

# AGRARIAN REFORMS IN BOMBAY

(The Legal and Economic Consequences  
of the  
Abolition of Land Tenures)

by

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*With a foreword*

by

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To  
Mrs. Indirabai Vilekar  
who has mothered me  
to effort and progress

## FOREWORD

The three main criteria of judging the stability of agriculture are, farm yields as compared to the productive capacity of land, net profits in agriculture in relation to expenditure, and the standard of living of the cultivator and his family. Judged by these criteria, Indian agriculture is considerably backward as compared to that in most of the agricultural countries of the world. One of the fundamental impediments to agricultural improvements in India, however, has been a group of intermediaries between the tiller of land and the State. While Europe has done away with the remnants of feudalism, its counterpart dies hard in various forms in India. Consequently, over a large part of the country, there is no full exploitation of land, the cultivator fails to get a reasonable share in the fruit of his labour, and his net profit, if any, is but meagre; moreover, as he is subjected to various other methods of exploitation and depressing influences, there has been a steady fall in his standard of living.

It is, therefore, a welcome sign that the abolition of the outmoded zamindari tenure system is receiving attention in most of the States in which it exists. While this issue has been on the anvil for a fairly long time in other States, the Bombay Government have taken a quick decision and enacted legislation to liquidate the non-ryotwari tenures such as the Bhagdari, Narwadari, Maleki, Mehwasi, Taluqdari and Khoti in the Bombay State. A significant feature of this legislation is that it attempts to reorientate the tenure system without creating discontent or disturbance among the old tenurial holders.

It is but proper that Dr. Patel, who was appointed by the Bombay Government for the special work connected with this reform should bring out this publication embodying his findings and views on this important subject. It contains very informative material on the historical, administrative, legal and economic aspects of the various tenures in the Bombay State, and discusses the provisions of the new legislation for their abolition, as also the social, administrative and economic consequences of this reform. The book is indeed a valuable contri-

bution to the studies—unfortunately too few—on this topical subject of land tenure and, as such, should prove useful to students of this subject as also to Governments in other States where similar reforms are contemplated or necessary. I do hope that the book will help to awaken among the public a wider and more fruitful interest in this important aspect of land-reform and thus speed up tenure reforms in other States as well.

10-5-50.

MANILAL B. NANAVATI.

## P R E F A C E

The abolition of the zamindaris, which was in a stage of controversy for more than two decades, has become a settled fact by the impact of economic and political forces in and around the country. It is believed that action in this respect will stem the spread of communism in India. As a result, the State Governments have, during the last five years (particularly after the Congress assumed office), undertaken legislative measures for the agrarian reforms with a view to abolishing all possible intermediaries between the State and the actual tiller of the land. Legislative attempts have been made to settle the relations between landlord and tenants *vis-a-vis* Government. It is assumed that land, as an agent of production, is a social asset and that Government has every right to regulate its use and management for the greatest good of the greatest number.

The Bombay Government made a modest beginning of the agrarian reform by enacting the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. It was followed up by the Bombay Tenancy and Agricultural Lands Act, 1948, which has practically settled the landlord-tenant relations. These Acts paved the way for the passing of the Acts to abolish the land tenures like Bhagdari, Narwadari, Maleki, Mehvasi, Talukdari and Khoti, which are the important *land tenures* of the Bombay State. Government proposes to follow up with legislative measures for abolition of *inam tenures* in the very near future. And that will complete the agrarian reforms of Bombay.

In the context of the Zamindari Abolition attempts of other State Governments of India, the measures of the Bombay Government may appear small. But having regard to actual results obtained so far, the achievement of the Bombay Government is really great and magnificent. When other State Governments have not been able to progress much beyond the *Bill Stage* because of the financial and administrative difficulties inherent in the imposing Zamindari Abolition Bills, this Government has actually enacted the Acts to abolish the zamindaris and brought them into force. The characteristic feature of the agrarian reforms of Bombay is that special rights and

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privileges enjoyed by tenurial holders are sought to be liquidated and that no attempt is made to acquire all lands and interests therein like other Governments. Government has always kept an eye on the practicability and the financial implications of the measures. As a result, it has been able to achieve its object without much discontent and disturbance among the tenure-holders. It is no exaggeration to say that it is much due to the energy, drive and vision of the Hon. Minister Shri Morarjibhai Desai that these agrarian reforms have been achieved by the Bombay Government within so short a time, without appointing any Committees and with comparatively little cost to Government.

Now a word about the publication of this book. I studied land tenures of Gujarat for my doctoral thesis on "the Land Revenue Settlements in Gujarat under the British". But that was very elementary. I, however, got an opportunity for a close first-hand study of the land tenures of Bombay, when I was appointed in 1948 on special duty in the Secretariat for work connected with the abolition of the land tenures. Besides the publications of Government and other institutions on the subject, I got a unique opportunity to study the otherwise inaccessible records of the Secretariat. The existing books on land tenures such as Dandekar's Law of Land Tenures, Baden-Powell's Land Systems of British India, Bombay Government's Character of Land Tenures of Bombay Presidency or a chapter on the Land Tenures in the Survey and Settlement Manual, Vol. I have become too old or are sketchy in treatment of the subject. There exists no single book, which deals with, in a compact form, the historical, administrative, legal and economic aspects of the land tenures of Bombay. The Talukdars, Khots, Maleks and other tenure-holders make anxious inquiries about the consequences of the Land Tenure Abolition Acts. This book is an attempt to present the material in a compact form in order to meet with the requirements of tenure-holders, lawyers, politicians, and Government administrative departments concerned. Besides, it may serve as a useful guide to other State Governments in India. If these objects are achieved, I would consider my labours amply rewarded.

As regards the plan of work, it is proposed to treat the problem of the land tenures in the Bombay State not as a haphazard incident but as a matter of historical growth. An

attempt is made to trace the genesis and growth of the tenures from the oldest available records and their developments in different stages to the present day. After the introductory chapter on the general aspects of the land tenures, one separate chapter is devoted to each land tenure. In each chapter, the historical origin of a particular land tenure, the rights and responsibilities of the tenure-holders, the provisions of the new Act abolishing the same, the social, administrative, economic and political consequences of the abolition of the tenures are dwelt upon in as much detail as possible. Care has been taken to sift the data obtained from various sources of Government records, and publications, and private books written either in English or regional languages. In order to make the book authentic as far as possible, every important statement in the book is supported by authority either of Government Resolutions, Acts, other pronouncements or High Court or Privy Council decisions. Where any incident or aspect of a tenure is found obscure or indeterminate, care has been taken to put that aspect in its proper perspective without making any dogmatic assertions thereof.

I am grateful to the Bombay Government for appointing me for the special work connected with abolition of the land tenures, which will be a landmark in the progress of the land revenue administration of Bombay. Besides acknowledging my debt to various authors whose publications I have drawn upon, I take this opportunity to express my deep sense of gratitude to Shri J. R. Dhurandhar, Additional Secretary, Legal Department, for his legal advice and for finding time, in the midst of pressing duties of the Legal Department, to go through the typescript and make useful suggestions. While acknowledging the help received from various sources, I must make it clear that I am alone responsible for the facts and opinions contained in the book.

I am grateful to the Bombay Government for having permitted the publication of this work.

Above all, I must acknowledge my indebtedness to Sir Manilal Nanavati for his encouraging Foreword.

G. D. PATEL.

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- "          "          "          "    Panch Mahals.
- "          "          "          "    Broach.
- "          "          "          "    Surat.
- "          "          "          "    Ratnagiri.
- "          "          "          "    Kolaba.

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|       |      |     |         |                          |
|-------|------|-----|---------|--------------------------|
| G.R., | R.D. | No. | 367     | dated 21st January 1873. |
| "     | "    | "   | 674     | " 31st January 1876.     |
| "     | "    | "   | 2474    | " 24th April 1876.       |
| "     | "    | "   | 8999    | " 15th November 1884.    |
| "     | "    | "   | 2826    | " 7th May 1887.          |
| "     | "    | "   | 992     | " 14th February 1888.    |
| "     | "    | "   | 5096    | " 6th August 1898.       |
| "     | "    | "   | 2263    | " 22nd March 1904.       |
| "     | "    | "   | 2512    | " 10th March 1909.       |
| G.M., | R.D. | "   | 8760    | " 11th August 1909.      |
| G.R., | R.D. | "   | 8674    | " 4th September 1909.    |
| "     | "    | "   | 5364    | " 6th June 1913.         |
| "     | "    | "   | 938     | " 29th January 1914.     |
| "     | "    | "   | 1244    | " 7th February 1914.     |
| "     | "    | "   | 12841   | " 22nd December 1914.    |
| "     | "    | "   | 13050   | " 29th December 1914.    |
| "     | "    | "   | 11063   | " 18th October 1915.     |
| "     | "    | "   | LC2083  | " 21st July 1926.        |
| "     | "    | "   | 8581/24 | " 2nd May 1927.          |
| "     | "    | "   | 8937    | " 14th November 1928.    |
| "     | "    | "   | 3271    | " 29th May 1934.         |
| "     | "    | "   | 3271    | " 20th February 1939.    |
| "     | "    | "   | 9398/45 | " 16th February 1950.    |

## CHAPTER I

### INTRODUCTION TO LAND TENURES

The subject of abolition of the land tenures has of late assumed much importance and looms large in the public mind and the press for several reasons. In the last century and even till the depression of 1930, little importance was attached to this problem. But since the commencement of World War II in 1939, and its concomitants of controls of agricultural produce, procurement and rationing of foodgrains, the matter has attracted much public attention. Since these measures are vitally connected with land utilization and agricultural products, the land tenures, which have proved more or less an impediment to the maximum utilization of the agricultural resources of the country, have come under severe criticism. The evils of absentee landlordism, rack-renting of tenants, improper cultivation of lands under different tenures, absence of scientific or mechanized farming or farming on modern lines, vast uncultivated lands in these areas, extensive and minute fragmentation of holdings, existence of uneconomic holdings all round, have set Governments and economists a-thinking about the future of several land tenures.

It is also assumed that realization of the agrarian reform is of vital national interest. The oppression of the down-trodden tenantry by the zamindars for generations by rack-renting and forced labour gave rise to many kisan movements in the country. Marches of kisans to Government offices were conducted to ventilate their grievances. With the spread of ideas of Socialism and Communism, this agricultural discontent assumed political importance particularly with the infiltration tactics of the communists in the politically unsettled countries of Asia. India cannot afford to ignore the writings on the wall especially those beyond its eastern frontier. As a result, the problem of abolition of the Zamindaris, which was still in a stage of controversy a few years ago, has now become a settled fact. Not only that; it is advocated as a bulwark against the insidious and surreptitious spread of Communism

in India and, therefore, of great national necessity. Many of the theoretical, administrative and financial objections against such a step have been swept away by the avalanche of political considerations and security of the new-born Republic.

Furthermore, the abolition of the Zamindaris has also become an economic necessity. India is a deficit country in matter of cereals and other foodgrains and has to import large quantities from abroad particularly wheat from the U.S.A. Such imports entail a heavy cost on India both as regards the price of foodgrains and the cost of transport with the result that our sterling resources are heavily drained away. In order to stop this rot, the Central Government have decided to stop all imports of foodgrains from 1951 by making India self-supporting in this respect. This object can be achieved only if India utilizes all her agricultural resources to the maximum and raises the optimum produce required by the ever-increasing population of India. For this, the abolition of Zamindaris has also become an economic necessity. The reasons are that in these Zamindaris, Government have little control or questioning interference, so long as the fixed dues of Government are paid by Zamindars or tenure-holders. Unless they are abolished, Government cannot step in to utilize the resources according to the requirements of the people. Agriculture is still the staff of life in India, as about 70% of the people live upon it. Land tenures have their effects on land utilization. Production may be enhanced or retarded by the laws, customs and institutions that are associated with land tenures. Unless Government abolishes these tenures and takes up management or control of all the resources in the State, optimum production and overall progress cannot be achieved.

From the administrative point of view, also, these tenures require to be scrapped. In the uncertain political conditions of India, various tenure-holders like the Talukdars, Khots, Mehwasdars, Bhagdars and Narwadars played a useful role in the administrative machinery of the State. But with the peaceful settlement of the country and establishment of the modern methods of administration, they have become functionless and have outlived their utility. They are clearly an anachronism and feudal relics of the past. They are like festering ulcers on the otherwise ryotwary land system of the Bombay State. Unless they are removed, the land system of

the State cannot be placed on the progressive patterns of peasant proprietorship and co-operative farming aimed at by Government. Of course, the abolition of the tenure would entail on Government some cost on account of compensation and alternative administrative arrangements; but the advantages, economic, political and administrative, flowing therefrom would outweigh many disadvantages.

In a nutshell, for the foregoing reasons, the Congress and all the State Governments have made abolition of "Zamindari" a major plank in their programme and policies and, to this end, passed necessary legislations practically in each State. The underlying principle of all the legislations is that intermediaries have no place in India's agrarian economy and that the land must belong to a person who cultivates it.

### Meaning of Land Tenure

The definition of the word "tenure" has not been laid down by any law in India. Latin *tenure* or French *Tenir* means to hold. The expression has been in use almost from the commencement of the British rule. The Regulation I of 1823 and the Regulation XVII of 1827 gave a list of certain tenures as tenures recognized by the custom of the country. This expression has acquired a limited sense under the English Law.<sup>1</sup> In India, the expression may be said to mean the manner and the right in which land is held and possessed and may indicate the duration of holdings. Tenure is the legal relation in which the holder of any land stands to Government, or any other superior landlord. This was the view held in *Manohar Ganesh v. Chotabhai*.<sup>2</sup> From these authorities, Mr. Modak deduces that "A tenure can be said to be the act, manner or right of holding of land, the terms or conditions upon which land is held or possessed".<sup>3</sup> Thus, the land tenure becomes a problem of intermediary interests, utilization of land and distribution of farm income.

### Genesis and Growth of Land Tenures

Innumerable forces have influenced the development of Society and amongst them, a prominent place must be given

1. Stroud's *Judicial Dictionary*, 2nd Edition, p. 2031.

2. I.L.R. 8 Bombay 347, p. 354.

3. D. S. Modak, *The Bombay Land System and Village Administration*, para 68, p. 143.

to the land tenure system. "The system of land tenure is an outcome of a long process of evolution, its complexities would be practically incomprehensible if the historical factor was not taken into consideration. At no time has the system remained static for long; it has undergone practically continuous change under the influence, partly of Government intervention but mainly of economic and social forces." "The ownership of land and the nature of rights and obligations as between the members of the rural community arising as a consequence of the utilization of land are, in all countries, the product of a long evolution determined by the geographical, economic, social and political conditions and circumstances of the community in question."<sup>5</sup>

According to Baden-Powell, there are various factors contributing to the genesis and growth of a variety of land tenures in India. The races of India took to agriculture after passing through the nomadic or pastoral stage and formed certain groups of land-holdings called 'villages'. The village formed a nucleus of certain relations and a bond of common government. The village with its various forms and modifications forms the starting point for the study of tenures. With the growth of the society and increase of population, there arose layer upon layer of interests each contributing to the creation of intermediaries. The revenue administration and revenue farming had great effect on the tenures. The State in India derived the bulk of its revenue from the land in the form of cropshare. Subsequently, it was commuted into cash rents. To collect the revenue, a hierarchy of graded officials in districts and minor divisions of territory were formed for administrative purposes. In the revenue administration of old Hindu rulers, the employment of an intermediary class of proprietors between the sovereign and the subject for revenue collection was unknown. The revenue collection was then directly undertaken by Government through its village servants either by taking a share of the produce or by levying a cash rent without the intervention of farmers or zamindars. Intermediaries were introduced by the Muslim rulers, when they invaded India in the eleventh century. They occupied

4. *The Land Tenure Systems in Europe*, published by the League of Nations, p. 8.
5. Sir Manilal B. Nanavati, *The Indian Rural Problem*, Ch. VIII, p. 106.

the country as a military occupation and did not make any effort to dismiss the old officers, who served under the Hindu Kings and replace them by their own staff. The reasons were that the old Hindu system of revenue administration required close and constant supervision and considerable local knowledge, which was inconvenient to Muslim rulers. In the circumstances, they introduced a system of intermediaries, who were merely revenue farmers. The duties of such intermediaries were to collect revenue on behalf of Government and had no title to lands. Their functions were mainly supervision and partial maintenance of order. Being rich and powerful, they advanced money to ryots and stood surety for individuals or villages for land revenue due to Government. Gradually, they entered into arrangements with the rulers for lump payment of revenue for a year or a term of years. So long as the central power was strong enough, the intermediaries merely acted as revenue collectors. But with the disintegration of the Mogal Empire, by reason of their local power and influence, they became independent and claimed proprietary right in the soil. The Marathas like other invaders fastened on the land and devised some scheme of making profit out of it. For collection of revenue, a hierarchy of graded officials in districts and minor division of territory were formed for administrative purposes. These persons were remunerated by holdings of land. Consequently, a class of land tenures developed due to these official holdings. The assignment or remission of land revenue was responsible for tenures. Further, Government alienated land revenue of a certain estate or tract of country in favour of some chief of importance or to provide funds for some special objects or for a recompense for services rendered or to be rendered. This was a troublesome legacy to the British.

In the middle of the eighteenth century, when the East India Company took over the administration of the State, their main concern was the punctual collection of land revenue to meet the cost of the wars then waged. They were forced to evolve some method out of the administrative and social chaos existing at the time. They had to acquaint themselves with descendants of the old revenue farmers and chiefs through whom the Muslim and Maratha rulers collected land

revenue. It was noticed that these persons had arrogated to themselves much power and appropriated vast areas of land to themselves. But the British could not afford to dispense with them, as they were the only well-established machinery for revenue collection then in existence. Having regard to the administrative conditions obtaining then, it was not possible to enter into direct arrangements with the actual tillers of the soil. The land tenures evolved during the period were therefore mere by-products of attempts at land revenue settlements.

Another important cause was the super-imposition of one set of land rights over others. It may be noted that historical conquests produced no wholesale disruption or annihilation of the previous state of things. The changes were gradual and imperceptible. They represented an indefinite sort of compromise between the old facts and new conditions.

The modern laws had a fair share in shaping the tenures. The British found in the beginning that previous Governments had left traces of several different rights and layer upon layer of interests. In an attempt to give legislative sanction to these interests, early administrators endeavoured to formulate theories according to their ideas of Western jurisprudence.

Nor must we attribute all modifications to historical events and legislative efforts. All the same, economic conditions were silently playing their part in modifying ideas and customs about land-holding. With the increase of population, more and more land was brought under cultivation. Area available for cultivation diminished and the holdings became more and more sub-divided. The marginal land was brought under the plough. The law of diminishing return came into operation. The 'rent', 'enhancement', 'competition' or such other economic terms began to be talked about.

In a nutshell, it may be deduced from the foregoing facts that the land tenures may be ascribed to political, historical, administrative, legal and economic factors. No single cause operated at any one time; but there was an inter-action of more than one cause, which produced or modified the existing land tenures shading off the intermediate interests in the land.

The land tenure problem cannot be clearly and definitely separated from those of other phases of economic life or of other sciences. Land tenure research comes close to law when

it studies property rights and their division, whether they may be historical or temporary; or in the applied aspects, such as the legal status of a cropper and tenant or the relationship between the landlord and the tenant. It touches sociology, when it tries to point out certain sociological impacts of the tenure system.<sup>6</sup> With the passage of time and clear definition of rights and responsibilities of tenure-holders, the research in the historical aspect of land tenures becomes more of academic interest.

### Main Land Tenures of Bombay

The forces underlying the genesis and growth of many land tenures in the State have been set forth above. Now, we may pass in review different land tenures indicating the probable forces contributing to their growth. To begin with, the main land tenures of the Bombay State are the Bhagdari, Narwadari, Talukdari, Khoti, Mehwasi, Maleki, Sharakati, and Shilotri. Practically, all of them arose out of the uncertain political conditions of the times and the collection of land revenue for Government of the day.

The Bhagdari and Narwadari tenures in Gujarat are traced back to the ancient village communities but the exigencies of Mogal and Maratha administration in matter of revenue collection (i.e. revenue farming) practically created these tenures in the present form. The Bhagdars and Narwadars stood surety (manotidars) for individuals and villages in matter of payment of the land revenue. The Government of the day was saved the trouble of collecting revenue from the ryots.

The Khoti tenure originated in the Konkan owing to the rugged nature of the tract, the difficulty of collecting land revenue directly from individual cultivators and changes in the ruling power. In view of these factors a powerful and influential middle-man who could settle himself in the village, organize cultivation of lands, command confidence of ryots and be responsible to Government for revenue was badly needed. In these circumstances, the Bijapur King Yusuf Adil Shah (1489-1510) entrusted the work of collecting land revenue of villages to rich and influential persons, who subse-

6. J. D. Black, *Research in Agricultural Land Tenure, Scope and Method*, p. 4.

quently came to be called Khots. The system was continued by the Marathas and the British for similar reasons.

The Talukdari tenure obtaining in the districts of Ahmedabad, Kaira, Panch Mahals and Broach did not arise out of the revenue farming system of Government; but it originated in the uncertain political conditions of Gujarat. The Talukdars date back to the old Rajput princely order. With the disintegration of the Mogal Empire and the resultant political chaos, some local chieftains or Thakors played the padshah in their principalities and arrogated to themselves the authority of governing the country-side with a right to levy taxes and cesses. During the Maratha period, they continued subject to payment of tribute. In view of these facts, it may be noted that they were not the grantees of the British, but their rights as proprietors of the villages antedated the advent of the Marathas and the British.

Further, the Mehvasi tenure obtains in 21 villages in the Kalol Taluka (district Panch Mahals). This tenure originated in political and administrative disorder which resulted with the downfall of the Moguls and the exactions of the Marathas. During the period, some Koli freebooters and some Rajput chiefs, who, either as ejected from original ruling position or having always been freebooters in the wilder parts of the country, maintained a hold by terror and force on the neighbourhood. Thus, the Mehwasdars acquired certain lands and rights to recover revenue in villages. During the Maratha period, they continued in their position on payment of lump sum called "ankda" and in the beginning of the British period, they claimed proprietary rights in the villages; but we shall see later on that the British did not recognize any proprietary rights in the villages; but permitted them to collect land revenue on behalf of Government on certain remuneration called 'Mehvasi profits'.

Furthermore, the Maleki tenure obtains only in 27 villages of the Thasra taluka (district Kaira). This is one of the tenures which does not owe its origin to the expedient of revenue-farming. But it arose out of a grant in about 1483 of 12 villages by Sultan Mahmed Begada of Ahmedabad to the Malekjadas as a reward for military prowess shown in conquering the fort of Pawagadh in the Panch Mahals district. The Marathas subjected them to payment of tribute and

ghasdana. In the early British period, attempts were made to settle their rights by agreement and leases. But their rights and privileges were ultimately settled in 1865-66 by Mr. Pedder. Under the settlement, Government assumed management of the villages and allowed to Maleks a 7 or 9 anna share from the revenue of these villages and certain "Gharkhed" lands as exempt from payment of revenue. In short, the Maleks became Amal (share of revenue) holders under the British.

Besides the Maleki tenure, there is another tenure called Sharakati which resembles the Maleki tenure in point of sharing revenue. The Sharakati tenure is not confined to a particular taluka or district; but is scattered over a number of villages in the whole State. Owing to exigencies of administration, Government allowed to certain holders of villages a certain proportion of revenue and retained the balance. Such villages are not confined to any particular areas or inams; but they may be saranjam, personal, paragana, etc. With the abolition of all inams in the State, this tenure will also automatically be abolished. Government will not, therefore, require any special legislation for its abolition.

Lastly, there is the Shilotri tenure which is found in the Northern Konkan. The tenure relates to lands which have been embanked and reclaimed from the sea. It has been described in the Bombay Regulation I of 1808 as under:—

(1) There has existed from the time of the acquisition by the Portuguese of the Island of Salsette in 1534 A.D. by conquest a description of landed property under the denomination of Shelowtr (called also Serrotore), and consisting of lands said to have been acquired by the Natives on favourable terms of tenure, by purchase from their Portuguese masters, which property has been respected throughout the subsequent revolutions (i.e. changes).

(2) Another description of Shelowtr tenure consists of certain spots of ground gained from the sea by embankments, or brought into cultivation from the jungle, or forest, at the personal expense of individuals, who have continued to pay thereon, in several instances, a fixed quit-rent without reference to the produce.

This tenure is mainly found in the districts of Thana and Kolaba and may be said to be instances of special conditions

or restrictions referred to in the proviso to Section 52 of the Land Revenue Code.<sup>7</sup> Government has no right to enhance the rent or revenue of the Shilotridars and consequently its assignees have also no such right.<sup>8</sup>

The reclamations are commonly known as khars. The tenure may be sub-divided into three classes. To begin with, there is the shilotri tenure proper under which the khar belongs to the person by whom it was reclaimed or his representatives. The shilotars are considered to have a proprietary right. They let out these lands at will and, according to the old custom, levy a maund of rice per bigha in addition to the assessment, for the repair of the outer embankments. These lands have been surveyed and assessed like other Government lands. The responsibility for repairs is on the proprietor. The second class of the shilotri lands is that in which either Government reclaimed the khars or became possessed of them by lapse. The responsibility for repairs of the embankments is on Government. The cultivators of these khar lands hold their land just as other survey tenants. But an extra assessment, which is supposed to represent the shilotri maund, is appropriated to the repairs of the embankments. The third kind of shilotri lands is that in which reclamations were made by associations of ryots on special terms with Government. They are called *Kularg Khars* in which the tenants carry out repairs of embankments jointly, each having a share of the land and assessment recorded against his name.

It may be remembered that a Shilotri maund (or man) is neither rent nor assessment. It is levied from the tenants for the purpose of meeting the cost of repairs to embankments. Recent inquiries, however, indicate that although the lands and embankments are not kept in proper repairs by the Shilotars concerned, they recover the shilotri maund from the tenants. The shilotars enjoy this right without performance of any duty on their part. The tenants urge that this levy should be abolished forthwith. Under the provisions of section 20 of the Bombay Khar Lands Act, 1948, this right can be abolished on payment of compensation, unless Government considers a special legislation necessary for abolition of this right only.

7. Dandekar, *Law of Land Tenures*, p. 24.

8. *Dadibhai v. Ramji* (1874), 11 Bom. H.C.R. 162.

The land tenures prevalent in the State are ryotwari and non-ryotwari. The former covers an area of 4,46,75,934 acres, i.e. nearly 90% of the total pre-merger areas in the State; whereas the latter covers 39,77,512 acres.<sup>9</sup>

The broad analysis of the development of the different land tenures shows that there was no definite and well-chalked out tenurial policy followed by Government. The land tenures, as they exist today, are the by-products of various settlements, made from time to time by the British for purposes of revenue collection. Heavy expenditure on the territorial wars from 1750 to 1850 made the early British administrators to look to realization of more and stable revenue from the ryots as the only ideal of administration. They did not care for the happiness of the ryots or the land-owning classes. The leading principles of revenue administration as laid down by Mr. Mountstuart Elphinstone, were "to abolish farming, but otherwise to maintain the native system; to levy the revenue according to the actual cultivation; to make the assessment light; to impose no new taxes; and to do away with none, unless otherwise unjust; and above all, to make no innovations."<sup>10</sup> Thus, the *status quo* in the case of land-holders, ryots and the methods of revenue collection was maintained. The result of this policy was that Government farmed out revenues of many villages to the existing powerful and leading persons or old officials of villages like Bhagdars, Narwadars, Khots, Maleks, Talukdars, etc. This was against the policy of abolishing farming laid down by Mr. Elphinstone in 1821 but the political circumstances of the times compelled the British to recognize the existing agencies of revenue collection and village administration. The Regulation XVII of 1827 (Chapter VI) incorporated elaborate provisions for farming of revenues. The subsequent history of the State showed a steep increase in the revenue levied from the ryots. Every lease, renewal of lease, or agreement meant an increase of revenue with the result that the peasantry groaned under the heavy pressure of land revenue. The fall of prices of agricultural produce in the thirties and the forties of the last century worsened their position. There was no primary

9. Captain Mohite's Report on *Co-operative Farming in Bombay Province*, p. 1.

10. *Survey and Settlement Manual*, Vol. I, p. 17.

motive to give relief to the disadvantaged classes; but "there seemed to be a deliberate attempt to create a hierarchy of an unequal agrarian social structure to ensure and perpetuate their territorial annexations, thus harnessing agrarian economy to imperial expansion and consolidation."<sup>11</sup>

Thus, the settlement of land revenue followed the process of territorial acquisition with the result that there was no uniformity in the pitch of land revenue demand. The important feature of the first British settlements was grant of annual or triennial leases to the existing powerful landholders or petty chiefs like Khots, Talukdars, Mehwasdars, etc. There was no definite policy of land tenure settlement till the forties of the last century. It was only after the publication of the Joint Report of 1847 that attempts were made by the British administrators like Peile, Beyts, Pedder, Nairne, etc., to settle the incidents of various land tenures like the Talukdari, Bhagdari, Narwadari, Maleki, Khoti, etc. As a result, we see the Bhagdari and Narwadari Act enacted in 1862, the Maleki settlement made in 1865, the Talukdari settlement in 1866, the Khoti settlement between 1873 and 1880 and the Mehwasi agreement executed between 1873 and 1886. With all the abuses and inefficient administration caused by different tenures, the British Government never thought of abolishing them outright. When the evils were rampant and widespread, and popular agitation tremendous, it only bowed to the public opinion and tinkered with the problem by piecemeal reforms here and there. The problem of parasitical intermediary interests in land with its concomitant evils persisted. What Dr. Sayanna says about the land system in Madras is equally applicable to that in Bombay. He observes<sup>12</sup> that "As a result, the land system in Madras, as it exists at present, is composed of heterogeneous types of land tenures, which have been responsible for the large tracts of waste lands and low standards of cultivation, on the one hand, and, on the other, for great maladministration of farm income leading to rural poverty, indebtedness and agrarian discontent in the province". There are waste lands aggregating to 2½ lakhs of acres in the Talukdari villages. Low standards of cultivation are noticeable in Talukdari, Mehwasi and Maleki villages. Rural

11. Dr. V. V. Sayanna, *The Agrarian Problems of Madras Province*, p. 45.

12. *Ibid.*, p. 46.

poverty and agricultural indebtedness are the hall-mark of the villages particularly under the Khoti, Talukdari, Maleki and Mehwasī tenures. The tenorial holders are practically sold out to the shaukars of the village or the neighbouring khalsa villages. The net result is that the agricultural population of the areas is seething with discontent and despair and this condition drives them to become fatalistic. As stated before, the British were anxious not to displease the land-holding and tenorial classes, who were considered as bulwark against any popular agitation by the Congress or the kisan organizations. The history of the khoti and talukdari tenures give abundant proof of this fact. In this state of affairs, the Britishers left India in August 1947 leaving the reins of entire administration to the Congress party in India.

### Congress Policy of Agrarian Reform

The Congress Party had long before declared its policy regarding agrarian reform. The resolution on the Fundamental Rights and Economic Programme passed at the Karachi Congress in 1931 provided<sup>13</sup> as under:—

“The system of land tenure and revenue and rent shall be reformed and equitable adjustment made of the burden on agricultural land, immediately giving relief to the smaller peasantry by a substantial reduction of agricultural rent and revenue now paid by them and in case of un-economic holdings exempting them from rent, so long as necessary with such relief as may be just and necessary to holders of small estates affected by such exemption or reduction of rent, and to the same end, imposing a graded tax on net incomes from land above a reasonable minimum.”

The policy was further amplified by a resolution on Agrarian Programme passed by the Lucknow Congress in April 1936 as under:—<sup>14</sup>

“This Congress is of opinion that the most important and urgent problem of the country is the appalling poverty, unemployment and indebtedness of the peasantry funda-

13. Jawaharlal Nehru, *Report of the National Planning Committee*, p. 27.

14. *Ibid.*, p. 29.

and dwarfed holdings. Schemes are being prepared to consolidate ownership and not cultivation and actual consolidation of small holdings is yet to be made. When schemes chalked out by Government are put into operation, the benefits envisaged by the Act will be realised by the ryots.

### **The Bombay Tenancy & Agricultural Lands Act**

In order to settle landlord-tenant relations, Congress Government had passed the Bombay Tenancy Act, 1939. The actual working of the Act revealed that the provisions and the limited application of the Act did not achieve the object aimed at by Government. Government, therefore, enacted in 1948 an omnibus legislation called the Bombay Tenancy and Agricultural Lands Act, 1948, which, while repealing the Bombay Tenancy Act, 1939, as amended in 1946, retains some of its useful provisions regarding tenancies, maximum rent, commutation of cropshare rent into cash rent, suspension or remission of rent, the rights of tenants against arbitrary eviction and special privileges of protected tenants for full benefit of the produce and wood of trees planted during the tenancy. The Act fixes the maximum rate of rent at  $\frac{1}{4}$ th and  $\frac{1}{3}$ rd of the total produce in the case of irrigated and non-irrigated lands, respectively. Government is, however, empowered to fix a lower rate of rent as a multiple of assessment. Further, provision has been made for refund of rent recovered in excess by the landlord and also for compensation to the tenant. Under the Act, the tenants are either protected or ordinary for a term of 10 years. The rights of permanent tenants are not abridged or affected by the provisions of the Act. The onus of proving that a particular tenant is not a protected tenant is thrown on the landlord. Besides, such a protected tenant cannot be evicted by a landlord, who has in his possession 50 acres or more land, even if he intends to cultivate personally the land held by a tenant. He is given a right to purchase the land he is cultivating at a reasonable price to be determined by an Agricultural Lands Tribunal, provided his holding is not more than 50 acres, or if, by thus purchasing, the land in possession of the landlord is not reduced to less than 50 acres. In order to discourage absentee landlordism, restrictions have been placed on the transfer of agricultural lands to non-agriculturists and the cultivating tenant is given the first right

of refusal. With a view to secure efficient cultivation, a landlord is authorized to terminate the tenancy in case a tenant fails to produce a minimum yield. Further, Government is empowered to assume management of estates for full and efficient use for agriculture or for social and economic improvement of the peasantry or on account of disputes among the tenants and landlords.

This Bombay tenancy legislation has been acknowledged to be one of the most progressive legislations in the country. Other State Governments have adopted certain important features of the Bombay legislation in their tenancy legislations. Even the recent report of Congress Agrarian Committee adopted salient features of the legislation in its suggested reforms of the agricultural economy of India.

In short, the Bombay Government made a very auspicious and brilliant beginning in the agrarian reform by enacting the Bombay Tenancy and Agricultural Lands Act, 1948, soon after assuming office. As detailed above, its provisions are very comprehensive and its effects far-reaching. After settling landlord-tenant relations, Government took up the work regarding settling relations between Government and various tenurial holders of lands. In its policy, Government aimed at abolition of the special privileges and rights regarding revenue and land enjoyed by such holders. But it did not attempt to acquire all lands and interests involved in the tenures. The ideal before Government was to liquidate their special privileges and level them down to the position of ordinary ryotwari landholders subject to the provisions of the Bombay Land Revenue Code. This line of agrarian reform was adopted for several reasons. To begin with, the contemplated measure would not lead to their severance from their lands with the result that such a step would cause the least possible discontent and disturbance. The tenurial holder would not feel that there is confiscation or expropriation of his property. Of course, there would be heart-burning, because Government proposed to withdraw concessions in land and land revenue enjoyed by them for several generations. But this could not be helped in the context of altered circumstances of the society and progressive administration of the State. Government has to move with democratic governments of the world and if it

does not move or moves half-heartedly, it is sure to meet the fate of landlordism in other countries.

### Compensation

Another important consideration was the question of compensation. Under Section 299 of the Government of India Act, 1935, no person is to be deprived of his property without payment of compensation. When there is compulsory acquisition of private property, Government has to lay down principles of compensation and the manner and method of payment. In acquisition of Zamindaris in Bihar, Madras, United Provinces, Government will have to pay compensation to the tune of Rs. 150, 17½, and 134 crores. Even though the necessary Bills have been passed in the former two States, they find it extremely difficult to make payment of compensation with the result that they have been reported to be resorting to expedients of issuing negotiable or non-negotiable bonds or raising the Zamindari Abolition Funds as in the United Provinces. Their position has become very embarrassing as a result of the Central Government's directive that the State Governments should not expect any financial help for implementing their Zamindari abolition policies or float loans so as to aggravate inflationary tendencies in the country. Having regard to these considerations, Government thought it expedient and politic to liquidate such rights and interests in several feudal and anachronistic land tenures in a manner, which would not involve them in payment of large compensation. As a quantum of compensation, Government of Bombay laid down an *ad hoc* principle that maximum compensation equal to three times the annual profits or revenue realized by different tenorial holders should be given for liquidation of their special rights and privileges. This quantum was adopted having regard to the fact that they were, as far as possible, not to be deprived of the lands in their possession. The profits or revenue enjoyed by them for generations without any duties or with improper functioning had also been borne in mind in fixing the quantum. In this historical and tenorial background, the quantum of compensation incorporated in the Acts to abolish the Bhagdari, Narwadari, Talukdari, Khoti, Maleki tenures, etc., was appropriate,

equitable and legal in accordance with the provisions of Section 299 of the Government of India Act, 1935.

All these tenure abolition Acts provide that for extinguishment or modifications of any rights the tenorial holders shall be entitled to maximum compensation which shall not exceed three times the annual profits or incomes enjoyed during the last 3 or 5 years. For extinguishment or modification of any other rights under the Acts, residual provisions have been made for grant of compensation. For compensation the person concerned has to apply to the Collector of the district within 6 or 12 months as provided in the Acts. Thereupon, the Collector would hold a formal inquiry and assess the amount of compensation. If any person is aggrieved by the award or decision, provision has been made for appeal to the Bombay Revenue Tribunal, the decision of which is to be deemed final.

These compensation provisions were criticized from a few points of view. To begin with, the gravamen of the charge was that provision should have been made for assessment of compensation by civil courts and for appeals to the High Court and that determination of the amount of compensation by the executive officers like the Collectors would be improper. The criticism seems to have been made on misappreciation or improper appreciation of the provisions of the Acts. It may be recalled that all these land tenures form part of the general revenue administration of the State and their subtleties and niceties can be appreciated in their proper historical and tenorial background only by the revenue officers like the Collectors of the districts because of their knowledge acquired in the day-to-day administration. They alone, therefore, can assess adequate compensation, having regard to the rights enjoyed by tenorial holders. Further, Government has not excluded the judicial adjudication of the claims to compensation, because of the provision of appeal to the Bombay Revenue Tribunal which is presided over by an ex-High Court Judge of Bombay and a leading member of the Bombay Bar and a revenue expert like the Divisional Commissioner. Out of the three members constituting the Tribunal, two are from the judicial line of acknowledged merit and adequate experience. The decisions of such a body are not likely to be influenced

or swayed by executive considerations. In these circumstances, the criticism in this respect is misconceived.

Secondly, after the publication of the draft Bill to abolish the Khoti tenure, a section of the press urged Government to pay compensation in matter of Khoti faida to the Khots, instead of the tenants paying the same. From some quarters, it was argued that if Government could not pay the compensation of Khoti faida, tenants of Khoti lands should be given loans or advances in order to enable them to pay amounts of compensation. These arguments were advanced on the ground that the Khoti tenants would not be able to pay "commutation of Khoti dues" to Khots, who would consequently not get the requisite sum as compensation for extinguishment or modification of their rights. It will thus appear that both these arguments were made to safeguard the position of tenants and khots *vis-a-vis* Government. It may be remembered that the Khoti faida is being paid by tenants to Khots for several generations in the past and for severing their relations from the Khots, the compensation (commuted value of Khots' dues) at three times the amount of Khot's dues would not be heavy for the khoti tenants to pay for gaining independence from Khots and acquiring occupancy rights in the lands in their possession on payment of a nominal occupancy price either to Government or the Khot. Further, adequate provision has been made in the Act to safeguard the recovery of commutation value of Khot's dues or amounts of occupancy price from tenants, as they are made recoverable as arrears of land revenue. Lest tenants might delay or hesitate to apply for commutation of the Khot's dues, provision has been made that the Mamlatdar (and not the tenants) should start inquiries *suo motu* for determination of the commutation value of such dues. In view of these provisions, it will appear that the criticism in the press in this respect has been forestalled by sufficient provisions in the Act.

One leading English daily urged that the compensation provisions about the Talukdari and Khoti abolition Bills required modification. Under the provisions, there is to be no automatic monetary payment for the loss of rights enjoyed so far by the Khots and Talukdars. They are told the maximum they may expect but not what they will actually get. It was therefore suggested by that newspaper that matters could be

simplified by evolving a formula equating loss of rights with a compensation schedule and that this would not leave them to the tender mercies and vagaries of a local Collector.<sup>15</sup> This criticism of the compensation clauses is based upon a superficial consideration of the provisions. Scrutiny of all these abolition Acts would show that the compensation provided is based upon the income realized by the tenorial holders during 3 or 5 years before the coming into force of the Acts. These incomes are definite and recorded in the revenue records. The provisions regarding the three times the maximum income or exemption from land revenue enjoyed hithertofore are also clear and tenorial holders may expect the maximum amount as compensation normally. For reasons to be recorded if the Collector awards compensation less than the statutory maximum, the aggrieved party has a forum of appeal in the Bombay Revenue Tribunal. The suggestion about a compensation schedule seems to have been based on the provisions of the Zamindari abolition bills of United Provinces, Bihar and Madras. But as stated before, the Zamindari problem in our State is quite distinguishable from that obtaining in those States. At the cost of repetition, it must be stated that our Government aims at liquidation of special rights and privileges in certain land tenures and not acquisition of all interests in the Zamindaris as in other States. In the circumstances, it will be clear that the suggestion about a compensation schedule evolving a formula equating loss of rights is inapplicable to our problem.

Some extremists like the Socialists urged that the Talukdars and Khots and other tenorial holders do not deserve any compensation, because they have rack-rented their tenants in the past and enjoyed large incomes either without performance of their duties or with improper performance thereof. In this context, they should not be granted any compensation at all. This view Government refused to accept for two main reasons, viz., legal and political:

Legally, under Section 299 of the Government of India Act, 1935, and now under article 31 of the Constitution of India, no person is to be deprived of his property and for compulsory acquisition of any private property, he is to be

15. *The Times of India*, July 1949.

given compensation in the manner and method provided in the law. Compensation is to be paid for compulsory acquisition of property or rights. Readers of newspapers perhaps remember the great controversy that raged round the compensation clause (article 31 of the Constitution of India) in the Constituent Assembly. Conflicting and divergent views were expressed by Congressmen particularly from the Zamindari areas. A refreshing sense of realism was brought to bear upon the discussion by Sardar Vallabhbhai Patel by a timely message to the Consenbly. It said that whatever provision was sought to be made in the Constitution, it should not in any way undermine the credit of the country and jeopardize the gains of political consolidation and unity of administration achieved in the last two years after surmounting many difficulties. Sardar Patel reminded the Congressmen of the Congress pledge of payment of adequate compensation in the event of compulsory acquisition of property. During the debate, Jawaharlal Nehru, who moved the article, brushed aside too technical and legal niceties in the consideration of compensation and declared that the Congress pledge to abolish the Zamindaris would be given effect to "wholly, completely, hundred per cent, and no law and no judge is going to come in our way". . . . "We honour our judges within limits. But no judiciary can stand in judgment over the sovereign will of Parliament representing the will of entire community . . . where the future of India is concerned, no judiciary can come in the way". The article 31 which is a virtual adaptation of Section 299 of the Government of India Act, 1935, does not make any special distinction between agricultural and commercial property for compensation.

Politically, we should not forget that we are abolishing the land tenures not in the midst of a tempo of a revolution but in comparatively peaceful times. We have to strive to avoid ill-will, as far as possible.<sup>16</sup> The goodwill of the Zamindars today for the purposes of political stability of the country and the reorganization of agriculture should not be under-estimated. This political aspect of the Zamindari problem was emphasized by Pandit Govind Vallabh Pant in the Consenbly, when he said that "What has happened in China and Burma cannot

16. Prof. P. N. Driver, *Problem of Zamindari and Land Tenure Reconstruction in India*, p. 124.

be ignored, when we are considering the question of abolition of Zamindaris in our country". Speaking on the article 31, Mr. K. M. Munshi asked: "Are you going to have a revolution in this country and an agricultural revolt in order that a few thousand people could be kept in luxury and continue to enjoy comforts to which they were accustomed in the past century?" Thus objections raised to the abolition of the Zamindaris by several Zamindars were thus brushed aside and the article 31, as amended, was passed by the Consembly. For these legal and political reasons, the socialists' suggestion for abolition of the Zamindaris without payment of compensation could not be accepted.

Now, it is proposed to devote a separate chapter for each of the land tenures, which have been abolished by Government by enacting different legislations.

## CHAPTER II

### THE BHAGDARI AND NARWADARI TENURES

As declared by Government in the preamble to the Bhagdari and Narwadari Act, 1862, the Bhagdari and Narwadari tenures existed from times immemorial. They were not held on any written tenure but were held by the custom of the country. These tenures were referred to in section 8 of Bombay Regulation XVII of 1827 as tenures of shareholders of villages settling hereditarily and by right for the revenue of their villages in the gross, and thus possessing in some measure a proprietary right in the land of their villages. These tenures are some of the most important tenures of Gujarat, because they affect the best soil of the Broach and Kaira districts. Again, they are of great historical interest, as they are supposed to be probably the survivals of the old joint form of village community from which the present severalty type has evolved.<sup>1</sup> The tenures were of ancient origin and were abolished by Akbar; but were subsequently revived by the Marathas. The Bhagdari tenure is mainly found in the Broach district. Except two or three villages in the Ankleshwar taluka, all the Bhagdari villages are situated in the Broach, Amod, Vagra and Jambusar talukas, north of the Narbudda. The Narwa tenure obtains in the Kaira district. The Anand, Borsad and Nadiad talukas are the stronghold of the Narwadari tenure. It is also found in some villages of the Surat and Ahmedabad districts. In 1862, there were about 347 villages on these tenures; but in recent years, with gradual alienations of bhags and peta-bhags or narwas to outsiders, many bhags or narwas have been dismembered and the number of such villages has been reduced. This will be apparent from the figures given below:—

1. R. G. Gordon, *Survey and Settlement Manual*, Vol. II, p. 149.

| District         | Number of Villages in 1862 | Present Number <sup>2</sup> of Villages |
|------------------|----------------------------|---|
| Kaira ... ..     | 90                         | 90                                      |
| Broach ... ..    | 244                        | 224                                     |
| Ahmedabad ... .. | 1                          | 1                                       |
| Surat ... ..     | 12                         | 12                                      |
|                  | 347                        | 327                                     |

Further, there is one village (Timba) in the Godhra taluka, district Panch Mahals, which is held on the Bhagdari tenure.<sup>3</sup>

### Origin of the Tenures

The origin of these tenures is to be traced in the old system of village communities, which were economically self-sufficient and politically autonomous. They are the "Zamin-dari oasis" in the ryotwari settlements. It should be borne in mind that these tenures are a ryotwari and not alienated or leased tenure, as there is no single lessee and the whole revenue demand is collected without rebate or alienation. It was invented to distribute with evenness the growing burden of taxation. The Narwa or bhag is nothing more than the mode of distributing equally the total land revenue of a village among the co-sharers called bhagdars and peta-bhagdars. The tenures took a troublesome turn during the Maratha period, when the poor cultivating class had been oppressed by the rapacious demands of the revenue-farmers. Baden-Powell thinks that the narwa was "a special plan of meeting Maratha assessments."<sup>4</sup> The revenue-farming system was the pest of the communities and was created by the Bhagdari and Narwadari tenures.<sup>5</sup> They are one mode of collecting the revenue

2. Dr. M. B. Desai, *The Rural Economy of Gujarat*, p. 101.

3. G.R.R.D. No. 3224 dated 19th June 1879 at p. 85 of *Revision Settlement Report of Godhra taluka—S.S. No. CCCCXXVIII—N.S.*

4. Baden-Powell, *The Land Systems of British India*, Vol. III, p. 265.

5. Dhanabhai N. Patel, *The Bhagdari and Narwadari Tenures (1910)*, p. 4.

demands of Government (vide *Umar v. Secretary of State*, I.L.R. 37 Bom. 87). The system, as we find it today, developed out of the farming system of the Marathas. The patels or matadars of villages stood surety (manotidars) for the collection of the revenues of the entire villages. These patels or Desais paid a fixed share to the Peshwas and enjoyed certain privileges in the village. According to Mr. Rogers, the Bohras in Broach got footing as revenue-farmers or perhaps they stood security for the villages. Possibly, they might have been grantees under the early Muslim rule or converts from Rajputs and, as such, they might represent an old territorial nobility, who now descended to the rank of peasant-proprietors. They were much depressed by the Maratha rule, and fared best in the territories held by the Nawab of Broach, i.e. in the present Broach Taluka.<sup>6</sup>

On the other hand, the Narwa villages of Kaira held by Patidars represent a group of lands cultivated on a system of co-operation. Many villages are held by descendants of one common ancestor. From these facts, Baden-Powell concludes that the village was granted for management to a single person and, therefore, it is possible that the Patidar Narwadars represent territorial overlords as well as agricultural lessees.

When the British took over the administration of the Province in the beginning of the nineteenth century, they found these tenures with the bhagdars and narwadars fully entrenched in their position in their villages. According to the Government policy as enunciated in the famous Minute of Honourable Mr. Mountstuart Elphinstone, the leading principles of the revenue administration were (it may be repeated), "to abolish farming, but otherwise, to maintain the native system; to levy the revenue according to the actual cultivation; to make the assessment light; to impose no new taxes; and to do away with none, unless obvious and unjust; and above all, to make no innovations". Accordingly, the farming system in these villages was abolished, but the British Government fixed the 'falo' or lump payment payable to Government by bhagdars and narwadars. Instead of abolishing the tenures, root and branch, the British Government continued them out of political and administrative considerations; poli-

6. Baden-Powell, *The Land Systems of British India*, Vol. III, pp. 260-261.

tical because, the Amins, Desais and Patels of Kaira and Broach, who had been revenue-farmers and manotidars during the Maratha regime, could not be removed easily from their position and power; and administrative because Government was saved the trouble of collecting revenue from individual land-holders, as the Bhagdars and Narwadars made lump payments to Government of land revenue of their villages. Mr. Rogers explains the Government attitude towards the tenures as follows:—

“The narwa system, where the Patidars (sharers) were numerous, had many of the advantages of the *ryotwari* without risk of loss to Government, as the ryots were guarded against over-exaction by being able to move away to other villages. . . . It provided safeguards against over-assessment under a rapacious Government. . . .”<sup>7</sup>

In this historical background, these tenures were continued by Government.

The Bohras and Patidars of Broach and Kaira, being skilful cultivators, cultivated the lands in the most careful and scientific manner and raised the most valuable cash crops of Gujarat, viz. cotton and tobacco. This gave the lands a saleable value even in the times of the Marathas. When the population began to press upon the means of subsistence, narwadars and bhagdars alienated much of these lands to outsiders. Many Patidars and Amins lived beyond their means and incurred heavy debts. The result was that creditors deprived them of much of their lands by the legal processes. This retarded the recovery of Government revenues.<sup>8</sup> The preamble of the Act states that as the permanence of the tenures was endangered by the increasing practice of attachment and sale by civil process of the homesteads and the building-sites (gabhans) appertaining or appendant to the bhag or peta-bhags, it was deemed expedient to prevent alienations, assignments, mortgages, etc., of any share of bhag or narwa by legislation. The Act is, in essence, a legislation restricting alienations to non-bhagdars or narwadars. It does not define the rights and responsibilities of the bhagdars or narwadars. The sole object of the Act is to protect collection of Government revenue by

7. A. Rogers, *The Land Revenue of Bombay*, Vol. I, p. 79.

8. Dhanabhai Patel, *The Bhagdari and Narwadari Tenures* (1910), p. 8.

preventing dismemberment of a bhag or its recognized share in such villages.

### Constitution of the Village

Fundamentally, there is no difference in the constitution of the bhagdari and narwadari villages. The lands in these villages consist of certain main divisions called 'mox-bhag', containing sub-divisions called peta-bhags. These peta-bhags are also in turn divided into fractional parts upto a fixed limit. The head of the family is mainly responsible for the payment of Government revenue and is called mox-bhagdar. Similarly, peta-bhagdars are collectively responsible for that portion of the assessment which has been allotted to their peta-bhags. All sub-sharers have equal rights and are called Patidars, who are descendants of the old proprietary cultivators. The shares or divisions, great and small, are sometimes of equal and sometimes of unequal amounts, but always in well-known and recognized proportions so that the assessment due by the whole village is exactly apportioned among them. At the time of the original settlement of these villages, special arrangements were required to be made by Government. Under the survey system, many narwa village communities were allowed at their own will, to divide their respective responsibilities for the revenue, according to the assessment of their respective shares instead of according to the old symbolic division (phälavani) of the lump assessment originally entered into the Narwa Register.

Apart from the bhag or narwa lands divided into mox and peta-bhag, there are certain lands common to the whole village called *Gam majmun*. They are set apart for the common benefit of the village. The village officers deal with them and the amount realized from them each year is credited to mox-bhagdars, who are immediately responsible for the lump assessment. When parts of the majmun lands are distributed among different shares, they are called *pati majmun*. If a sub-sharer becomes bankrupt or his family ceases to exist, his lot necessarily becomes temporarily or permanently a part of *pati majmun*. If a mox-bhagdar becomes insolvent, the *pati* itself becomes a part of *gam majmun*.<sup>9</sup> According to Mr. Pedder, the *gam majmun* had its origin in having a certain

9. *Manohar Ganesh v. Chhotabhai*, I.L.R. 8 Bom. 347.

portion of land usually the least valuable earmarked to be held in common as a common pasturage, watans of village servants, etc. These majmun lands form part of the narwa but they are so called because they are not thrown in any bhag, but are kept common for the purposes stated above.<sup>10</sup>

In juxtaposition with these bhag and majmun lands, there exists alienated and unalienated lands in these villages.

### Difference between the Bhagdari and Narwadari Tenures

The bhagdari and narwadari tenures are essentially the same in nature and constitution of the villages. But they differ in one material particular. In the bhagdari villages, the assessment was fixed on each field. Although the assessment of each share (bhag) was not the aggregate of the assessments of several fields which the share comprised, it was the amount of the total field assessment of all bhagdari lands divided according to the phala register. In the narwadari tenure, there was never a separate field assessment, but the revenue was fixed in lump. Although the bhagdari and narwadari tenures have been preserved by the survey, yet the amount of revenue to be paid in the lump sum has been ascertained by field assessment. This was done to provide for the contingency contemplated by clause 2 of section 8 of Regulation XVII of 1827, i.e. reversion of the narwa or bhag land to Government on account of non-payment of land revenue. Government could then introduce the survey rates immediately without detriment to Government revenue.

### Main Features of the Tenures

The incidents of the tenures are nowhere defined in the Bhagdari and Narwadari Act, 1862; but they are found scattered in different High Court rulings and the customs or usages obtaining in the districts of Broach and Kaira. An attempt is made to summarize them below:—

(1) The main peculiarity of these tenures is that they involve joint responsibility for the payment of the Government revenue. This flows from the fact that these tenures were preserved by a special Act V of 1862 in order to safeguard

10. Mr. Dhanabhai N. Patel, *The Bhagdari and Narwadari Tenures*, pp. 13-14.

collection of Government land revenue demand. Mox-bhagdar and peta-bhagdars were severally and jointly responsible for payment of Government revenue. In case a peta-bhagdar defaulted, the mox-bhagdar had to pay his share of revenue.

(2) Bhagdars and narwadars are occupants of the lands held by them in the bhag or peta-bhag of the village subject to the rights and responsibilities of an occupant within the meaning of the Land Revenue Code. The narwa or bhag is considered strictly as property. It is saleable from one bhagdar to another and is inherited subject to the rules and customs of the bhag or narwa.

(3) Sons inherit such lands equally and hence the most incredible sub-divisions of a bhag or narwa are noticeable in every village. In Broach, there is a custom that the male relations related either through the male or female succeed in preference to daughters of the deceased bhagdar (*vide* 5 Bombay 482). In the Kaira district, no such custom seems to have been proved to exist.

(4) According to the Vahivatnama recorded in the Narwa Patrakas, the mox-bhagdar or narwadar has a reversionary right to the peta-bhag or sub-shares of a peta-bhagdar, who dies intestate and without known heirs. (This is just contrary to the provisions of section 72 of the Bombay Land Revenue Code, 1879.)

(5) The villages on these tenures are all surveyed and settled like the seza villages and governed by the provisions of the Land Revenue Code, 1879, as modified by the special customs recorded in the Narwa Registers.

(6) Under the Act of 1862, not only the agricultural lands appertaining to the bhag or narwa are protected from disintegration; but the homesteads, gabhans, etc., appurtenant or appendant to such bhags, etc., are also similarly protected. The village site of such villages was divided amongst narwadars in proportion to their shares in the cultivable lands.

(7) The bhagdars or narwadars are the occupants and the other cultivators are either tenants-at-will or customary tenants of the bhagdars and not of Government. Tenants-at-will are those who hold lands at the pleasure of Narwadars, who can eject them or increase their rents at discretion. Customary tenants are those who cannot be ejected so long as

they pay the customary rental, which is either a fixed share of the produce or more commonly the customary bighoti rates which are generally recorded in the village-books.<sup>11</sup>

(8) As regards right to trees, the ownership in the trees goes with the ownership of the land, unless a custom to the contrary exists. Tenants' right to trees depends upon a local custom or a special contract. In some Narwa villages, there exists a custom allowing *uchherbhag* to tenants. These customs have been recorded in the Vahivatnamas of villages.<sup>12</sup>

(9) Since alienations to non-bhagdars of a village were prohibited under the Bombay Act V of 1862, the integrity of the village community was preserved; i.e. if the bhagdars were all Bohras, the land remained in possession of that community. If they were all Patidars, the lands continued in possession of that caste.

(10) (a) Still, alienations to non-bhagdars were not uncommon. Owing to debt or some other causes, the bhag lands were sold or mortgaged to non-bhagdars in contravention of section 3 of the Act. In such cases, Government has directed that (1) no alienations need be interfered with, if the alienee belongs to one of the bhagdari families of the village and that (2) the power of nullifying an alienation should not be exercised in order to assist an alienor to get out of a fair, bargain, etc.

(b) Besides these, there were other alienations, which obtained a complete or partial recognition from Government. For example, mortgage of village lands was held free or at less than their value by the mortgagee until his loan was repaid. In times of pressure, part of the common land might be sold to realize the land revenue. The purchaser took it on terms of being exempt from payment to the community. These facts gave rise to *garenia* and *vechania* tenures in Narwa villages. These tenures received legal recognition as valid titles to exemption

11. Tenants' rights to lands and trees have now been determined by the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948.

12. Ibid.

from revenue by the Bombay Regulation X of 1831.

- (c) Lands alienated by bhagdars out of lands in their bhagdari and narwadari villages were excluded from the benefits of the Summary Settlement Act VII of 1863. It was declared that in the event of the management of these villages being at any time resumed by Government, all lands alienated by bhagdars shall revert to Government unaffected by the alienations (*vide* section 3 of Act VII of 1863). The partial recognition which these assignments received from Government made it practically impossible to subject them to full assessment.

(11) Lastly, the narwadars are peasant or yeoman proprietors for the most part cultivating the land themselves. They are not "landlords" in the English sense of the word, as Talukdars more or less are, and differ from Inamdars, who hold either the land or only the right of enjoying the Government land tax and from khots to whom is delegated the right of collecting such tax. The narwadars are proprietors, but are usually occupants with certain limitations.<sup>13</sup>

### Act V of 1862

Before 1862, it was noticed that the permanence of the Bhagdari and Narwadari tenures was in danger as a result of increasing practice of private alienations and of attachments and sale by civil process of the homestead and building sites appertaining or appendant to the constituted bhag or peta-bhag in these villages. In order to prevent the dismemberment of the bhags or narwas, the Bombay Act V of 1862 was passed. It restricted alienations of such property to non-bhagdars. Alienations may either be private or through the civil court. Sections 1, 2 and 4 deal with alienations through the Civil Court and sections 3 and 5 deal with private alienations. Section 3 lays down the substantive and the objective law relating to private alienations.

Owing to bad seasons, some bhagdars could not pay land revenue and some failed to get any rents from the tenants

13. *The Bhagdari and Narwadari Manual*, p. 1.

before 1900. So, the bhags had to be dissolved by Government either of their own accord or at the request of the bhagdars.<sup>14</sup> In some cases, bhags were too large to be managed by single bhagdars who, in some cases, were incompetent or extravagant persons.<sup>15</sup> The result was that in many villages bhags were dissolved. With the improvement of the economic conditions, bhagdars desired to restore the bhagdari tenure in respect of bhags which were broken up due to failure to pay rent, etc. The Act did not provide for the reconstitution of the bhag or narwas so forfeited. In order to empower Government to reconstitute such lands into bhags, the Bombay Act II of 1910 was passed. Accordingly, Government could restore the Bhagdari or Narwadari tenure in respect of such lands from a specified date by official notification.

It will thus appear that the Act only deals with restrictions on alienations of bhag or peta-bhags. It neither defines a bhagdar nor a peta-bhagdar, nor does it lay down his rights and responsibilities. It simply lays down restrictions on alienations made privately or through a civil court. The responsibility for payment of land revenue was left to be decided by the Vahivat recorded in the Narwa Patrak, the survey and settlement introduced in these villages during the sixties of the last century and the executive orders of Government.

### A Case for Abolition of the Tenures

Originally, the tenures conferred a sort of prestige on the holders of these lands. This was true in the early British times, when prestige was associated with land-holding. But now, the popular conception of prestige has undergone much change and is not necessarily associated with land or any tenures thereof.

The protagonists of the tenure may urge that their abolition would prejudice their reversionary right of mox-bhagdars in intestate bhag properties. According to the Narwa Vahivat, if any peta-bhagdar dies intestate and without known heirs, the peta-bhag reverts to the mox-bhagdar and not to Government (*vide* section 72 of the Bombay Land Revenue Code, 1879). This right arose out of the ultimate responsibility of

14. Paragraph 3 of the Mamlatdar of Jambusar's report, No. 430, dated 23rd May 1902, at page 76 of *Revision Settlement Report of Jambusar Taluka—S.S. No. CCCCXII—N.S.*

15. *Ibid.*, para 5.

the mox-bhagdar to pay land revenue in respect of all lands constituting the whole bhag. In short, this reversionary right was only a contingent right and should not come in the way of its abolition.

It may be further argued that since the Act imposed restrictions on alienations of the bhag property, the bhag lands together with houses and gabhans were preserved intact and did not pass in possession of non-bhagdars. As stated before, this is true in theory; in practice, however, many unrecognized portions of bhags and narwas have been alienated to non-bhagdars without the permission of the Collector under section 3 of the Act. In many cases, alienations have been long-standing and non-bhagdars have not been evicted, because the provisions of section 3 are only permissive and not mandatory.

Besides, Bhagdars have responsibility, but no rights. They have to pay Government revenue in respect of the whole bhag, although they may not be able to recover rents from their tenants.<sup>16</sup>

In short, the advantages urged in favour of continuance of the tenures no longer exist. The tenures have neither benefited the Bhagdars and Narwadars nor the tenants. The remarks of Mr. A. C. Logan, the Collector of Broach (1902) in this connection are very trenchant and are reproduced, *in extenso*, below:—

“The general reason for the tendency of bhags to disappear is the disruptive effect of our survey system. A bhag is a little Zamindari oasis in the midst of a ryotwari system, and in the varying circumstances which arise, Bhagdars and tenants in turn, no doubt turn longing eyes on the position of a free khatedar, the former when they feel the burden of their joint responsibility for an immense property and the latter, when they feel the burden of a landlord. Again the bhag system affords much scope for evasion of a land tax and the revenue officers are often compelled to put an end to it for that reason.”<sup>17</sup>

Thus, besides difficulties to the Bhagdars and their tenants, Government have their own administrative difficulties in administering the tenure. The Revision

16. Evidence of Dewan Bahadur A. U. Malji, Report of the Royal Commission on Agriculture in India, Vol. II, Part II, p. 218.  
 17. *The Revision Survey Settlement Report*, Jambusar Taluka, para. 8 of the Collector's letter, at p. 69. S.S. No. CCCCXII—N.S.

Settlement Officer of the Jalalpore taluka observed that "The Narwa . . . villages . . . are the worst paying and the most neglected in the taluka. The Bhatella Desais owing to their influence and cunning have succeeded hitherto in keeping the Government demand at a proportionately low figure which enables them to take less personal interest in the cultivation of the land."<sup>18</sup> Even Mr. Rogers was constrained to remark that "It (the system) provided safeguards against over-assessment under a rapacious Government, but was also a bar to the just claims of the State."<sup>19</sup>

These difficulties were inherent in the system itself. Apart from these difficulties, the passage of time has wrought its changes. In the context of the modern administration, the tenures have created complications in administration and agricultural improvements. The Bhagdars and Narwadars are no longer needed as farmers of revenue or manotidars and have, therefore, lost their *raison d'être*. Further, owing to the law of inheritance, the bhags have been divided and sub-divided into fragments of 2 or 3 gunthas with the result that profitable or economic cultivation of these lands would be unthinkable. Excessive sub-division and fragmentation of the holdings and restrictions on alienations to non-bhagdars under section 3 and 5 of the Act, impede the implementation of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. In such villages, in juxtaposition with the Bhagdari lands, there exist alienated and unalienated lands. Unless, therefore, the restrictions on alienations are removed by repeal of the Act of 1862, the Bombay Prevention of Fragmentation and Consolidation of Holdings Act cannot be implemented fully by Government.

After abolition of the tenures, the tenure-holders stand to gain and will have nothing to lose. Removal of restrictions on alienations would enhance considerably the land values and reduce litigation in civil courts and complications in the revenue records. Free transferability of these lands would increase the creditworthiness of bhagdars and narwadars. At present, two kinds of registers are maintained at the villages, viz. Narwa Patraks and Record of Rights. After the repeal of the Act, only the Record of Rights will be necessary.

18. *The Revision Survey Settlement Report of Jalalpore Taluka*, p. 11.

19. Mr. Rogers, *The Land Revenue of Bombay*, Vol. I, p. 79.

The question of the repeal of the Act V of 1862 was mooted as far back as 1886, when it was noticed that the Act could not prevent fraudulent alienations to non-bhagdars. But Government was not convinced of the expediency of repealing the Act, as the Collector had ample powers to deal with such alienations (Government Resolution, Revenue Department, No. 4720, dated 3rd July 1886). In 1908, again, an attempt was made to abolish the tenures. High officials of Government were in favour of the natural death of the tenures, because they wanted to avoid popular agitation. In fact, Government attempt to review the policy in the matter raised great opposition particularly from the Narwadars of Kaira. As a result, Government took no decision and allowed the matter to take its natural course.<sup>20</sup>

This was the position before the present Congress Government decided to abolish all such anachronistic tenures. As a measure of agrarian reform, Government chalked out a plan for abolishing all the land tenures and made a beginning with the repeal of the Bhagdari and Narwadari Act of 1862. In March 1949, Government sponsored the Legislative Assembly Bill No. XXIV of 1949 which was passed by the Bombay Legislature on the 5th April 1949, without any amendment. The Bill, as enacted, is called the Bombay Act XXXII of 1949, i.e. the Bombay Bhagdari and Narwadari Tenures Abolition Act, 1949. It has been brought into force with effect from the 5th August 1949, after receiving the assent of the Governor-General. For facility of reference, the Act is given in Appendix A.

### **The Bombay Bhagdari and Narwadari Tenures Abolition Act, 1949**

The Act provides for the repeal of the Bhagdari and Narwadari Act, 1862, and the abolition of the Bhagdari and Narwadari tenures with all the incidents attached thereto. It gives rights of occupancy on payment of land revenue under the provisions of the Land Revenue Code to (1) holders of land forming part of a bhag, narwa or share together with home-

<sup>20</sup>. It may be relevant to note that the Baroda Government abolished the Narwadari tenure from the Petlad Taluka in the Charotar tract and introduced the Ryotwari system. This step has contributed both to the improvement of agriculture and rural reconstruction.—Dr. M. B. Desai, *The Rural Economy of Gujarat*, p. 105.

stead, building sites and other appurtenances and (2) persons in lawful possession of majmun lands. Care has been taken to declare and affirm the position. All property not in possession of individuals or aggregate of persons vests in Government under section 37 of the Land Revenue Code. Further, alienations, assignments, etc., of bhags or shares made in contravention of section 3 of the Bombay Act V of 1862, before the coming into force of this Act, are not to be invalid, but this provision is not to affect any order of eviction passed by the Collector. Special rules of succession which prefer male agnates to female heirs such as daughters and sisters are abolished. The repeal of the Act V of 1862 does not affect any right, title, interest, etc. already acquired, accrued, or any legal proceedings or remedy in respect of such right, title or interest, etc. Government has been empowered to frame rules under the Act for the purpose of carrying out the provisions of the Act. Accordingly, Government has prescribed a rule<sup>21</sup> regarding a form in which persons affected by the provisions of the Act have to make an application for compensation within six months with effect from the 5th August 1949.

### Consequences of the Act

Now that the Bombay Bhagdari and Narwadari Tenures Abolition Act, 1949, has been applied by Government, it is necessary to know the legal and administrative consequences of the Act. Legally, the Act does nothing more than affirm the status of Bhagdars and Narwadars, etc., as occupants within the meaning of the Bombay Land Revenue Code 1879, and makes them directly responsible to Government for payment of land revenue in respect of the lands held by them as such. It also recognizes all alienations, assignments, mortgages, etc., on any unrecognized portion of a bhag or narwa in contravention of section 3 of the Act V of 1862 made before the new Act comes into force, provided the Collector or any other revenue officer has not made an order of evicting the alienee from such land. After the abolition of the tenures, certain inams such as garenias, vechanias, devasthans would not survive in view of the provisions of section 3 of the Summary Settlement Act VII of 1863. Such alienations are saved by

21. *Vide* Appendix B.

provision in section 7 of the Act. The special rule of succession in the Broach district which prefers male agnates to female heirs such as daughters and sisters is abolished on the principle of free transferability of such lands. In such villages, customary tenants and tenants-at-will will be governed by the provisions of section 84 of the Bombay Land Revenue Code and the Bombay Tenancy and Agricultural Lands Act, 1948, respectively. Since the application of the latter Act to the whole State from December 1948, there are no tenants-at-will now.

From the administrative point of view, it is significant to note that Government will not have to incur any additional expenditure for the administration of the new Act. Since these villages have already been surveyed and settled like the khalsa villages, and, at present, are managed by the village staff consisting of patels, talatis and circle inspectors, etc., no new staff will have to be appointed by Government. The village administration will, however, be smoothened by the abolition of the Narwa Patraks and the joint responsibility for payment of land revenue inherent in the tenures. As regards compensation, Government will practically have to pay little compensation, as no substantial rights of the bhagdars are abolished, the reason being that the system was merely one mode of collecting the revenue demands of Government. The reversionary right, in case of a peta-bhagdar dying intestate and without known heirs, was given to a mox-bhagdar, because the mox-bhagdar was solely responsible to Government for payment of land revenue. When he is relieved of this responsibility, compensation payable to the mox-bhagdar for the loss of this right would naturally be nominal. In short, the change-over from the Bhagdari and Narwadari tenures to the ryotwari system will be smooth and would not involve Government in additional cost either on account of administrative machinery or compensation payable to bhagdars for the loss of their rights.

## CHAPTER III

### THE MEHWASI TENURE

The Mehvasi tenure obtains in 21 villages of the Kalol taluka, district Panch Mahals. The Mehvasi chiefs or Thakors are found in two other districts of Gujarat, i.e. Ahmedabad and Kaira. In the Prantij taluka of the Ahmedabad district, there are certain villages known as Mehvasi villages and their tenure is exactly similar to that of the Talukdari villages of the Ahmedabad district, i.e. the jama is subject to revision and the holders are considered proprietors thereof. In the Kaira district, certain villages on the Mahi river are held on the Udhad Jama tenure, i.e. the jama is fixed and is not liable to revision. The villages are treated in the same way as Talukdari villages as regards the imposition and levy of jama. These villages of the Ahmedabad and Kaira district, which are essentially talukdari in character, have been dealt with in the Chapter on the Talukdari tenure. Besides these, there are the Mehvasi Chieftains of West Khandesh. Their estates are treated as partially-excluded areas. The status of the Chieftains has been defined by the West Khandesh Mehvasi Estates Regulation, 1949, issued under section 92 of the Government of India Act, 1935, for the good and peaceful government of the areas by applying the laws of the Province and giving the Chieftains the status that the Gujarat Talukdars will have after repeal of the Gujarat Taluqdars' Act, 1888.

The case of the Panch Mahals Mehwasdars is essentially different. In the Kalol taluka, patels of 23 villages (originally) with their shares under the name of the Mehvasi patels claim certain privileges amounting to a distinct tenure. Whatever might have been their rights and privileges in the pre-British times or in the early British period, they are at present lease-holders with certain rights in 21 villages under the agreements executed by them.

The statistical information about these villages is as under:—

| Number of Villages<br>(1) |  | Number of Mehwasdars<br>(2) |  | Total Area of the Villages (acres)<br>(3) |  | Total assessment of the Villages<br>(4) |  |
|---------------------------|--|-----------------------------|--|---|--|---|--|
| 21                        |  | 72<br>(approximately)       |  | 41,025                                    |  | Rs.<br>40,154                           |  |

  

| Land in possession of Mehwasdars<br>(5) |                | Land in possession of occupants directly held from Government<br>(6) |                | Annual amount of ankda paid to Government<br>(7) |  | Annual Mehwasī profits<br>(8) |  |
|---|----------------|--|----------------|--|--|-------------------------------|--|
| Area (acres)                            | Assessment Rs. | Area (acres)   | Assessment Rs. | Rs.  |  | Rs.                           |  |
| 3,502                                   | 4,486          | 12,544   | 23,251         | 20,522   |  | 12,093                        |  |

This statistical information will be interpreted at a later stage, when we come to consider the question of compensation to the Mehwasdars.

In order to appreciate their rights and responsibilities in their proper perspective, the history of the tenure together with its various incidents are discussed below.

### The Historical Background

The history of the Mehwasī tenure shows that in this tenure, we go a step further into the Mulkīri or unabsorbed borderland of the Marathas. During the latter part of the eighteenth century, the Mogal rule was loosened and the Maratha authority to shelter people from the raids of freebooters and the exactions of their stronger neighbours drove owners of many villages to seek the protection of local chiefs. In the Maratha period, the continued state of warfare resulted in the country being classified into peaceful (rasti) and troubled (Mehwasī). The trouble was mainly caused by Koli freebooters and some Rajput chiefs, who either as ejected from an original ruling position or having always been free-booters in the wilder parts

of the country, maintaining a hold by terror and force on the neighbourhood. A number of chiefs, who had lost their domains settled where they could and got hold of what they could.<sup>1</sup>

In 1853, His Highness the Sindhia leased the Panch Mahals district to the British Government for ten years and finally ceded the district in the early sixties. The exact origin of the Mehwasdars is uncertain, but they are presumably the descendants of ancient Rajput or Koli settlers. They were in possession of 23 villages, when the Panch Mahals was taken over by the British. Their payments to the Sindhia were the subject of annual bargain between them and the Desais. They "never had any right other than might, or any distinction save habitual contumacy". Government did not interfere with them till 1863, when Colonel Barr, the then Political Agent, took the first step towards depriving them of their rights in the internal management of their villages by appointing talatis. This created great discontent amongst the Mehwasdars. Upto 1867, when the introduction of survey and settlement in the Kalol taluka came under discussion, the Mehwasdars exercised unquestioned rights over their villages by virtue of custom. They used to pay "Ankda" (lump sum), which was determined every year by the Suba or the Mamlatdar. The Ankda was paid proportionately by the sharers. Government sanctioned the settlement of these 23 villages in 1873.<sup>2</sup> For the first time, Government pronounced on the nature of the tenure as follows:—

"The tenure of these villages does not exactly correspond with either the Narwadari or Bhagdari, as these are constituted. It more nearly approaches that of Talukdari villages in the Ahmedabad Collectorate, and the villages undoubtedly fall within the categories of those described in section 8 of Regulation XVII of 1827, as held by shareholders settling hereditarily and by right for the revenues of their villages in the gross and thus possessing in some measure a proprietary right in the land of their villages."

These orders gave the Mehwasdars the sole proprietary right both against the State and sub-tenants, but this right was made subject to the provisions of clause 2, section 8 of Regulation

1. Badel-Powell, *The Land-systems of British India*, Vol. III, pp. 277-79.  
2. G.R., R.D. No. 367 dated 21st January 1873.

XVII of 1827, which rendered the land and crop liable for revenue in the event of sharers' default, etc. But the orders in para 16 of the G.R. introduced a new element in the relations between Government and the Mehwasdars in the shape of a requirement that the latter should execute agreements as to terms equivalent to counterpart leases. Some of the Mehwasdars were unwilling to sign the agreements. As a result, Government ordered that the villages must thenceforward be dealt with as khalsa and the sharers recognized as mere survey occupants. The whole of the forest areas was taken over as in other khalsa villages.<sup>3</sup> These orders remained in force for ten years during which the Mehwasdars were converted into ryots of khalsa villages.

In 1887, Government realized that the orders issued in 1876 were issued under a misapprehension. So, Government decided to revert to the old position.<sup>4</sup> Accordingly, the management of the villages was restored to the Mehwasdars on payment of the jama calculated on the assessment of the cultivable lands, held by themselves, or in occupancy of ryots. In future, occupants holding directly from Government and all future occupants of assessed waste had to pay survey assessment to the Mehwasdars. The Mehwasdars were given a lien on the assessed waste and allowed to let it out for cultivation without becoming liable to an increased jama. Government retained the management of the forests, but granted to Mehwasdars a reduction of jama varying from 30 to 60% as compensation for the loss according to the area of the land taken up for forest. The proportion of jama varied in each village according to the proportion borne by the forest area (which had already been taken by Government) in each village to the total area of that village in the following manner:—

| Proportion of the Forest to the total area of the Village      | Jama payable in respect of lands |                                  |
|--|----------------------------------|----------------------------------|
|  | Occupied by Mehwasdars (a)       | Held by registered occupants (b) |
| (1) Less than $\frac{1}{4}$ th ..                              | 70%                              | 70%                              |
| (2) More than $\frac{1}{4}$ th and less than $\frac{1}{2}$ ... | 50%                              | 60%                              |
| (3) More than $\frac{1}{2}$ ...                                | 40%                              | 50%                              |

3. G.R., R.D. No. 674 dated 31st January 1876.

4. G.R., R.D. No. 2826 dated 7th May 1887.

Thus, it was decided that the Mehwasdars had no proprietary rights in the villages and forests. The original leases were prepared in 1887<sup>5</sup> and finally approved in 1888.<sup>6</sup> The terms of the leases were subject to revision at the time of the revision settlement of the taluka. Originally, there were 23 villages; but in 1890, Navagam and Hadmatia villages were included in the reserved forest and the Mehwasi rights therein were commuted for cash allowances as compensation. The agreements executed by the Mehwasdars were for 21 villages only. In short, compensation for the loss of the Mehwasdars' forest rights and remuneration for recovery of revenue on behalf of Government formed the basis of the Mehwasi contract, thereafter.

Whatever may have been the status of the Mehwasdars under the previous Governments and under the early British Government, their position has become one of contractual relationship between them and Government by the execution of agreements since 1887-88.<sup>7</sup> The Mehwasdars agitated for the restoration of their proprietary rights in 1908-09, but Government categorically informed them that they stood in contractual relationship with Government under the agreements and refused to re-open the question.<sup>8</sup>

The question of renewing the agreements was considered from 1909 to 1912. Revised terms were proposed to the Mehwasdars. But they refused to accept them with the result that Government dropped the idea of introducing any changes in the existing leases and requested the Commissioner, N.D. to report on the question of introducing the Record of Rights in the villages.<sup>9</sup> In 1923, Mr. H. V. Braham, who was doing revision settlement of the Kalol taluka, was directed to take up the work of revision of the Mehwasi leases. Mr. Braham submitted proposals to Government which were sanctioned<sup>10</sup> in 1928. The draft agreement sanctioned by Government is given below, for facility of reference:—

5. G.R., R.D. No. 2826 dated 7th May 1887.
6. G.R., R.D. No. 992 dated 14th February 1888.
7. G.M., R.D. No. 7860 dated 11th August 1909.
8. G.R., R.D. No. 8674 dated 4th September 1909.
9. G.R., R.D. No. 5364 dated 6th June 1913.
10. G.R., R.D. No. 8937 dated 14th November 1928.

## FORM OF MEHWASI AGREEMENT

We the undersigned Mehwasdars of the village of \_\_\_\_\_ in the Kalol Taluka of the Panch Mahals district hereby agree to hold the said village from Government and to manage it on the following terms :—

1. We undertake to pay to Government the sum of Rs. \_\_\_\_\_ as jama plus Rs. \_\_\_\_\_ as judi on Inam lands and Rs. \_\_\_\_\_ as local fund cess on the full assessment of items 1, 2, 3, 4 and 5 mentioned below and cash remuneration, where necessary, to make up the emoluments or village servants according to the Woodward Scale. This amount will be paid in two instalments as under on such dates as Government may fix.

Half the jama plus the whole of the judi and local fund cess and cash remuneration, if any, of village servants, to be paid on the date fixed for the first instalment ;

and

the remaining half of the jama to be paid on the date fixed for the second instalment.

- (1) ..... \* per cent of the amount of assessment of lands occupied by us as Mehwasdars.
- (2) ..... \* per cent of the amount of assessment on land occupied by other registered occupants.
- (3) 70 per cent of the amount of income from unassessed unoccupied land not set apart for public purposes, when it is given out for non-agricultural purposes.
- (4) 70 per cent of the income derived from the sale or lease of vacant village site plots.
- (5) Judi on inam lands.
- (6) Local fund cess on the full assessments on items 1, 2, 3, 4 and 5, such cases being liable to revision under section 93 of the Bombay Local Boards Act, 1923 (Bom. VI of 1923).
- (7) Such cash remuneration as is required to make up the emoluments of village servants according to the Woodward scale, i.e. a total amount of Rs. .... subject to modification in accordance with clauses 5, 8, 13 and 14. As we have no claims to the revenue of disforested land, we shall not be liable to collect this revenue. But if no suitable Government agency is available for its recovery and we are called upon to make the

\* The percentage varies in different villages.

recoveries, we shall be entitled to a remuneration of 5 per cent of the amount collected by us.

2. On land, which was occupied at the time of the original settlement but has since become or shall hereafter become unoccupied, we shall continue to pay the percentage of the assessment as fixed in clause 1.

3. On land unoccupied at the time of the original settlement whether assessed or unassessed, we shall pay nothing to Government subject to the reservations made in clauses 5, 13 and 14.

4. We shall not recover from any person who has been entered in the survey or village records as an occupant, land revenue in excess of the survey assessment and local fund cess. From the tenants of land standing in our names and from the tenants of land, which we may give out in future out of the land referred to in clause 3, we shall recover the rent which may have been agreed upon between us and the tenants.

5. When assessed land, whether occupied, or unoccupied, is appropriated to a non-agricultural purpose with the previous permission of the Collector, we shall levy altered assessment as fixed by the Collector and the amount on which the percentage payable to Government has been calculated shall be at once alterable accordingly.

6. The judi on Inam lands shall be collected by us and paid by us to Government.

7. If the Collector requires any unoccupied assessed land to be assigned for the remuneration of village servants, he shall be at liberty to do so. We shall not object to it. In villages where unoccupied assessed land is not available when required for this purpose, we agree to make up the emoluments of village servants by providing the deficit amount as cash remuneration according to the Woodward scale.

8. If the Collector requires any unoccupied assessed land to be assigned as Inam, the amount, on which the percentage payable by us is calculated will be reduced by the amount of the assessment on the land so assigned and the jama payable by us shall be increased by the judi, if any, imposed on the alienated land.

9. Reserved forests are to remain under the sole charge of Government. If at any time they are disforested, such lands may be disposed of by Government as they think fit and we shall have no right to any share of the occupancy price or assessment realised by Government from such lands.

10. We and the occupants shall get free timber under permit from forests and unassessed waste land for agricultural and domestic purposes, subject to the standing orders of Government regulating such rights.

11. Our agricultural cattle and those of the inhabitants of the village shall be allowed free grazing in open forest subject to the standing order of Government regulating such rights.

12. We and the occupants shall have full rights over all trees in occupied land standing in our or their names. All trees in unoccupied land whether assessed or unassessed belong to Government. But when such land is given out for cultivation, the trees shall be cut or sold to the person to whom the land is given and Government shall then have no further claim to any trees which may afterwards grow up therein. The villagers shall have the privilege of removing dry fallen wood for fuel from unoccupied unassessed land. If this concession is abused, it will be liable to be cancelled by the Collector at any time.

13. Unassessed unoccupied land set apart for public purposes shall not be used for any other purpose without the sanction of the Collector. Vacant village site lands may be disposed of by the Collector, but the income derived therefrom shall go to us and shall be included in the total amount of which jama is calculated. The jama on this income shall be uniformly 70 per cent.

14. All unassessed unoccupied land other than that referred to in clauses 2 and 13 shall, so long as it is not used for non-agricultural purposes, be managed and controlled by us subject to the reservations made in clause 12, and the whole income from such land shall go to us. But if such land is to be given out for non-agricultural purposes, it shall be disposed of by the Collector and the income shall go to us but shall be included in the amount on which we pay the jama. The jama on this income shall be uniformly 70 per cent.

15. Boundary marks shall be maintained in accordance with the same rules as obtained in Khalsa villages. In default, the cost of repairing them may be levied from us or the occupants.

16. We shall maintain the Record of Rights (including the crop and tenancy register). We shall appoint and maintain our own talatis subject to the following restrictions :—

- (a) No talati shall be appointed without the sanction of the Collector who may, if he thinks fit, require the talati to pass the examination prescribed for Government talatis.
- (b) The Collector shall exercise concurrently with us the power of fining, suspending and dismissing any talati.

17. If we fail to maintain accounts and records in a manner satisfactory to the Collector, it shall be competent to him to inflict on us a fine not exceeding Rs. 50 for each default.

18. This agreement shall remain in force upto August of the year 1955 A.D., i.e. until the expiry of the existing settlement of the Kalol Taluka. It shall be open to Government on the expiry of this settlement to modify these conditions or to impose new ones as Government deems fit. If we fail to pay the jama, the Collector may, after giving 15 days' notice, declare the village forfeited to Government or may attach the village or take any other steps for the recovery of arrears under the provisions of Bombay Land Revenue Code, 1879.

19. The Collector may require the son or sons of any of us to attend any school which he considers to be within our means and may enforce the attendance of such boy or boys at the school by levy of fine not exceeding two rupees per day for every boy, who fails to attend and if such failure continues, may levy a further fine of eight annas for every day such failure continues or is repeated. In witness whereof, we, the Mehwasdars of the village of..... in Kalol taluka of the Panch Mahals district have in token of our acceptance of the conditions hereinbefore set forth set our hands on.....  
1931.

Signed and delivered by.....  
.....and.....

and.....and.....

and.....and.....

in the presence of

(1)

(2)

(All the Mehwasdars have executed the agreements in the above form.)

### Rights and Responsibilities of the Mehwasdars

With a view to appreciating the rights and responsibilities of the Mehwasdars as embodied in the agreement, it is very necessary to know the distribution of the lands in the Mehwasi villages. The lands in these villages may be divided into five classes as under:—

- (1) Lands occupied by Mehwasdars.
- (2) Lands occupied by other khatedars holding directly from Government.
- (3) Inam lands.
- (4) Assessed waste.
- (5) Unassessed waste.

The 'ankda' (lump sum) was fixed at certain percentages of the survey assessment of classes (1) and (2) and judi on class (3) with L.F. Cess on these three items. Lands in class (4) were left entirely at the disposal of the Mehwasdars and were at liberty to make free use thereof and to retain the profits, subject to the condition that the tenants were not to pay more than the survey assessment. As regards (5), the Mehwasdars enjoy the same rights as in class (4).

As regards the agreement, two things are important, i.e. (1) ankda, and (2) mehwasī profits. The Mehwasdars collect revenue on behalf of Government from the ryots and pay it to Government in the form of 'Ankda'. In return, they are entitled to remuneration which is called "Mehwasī" profit. It is, therefore, necessary to know exactly what constitute the 'Ankda' and the Mehwasī profits.

An 'Ankda' consists of the following items:—

- (1) ..... \* per cent of the amount of assessment on lands occupied by Mehwasdars.
- (2) ..... \* per cent of the amount of assessment on lands held by other registered occupants.
- (3) 70% of the amount of income from unassessed waste not set apart for public purposes, when given out for non-agricultural purposes.
- (4) 70% of the income derived from the sale or lease of vacant village site plots.
- (5) Judi on inams.
- (6) Local Fund Cess on the full assessment of items (1) to (5), revisable under the Bombay Local Boards Act, 1923.
- (7) Amount of cash remuneration required to make up the emoluments of village servants according to the Woodward scale.

The amount of the Ankda is liable to modification under the circumstances set forth in clauses 5, 8, 13 and 14 of the agreement.

The Mehwasī profits consist of the following factors:—

- (1) 30 to 60% reduction on assessment of lands held by Mehwasdars.

\* Percentage varies in different villages according to area of lands taken for forest as stated before.

- (2) 30 to 60% reduction on assessment of lands held by occupants holding directly from Government.
- (3) Amount of assessment on assessed waste at the original leases in 1887-88, subject to the alterations under clauses 5 and 8.
- (4) All profits from unassessed waste, subject to alterations under clauses 1(3) and 13.

Besides, the Mehwasdars have other rights under the agreement. Mehwasdars and occupants are entitled to get free timber under permit from forest and unassessed waste land for agricultural and domestic purposes, subject to the standing orders of Government. Reserved forests are to remain under the sole charge of Government, and after disforestation, the Mehwasdars will have no rights to any share of the occupancy price or assessment realized by Government from such lands. Full rights to trees in lands occupied by Mehwasdars and occupants are conceded and all trees in unoccupied land, whether assessed or unassessed, belong to Government.

Under the agreement, Mehwasdars have to maintain Record of Rights (including crop and tenancy register) by appointment of talatis.

The agreement is to remain in force upto July 1955, i.e. until the expiry of the existing settlement of the Kalol taluka. On expiry of the agreement, it is open to Government to modify these conditions or to impose new ones. On failure to pay jama, the village is liable to be forfeited to or attached by Government for recovery of arrears. Since there is no breach of any conditions of the agreement, the Mehwasi agreements can be terminated before the expiry of the due date by legislation only. Hence, Government undertook a special legislation for termination of the leases.

### Case for Abolition of the Tenure

It was felt as early as 1901 that the Mehwasi tenure presented administrative difficulties and that it was absolutely necessary to abolish it. Mr. Rendall gives a graphic picture of the evils of the tenure. His remarks are very relevant and are reproduced *in extenso* below:—

“The Mehwasi tenure is utterly bad. The Mehwasdars have been a continual plague to us. They are uneducated and slack and idle and they have in many cases mortgaged

their villages to a Banya or their own talati. It is absolutely necessary for Government to make these villages khalsa and pay to the Mehwasdar the percentage of *upaj* to which he is entitled, minus establishment expenses. There can be nothing but gain in this arrangement and we shall then get people settling in these villages, have regular reports and returns sent in and get our revenue in. . . .”

“The Mehwasdars have certain rights over trees which they have abused. In cultivated survey numbers, they have the same rights as cultivators in Government villages. So they let the land out to any one, get it transferred to their own names, cultivate it nominally and cut down the trees *ad libitum*. Trees in assessed waste can be cut by Mehwasdars to aid cultivation and this privilege they have abused.<sup>11</sup>

For this state of affairs, many factors are responsible. To begin with, the Mehwasdars as a class are Barias of the Koli caste with one exception that certain sharers in Chalali belong to the Desai family of Kalol. They are improvident and heavily indebted to the Banias and shahukars of Kalol. Consequently, their villages are impoverished and badly cultivated. The practice of sub-dividing their shares has ruined the value of their property and has reduced the sharers to the level of ordinary Koli cultivators. A visit to any Mehwasi village would present one with a spectacle of a deserted village with many fields fallow or badly cultivated, houses ruined or run up with wattle and daub and without proper roads or sanitation. Except the Mehwasdars of Pingli and Naranpura, almost all the Mehwasdars are in debt. For marriage of a daughter, a Mehwasdar takes money from the bridegroom's father; and for the marriage of a son, he is driven to sell his lands to a shaukar! Many of them are illiterate. The Mehwasdars are so indigent and impoverished that they are able to pay their 'Ankda' to Government with great difficulty. The Collector of Panch Mahals (1902) was, therefore, constrained to remark that “Managed as they are, the villages are necessarily a drag on the prosperity of the taluka, and in one respect serious administrative inconvenience is caused. The

11. *Revision Settlement Report of Kalol Taluka*, p. 61; S.S. No. CCCCXVIII—N.5.

Government Talatis were removed from the villages under the conditions of the lease and the Mehwasdar was allowed to make his own arrangements as regards the keeping of records and accounts. It is true that the accounts were correctly kept, but he has not fulfilled his duty in this respect and there is no efficient method of enforcing the responsibility. . . . The irresponsible men taken as Talatis by the Mehwasdars usually develop into their sowkars and by lending them money acquire an undesirable influence and position in the village.”<sup>12</sup>

In short, from the point of the administration and the Mehwasdars themselves, it is necessary to abolish the system. In the context of the modern administration, Government does not require the agency of the Mehwasdars to collect revenue on its behalf. By their illiteracy, general backwardness and incapacity to manage the villages, the Mehwasdars have themselves made out a case for their abolition. Further, Government does not require these intermediaries, who have outlived their utility. As a measure of agrarian reform, Government decided to scrap the system. To this end, Government enacted the Panch Mahals Mehwasi Tenure Abolition Act, 1949. For facility of reference, the Act is given in Appendix C. The new Act has been brought into force with effect from the 15th March 1950.

### Provisions of the new Act

The Act provides for the abolition of the Mehwasi tenure with all its incidents. Every Mehwasdar in respect of his lands in his possession and every registered holder in respect of the lands in his possession is recognized as occupant within the meaning of the Bombay Land Revenue Code, 1879. All waste lands, whether assessed or unassessed, and all other property referred to in section 37 of the Land Revenue Code in such villages, which are not the property of individuals, etc., are to be the property of Government. Provision is made for payment of compensation to the Mehwasdars for extinguishment or modification of any rights; but the amount of compensation is not to exceed the maximum of the average of the total or partial exemption of land revenue and profits from unassessed waste to which the Mehwasdar was entitled under the Mehwasi lease of his village during three years immediately

12. *Revision Settlement Report of Kalol Taluka*, p. 67.

before the date on which the Act came into force. Against the Collector's award of compensation, an appeal lies to the Bombay Revenue Tribunal. Government has framed rules prescribing the form of application for compensation under section 6(2) and the value of the court-fee stamp to be affixed to an appeal to the Bombay Revenue Tribunal under section 8 of the Act. They are given in the Appendixes D and E.

### Consequences of Abolition of the Tenure

Now that the Act is passed by the Bombay Legislature, it is but proper to consider the consequences that would follow from it. Administratively, the work of collecting land revenue and maintenance of revenue records will be done by the talatis appointed by Government. The Mehwasdars, who were exempted partially or wholly from payment of land revenue, will have to pay full assessment direct to Government. Further, the holders of inam lands will pay judi directly to Government and not through the Mehwasdars. All assessed and unassessed waste lands which are not the property of individuals will vest in Government. The Mehwasdars' tenants, who cultivate these waste lands, will be the tenants of Government. The provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, will apply and the tenants' tenure and rental will be determined accordingly. Furthermore, trees in lands held by Mehwasdars and occupants will vest in them, whereas those in the assessed and unassessed waste will vest in Government, subject to the tenants' rights as provided in the tenancy legislation. Grazing rights of the people in the open forest will continue, subject to the standing orders of Government. Lastly, Government will have to pay the amount of cash remuneration required to make up the emoluments of village servants according to the Woodward scale.

Apart from these administrative facilities, the Act will engender a great social and moral change in the Mehwasdars. The Mehwasdar was so far deluding himself with the belief that he was a Thakor of his village, and banked on his Mehwas for maintenance. He neither undertook proper cultivation of his lands nor did he seek other avenues of employment outside his village. Now, he will be forced to look beyond his village for livelihood, if he has no lands in his possession. Normally, a Mehwasdar has 20 to 30 bighas of lands of his own, which

are many times sub-divided amongst brothers. Thus, by the abolition of the tenure, the village economy in these Mehwasi villages will be unsettled for some time; but in due course of time, the conditions will stabilize themselves and the Mehwasdars will adjust themselves to the new conditions of life. In short, he will be forced to be functional and be useful to the society.

As regards compensation, the maximum amount of compensation may amount to Rs. 12,000 on the basis of the Mehwasi profits enjoyed by the Mehwasdars. As against this, Government gain would be in the increase of revenue to the tune of Rs. 20,000 annually on account of the abolition of the Mehwasi profits. In the circumstances, the abolition of the Mehwasi tenure is a paying proposition to Government.

From the point of administration, Government will not have to incur any cost on administrative arrangements to be made in consequence of the abolition of the tenure. There already exist village administration consisting of patels and inferior village servants paid by Government. The Mehwasi talatis will have to be replaced by the Government talatis. To this end, Government has sanctioned creation of four new posts of talatis for these villages.

In short, the new legislation will not entail any heavy cost on account of administrative arrangements or compensation; on the contrary, Government would gain in revenue and the Mehwasdars will be forced to shake off lethargy and be functional.

## CHAPTER IV

### THE MALEKI TENURE

The Maleki tenure obtains in 27 villages of the Thasra taluka, district Kaira. These villages are entirely ryotwari and surveyed and settled like other khalsa villages in the taluka. Unlike the Bhagdars, Narwadars, Talukdars and Mehwasdars of Gujarat, the Maleks got the villages as a reward for gallantry shown in conquering the Pawagadh Fort in the Panch Mahals district in the times of Sultan Mahmed Begada and unlike them, they are not governed by any legislative enactment, but by the Pedder Settlement. Thus, they are neither farmers of revenue like the Bhagdars, Narwadars and Khots, nor are they proprietors of their villages like the Talukdars. They were the original grantees of the villages by the Sultan for their military prowess. Originally, their status approximated to that of the inamdars and enjoyed the villages rent-free. But we will see later how their fortunes fluctuated with the changes of political power in Gujarat and how they were reduced to the position of sharers of revenue from certain categories of the lands within their villages.

#### The Historical Background

The Maleks enjoy the rights and privileges in the Maleki villages from the time of Mahmed Begada, Sultan of Gujarat (1459-1513). In about 1483, the Sultan granted<sup>1</sup> about 90 sq. miles of land on the banks of the Mahi in the Thasra taluka to certain Muslim families known as Malekjadas, as a reward for military service at the siege of Champaner (Pawagadh). But no documentary evidence of the grant by Mahmed Begada is known to exist. At the time of the grant, these lands covered 12 villages. But when they came under the British rule in 1817, they numbered seventeen and in 1864 had increased to twenty-seven.

For about 250 years, the Maleks enjoyed the villages rent-free and managed them on the Bhagbatai system. They took half the produce from the cultivators. In the

1. *Bombay Gazetteer*, Gujarat : Kaira, p. 82.

beginning of the 18th century, the Marathas began to establish their power in Gujarat. The Peshwa's government imposed on the Maleki villages an Udhad jamabandhi or a lump tribute. The amount was not fixed but was regulated solely by the comparative power of the government to levy and of the Maleks to resist the exaction. In order to meet this tribute, the Maleks imposed a property cess "Karam vero" on their tenants and reduced their own shares of the produce "vaje" from one-half to one-third. In about 1769, the Mulkgiri army (i.e. the revenue collecting force) of the Gaikwar began to levy a tribute under the name of "Ghasdana" from the villages. Some of the villages became also liable to a jamabandhi payment to the Babi of Balasinor. These exactions were met out of the property cess Karam vero and not from the Maleks' share of produce. But in some years, the Maleks were so hard pressed that to meet the demand, they had to part with a considerable quantity of land from their villages and to sell their "vaje".

### Robertson's Settlement

In 1817, when Thasra came under the British management, accountants were placed in the Maleki villages and field register of all the lands was prepared. The lands of these villages were divided into the following classes:—

- (1) Sarkari lands paying vaje of one-third and Karam vero.
- (2) Vechania and Girania lands paying Karam vero but no vaje.
- (3) Pasayata and village service lands, sometimes entirely free and sometimes paying Karam vero.
- (4) Lands cultivated by Maleks personally (Gharkhed lands).

An acreage rate was imposed on Government lands not tilled by the Maleks and a quit rent on the alienated lands. Since the Maleks levied special cesses to meet their tribute to the Gaikwar and the Babi of Balasinor, the new assessment pressed the cultivators so hard that they began to desert their villages. To prevent this, in 1819, Captain Robertson, Collector of Kaira, introduced a new system based upon the principle of consolidating all demands to which the cultivators were liable. He abolished all cesses and the practice of levying vaje in kind and substituted fixed bighoti rates upon vechania,

giranias, and occupied sarkari lands. The bighoti rates were fixed not according to the quality and productivity of the soil, but upon the caste of the cultivator. The common rates were Rs. 4½ to 6 (Babasi) for Patidars and Rs. 3 and 3⅓ for Kolis. In place of vaje, the Maleks were to receive upon each cultivated bigha of Sarkari lands Re. 1-5-0 (Re. 1-8-0 Babasi) and to enjoy rent-free lands which they personally cultivated. The management of vechania and girania lands was resumed and in lieu of vaje, the holders were to receive upon each cultivated bigha a Kothli santh of Re. 0-14-7 (Re. 1 Babasi). Half of the Gaikwar's ghasdana was to be paid by government and the remainder with the whole Balasinor tribute by the Maleks. Lastly, Government talatis were appointed in these villages and the management was taken out from the Maleks. The effect of this arrangement was to reduce the Maleks from the position of proprietors of alienated lands paying a tribute to government to that of persons having merely a share of the revenues of government villages.<sup>2</sup>

In 1820, the prices of agricultural produce fell precipitately with the result that Captain Robertson's caste rates were found oppressive and that considerable inferior soils went out of cultivation. So, in 1823, the Maleks of 16 villages entered into a fresh agreement under which the rates were reduced but the Maleks of 7 villages stuck to the old agreement of 1819-20.

In 1824, Government issued a resolution which described the tenure of the villages as under:—

“**Para 4:**—The plan of giving the Maleks a fixed sum per bigha and taking the management of their villages out of their hands must have the effect of reducing them from the situation of landlords to that of mere pensioners, and it is not to be expected that they will be reconciled to the change.”

“**Para 5:**—It appears to the Honourable the Governor-in-Council that the Maleks have as much claim as the Chiefs of the Mehwasi villages or the small Grassia proprietors in Ahmedabad, and accordingly instructs you to treat them in the same way.”<sup>3</sup>

2. *Pedder's Report*, para 19, at p. 56, of *Revision Settlement Report of Thasra Taluka*, No. CCCV—N.S.

3. G.R., R.D. No. 1189 dated 17th July 1824 quoted in para 25 of Mr. *Pedder's Report* at p. 57 of the *Revision Settlement Report of Thasra Taluka*.

In pursuance of these orders, the Collector of Kaira removed the Government talatis and handed over the management of the villages to the Maleks. The Maleks were much satisfied by this step and appointed their Talatis immediately. Captain Robertson's settlement of 1819 and 1823 with regard to the rates and relative shares of government and the Maleks were considered still to be in force. Pedder observed<sup>4</sup> that prior to the introduction of the British rule, the Maleks had undoubted proprietary rights which they exchanged in 1819 and 1823 for the guarantee of a certain sum upon each cultivated bigha.

Soon after, the villages, on paying Government a lump sum, were leased to the Maleks who were left free to alter the rates of assessment, as they chose. The leases lasted till 1837, when the arrangement sanctioned in 1819 and 1823 was re-introduced. In 1843 and again in 1850, district officers complained that the Maleks had so adjusted the assessment that while the Government share was reduced by one-half, the Maleks' share was made one-fourth larger than in 1819 and the subsequent years. But Government did not disturb the existing arrangement till 1860, when, on introduction of the revenue survey, the Maleks were asked if they would continue to manage their villages, paying Government a fixed rental. To this, they would not agree, stating that the number of sharers was too great to give them any chance of managing their villages successfully.

### The Pedder Settlement

This indefinite position continued till Mr. Pedder was directed by Government in 1860 to inquire and report on the Maleki villages. He submitted his report to Government suggesting the lines of settlement. Government agreed to Mr. Pedder's proposals and granted sanads to Maleks. Accordingly, the villages were to be managed by Government under ordinary survey rules. The Maleks were allowed to hold the lands cultivated by themselves in 1819 rent-free and, for the rest, receive a share varying from seven to nine annas in a rupee of assessment. The village accountants nominated by the Maleks were appointed and paid by Government.

4. Para 33 of *Pedder's Report* at 47 of the *Revision Settlement Report of Thasra Taluka, S.S. No. CCCV—N.S.*

The settlement has not been recognised or guaranteed by any specific provisions of a legislative enactment. The settlement was a sort of engagement or arrangement and not a grant. Whatever status the Maleks had in the pre-British or early British period, their rights and responsibilities are at present regulated according to the Pedder settlement. It is, therefore, absolutely necessary to know the terms of the settlement as incorporated in the Maleki sanad. For facility of reference, the Maleki Sanad <sup>5</sup> is reproduced below:—

### THE MALEKI SANAD

THIS SANAD is issued on the part of HER MOST GRACIOUS MAJESTY VICTORIA, QUEEN OF GREAT BRITAIN AND IRELAND, and of the COLONIES AND DEPENDENCIES thereof, by command and under the signature of His Excellency the Honourable SIR HENRY BARTLE EDWARD FRERE, Grand Commander of the Most Exalted Order of the Star of India, Knight Commander of the Most Honourable Order of the Bath Her Majesty's Governor of Presidency of Bombay in Council, to the effect that :

WHEREAS you Mullek and your Co-sharers in the Wuzeh of the village of in the Tasrah Taluka of the Kaira Collectorate, are heirs of the Mulleks with whom Captain Robertson made a settlement on the part of the British Government

in the year     A D.     with respect to certain rights and     Samvat     privileges in the villages aforesaid, enjoyed from the time of the former Government, and whereas His Excellency Sir HENRY BARTLE EDWARD FRERE, G.C.S.I., K.C.B., Her Majesty's Governor of Bombay Council, is desirous to confirm, subject to the conditions of good behaviour and loyalty to the British Government to you and your heirs for ever the rights and privileges aforesaid, as now settled, consequent on the introduction of the revised Revenue Survey and Assessment into the village, it is hereby declared as follows :—

### ARTICLE I

#### Wuzellee Land

In the said village ..... there are ..... Acres and Gunthas of Wuzellee land as set forth in Schedule A hereto annexed. On every rupee of the assessment of this Wuzellee land, you and your co-sharers, Mulleks of the said village, have a claim of ..... annas and Government a claim of .....

5. R. N. Joglekar, *Alienation Manual*, Appendix B, p. 91.

annas. The proportion of the said Wuzeh annas due to each shareholder is to be distributed and apportioned on the plan now existing, according to the share of each as set forth in the Schedule A aforesaid, provided always that no further sub-division of shares than is set forth in the said Schedule shall be permitted or allowed, that is to say as far as entries in Government accounts are concerned.

## ARTICLE II

### Santhalee Land

And whereas, there were in the village of ..... Acres and ..... Gunthas Santhalee land, on which the "Santh" payments were ..... fixed at the settlement, before mentioned by Captain Robertson, and whereas the said "Sanths" have been redeemed by Government, or commuted into annual cash payments. It is hereby declared that your connection and that of the Santh holders in these lands have altogether ceased and determined, and, henceforth, belong exclusively to Government.

## ARTICLE III

### Nukroo Land

You Mullek and ..... Your co-sharers hold ..... Acres and ..... Gunthas of Nukroo or rent-free land which by the terms of Captain Robertson's Sanad you were enjoyed to retain in your own possession as Gharkhed or land cultivated by means of home labour, and it is desirable that this alienation of the public revenue should be preserved for the due support of your position as the lineal descendants of the original Mulleks of this village; therefore the said Nukroo lands (as specified in Schedule B hereto annexed) shall be continued to you and your heirs rent-free for ever.

## ARTICLE IV

And whereas you Mulleks and your co-sharers Mulleks of the village of ..... have a preferential right over the Wuzellee lands of the said village, it is hereby declared that the refusal of the right of occupancy of all lands which may now be or hereafter may become waste in your respective shares, shall be offered to you and your co-sharers prior to the usual auction sale of the occupancy of waste lands, and the terms of occupancy shall be in accordance with the provisions of the Rules to this Sanad in the Schedule C.

## ARTICLE V

In addition to any rights in the produce of trees and grass which the Mulleks possess at present according to existing custom, and with

which the provisions of this Sanad do not interfere, they shall enjoy the miscellaneous Revenue accruing from the sale of grass, grazing, produce of fruit tree, wood on waste Wuzellee lands, etc., etc., in the same proportion as the Wuzeh, that is to say in those villages in which Wuzeh is fixed at nine annas in the Rupee, they shall be entitled to 9 annas in the Rupee of the miscellaneous Revenue aforesaid, and in villages where the Wuzeh is fixed at 7 annas in the Rupee, to seven annas of the Miscellaneous Revenue.

#### ARTICLE VI

The Mullekee villages as per margin have hitherto paid tribute to the Babee of Balasinor but by this Sanad His Excellency the Governor-in-Council is pleased to declare that this tribute shall not be levied from the Mulleks in future, but shall be paid out of the Government share of the Revenue, and the Babee shall hereafter have no claim whatever on the Mulleks on this account.

1. Wanghrolee.
2. Nudadra.
3. Sandalee.
4. Khurgodra.
5. Sulloon.
6. Sunadra.

#### ARTICLE VII

You Mullek ..... and your co-sharers in the village of ..... aforesaid have the right of nominating a Talatee to be paid by Government, who will be appointed by the Collector on your nomination if he shall be a fit person for the office, but the said Talatee shall not be discharged by you or by your co-sharers without the consent of the Collector being first obtained, and the said Talatee shall be amenable to all the penalties prescribed for Revenues and other Officers by the Regulations and Acts of Government present and prospective.

#### ARTICLE VIII

Though this Sanad and its Schedules have been issued in respect to the aforesaid person or persons mentioned therein, it is to be clearly understood that the rights and privileges herein confirmed and guaranteed, and the terms and conditions herein laid down shall equally hold good in respect to each and all shareholders in the Wuzeh.

According to the Sanad, the lands in the Maleki villages may be classed as under:—

- (1) wajeli lands,
- (2) santheli lands,
- (3) nakru lands, and
- (4) lands other than those at items (1) to (3).

The settlement with the Maleks was made with reference to the classes of the lands set forth above. The character of the lands together with the Malek's rights and privileges therein are important and are therefore dealt with seriatim below:—

### Wajeli Lands

The wajeli lands are the old Sarakari lands from which the Maleks used to receive their vaje equal to  $\frac{1}{3}$ rd of the produce and the Karam vero. Article I provides that in these lands the Maleks are entitled to a share of 9 or 7 annas in every rupee of the assessment thereof. These proportions of the Malek's shares were fixed on the bases of Robertson's settlements of 1819 and 1823. In the seven villages held under the settlement of 1819, more favourable terms were offered to the Maleks, who were allowed a share of 9 annas in every rupee of assessment of the lands. In the remaining villages, which came under the settlement of 1823, the Malek's share was fixed at 7 annas in every rupee of assessment. This share, which was  $\frac{1}{3}$ rd of the produce of the land formerly, was commuted into a cash proportion of assessment and came to be called "Vaje". The term vaje means a deduction from land revenue. It is a share of the revenue collected by Government and paid to the Maleks.

Further, Article V entitled them to the miscellaneous land revenue accruing from the sale of grass, grazing produce of fruit trees, wood on waste wajeli lands, etc., in the proportion set forth above. The Maleks were granted a proportionate share from the miscellaneous revenue, in order to compensate them to some extent, the loss of the revenue sustained by them by the operation of the revised assessment.<sup>6</sup> Article IV gives them a preferential right over these lands and a right of first refusal of the occupancy of all the lands, which may subsequently become waste.

There are, at present, wajeli lands admeasuring 38,366 acres assessed at Rs. 74,917 and the Maleks get a share amounting to Rs. 35,117 per annum from them.

### Santheli Lands

The santheli lands are the old vechania and girania lands

6. Para 3 of G.R., R.D. No. 4002 dated 2nd November 1866 at p. 77 of S.S. No. CCCV—N.S.

paying Karam vero but no vaje. Captain Robertson in the twenties resumed the management of these lands and the holders thereof were given, upon each cultivated bigha, a "Kothli Santh". Thus, the Santh payments were fixed by the Robertson's settlement. These Sanths were redeemed by government or commuted into annual cash payments. As a result, the connections of the Santh holders and the Maleks were determined and the lands were decided to belong exclusively to Government thereafter. The Santh cash payment is commonly known as Kothli Santh which is a compensation paid in cash, annually for lands resumed by Government in the Gujarat districts. This inam has been placed under inam Class II (personal inam) and is treated as private property.<sup>7</sup> Government has granted sanads in respect of such cash allowances.<sup>8</sup> In short, the Maleks have no interest in the Santheli lands. At present, there are Santheli lands measuring 14,735 acres assessed at Rs. 31,500 in the Maleki villages.

### Nakru Lands

Under Captain Robertson's settlement, the Maleks were allowed to retain rent-free (nakru) certain lands as Gharkhed (personally cultivated). Under the Pedder settlement, this alienation of the land revenue was continued for the maintenance of the Malek's status, as they were the lineal descendants of the original Maleks (*vide* Article III of the Sanad). These lands are entered in the revenue records as Maleki—Nakru, Inam Class II, starred.<sup>9</sup> They are not held under the Summary Settlement Act, but were adjudicated as rent-free. On alienation from the family, they are liable to full assessment.<sup>10</sup> There are at present Nakru lands measuring 2,269 acres assessed at Rs. 6,829—an amount which is enjoyed as an alienation by the Maleks.

Besides these three classes of the lands, there are other lands measuring 2,294 assessed at Rs. 6,156. This area covers public assignments such as grazing areas, pasayata lands, etc.

To sum up, the Maleks have the following rights under the terms of the Sanad granted in 1865:—

7. Article 49 of *Alienation Manual*, pp. 44-45.
8. Appendix B of *Alienation Manual*, p. 233.
9. *Revenue Accounts Manual*; Remarks on V.F. III, p. 35.
10. G.R., R.D. No. 12841 dated 22nd December 1914.

- (1) The Maleks were to receive a share varying from 7 or 9 annas of every rupee of assessment in respect of the vajeli lands.
- (2) A similar share was to be received by them from the miscellaneous revenue arising from these (vajeli) lands.
- (3) The Maleks were to retain possession of Nakru lands, which were wholly exempt from payment of land revenue. The other lands in possession of the Maleks were to be subjected to full survey assessment.
- (4) The Maleks were given a preferential right for the purchase of the occupancy of the waste vajeli lands.
- (5) The Maleks were to have a right to nominate talatis.

It will thus be clear that whatever interest or right the Maleks acquired under the Pedder settlement was non-transferable and could not be sold or mortgaged.

#### Case for Abolition of the Tenure

The question of the abolition of the Maleki tenure requires to be considered in the historical background set forth above. It will be clear that they were no revenue farmers like the Khots or Bhagdars and Narwadars, but originally grantees of rent-free villages as a reward for military service. Owing to uncertain political conditions obtaining in Gujarat in the 18th century, Ghasdana and other cesses were levied both by the Marathas and the Babi of Balasinor. The British recognized their rights in Gharkhed lands only and 7 or 9 anna share in the revenue accruing from the vajeli lands. In order to placate them, the Maleks were allowed to nominate Talatis in these villages, who were and are paid by Government. The present position is that the Maleks control the whole village administration completely because of their right to nominate talatis. In some cases, it is alleged that Maleks exact money from the prospective candidates for the talati's post, who, in turn, naturally recover the amount from the ryots. In these circumstances, the talatis in these villages are the Maleks' nominees, who are prepared to do anything at their bidding. Further, the Maleks or their relatives are found to be the only literate and fit persons for appointment as patels. When the talati and the patel are under the thumb of the Maleks, one can easily imagine the power of the Maleks and the condition of the village administration.

There is another and more serious administrative evil connected with the tenure. Mr. Pedder found that the bighoti rates in the Maleki villages had been as a rule considerably higher than those in similar khalsa villages. These bighoti rates, were based upon Captain Robertson's caste rates. Consequently, the Kanbis (Patidars) paid rates very much higher than those paid by Kolis. The grouping and rating in these villages at the time of the original settlement in 1864-65 presented a serious problem to Mr. Pedder. If the villages were grouped according to the principles of the Joint Report of 1847, it would have resulted in a loss both to the Maleks and Government. It was therefore considered inexpedient to put the Maleks against the settlement and the rates finally imposed were somewhat higher than those in the corresponding khalsa villages and were calculated as much with a view to the character and skill of the cultivators as to the situation with respect to market and climate.<sup>11</sup> In the revision settlement in 1895, the same difficulty arose. Reduction of assessment was justified on the survey principles; but it was not proposed in order to placate the Maleks. On the contrary, the Settlement Officer was compelled to propose rates above those which according to purely survey considerations would have been justifiable.<sup>12</sup> Thus, the assessment rates fixed in the Maleki villages were much above those in the khalsa villages. The high pitch of assessment was continued in order not to displease the Maleks; but the people had to pay high rates not warranted by the survey principles. The Maleki tenure came in the way of fixing the grouping and rating according to the principles of the Joint Report. With the abolition of the tenure, this inequality in the pitch of assessment in the Maleki villages will be removed and the ryots, Patidars and Kolis, will have to pay a lighter assessment based on the survey principles. In short, the heavy load of assessment from these villages will be taken off the cultivators and these villages will no longer present a problem to the settlement officers in future.

Apart from these administrative facilities, the abolition of the tenure is necessary for the benefit of the Maleks themselves

11. *Revision Settlement Report of Thasra Taluka*, para 35, pp. 9-55, S.S. No. CCCV—N.S.

12. *Ibid.*, p. 112.

from the social and economic points of view. In order to appreciate this facet of the problem, it is necessary to know the composition of the classes of the population. The ryots are entirely agricultural and are mainly divided into three classes, viz. Muslims, Patidars and Barias. The Muslims, mostly belong to the families of the Malekjadas. They are not cultivators. They are thriftless and lethargic. Consequently, they are mostly poor, although they get larger revenues on account of vaje. The vaje is partible and sub-divided into many small shares. There are many families who subsist on the shares from vaje. In the absence of any alternative employment and extravagant expenditure on marriages and other social functions, practically all the Maleks are indebted to the Barias of Thasra and Kapadwanj. In order to facilitate payment of land revenue, Government allowed them to pay it out of the vaje in July every year. Their houses are generally not of pucca structures and have very few household materials. One should not judge them from the good dress they put on while attending the Mamlatdar's Kutchery or other ceremonial functions.

The second class is of Patidars who are comparatively numerous. They are mostly tenants of the Maleks or of Government. Many of them hold Sanths. They are excellent cultivators and notwithstanding the heavy rates of assessment they have hitherto paid, they are well off. Many have pucca built houses and, economically, they are supreme in the villages.

Lastly, there are Barias who constitute the most numerous class. They are bad, indigent, and improvident cultivators. They are indebted to the Barias of the villages.

From these three classes of people, it is clear that the Maleks bank on their vaje, the Patidars on their agricultural skill and Kothli santh and the Kolis on the agricultural labour. In this sort of village economy, the class of Patidars, which is thrifty, skilful, and industrious, is bound to come up economically and socially, although the Maleks may lord over them as the descendants of the original Malekjadas and the "Maliks" of the villages. The easy income from Government has made them indolent and improvident and they have scarcely looked beyond their villages for employment. The abolition of the tenure will shake off this smug self-complacency and will force them to think of alternative employment for mainte-

nance, if "Gharkhed" lands are not sufficient to maintain them.

In this social, economic and administrative background, Government considered the liquidation of the special rights and privileges of the Maleks. Furthermore, as a measure of agrarian reform, the abolition of the Maleki tenure became urgent and imperative. Government therefore introduced the Bill No. XLVII of 1949 in the Bombay Legislature, which was passed into an Act without any amendments. The new Act called the Bombay Maleki Tenure Abolition Act, 1949, is given in Appendix F. The Act has been brought into force with effect from the 1st March 1950.

### Provisions of the new Act

The Act aims at abolition of the Maleki tenure and its incidents. The Maleks shall not be entitled to receive any share of the revenues, fixed and fluctuating, arising from the vajeli lands in these villages. Further, they shall not be entitled to claim a preferential right for the purchase of the occupancy of any waste vajeli lands. Lastly, they lose their rights to nominate talatis in their villages. But the Act saves the Malek's right to hold Nakru lands as being exempt from payment of land revenue and the right to receive Kothli Santh. These rights are not taken away by Government, because the Nakru lands and the Kothli Santh allowances are treated as personal inams of Class II, which Government does not want to abolish at this stage. They will be considered, when the Government takes up the general question of abolishing personal inams in the whole State.

Thus, it will be clear that the Maleki right extinguished by the Act are those specified in section 3(i)(b) thereof. Out of the said rights, the rights in sub-clauses (iii) and (iv) regarding the preferential right to purchase occupancy of waste vajeli lands and the right to nominate talatis are mere notional rights, for which no compensation is payable. As regards the rights in sub-clauses (i) and (ii) regarding proportionate sharing of fixed and fluctuating land revenue from the vajeli lands, provision has been made in section 5 of the Act for payment of compensation for extinguishment or modification thereof. The first proviso in that section lays down that the compensation shall not exceed three times the maximum of the

average of the amount proved to have been realized by the Maleks during five years immediately before the date on which the Act comes into force. And for extinguishment or modification of any other right, the compensation is to be determined according to the principles laid down in sub-section (1) of section 23 and section 24 of the Land Acquisition Act, 1894. The Malek's right to share revenue from the vajeli lands is incorporeal and is not a right in land within the meaning of section 299(2) of the Government of India Act, 1935. It cannot, therefore, be the subject-matter of valuation under the provisions of the Land Acquisition Act. In the circumstances, the provisions regarding compensation for modification or extinguishment of the Malek's rights in the Maleki villages are adequate. For compensation, an application is to be made to the Collector of Kaira in the prescribed form within six months from the date on which the Act comes into force. The Collector is to assess compensation after holding a formal inquiry in the matter. In this work, he is to be guided by the provisions of sub-section (1) of section 23 and section 24 of the Land Acquisition Act, 1894. An appeal against the Collector's award lies to the Bombay Revenue Tribunal.

Under section 8 of the Act, Government has framed rules regarding the form of application under section 5(2) and the value of the court fee stamp to be affixed to an appeal to the Bombay Revenue Tribunal. The rules are given in Appendix G.

### Consequences of the Abolition of the Tenure

Since the Bombay Maleki Tenure Abolition Act, 1949, has been passed by the Bombay Legislature, it is necessary to consider the consequences following therefrom. Administratively, the abolition of the tenure does not entail any additional expenditure on Government on account of the village administration. At present, the village establishment consisting of patels and inferior village servants is paid by Government. The talatis, though nominated by the Maleks, are also being paid by Government. Further, the serious difficulty in the settlement of these villages as detailed above, will be removed and the ryots of the villages will, in future, be assessed at a lower rate according to the principles of survey and settlement. Lastly,

Government will be benefited every year to the extent of Rs. 35,117 (Malek's shares) by way of land revenue from the vajeli lands. Of course, Government will have to pay compensation not exceeding three times the maximum of the average of the amounts realized by the Maleks during the five years immediately before the Act comes into force. If Rs. 35,000 is approximately taken the annual income of the Maleks, Government will have to pay compensation not exceeding the amount of Rs. 1,05,000.

Socially, the tenure may bring about a great change. The Maleks act as the Maliks of these villages and there are cases when they have ridden roughshod over the ryots. The people, who are in a state of mental subjection for centuries, cannot easily raise their heads against their ancient Maliks. In the circumstances, the acts of harassment are perpetrated with impunity and the offenders are not brought to book. The abolition of the tenure will remove from the minds of the ryots the fear-complex born of centuries. The Maleks will be brought down to the level of the ordinary landholders holding Nakru and other lands only. The Maleks will have to disabuse their minds of the old notions of status and prestige associated with the tenure and will have to adjust themselves to the new order of these villages. If a Malek has sufficient "Gharkhed" lands, he will continue to make a living out of the produce of the lands, but his income from the lands will be limited to the maximum rent prescribed under the Bombay Tenancy and Agricultural Lands Act, 1948. Many will be forced to seek employment outside their villages. It is contended that the Act may dislocate the village economy by affecting the livelihood of certain persons of the Maleki families. But there is no truth in this contention, because the vaje has been divided and sub-divided in so many small shares that the abolition of the tenure with the Malek's right to vaje would not deprive them of a large slice of their income and would therefore not affect adversely their financial position. They would feel because of the sentimental attachment to the tenure. But the conditions would stabilize themselves in due course of time and the Maleks would be forced to adjust themselves to the new conditions of life.

## CHAPTER V

### THE TALUKDARI TENURE

The talukdari tenure is one of the most important tenures of Gujarat. The history of Gujarat, diversified as it is with many political vicissitudes and changes of dynasties, has left its marks on the existence of several varieties of the overlord tenures. In India, among the factors which contributed to the development of the land tenures, we have to note the effects of conquest and internal disruption of the old ruling chief's estates or domain. These effects are most conspicuous in the case of the Talukdars of Gujarat. They date back to the Moghal or pre-Moghal times, when the local chiefs or Thakors played the padshah in their principalities. During the Maratha period, they continued subject to payment of tribute. In the latter half of the 18th century and the first half of the 19th century, black-mailers and revenue farmers, who held supreme sway over the populace in those troublous times, arrogated to themselves the authority of governing the countryside with a right to levy taxes and cesses. The origin of many talukdars is found in the uncertain political conditions of Gujarat. They are mainly found in the districts of Ahmedabad, Kaira, Panch Mahals and Broach. The gross areas under the tenure is about 14,33,204 acres, out of which 10,61,187 acres are temporarily settled and the remaining 3,72,022 acres are permanently settled.<sup>1</sup> According to the latest information (1948-49), the talukdari villages and wantas are as under in different districts of Gujarat:—

| District         | No. of Villages | No. of wantas |
|------------------|-----------------|---------------|
| Ahmedabad ...    | 393             | 3             |
| Kaira ...        | ...             | 32            |
| Broach ...       | ...             | 29            |
| Panch Mahals ... | 164             | ...           |
|                  | 557             | 64            |

1. *The Land Revenue Administration Report, Bombay Province, 1930-31.*

In the Ahmedabad district, the Talukdari villages are mainly found in the talukas of Viramgam, Sanand, Dholka, Dhandhuka, Gogha and Prantij. In the Panch Mahals, they are chiefly found in the Godhra and Halol talukas, while a few villages exist in the Dohad and Jhalod talukas. In Ahmedabad and the Panch Mahals, there are entire villages on the talukdari tenure, which are all surveyed and settled. The talukdars hold the villages on payment to Government of a jama, which is subject to revision at every revision settlement. In Broach and Kaira, there are no entire villages on the talukdari tenure, but the talukdari estates consist of wantas, i.e. one-fourth share of the original talukdari estates. In the case of these wantas, the jama is fixed in perpetuity (uddhad). The leading characteristic of the talukdari tenure is that the talukdari estates are neither alienated nor unalienated but are proprietary and date back to the pre-British times. There are, however, two exceptions to this proprietary status. The Naiks of the Dohad taluka in the Panch Mahals and the Kasbatis of the Viramgam taluka in the Ahmedabad district have not been given the attributes of the talukdars, although they have been included in the definition of a "talukdar" under section 2 of the Gujarat Taluqdars' Act, 1888. They are considered to hold their estates as permanent lessees under certain conditions. Their leases have been terminated by Government.

### Historical Background

Historically, the talukdars of Gujarat are identical with the ruling families of Kathiawar and other Agencies and their loss of power is generally ascribed to the geographical accident of their estates being situated in the settled portion (*rasti*) of the State under the British Government. Their kinsmen are, in unsettled (*mulkgiri*) territories of Kathiawar, continued to be treated as tributories. In this connection, Mr. Peile, the great authority on the talukdari tenure states as follows:—  
 "The estates of the Ahmedabad Talookdars may be defined geographically as the border-land between Gujarat proper and the peninsula of Kathiawar, and historically, as the coast where the debris of the old Rajpoot principalities of that peninsula was worn and beaten by the successive waves of Mogul and Mahratha invasions. But they are a part of Kathiawar rather than of Gujarat. Their proprietors are Katheewar Chiefs.

Their communities have the same elements. There are Choorasamas in Oound and Choorasamas in Dhandooka, Jhalas in Dhangadra and Jhalas in Dhundooka, Goels in Palitana, and Goels in Gogo Bara.”<sup>2</sup>

The talukdars comprise persons of varying positions ranging from Jurisdictional Chiefs holding talukdari villages in British Districts and the holders of recognized chieftainships such as Sanand and Gamph, etc., to the holders of a few acres in co-parcenary estates. With an exception of a few Muslims, Kathis and Charans, they are of pure or mixed Rajput descent, embracing Waghela, Chudasamas, Jhalas, or Koli Thakardas of Viramgam and Pantij, Molesalams, the descendants of Rajput converts to Islam of the Broach and Kaira districts and of Ranpur in the Ahmedabad district.

According to the statement of Mr. Peile, the Talukdars were called Grassias and the name “Talukdars” was first used in Gujarat by the British themselves. One of the most difficult questions about the talukdars has been to fix the position of the talukdari estates according to the history of their origin and the treatment accorded to them by the former Governments. It is, therefore, necessary to describe how they were treated under the Moghuls, Marathas and the British. As regards their treatment under the Moghuls, Mr. Peile, observes: “In the better days of Mogal Rule, Todarmal, the Minister of Akbar, divided all the districts of Gujarat under different provinces or Sirkars. Of all the Talukdari districts, Gogo alone appears in this division under the Sirkar of Sorath, or Katheewar. Dholka and Dhandhuka are numbered under the better tamed districts of the Ahmedabad Sirkar, and so is Viramgam under the name Chalabarah or Jhalawar. The part of Gogo (the Ostia of Cambay) was also under the latter Sirkar.”

Mr. Reeves' remarks in this connection are also pertinent. He observed that “there is no doubt that they are sprung from an ancient race of hereditary proprietors, who were found by the Mogals at their first appearance in Gujarat possessed of considerable power and wealth. The Mogals managed to expel the whole of them from their estates, but on a stubborn resistance being made, they felt themselves obliged to restore to the Grassias in the immediate vicinity of the capital,

<sup>2</sup>. *Vide* Government Selection CVI—N.S., p. 4.

Ahmedabad, a portion of their lands which is held to this day rent-free as 'Wanta', while to those situated more remote from the capital and whose resistance was still more resolute, restoration of their lands was made in full, burdened, however, with the obligation of paying tribute. This tribute, which was annual, amounted to about half the net revenue of each estate and was payable in cash. It nowhere appears that the estates were burdened in any other manner. And thus the Grassias were settled by the Mogals *as actual proprietors of their estates* with the simple liability of paying tribute to the Government." <sup>3</sup>

Under the Marathas, their position changed. According to Mr. Peile,<sup>4</sup> "The Marathas expressed the distinction between the two Sirkars in new and more significant terms. They called Katheewar (where they could not appear without an armed force), the *Mulkgiree* country, while the other Districts were called the *Rastee*, or pacific. About 1760, they transferred the District of Gogo to the Rastee Districts and after this, none of the Talukdari Districts remained in the Mulkgiree country. They were not, therefore, of those which maintained perfect political independence under formal rules. Yet it would not appear that the peaceable were really much quieter than the Mulkgiree <sup>5</sup>. . . . The Mulkgiree country has been treated as foreign territory and the tribute due from it fixed in perpetuity, while the Talukdars' estates have fallen under British jurisdiction with a rapidly increasing land tax." <sup>6</sup> In short, the accession and domination of the Marathas effected no change whatever in the tenures of the Grassias, though the annual payments varied under their administration. Although less than half the net revenue was sometimes taken by what was called Mulkgiri, there is no record of the exaction of any more than one half. According to Mr. Reeves, after the acquisition of Gujarat from the Marathas, the British Government continued to realize annual payments according to past years. But very soon, the nature of the payment was altered, instead of a tribute, Government assumed it to be rent or revenue. This change had an important effect on the Grassias. Furthermore, about the year 1821, the rental was increased by

3. Dandekar, *Law of Land Tenures*, Vol. I, pp. 352-353.

4. *Ibid.*, p. 351.

5. Peile's Report, Government Selection No. CVI—N.S., p. 5.

6. *Ibid.*, p. 7.

50% and this threw a burden on the Grassia chiefs, who were accustomed to a free style of living and who were at best "inapt financiers". However, they were obliged to submit to the enhanced levy, which caused them financial embarrassment.

Subsequently, Mr. Elphinstone introduced annual leases and also fixed the payments at 70% of the produce. This large share, which was expected without remissions of any kind, barely admitted a livelihood to the Talukdars and could not arrest the ill effects of previous mistakes and oppressive treatment. Thus, the Talukdars were driven to saukars and indebtedness. Mr. Reeves observes<sup>7</sup> that "Since the time of Mr. Elphinstone, it has been frequently declared and, that too, on the authority of the Legal Remembrancer that the tenure of the Grassias or Talukdars is that of the hereditary leaseholders dependent on the pleasure of the Government". At the time of the introduction of the Bill for the Grassias of the Ahmedabad District, Mr. Reeves<sup>8</sup> as President of the Local Council gave a graphic picture about the status of the Talukdars in 1862, as under:—

"We have thus seen the ancient chief, actual proprietor of his domain and once powerful enough to resist Mogal invasion of his rights sword in hand, converted by British mismanagement founded on error, but not the less most unrighteous, into an annual leaseholder or mere tenant-at-will of Government and reduced to extreme degradation."

The extent and seriousness of the talukdars' indebtedness can be realized from the account given by Mr. Peile:<sup>9</sup>

"A few sharp visitations of the civil process intimidated them into needless pliability. When summoned to the courts, they either ignored the summons to their own discomfiture or compromised matters with their creditors at a monstrous sacrifice. Money-lenders collected and became the terror of the district. Bond was heaped upon bond, until the original transactions were lost in a maze of chicanery. Then came the recklessness of men, who

7. Dandekar, *The Law of Land Tenures*, Vol. I, p. 354.

8. *Ibid.*

9. Peile's report, p. 12 in Government Selection No. CVI—N.S.

knew nothing of their own affairs, except that they were inextricably involved.”

They had sunk so deep in debt that they were reduced to penury and want. In describing the piteous position of the talukdars, Mr. Peile lamented as follows:

“Many Grassias are borrowing the means of life every year and some are fugitives on account of their fathers’ debts. Cultivation is at a low ebb; because the men, who should furnish capital and enterprise, are bankrupts and beggars.”

The question of huge debts by the talukdars overshadowed the subsequent legislation and survey and settlement of the talukdari estates. Debts piled up owing to extravagance on social customs and absence of increasing source of income in the villages. The survey and settlement of the talukdari villages commenced along with other khalsa villages in the Ahmedabad district from 1851. In view of the peculiar history of the talukdari villages, Government surveyed and settled them separately, as far as possible, on the ability of the talukdars to pay and not according to the strict principles of the Joint Report of 1847.

With a view to amelioration and rehabilitation of this landed gentry in the Ahmedabad Collectorate, the Bombay Act VI of 1862 was passed. It provided for the settlement of the financial liabilities of the talukdars and the reinvestment of the proprietary rights. Section 26 of that Act provided for the proprietary right as under:—

“From and after the expiration of the period of management of the estate of any Talukdar, whether such period extend to or be less than twenty years, the Talukdar shall be absolute proprietor of said landed estates as regards succession to and possession, management and transfer of the same, subject to such land tax as the Governor-in-Council may be pleased to reserve and all usual remedies for the recovery thereof.” But the great drawback of the Act was that it imposed no restrictions on the alienations of the talukdari estates, which gradually passed from the talukdars to non-talukdars. Further, the Act placed no limitation on the amount of tribute leviable from them. Nevertheless, under the provisions for debt settlement, debts of many estates were settled on equitable principles and paid off.

The Act of 1862 applied to the Talukdars in the Ahmedabad district only. For the relief of the talukdars (Thakors) in the Broach and Kaira districts, Acts XIV of 1877 and XXI of 1881 were passed.

As regards the Talukdars in the Panch Mahals, it may be stated that the district was ceded to the British in 1860 by the Scindhia by a treaty.<sup>10</sup> The treaty itself throws no light on the rights of the Talukdars or Grassias under the Scindhia's Government, but in the *Bombay Gazetteer*,<sup>11</sup> their villages have been styled as proprietary villages and it is stated that under the British management, the position of the talukdars and Thakors was left unchanged. The Talukdars of Godhra (Metral) have been recognized as full proprietors of the soil of their estates and right of Government being confined to a charge of the rental.<sup>12</sup>

This brings the history of the talukdars upto the passing of the Gujarat Taluqdars' Act (VI of 1888), which applies to all the Talukdars of Gujarat. Before the enactment of this Act, the talukdari tenures as such was not specially recognized in the legislation relating to landed interests and there was no land-law applicable to these estates. The Gujarat Taluqdars' Act, 1888, was passed to provide for the revenue administration of the estates of the Gujarat Talukdars and to limit the further operation of Bombay Act VI of 1862.

### Description of a Talukdari Village

In order to appreciate the incidents of the talukdari tenure in their proper perspective, it is necessary to know the constitution and management of the talukdari villages. The description given by Mr. Peile, in his report of 1866 still holds good in material particulars, although more than eighty years have rolled by. The ryots have, however, become less servile and more conscious of their rights by propaganda against the Talukdars by various organizations.

The community of a talukdar's village consists of a talukdar or talukdars (commonly known as Darbar), his attendants commonly Rajputs, one or two shop-keepers, with whom the talukdar has account for petty supplies, perhaps a Gosai or

10. *Aitchison's Treaties*, Vol. IV, Article 3 of Treaty No. XII at p. 81.

11. *Bombay Gazetteer*, Vol. III, p. 263.

12. G.R., R.D. No. 8999 dated 15th November 1884.

Charan (bard), Mukhi, whom the talukdar nominates under approval, Havildar, who helps the Mukhi and keeps watch in the grain yard; a village barber, pagi and others, and the cultivators, of whom a few are Patidars and the rest Kolis, Bharwads, Ahirs, etc. There are no hereditary village officers. The Darbar is highly regarded even in his eccentricities and follies. No one holds any position in the village except under his pleasure. The village site is like the rest of the lands, the property of the Darbar. All the village lands are subjected to the rent payable to the Darbar. Exception is made in the case of the lands, which have been given by them or by their ancestors. The remainder of the lands is enjoyed by the village servants for remuneration and often pays a cess or quit rent. Of the rent-paying (Darbari) lands, talukdars set apart certain lands as Ghar-khed, i.e. lands under personal cultivation. The rest they let out to tenants, whose tenure is not secured by leases or written conditions; but it is a tenancy-at-will. In practice, tenants are not evicted, if rents are regularly paid to Talukdars. Rents are levied in kind, in the districts of Ahmedabad and Panch Mahals; and, in cash, in the talukdari estates of Broach and Kaira. In the Ahmedabad district, the Bhagbatai (crop share) system prevails. The talukdar goes to the field and divides the produce according to the custom of the village (Dharo) which is recorded in every case. The division of the talukdar's and tenants' share is either made by *Makhal*, i.e. actual weighing out of the crop in the common grain-yard, or by *dhal*, i.e. appraisalment of the standing crop. The rent levied by the Talukdars in cash or kind varies in different estates and different villages of the same estate within very wide limits. In some cases, it is even less than the Government assessment and, in others, it may be as much as two or three times the assessment. General average of rent ranges from  $1\frac{1}{4}$  to  $1\frac{1}{2}$  times the assessment.<sup>13</sup> Besides the rents, tenants had to pay other cesses such as Santi vero (Plough tax), Punchhi vero (Tail tax), Bham vero (Hide tax) and others. It may be noted that the recovery of the cesses was not stringent and rigorous and, therefore, the weight or pressure of a variety of cesses was not felt by the ryots.

13. *Survey and Settlement Manual*, Vol. I, p. 225.

## Wantas

We have stated before that the talukdari estates either consist of entire villages as in Ahmedabad and Panch Mahals districts, or portions of villages called "wantas" as in Kaira and Broach. The wantas are generally (though not invariably) held by the talukdars. The origin of the wantas is generally ascribed to the action of the Muslim invaders of Gujarat, who deprived the original chiefs of all but one-fourth of their possessions which took the name of "wanta" (divided). In some cases, where the holders offered no opposition to this sort of spoliation, the wanta was granted free and in cases of opposition, the wanta was burdened with salami or quit rent, which remains till date. But there is no record nor even tradition to show on what principle quit rents were imposed. No holder of wanta lands has any documentary title and the limits of the same are determined from the first trustworthy records prepared under the British rule as contained in the village accounts. Certain wantas pay tribute in the shape of uddhad jama or are in some cases rent-free and subject to the summary settlement cess only. Isolated wanta lands may be rent-free or subject to quit-rent. The wanta lands are generally held by Rajputs. Villages having wantas are divided into sections "Wanta" and "Talpad" (fully assessed). A wanta has a distinct part of the village site and distinct cultivators. It may be remembered that wanta does not mean land assigned but the land retained. The tenure is a trace of the Mogal settlement. It is a sort of Talukdari tenure within talukdari and Peile calls the wanta holders as "ex-talukdars". It is, in short, a privileged holding. In talukdari as well as khalsa villages, the wantas are found to exist, in whole villages or in smaller blocks. At present, there are wantas numbering 3, 32 and 29 (64 in all) in the districts of Ahmedabad, Kaira and Broach, respectively.

Wantas are of two kinds. (1) Summary settlement wantas treated as personal inams in tail male, and (2) talukdari wantas subject to jama and classed as "land specially reduced."<sup>14</sup> The former class appears to cover those wantas in respect of which the holders accepted the summary settlement under the Summary Settlement Act VII of 1863 and

14. *Supplement to Revenue Accounts Manual*, p. 16.

converted the former quit-rent into salami. The latter class covers those wantas which are liable to the payment of Uddhad (fixed) jama. The latest pronouncement on the wantas is contained in the High Court decision in *Narharsinghji Ishwarsinghji v. Secretary of State* (B.L.R. Vol. XII 167). In that case, Justice Divatia has described the characteristics of the talukdari wantas as under:—

“A talukdari wanta in Gujarat is neither an alienated nor an unalienated holding. It is a peculiar estate, which continues to be the property of its holder under the British rule, as it was in pre-British dynasties from ancient times. . . . A talukdar is neither an inamdar nor an occupant of his lands. His wanta is a freehold and not a leasehold. What was paid formerly as tribute and peshkush as a political levy is now converted into a fixed amount in lump as a revenue payment; but his proprietary right over all the lands comprised in the wanta was affirmed at the commencement of the British rule and has since not been taken away by any legal process.”

### Legal Status of a Talukdar

In the historical background described above, the legal status of a talukdar may be summarised now. In 1821, the condition of the talukdars first came prominently before Government. It was “settled that the talukdars were proprietors, paying their share of the public burden by a tax on the value of their lands.”<sup>15</sup> But the practice of taking annual agreements for the payment of the tax from the talukdars, which was then introduced, gradually obscured their real rights, until, shortly before 1860, the law officers of Government held that they were mere lease-holders. Some district officers viewed them as careless landlords and unpunctual revenue payers. The investigations of Mr. Peile, commenced in 1860, proved the ancient origin of the rights of the talukdars. He showed conclusively that, like their brethren, the talukdars of Kathiawar, they had held their villages in full proprietorship at a period antecedent to the ascendancy of the Mogals and Marathas in Gujarat and that under native rule, they had never been fully conquered, though they were subject to a tribute. The

15. Government Selection No. CVI—N.S., p. 13.

Act VI of 1862 recognized the full proprietary ownership of the talukdars in their estates and imposed no restriction on their power of alienation. Further, it imposed no limit on the amount of tribute leviable from them. The Act VI of 1888 recognized the proprietary character of their estates, but the power of alienation was restricted by section 31. An encumbrance was only valid during the life-time of the encumbrancer, unless the sanction of the talukdari settlement officer had been previously obtained to the creation of the encumbrance and no permanent alienation could be made without the sanction of the State Government. In short, there were three distinct periods during which the status of the talukdars underwent changes. Until 1862, the talukdars were legally, though incorrectly, regarded as mere lease-holders; from 1862 till 1888, they were full proprietors with unlimited powers of alienation, and from 1888 onwards, while still remaining full proprietors, some measure of restriction was placed on their power to alienate their estates.

### Jama

Government felt great difficulty in the settlement of the jama of these estates. As stated before, the talukdari estates are held subject to the payment of Jama (land revenue) to Government which may be either fixed (uddhad) or fluctuating. According to section 2(1)(c) of the Gujarat Taluqdars' Act, the expression "Jama" means land revenue payable by a talukdar to the State Government. The expression, however, has a very chequered history. It may be recalled that when the East India Company imposed its rule, the talukdars were not the subject of any power, but tributaries themselves exercising sovereign powers. For some time, the talukdars maintained that position. From 1815, when the Court of Directors assumed sovereign powers, the talukdars became subjects liable to taxation like other subjects, but their full proprietary right remained intact. The jama was a tribute, pure and simple. From 1815 to 1863, the jama was divested of its character of a tribute and became according to Mr. Peile, "a roughly calculated tax on the talukdar's rental". It bore no fixed relation to the productivity, actual or potential. The period between 1863 to 1888 constituted a third phase in the history of the jama, when it assumed a new character. The

uncertain basis of the talukdar's rental was abandoned in favour of one derived from the productivity of the estates, as determined by the survey. The general principle laid down for guidance by Mr. Peile in calculating the jama was that something between 50% and 70% of the survey assessment should be taken as Government share. No specific orders were issued then with regard to the waste lands of the estates. Mr. Peile ignored all but cultivated lands and the jamas eventually sanctioned were in almost all cases between 50% and 70% of the assessment on cultivated lands alone.

The enactment of the Gujarat Taluqdars' Act, 1888, brings us to the fourth and last phase in the character of the jama. Section 22 of the Act provides that jama payable in respect of a taluqdar's estate shall be the aggregate of the survey assessments of the lands composing such estates or a portion thereof. Section 23, however, saves any agreement about the settlement of jama entered into by a taluqdar or any settlement of the amount of jama under the orders of Government. The ultimate displacement of the estate as the unit of assessment was a foregone conclusion since the introduction of the original survey. The provision in section 22 marks its final disappearance. A "Unit" could not bear an "aggregate" of assessment. The estate became an aggregate of fields and its jama an aggregate of their several assessments. The field became the unit of assessment. The tribute of 1815 became the survey assessment of 1888. In short, the State demand has passed through successive changes of character, almost invariably increasing in amount. Beginning as a tribute proper, it became first a roughly calculated tax on the rental, then by the Act VI of 1862 a land tax and finally by Act VI of 1888, land revenue—the aggregate of the survey assessments of the lands comprising an estate.<sup>16</sup>

The jama is fixed (uddhad) in respect of the estates in Kaira and Broach, but those in Ahmedabad and Panch Mahals are liable to revision at every revision settlement. The fluctuating jama in respect of these latter estates may be equal to the full survey assessment of all the lands comprised within the estate. However, in practice, Government demand was originally limited to about 60% of the assessment on the

16. *Vide* author's unpublished thesis *Land Revenue Settlements in Gujarat under the British*, Chapter VIII.

cultivated land and 35% of that on waste land. In special cases, only, a maximum of 70% of the total assessment of the estate was allowed, enhancement beyond 50% of the existing jama being forbidden in any case. These percentages were not rigidly adhered to in cases, where glaring inequalities of jama were likely to occur. The productiveness of the estate was the main ground in fixing the jama. The ability of the talukdar to pay the jama was also taken into account.

In 1902, Mr. Robertson was appointed to report on the condition of the talukdars of the Ahmedabad District. He found that the Government demand had increased along with growing indebtedness and deterioration of the estates. He, therefore, recommended that as a first step towards the amelioration of the talukdars, the jama should be revised<sup>17</sup> (i.e. reduced). In 1904, Government decided<sup>18</sup> that a proper valuation of the land was essential for a just determination of the liability of talukdars. It directed that in fixing that liability, there should not be included in the demand any claim on account of waste land, that Government might claim upto the amount of half the rental and that the full assessment might be so low as not to amount to half a proper rental. These orders were meant to fix a fair jama in respect of the talukdari estates. So far, the original and revision survey and settlements were made separately for the talukdari villages, which presented a great problem to the settlement officers owing to factors like considerable waste lands, heavy indebtedness of talukdars, extensive alienations to cadets, temples, etc. But under the Bombay Land Revenue Code (Amendment) of 1939, all the villages, whether khalsa or talukdari, have been brought on a par for the purposes of settlement.

At present, the talukdari estates in the four districts of Gujarat cover an area of 10,81,356 acres assessed at Rs. 14,79,233 and pay jama amounting to Rs. 5,56,240 per annum. The low figure of jama is attributed to the existence of vast areas of waste lands in talukdari villages (which pay jama at 35% of the assessment), summarily settled wantas, alienations exempted from jama, etc. Thus the talukdars

17. Robertson's Report on *The Conditions of the Talukdars of Ahmedabad District*, para 69, p. 34.

18. G.R., R.D. No. 2263 dated 22nd March 1904.

enjoy a concession of land revenue to the extent of Rs. 9,22,993 per year.

### Alienations

Now we come to the difficult question of alienations in talukdari estates. There are vast areas in the talukdari estates which pay no revenue either to Government or the talukdars. This is the result of many alienations of the talukdari lands made by the talukdars or their ancestors either by gift, sale or mortgage, etc. Alienations by gift may be divided into three classes:—

- (a) alienations in favour of religious bodies, the village temple, and the like;
- (b) those in favour of the customary village servants and the darbar servants; and
- (c) those by grant of jiwai or of lands in lieu of maintenance.

Mr. Peile considered that the alienations under class (a) were true alienations but we have to consider all lands in respect of which a talukdar receives no rent and, therefore, the classes (b) and (c) are also to be treated as alienations. As regards class (b) (chakariat), the lands have been assigned for remuneration of village and Darbar service. But they were not assigned for hereditary offices, but can be rescinded by the Talukdars and, if the holders do not serve properly, they could be evicted. Class (c) alienations are either temporary or permanent. Temporary jiwai is given to a widow during her life-time, while permanent jiwai is granted to a bhayat (cadet) for maintenance of himself and his descendants in perpetuity or till heirs fail.

These alienations are called *lal liti* lands, i.e. recorded in red ink in the old faisal patraks. In many cases, they are more than 100 or 200 years old. The law relating to the alienations of talukdari land is found in section 31 of the Gujarat Taluqdars' Act, 1888. It specifically lays down that all permanent alienations without Government permission are null and void, if made after the passing of the Act. Before the enactment of the Act, the subject of alienations was inquired into by Mr. Peile.<sup>19</sup> As a result, Government recognized two

19. Government Selection No. CVI—N.S., p. 24.

classes of alienations, as revenue-free.<sup>20</sup> One class belongs to the pre-British period and were settled by Mr. Peile. The holders of these lands paid no jama or paid only half the salami. They were recognized, if found in Khardas (land registers) of 1818-20 or at the survey in 1863. The second category is of those alienations, which have not been so recognized by prescription and upon which jama is not levied. When the alienated land reverts to the talukdar, they will become ordinary lands of the talukdar and will pay full jama. Talukdars have a reversionary right to alienations, in case an alienee dies or leaves the village, provided possession had not passed into hands of others either by sale or mortgage. The lands alienated in this manner are considerable with the result that talukdars and Government are deprived of a large sum on account of jama. Also, extensive areas of alienations have passed into the hands of non-talukdars and have lost the talukdari character by adverse possession for more than 12 years.<sup>21</sup>

### The Gujarat Taluqdars' Act, 1888

Before dwelling upon the provisions of the Gujarat Taluqdars' Act, 1888, it is necessary to know the exact connotations of certain terms used in connection with the estates.

To begin with, the word "Talukdari Tenure" which acquired its present significance since the introduction of the British rule, is nowhere defined by a statute. It is however a well-understood expression. Secondly, the term "Talukdari" requires to be properly understood. Till the middle of the nineteenth century, a talukdar was called a "Grassia" or "Garashia" meaning a person with a Giras. The name seems to have been borrowed from the description of landed proprietors in Upper India, who were called talukdars.<sup>22</sup> In the Gujarat Taluqdars' Act, one finds two connotations of the term "Talukdar". According to the defining section 2(i)(a) of the Act, a talukdar means a thakur, mehwass, kasbati, naik and mulgameti, who holds land directly from Government. Secondly, according to section 2(2), the term talukdar as applied to surveys and settlements includes any class of holders

20. G.R., R.D. No. 2512 dated 10th March 1909, and No. 938 dated 29th January 1914.

21. 37 Bombay 380. *Talukdari Settlement Officer of Gujarat v. Rikhardas Parsottamdas* (1912).

22. *Narharsingji Iswarsinhji v. Secretary of State for India*, I.L.R. 44, Bom.

of unalienated estates, upon which the land revenue is fixed by a lump assessment. The Kasbatis and Naiks of Viramgam and Dohad talukas have been decided to be lease-holders as stated before and have, therefore, been excluded from the consideration in this chapter. The Mehwasdars of Panch Mahals have been also treated as lease-holders and have been considered in the chapter on the Mehwasi tenure.

There are two expressions used in the Act, the meanings of which are often confounded. They are "Talukdar's estate" and "talukdari estate". The word "Talukdari estate" has been judicially defined in several decisions of the High Court. It means the property of the talukdar held by him qua a talukdar. The expression 'talukdari tenure' has not been defined in any Act and has not formed part of any judicial decision. The Gujarat Talukdars' Act distinguishes between the 'talukdar's estate' and 'talukdari estate'. As stated before, the word 'talukdari estate' is a much wider term and includes property held by a talukdar whether in his status as talukdar or otherwise, whereas the word 'talukdar's estate' means the property held by him as a talukdar only. These expressions apply only to proprietary villages or estates in the four districts of Ahmedabad, Kaira, Broach and Panch Mahals and cannot apply to any land or other immovable property outside these districts, though it may be owned by a talukdar or talukdars.<sup>23</sup>

### Characteristics of the Tenure

The essence of the talukdari tenure is full proprietorship derived not from any grant made by the British but by adverse holding. This right has been recognized in paras<sup>24</sup> 4 and 6 of the Statement of Objects and Reasons appended to Bill No. 6 of 1885 (subsequently passed into the Gujarat Talukdars' Act, 1888) cited below:—

"The peculiarity of the tenure of talukdars and similar land-holders lies in this, that over their landed estates, they exercise the proprietary right of the Crown by inheritance, just as the native chiefs and their kinsmen do in Kathiawar. The Government revenue paid by talukdars

23. Dandekar, *Law of Land Tenures*, Vol. I, pp. 362-63.

24. *Bombay Government Gazette* dated the 26th December 1885, Part V, p. 65.

was originally a tribute and the rights of Government are limited to that payment. Government is not the owner of the land in these estates, waste or other. But as there is no legal customary limit to this Government rent charge and the talukdars are now simply private land-holders under the British law, there is no objection whatever to treating their relations with Government as payers of land revenue under the Land Revenue Code, provided that careful regard is had to their peculiar status in fitting them into the system."

"In the North-West Provinces and Oudh, matters affecting similar classes of land-holders and outside the scope of the Incumbered Estates Acts are dealt with in the Land Revenue Acts. But in the Bombay Legislation, which deals with landed interests, such tenures such as that of Talukdars are not specifically recognized. The Land Revenue Code (Bombay Act V of 1879) makes an exhaustive division of all lands, for the purposes of the Act into 'alienated' and 'unalienated'. Now the estates of talukdars and the like are not alienated, the interpretation of which term is 'transferred' in so far as the rights of Government to payment of rent or land revenue are concerned, wholly or partially to the ownership of any person; for the talukdari estates have never been in the hands of Government and they are liable to any revenue payment or rent charge which Government thinks it equitable to impose. In other words, the talukdars are not grantees. Nor again are their estates unalienated 'occupancies' in the full sense of all that the Land Revenue Code enacts as to such holdings."

The paragraphs are very important inasmuch as they set forth, in a nutshell, the rights of talukdars in their estates.

Some distinctive features of the Talukdari estates now remain to be dwelt upon. To begin with, many important estates such as Sanand, Gamph, Gangad, Amod, Kerwada, etc., observe the rule of primogeniture, but the bulk of the smaller estates are held by co-sharers. According to the inquiries made by the Government in 1925-26, the greater part of the talukdari estates in the Kaira and Broach districts is governed by the rule of primogeniture, but in the Ahmedabad district, which is the stronghold of the talukdari tenure, such estates

are very few. There are many non-primogeniture estates, which are held by co-sharers, whose increasing number threatens the estates with rapid disruption. This rule of succession has not been recognized in the Gujarat Talukdars' Act, but it is a very old custom presumably antedating the advent of the British. Because of the rule of primogeniture, the estates have remained practically intact, but where this rule does not govern succession, the estates have been partitioned into very small shares, which cannot maintain the holders thereof.

Further, under section 31 of the Act, a talukdar cannot encumber his estate beyond his own life-time without the permission of the Talukdari Settlement Officer and cannot alienate the same without the sanction of Government.

A talukdar is liable for the cost of the village police establishment maintained within his estate (section 30).

As regards partition of the estate, no civil court can entertain a suit, but such applications can be considered by the Talukdari Settlement Officer, subject in certain cases to appeal to the District Judge (sections 10 to 21).

Normally, Government does not interfere in the internal management of the estates, but the estates can be taken under Government management in the cases of apprehended injury to the well-being of inferior holders or breach of the peace, at the time of partitioning of the property, on the application of talukdars or under the provisions of the Land Revenue Code, etc., enabling public officers to assume charge of private estates.

Certain general provisions of the Bombay Land Revenue Code, 1879, have been applied to these estates (*vide* section 33).

Lastly, since they are proprietors of these estates, they have rights to trees, and the forests growing upon such estates.

As regards the talukdar's rights to mines and minerals, the position was indeterminate before 1909. In 1898, Government decided<sup>25</sup> that the talukdars of Gujarat have no rights to mines and minerals in the lands held by them on payment of jama. But in the case of the Talukdars of Mehtral, taluka Godhra, district Panch Mahals, Government (1909) accepted

<sup>25</sup>. G.R., R.D. No. 5096 dated 6th August 1898.

the position that unless such rights were not recognized in the case of any particular talukdar, in view of the proprietary interest held by a talukdar in his talukdari land, such right might be conceded.

### Tenants

The tenants in the talukdari villages were tenants-at-will, but as stated by Mr. Peile, in his report that the ejection of tenants was very rare and that the tenants retained the same holding for generations. There are a few Mulgаметies, the original village settlers, who enjoy permanent tenancy rights in these villages. Rents are paid in crop share (Bhagbatai) generally in Ahmedabad and Panch Mahals. In the Kaira and Broach districts, the rents are generally paid in cash. In the absence of any law protecting tenants from heavy demands of rent and other cesses, some incidents of oppression and harassment were noticed in some talukdari villages. But since the application of the Bombay Tenancy and Agricultural Lands Act, 1948, to these villages, tenants' rights as to tenure, trees, rental, house-sites, etc., have been settled. Now, there are no tenants-at-will but they are either permanent, protected, or ordinary tenants for 10 years. Adequate provision for the rights of the tenants in general has been made in that Act. Now talukdars cannot raise rents or levy cesses according to their will, but have to act subject to the provisions of the tenancy legislation.

### Case for Abolition of the Tenure

We have passed in review the whole history of the talukdars and talukdari estates in Gujarat. We have seen that the history of talukdars has been darkened by the heavy load of debt (that their generations carry on their backs), ignorance and illiteracy of the Talukdars themselves and the absence of proportionate increase of income from land to meet their extravagance on social ceremonies. Now and again, Government actions were motivated by the lofty desire to ameliorate the conditions and prospects of the talukdars. The Act VI of 1862 was passed with a view to rehabilitating talukdars by reinvesting them with the proprietary rights and settlement of debt. But the Act failed adequately to remove the octopus of debt. Mr. Peile's inquiry and report on the conditions of

the talukdars of Ahmedabad in 1866 was another attempt to settle the rights of the talukdars *vis-a-vis* Government and the ryots. At the end of his report, Mr. Peile (1866) expressed the hope that "with the long decline of agricultural prosperity arrested and reversed, with the old incubus of debt removed, with all their ancestral rights acknowledged and confirmed, with all reasonable protection to their property, with improved domestic habits, under intelligible revenue settlement and thoughtful and sympathetic superintendence, with vast expansion of the opportunities of education and of the means of transit, the restoration of talukdars is no longer a hopeless task."<sup>26</sup> This hope was not realized even in 1903, when Mr. Robertson made inquiries into the conditions of the Ahmedabad Talukdars. The load of debt was still there, the extravagant expenditure on social ceremonies like marriage and death continued unchecked. As a rule, a talukdar was and is ignorant of law and letters and, therefore, a pliant victim to any unscrupulous shahukar or pleader, tenacious of his rights and forced into expensive litigation to settle every petty dispute, respected by his villagers but extravagant by custom, and infrequently by nature. The unrestricted power of encumbering his property enjoyed under Act VI of 1862 had wrought his ruin. The Darbar was respected in his follies and eccentricities. Mr. Robertson had found vast waste areas in the talukdari villages. Even today, there are vast areas aggregating 2½ lakhs as waste. This is not due to absence of effort on the part of talukdars to bring them under the plough. But excessive sub-division and fragmentation of holdings, lack of capital, internecine disputes among the bhayats and, many times, between the tenants and talukdars, have resulted in vast areas of their estates remaining waste for a number of years. In view of the personal characteristics of talukdars described above, we find little rural or urban development in their villages. As a race, they are indolent and extravagant and live upon the rents from lands and regard manual labour as degrading. Mr. Dias as Settlement Officer (1941) has graphically described the present parlous position of the Taluqdars as follows: "They (Talukdars) are in a miserable plight. It is clear, however, that the Talukdars

have themselves to blame for their present destitute condition. Most of the estates are very heavily mortgaged and the Talukdars are too backward, indolent and poor to extricate themselves from the clutches of the Bania, who takes all or the lion's share of the crop-share produce by way of interest, dues and repayment of capital. In two villages, complaints have been heard that the talukdars were in the habit of stealing the crops of their tenants and the talukdar of one village had become a bus-driver." 27 Though the description relates to the condition of talukdars in the Viramgam Taluka, the condition of their brethren in other parts of Gujarat, excepting a few Talukdars, is no better. From these observations, one can imagine the depth of deterioration of the talukdars.

They do not seem to have taken special efforts to develop their villages and where a few have directed their energies in that direction, they have been handicapped for want of capital and technical assistance. A visit to any talukdari village will show that signs of progress in industry, commerce, education, etc., are conspicuous by their absence. Those villages do not seem to wear that cheerful and progressive outlook which one readily sees in many khalsa villages nearby. In spite of Government aid in managing their property, liquidation of debts by liberal loans, partitioning of their estates, etc., the expectations of Government officials like Peile and Robertson that talukdars would be leaders of the people, have not materialized. 28

In short, they have failed to play any useful role in the Society or the State. Even with the liberal financial help from Government, they have not kept pace with the times and have remained Darbars of the 19th century. The prodigal race of talukdars are anachronistic survivals in the present state of the society. They are parasitical intermediaries between the State and the tillers of the soil. In their programme of gradual agrarian reform, Government therefore decided to

27. The Third Revision Settlement Report of Viramgam Taluka, p. 12.

28. Mr. Robertson observed in 1903 : " With the full help proposed, we may hope to see in the future these men occupying the position in rural society to which their history entitles them, loyal and helpful to government and leaders of the people, entitled to our respect, not because of what they were but because of what they are, not because they won their land by the sword, but because they retain it by their industry." Robertson's Report on the Conditions of Talukdars of Ahmedabad District, para 70, p. 35.

abolish the talukdari tenure along with other tenures in the State.

With this view in mind, Government introduced, in the September-October Session (1949) of the Bombay Legislature, a Bill<sup>29</sup> to abolish the talukdari tenure. The Bill was passed by both the Houses of the Legislature with a few amendments. The Governor-General has given assent to the new Act, which will be brought into force very shortly. The new legislation is called the Bombay Taluqdari Tenure Abolition Act, 1949. The Act is given in Appendix.<sup>30</sup> The Rules have also been framed under the Act.<sup>31</sup>

### The Bombay Taluqdari Tenure Abolition Act, 1949

The Act provides for the abolition of the talukdari tenure with its incidents. It repeals the Ahmedabad Talukdars' Act, 1862, the Broach and Kaira Incumbered Estates Act, 1881, and the Gujarat Taluqdars' Act, 1888. But the repeal of these enactments shall not affect the validity or invalidity, effect or consequences of any alienations or any encumbrance created on the talukdari land, any obligation or liability already incurred or accrued, or any declaration made or any agreement or settlement recognized, any partition confirmed, etc. (section 17). All original and revised revenue surveys of the talukdari estates so far made shall be deemed to have been made under Chapter VIII and VIII-A of the Bombay Land Revenue Code, 1879 (section 4).

All the talukdari lands shall henceforth be liable to the payment of land revenue in accordance with the provisions of the Land Revenue Code, but this provision does not affect the right of any person to hold any talukdari land wholly or partially exempt from the payment of land revenue under a special contract or any other law in force, nor the right of any person to pay the jama under any agreement or settlement recognised under section 23 or under a declaration made under section 22 of the Gujarat Taluqdars' Act (section 5). The cases of the talukdari estates settled under the Summary Settlement Act VII of 1863, etc., will be covered by the provision. This means that all the talukdari lands, in respect of which

29. See Appendix H.

30. See Appendix I.

31. See Appendix J.

fluctuating jama is paid in the Ahmedabad and Panch Mahals district, will have to pay full assessment in respect of these lands; whereas the holders of the talukdari wantas of Kaira and Broach, which pay fixed (uddhad) jama, will not be affected by the provision and continue to pay the fixed lump jama as hithertofore. The latter are excluded from the operation of the Act; because it has been held that the uddhad jamabhandi tenure is more akin to the personal inams in the State. This exemption from payment of full assessment however will be removed, when Government takes up the general question of the abolition of the personal inams in the State.

Further, a jiwaidar is also a talukdar and the land assigned to him for maintenance forms part of the talukdari estate [section 5(1)(b)]. In accordance with the High Court decision,<sup>32</sup> a jiwaidar is given the status of an occupant within the meaning of the Bombay Land Revenue Code. This provision has been made in order to avoid further disputes between the jiwaidars and talukdars, who might claim jiwai lands back in exercise of their reversionary right.

Care has been taken to declare that all public roads, lanes and paths, etc., all lakes, wells and tanks, etc., all unbuilt village site lands, all waste lands and uncultivated lands (excluding lands used for building or non-agricultural purposes) vest in Government. Lands will be deemed uncultivated, if they are not cultivated for a period of 3 years immediately before the Act comes into force. But this provision does not apply to the public roads, lanes and paths, etc., situated within the limits of wantas. This exception is made in accordance with the High Court decision in Amod Thakor's case (43 B.L.R. 167). Accordingly, a talukdar has been held to have the proprietary right all over the waste and uncultivated lands comprised in his wanta, but the decree in that decision has made it clear that he has no such rights on waste and uncultivated lands outside such wanta (section 6).

The provisions of section 6 are meant to provide for dissolution of many disputes between the talukdars and the people. Disputes as regards the use of wells and the village-sites in the talukdari villages go on for years. Complaints were received that some of the talukdars deprived people of their right to

32. I.L.R. 44, Bom. 832.

village-site plots, or right to take water from wells. Further, in some cases, talukdars withdrew waste lands used as grazing areas and brought them under the plough, thus curtailing grazing areas at the villages. The Collector had no power, so far, to stop this mischief. In view of this provision, Government can intervene and assign waste lands for grazing and give unbuilt village-site lands for building purposes. Of course, Government will have to pay compensation for the lands so assigned, because the talukdars are the proprietors thereof.

Compensation to the talukdars has been provided for extinguishment of any rights under the provisions of section 6 of the Act. A talukdar whose rights have been extinguished, has first to apply, within a period of 12 months of the coming into force of the Act, to the Collector of a District for payment of compensation. The Collector has to make award of the compensation, after making a formal enquiry. Certain principles have been laid down for the guidance of the Collectors in assessment of compensation. To begin with, if the property is waste or uncultivated but cultivable, the amount of compensation shall not exceed three times the assessment of the land. But if the land is unassessed, the assessment would be made on the basis of the assessed land in the vicinity. Secondly, if the property is land over which any member of the public has acquired or has been enjoying a right of way or any right of easement, the quantum of compensation shall not exceed one survey assessment in accordance with the provisions of the Land Revenue Code, 1879, and the rules thereunder. In the absence of any provisions in the Code, the amount of compensation shall be the market value of the right or interest held by the claimant. Thirdly, trees and structures on the land will be compensated at the market value thereof in accordance with the provisions of sections 23 and 24 of the Land Acquisition Act, 1894 (section 7). Against the Collector's award, provision has been made for appeal to the Bombay Revenue Tribunal, which should be made within a period of sixty days from the date of the Collector's award. The Collector's award, if not modified, reversed or annulled by the Bombay Revenue Tribunal, shall be final and conclusive and will not be liable to the process of the Civil Court (section 12). Section 14 provides for compensation for modi-

fication or extinguishment of any rights other than those mentioned in section 7.

Section 16 applies to these areas the provisions of the Land Revenue Code, subject to the modifications specified in the Schedule I. This is a very important provision inasmuch as a third category of land (i.e. talukdari) is introduced along with the alienated and unalienated lands in the scheme of the Bombay Land Revenue Code, 1879. It may be remembered that the existing provisions of the Code apply to alienated and unalienated lands only. As stated before, the talukdari lands are neither alienated nor unalienated. In the Schedule I, the word "talukdari" has been inserted in various sections, where reference has been made to unalienated lands. The effect of these modifications in the B.L.R. Code is that the proprietary rights of the talukdars in their lands are not abolished but preserved and safeguarded by the Act. Of course, these amendments would curtail or modify the talukdars' rights in certain respects for which they may apply to the Collector for compensation under sections 7 and 14 of the Act. The Act appears to affect the talukdars' following rights:—

To begin with, the amended section 38 of the Land Revenue Code empowers the Collector to assign lands for public purposes such as grazing, etc., subject to the general orders of the State. Since the talukdars are the proprietors of the soil, Government will have to pay compensation for the lands which do not vest in it.

Section 33 of the Gujarat Talukdars' Act excluded sections 63 and 64 of the Land Revenue Code from application to the talukdari estates. Now that a talukdar has been given the status of an occupant within the meaning of the provisions of the Land Revenue Code, he will be entitled to the temporary use and the right of pre-emption in respect of alluvial accretions under sections 63 and 64 of the Land Revenue Code. The talukdars are gainers in this respect.

The talukdars have rights to mines and minerals existing in their talukdari estates. The amendment to section 69 will curtail these rights. In item (7) of the Schedule I, the word "talukdari" has been inserted after the word, "unalienated" in section 69 of the Land Revenue Code. The effect of this insertion would be that with effect from the date of the coming into force of the Act, Government would reserve to them-

selves the rights to mines and minerals in the talukdari lands and that the subsisting rights of the talukdars in regard to the existing mines and minerals products would continue unaffected by the provisions of the Act. The talukdars' rights to mines and minerals in their lands are very valuable as will be seen from the annual large income from the Shivrajpur mines to the Shivrajpur Estate in the Panch Mahals.

### Consequences of the new Act

The fundamental change, which the Act will bring about, is with regard to the liability of the talukdars to pay Government dues in respect of their lands. So far, they pay jama at a reduced rate of 60% or 70% of the aggregate assessment of their lands. The Act makes all the talukdars' lands, except wanta lands, liable to the payment of full survey assessment and other Government dues in accordance with the provisions of the Bombay Land Revenue Code, and Rules thereunder. The withdrawal of the concession in the matter of the jama will yield Government an additional revenue of Rs. 8,13,010 per annum from the talukdari lands in the Ahmedabad and Panch Mahals districts only. The talukdars, will not be entitled to any compensation for loss of this concession or exemption from payment of land revenue. According to the decision of the Federal Court in *Raja Bahadur Kunwar Lalsing v. C.P. and Berar Government* (1944) F.C.R. 284, the imposition of full assessment on extinguishment of the right to exemption from land revenue does not fall under section 299(3) of the Government of India Act, 1935 and is not required to be compensated. In view of this decision, the talukdars will not be entitled to any compensation on account of levy of full assessment on their lands.

Further, all public roads, lanes and paths, etc., all lakes, wells and tanks, etc., all unbuilt village-site lands, all waste lands not cultivated for a period of three years immediately before the coming into force of the Act and not situated within the wantas, will vest in Government. The lands in the talukdari villages which have been put to building or non-agricultural uses are not affected by the provision. For extinguishment or modification of their rights in this respect, the talukdars will be entitled to compensation (section 7). As stated before, the disputes about the use of public wells, grazing

grounds, roads, etc. will come to an end, or will be regulated by the Collector under the general provisions of the Bombay Land Revenue Code and the rules thereunder. This provision will curtail the talukdars' rights to some extent.

But, the important curtailment will be in respect of the talukdars' right to mines and minerals in their lands. This right is a necessary incident of their proprietary interest in the lands. In view of the fact that section 33 of the Gujarat Taluqdars' Act, 1888, did not exclude the application of section 69 of the Bombay Land Revenue Code to the talukdars' estates, it was considered necessary and proper to make it clear in the Schedule I that the said section would apply to the talukdari lands. But whatever doubt may have been in regard to the question whether a talukdar can take advantage of the proviso to that section, such doubt has been resolved by an express provision in section 5 of the new Act that a talukdar shall be deemed to be an occupant of talukdari land held by him. It is true that an "occupant" is defined in section 3(16) of the Bombay Land Revenue Code as "a holder of unalienated land", but under section 16 of the Act, the provisions of the Bombay Land Revenue Code are to be read subject to the provisions of the new Act and as provided in section 68 of the Code, it is not inconsistent with the scheme of the Code to attach special conditions to the holding of an occupant. In view of this provision, a talukdar will be entitled to take advantage of the proviso to section 69 of the Bombay Land Revenue Code, 1879, and claim mineral rights in his talukdari lands, if such rights subsist at the date when the Act came into force, unless by virtue of some instrument such rights are not recognized in the case of any particular talukdar. Under section 6 of the Act, all public roads, lanes, paths, etc. and all waste and uncultivated lands are declared to vest in Government, but the lands used for building or non-agricultural purposes have been expressly excluded. The words "excluding lands used for building or other non-agricultural purposes", which were introduced in this section at the time of the second reading of the Bill, would include lands used for mines and minerals and would not, therefore, be transferred to Government under the provisions of that section. It will appear from the above that the rights of talukdars to mines and minerals on account of their proprietary interest in the lands have been

sufficiently safeguarded in the new Act.<sup>33</sup> The Honourable Member made a pronouncement accordingly on the floor of the Bombay Legislative Assembly during the debates on the Bill. Since the subsisting rights of the talukdars in the mines and minerals are not affected, there will be no interruption of mineral production and the existing leases will not require to be cancelled. Since the talukdars are the proprietors of the soil, they are entitled to compensation for abolition of their mineral rights under section 14 of the Act.

The Act does not touch or affect the talukdars' right to trees or forests in the talukdari estates. Trees upon the land are part of the land and the right to cut down and sell those trees is inherent in the proprietorship of the soil. The owner of the land is the owner also of the timber which grows upon the land. The talukdars being the proprietors of the soil are entitled to the trees and everything that grows upon their estates. This right of the talukdars remains unaffected by the provisions of the Act.

Lastly, it may be remembered that the Act does not take away the proprietary character of the talukdari lands comprising their estates. Extensive modifications of the provisions of the Land Revenue Code as set forth in the Schedule I are necessitated with a view to preserving the proprietary status of the talukdars. It is needless to say that this status is higher than that of a holder of alienated or unalienated lands under the Revenue Code, 1879.

In brief, the Act does not attempt to deprive the talukdars of their lands nor their proprietary right therein. It only attempts to bring down the talukdars to the level of ordinary ryotwari land-holders with certain reservations necessitated by the proprietary character of the lands.

### **Effects of Abolition of the Tenure**

Now, the effects of abolition of the talukdari tenure remain to be assessed from the administrative, social, political, and economic points of view.

Administratively, at present, the talukdars bear the cost of the village police establishment, talatis, clerks and havaldars, for recovery of rent. Practically, Government have no voice

33. G.R., R.D. No. 9398/45 dated 16th February 1950.

in the administration of talukdari villages. Since the Act makes the talukdar an ordinary ryotwari land-holder, Government will have to appoint and bear the cost of the village establishment consisting of patels, talatis, and inferior village servants. Uptil now, the ryots of the talukdari village could not raise their little finger against talukdars for the redress of their grievances. Everything depended on the pleasure of the Darbars. Now that the village establishment will be appointed by Government, they will be in a position to ventilate their grievances freely through the Government agency.

Furthermore, we have seen above that the survey and settlement of the talukdari villages was a huge problem in the original and revision settlements. They required a special grouping and rating of talukdari villages as distinct from the settlement of khalsa villages in talukas. In re-revision, attempts were made to fit in the talukdari villages in the general scheme of settlement of khalsa villages; but in view of the different technique of the past talukdari settlements, this could not be done and the problem still persists. The abolition of the tenure removes this great snag in the process of settlement.

An important administrative change will be as regards the recording of the public as well as private rights in the talukdari estates. Under section 5 of the Gujarat Taluqdars' Act 1888, the Settlement Registers have been maintained in all such estates, which have been exempted from the operation of the Record of Rights Act of 1913 (i.e. now Chapter X-A of the Land Revenue Code). After abolition of the tenure, section 16 of the new Act applies to these estates all the provisions of the Land Revenue Code with certain modifications. Now, in place of the Settlement Registers, Government will have to introduce the system of Record of Rights under the provisions of the Code. The work in this respect will entail some expenditure to Government. But the people will be benefited inasmuch as their rights will be properly maintained by incorporating all mutations. It is a notorious fact that the work regarding entering mutations in the Settlement Registers after proper and adequate check by the appropriate authority is not carried on for years. This great drawback will be removed by the introduction of the Record of Rights and the revenue system will be placed on a par with that of the khalsa villages.

Lastly, in the talukdari villages, there are about 2½ lakhs acres of lands lying waste for a number of years. They have remained uncultivated, because talukdars as a race have a distaste for agriculture and they have neither capital nor knowledge necessary for cultivation. Now under the Act, if any lands have remained waste and uncultivated for a period of three years before the date of the coming into force of the Act, they will vest in Government. The effect will be that talukdars will be forced to bring them under the plough as early as possible. This process will help the "Grow More Food" campaign of Government.

Socially, the talukdars will be levelled down and the ryots will be levelled up. By the growing consciousness of their rights under the democratic government, the ryots had already begun to agitate for their rights and to call in question the authority of the talukdars. They will no longer be respected in their follies and eccentricities. On the other hand, the talukdars will be forced to be functional and to direct their energies to other avocations for maintenance. The evil of sub-division and fragmentation of their holdings is so rampant that many will not be able to maintain themselves from the rents from lands. They will have to turn to other occupations in life. Their present parasitical existence will come to an end and they will be driven to play their useful part in the society. Of course, it will take some time before they adjust themselves to the new order of life by removing the dead-weight of century-old indolence and lethargy. They will have to curtail lavish expenditure on social and religious customs. In short, they will have to become living limbs of the society.

Politically, the effects will not be far-reaching. It may be recalled that they were the products of uncertain political conditions obtaining in the pre-British times. During the British period, they had no civil and criminal jurisdiction in their estates. But they were retained by the British as vested interests to exert reactionary influence on the political progress of the country. Fortunately, the abolition of the tenure comes after the abolition of the Princely India and merger or integration of their States into the Indian Dominion. In view of these circumstances, there was no agitation either in the press or on the platform against the proposed Bill. The talukdars seemed cowed down by the rapid merger and integration of

the big States like Baroda, Kolhapur, etc., in the province and waited for their day of reckoning. It is pertinent to note that the new Act does not deprive them of their lands and other properties, except when they are needed for public purposes. The Act therefore caused no political upheaval. In the new political and administrative set-up, with their military traditions, they can play a useful role, if fit persons are absorbed in the military or defence forces.

Economically, the abolition of the tenure will bring about a great change in the economy of the talukdari estates. At present, one finds few industries or centres of commerce in the talukdari villages, presumably because the capital is shy either for lack of talukdars' interest or uncertainty about the future of big industries in such estates. Talukdars' interests have so far centred round collection of rentals from their tenants and personal enjoyment. Barring a very few talukdars, little has been done by them as a race to attract capital and big business from the former adjacent British areas and to establish large-scale or small-scale industries. There is no capital formation in these villages. Absence of industries in the talukdari areas explains the general economic backwardness of talukdars and talukdari estates and the large load of debts. Now that the talukdars are reduced to the status of big land-holders and that administration of the estates has been taken up by Government, the uncertainty inherent in the talukdari management of the villages is removed. Now, capitalists and industrialists in these areas will be governed by uniform laws and rules and will not have to fear capricious treatment from the talukdars. The talukdari villages, which are practically bereft of any development, offer vast scope for extension of Government activities for industrial development no less than rural regeneration.

In conclusion, it may be hoped that the talukdars will now eschew extravagant expenditure on social customs and learn to live within their present income or explore new fields for maintenance. It is not too much to hope that talukdars will make good soldiers in the Indian army and carve out a career for themselves.

## CHAPTER VI

### THE KHOTI TENURE

According to Baden-Powell, the khoti tenure is a kind of "double" tenure of a different origin and nature obtaining in the Konkan districts only and the history of the khot "illustrates the process of growth by which an ancient official, a leading headman, or a mere capitalist may, when recognized in a peculiar position by the State, grow into a landlord."<sup>1</sup> Molesworth defines the word khot "as a rentier of a village, a farmer of land or revenue, a farmer of the customs, also a contractor or monopolist".<sup>2</sup> The khoti tenure originated in the Konkan owing to the rugged nature of the tract and the difficulty of collecting land revenue. The persons who acted as revenue-farmers came to be called khots.<sup>3</sup>

In the Ratnagiri district, the khots were of all castes, but mainly Muslims, Marathas, Prabhus and Brahmins. The original khots were in most cases, Marathas or Muslims. The Brahmins were chiefly new men, who had come forward in the latter part of the eighteenth century in the year of Brahmin power and Brahmin misrule.<sup>4</sup>

In the Kolaba district, the khots were mainly Brahmins and Muslims. The Hindu khots were chiefly Brahmins and Prabhus, but there were a few Sonars, Shimpis, Gavlis, and Gujarati Baniyas and one or two Maratha Kunbis and Kolis.<sup>5</sup>

The Khoti tenure obtains in the districts of Ratnagiri and Kolaba only. The terms of the khoti tenure in the Ratnagiri district are governed by the provisions of the Khoti Settlement Act, 1880; whereas those in Kolaba are regulated by sections 37 and 38 of the Khots' Leases Act, 1865, customs and terms of the kabulyats executed by the khots. There are certain leasehold proprietary and other villages in Thana

1. Baden-Powell, *Land Systems of British India*, Vol. III, pp. 287-288.
2. Candy, Government Selection No. CXXXIV—N.S., p. 1.
3. Mr. J. V. Joshi's figurative description of a Khot as a person who adorned the Konkan by breaking open hills and dales by very strenuous efforts in Thana, Ratnagiri and Kolaba is of little practical use for our purpose, vide *Khoti Satta Prahar* (Marathi), p. (i).
4. *Bombay Gazetteer of Ratnagiri District*, Vol. X, p. 227.
5. *Bombay Gazetteer of Kolaba District*, Vol. XI, p. 165.

and Bombay Suburban District (i.e. in the old Salsette taluka). The holders of these villages are popularly known as Khots. They are miscalled Khots. Truly speaking, they are inamdars or leaseholders. The villages concerned are regulated by the terms and conditions embodied in different agreements or leases (kauls) granted by the British.<sup>6</sup> Since these villages are not on the khoti tenure, they will not be considered in this chapter.

The power of creating khoti, it may be noted, came to an end in 1879 by the repeal of the Regulation XVII of 1827 by the Bombay Land Revenue Code.

The statistical information about the existing khoti villages, the areas covered by them, the assessment, and jama payable by the khots, etc. is given below:—

| District. | Number of khoti villages. | No. of holders or recognised shareholders. | Gross khoti area in acres. | Total assessment of khoti lands. | Annual Jama paid by khots to Govt.* | Amount of Khoti faida.* |
|-----------|---------------------------|--|----------------------------|----------------------------------|-------------------------------------|-------------------------|
| Ratnagiri | 952                       | 35,582                                     | 14,76,085                  | 5,77,464                         | 5,72,222                            | 9,20,987                |
| Kolaba    | 464                       | 3,701                                      | 3,53,221                   | 2,68,491                         | 3,75,105                            | 3,52,156                |
|           | 1,416                     | 39,283                                     | 18,29,306                  | 8,45,955                         | 9,47,327                            | 12,73,143               |

\* The figures are inclusive of the commuted value of crop share.

The above statistical data will be interpreted at their proper places.

### The Geographical and Human Factors of the Konkan

We have seen before that the rugged nature of the South Konkan and the consequent difficulty of collecting land revenue have mainly contributed to the growth of the khoti system. In order to appreciate different aspects of the khoti problem, it is necessary to know first the geographical, economic and human factors of the Konkan. To illustrate the point, the conditions obtaining in the Ratnagiri district are set forth below:—

The Ratnagiri district is a long narrow strip between the sea and the Sahyadri ranges. The district may be described

6. Clause 2 of section 18 of Regulation I of 1808.

as rocky and rugged. Near the coast, it consists of a bare elevated plateau intersected by numerous creeks and navigable rivers flowing between steep and lofty hills. These rivers and creeks have, along their banks, the chief seaports and almost all the fertile land of the district.<sup>7</sup> The means of communications are naturally scanty, particularly in the rainy season. Except for the bridging of rivers on the through Bombay-Konkan Goa road in recent years and a construction of a few District Local Boards roads, there has not been much improvement in the means of land communications.

The pressure of the population in the district is tremendous. According to the census of 1941, the population of the district was 13,73,466 which was the highest for the districts of the State.<sup>8</sup> The population has trebled since the commencement of the British rule and has more than doubled during the last century. Nearly 72 per cent of the total population is agricultural and consists mostly of Marathas, Kunbis and Mahars.

Unfortunately, the census figures of 1941 have not been analysed into occupational groups. But, if we take the population of 1931 figures, we can safely say that 36% of the total population, i.e. 4,94,000, follow agriculture as their principal or subsidiary occupation. The Special Enquiry Officer Mr. B. P. Patel, I.C.S., (1944) puts the population dependant on agriculture at 9,98,000. According to the 1931 census, the cultivating owners and tenant cultivators were as under:—

|                    |        |
|--------------------|--------|
| Cultivating Owners | 37,500 |
| Tenant-cultivators | 77,900 |

Owing to the khoti system, the numbers of cultivating owners or tenants could not be increased much in 1941 or 1950. The cultivators are principally Kunbis, Marathas and Mahars, whose population is as under, according to the 1941 census:—

|                   |          |
|-------------------|----------|
| Kunbis (Kulwadis) | 3,53,771 |
| Marathas          | 3,44,566 |
| Maratha Kunbis    | 22,801   |
| Mahars            | 1,04,333 |

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7,25,471

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7. Statistical Atlas (1925), p. 143.

8. Since 1941, the growth of population must be much more till date.

In the district, the Brahmmins are predominantly khots. The Marathas and Muslims share their loyalty between Khots and tenants, the balance being in favour of tenants. It is in one village, Adkhal, taluka Mandangad that a Mahar owns khotki. The Kunbis own the whole khoti interest in one village in Veral tarf Veshwi, taluka Mandangad and small shares varying from one pie to one anna in five khoti villages in the Guhaghar taluka.

Out of the Marathas, Kunbis and Mahars, the Marathas are better off, socially and economically; because many of them have been employed in Bombay in factories, offices, police and military departments. The worst of them are Kunbis (Kulwadis) who are more depressed than the Mahars.<sup>9</sup> Spread of literacy among them is practically nil; but, of late, they have begun to take interest in education.

The soil of the district is hard and poor. Though the gross area of the district is about 25½ lakhs acres, 7½ lakhs acres out of it are uncultivable being rivers, nallas, etc. The cultivable area is 18 lakhs acres; but only less than 1/10th of this area (i.e. 1,71,000 acres) is assessed rice area, the remainder being rabi, garden and warkas lands, in which inferior millets such as ragi (nachani), wari, and harik (kodra) are grown in rotation with fallow periods varying from 3 to 10 years. As the soil is poor and there is very small paddy area, the total land revenue assessment (proper) is only a little over Rs. 10 lakhs. In the district, rice, ragi, wari and harik are the staple grains. The acreages under these grains were as under in 1944:—

|                | Acres    |
|----------------|----------|
| Rice (Paddy)   | 2,06,000 |
| Ragi (Nachani) | 1,55,000 |
| Wari           | 39,000   |
| Harik (kodra)  | 55,000   |
|                | 4,55,000 |

9. Report of the Ratnagiri District Congress Agricultural Inquiry Committee (1938), (Marathi), pp. 50-51.

The details of the gross area, cropped area and fallow area are as under:—

| —                         | Gross area<br>(acres) | Cropped area<br>(acres) | Fallow area<br>(acres) |
|---------------------------|-----------------------|-------------------------|------------------------|
| Govt. Villages (surveyed) | 6,77,319              | 1,89,965                | 2,36,961               |
| Khoti and Inam            | 18,87,090             | 4,60,850                | 9,31,081               |
| <b>Total</b>              | 25,64,409             | 6,50,815*               | 11,68,042              |

\* This figure includes 1,17,000 acres of grass crop.

Thus, it will appear that the cropped area is  $\frac{1}{4}$ th of the gross area and a little more than  $\frac{1}{3}$ rd of the assessed area.

In order to appreciate the validity of the various claims put forward by the khots, it is necessary to have some idea of the general agricultural conditions in Ratnagiri and Kolaba. So far as the fertility of the soil is concerned, the Ratnagiri district is the worst district in the State. According to the Report of the Konkan Co-operative Enquiry Committee, the average size of a holding cultivated by a family is only half to one acre and even such a small holding does not lie in one place, but is made up of 1 to 20 scattered strips of land. Much of the soil is poor, the average yield of rice land being from 10 to 15 maunds (of 64 lbs. each per acre) as contrasted, for instance, with an average of 20 or 30 maunds (of 72 lbs. each) in the Kolaba district. Practically, all the cultivated land is one-cropped. Two-cropped lands are an exception. Every acre of rice land in Ratnagiri requires four to five acres warkas land to go with it in order to supply the necessary raw materials, fodder, etc. Four to five acres of rice land with the necessary complement of the warkas land would be required to constitute an economic holding.

Apart from the geographical and other factors, agriculture in the Konkan languishes because of emigration of able-bodied men to the Bombay mills and other industrial centres. As a result, cultivation of lands is left to old men, women-folk and children. This has led Mr. Ranade (1927) to observe that "The net result of all this is that this cultivator-cum-mill-hand unfits himself for both the professions he follows. His fields suffer, because he has very little time to devote to them and

he can scarcely hope to rise as a mill labourer, as his attention and time are divided between Bombay and his native place".<sup>10</sup>

Recent socio-economic survey by Shri S. P. Patwardhan, Sanchalak, Sarvodaya Centre, Kankavli (district Ratnagiri) tells the same tale of economic and agricultural backwardness of the tract. His pithy observations regarding the people and the land are reproduced below:—

“The soil is poor and cannot maintain the dense population. Economy is Bombay-centred. The best intellect and ability shifts to Bombay and those left behind depend on money orders from abroad than on their own efforts. There is no atmosphere for self-reliance and self-sufficiency. Labour is comparatively dear and agriculture is a losing concern.”

“The environment is not conducive to corporate life and public spirit. Houses are far removed from each other, each homestead living its own independent life. There is again no knowing where one village ends and another begins.”<sup>11</sup>

Cattle-wealth of the areas is poor and short-lived. Since agriculture is dependant solely on monsoon, a farmer gets employment for about 1½ or 2 months in a year. For this short period, he cannot afford to have a pair of bullocks for his small holding. The motor transport has replaced transport of agricultural produce by bullock-carts. The ascent and descent on the hills and dales also tell upon the health of cattle. In the absence of the Government grazing grounds, cattle do not get sufficient grazing. In the circumstances, the cattle of Konkan remain underfed and die early. The result is that a farmer has either to hire a pair of bullocks from a khot or purchase a new pair at high cost by incurring debt. Shri Patwardhan's survey in 34 villages has revealed that 66% of the families are without a cow or a buffalo, and 23% of the agricultural families have no bullock at all.

The above facts give a picture of the conditions obtaining in the Ratnagiri District. The conditions in the Kolaba Dis-

10. V. G. Ranade, *A Social and Economic Survey of a Konkan Village* (Roth Khurd), (1927), p. 41.
11. Shri Patwardhan's article on "Sarvodaya Plan for Kankavli Area" published at page 3 of the *Bulletin of the Bureau of Economics and Statistics*, Bombay, October 1949.

tract do not differ in material particulars and they may be presumed to hold good in the case of the Kolaba District.

In short, the whole question of the khoti tenure requires to be considered in the context of the general geographical, economic and social backwardness of the tract set forth above.

### The Historical Background

The tenure originated in the Konkan owing to the rugged nature of the tract, the difficulty of collecting land revenue directly from individual cultivators and changes in the ruling power. Owing to these factors, a powerful and influential middleman, who could settle himself in the village, organize cultivation of the lands, command confidence of the ryots, and be responsible to Government for revenue was badly needed. The geographical conditions of the Konkan and the necessity of a Government agent for collection of land revenue created a middleman called "khot". According to the researches made in the Poona Daftar by R.B. Acyutrao Desai, the khoti was "a hereditary right to collect rent and pay it to Government, and incidentally therewith, to enjoy profits by extending cultivation and to enjoy also the customary honours, privileges, etc."<sup>12</sup> Mr. Pelly (1819-20) observed that "the origin of the khots is not easy to be traced"<sup>13</sup> Anyway there is no doubt that they are about five centuries old. The earliest recorded evidence of the existence of the Khoti system is found in certain sanads issued in the time of Yusuf Adil Shah, the King of Bijapur (1489-1510). Many khots south of Bankot or the Savitri river hold sanads given to them by the Marathas (1670-1760), the Moguls (1690-1720) or the Peshwas (1760-1818).<sup>14</sup> The sanads generally lay down that as watandars (वतनी पेशानें) or according to the custom of the Khoti watan (खोती वतनाचे चाली प्रमाणें) or according to the usage of the country, (मुळुख शिरस्त्या प्रमाणें) the management of the villages should be made (वहिवाट करीत जाणें). According to the sanads, the khot's rights extended over all the things in the village not as an actual holder or occupant, or owner but as a watandar, whose main business was to encourage cultivation, collect rent, and pay it to Government. In the case of

12. Government Selection No. CCCCXLVI—N.S., para 11, p. 6.

13. Ibid., p. 3.

14. Ibid., pp. 166-92.

the Khoti sanads, the uniformity of the inam grants is wanting. Khots were not recognized as proprietors of their villages but as hereditary farmers of revenue with limited interest. According to R.B. Desai, "it is a remarkable circumstance that not a single khot in the district has been able to produce during the last fifty years an express recognition by the former Government of his having a right to the soil of his village".<sup>15</sup> After the enactment of the Khoti Settlement Act, 1880, the distinction regarding sanadi, non-sanadi and watandari khots no longer exists and all khots are treated alike as hereditary farmers of revenue with certain defined rights over their subordinate ryots.<sup>16</sup>

The fortunes of khots fluctuated with the changes in the ruling power. During the period of the Peshwas, the khots who were mostly Brahmins, held office only during good conduct or so long as they gave satisfaction and were liable to ejection and, in fact, were ejected several times on very frivolous pretexts. In those days, the office was not hereditary. But the son of the khot was often allowed to succeed the father and in this way, a quasi-hereditary right grew up. At the time of introducing the Khoti Settlement Bill in 1879, Mr. Ashburner had stated that a hereditary proprietary right never existed and would not have been tolerated for a moment by the Peshwa. The quasi-hereditary right of the Peshwa's period became mature under the British period and the khot came to be recognized as hereditary farmer of revenue with limited interest under the Khoti Settlement Act, 1880. It is unnecessary to describe in detail the various stages through which the khoti system passed in its evolution during the pre-British period. According to the principle of constitutional law well-recognized by the Privy Council in several cases, "after a cession of territory to British rule, the only enforceable rights against the Sovereign are those conferred by him after the cession either by agreement, express or implied, or by legislation. An inhabitant of the territory can only make good in the Municipal courts such rights as the Sovereign has recognized. Such rights as he held under the rule of predecessors avail him nothing".<sup>17</sup> An enquiry into the question as to

15. Government Selection No. CCCCXLVI—N.S., para 12, p. 6.

16. Desai's Khoti Act (1913), Ashburner's Statement, p. 213.

17. *Rajbai v. The Secretary of State for India.*

what position khots enjoyed or accepted or what rights they had either under the Mogal or the Peshwas rule is entirely irrelevant and will serve no useful purpose.

The position of khots was succinctly summarized by Mr. Candy as under:—

“In the first years of the British administration of the district, all the khots were treated as absolute proprietors of their villages. Subsequently, the opinion of some officers was that the khots had no proprietary rights in the land of their villages. Now, it is indubitably established that the khot's interest in the village is limited, not absolute; that he possesses, in some measure, a proprietary right, in fact, that he is an occupant with all the rights and liabilities appertaining to such a status”.<sup>18</sup> At that time, the British officers were not perfectly acquainted with this tenure and had to depend upon the information given by the khots themselves, who were rich and influential persons in the villages.<sup>19</sup> As a class, the khots of Ratnagiri were well off. Several khots were men of capital, who laid out money in bringing new land under cultivation. But the condition of half-crop tenants was very pitiable. “In every respect, in spirit, intelligence and comfort, the half-crop tenants were far below the people of Gujarat and the Deccan. Among them, a man wearing a decent turban or even so coarse a dress attracted attention as being above the lower orders. No money (1821) passed among them. The khot advanced grain for seed and food and in return took their crops. In a khot's village, it was rare to see a rupee in a tenant's hand. In the deepest poverty, almost in villanage, they looked to the khot as their sole master and landlord. A great number could not afford themselves or their families the luxury of a full meal of any sort of grain even once a day. Too listless to grow vegetables, they preferred trusting to forest produce, gathering firewood, gallnuts, hirdas and red flowers dhyati.”<sup>20</sup> Such was the precarious plight of the tenants in the beginning of the

18. Government Selection No. CXXXIV—N.S., p. 73.

19. “Both directly as village managers, and through their close connection with the hereditary revenue officers, the khots were so completely masters of the district records that the early British officers were baffled and balked in their attempts to settle their relations to Government and to different classes of underholders”, *Bombay Gazetteer of Ratnagiri District*, Vol. X, p. 225.

20. *Bombay Gazetteer of Ratnagiri District*, Vol. X, pp. 229-230.

British rule, when the early British officers maintained the *status quo* as regards the system of collecting land revenue.

In Kolaba, many of the khots were the representatives of the families, who held the position of khots at the beginning of the British rule. The khotki in many villages has been considerably sub-divided and many of their members have left their villages. A good number of khots has fallen into debt and sold or mortgaged their estates to Brahmins, Shenvis, Gujars, Prabhus, Marathas and Muslims. There is no recorded instance of a khot's family dying out.

Besides the khoti nisbat land, members of the khot's family generally hold much of the best land of the village as dharekaris paying government assessment and tilling it by annual tenants or hired labourers. Of the entire body of khots, about one-half combine money-lending with husbandry and revenue farming.<sup>21</sup>

Government directed Captain Wingate to report on the advisability of introducing survey and settlement in the Ratnagiri district. He submitted his report in 1851, which is a very important document on the khoti tenure. On the basis of his report, the survey operations were introduced in the district in 1853. In order to legalise these survey operations, Government inserted two sections 37 and 38 in the Bombay Act I of 1865 (the Bombay Survey and Settlement Act) which, while recognizing the permanency of the khot's tenure and making it conditional on the payment of jama, sought to impose limits on the exactions of the khot from tenants.

In 1866, in the leading case of *Tajubai v. The Collector of Kolaba*, the question whether the khot had a proprietary interest in the soil or whether he was merely a farmer of revenue was directly before the Court. The Court pronounced an emphatic decision to the effect that the khot was merely a hereditary farmer and held that neither the fact that the khots could transfer their rights nor the fact that it was the practice of Government to restore villages after the attachment affected the question.<sup>22</sup>

21. *Bombay Gazetteer, Kolaba District*, Vol. XI, p. 166.

22. The *Tajubai's* case has been repeatedly approved and followed in subsequent cases and the view expressed therein has been confirmed by the Privy Council in *Nagardas v. The Conservator of Forests*, I.L.R. 4, Bom., 264 at p. 271.

## Survey and Settlement of Khoti Villages

The Survey and Settlement were introduced between 1866 and 1876 in the Ratnagiri district. But they were carried out in the teeth of much opposition from the khots. In 1873, the matters came to a head, when the khots objected vehemently to the limitation of their demands on tenants and the entry of tenants' names in the survey records with the result that they refused to manage their villages and filed suits against Government for the loss caused by survey. "Not only by the khots was the settlement disliked. The regular cash payments were new to the under-holders and though less in amount, were perhaps more irksome than the former way of realizing khot's demands. The division of the uplands, varkas and wrong entries of peasant-held *dhara* land, as rented *khoti*, caused much confusion. Peasant holders as well as khots were hostile to the new settlement and even tenants-at-will, though pleased at gaining an entry in the survey records, were universally opposed to the payment of Khot's profit. The system had absolutely no friends."<sup>23</sup>

## The Khoti Commission

In consequence of the failure of the survey, Government appointed in 1874 a Khoti Commission to investigate and ascertain the mode of settlement, which would satisfy the views of all the parties concerned. The Commission consisted of Col. Francis, Messrs. A. K. Nairne, N. G. Sathye, and N. B. Gole. The Commission submitted its report to Government, which found it impracticable to arrive at any amicable settlement by mutual consent of the parties. Government, however, ruled as finally settled that the khot, whether sanadi or non-sanadi, was a superior holder within the meaning of the Survey Act; that he had a right to settle with Government for the land revenue; that he had "as against Government the very good and full hereditary and transferable title, analogous to that of a survey occupant; and that he had full rights, subject to the provisions of the Survey Act, over all lands included in his estate which were not encumbered by the rights of holders subsidiary to his. It was further ruled that on the lapse of such rights, the lands would lapse to the khot and

23. *Bombay Gazetteer, Ratnagiri District*, Vol. X, p. 252.

not to Government. All this was necessary to clarify that the only person, who could legally claim to be a survey occupant was the khot himself and that all other cultivators, whether dharekaris or occupancy tenants, were not to be considered as survey occupants holding from Government but as tenants holding on certain terms from the khot. Furthermore, all the old tenants of khoti lands, who had continuously cultivated at least for 20 years prior to 1865 (i.e. from 1845) were not to be regarded as mere tenants-at-will, but were to have secured to them full hereditary rights of occupancy conditional on payment of rent. All extra cesses were ordered to be abolished. By way of compensating the khots for the loss so caused, Government proposed to fix the jama at something less than the total survey assessment of all the assessable lands comprised in the village.<sup>24</sup>

On the basis of the Commission's recommendations, the Khoti Settlement Act, 1880, was enacted. The Act had been applied to the Ratnagiri district only and had not been extended to the Kolaba district, although there was a provision in the Act for extending its provisions to the villages in the Kolaba district, presumably because Government did not want to concede more rights to the Kolaba khots. To the Kolaba district, however, the Bombay Act I of 1865 (the Khots Leases Act) containing sections 37 and 38 was applied. It is necessary to remember that the Khoti Settlement Act, 1880, does not purport to create new rights; but it only aims at ascertaining and defining—not altering—the relations between the khots and tenants, which were till then *undefined*. Any record or proceeding under the Act, “does not, therefore confer on any one any right not already in existence”.<sup>25</sup> In the Kolaba district, in the absence of any grant or sanad providing for the permanent continuance of a khotki and in the absence of the benefit of the provisions of sections 37 and 38 of the Bombay Act I of 1865 declared in relation to settlement leases, the continuance of the khotki depends on the customary law, which admitted or declared the khoti tenure in the district as a hereditary tenure.<sup>26</sup> This view has been affirmed by the

24. G.R., R.D. No. 2474 dated 24th April 1876. Recent inquiries, however, indicate that there is no difference between the survey assessment and the jama paid to Government by the Ratnagiri khots.

25. Desai's Khoti Act, pp. 7-8.

26. *Tajubai v. Sub-Collector of Kolaba* (1866).

Bombay High Court in *Ganpati Gopal Risbud v. Secretary of State*.<sup>27</sup> The Khot's rights and interest are transferable under the customary law and are governed by the ordinary law of inheritance and succession.<sup>28</sup> Thus, there are no peculiarities of the tenures affecting ordinary law of inheritance and succession as in the case of the Talukdars or Bhagdars.

### Description of a Khoti Village

In order to have a proper appreciation of the incidents of the khoti tenure, and distribution of different categories of khoti lands, it is necessary to describe a khoti village. To begin with, a khoti village is either a "nivval" khoti or "khoti khitchri". In the former, there are no "dhara" lands, and it has purely khoti lands and whereas in the latter, there are some dhara lands also, and, therefore, it is called mixed (khitchri) village. In the Southern Konkan, the permanent hereditary proprietors or holders of Government land are called dharekaris, their lands, dhara lands and the tenure dhara tenure. Dhara means a holding. Dhara lands are held by dharekaris and quasi-dharekaris, by the former, on payment of survey assessment to Government and by the latter, on payment of survey assessment to Government and crop share to the khot (section 33 of the Khoti Act). They have a permanent hereditary right to hold the lands on these conditions. All lands in a khoti village excepting dhara lands are called khoti lands. Some of these lands are in occupation of permanent tenants (watandar kul) having some statutory rights and privileges and are called khoti kulargi lands. After deducting khoti kulargi lands from the khoti lands, there remain lands called gavik or khoti nisbat (under charge of a khot). Some of these khoti nisbat lands are cultivated personally by the khots themselves and are, therefore, called "khoti khasgi" lands, as distinguished from khoti nisbat lands as meaning khoti lands in possession of tenants other than permanent tenants. When the khotki is undivided and different co-sharers are in possession of different plots or "thikans" of khoti kasgi or khoti nisbat lands, such lands are termed "khoti khasgi samayik". The terms "khoti khasgi" and "khoti nisbat" have been clarified by the survey

27. I.L.R. 48, Bom. 599.

28. Dandekar's *Law of Land Tenures*, Vol. I, pp. 276 and 302.

department; but as regards the rights of the khot against Government, the interest in regard to each of them is the same.<sup>29</sup> This is the state of the khoti villages in the Ratnagiri district.

In the Kolaba district, the main divisions of khoti lands are:

- (1) dhara or suti lands; and
- (2) khoti lands.

The khots' tenants pay rent as fixed and as determined by Government. Rent is something over the survey assessment. The position of khoti tenants in this district is analogous to quasi-dharekaris in the Ratnagiri district. There are no quasi-dharekaris in Kolaba.<sup>30</sup> A Khot's position in the Kolaba district, where not determined by any sanad or deed, is that laid down in the case of *Tajubai v. The Sub-Collector of Kolaba*. It has been stated that a khot possesses with reference to the lands within his khotki, no rights, which are not dependant on the continued exercise by him of his functions as a farmer of revenue. This, in turn, is conditional upon his execution of the kabulyat. In the Ratnagiri district, a khot is a superior holder according to the Khoti Settlement Act, 1880. As regards the Kolaba khots, the High Court has held in *Secretary of State v. Devji Vijpal* (1934) that the Kolaba khot is not a superior holder within the definition of section 3(13) of the Bombay Land Revenue Code, 1879. Mr. Dandekar's view that the Kolaba khot is a superior holder is not tenable.<sup>31</sup>

In the Kolaba district, there is a species of the khoti tenure called "Izafati khoti". "Izafat" means an increase. Izafati khoti means a khoti to which some benefits and perquisites in excess of the original remuneration and benefits are added. The izafat khots represented the hereditary district revenue servants, the deshmukhs and deshpandes, to whom in return for their services, the Muslim rulers granted the rent-free villages. Under the Marathas, their services were rewarded<sup>32</sup> by a percentage on the collections. Such khots were found only in Pen and Roha talukas. The izafati

29. Dandekar's *Law of Land Tenures*, Vol. I, p. 292.

30. J. V. Joshi, *Khoti Satta Prakar* (Marathi), p. xxvi.

31. Dandekar's *Law of Land Tenures*, Vol. I, p. 283.

32. *Bombay Gazetteer*, Kolaba District, Vol. XI, p. 163.

villages are subject to the provisions of sections 37 and 38 of Act I of 1865. Recent inquiries, however, indicate that there are no izafati khoti villages now in the Kolaba district. In the circumstances, this species of the tenure is now of historical interest only.

Before we conclude this part, it is necessary to appreciate the difference in the connotations of terms 'khoti khasgi' and 'khoti nisbat' in the Ratnagiri and Kolaba districts. These terms are neither defined in the Khoti Settlement Act, 1880, nor in the kabulyats executed by the Kolaba khots. The terms were coined by the survey department. The distinction between these terms was clarified at the time of introducing the Record of Rights in the Kolaba district in 1914.<sup>33</sup> Accordingly, the khoti khasgi lands are the private property of khots either by being entered in his name in the original survey or by acquisition, by purchase, or by other lawful transfer otherwise than in his capacity as khot or by being brought into cultivation at the khot's own expense. The khoti nisbat lands are those lands in a khoti village, which may be held by permanent tenants or by non-permanent tenants, all of whom pay to the khots, in addition to the assessment, faida, which is fixed under the Act or the terms of the kabulyat. The observation of Mr. Dandekar that there is no distinction between khoti nisbat lands and khoti khasgi lands, is therefore, not proper.<sup>34</sup> A clear distinction between the important expressions has been made in the G.R.R.D. No. 13050 dated 29th December 1914 and I.L.R. 48 Bom. 599. Accordingly, there is a material difference in the rights which the khots enjoy in these two categories of lands in the Ratnagiri and Kolaba districts. In the Ratnagiri district, the khoti khasgi land, just as in the Kolaba district, is a private property of the khots; but in the Ratnagiri district, khoti nisbat land is a joint property of the khots. In Kolaba, however, the khoti nisbat lands vest in Government and are in possession of occupancy or annual (now ordinary) tenants.<sup>35</sup> Time and again, the Kolaba khots have attempted to have recognition of their rights

33. G.R., R.D. No. 13050 dated 29th December 1914 and I.R.R. 48. Bom. 599. *Ganpati Gopal Risbud v. Secretary of State for India*.

34. *Dandekar's Law of Land Tenures*, Vol. I, p. 292.

35. Para 9(a) of Collector of Kolaba's letter No. K.H.T. 88 dated 20th May 1933 printed as an accompaniment to G.R., R.D. No. 3271 dated 29th May 1934.

in the khoti nisbat lands similar to those of the Ratnagiri khots; but Government have consistently refused to recognize that right. That this detailed discussion about these two terms is very necessary and important will be realized, when we come later on to the provisions of the Bombay Khoti Abolition Act, 1949.

### Rights and Responsibilities of Ratnagiri Khots

According to the Khoti Settlement Act, 1880, as amended from time to time, a khot is a superior holder to settle with Government for the revenue of his village and to hold the same, subject to the payment of jama (sections 4 and 24). He is primarily responsible for the jama of his village lands under section 136 of the Land Revenue Code, 1879 [section 39(c)]. Further, he has to pay L.F. Cess on every rupee of his jama. His rights in khoti lands are heritable and transferable (section 9). He has a right as against Government to resume lands held by privileged occupants in his village, which are forfeited, or lapsed for failure of heirs and those resigned by permanent tenants (section 10). He can confer higher rights of a privileged occupant on any one or more of his tenants (section 11). Besides, in case of lands held by permanent tenants, he is entitled to his 'faida' (profit) [section 33(1)(b) and (c)]. All miscellaneous land revenue in khoti villages goes to the khot and all trees in khoti khasgi and khoti nisbat lands belong to him,<sup>36</sup> except those which have been reserved by Government. It may be remembered that he is not a grantee of the soil; but he is a limited proprietor, since he holds the village on condition of payment of jama. He has, however, full proprietary rights in khoti khasgi lands. But in respect of khoti nisbat lands, a khot has only a limited or reversionary interest therein, i.e. such lands would revert to him or become his khasgi only on resignation, lapse, or forfeiture according to section 10. His right to recover rents even from permanent tenants is much curtailed. He has no right to fix maximum rent, as Government has reserved that right to itself under section 33. They are enjoined to keep accounts and registers such as appraisement register, ledger and rayats'

36. *Revenue Accounts Manual*, p. 16.

receipt books and crop registers (section 15). Lastly, he is entitled to cultivate the land of a permanent tenant, if he fails to cultivate the same, just as if it were khoti nisbat land [rule III under clause (f) under section 40 of the Act].

### Rights and Responsibilities of Kolaba Khots

In spite of the decision in the *Tajubai v. The Sub-Collector of Kolaba* (1866), the Kolaba khots went on claiming that they were the proprietors of the villages; that they were not bound to pass kabulyats and that Government had no right to interfere in fixing their demands from cultivators. In 1893, a suit was filed, which is known as the Ambdoshi Khoti suit. After protracted litigation for years, it was decided against the khots in 1911.<sup>37</sup> A new form of kabulyat was prepared and offered to the khots. The latter again refused to accept it and filed suits in 1917. These suits were decided in 1924 and the decision is reported in I.L.R. 48 Bom. 599.<sup>38</sup> The High Court held:

“The khoti tenure in the Kolaba district is a customary tenure. . . . A khot's interest in the village is limited, not absolute. He possesses in some measure a proprietary right. He is an occupant with all the rights and liabilities affecting such status. He has to secure to Government the payment of the village revenues, while the village lands he has to manage in accordance with the conditions mentioned in the kabulyats.” It has been further held that the Kolaba khots are hereditary farmers of revenue and are entitled to their villages as khoti on entering every year into customary kabulyats, which are bound to conform to custom, except as altered by section 38 of the Act I of 1865. The Kolaba khots again tried to object to the terms of kabulyats and filed suits in 1942. They were compromised in 1945 by a consent decree and the kabulyats were executed.

The kabulyats originally contained only an obligation to pay land revenue to Government; but they grew more comprehensive with the increase of duties in course of time. Besides, Government has a right of interference in the Khoti villages. For refusal to execute an agreement or failure to

37. I.L.R. 36, Bom. 290.

38. *Ganpati Gopal Risbud v. The Secretary of State for India* [B.L.R. XXVI, 574 (1924)].

comply with the conditions of agreement, Government used to resume or attach villages. The kabulyats were annual. The former Governments ejected khots at its convenience and the British Government restored khots merely because it was expedient and convenient.

The stipulations contained in the kabulyats were intended to define the rights and liabilities of the khots in their relation to Government and cultivators of the villages. Any amplifications or amendments of the conditions therein were made according to exigencies of the village administration. This was consistent with the khot's legal position as a revenue farmer. The agreements have been executed in the form<sup>39</sup> prescribed by Government. Accordingly, the khots have to pay total amount of assessment fixed at the last revision settlement together with the local fund cess thereon. They are entitled to collect dues from cultivators as follows:—

- (a) with regard to dhara lands, only the survey assessment and local fund cess in cash;
- (b) with respect to khoti nisbat lands of all kinds,
  - (i) the survey assessment plus local fund cess; and
  - (ii) customary khoti faida in kind or in cash (where customary) together with bundles of straw stipulated. In token of payment, they have to give receipts to cultivators. Further, if any dharekari absconds without giving his land to another person for vahivat or dies without leaving any heir or if any tenant of the khoti nisbat land dies without leaving any heir or absconds, the khot has to report the fact to the Mamlatdar and has to obey the orders passed by Government and take steps for the cultivation of the said land and for the payment of assessment to Government. Lastly, he has to pay assessment in respect of the unassessed "Khajan" (coast land) and "pulanvat" (sandy lands) and other unassessed lands of the village, as and when it is fixed by Government.<sup>40</sup>

39. G.Rs. R.D. No. 3271 dated 29th May 1934 and 20th February 1939. For form of kabulyat, see Appendix O.

40. *Vide* Appendix O.

As regards the right of ownership to the khoti khasgi and khoti nisbat lands, there is a distinguishable difference. In the Ratnagiri and Kolaba districts, the khoti khasgi land is the private property of the khot. But in the Ratnagiri district, the khoti nisbat land is the joint property of the khot; while in Kolaba, it vests in Government and is in possession of occupancy (permanent) or annual tenants (now ordinary tenants under the Bombay Tenancy and Agricultural Lands Act, 1948).<sup>41</sup> Clause 9 of the kabulyat vests khoti nisbat lands in the Kolaba district in Government. The Kolaba Khots agitated to obtain rights similar to those of the Ratnagiri Khots in the case of the khoti nisbat lands; but Government have consistently refused to recognize them, as they are not entitled to them by the custom (*vahivat*) and the terms of the kabulyat executed by them.

In short, all the rights of the Kolaba khot are governed and limited by and depend upon the subsistence of the khotki. On his failing to execute the kabulyat and thus ceasing to be a khot, his limited interest and proprietary rights, whatsoever their nature, come to an end.

### Khoti Faida

The term "khoti faida" is very important in the khoti tenure and has been many times a bone of contention between the khots and tenants. For full appreciation of many problems regarding the Khots *vis-a-vis* tenants and Government, we should know its definite implications. It may be remembered that khoti faida or the khoti profit is a sort of remuneration to the khot payable by quasi-dharekaris and permanent or ordinary tenants for management of the khoti villages. Since a khot is not a public officer, khoti faida is not a salary within the meaning of section 266(*h*) of the Civil Procedure Code, 1882.<sup>42</sup> The faida has been fixed at different times in different villages of different talukas of these districts, and, therefore, the variety of the khot's dues requires to be treated in full detail in order to understand, at a later stage, the basis

41. *Vide* Footnote No. 35.

42. A. G. Desai, *Khoti Settlement Act* (1913), p. 158.

of compensation provided in the Bombay Khoti Abolition Act, 1949.

In the Ratnagiri district, the khoti faida is paid to khots by quasi-dharekaris and permanent tenants in accordance with section 33(1) (b) (c) of the Khoti Settlement Act, 1880. Accordingly, the quasi-dharekaris pay as khoti faida the amounts of grain or money respectively as set forth in the schedule to that Act and the permanent tenants do so according to the terms of the entry in the survey-record made in respect thereof and for the time being applicable thereto, subject to the deductions of survey assessment and local fund cess. The faida is either payable in kind or cash. Generally, it is 2 or 3 times the assessment of the lands. Rents payable in kind to khots have been commuted into cash in some villages in accordance with Rule V under section 33(1) of the Act. According to Rule V(2), the commuted value of rent equal to  $\frac{1}{3}$ rd share is deemed to be equivalent to two multiples of survey assessment and  $\frac{1}{2}$  share equal to three multiples of such assessment. Although the commutation of rents in kind was permitted by the amending Act III of 1904, the advantage of this provision has been taken by a few tenants only. Those, who have commuted their crop-rents into cash, have been much profited by the high prices of agricultural produce ruling during the last eight years and those, who have not done so, have to pay considerably more rent in terms of the agricultural produce.

In the Kolaba district, the khoti faida (or khot's dues) is paid by tenants of khoti nisbat lands in accordance with the terms of the kabulyat or provisions of section 38 of the Khots Leases Act, 1865. The faida varies from half a rupee in cash to half a maund of paddy for kharif lands and three-quarters of a rupee in case of varkas lands. Like that in the Ratnagiri district, the khoti faida was fixed at different times in different villages of the talukas of the Kolaba district and, therefore, varies from village to village and taluka to taluka. The diversity in amount and kind in regard to the khoti faida will be seen from the extract cited below:—

“In 41 villages, it (faida) is recovered at the rate of  $\frac{1}{2}$  maund and in one village at  $\frac{1}{4}$ th maund per rupee of assessment on 'kharif' lands. In three of these villages, ten sheaves of rice-stalks (pendha) per maund are also recovered. In

varkas and rabi lands, the practice is even more irregular. In 67 villages, faida is at the rate of eight annas per rupee in cash, in 9 at the rate of five annas four pies, in 2 at  $\frac{1}{4}$ th maund of grain, half of which is to be nagli and the other half to be vari in case of varkas lands and in cash at eight annas per rupee of assessment in rabi lands.”<sup>43</sup>

This was the position in 1914, but subsequent revision settlements do not seem to have made any appreciable change in the position described above.

From the foregoing facts, it will be crystal clear that the recording of entries of the khoti faida and its recovery from tenants at different rates in crop and/or kind must have been a very complex affair involving intricate calculations to the utter disadvantage of backward and illiterate tenantry of Kulvadis and Mahars in the Konkan.

### Khot's Rights to Trees and Forests

Now, the khot's rights to trees and forests in the khoti villages remain to be considered. According to section 41 of the Bombay Land Revenue Code, 1879, the right to all trees, brushwood or other natural products, wherever growing, except in so far as the same may be the property of individuals capable of holding property, vests in Government. Government proprietorship of all trees is the rule and private rights of ownership is the exception. The question whether a khot has proprietary or any other limited right to the trees standing or growing on lands in his khoti village would depend on (1) the khot's interest in the soil, (2) any express grant or concession, and (3) the customary user, if any. The khot being a revenue farmer having limited interest in the khoti lands is entitled to cut timber either on uncultivated or forest lands.<sup>44</sup>

With regard to the rights of the Ratnagiri khots, section 41 of the Khoti Settlement Act empowers Government to constitute any uncultivated land into a reserve forest. In such a reserved forest, a khot is entitled to one-third of the net profits derived by Government from such forests, after deducting the cost of management for the duty of protecting the forests.

The forest rights of the Kolaba khots have been provided in clauses 10 to 12 of the kabulyat executed by them. Accord-

43. G.R., R.D. No. 1244 dated 7th February 1914—accmpt.

44. *The Collector of Ratnagiri v. Antaji*, I.L.R. 12, Bom. 534.

ingly, in the reserved forest, the khots are entitled to one-third share of the net proceeds, after deducting expenses of all fellings made by Government, reduced by 20% of the amount of such share. In the protected forest excepting the trees in the reserved forest and the teak and blackwood trees in the forest, the ownership of trees vest in dharekaris or the khots according as the land in which the trees are situated belong to a dharekari or a khot. But this provision does not apply to such original teak and blackwood trees in khoti nisbat lands as have been included in Government orders of 1927<sup>45</sup> and remained undisposed of at the date of the execution of the kabulyat. But when such teak and blackwood trees were cut, they would be entitled to one-third share of the sale proceeds after deducting the expenses. Right to aftergrowth and new growth trees has not been conceded in warkas land which is not "khasgi" and all that is conceded is the right to such growth in culturable waste which is not warkas.<sup>46</sup>

Government would claim no right over the teak trees already planted nor upon those that may hereafter be planted in occupied khoti lands.<sup>47</sup> It has been held that as the right to teak and other forest trees grown on khoti khasgi lands was transferred to the owners of those lands by Mr. Dunlop's proclamation of 1st March 1824 and as that right having once conferred could not be withdrawn by the subsequent proclamation of 1851, a khot, who cuts down teak trees growing on his khoti khasgi land cannot be convicted of an offence under section 77 of the Indian Forest Act. The Dunlop Proclamation is an instance of grant and, therefore, the khots of villages affected by the proclamation have been considered as owners of all the trees standing or growing upon khoti khasgi or

45. G.R., R.D. No. 8581/24 dated 2nd May 1927.

46. G.R., R.D. No. 11063 dated 18th October 1915. This view is supported by the High Court ruling in *Sadashiv Parashram Risbud v. Secretary of State for India* (1917). Accordingly, section 40 of the L.R. Code, which relates to the rights of the occupants to trees, cannot help the khots. In the first place the khots are not the occupants within the meaning of section 40. Even assuming that they are occupants, it is clear from the Proclamation of 1870 and the Proclamation of 1902, which has been admitted in evidence in appeal with the consent of the parties, that the teak trees on the varkas lands were reserved by Government. The khots have no claim to the teak trees under section 40 of the L.R. Code and they have failed to prove that they are entitled to the benefit of Dunlop's Proclamation in respect of varkas lands in question (20 B.L.R. at p. 161).

47. *The Bombay Forest Manual*, Vol. III, article 88, at p. 39.

khoti nisbat lands in the possession of such khots or their sub-tenants.<sup>48</sup>

The management of the forest by the Khots in their khoti villages has not been conducive to the growth of forests. It may be recalled that the Khots are allowed one-third share out of the forest fellings for their duty of protecting forests. It has been noticed that they have failed in their duty to protect forests and that the same is now done by the Forest Department by maintaining establishment. In the circumstances, there is no justification for paying one-third share to the khots. As far back as 1925, it was contended that the large number of *Dalhi* assignments in the forests and the claims of khots to one-third share of the revenue of a large area of the forests militated against the fullest development of the forest resources.<sup>49</sup>

### Reversionary Rights of Khots

A khot has a reversionary interest in the *occupied* lands in his khoti village during the continuance of the khotki. This reversionary interest has been recognized at least since the decision in the Tajubai's case in 1866. Because of this interest, the Khot is a holder of all the occupied lands in the khoti village within the meaning of section 3(10) of the Bombay Land Revenue Code. This interest is affirmed in section 10 of the Khoti Settlement Act, 1880, and section 38 of the Khots' Leases Act, 1865, for the Ratnagiri and Kolaba districts, respectively.

According to section 10 of the Khoti Settlement Act, 1880, if the land held by a privileged occupant lapses for failure of heirs or is forfeited on the occupant's failing to pay the survey

48. Antaji Keshav Tambe, I.L.R. 18, Bom. 670.

For facility of reference, the Dunlop Proclamation is given below :—

"It is hereby proclaimed, for information of all, that it has been the practice hitherto for the Government to claim all teak, sisu, and other timber trees within the limits of the Zilla, even when growing on private lands, on which account, people were discouraged from preserving and rearing these timber trees on their lands. Government have heard this and bearing in mind that all people will be much benefited by the rearing and cultivation of teak, sisu, and other trees in the country, hereby proclaim for the information of all, that, exclusive of Government forest in the Sawera taluka and Malwan taluka, whoever may have teak and other trees growing on their land outside these limits will be exempted from all claims on the part of Government. Those, who are the owners of the trees or who will hereafter raise them on their private land will be allowed to dispose of them according to their pleasure. No obstruction will be caused on the part of Government."

49. *Statistical Atlas* (1925), Kolaba District, p. 139.

assessment or rent due in respect thereof, or if any permanent tenant resigns his land or any portion thereof, his land shall be at the disposal of the khot as khoti land free of all encumbrances other than the liens or charges created or existing in favour of Government. R.B. Desai, however, questions the legality of these provisions in consequence of his researches in the Peshwa Daftar. The evidence collected by him convinced him that lapsed holdings (गयाळी) even in watani khoti villages *reverted to Government and not to khot* and that they were disposed of by Government. That was the regular system under the Peshwa and his predecessors. The opinion of Messrs. Reid (1828-29) and Candy (1875-76) cited at pages 78-79 of the Government Selection No. CCCCXLVI—N.S. were given without proper inquiry and authority. R.B. Desai therefore observed that “What (lapsed holding) continued to be enjoyed under sufferance since 1817 was repeatedly and prominently put forward by the khots and their advocates, not as a prescriptive right, but as one inherent in the watan itself”.<sup>50</sup> Since however the reversionary right has been recognized in the Khoti Settlement Act, 1880, and the Khots’ Leases Act, 1865, Government has acquiesced in the position and vast areas have reverted to the khots. The resignations of such lands have been alleged to have been obtained many times by compulsion and fraud by khots. It may be noted that in the Ratnagiri district, the khoti land, which goes by the name of the “khoti nisbat land”, is the land that has reverted to the khot either by lapse, resignation or forfeiture under section 10 of the Act. In the Kolaba district, the khoti nisbat lands are those which have been referred to in clause 9 of the kabulyat. The importance of the khot’s rights in these lands will be realized later, when we come to discuss the provisions of the Bombay Khoti Abolition Act, 1949.

### Tenants

In the Ratnagiri district, tenants in khoti villages may be divided as under:—

- (1) Privileged occupants:
  - (a) dharekaris,
  - (b) quasi-dharekaris, and
  - (c) permanent tenants.

50. Government Selection No. CCCCXLVI—N.S., p. 79.

## (2) Ordinary tenants (or unprivileged tenants).

Dharekaris are Maratha Kunbis, who are the original inhabitants of the Konkan. They used to pay land revenue direct to Government. But the "anarchy of the times" drove them to the mercy of the Brahmin khot, who subjected them to the payment of extortionate rents. This created a class of tenants called quasi-dharekaris, who paid to the khots crop-share in addition to survey assessment. Quasi-dharekaris are divided into daspatkaris, dupatkaris, didpatkaris and paune dupatkaris according to the proportion of crop-share or rent set forth in the Schedule to the Act. A permanent tenant under the Act is one who was a permanent tenant in 1845. An ordinary (upri) tenant is an annual tenant but many of them have continued on their lands for many years. Mr. Mountford found in 1926 that tenants of 70 years' standing were upris. Recent upri tenants are very rare. They have been wedded to the soil and are above  $\frac{1}{4}$ th of the total number of tenants.<sup>51</sup> It may be remembered that privileged occupants and ordinary tenants are all inferior holders of the khot.

As regards their liability, a privileged occupant is primarily responsible for the survey assessment of his holding, as the khot is for the jama of his village [section 39(c)]. He has to pay L.F. cess on every rupee of the survey assessment of his holding (section 36). He is safeguarded from the exactions of his khot, inasmuch as a khot is prohibited from levying phaski, veth, nangarveth, wartala, or any other cess (section 35). As regards the rent payable to the khot, a dharekari has to pay nothing; a quasi-dharekari has to pay the amounts of grain or money set forth in the schedule and a permanent tenant has to pay to him customary rent as per entries in the survey record subject to the deductions of survey assessment and L.F. cess [section 33(1)]. Privileged occupants continue to hold their lands on condition of payment of survey assessment to Government and rent due to the khot (section 7). Like those khots, his rights are heritable and transferable (section 9). His lands shall not be deemed to have been forfeited on failure to pay rent, unless certified by the Collector. He can resign his entire holding, without the consent of a khot, but for partial relinquishment, his consent is necessary (section 10). Ordinary tenants hold their lands subject to the terms

51. G.R., R.D. No. L.C. 2083 dated 21st July 1926.

and conditions agreed upon between the khot and themselves (section 8). Under the Khoti Settlement (Amendment) Act, 1946, they are made ten-yearly tenants and their rents are not to exceed the maxima prescribed in section 33(1)(c). Rule VI of section 33 empowers any tenant to have his reasonable rent fixed under the Bombay Tenancy Act (now the Bombay Tenancy and Agricultural Lands Act, 1948). The rights of tenants *in general* are secured as regards rent, tenure, trees, house-sites, etc., under that Act.

In the Kolaba district, the tenants are found as follows:—

- (1) sutidars or dharekaris,
- (2) occupancy tenants or permanent tenants, and
- (3) ordinary tenants.

In the Kolaba district, most of the appointments of these revenue farmers seem to date from the eighteenth century. When the khots were appointed, a large proportion of the villagers seem to have been land-holders or dharekaris; but in times of exaction, failing to meet the Government demands, the small holders abandoned their lands, or became so indebted to the khots that they fell to the position of tenants.<sup>52</sup> The khot's liability to Government and his demand to tenants had been fixed at the original and revision surveys. The Khot's liability was guaranteed for a number of years and during the period of guarantee, the khot could not and cannot demand anything more than the rates or demands fixed at the surveys.

### Evils of the System

Broadly, the evils may be divided into two classes: (1) those relating to the tenants, and (2) those relating to the administration of the tenure.

In the first category come "veth" or forced labour, rack-renting, disputes about trees, grazing grounds, impounding of cattle, etc. The practice of demanding labour from upris (tenants-at-will) for private work of khots on a concessional low wage is one of the outstanding evils of the system. It was noticed long before by Mr. Candy (1873-74). Mr. P. G. Kanekar, a social worker, emphasized the evil aspect of the system in his book "The Serfdom in the Konkan".<sup>53</sup> During inquiries into the complaints of the tenants in the Konkan,

52. *Bombay Government Gazetteer*, Kolaba District, Vol. XI, p. 178.

53. P. G. Kanekar, *Serfdom in the Konkan*.

Mr. L. J. Mountford, the Commissioner, Southern Division (1926) observed that the practice of working on the land of the khot for small payment of grain and for cutting and carrying rab and fuel to the khot for nominal payment is immemorial. Of course, forced labour from privileged occupants only has been prohibited under section 35 of the Act. In practice, such labour is still exacted from them. But insistence on compulsion appears to be less severe and wages have been increased a little. But so long as tenants enjoy privileges from khots such as free grazing and fuel, they cannot afford to incur the displeasure of khots by refusing 'veth'.<sup>54</sup>

Mr. Nairne wrote<sup>55</sup> about the attitude of khots towards his tenants in 1875 as under:—

“I have no objection to their being changed from farmers into proprietors whether as an act of grace on the part of Government, or as a reward to them for having improved the country. But I fail to see that their reclamation of the country is to be accepted as a reason for keeping in a state of bondage cultivators, who have been in the villages for generations. . . . There is not a single thing in the way of improvement that the khots can point to except the construction of a certain number of rice fields”. But this claim is even contested by the cultivators, who assert that the fields have been constructed by their forced labour. Mr. Mountford in 1926 found that the khot's attitude towards his tenants had not improved since 1875. After careful and detailed inquiries, he was constrained to observe as under:—

“With a few exceptions, the khot has done nothing to improve his tenants' conditions. He has no conception of the obligations of the landlord and has demanded the service of the *kul* for generations as a matter of course. He uses him as his cooly, as his wood-cutter, his ploughman, his thresher, etc. All work required to be done on the home farm, when the khot himself cultivates, has to be carried out by his tenants. In old days, the khot made the tenants carry his palkhi and give up one day in eight for his labour on payment of one meal. The khots have considerably increased in number and feel the pressure of increased prices and cannot afford to relax any of their exactions and move with the times. . . . The khot

54. G.R., R.D. No. L.C. 2083 dated 21st July 1926.

55. Accompaniment to the G.R. of 21st July 1926 (Ibid.)

has done nothing to uplift his tenantry by way of schools. He claims that he gives them grazing, where there is no other grazing but on the khot's land; but cattle could not work on his land, if not grazed. He claims he lets them cut fuel from his land; but they have also to cut his fuel and bring it to his house. He claims to allow them to take rab from his lands for their cultivation; but there could be no cultivation by them of his home farm without rab. He claims to allow them mangoes and hirda, but he does so because the Civil Courts do not allow the khot to deprive tenants of such, as it is in accordance with immemorial custom."

Thus, it will be clear that in the apparent benevolent actions of the khot, the self-interest of the khot is involved. In the nature of things, the khot is in a position to exact 'veth' and other menial duties. It is pertinent to note that in the khoti villages, there are no grazing lands assigned and the tenants have to use khoti land for grazing. Further, there are no village sites in lands other than those in khoti land and the tenants have to live on the khot's land.

Of all the Maratha, Mahar and Kunbi tenants, the condition of the Kunbi tenants is the worst. Under the leadership of Dr. Ambedkar, the Mahars have become bold and vocal in their demands. In the absence of any leadership, the Kunbis are economically and psychologically more depressed than the Mahars. The Enquiry Committee appointed by the Ratnagiri District Congress Committee in 1936 found that the Kunbis were afraid of the Mahars and even did 'veth' for the latter (Mahars)!<sup>56</sup>

The position has however changed after the passing of the Bombay Tenancy and Agricultural Lands Act, 1948. The tenants' rights as to tenure, rental, trees, house-sites, etc., have been settled and there is not much scope left for oppression and harassment by the khots now. The tenancy problems in the khoti villages like those in the khalsa villages are, to all intents and purposes, nearer solution.

In view of the foregoing facts, the evils to be eradicated are of an administrative nature only and in view of the revenue-farming origin of the system, they are more serious and urgent. In the context of the modern conditions, the khoti system of

56. Report of the Agricultural Inquiry Committee, 1938, (Marathi), p. 51.

village administration is an anachronism. A khot, at present, is a useless middleman and performs no useful function to Government or ryots. The expenditure on account of pay of a talati in some villages is saved;<sup>57</sup> but this is done at a great cost to tenants and confusion of accounts, etc., in the taluka offices. These defects of system became more pronounced in tackling food and reconstruction problems. Before 1946-47, a police patel was the only Government official at the village and, more often than not, he happened to be a khot or a near relation of the khot. It is noticed that a copy of the Bot-khot is not properly maintained by khots, though enjoined by law to do so. The Abhavanis (appraisement registers) are not prepared according to rules. Further, crop and tenancy registers are not properly maintained and, therefore, reasonable estimates of crops are difficult to obtain from the khots. Enquiry by the Special Officer, Mr. B. P. Patel, I.C.S., in the Ratnagiri district in 1944, revealed that the preparation of Village Form No. VII-XII in representative villages showed no agreement between the existing record and maps and the actual conditions of ownership, cultivation and boundary marks. There are no arrangements for boundary marks inspection or restoration thereof in these villages.

The administrative evil does not stop here. It goes deeper into the system itself. Inquiries by the Special Enquiry Officer also showed that the number of absentee khots was considerable. In the Ratnagiri district, the number of the whole villages and dhadas under Government attachment were 97 and 1,862 respectively, as a result of the khot's failure to pass kabulyats. This clearly indicated indifference or inability to manage their estates. The things came to such a pass that the Collector had to manage so many dhadas for khots rather than the khots managing them for the Collector. This was due to the fact that the khots' interest centred round the collection of rent or earning livelihood elsewhere and not in the management of their villages. Thus, it will be clear that the main objects of the khoti system, viz. (1) promotion of cultivation of lands, and (2) collection and payment of land revenue to Government are not realized. In the circumstances,

57. After the Amending Act of 1946, talatis have been appointed in the khoti villages for collection of land revenue from dharekaris and quasi-dharekaris.

the system had far outlived its utility and required to be replaced by a regular ryotwari system of village administration.

### A Case for Abolition of the Tenure

The defects of the system were noticed as early as 1825. The Board of Directors wrote in their letter of 4th May 1825 about the evils of the system and its abolition, as under:—

“ We recommend it to you in a most particular manner not only to ascertain and protect the existing rights of the ryots, but to ameliorate their situation and relieve them from any claims which operate on them severely or oppressively. . . . Where the rights are established in behalf of existing middlemen, of whatever denomination and whether by the express act of the competent authority or by long prescription, they ought to be respected; but when such rights cannot exist without oppression to others, without materially obstructing the necessary operations of Government, it is desirable that suitable compensation should be made (paid) for them and that they should be abolished ”.<sup>58</sup> It is evident that even the Directors suggested abolition of the tenure, if it obstructed the necessary operations of Government. However, R.B. Desai is more emphatic in this respect. After study of the Peshwa Daftar, he came to the conclusion that the British continued the existing khoti system in the Konkan, because Government were not put in possession of the full facts regarding history and incidents of the tenure. His observations are very pertinent and therefore require reproduction:—

“ On the introduction of their rule in 1818, Government intended to bring about the ryotwari system both below and above the ghats. In the Konkan, their *informants*, as well as the persons through whom they administered this district, were, as a rule, either khots or persons interested in Khots, and the tone of the administration has throughout been favourable to them, in that they have always been regarded as watan-dars and occasionally, as proprietors also *without the usual obligations of service.*” As a result of his researches in the Peshwa Daftar, R.B. Desai was convinced that the khoti was a service watan like that of a patil in the Deccan and that the rights confirmed by the Khoti Settlement Act, 1880, were definitely more than the past records and practices justified

58. Candy's Report. Government Selection No. CXXXIV—N.S., p. 12.

them. On his report, Mr. Cumine, Settlement Officer, Ratnagiri (1887), lamented that "It is melancholy to think that if these papers had only been looked out seventy years ago, we should never have had a khoti question, at all".<sup>59</sup>

From the above observations, it will be evident that the British continued the khoti system in the Konkan, as they were not allowed to know the true incidents of the tenure in their correct perspective from the old records of the Peshwas. The history of the khots from 1821 till the enactment of the Khoti Settlement Act, 1880, affords an illustration of the khots manœuvring for their rights *vis-a-vis* Government and the tenants. Even in the subsequent amendments to the Act, the same story is repeated. The evils of the system began to be felt soon after the enactment of the Act. The difficulty was felt in the payment of rent by the occupancy tenants. The ascertainment of the customary rent in the shape of a share of a crop was invariably a fruitful source of dispute. In order to put an end to such disputes, an Act III of 1904 amending the Khoti Act, 1880, was passed according to which the tenants were allowed to commute their crop-share rent into cash under certain restrictions (*vide* section 33 Rule V). Although the Act was passed in 1904, the cases of commutation of crop-share into cash are not many and the disputes about the rent in crop-share, which includes the khot's faida, have not ended, so far.

Exactions of forced labour and various cesses from the tenants, particularly from the tenants-at-will (*upri*) made them (tenants) restive and disgruntled and forced them to agitate for the abolition of the tenure itself. In 1915, Government appointed a Committee to examine the question of the khots in the Kolaba district. Mr. H. S. Lawrence, Commissioner, Southern Division, suggested the extinction of the tenure from the Kolaba district, having regard to "the past history of the question, the vast files of correspondence and the volume of litigation". After considering the report, Government ordered that the question of abolition of the tenure should be postponed to a more convenient occasion.<sup>60</sup>

The Konkan Co-operative Enquiry Committee appointed by the Bombay Central Co-operative Institute visited several places

59. Government Selection No. CCCCXLVI—N.S., p. 25.

60. G.R., R.D. No. 11063 dated 18th October 1915.

in the Ratnagiri and Kolaba districts and submitted their report to the Institute. In their report, the Committee incidentally referred to the khoti tenure as under:

“ There is one thing however, which makes the position of the tenant precarious and that is in almost all cases, the hut or the house of the tenant stands on land which does not belong to him.”<sup>61</sup> The Committee’s proposal to provide house-sites for the tenants was even opposed by the khots. But this led to the awakening of the tenants.

Thereafter, the agitation against the khots gathered momentum from 1920 onwards, when Mr. Nanal, President of the Khoti Saba demanded inquiry into the working of the system with special reference to the grievances of the tenants. In July 1925, resolutions were brought forward by Messrs. A. N. Surve, M.L.C. and S. K. Bole, M.L.C., in the Legislative Council regarding the grievances of the khoti tenants in the districts of Ratnagiri and Kolaba; but were withdrawn on the understanding that the Commissioner S.D. (Mr. Mountford) would make personal inquiries and report the result to Government. The latter (Mr. Mountford) submitted his report to Government in 1926, after making detailed inquiries in the two districts. Government admitted that being “ a legacy of the former administrative and legislative arrangements ” and “ general economic and social conditions of the tract ”, the question admitted of no simple and straightforward solution. Government therefore issued orders securing and safeguarding the rights of the tenants; but Government did not contemplate abolition of the tenure itself.<sup>62</sup>

Subsequently Mr. P. G. Kanekar of the Social Service League, Bombay, made personal inquiries into the problem by visiting several villages in 1926 and advocated immediate abolition of the khoti-system for curing all the ills of the peasantry. The popular feeling was that “ The khots do everything in their power to discourage education among the Kunbis. Many of the khots are Brahmins, and there are also Marathas (the Kshatriya Marathas), Mohamedans and men belonging to other castes. Barring an honourable exception here and there, all are equally bad, whether they are Brahmins, non-Brahmins or Mohamedans. But that the khoti system

61. Konkan Co-operative Enquiry Committee’s Report.

62. G.R., R.D. No. L.C. 2083 dated 21st July 1926.

leaves much scope for oppression, ill-treatment and dishonesty cannot be denied".<sup>63</sup> Mr. Kanekar suggested that the system should be ended and not mended. "If the feudal system could be abolished in the Western countries, there is no reason why khoti cannot be abolished in this twentieth century of grace. Vested interests must yield before justice and humanity. Prescriptive rights should not be allowed to override equity and justice . . . that some of the original khots were instrumental in bringing the land in their villages under cultivation is no reason why the khoti system should be preserved intact. Their labours, if any, have been more than amply repaid; on that ground, they cannot claim the continuance of the privileges to the end of time."<sup>64</sup>

Dr. B. R. Ambedkar was the first to make a legislative attempt in 1937-38 to abolish the tenure with a view to securing occupancy rights to the tenants. His Bill aimed at (1) abolition of the khoti tenure and substitution of the ryotwari tenure, (2) making provision for payment of reasonable compensation to the khots for the loss of his rights, and (3) giving those inferior holders, who were in actual possession of land, the status of occupants within the meaning of the Bombay Land Revenue Code, 1879. But on Government promising announcement of their policy with regard to khots, Dr. Ambedkar did not move the Bill with the result that it lapsed.

Subsequently, in 1944, a Special Officer was appointed by Government to examine the khoti question in the Ratnagiri district. On the basis of the inquiry, he submitted his report to Government recommending reform and regulation of the system. At that time, complete liquidation of the khots was not considered a practical proposition and the reform of the system was aimed at by the introduction of the Record of Rights and the Bombay Tenancy Act. As a result, an amendment to the Khoti Settlement Act, 1880, was passed in 1946 providing mainly for the rights of the tenants (khoti-kularg and tenants-at-will, i.e. upri) and the introduction of the Record of Rights in khoti villages. These measures were not adequate to eradicate the evils of the system. Government

63. P. G. Kanekar, *Serfdom in the Konkan* (1926), p. 11.

64. *Ibid.*, p. 52.

therefore introduced a Bill<sup>65</sup> to abolish the khoti system, root and branch, in the September-October session of the Bombay Legislature in 1949. During its passage in the Bombay Legislative Assembly, the khoti interests on the opposition side made very long-winded speeches. The Congress M.L.As of Ratnagiri and Kolaba endeavoured to modify certain provisions of the Bill in favour of the tenants. As a result of their deliberations, during the second reading stage, Government agreed to several amendments to the Bill. The Bill underwent so many changes that Mr. R. N. Mandalik, M.L.C., was provoked to remark that if the Hon. Minister, Revenue Department, Shri Morarjibhai, who originally sponsored the Bill saw the amended Bill (as introduced in the Bombay Legislative Council), he would express wonder whether it was his child! The new Bill called the Bombay Khoti Abolition Bill, 1949, was passed by the Bombay Legislature on the 15th October 1949. After receiving the Governor-General's assent it has become an Act and has been applied to the Ratnagiri and Kolaba districts with effect from 15th May 1950. The Rules have also been framed under the Act. The Act and the Rules are given in the Appendices L and M. In view of the provisions of the Constitution of India, certain adaptations were carried out in the said Act by the Bombay Khoti Abolition (Amendment) Act, 1950, *vide* Appendix N.

### The Bombay Khoti Abolition Act, 1949

The new Act extends to the former Ratnagiri and Kolaba districts as constituted immediately before the thirtieth day of July 1949 and provides for abolition of the khoti tenure obtaining therein. Government proposes to extend the new Act to villages on the khoti tenure in the merged areas if there are any villages on the khoti tenure. Many of the definitions given in section 2 are those embodied in the Khoti Settlement Act, 1880; but the expressions "khot's dues", "khoti khasgi land" and "khoti nisbat land" which were not defined in the Khoti Act, are statutorily defined for the first time in the history of the khoti tenure. As stated before, the terms "khoti khasgi" and "khoti nisbat" were coined by the Survey Department and in the absence of statutory recognition

65. *Vide* Appendix K.

in the Khoti Act, became the subject of various legal interpretations. With a view to ending this indefinite position, Government considered it expedient to define these terms in the new Act. The expression "khot's dues" is separately defined for the Ratnagiri and Kolaba districts. For the former, it is based upon the provisions of section 33 of the Khoti Act. At present, in Ratnagiri, a khot gets his dues or faida from quasi-dharekaris and permanent tenants only. In Kolaba, a khot is entitled to a faida from tenants of the khoti nisbat lands only in accordance with the kabulyat or section 38 of the Khots Leases Act, 1865. The importance of the definition is immense since provisions regarding compensation (commutation) for abolition of the khoti tenure in section 5 of the Act are based upon the *khot's dues* received so far.

The expressions "khoti khasgi land" and "khoti nisbat land" have also been separately defined for Ratnagiri and Kolaba districts. In Ratnagiri, the khoti khasgi lands are those which are held and in possession of a khot excluding the khoti nisbat lands and lands held by privileged occupants. For Kolaba, the definition has been based upon the Government orders of 1914,<sup>66</sup> according to which the Record of Rights was prepared and separate categories of the khoti lands entered therein and the decision in *Ganpati Gopal Risbud v. The Secretary of State for India*.<sup>67</sup>

As regards the term "khoti nisbat land", separate definitions are also given for both the districts. In Ratnagiri, khoti lands acquired by the khot by lapse, resignation or forfeiture under section 10 of the Khoti Act are defined as khoti nisbat lands. The definition of such lands in Kolaba is based upon the Government orders of 1914, according to which the Record of Rights for khoti villages was prepared. In short, the definitions of "khoti khasgi land" and "khoti nisbat lands" have been framed in order to represent and cover the legal as well as actual position of the categories of these lands in khoti villages. The importance of the definitions will be realized presently.

According to section 4 of the Khoti Settlement Act, 1880, khots are entitled to hold their villages conditionally on the payment of the jama to Government and they are considered

66. G.R., R.D. No. 13050 dated 29th December 1914.

67. I.L.R. 48, Bom. 599.

as occupants in respect of the lands held by them as khoti khasgi. Section 4 of the new Act gives occupancy rights within the meaning of the L.R. Code not only to the khots but to dharekaris, permanent tenants and even ordinary tenants. It gives occupancy rights, on payment of land revenue assessment to Government, to

- (1) the khots, in the case of khoti khasgi lands;
- (2) the dharekaris and quasi-dharekaris, in the case of dhara lands; and
- (3) the permanent tenants, in the case of land held by permanent tenants.

Besides, in the Ratnagiri district, the khoti nisbat lands are the joint property of the khots (khoti samayik) and in the Kolaba district, such lands vest in Government. But there are many ordinary (upri) tenants<sup>68</sup> of many years' standing. These tenants agitated for fixity of tenure from 1920 onwards. In order to pacify them and to avoid bitterness, it was considered expedient to give the attributes of occupancy to such ordinary tenants in both the districts. In the Ratnagiri district, ordinary tenants in possession of khoti nisbat land are made eligible to the rights of an occupant, on payment to the khot, of an occupancy price equal to six times the assessment of the lands. In the Kolaba district, ordinary tenants in possession of the khoti nisbat lands and the khot in respect of such lands in his actual possession are made eligible for the rights of an occupant, on payment to Government, of occupancy price equal to six times the assessment of the land. In short, by these provisions, the ordinary (upri) tenants in Ratnagiri have been benefited; whereas in Kolaba, it should be noted that along with the ordinary tenants, the khots in respect of khoti nisbat lands in their actual possession have been made eligible for acquiring the attributes of occupancy, as well.

It would be of special interest to know the extent of the khoti nisbat lands and the amount of occupancy price in terms of multiples of survey assessment the tenants will have to pay to acquire the occupancy rights. The khoti nisbat lands are mostly warkas lands. According to the inquiry of the Special Officer in the Ratnagiri district in 1944, the total area of such lands was about 59,166 acres assessed at Rs. 24,993,

68. After the application of the Bombay Tenancy and Agricultural Lands Act, 1948, these ordinary tenants have become tenants for 10 years.

i.e. in round figures 60,000 acres assessed at Rs. 25,000. Thus, the average assessment per acre comes to Re. 0-6-8. The proportion of paddy and bagayat lands to warkas lands would be roughly 1 : 8. From the figures of the Ratnagiri district above, one can imagine what concession Government has given to the tenants in making them eligible for the rights of occupancy.<sup>69</sup>

69. The land revenue assessment in both the districts becomes of special interest to the public because of this provision and, therefore, the average assessments of the lands of different talukas are given below :—

| District              | Taluka       | Average assessment<br>per acre |    |    |
|-----------------------|--------------|--------------------------------|----|----|
|                       |              | Rs.                            | a. | p. |
| Ratnagiri             | Malvan       | 1                              | 1  | 2  |
|                       | Sangameshwar | 0                              | 6  | 6  |
|                       | Ratnagiri    | 0                              | 9  | 10 |
|                       | Rajapur      | 0                              | 9  | 1  |
|                       | Devghadh     | 0                              | 9  | 11 |
|                       | Khed         | 0                              | 9  | 4  |
|                       | Chiplun      | 0                              | 8  | 3  |
|                       | Guhaghar     | 0                              | 7  | 4  |
|                       | Dapoli       | 0                              | 9  | 5  |
| Vengurla              | 1            | 9                              | 0  |    |
| Average for the dist. |              | 0                              | 9  | 5  |

The average assessments given above are for bagayat, rice and warkas lands. The averages for different kinds of lands for the Ratnagiri taluka are given below for purpose of comparison :—

| Kind   | Average |    |    |
|--------|---------|----|----|
|        | Rs.     | a. | p. |
| Garden | 5       | 7  | 0  |
| Rice   | 4       | 4  | 0  |
| Warkas | 0       | 2  | 10 |

The average for the warkas land would come to about 4 annas per acre. In the Kolaba district, average assessment of different categories of lands are as under :—

| Taluka                | Average assessment<br>per acre |    |    |   |
|-----------------------|--------------------------------|----|----|---|
|                       | Rs.                            | a. | p. |   |
| Panvel                | 3                              | 9  | 5  |   |
| Pen                   | 3                              | 5  | 8  |   |
| Khalapur              | 2                              | 5  | 11 |   |
| Alibag                | 5                              | 5  | 5  |   |
| Roha                  | 2                              | 11 | 10 |   |
| Mahad                 | 0                              | 13 | 11 |   |
| Karjat                | 1                              | 9  | 7  |   |
| Mangaon               | 1                              | 4  | 7  |   |
| Average for the dist. |                                | 2  | 4  | 7 |

(This statistical information has been culled from the Calendar of Settlements in the Bombay Province.)

The occupancy price in terms of multiples of assessment is quite distinct from the commuted value (compensation) of khot's dues payable by quasi-dharekaris, permanent and ordinary tenants under section 5. After acquiring occupancy rights, these persons will be free from the liability for payment of khot's dues. All rights of a khot in his capacity as a khot in such land have been extinguished from the date the Act came into force, i.e. 15th May 1950.

Now, we come to the compensation clause in the Act. Section 5 enacts that a quasi-dharekari, a permanent tenant or an ordinary tenant shall have to pay commuted value of the khot's dues. The procedure for commutation of such dues is given in detail in order to avoid any doubt or uncertainty in the payment thereof. Accordingly, the Mamlatdar of the taluka will give a notice to quasi-dharekaris, permanent and ordinary tenants and khots and hold a formal inquiry to determine the amount of commuted value. In estimating the commuted value, the Mamlatdar is to be guided by the following principles. To begin with, in the case of dues payable in crop-share, one-third crop share will be considered equal to two multiples of survey assessment fixed on the land and any other crop-share as a proportional multiple of such assessment.<sup>70</sup> As regards produce on any warkas land used for rab manure for rice cultivation, the commuted value will be taken as equivalent to one survey assessment of that land. The commuted value so arrived at shall not exceed three times the amount of khot's dues, if payable in cash, or three times the value of such dues if payable in kind, subject to the maximum of a sum equal to six times the survey assessment of the land or if the khot's dues are payable in crop-share, three times the commuted value reckoned in terms of multiples of survey assessment.

The amounts of occupancy price and commuted value are made recoverable as arrears of land revenue. This provision seems to have been inserted to allay the apprehensions of and to safeguard the amounts payable to the khots (section 6).

On abolition of the khotki, it is but proper that khots should deliver to Government records relating to khoti villages maintained by them under the provisions of the Khoti Act and the Kabulyats. Failure to deliver such accounts or records

70. The sub-section (3) of section 5 is based upon the provisions of Rule 5(2) of section 33 of the Khoti Settlement Act, 1880.

is made punishable with fine, which may extend to Rs. 200 and with additional fine which may extend to Rs. 25 for every day for the continuing offence after such conviction (section 7).

For the removal of doubt, it has been specifically declared that all uncultivated and waste lands in khoti villages not appropriated by any khot and not entered into revenue or survey records as khoti khasgi before the coming into force of the Act and all other kinds of property referred to in section 37 of the L.R. Code, etc., are to vest in Government. Government is empowered to dispose of such lands under section 37 or assign for public purposes under section 38 of the L.R. Code, 1879 (section 8).

For extinguishment of the khot's right to appropriate any uncultivated and waste lands not so far appropriated by a khot before 1st August 1949, a khot shall be entitled to compensation not exceeding the amount calculated at Rs. 5 per 100 acres of such land [sub-section (3)(b) to section 12]. This provision is very important and requires to be understood with reference to the distribution of different categories of lands in khoti villages. It may be recalled that under the Act, khots in respect of khoti khasgi lands, dharekaris in respect of dhara lands and permanent and ordinary tenants in respect of khoti nisbat lands have been made occupants within the meaning of the Bombay Land Revenue Code. In respect of khoti nisbat lands, where there is no tenant, a khot is also made an occupant (section 4). The result will be that there will not be probably any or considerable lands left for the Collector either to dispose of or assign for public purposes.<sup>71</sup> However, this salutary provision is made in order to enable the Collector to assign lands for grazing, public roads, etc. in such villages. It is a notorious fact that many khots withdrew lands from grazing and brought them under the plough, to the great inconvenience and harassment of the ryots. Absence of public grazing grounds in khoti villages was a fruitful source of friction and disputes between the khots and ryots and one of the important reasons of "veth" (forced labour). Under the existing law, Government could not do anything in the matter. This provision is expected to remedy the situation.

71. According to the *Ratnagiri District Gazetteer* (Vol. X), there is little, if any, unappropriated waste in the district (*vide* footnote 2 at p. 240).

Further, a khot's reversionary right under section 10 of the Khoti Act is extinguished (section 9) on payment of compensation which shall not exceed the amount calculated at the rate of Rs. 2 per 100 acres of such land [proviso (a) to section 12].

The forest rights of khots are provided for in sections 41 and 42 of the Khoti Settlement Act, for the Ratnagiri district and clauses 10 to 12 of kabulyats for the Kolaba district. Accordingly, the khots are entitled to  $\frac{1}{3}$  share from the net profits derived by Government from such forests after deducting the cost of management. It may be noted that the khot's rights to trees are distinct and separate. Provision in section 10 does not interfere with khots' rights to trees in private lands.

The main provision for compensation for extinguishment or modification of khots' rights is found in section 5; but for extinguishment or modification of any other rights, a residual provision is made in section 12. In estimating compensation in respect of these rights, the Collector is to be guided by the provisions of sections 23(1) and 24 of the Land Acquisition Act, 1894. The Collector is also empowered to decide all questions relating to disputes as to the nature of dhara, khoti khasgi, khoti nisbat or land held by permanent or ordinary tenants. Subject to the appeal to the Bombay Revenue Tribunal, the Collector's award or decision in this respect is to be final. Against the Collector's award or decision, an appeal lies to the Bombay Revenue Tribunal and should be filed within 60 days from the date of the award (sections 12 and 13). A court-fee stamp of Rs. 3 is to be affixed to every appeal to the Tribunal (section 14).

The provisions of the Bombay Land Revenue Code, 1879, have been applied (section 11) after repealing the Khots' Leases Act, 1865, the Khoti Settlement Act, 1880, and section 114 of the L.R. Code (section 17).

Lastly, the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, which has been extended to the khoti villages, will govern the relations of the present khots and tenants, except in so far as the provisions of the said Act are not in any way inconsistent with the express provisions of this Act (section 15).

## Consequences of the Abolition of the Tenure

From the foregoing facts, it will appear that the Bombay Khoti Abolition Act, 1949, is a comprehensive measure of great administrative, economic and social importance in the history of the Konkan and will go a great way in stabilizing the relations between the present khots and their tenants. Further, it is essentially a conciliatory enactment, conceding as it does, the attributes of occupancy to khots, quasi-dharekaris, permanent and ordinary tenants. It is now proposed to examine the probable administrative, economic and social effects in the Konkan.

Administratively, the new legislation will bring about a great change. The khoti system of village administration is an anachronism and is opposed to the general revenue system of the State. Till recently, except the police patils there was no other Government official in the khoti villages. And the police patil was often either a khot himself or his relative. Thus, the present administration of the khoti villages was more or less completely under the control of khots and persons other than khots had practically no voice in the administration. Periodical inspections by Government officials were resented by them, as they thought that management of khoti villages was their business and official inspection was an interference! With the removal of khots as managers of these villages, Government will have to appoint revenue patils. These officials will be responsible both to Government and the people. Their appointment would cost Government a little, but the village administration would be put on a par with the provincial pattern with the result that the village records which are at present either not maintained at all or maintained in a slipshod manner by khots will be replaced by a regular system of village accounts prescribed in the Revenue Accounts Manual. The records like the Abhavani Patraks, Bot-khats, and khatavni, etc., will go. At present there are no arrangements for boundary marks inspection or restoration. This defect will now be removed. The khots will be replaced by talatis and revenue patils who will be available to the ryots at the villages. This will enable Government to get statistics and returns about crops, land revenue, leases and other matters relating to the villages and village administration.

Further, the Record of Rights has been introduced in all the khoti villages of the Kolaba district only, but in those of the Ratnagiri district, action is being taken to introduce the Record of Rights. This will entail cost to Government; but it would, once for all, decide the rights, public as well as private, of the ryots and Government and put an end to many disputes between khots and the ryots. Introduction of the Record of Rights in the khoti villages would not only put the villages on a sound basis; but it will facilitate revision settlement work in future.

At present, there is no direct contact of Government officials with the tenant-cultivators. The abolition of the tenure and granting of occupancy rights to quasi-dharekaris, dharekaris, permanent and ordinary tenants would bring the ryots in direct relation to Government. This will enable the ryots to ventilate their grievances freely and get them redressed.

Further, various minute interests in lands of the khoti villages such as quasi-dharekaris of different denominations like daspatkaris, dupatkaris, didpatkaris and paune dupatkaris, which are found in juxtaposition with khalsa and inam lands will be removed. This change will help Government in implementation of its scheme of prevention of fragmentation and consolidation of holdings.

Lastly, the present quasi-dharekaris, permanent and ordinary tenants, who had no stake in the lands and no fixity of tenure will feel stabilized as occupants and would naturally put in more effort to improve fields and crops. As stated before, the Ratnagiri and Kolaba districts are deficit districts in foodgrains, because of the rugged and rocky terrain and ever-increasing population. Thus, the abolition of the tenure may help the "Grow More Food" campaign of Government.

Socially, there will be a tremendous change. We have seen before that the tenants have been agitating for abolition of 'veth', from 1920 onwards. The new legislation breaks the social bondage of the tenants particularly of the ordinary tenants (upri), who will now be occupants of the lands in their possession, and will breathe free air. The Kulwadi and Mahar tenant-cultivators will feel that they have a stake in the society because of the occupancy tenure. Besides, the abolition of the tenure will have a great psychological effect on the

people of the tract, which would perhaps outweigh any other material advantages flowing from this agrarian reform.

Economically, the effect will be that there will be now intensive cultivation. But in view of the rocky tract and paucity of fertile lands in the two districts, the economic advantages will be limited. According to the Ratnagiri District Congress Enquiry Committee<sup>72</sup> (1938), generally a farmer cultivates land measuring 21 gunthas (rice cultivation in 9 gunthas and 12 warkas land). This small area cannot be an economic holding sufficient to maintain a farmer and his family, all the year round. In the absence of canal irrigation, the agricultural operations are solely dependent on the monsoon and employ farmers for 5 months only! Since there are no Government grazing areas in the khoti villages, cattle wealth of the tract is poor and short-lived. Intensive cultivation of small holdings cannot help a farmer much. This geographical factor drives him to seek a living outside the district, mainly in Bombay. The increasing pressure of population is relieved to some extent by the migration of many persons for service or work in the metropolitan city; but this factor itself cannot improve the condition of the people unless appropriate conditions are created in these districts themselves for fuller utilization of the resources and full employment of the people by establishment of cottage industries, canals, roads, etc. Government have opened one Sarvodaya Centre at Kankavli in the Ratnagiri district for the social and economic regeneration of the people. But in the nature of things, the scheme will take time before it could show concrete results for improvement of the tract. But as things stand at present, the economic advantages flowing from the abolition of the tenure will be conditioned and limited by the human, geographical, economic environments of the terrain.

In a nutshell, from the administrative, social and psychological points of view, the new legislation will have far-reaching repercussions amounting to a revolution; but the material progress will be limited by the economic environments.

## CHAPTER VII

### LAND TENURE RECONSTRUCTION

#### Financial and other Implications of the Legislations

We have passed in review the legislations enacted by the Bombay Government in implementation of their policy of agrarian reform. To a superficial observer, these land tenure abolition Acts may appear to touch the fringe of the problem, as they do not deprive tenorial holders of their lands and retain them as ryotwari land-holders. It might appear that no radical reform of the land tenure system will be brought about by these legislations. Government may seem to have tinkered with the problem of the land reform, as they have not gone the whole hog by acquisition of all lands and interests therein. Apparently, these Acts seem innocuous; but they are revolutionary in character and effect. Like the Zamindari abolition legislations of the United Provinces, Madras or Bihar, they do not attempt to abolish, root and branch, the landlordism from the State; but they aim to clip the wings of the landlords with a view to make them harmless. Special rights and privileges, which enabled them to practice 'zoolam' are taken away by these Acts and they are levelled down to the status of ordinary landholders without any right either to raise rents beyond the statutory maximum or levy any obnoxious cesses. They will have a very beneficial effect on the ryots from the psychological point of view. The fear and inferiority complexes born of century-old domination by the various tenorial holders will be removed and the ryots will breathe free air and direct their thinking processes and energies to creative channels. Administratively, there will be a tremendous change with proportionately little cost. After the abolition of the Bhagdari, Narwadari, Maleki, Mehwasi and Khoti tenures, the introduction of the administrative arrangements in these areas will cost Government practically little. Only in the case of the talukdari villages, Government will have to appoint the village administration consisting of talatis, patels and inferior village servants and replace the Settlement

Registers by the system of Record of Rights. These administrative changes will necessarily entail fresh cost to Government.

As regards the cost on account of compensation, we have seen that the maximum quantum has been fixed at three times the annual profits from the lands or the amount of annual exemption from payment of land revenue. Under the Bombay Bhagdari and Narwadari Tenures Abolition Act, 1949, Government had practically to pay no compensation. Under the Bombay Maleki Tenure Abolition Act, 1949, the maximum compensation may amount to Rs. 1,05,000 only. But Government will be benefited annually to the extent of Rs. 35,000 by abolition of the Malek's vaje. For abolition of the Mehvasi tenure, the Mehwasdars will have to be compensated to the extent of their annual Mehvasi profits and this amount will be in the neighbourhood of Rs. 12,000. As against this, the Government gain would be in the increase of revenue to the tune of Rs. 20,000 annually on account of abolition of the Mehvasi profits. Under the Bombay Khoti Abolition Act, 1949, the commutation of the khots' dues will have to be paid by the tenants and not Government. For abolition of rights other than khots' dues, the compensation will have to be paid by Government. Under this item, would come acquisition of khots' lands for grazing grounds and other public purposes. The cost on this score cannot be estimated, as it would vary and depend on the requirements of the existing khoti villages. Lastly, under the Bombay Taluqdari Tenure Abolition Act, 1949, Government will have to pay compensation under section 7 for extinguishment or modification of the talukdars' rights in waste lands vesting in Government under section 6 thereof. For abolition of other rights in the talukdari villages, compensation will have to be paid under section 14 thereof. The exact amounts that Government will have to pay under the Khoti and Talukdari Tenures Abolition Acts cannot be definitely stated, as it would depend upon the nature of the rights extinguished and the class of property in respect of which such rights are either extinguished or modified under the Acts. Since full assessment is being paid in respect of the khoti lands generally, there will be no gain to Government from the point of land revenue collection. But in case of the talukdari tenure, the withdrawal of the concession in the matter of jama will yield

Government an additional revenue of Rs. 8,13,010 per annum from the talukdari lands in the Ahmedabad and Panch Mahals districts only. And the talukdars will not be entitled to any compensation for loss of this concession. In short, these agrarian reforms will cost the Bombay Government a few lakhs of rupees only and the payment of compensation will not require Government to borrow money by floating loans, and will not be a drain on the State exchequer. Thus, the Bombay Government has steered clear of the difficulties arising out of the Government of India's directive that in implementing zamindari abolition programmes, the State Government should not expect any financial help from the Centre or should not float loans and accentuate the existing inflationary tendencies.

These agrarian reforms are a magnificent achievement of the Bombay Government. Their significance and importance can be realized only when we make a comparison with such reforms and achievements of other Governments in the Indian Union, so far. For this purpose, it is necessary to briefly review the various legislative attempts for the zamindari abolition in different State Governments in India.

### Zamindari Legislations in other States: Madras

The Madras Government passed the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948. It proposes to take over 3,810 estates belonging to zamindars throughout the State covering an area of twelve million acres altogether. It provides for a sliding scale of compensation ranging from  $12\frac{1}{2}$  to 30 times the basic value of each zamindari estate, the small holders getting a higher percentage. The basic value of the estate will be approximately 25% of the annual rental of the estate after its conversion into ryotwari tenure. The total compensation is estimated at Rs.  $12\frac{1}{2}$  crores. Separate steps are being taken to abolish the inams as distinguished from the zamindaris and it is estimated that Government will have to pay compensation in the order of Rs. 5 crores. According to the Zamindari Abolition Act, compensation was to be paid to the estate-holders on the basis of the rental decided after the introduction of the survey and settlement in the estates. Since this provision created apprehensions in the minds of the zamindars, an amendment to the Act has been adopted to provide for part payment of the compensation to the estate

holders, pending introduction of survey and settlement. Rules have been framed under section 40(2) of the Act, which provide for payment of compensation in cash and where it is paid in instalments, provision has been made for payment of interest at 3% on the portion of compensation remaining unpaid. Some zamindars gave to the Collectors of the districts notices of suit questioning the validity of the Act, but the wind from their sails has been taken away by Article 31 of the Constitution of India.

### Bihar

The Bihar Government was the first Government in India to pass the Bihar Zamindari Abolition Bill. The total amounts to be paid as compensation are estimated in the order of Rs. 150 crores. It provided for payment of compensation in negotiable bonds redeemable in 40 annual instalments. When the Bill was sent for the assent of the Governor-General, the Central Government returned the Bill to the Bihar Government with instructions that the acquisition of the mining rights should be in conformity with the industrial policy of the Central Government; that the zamindaris with an annual income of less than Rs. 5,000 should not be acquired by the State and that cash compensation should be paid for the acquisition of zamindaris with annual income above Rs. 5,000. The new Abolition Bill prepared by the Bihar Government has incorporated the suggestions. It is understood that as a temporary expedient, Government has adopted another Bill called the Bihar State Management of Estates and Tenures Bill under which it is proposed to take over the management of the estates in order to prevent deterioration in the agrarian situation.

### U.P.

In the United Provinces, the Government has drafted "the United Provinces Zamindari Abolition and Land Reforms Bill, 1949", which is claimed by the United Provinces' Chief Minister as an "antidote to Communism" and will become the Magna Charta of the United Provinces' 50 million rural population. According to him, its revolutionary character could well be compared to the achievement of India's freedom. The main features of the Bill are acquisition of interests of all

the intermediaries on land on payment of compensation amounting to eight times their net income to all the zamindars and rehabilitation grants at a graded rate ranging from twenty to two to all the smaller zamindars paying an annual land revenue not exceeding Rs. 5,000. The Bill seeks to evolve a new and uniform system of land tenure, which combines the wholesome features of peasant proprietorship with the development of self-governing village communities, in whom will be vested the ownership of all common lands and powers of land administration and management. To overcome financial and legal difficulties, tenants are being asked to make voluntary contributions of ten times their rent to the Zamindari Abolition Fund. Tenants, who pay in advance ten times the rent, will acquire "Bhumidari" rights and, in the following years, will pay to Government only half the rent. Doubts were expressed as to how the tenants would pay this advance amount. The contributions to the 170-crore Zamindari Abolition Fund were commenced on the 2nd October 1949 and were expected to be over by the 31st December 1949. The press reports suggest that by December 1949 a little over Rs. 5 crores, as against an anticipated realization of Rs. 170 crores, were contributed to the fund. Government therefore extended the period upto the end of February 1950. By this time, only Rs. 7 crores have been contributed! In the circumstances, the practicability of the new legislation is much criticized by the zamindars on the one hand and the Socialists on the other. Because of the provisions of Article 31 of the Constitution of India, the legislation will be saved from attacks on the score of compensation.

### C.P.

The Central Provinces Government passed a resolution in about 1947 demanding the abolition of the malguzari system. Under the present malguzari system, 75% of the revenue collected by a malguzar is paid by him to Government, while he gets only 5% of the remaining money after meeting the cost of collection. A Bill has been drafted on the United Provinces model for the elimination of the intermediary interests. The Bill proposes to pay compensation on the basis of 5% assets and rehabilitation grants to malguzars. This will cost nearly Rs. 5 crores to Government. It may be noted

that between the Central Provinces middlemen and the zamindars of the permanently settled States, there is a vital functional difference. In the latter, the land revenue was settled in perpetuity, the zamindar being required to pay it. In the Central Provinces, the revenue is not fixed permanently and the malguzars are essentially revenue collectors retaining a varying but substantial slice as their service charges. With some differences in detail, the Central Provinces measure adheres generally to the principles underlying the United Provinces legislation. As in the United Provinces, provision has been made to raise the compensation money, which is fixed at 10 times the net annual incomes of the intermediaries, by asking tenants to pay in advance a certain multiple of their rent against the concession of securing the right of peasant proprietorship and other ancillary perquisites. It is needless to say that the success of the measure will be determined largely by the success or otherwise of the drive to collect the advance rent. The Central Provinces Government has enacted another measure of agrarian reform on the model of the Bombay Tenancy and Agricultural Lands Act, 1948. The legislation provides for fixity of tenure, prohibits sub-leasing below a prescribed limit in order to prevent fragmentation and gives to a tenant the right to purchase from his landlord the leasehold land he is tilling, provided that thereby the total area of his holdings does not exceed 50 acres and that the personally cultivated land of the landlord does not fall below that level. Though these are valuable concessions, their benefits are necessarily circumscribed by economic considerations and as in the case of the Bombay legislation, the advantages of the Central Provinces enactment can accrue only to a few prosperous tenants able to purchase land without financial assistance.

### Orissa

In Orissa, Government appointed in 1946 the Land Revenue and Land Tenure Committee to recommend legislative and other measures for reforming the different systems of land tenures in the State. The Committee published its report in 1949. Its recommendations are based on an order of society in which "in the ultimate analysis, the land belongs to the community and the community has always the right

to regulate it in its own interests".<sup>1</sup> The Committee has emphasized the need for integrating agrarian and administrative reforms for the purpose of better exploitation of land and water resources for the benefit of the community.

The scheme envisages decentralization of land revenue administration. The Committee has suggested the following steps for abolition of the intermediaries:—

A comprehensive Orissa Lands Management and Local Government Bill should be prepared and passed to provide for the following among others: The State, excluding the big municipal and industrial areas, will be divided into administrative areas known as Anchals. There will be a local authority in every Anchal to be known as *Anchal Shasan*, which will consist of an elected *Sabha*, the Anchal Sabha and an executive officer to be known as Anchal Sarbadhikari. After the Anchals are delimited and executive officers appointed for them, the first stage of reform will commence by a notification of the State Government. The Anchal Shasan will come into existence, the Anchal Sarbadhikari alone functioning as the local authority.

All engagements for land revenue, whether known as peshkush, sadr, jama or otherwise made or entered into with or by proprietors under the permanent or temporary settlements, will then be annulled. All alienations or assignments of the land revenue made or recognized by Government whether for a term or in perpetuity or permanent, conceded by the Government in favour of proprietors will cease to be effective. The customary and legal right of the State to a certain proportion of the produce will vest in the community which will exercise it through the Anchal authority.

The proprietors, tenure holders and other persons who will be deprived of the possession and management of their estates or interests by the scheme will be entitled to receive *Malikana* to be paid annually and in perpetuity from the Anchal Fund. For the purpose of calculating malikana, the average of the legitimate gross income that is due during the agricultural year in which the management is taken over by the Anchal Shasan and the gross income derived by the zamindar and other intermediary interests during the preceding two years

1. The Report of the Land Revenue and Land Tenure Committee, Orissa, p. 9.

will be taken as the basis. From the whole, there will be a reduction of 15% on account of cost of management. Malikana will be granted on such average incomes from 20% for sums not exceeding Rs. 1,000 to 7½% for incomes exceeding Rs. 5 lakhs. The maximum limit of the scale of malikana has been raised to 20% of the net income in ordinary cases, to 60% in the case of revenue-free estates and to even 100% in the case of some temples (viz. the temple of Jagannath).

After the estates and other interests are taken over by the Anchal Sarbadhikari, he will, acting under the supervision and control of the Land Reforms Commissioner divide the Anchal into a number of suitable areas each consisting of one or more villages with a collection of land revenue ranging from Rs. 3,000 to Rs. 5,000 for the purpose of land revenue collection and for the formation of the *Gram Panchayats*, etc. The work of collecting land revenue will be done by the Gram Panchayats.

The above scheme seeks to achieve deprovincialization of land revenue and decentralization of administration. Its success will be conditioned by the capacity, energy and experience of the Land Reforms Commissioner, the Anchal Sarbadhikaris and members of the Gram Panchayats. One serious drawback of the scheme seems to be its payment of malikana in perpetuity. Unlike zamindari legislations in other States, this provision regarding payment of compensation in perpetuity to the zamindars and other intermediary interests is quite novel and one may question why the posterity should be burdened with the financial liabilities in respect of holders of rights and privileges, that have outlived their utility.

### East Punjab

As regards the East Punjab, an Ordinance of extraordinary importance relating to the abolition of the zamindari and occupancy tenure in all parts of the Union was issued in August 1949 by the Government of the Patiala and East Punjab States' Union in commemoration of the first anniversary of the Union. It provides for division of land between occupancy tenants and landlords. Landlords will get one-fourth of the land and the remaining three-fourths will go to the tenants, thus making the latter peasant proprietors. The tenant has also been given the choice of claiming the landlord's share of one-fourth of the

land against cash payment; but the landlord cannot claim the tenant's share.

As regards settlement of value, the Ordinance provides that it shall be determined not by the landlord but by a high-power partition committee to be appointed for the specific purpose and partition will be effected by the partition officer, who will also assess the compensation and settle disputes between landlords and file suits in *forma pauperis* in respect of realization of arrears of rent. Provision has been made to the effect that a tenant or his heir, who had been dispossessed of his land during the last nine years for non-payment of dues to the landlord is entitled to reclaim his land on payment of decretal amount. The actual working of the Ordinance and its progress and effects are not known.

### Assam

In Assam, the necessary legislation for abolition of the Zamindari is under consideration of that Government.

### Madhya Bharat

Lastly, among the States Union Governments, the Madhya Bharat Ministry is the first to introduce (1) the Jagir Abolition Bill, and (2) the Zamindari Abolition Bill. Before drafting these Bills, the Government had appointed a committee called the Rajasthan Madhya Bharat Jagir Inquiry Committee and on its recommendations, the Bills have been drafted. The Committee has taken the view that the jagirdari and zamindari systems are at best nothing more than intermediaries between Government and the actual tiller of the soil. The jagirs are a major problem in the State as well as in the neighbouring State of Rajasthan. Government has taken over functions such as maintenance of law and order in their States with the result that the jagirdars have been reduced to mere recipients of rent. The Committee has recommended that the Jagirdari should be abolished and that the work of revenue collection from jagir villages should be taken over immediately. But it has suggested that the jagirdars should be paid annually a rehabilitation allowance for a period of 10 years, after vesting all the jagirs in Government. The Jagir Abolition Bill provides accordingly that the allowance (or grant) will be fixed according to a sliding scale rising from 30% of the gross

income, where it is Rs. 2,00,000 or more to 80%, where it is less than Rs. 1,000. The Zamindari Abolition Bill provides that amount of compensation will range from eight times the net income, where the land revenue paid by the zamindar exceeds Rs. 5,000 to 20 times the net income, where the land revenue is upto Rs. 100. It further provides for interim payment, if compensation claims are not settled within a year of acquisition of the proprietary rights and for payment of the total amount in 15 annual instalments. There is no indication of the probable amounts of compensation and rehabilitation grants the State will have to pay to the dispossessed jagirdars and zamindars. It is problematic whether these amounts can be met from the increase in land revenue. Perhaps the period of 15 years may be too long in view of the political uncertainties of the future and the absence of provision for accumulation of interest.

On the basis of the U.P. Zamindari Abolition Bill, the Zamindari Abolition Bill provides that non-occupancy tenants and sub-tenants, who pay in advance, respectively, six times and fifteen times the present rent within six months of the acquisition of an estate, will acquire "Bhumidari" rights. It follows that those, who do not pay this amount within the stipulated period of six months, will continue as tenants. We all know the fate of the U.P. Zamindari Abolition Fund to which the tenants have not been able to pay more than Rs. 7 crores as against the anticipated amount of Rs. 170 crores, even after extension of the stipulated period of payment. This provision is therefore of doubtful value to the tenants.

It may be stated that both the Bills are not ambitious like the U.P. and Orissa Zamindari Abolition Bills, which envisage handing over of the entire village administration to the village panchayats, formation of co-operative farming, etc. According to press report, the latest development in respect of these Bills is that the Central Government has advised the Madhya Bharat Government to go slow with their zamindari abolition programme as the Committee's Report is under the consideration of the Centre.

From the foregoing brief survey of the zamindari abolition legislation in India, it will be clear that except in Madras, Bihar and the United Provinces, much progress has not been made in the matter of abolition of the zamindars. And even

in Madras, Bihar and the United Provinces, although the legislations have been passed by the State Governments, the progress has not kept pace with the enthusiasm of the Government concerned on account of colossal cost of compensation and other difficulties inherent in the measures. Viewed in this background, the achievements of the Bombay Government are magnificent, since the agrarian reforms have been brought about without much discontent and disturbance and with comparatively little cost to Government. Thus, Bombay, as in other respects, has given a lead to other States of India in the matter of agrarian reform and has provided an example to emulate. In fact, other Governments have adopted the essential principles of our tenancy legislation and it is not unlikely that the scheme of our land tenure abolition Acts may be followed in their reforms in future.

Now, one may legitimately ask that these Acts of the Bombay Government are all negative in character in that they abolish the land tenure and that they do not provide for land reforms after the liquidation of the special rights and privileges of the tenurial holders. This defect was noticed in the legislations for abolition of the zamindari in Bihar and Madras. But this was because the zamindari abolition Acts did not precede agrarian reforms of the type we have in the Bombay State. Still, there is no tenancy law worth the name in Madras.

It must be noted that our land tenure abolition Acts were preceded by the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, and the Bombay Tenancy and Agricultural Lands Act, 1948. Under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, Government seeks to prevent fragmentation of dwarfed holdings and consolidate the existing fragments of land. It is understood that much spade work has been done so far, but the work about actual consolidation of holdings is yet to commence. The schemes seek to achieve consolidation of ownership and not of cultivation. Perhaps this may limit the benefits expected to result from the consolidation proposals. But when the whole process is over, the full benefits of the measure will become apparent. The Bombay Tenancy and Agricultural Lands Act, 1948, has settled the relations between landlords and tenants as regards rental, tenure, trees, house-site,

etc.; and paved the way for the enactment of the land tenure abolition Acts. These Acts seek to settle the relations between the State and landlords. This work will take a year or so and, then, the whole process of settlement of relations of the landlords and tenants *vis-a-vis* the State will be more or less complete. But these reforms are not enough for an overall agricultural progress. The negative measures like the abolition of the zamindari or land tenures cannot in themselves prove the *open sesame* to radical reform. The basic problem of inefficiency and uneconomic cultivation persists. For this state of affairs, other positive measures are necessary. In order to formulate measures, we must have a clear conception of the available resources of the State and the future pattern of agrarian economy to be based thereon. Although, agriculture is the economic staff of our life in India (nearly 70% of the people subsist on agriculture), the agrarian problems have been discussed threadbare. "There is no little irony in the fact that while a basically agrarian country like India has witnessed an industrial revolution, she still awaits what might appropriately be called an agricultural revolution."<sup>2</sup> There is no doubt that the agrarian reform measures of various Governments will bring about this revolution gradually; but, as stated before, the legislative attempts at land tenure reforms alone will not be adequate and will not produce the expected favourable results.

### Future Pattern of Agrarian Economy

We may now proceed to consider the future pattern of agrarian economy. The Nehru Committee has laid down the basic principle which should govern the land tenures of the future after the elimination of the intermediaries:

"Land should be held for use and as a source of employment".

According to press report, the Kumarappa Committee on Agrarian Reforms appointed by the Congress President in 1947 has stressed the point that the land is a social asset, the use of which must be strictly regulated by the State. The future pattern of agricultural economy must not be static and unalterable but be evolved progressively and without social

2. *The Times of India* dated 12th December 1949.

disturbance out of the experience gained by our experiments and under the pressure of new economic and social forces that will be released by the abolition of different land tenures.

The objective is to achieve the maximum utilization of the resources in agriculture with a view to attaining optimum production of foodgrains and other crops and provide employment to the agricultural population. "The crux of the problem of India's agricultural economy is a very unfavourable ratio of resources to men. There are too many men and too little capital employed in agriculture. The result is that agriculture is inefficient and the agriculturists are poor. On top of this, the organisation of even the existing resources is uneconomic and irrational."<sup>3</sup>

### Agricultural Statistics

In the existing agricultural conditions of the country, we have to think out the measures for the overall amelioration of the peasantry. Effective planning and agrarian reforms can be undertaken only if we have exact agricultural statistics about our resources. It is admitted on all hands that our agricultural statistics are not only woefully deficient in detail but they are very often misleading; because exactitude is rare in minor over-worked village officials like talatis, who seem to be inclined to doctor their estimates because of various controls of commodities. Furthermore, "The statistics in India are largely a bye-product of administrative activities".<sup>4</sup> All statistics in India have so far been collected and compiled as an aid to administration; but not "as an aid to the formulation of social policies".<sup>5</sup> The necessity of accurate agricultural statistical data has been keenly felt in formulation of the policy connected with the "Grow More Food" campaign. In this connection, Dr. Rajendra Prasad in his presidential address to the All-India Agricultural Economic Conference held in Madras in January 1950 has admitted that there is a lack of reliable statistics and that planning becomes difficult, if not impossible, both in respect of any satisfactory scheme for increasing the yield and for its proper distribution. Dr.

3. Prof. M. L. Dantwala, *Indian Agriculture*, p. 37.

4. Professors Bowley and Robertson, *A Scheme for an Economic Census of India* (1934), p. 38.

5. Report of the Royal Commission on Agriculture, Abridged edition, p. 77.

Mahalanobis, however, was more frank in his recent presidential address before the Indian Science Congress. "It is best," he stated, "to confess that India really does not know the actual (agricultural) position."

In these circumstances, the primary need in this matter is that Government should collect statistics regarding agro-economic problems like rainfall, occupational population, agricultural stock, cultivation of land, crops, leases and sale of lands, agricultural wages, agricultural indebtedness, mortgage debt, sub-division and fragmentation of holdings, facilities for rural finance, economic holdings, social repercussions of the incidence of land revenue assessment on different strata of society, etc. This is not to say that Government has done nothing in this direction. Statistics are collected by various departments of Government; but this is done as an aid to administration and there appears no adequate co-ordination. Now, with the advent of Independence, the objective has changed and the statistics are being collected and co-ordinated with a view to formulation of socio-economic reforms.

As regards the future pattern of economy, one has to be very cautious and circumspect in formulation of the policy. Even the Kumarappa Committee suggests that this can only be arrived at by experiment and observation but, in the meanwhile, schemes can and must be launched. The Sarvodaya Planning Committee is of the opinion that "the existing pattern of agrarian economy is so complex and the problems which it has to face are so variegated that no single uniform method of land utilization can meet the requirements of the situation. The agrarian policy of the country should therefore subserve the principles governing the system of production".<sup>6</sup>

It has been alleged that Government authority in India has too often and far too long been obsessed with the collection of land revenue to the exclusion of other agrarian duties. With the advent of Independence, Government has considerably changed its attitude in this respect. But the need for a closer plan of the economic integration cannot be over-emphasized in the present context of the country. Crop-planning, anti-erosion measures, assignment of grazing grounds, crop rotation, afforestation, and collection of statistics

6. Principles of Sarvodaya Plan (1950), pp. 11-12.

are urgent agronomical measures to be adopted by Government with proper agencies for supervision, control and co-ordination. This sort of co-ordination can be achieved only if we have institutions for agricultural research. That India is lagging behind in this respect was emphasized by Prof. Ashby after his recent study tour of India. He was constrained to observe that "Having regard to (a) the area of agricultural land, (b) the size of the agricultural population, (c) the importance of agriculture in the national economy—its actual and potential contributions to national wealth—I am appalled at the small provisions made for investigation and research in Agricultural Economics."<sup>7</sup> What strikes the trained eye of a foreigner in a rapid tour of a month in India remains unobserved and unattended to by us!

Planning in agriculture must be governed by a two-fold aim, viz. economic efficiency and the creation of new social values suited to the genius and traditions of the country. It must make for maximum food production and the highest possible standard of living for the community. The people should be able to obtain wholesome and nourishing food at prices within their reach and the efficient cultivator should get an adequate remuneration for his services to the community and safeguarded from poverty and distress. The future agricultural policy must aim at the highest development of the national heritage, the full use of both natural and human resources.<sup>8</sup>

The economists and administrators alike advocate peasant proprietorship and co-operative farming as the future pattern of our agricultural economy for the amelioration of our peasantry. The peasant proprietorship as a solution of our economic system has been suggested by the Prakasam Committee in Madras, the Floud Commission in Bengal, Dr. Naidu's Report on Indebtedness in Madras and Acharya Kripalani in his address as President of the Congress in 1946. In the circumstances, the proposal calls for thorough study for appreciating its implications. It is therefore proposed to examine how far these remedies are feasible under the existing economic conditions.

7. Prof. A. W. Ashby, *Agricultural Economics in India* (1950), p. 2.

8. Report of the United Provinces Zamindari Abolition Committee, Vol. I, p. 477.

## Peasant Proprietorship

As regards the peasant proprietorship, Mr. Charan Singh of the U.P. is one of the staunchest advocates. He considers that peasant proprietorship is the only system which can provide a workable solution to our land problem and is the only way to the greatest happiness of the largest number of the people.<sup>9</sup> According to him, the system has two underlying principles. Firstly, land should be regarded, not as a source of rent providing an unearned income for its owner, but as a definite and limited means for employing the labour of a class of citizens, whose regular occupation is the tilling of the soil. Consequently, it should be allowed to be acquired only by him who is prepared to cultivate it himself—to the total exclusion of rent or income without labour. Secondly, land being a national asset, the right to hold it should necessarily attach the obligation to use it in the national interest and nobody, therefore, has a right to abuse or misuse it. And, whether landlord or peasant, if the owner or holder does not fulfil the social and economic duties incumbent upon property, he must be treated as a speculator or a defaulter and be divested.

The first principle that none should be allowed to derive an unearned income from land suggests two measures:

- (i) the raising of the existing tenants to the ownership of their holdings, and
- (ii) the preventing of the passing of land into the hands of speculators or non-agriculturists in the future.

The second principle that land, being a national asset, should be used to the best possible advantage of the community leads to two others, viz.

- (iii) reclamation of waste land, its distribution among holders of uneconomic farms and, if excess is available, settling of landless agricultural labourers thereon, and
- (iv) regulation of the size of holdings and their internal organization.

In the circumstances, steps should be taken to see that land is prevented from passing into the hands of absentee or non-agriculturist owners, who will not or cannot cultivate the land themselves, but will let it out either on cash or produce rents.

9. Charan Singh, *Abolition of Zamindari*, Chapter V, p. 126.

If land can be freely sold, richer people would gradually buy up big plots of land and a large section of the peasantry would again be deprived of land and this process will complete the vicious circle.

As regards regulation of the size and internal organization of holdings, the Government policy should aim at the prevention or abolition of unduly small farms and large farms and the re-arrangement of farms which are uneconomical because of their small and scattered character.

The arguments put forth by the advocates of peasant proprietorship are succinctly summarized as under:—<sup>10</sup>

- (1) It will give maximum employment to the labour available.
- (2) It will bring about economic decentralization and give an independent means of support to the majority of producers.
- (3) It will preserve liberty and a democratic rural society and establish social stability and self-respect.
- (4) It will give the greatest possible yield per acre, maintain maximum soil fertility and also help to intensify livestock production.
- (5) It offers no hindrance to technical progress, while it suits our social structure and satisfies the Indian peasants' love for land.

According to Shri Charan Singh "for India, circumstanced as she is today, peasant proprietorship is the ideal economy—the next step at any rate or the final step as you will".<sup>11</sup>

### Criticism of Peasant Proprietorship

But the proposal for establishing peasant proprietorship in India has been severely criticized by many agro-economists as impracticable and as one not likely to secure the advantages claimed for it. All the theoretical advantages of the system are not available to all countries and times. It should not be forgotten that the most dominant and intractable feature of our agrarian economy is the small size of the holdings occupied by a vast majority of the cultivators. The growth of population has affected the size and distribution of the holdings in

10. Prof. P. N. Driver, *Problems of Zamindari and Land Tenure Reconstruction in India*, p. 184.

11. Charan Singh, *Abolition of Zamindari*, p. 154.

general. In Bombay, the pressure of population coupled with the effects of the Hindu and Mohamedan laws of inheritance and the free right of transfer of lands under the ryotwari (survey) tenure has led to a gradual and systematic increase in the sub-division of holdings. As regards the size of the holdings, the Bombay State is supposed to have a bigger size than most other States; but on the other hand, the yield per acre of net area sown is the lowest in India, i.e. about 0.19 of a ton per acre. Further, although the average ryotwari holding is about 11 acres, nearly 50% of the holdings are below 5 acres in size, while as many as 78.5% of the holdings are below 15 acres. The number of holdings increased from about 12,72,000 in 1904-05 to over 23 lakhs in 1942-43.<sup>12</sup>

In the above circumstances, prevention of fragmentation and consolidation of holdings is considered a pre-requisite to peasant proprietorship. It has been argued that legislative measures for consolidation of holdings would remedy the state of affairs. The attempts so far made in this direction are not encouraging. The reasons are that the procedure of compulsory consolidation through legislation, besides being very expensive and tedious, involves acts of ejection and forcible expropriation which violate the fundamental aspects of the institution of private property. Shri Charan Singh suggests that a combination of compulsory and co-operative methods coupled with the taking over by the State of the cost of consolidation or a very large part of it, would accelerate the process of consolidation at the desired pace. A national or governmental drive from the top and a staff of honest and competent consolidation officers and surveyors, amins, etc., possessing imagination, interest in their work and sympathy for the cultivators, are, of course, the two *sine qua non* of the success of the scheme on any national or provincial scale.<sup>13</sup> But agro-economists like Prof. Driver are sceptical about the success of the schemes of consolidation of holdings for fragmentation and the principle of primogeniture for the sub-division of land. Consolidation of holdings will not be an effective solution for uneconomic holdings. Even Charan Singh says in despair that "Before leaving the subject, we must admit that a final

12. Prof. P. N. Driver, *Problems of Zamindari and Land Tenure Reconstruction*, p. 188.

13. Charan Singh, *Abolition of Zamindari*, p. 208.

or perfect remedy for the too small, or uneconomic size of farm business is difficult to find".<sup>14</sup> But when Government fixes the 'basic holding' and the 'economic holding' as suggested by the Kumarappa Committee, perhaps consolidation may prove to be a practicable proposition. Of course, it cannot serve as a cure-all of all the agricultural evils of the land system.

Further, peasant proprietorship cannot succeed so long as there is untrammelled right of transfer. It is true that there will be a few transfers and no zamindars with a right to eject tenants. But so long as land remains a marketable commodity, sales and transfers of land would take place.

The solutions suggested above do not come within the realm of practicability. As regards the raising of tenants to the ownership of their holdings, it is found that the curtailment of large farms whether under personal cultivation or lease and re-distribution of land among tenants is not desirable and expedient under the present circumstances. Again, the land available for re-distribution does not seem to be adequate. Furthermore, tenants have not the wherewithal to purchase lands from their landlords on payment of a small occupancy price. Of late, the rural credit has considerably shrunk up and it is a question whether Government can step in to finance such a scheme.

With regard to reclamation of waste lands and their re-distribution among uneconomic holdings, much of such lands will be required for afforestation, grazing grounds and growing fodder crops to restore the agronomic balance. In the circumstances, the area available for cultivation will be very small.

The proposal of peasant proprietorship envisages retention of private property in land. This has led socialists and communists to urge that the system envisages a pre-capitalist society out of which capitalism has emerged and that its establishment or re-establishment would mean turning back the wheel of progress. According to them, the logic of agricultural evolution demands the abolition of private property in land and the establishment of a planned system of production for use based upon the technical advances made by capitalism. Against this, it has been urged that small private property in land instead

14. Charan Singh, *Abolition of Zamindari*, p. 244.

of being a "fetter on production" is rather an encouragement to higher production and the mechanical inventions have not been proved by themselves to produce two ears of corn where one grew before. The establishment of a planned economy of production is not an indispensable preliminary to an exploitation of the technical advances made under the capitalistic system.

In view of the difficulties stated above, the formation of peasant proprietorship in the existing circumstances does not seem to be a practicable proposition in the immediate future.

### Co-operative Farming

Now we proceed to discuss the co-operative farming, which has been advocated as a panacea for our agricultural economy. Co-operative farming is one of the methods of re-organizing agriculture by means of large-scale farming. The writers on co-operative farming have no clear conception of the system and they have, therefore, found it easier to say what co-operative farming is not rather than to assert clearly what it is or can be. Captain Mohite, the author of the Report on Co-operative Farming in Bombay also talks negatively about co-operative farming:

"Co-operative farming may mean farming or any part of it done by coming together. It would, however, be obviously wrong to call farming co-operative, if it is carried independently by individual owners or tenants, who come together and organize not the whole or any part of the actual process of farming as a joint enterprise, but only the supply of credit, agricultural or domestic requirements, the processing and marketing of produce."<sup>15</sup>

As an essence of co-operative farming, the Advisory Board of the Imperial Council of Agricultural Research in 1944 has suggested in its Memorandum on the Development of Agriculture and Animal Husbandry in India that there should be the physical pooling together of all the small plots of land in a village. The Memorandum states that "Here, each cultivator would retain his rights in his own land, but cultivation operations would be carried on jointly. The expenditure would

15. Captain Mohite, *Report on Co-operative Farming in Bombay*, p. 20.

be met from a common fund and deducted from the gross income. The net income would then be distributed among the cultivators in proportion to the land belonging to each". The Report of the Indian Delegation on Co-operative farming in Palestine observes that "The essence of real co-operative farming, therefore, is the pooling of small and scattered individual holdings and cultivating the land so pooled as one unit by the owners of the holdings".

Now, we may proceed to consider the essential features of co-operative farming. Broadly, they may be stated as under:—

- (1) A co-operative farm would be organized on the basis of voluntary association without the exercise of any coercion by the State.
- (2) The members would pool their stock, land and capital. The farm would be exploited as one unit under an elected management.
- (3) The agricultural technique will not be mechanized.
- (4) The private property of the individual in his land would be recognized in so far as he would be entitled to a share of a part of the profits in proportion to the land contributed by him.
- (5) The rest of the profits would be distributed on the basis of work done.
- (6) The members would be free to live and eat separately, i.e. consumption will not be organized collectively.

This form of organization provides for the small producer the economies of large-scale enterprise in obtaining credit, purchase of stock, equipment or raw material, marketing of produce, increased capital resources, technical knowledge, optimum use of labour, land or other factors of production, efficiency of work on account of division of labour and efficiency of organization and management. The co-operative farming, in short, will concern itself with the means of production and distribution of agricultural produce and not consumption.

A co-operative farming society may take one of the following forms:—

- (1) Co-operative Better farming society.
- (2) Co-operative Joint farming society.
- (3) Co-operative Tenant farming society.
- (4) Co-operative Collective farming society.

For details about the formation of the above societies, the reader is referred to the Report on the Co-operative Farming in Bombay by Captain Mohite. Of course, the main features of the societies are more or less the same in all the four forms of the societies except in the collective farming society which has been tried only in Russia on a national scale and in which members lose their right of individual ownership.

It has been suggested that the process of co-operative farming should be commenced through the establishment of multi-purpose societies. Such societies do exist in the Bombay State and should be instrumental in paving the way for formation of co-operative or joint farming societies.

After formation of such societies, the question remains whether there will be an effective incentive for work on a co-operative farm. It may be argued that the "magic of private property turns sand into gold". The individual should feel that he must put in the best in him and all the workers should also feel and act accordingly. In a society, economic motives are not the only incentives. The problem is psychological and the members should be educated about new motives and impulses. Further, the shift of emphasis should be from acquisitiveness to higher social values. Furthermore, there will be the loss of individual freedom; but that loss of freedom will be compensated by the sense of solidarity and personal security that such societies will give to their members.

### Difficulties in Co-operative Farming

But there are insurmountable difficulties to the immediate establishment of co-operative farming on a large scale. It can be achieved only by a slow process of experiment and evolution. A few societies purporting to be Joint Farming Societies have been formed in the Bombay State.<sup>16</sup> Having regard to the existing methods of cultivation, distribution of land, the ryotwari system of land settlement, acreage of irrigated and irrigable lands, the extent of Government waste land available in the State and the psychology of cultivators, the co-operative farming societies are suitable. The collective farming societies of the type of Russia are not suitable for adoption in the country, because it fundamentally affects the right of private

16. Captain Mohite, *Report on the Co-operative Farming in Bombay*, p. 26.

ownership of land. Any attempt to form such societies may be considered as an attempt at expropriation and confiscation. Again, the Constitution of India recognizes the right of private ownership in land as one of the fundamental rights of the citizens of India. In the circumstances, the collective farms established in Russia and Palestine cannot serve as examples to be emulated in India. The only way of securing the benefits of large-scale cultivation without affecting any of the social institutions and interfering with the framework of private property is by the establishment of co-operative farming.

Notwithstanding these factors, there are obstacles to the adoption of co-operative farming in India. To begin with, the peasant's attachment to his land, a strong sense of property, love of independence and his ingrained conservatism are definite difficulties in establishing co-operative farms on a voluntary basis. Factiousness is a bane of village life nowadays. A democratic government representing the people cannot think in terms of coercing a vast mass of agriculturists.

Secondly, even if co-operative farms were established, their maintenance and successful working would require a degree of managerial skill and technical knowledge which is normally not found in ordinary villagers. It is therefore necessary to undertake schemes for the general and technical education of cultivators and to provide efficient and trained personnel for control, supervision and direction of co-operative farms. The State will also have to maintain strict supervision over the finances and accounts of the co-operative farm. It will have to provide for short-term and long-term finance. In the present circumstances, the State cannot provide the necessary technical and administrative personnel. It is therefore clear that even to start a co-operative farming society in a single village would require much careful planning, technical knowledge and administrative skill.

The above difficulties, though not insurmountable, are really great. But they can be removed only by creating the conditions at present wanting in the villages. The lack of technical and administrative personnel can be removed by recruitment and training of persons, who will be called upon to organize and supervise the management of co-operative farms. The rules for the purpose will have to be worked out in consultation with the Agricultural and Co-operative Depart-

ments and other organizations like the All-India Village Industries Association, etc. The personnel should accept the job as an opportunity for social service. Demonstration co-operative farms should be established on re-claimed lands. Propaganda should be made for making co-operative farms attractive and popular among the people. Since a village is the ultimate unit of farming, a beginning may be made with a smaller unit as far as practicable. In order to supply incentives for voluntary co-operation, Government should offer inducements in the shape of low rate of rent for such farms, provision of credit for productive purposes, sale of improved seeds, implements, medical, sanitary and educational facilities, etc. The real difficulty with cultivators is of credit. The financing authority should not take a static view of creditworthiness of a cultivator and should allocate credit on the assessment of a farmer's production potential.<sup>17</sup> The present system of advancing Government loans on the security of the immovable property of a farmer requires to be revised. The Bombay Government has already relaxed the rigid rules regarding tagavi loans to agriculturists.

The Kumarappa Committee has recommended co-operative joint farming for holdings below the basic size. Such farms should be formed wherever the requisite number of below-basic holders come together and constitute a holding of the optimum size. The idea underlying this suggestion seems to be that there is a limit below which family farming, even with all co-operative aids, ceases to be economic.

All the same, "the fact remains that neither peasant proprietorship nor co-operative farming offers a practicable scheme for immediate adoption. The basic difficulties of both appear to be insurmountable".<sup>18</sup> "However attractive, therefore, co-operative farming appears at first sight, as a practical proposition, it is hardly workable under the present conditions."<sup>19</sup>

Whatever may be the theoretical, financial and administrative difficulties in the co-operative farming system, the idea of co-operative farming has come to stay. And the State Governments have passed or propose to pass legislations for

17. Prof. M. L. Dantwala, *Indian Agriculture*, p. 41.

18. Report of the U.P. Zamindari Abolition Committee, p. 518.

19. Nanavati and Anjaria, *Indian Rural Problem*, p. 130.

creating conditions which might pave the way for establishment of co-operative farming.

According to the press report, the Report of the Congress Agrarian Reforms Committee appointed in 1947 under the chairmanship of Dr. J. C. Kumarappa has been published and the future pattern of agrarian policy of the Union and State Governments would be regulated by the orders to be issued on the recommendations of that Committee. The said report is under examination of the Working Committee of the Congress.<sup>20</sup>

### **Kumarappa Committee's Recommendations**

As regards the future pattern of agricultural economy, the Report says that "no single uniform method of land utilization can meet the requirements of the situation in view of the fact that the existing pattern of agricultural economy is very complex and the problems which it has to face are variegated". The Committee has kept before itself the following principles as governing the agrarian policy of the country:

Agrarian economy should provide an opportunity for the development of the farmer's personality. There should be no scope for exploitation of one class by another. There should be maximum efficiency of production and the schemes of reform should be within the realm of practicability.

The central concept of the recommendations of the Committee is that an economic holding should be determined according to the agronomic conditions on the principles that it must afford a reasonable standard of living and provide full employment to a family of normal size and at least to a pair of bullocks. It has recommended (1) a basic holding, and (2) an optimum holding. A basic holding has been defined as a holding smaller than that which would be palpably un-economic from the point of view of efficiency and agricultural operations.

It has also proposed a ceiling to the size of a holding, which an individual farmer should own and cultivate. The supply of land, in relation to the number of people seeking it, is so limited that not to put a ceiling on individual holdings would be irrational and unjust. Besides, under the present technique of cultivation, the managerial capacity and the financial re-

20. The said Report is since published.

sources of an average cultivator in India, the optimum size of a holding has to be fairly low. The Committee has therefore recommended that the optimum size should be three times the size of the economic holding. However, certain exceptions have been allowed for joint families and charitable institutions.

As regards rights, cultivators will have permanent, heritable and transferable rights in the land. His right of cultivation will be subject to certain conditions, viz. that he does not sublet his holding; that he transfers his holding according to certain well-defined priorities laid down by an appropriate authority and at a price which is reasonable and not speculative; and that he conforms to the test of good husbandry and the scheme of crop-planning proposed from time to time by the Regional Land Commission.

As regards the land administration, the idea is to impart a functional rather than a political approach. The rights vested in the community are to be exercised by the Land Commission through agencies at different levels. The village panchayat elected on adult franchise and proportional representation will be the basic agency. It will be in charge of all common assets of the village such as waste land, village sites, tanks and forests. It will also be responsible for the collection of land revenue from the cultivators. This proposal of de-provincialization of land revenue appears similar to the one advocated in the Report on the Land Revenue and Land Tenure Committee of Orissa.

In order to improve the present system of administration relating to land use and management, the Committee has recommended a single and integrated machinery with regional units composed of different elements such as officials, experts and representatives of agricultural population, with all the powers and responsibilities vested in various departments at present dealing with agrarian economy. There will be decentralization of government functions as far as possible. For each State, there will be a State Land Commission and at the apex of the machinery, there will be a Central Land Commission whose primary duty will be to evolve an all-India scheme of crop-planning.<sup>21</sup>

21. The above information has been culled from press reports, as the Kumarappa Committee's report is not released for publication (since published).

After the Independence, people have begun to clamour for decentralization of land administration in order that many problems of rural economy can be tackled quickly and promptly through local initiative and enthusiasm. And the agency proposed is the village panchayat. In this scheme of things, and the adult franchise granted by the Constitution of India, the village panchayats will have a very vital and important part to play.

For re-organization of agriculture, there should be a comprehensive plan. The Committee has recommended such a plan for rural welfare embracing basic education with agriculture as the main craft, rural health organisation and the development of the village panchayat.

### Conclusion

In conclusion, it should be remembered that the reform of the land tenure system alone will not bring about a millennium for a farmer, since it cannot promise a final solution of the agrarian problems. "The agricultural problem is vast and complex and has to be attacked on many fronts. The abolition of zamindari is only a beginning in a comprehensive plan for agricultural development."<sup>22</sup> It should be followed by large-scale organization of agriculture by introduction of co-operative farming, irrigation projects, and intensive application of all methods of agricultural development. Steps should be taken to provide adequate employment for the present under-employed and unemployed agricultural labour. The State should provide for facilities for education, health and sanitation in the rural areas. An adequate balance must be maintained between the agricultural and industrial population of the country. The present flow of the people towards big towns and cities must be stopped by creating conditions in villages for appropriate employment and amenities. The present land administration should be decentralized with a view to giving scope to villagers to tackle their problems through local initiative and enthusiasm. The village panchayats, elected on adult franchise and proportional representation should be established in as many villages as possible and should be charged with the responsibility for improvement of the rural conditions and the village administration. In these measures lies the hope of solution of our agricultural problems.

<sup>22</sup>. Charan Singh, *Abolition of Zamindari*, p. 252.

# APPENDICES

## APPENDIX A

### BOMBAY ACT No. XXXII OF 1949

(Brought into force with effect from 5th August 1949)

#### An Act to abolish the Bhagdari and Narwadari tenures in the Province of Bombay

WHEREAS it is expedient to abolish the Bhagdari and Narwadari tenures which prevail in certain parts of the Province of Bombay and to provide for certain other purposes hereinafter appearing ; It is hereby enacted as follows :—

#### Short Title, Extent and Commencement

1. (1) This Act may be called the Bombay Bhagdari and Narwadari Tenures Abolition Act, 1949.

(2) It extends to the whole of the Province of Bombay.

(3) It shall come into force on such date as the Provincial Government may by notification in the *Official Gazette* specify.

#### Abolition of Bhagdari and Narwadari Tenures

2. With effect from and on the date on which this Act comes into force,—

(1) the Bhagdari and Narwadari tenures shall, wherever they prevail, be deemed to have been abolished ;

(2) all the incidents of the said tenures attaching to any land held on such tenures shall be deemed to have been extinguished ;

(3) any declaration made by the Provincial Government under section 6 of the Bhagdari and Narwadari Act, 1862 (Bom. V of 1862), shall be deemed to have been cancelled.

#### Holder of land forming part of bhag, narwa or recognised sub-division and persons in lawful possession of majmun to be deemed to be occupants

3. (i) Every holder of any land forming part of a bhag, narwa or share in a bhagdari or narwadari village or any homestead, building site (gabhan) or premises appurtenant or appendant to any such bhag, narwa or share or a recognised sub-division of a bhag, narwa or share, and

(ii) every person lawfully in possession of any land forming part of a gam or pati majmun in a bhagdari or narwadari village, immediately before the coming into force of this Act, shall be deemed

to be an occupant within the meaning of the Bombay Land Revenue Code, 1879 (Bom. V of 1879), in respect of such land in his possession and shall be primarily liable to the Provincial Government for the payment of land revenue due in respect of such land and shall be entitled to all the rights and shall be liable to all the obligations in respect of such land as an occupant under the said Code or any other law for the time being in force.

### **All other majmun land and other property to be property of the Crown**

4. For the removal of doubt, it is hereby declared that all land forming part of a gam or pati majmun in a bhagdari or narwadari village other than the land referred to in clause (ii) of section 3, all waste and uncultivated land and all other kinds of property referred to in section 37 of the Bombay Land Revenue Code, 1879 (Bom. V of 1879), situated in a bhagdari or narwadari village, which are not the property of any individual or of any aggregate of persons capable of holding property, and except in so far as any rights of such persons may be established in or over the same, and except as may be otherwise provided in any law for the time being in force, are together with all rights in or over the same or appertaining thereto, the property of the Crown, and it shall be lawful to dispose of or set apart the same for the authority in the manner and for the purpose provided in sections 37 or 38 of the Bombay Land Revenue Code, 1879 (Bom. V of 1879), as the case may be.

### **Alienation so far made not to be invalid**

5. Any alienation, assignment, mortgage of, or any charge or incumbrance on, any bhag, narwa or share in any bhagdari or narwadari village other than a recognised sub-division of such bhag, narwa or share or any homestead, building site (gabhan) or premises appurtenant or appendant to any such bhag, narwa or share made or created before the coming into force of this Act in contravention of the provisions of section 3 of the Bhagdari and Narwadari Act, 1862 (Bom. V of 1862), shall not be or ever to have been deemed to be invalid merely on the ground that it was made or created in contravention of the said section :

Provided that the Collector or the other revenue officer has not made an order removing the person in whose favour such alienation, assignment, mortgage, charge or incumbrance was made or created from the possession of such land, and such order has not been set aside by a competent court before the coming into force of this Act.

### **Custom of female heirs excluded by male heirs void**

6. Any custom, usage or practice relating to the succession to any bhag, narwa or a bhagdari or narwadari village or any homestead, building site (gabhan) or premises appurtenant or appendant to such bhag, narwa or village whereby contrary to the personal law governing the parties, the female heirs were excluded absolutely or in favour of

more distant male heirs, shall, to the extent of repugnancy, be deemed to be void and of no effect from and after the date on which this Act comes into force.

### Saving of recognised alienation

7. Nothing in section 3 of the Exemptions from the Land Revenue (No. 2) Act, 1863 (Bom. VII of 1863), shall affect the rights of any person in respect of any land in a Bhagdari or Narwadari village, the alienation of which land in favour of such person may have been recognised under the provisions of a special contract with the Crown or any law for the time being in force.

### Method of compensation for the extinguishment or modification of any rights in land

8. (1) If any person is aggrieved by any of the provisions of this Act as extinguishing or modifying any of his rights in land and if such person proves that such extinguishment or modification amounts to the transference to public ownership of land or any right in or over such land, such person may apply to the Collector for compensation.

(2) Such application shall be made in a prescribed form and shall be made within six months from the date on which this Act comes into force.

(3) The Collector shall, after holding a formal inquiry in the manner provided by the Bombay Land Revenue Code, 1879 (Bom. V of 1879), award such compensation as he deems reasonable and adequate. In deciding the amount of the compensation, the Collector shall be guided by the provisions of sub-section (1) of sections 23 and 24 of the Land Acquisition Act, 1894 (Bom. I of 1894). Subject to the provisions of sub-section (4), the award of the Collector shall be final.

(4) Any person aggrieved by the award of the Collector may appeal to the Bombay Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1939 (Bom. XII of 1939).

(5) In deciding appeals under sub-section (4), the Bombay Revenue Tribunal shall exercise all the powers which a Court has and follow the same procedure which a Court follows in deciding appeals from the decree or order of an original Court under the Code of Civil Procedure, 1908 (V of 1908).

### Repeal

9. The Bhagdari and Narwadari Act, 1862 (Bom. V of 1862), and section 117 of the Bombay Land Revenue Code, 1879 (Bom. V of 1879), are hereby repealed. The repeal of the said enactments and the provision declaring any incident of the Bhagdari and Narwadari tenures to have been extinguished shall not affect,—

(a) any right, title, interest, obligation or liability already acquired, accrued or incurred before the date on which this Act comes into force ;

- (b) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability or anything done or suffered to be done before such date.

### Rules

10. The Provincial Government may make rules for the purpose of carrying out the provisions of this Act. Such rules shall be subject to the condition of previous publication and shall when finally made be published in the *Official Gazette*.

### Interpretation

11. The words and expressions used in this Act shall have the meanings assigned to them in the Bombay Land Revenue Code, 1879 (Bom. V of 1879).

## STATEMENT OF OBJECTS AND REASONS

The Bhagdari and Narwadari tenure is found in certain districts of Gujarat, particularly in the Broach and Kaira districts. The tenure is merely a mode of the collection of Government demand. The Bombay Act V of 1862 was enacted with the following objects, viz.:—(i) to benefit bhagdars and narwadars by making it impossible for them to fritter away their estates piecemeal; and (ii) to secure the interests of Government by preventing disintegration of properties on which the land revenue was assessed in lump. In short, the intention of the Act was to protect bhags and narwas or shares of bhags or narwas together with homesteads and gabhans (building sites) appurtenant or appendant thereto. The continuance of this tenure is not suitable and is inconsistent with the policy of agrarian reform initiated by Government. Bhagdars or Narwadars are no longer required as sureties for payment of land revenue and have long since lost their premier position in the village administration. Excessive fragmentation and restriction on alienation of these lands to non-bhagdars would impede the implementation of the Prevention of Fragmentation and Consolidation of Holdings Act. The existence of the tenures postulates maintenance of double records such as Narwa Patrahs and Record of Rights. In view of these considerations, Government has decided upon the abolition of the tenures by repealing the Bombay Act V of 1862.

The present Bill aims at achieving this objective. It provides for the repeal of the Bhagdari and Narwadari Act, 1862, and the abolition of the Bhagdari and Narwadari tenures with all the incidents attached thereto. It gives rights of occupancy on payment of land revenue under the provisions of the Land Revenue Code to (1) holders of land forming part of a bhag, narwa, or share together with homestead, building sites and other appurtenances and (2) persons in lawful possession of majmun lands. Care has been taken to declare and affirm the position. All property not in possession of individuals or aggregate of persons vests in Government under section 37 of the Land Revenue Code.

Further, alienations, assignments, etc. of bhags or shares made in contravention of section 3 of the Bombay Act V of 1862, before the coming into force of this Act, are not to be invalid, but this provision is not to affect any order of eviction passed by the Collector. Special rules of succession which prefer male agnates to female heirs such as daughters and sisters are abolished. The repeal of the Act V of 1862 does not affect any right, title, interest, etc., already acquired, accrued, or any legal proceeding or remedy in respect of such right, title or interest, etc. Government has been empowered to frame rules under the Act for the purpose of carrying out the provisions of the Act.

## APPENDIX B

### REVENUE DEPARTMENT

Bombay Castle, 5th August 1949

#### Bombay Bhagdari and Narwadari Tenures Abolition Act, 1949

No. 5898/45.—In exercise of the powers conferred by section 10 of the Bombay Bhagdari and Narwadari Tenures Abolition Act, 1949 (Bom. XXXII of 1949), the Government of Bombay is pleased to make the following rule, namely :—

Every person who proposes to apply to the Collector for compensation under sub-section (1) of section 8 of the Act shall make an application in the following form, namely :—

#### “ FORM

To

The Collector of .....

Name of the applicant .....

Village .....

Taluka .....

Sir,

I beg to state that—

- (a) I am a holder of the marginally-noted \* land forming part of a bhag/narwa/share in a bhagdari/narwadari village .....  
taluka ..... district ..... and/or/a homestead/  
building site/premise appurtenant or appendant to such bhag/  
narwa/share.
- (b) I am lawfully in possession of the marginally-noted \* land forming part of a gam or pati majmun in a bhagdari/narwadari village ..... taluka ..... district .....

2. Under the provisions of section ..... of the Bombay Bhagdari and Narwadari Tenures Abolition Act, 1949, the following rights of mine in such land/lands or a homestead/building site/premise appurte-

\* S. No., Area, Assessment.

nant or appendant thereto are extinguished/modified. I therefore claim Rs. .... as compensation :—

The rights extinguished are .....

The amount of compensation which is claimed is arrived at as follows :—

3. Extracts from the Record of Rights and Narwa Patrak in respect of such land or homestead/building site/premises are enclosed. I also enclose the following documents evidencing my title to the land or the homestead/building site/premise in question :—

(Here give a list of documents).

(Names of witnesses, if any, should be stated. It should also be stated whether they are to be summoned or whether the applicant will produce them.)

Yours faithfully,

Signature of the applicant.”

Date—

Place—

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## APPENDIX C

### BOMBAY ACT No. LXIII OF 1949

(Brought into force with effect from 15th March 1950)

**An Act to abolish Mehwasssi tenure in the Kalol taluka  
in the district of Panch Mahals**

WHEREAS it is expedient to abolish the Mehwasssi tenure prevailing in certain villages in the Kalol taluka in the district of Panch Mahals in the Province of Bombay and to provide for certain consequential and incidental matters hereinafter appearing; It is hereby enacted as follows :—

#### Short title, extent and commencement

1. (1) This Act may be called the Panch Mahals Mehwasssi Tenure Abolition Act, 1949.

(2) It extends to the district of Panch Mahals in the Province of Bombay.

(3) It shall come into force on such date as the Provincial Government may, by notification in the *Official Gazette*, direct.

**Definitions**

2. In this Act, unless there is anything repugnant in the subject or context,—

- (1) “Mehwassi village” means a village specified in the Schedule appended to this Act ;
- (2) “Mehwasdar” means a holder of a Mehwassi village ; and
- (3) “Mehwassi lease” means a lease or agreement under which a Mehwassi village is held from the Provincial Government.

**Abolition of Mehwassi tenure**

3. With effect from and on the date on which this Act comes into force,—

- (a) the Mehwassi tenure in the villages specified in the Schedule shall be deemed to have been abolished ;
- (b) the agreements or leases, subject to the terms and conditions of which the said villages have been held, shall be deemed to have been cancelled ; and
- (c) all the incidents of the said tenure attaching to any land in the said villages shall be deemed to have been extinguished.

**Mehwasdar and registered occupant to be occupant**

4. (1) (a) Every Mehwasdar in respect of the land in his possession in a Mehwassi village under a Mehwassi lease, and

(b) every registered occupant in respect of the land in his possession in a Mehwassi village,

immediately before the date on which this Act comes into force shall, notwithstanding the fact that the period specified in the Mehwassi lease for the continuance thereof has not expired, be deemed to be an occupant within the meaning of the Bombay Land Revenue Code, 1879 (Bom. V of 1879), in respect of such land in his possession and shall be primarily liable to the Provincial Government for the payment of land revenue due in respect of such land and shall be entitled to all rights and shall be liable to all the obligations in respect of such land as an occupant under the said Code or any other law for the time being in force.

(2) Nothing in sub-section (1) shall affect the right of any person to hold any land wholly or partially exempt from land revenue under a special contract other than a Mehwassi lease or any law for the time being in force.

**Waste lands and other property specified in section 37 of Bombay Land Revenue Code vests in Crown**

5. For the removal of doubt, it is hereby declared that all waste lands whether assessed or unassessed in a Mehwassi village and all other kinds of property referred to in section 37 of the Bombay Land

Revenue Code, 1879 (Bom. V of 1879), situate in a Mehwasasi village, which are not the property of the individuals, or of any aggregate of persons legally capable of holding property and except in so far as any rights of such persons may be established in or over the same and except as may be otherwise provided in any law for the time being in force, are together with all rights in or over the same or appertaining thereto, the property of the Crown and it shall be lawful to dispose of or set apart the same by the authority and for the purpose provided in section 37 or 38 of the said Code, as the case may be.

### **Compensation payable to Mehwasdar or any person for extinguishment or modification of any rights**

6. (1) If a Mehwasdar or any other person aggrieved by any of the provisions of this Act as extinguishing or modifying his rights under a Mehwasasi lease or in land and if such Mehwasdar or other person proves that such extinguishment or modification amounts to the transference of public ownership of any land or any right in or over such land, such person may apply to the Collector for compensation.

(2) Such application shall be made in the prescribed form within six months from the date on which this Act comes into force.

(3) The Collector shall after holding a formal inquiry in the manner prescribed by the Bombay Land Revenue Code, 1879 (Bom. V of 1879), award such compensation as he deems reasonable and adequate :

Provided that the amount of compensation for the cancellation of a Mehwasasi lease shall not exceed the maximum of the average of the amount of the total or partial exemption of land revenue and profits from unassessed waste land to which the Mehwasdar was entitled under the Mehwasasi lease in respect of his village during three years immediately before the date on which this Act comes into force :

Provided further that in the case of the extinguishment or modification of any other right of a Mehwasdar or any other person the Collector shall be guided by the provisions of sub-section (1) of section 23 and section 24 of the Land Acquisition Act, 1894 (I of 1894).

(4) Subject to the provisions of sub-section (5), the award of the Collector shall be final.

(5) Any person aggrieved by the award of the Collector may appeal to the Bombay Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1939 (Bom. XII of 1939).

(6) In deciding appeals under sub-section (5), the Bombay Revenue Tribunal shall exercise all the powers which a court has and follow the same procedure which a court follows in deciding appeals from the decree or order of an original court under the Code of Civil Procedure, 1908 (V of 1908).

### **Limitation**

7. Every appeal made under this Act to the Bombay Revenue Tribunal shall be filed within a period of sixty days from the date of the

award of the Collector. The provisions of sections 4, 5, 12 and 14 of the Indian Limitation Act, 1908 (IX of 1908), shall apply to the filing of such appeal.

### Court fees

8. Notwithstanding anything contained in the Court-fees Act, 1870 (VII of 1870), every appeal made under this Act to the Bombay Revenue Tribunal shall bear a court-fee stamp of such value as may be prescribed by rules made under this Act.

### Rules

9. The Provincial Government may by notification in the *Official Gazette*, make rules for the purpose of carrying out the provisions of this Act. Such rules shall be subject to the condition of previous publication.

## SCHEDULE

[See section 2(1)]

### Mehwassi villages in the Kalol taluka in the district of Panch Mahals

- |                     |                |
|---------------------|----------------|
| 1. Adadra.          | 12. Karoli.    |
| 2. Ambalanu Muvadu. | 13. Mokal.     |
| 3. Bedhia.          | 14. Naranpura. |
| 4. Bhadroli Khurd.  | 15. Paruna.    |
| 5. Bhelidra.        | 16. Phansi.    |
| 6. Bhukhi.          | 17. Pingli.    |
| 7. Bodidra.         | 18. Rinchhia.  |
| 8. Chalali.         | 19. Royan.     |
| 9. Gajapura.        | 20. Vyasda.    |
| 10. Kahanpur.       | 21. Vintoj.    |
| 11. Kanod.          |                |

## STATEMENT OF OBJECTS AND REASONS

The Mehwassi tenure obtains in 21 villages of the Kalol taluka, district Panch Mahals. In the Maratha period, the continual state of warfare resulted in the country being classified into peaceful (*rasti*) and troubled (*Mewassi*). The trouble was mainly caused by Koli freebooters and some Rajput Chiefs, who maintained a hold by terror and force on the neighbourhood. Whatever might have been their rights and privileges in the pre-British or early British period, the position of the Panch Mahals Mehwasdars has become one of contractual relationship between them and Government, by the execution of agreements since 1887-88. The agreements executed by the Mehwas-

dars are to expire on 31st July 1955. They hold these villages on payment of 'Ankda' (lump sum) to Government. By way of remuneration, they enjoy Mehwasssi profits based on exemption from land revenue and profits from unassessed waste. In the context of the modern administration, Government does not require the agency of the Mehwasdars to collect revenue on its behalf. The Mehwasdars are intermediaries who have outlived their utility. As a measure of agrarian reform Government has decided to abolish the Mehwasssi tenure in the Kalol taluka in the Panch Mahals district.

The present Bill has been designed to achieve this object. Clause 3 of the Bill provides for abolition of the tenure with all its incidents. Every Mehwasdar in respect of the lands in his possession and every registered occupant in respect of the lands in his possession are recognized as occupants within the meaning of the Bombay Land Revenue Code, 1879 (clause 4). All waste lands, whether assessed or unassessed and all other property referred to in section 37 of the Bombay Land Revenue Code in such villages which are not the property of individuals, etc., are to be the property of the Crown (clause 5). Provision has been made for compensation payable to Mehwasdar or any person for the extinguishment or modification of any rights in the Mehwasssi villages. Sub-clauses (1) to (3) and (5) and (6) of clause 6 and clauses 7 and 8 provide for filing an appeal to the Bombay Revenue Tribunal against the Collector's award. Lastly, clause 9 empowers Provincial Government to make rules for the purpose of carrying out the provisions of the Act.

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## APPENDIX D

### REVENUE DEPARTMENT

Bombay Castle, 15th March 1950

#### The Panch Mahals Mehwasssi Tenure Abolition Act, 1949

No. 701/49.—In exercise of the powers conferred by section 9 of the Panch Mahals Mehwasssi Tenure Abolition Act, 1949 (Bom. LXII of 1949), the Government of Bombay is pleased to make the following rule, namely :—

“ Every person who proposes to apply to the Collector for compensation under sub-section (1) of section 6 of the Act shall make an application in the following form, namely :—

#### “ FORM

To  
 The Collector of Panch Mahals District.  
 Name of the applicant  
 Village  
 Taluka Kalol.

Sir,

I beg to state that—

(a) I am a holder of the land/s noted below in the Mehwasssi village, taluka Kalol, district Panch Mahals.

| S. No. | Area. | Assessment. |
|--------|-------|-------------|
|--------|-------|-------------|

(b) I enjoyed the following rights under the Mehwasssi lease :—

2. Under the provisions of section ..... of the Panch Mahals Mehwasssi Tenure Abolition Act, 1949, the following rights and interests of mine in such land/lands under the Mehwasssi lease are extinguished/modified. I therefore claim Rs. \_\_\_\_\_ as compensation :—

The rights  $\frac{\text{extinguished}}{\text{modified}}$  are

The amount of compensation which is claimed is arrived at as follows :—

3. Extracts from the Record of Rights in respect of such land/lands are enclosed. I also enclose the following documents evidencing my title to *or* interest in the land/lands in question :—

(Here give a list of documents)

(Names of witnesses, if any, should be stated. It should also be stated whether they are to be summoned or whether the applicant will produce them).

Yours faithfully,

Signature of the applicant."

Date

Place

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## APPENDIX E

### REVENUE DEPARTMENT

Bombay Castle, 15th March 1950

**Panch Mahals Mehwasssi Tenure Abolition Act, 1949**

No. 701/49.—In exercise of the powers conferred by sub-section (3) of section 1 of the Panch Mahals Mehwasssi Tenure Abolition Act, 1949 (Bom. LXIII of 1949), the Government of Bombay is pleased to direct that the said Act shall come into force on 15th March 1950.

### The Panch Mahals Mehwassi Tenure Abolition Act, 1949

No. 701/49-M.—In exercise of the powers conferred by section 8 of the Panch Mahals Mehwassi Tenure Abolition Act, 1949 (Bom. LXIII of 1949), the Government of Bombay is pleased to direct that every appeal made under the said Act to the Bombay Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1939, shall bear a court fee stamp of Rupees three.

## APPENDIX F

### BOMBAY ACT No. LXI OF 1949

(Brought into force with effect from 1st March 1950)

#### An Act to Abolish the Maleki tenure in the Province of Bombay

WHEREAS it is expedient to abolish the Maleki tenure which prevails in certain parts of the Province of Bombay and to provide for certain consequential and incidental matters hereinafter appearing ; It is hereby enacted as follows :—

#### Short title, extent and commencement

1. (1) This Act may be called the Bombay Maleki Tenure Abolition Act, 1949.

(2) It extends to the District of Kaira.

(3) It shall come into force on such date as the Provincial Government may, by notification in the *Official Gazette*, specify.

#### Definitions

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) “Maleki village” means a village specified in the Schedule appended to this Act ;

(b) “Malek” means a holder of a Maleki village and includes his co-sharers ;

(c) “Code” means the Bombay Land Revenue Code, 1879 (Bom. V of 1879).

(2) Any word or expression which is defined in the Code and not defined in this Act shall be deemed to have the meaning given to it by the Code.

(3) References in this Act to the incidents of the Maleki tenure shall, notwithstanding the abolition of the said tenure by this Act, be construed as references to the incidents as they were in force immediately before this Act comes into force.

### Abolition of Maleki tenure and its incidents

3. (1) With effect from and on the date on which this Act comes into force,—

(a) the Maleki tenure wherever it prevails in the District of Kaira shall be deemed to have been abolished ;

(b) in particular, a Malek shall not be entitled,—

(i) to receive any share of revenues of vajeli lands in his village ;

(ii) to receive any share of the miscellaneous revenues consisting of sale proceeds of grass, grazing, produce of fruit trees or wood on waste vajeli lands in his village ;

(iii) to claim a preferential right for the purchase of the occupancy of any waste vajeli land ; and

(iv) to claim a right to nominate a Talati.

(2) Nothing in sub-section (1) shall affect the right of a Malek to hold nakru lands as being exempt from payment of land revenue or to receive santh cash payment to which he is entitled under the sanad granted on behalf of the Crown.

(3) Save as expressly provided by this Act, all the incidents of the said tenure shall be deemed to have been extinguished, notwithstanding any law, custom or usage, or anything contained in any sanad, grant, settlement, contract or order made by or entered into on behalf of the Crown.

### All lands liable to land revenue in Maleki villages

4. (1) Subject to the provisions of sub-section (2), all lands in the Maleki villages are and shall be liable to the payment of land revenue in accordance with the provisions of the Code and the rules made thereunder.

(2) Nothing in sub-section (1) shall be deemed to affect the right of a Malek to hold any nakru land as being exempt from the payment of land revenue or the right of any other person to hold any other land as being so exempt under a special contract or any law for the time being in force.

### Method of compensation for the extinguishment or modification of right in lands

5. (1) If a Malek or any other person is aggrieved by any of the provisions of this Act as extinguishing or modifying any of his rights in land and if such person proves that such extinguishment or modification amounts to the transference to public ownership of any land or any right in or over such land such person may apply to the Collector for compensation.

(2) Such application shall be made in the form prescribed by rules made under this Act within six months from the date on which this Act comes into force.

(3) The Collector shall after holding a formal inquiry in the manner provided by the Code determine the amount of such compensation and the apportionment, if necessary, among the co-sharers entitled to it and shall make an award accordingly :

Provided that the amount of compensation for the extinguishment or modification of such rights mentioned in clause (b) of sub-section (1) of section 3 shall not exceed three times the maximum of the average of the amount proved to have been realized by the Malek during five years immediately before the date on which this Act comes into force in respect of his share in the revenues of the vajeli lands and of his share in miscellaneous revenues mentioned in sub-clause (ii) of clause (b) of sub-section (1) of section 3 :

Provided further that in determining the amount of compensation in the case of any other right proved to have been extinguished or modified by the Malek or any other person, the Collector shall be guided by the provisions of sub-section (1) of section 23 and section 24 of the Land Acquisition Act, 1894 (I of 1894).

(4) Subject to the provisions of sub-section (5) the award of the Collector shall be final.

(5) Any person aggrieved by the award of the Collector may appeal to the Bombay Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1939 (Bom. XII of 1939).

(6) In deciding appeals under sub-section (5) the Bombay Revenue Tribunal shall exercise all the powers which a court has and follow the same procedure which a court follows in deciding appeals from the decree or order of an original court under the Code of the Civil Procedure, 1908 (V of 1908).

### Limitation

6. Every appeal made under this Act to the Bombay Revenue Tribunal shall be filed within a period of sixty days from the date of the award of the Collector. The provisions of sections 4, 5, 12 and 14 of the Indian Limitation Act, 1908 (IX of 1908), shall apply to the filing of such appeal.

### Court-fees

7. Notwithstanding anything contained in the Court-fees Act, 1870 (VII of 1870), every appeal made under this Act to the Bombay Revenue Tribunal shall bear a court-fee stamp of such value as may be prescribed by rules made under this Act.

### Rules

8. The Provincial Government may, by notification published in the *Official Gazette*, make rules for the purpose of carrying out the

provisions of this Act. Such rules shall be subject to the condition of previous publication.

## THE SCHEDULE

[See section 2(1)(a)]

### Maleki villages in Thasra taluka, Kaira district

- |                       |                           |
|-----------------------|---------------------------|
| 1. Padal.             | 15. Wangroli.             |
| 2. Rasulpura (Padal). | 16. Sandheli.             |
| 3. Menpura.           | 17. Dabhali.              |
| 4. Baladha.           | 18. Vaso.                 |
| 5. Pali.              | 19. Mahi-Itadi Vadi Bhag. |
| 6. Malvan.            | 20. Mahi-Itadi Vallavpur. |
| 7. Rustampura.        | 21. Kuni.                 |
| 8. Khadgodhra.        | 22. Rozva.                |
| 9. Nadadra.           | 23. Vadad.                |
| 10. Saloon.           | 24. Mitha-na-Muvada.      |
| 11. Sanadra.          | 25. Angadi Kasba.         |
| 12. Palaiya.          | 26. Angadi Pahadia.       |
| 13. Jargal.           | 27. Vanoda.               |
| 14. Sanaiya.          |                           |

### STATEMENT OF OBJECTS AND REASONS

The Maleki tenure obtains in 27 villages of the Thasra taluka of Kaira district. In about 1483, Mahmed Begada, Sultan of Ahmedabad, granted to certain Muslim families known as Malekjadas, some villages in the Thasra taluka as a reward for military service at the siege of Champaner (Pawaghad). For about 250 years, they enjoyed the villages rent-free. Whatever position the Maleks enjoyed during the pre-British or early British period, the rights and privileges of the Maleks were settled by Mr. Pedder in 1865. According to the sanads granted under the Pedder settlement, the Maleks enjoy certain rights, viz. a 7 or 9 anna share in the revenues arising out of the Vazeli lands, enjoyment of Nakru lands as entirely exempt from payment of assessment, Kohtli Santh in respect of the lands resumed by Government and the right to nominate talatis in the Maleki villages. The Maleks no longer serve any useful purpose in the rural economy. As a measure of agrarian reform, therefore, Government proposes to abolish the Maleki tenure by extinguishing this tenure with due safeguard to protect the legitimate personal rights or interests of these land-holders.

2. The present Bill is designed to achieve the aforesaid object. Clause 3 provides for the abolition of the Maleki tenure and its incidents; but the Malek's rights to hold Nakru lands 'rent-free' and to receive Santh cash allowance are not affected. Clauses 5 and 6 provide for compensation for the extinguishment or modification of any rights in the lands in the Maleki villages and lay down the procedure for filing appeal against the award of the Collector. Clause 7 empowers the Provincial Government to make rules for the purpose of carrying out the provisions of the Act.

## APPENDIX G

## REVENUE DEPARTMENT

Bombay Castle, 27th February 1950

## The Bombay Maleki Tenure Abolition Act, 1949

No. 10467/45.—In exercise of the powers conferred by section 8 of the Bombay Maleki Tenure Abolition Act, 1949 (Bom. LXI of 1949), the Government of Bombay is pleased to make the following rules, namely :—

1. *Form of application.*—Every person who proposes to apply to the Collector for compensation under sub-section (1) of section 5 of the Act shall make an application in the following form, namely :—

## “ FORM

To

The Collector of Kaira.

Name of the applicant .....

Village .....

Taluka Thasra.

Sir,

I beg to state that I am a holder of the marginally noted \* land/lands in the maleki village taluka Thasra, district Kaira, and the names of the co-sharers are

2. Under the provisions of section of the Bombay Maleki Tenure Abolition Act, 1949, the following rights of mine in such land/lands are extinguished or modified. I, therefore, claim Rs. as compensation.

The rights extinguished or modified are

The amount of compensation, which is claimed, is arrived at as follows :—

Extracts from the Record of Rights in respect of such land/lands are enclosed. I also enclose the following documents evidencing my title to the land/lands or the right therein :—

(Here give a list of documents)

(Names of witnesses, if any, should be stated. It should also be stated whether they are to be summoned or whether the applicant will produce them).

Yours faithfully,

Date.....

Place.....

Signature of the Applicant.”

Survey No., Area, Assessment.

2. *Court-fees.*—Every appeal made under the Act to the Bombay Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1939, shall bear a court-fee stamp of Rs. 3.

## APPENDIX H

### L.A. BILL No. XXXIX OF 1949

#### A Bill to abolish the taluqdari tenure in the Province of Bombay

WHEREAS it is expedient to abolish the taluqdari tenure prevailing in certain parts of the Province of Bombay and to amend the law relating to the revenue administration of the estates held on the said tenure ; It is hereby enacted as follows :—

#### Short title, extent and commencement

1. (1) This Act may be called the Bombay Taluqdari Tenure Abolition Act, 1949.

(2) It extends to the districts of Ahmedabad, Kaira, Broach and the Panch Mahals.

(3) It shall come into force on such date as the Provincial Government may, by notification in the *Official Gazette*, appoint in this behalf.

#### Definitions

2. In this Act, unless there is anything repugnant in the subject or context,—

- (1) "Code" means the Bombay Land Revenue Code, 1879 (Bom. V of 1879) ;
- (2) "Taluqdars' Act" means the Gujarat Taluqdars' Act, 1888 (Bom. VI of 1888) ;
- (3) "Taluqdari land" means land forming part of a taluqdari estate and includes land forming part of such estate and held by a cadet of a taluqdar's family for the purpose of maintenance ;
- (4) "Taluqdari tenure" means a land tenure on which the taluqdari land is held ;
- (5) The words and expressions used in this Act shall be deemed to have the same meaning as they have in the Code.

#### Abolition of taluqdari tenure and its incidents

3. With effect from the date on which this Act comes into force—

- (i) the taluqdari tenure shall wherever it prevails be deemed to have been abolished ; and
- (ii) save as expressly provided by or under the provisions of this Act, all the incidents of the said tenure attaching to any land comprised in a taluqdari estate shall be deemed to have been extinguished.

### Revenue surveys to be deemed to be surveys under the Code

4. All revenue surveys or revised revenue surveys of taluqdari estates directed by the Provincial Government under section 4 of the Taluqdars' Act and all settlements made shall be deemed to have been made under Chapters VIII and VIII-A of the Code and the settlement registers and other records prepared of such surveys shall be deemed to have been prepared under the corresponding provisions of the Code.

### Liability of taluqdari land to payment of land revenue

5. (1) Subject to the provisions of sub-section (2), all taluqdari lands are and shall be liable to the payment of land revenue in accordance with the provisions of the Code and the rules made thereunder.

(2) Nothing in sub-section (1) shall be deemed to affect—

- (a) the right of any person to hold any taluqdari land wholly or partially exempt from the payment of land revenue under a special contract or any law for the time being in force ;
- (b) the right of any person to pay jama only under any agreement or settlement recognised under section 23 or under a declaration made under section 22 of the Taluqdars' Act so long as such agreement, settlement or declaration remains in force under the provisions of this Act.

### All public roads, etc. not situate in wantas to vest in the Crown

6. All public roads, lanes and paths, the bridges, ditches, dikes and fences, on, or beside the same, the bed of the sea and of harbours, creeks below high water mark, and of rivers, streams, nallas, lakes and tanks, and all canals, and water courses, and all standing and flowing water, and all waste and uncultivated lands which are not situate within the limits of the wantas belonging to a taluqdar in a taluqdari estate shall, except in so far as any rights of any person other than the taluqdar may be established in and over the same and except as may otherwise be provided by any law for the time being in force, vest in and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the Crown and all rights held by a taluqdar in such property shall be deemed to have been extinguished and it shall be lawful for the Collector, subject to the general or special orders of the Commissioner, to dispose them of as he deems fit, subject always to the rights of way and of other rights of the public or of individuals legally subsisting.

*Explanation.*—For the purposes of this section, land shall be deemed to be uncultivated, if it has remained uncultivated for a continuous period of five years immediately before the date on which this Act comes into force.

### Compensation to taluqdars for extinguishment of rights under the preceding section

7. (1) Any taluqdar having any rights in such property shall be entitled to compensation in the manner provided in the following paragraphs, namely :—

- (a) within a period of six months from the date on which this Act comes into force, the taluqdar shall apply in writing to the Collector stating the nature of his right, the grounds of his claim and the amount of compensation claimed by him for the extinguishment of his rights ;
- (b) the Collector shall hold a formal inquiry in the manner provided in the Code and if the Collector is satisfied that the applicant had any rights in the land and that such rights have been extinguished under the last preceding section, shall make an award in the manner prescribed in section 11 of the Land Acquisition Act, 1894 (I of 1894) subject to the following conditions :—
- (i) if the property acquired is waste or uncultivated but is culturable land the amount of compensation shall not exceed three times the assessment of the land :
- Provided that if the land has not been assessed, the amount of compensation shall not exceed such amount of assessment as would be leviable in the same village on the same extent of similar land used for the same purpose ;
- (ii) if the property is land over which the public has been enjoying or acquired a right of way or any individual has any right of easement, the amount of compensation shall not exceed the amount of the annual assessment leviable in the village for uncultivated land in accordance with the rules made under the Code or if such rules do not provide the levy of such assessment, such amount as in the opinion of the Collector shall be the market value of the right or interest held by the claimant ;
- (iii) if there are any trees or structures on the land, the amount of compensation shall be the market value of such trees or structures, as the case may be ;

*Explanation.*—For the purposes of this section, the “ market value ” shall mean the value as estimated in accordance with the provisions of sections 23 and 24 of the Land Acquisition Act, 1894 (I of 1894), in so far as such provisions may be applicable.

(2) Every award made under sub-section (1) shall be in the form prescribed in section 26 of the Land Acquisition Act, 1894 (I of 1894), and the provisions of the said Act, shall, so far as may be, apply to the making of such award.

### **Appeal against the Collector's award**

8. An appeal shall lie against an award of the Collector to the Bombay Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1939 (Bom. XII of 1939), notwithstanding anything contained in the said Act.

### Procedure before the Revenue Tribunal

9. (1) The Bombay Revenue Tribunal shall, after giving notice, to the appellant and the Provincial Government, decide the appeal and record its decision.

(2) In deciding appeals under this Act, the Bombay Revenue Tribunal shall exercise all the powers which a Court has and follow the same procedure which a Court follows in deciding appeals from the decree or order of an original Court under the Code of Civil Procedure, 1908 (V of 1908).

### Limitation

10. Every appeal made under this Act to the Bombay Revenue Tribunal shall be filed within a period of sixty days from the date of the award of the Collector. The provisions of sections 4, 5, 12 and 14 of the Indian Limitation Act, 1908 (IX of 1908), shall apply to the filing of such appeal.

### Court fees

11. Notwithstanding anything contained in the Court-fees Act, 1870 (VII of 1870), every appeal made under this Act to the Bombay Revenue Tribunal shall bear a court-fee stamp of such value as may be prescribed.

### Finality of the award and decision of the Revenue Tribunal

12. The award made by the Collector subject to an appeal to the Bombay Revenue Tribunal and the decision of the Bombay Revenue Tribunal on the appeal shall be final and conclusive and shall not be questioned in any suit or proceeding in any Court.

### Inquiries and proceedings to be judicial proceedings

13. All inquiries and proceedings before the Collector and the Bombay Revenue Tribunal under this Act shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code (XLV of 1860).

### Method of compensation for the extinguishment or modification of any other rights

14. (1) If any person is aggrieved by any of the provisions of this Act as extinguishing or modifying any of his rights in any land other than those in respect of which provision for the payment of compensation has been made under section 7 and if such person proves that such extinguishment or modification amounts to the transference to public ownership of such land or any right in or over such land, such person may apply to the Collector for compensation within a period of six months from the date on which this Act comes into force.

(2) The Collector shall, after holding a formal inquiry in the manner provided in the Code, make an award deciding such amount of compensation as he deems reasonable and adequate. In deciding the amount of compensation, the Collector shall be guided by the provisions

of sub-section (1) of section 23 and section 24 of the Land Acquisition Act, 1894 (I of 1894).

(3) An appeal shall lie from the said award to the Bombay Revenue Tribunal.

(4) The provisions of sections 7 to 12 (both inclusive) shall, so far as may be, apply to the proceedings in respect of such award or appeal, as the case may be.

### Rules

15. (1) The Provincial Government may, by notification published in the *Official Gazette*, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for the following matters :—

- (a) the value of Court-fee stamp payable on an appeal to the Bombay Revenue Tribunal under section 11 ;
- (b) any other matter which is to be or may be prescribed under this Act.

(3) Rules made under this section shall be subject to the condition of previous publication.

### Application of the Code to the taluqdari lands

16. Subject to the provisions of this Act, the provisions of the Code apply and are hereby declared to apply to all taluqdari lands subject to the modifications specified in Schedule I.

### Repeal

17. The enactments specified in Schedule II are hereby repealed :

Provided that the repeal of the said enactments shall not in any way be deemed to affect,—

- (a) the validity, invalidity, effect or consequences of any alienation of or any incumbrance created on a taluqdari land or of anything already done or suffered to be done under the said enactments before the date of the commencement of this Act ;
- (b) any obligation or liability already incurred or accrued before such date ;
- (c) any declaration made or any agreement or settlement recognised, any partition confirmed and any management of the taluqdari estate assumed under the provisions of any of the enactments hereby repealed,

and any proceeding connected with such partition or management instituted before the aforesaid date shall be continued and disposed of, as if this Act had not been passed.

SCHEDULE I  
(See section 16)

| Year. | No. | Short title.                       | Extent of modification.  |
|-------|-----|------------------------------------|--|
| 1     | 2   | 3                                  | 4  |
| 1879  | ... | The Bombay Land Revenue Code, 1879 | <p>(1) In section 3, clause (13), after the words " the Provincial Government ", the words " and includes a taluqdar " shall be inserted.</p> <p>(2) In section 38, after the words " unalienated portions of villages " the words " or in villages or portions of villages comprised in a taluqdari estate " shall be inserted.</p> <p>(3) In section 46,—</p> <p>(i) after the words " any holder of alienated land " the words " or a taluqdar " shall be inserted ;</p> <p>(ii) after the words " the said holder ", the words " or taluqdar, as the case may be " shall be inserted.</p> <p>(4) In section 56,—</p> <p>(i) after the words " alienated holding " wherever they occur, the words " or taluqdari land " shall be inserted ;</p> <p>(ii) for the words " such occupancy or alienated holding " wherever they occur and for the words " such occupancy or holding " the words " such occupancy, alienated holding or land " shall be substituted.</p> <p>(5) In section 57,—</p> <p>(i) for the words " a holding " the words " a holding or land " shall be substituted ;</p> <p>(ii) for the words " such holding " the words " such holding or land " shall be substituted.</p> <p>(6) In section 58, after the words " share of a village " wherever they occur, the words " or of a village or portion of a village comprised in a taluqdari estate " shall be inserted.</p> <p>(7) In section 69, after the word " unalienated " the words " or taluqdari " shall be inserted.</p> <p>(8) In section 76, after the words " alienated land " the words " or any taluqdari land " shall be inserted.</p> <p>(9) In section 80,—</p> <p>(i) after the words " an occupancy " the words " or any taluqdari land " shall be inserted ;</p> <p>(ii) after the word " occupant " wherever it occurs the words " or holder " shall be inserted.</p> |

| Year. | No. | Short title. | Extent of modification.   |
|-------|-----|--------------|---|
| 1     | 2   | 3            | 4   |
|       |     |              | (10) In section 85, sub-section (r), after the words " alienated share of a village " the words " or of a village or portion of a village comprised in a taluqdari estate " shall be inserted.  |
|       |     |              | (11) In section 94A, sub-section (r), after the words " alienated shares of a village " the words " or of a village or portion of a village comprised in a taluqdari estate " shall be inserted.  |
|       |     |              | (12) In section 111, after the word " estate " where it occurs for the first time the words " including a taluqdari estate " shall be inserted.   |
|       |     |              | (13) In section 114, the words " or in a taluqdari estate " shall be deleted.   |
|       |     |              | (14) In section 118, after the word " alienated " wherever it occurs the words " or taluqdari " shall be inserted.  |
|       |     |              | (15) In section 136, sub-section (r), after the words " alienated land " the words " or taluqdari land " shall be inserted.   |
|       |     |              | (16) In section 150,—<br>(i) in clause (b), after the words " alienated holding " the words " or taluqdari land " shall be inserted ;<br>(ii) in clause (f), after the words " alienated holding " the words " or any taluqdari land " shall be inserted. |
|       |     |              | (17) In section 153, after the words " alienated holding " wherever they occur, the words " or any taluqdari land " shall be inserted.  |
|       |     |              | (18) In section 159, after the word " holding " the words " or land " shall be inserted.  |
|       |     |              | (19) In section 181, after the words " or alienated holding ", the words " or any taluqdari land " shall be inserted.   |
|       |     |              | (20) In section 214, in clause (d) of sub-section (r), after the words " unalienated land " the words " or taluqdari land " shall be inserted.  |
|       |     |              | (21) In section 216, sub-section (r), after the words " alienated shares of villages " the words " and villages or shares of villages comprised in taluqdari estates " shall be inserted.   |
|       |     |              | (22) In section 217, after the words " alienated village " the words " or a village or the share of a village comprised in a taluqdari estate " shall be inserted.  |
|       |     |              | (23) In section 218, after the word " alienated " wherever it occurs the words " or taluqdari " shall be inserted.  |

## SCHEDULE II

(See section 17)

## Enactments repealed

| Year. | No.     | Short title.                                       | Extent of repeal. |
|-------|---------|--|-------------------|
| 1     | 2       | 3  | 4                 |
| 1862  | ... VI  | The Ahmedabad Taluqdars' Act, 1862.                | The whole Act.    |
| 1881  | ... XXI | The Broach and Kaira Incumbered Estates Act, 1881. | The whole Act.    |
| 1888  | ... VI  | The Gujarat Taluqdars' Act, 1888.                  | The whole Act.    |

## STATEMENT OF OBJECTS AND REASONS

The Talukdari tenure obtains in the four districts of Gujarat, viz. Ahmedabad, Kaira, Broach and Panch Mahals. The Talukdars came into being as a result of the unsettled political conditions of certain periods in our history. The Talukdari villages and estates are at present governed by the Gujarat Taluqdars' Act, 1888. The Talukdars hold them subject to the payment of jama which is either fixed or fluctuating. Government attempted in the past to rehabilitate the landed gentry of the Talukdars by liberal grants of loans and management of their estates by special Acts such as (1) the Ahmedabad Taluqdars' Act, 1862, (2) the Broach and Kaira Incumbered Estates Act, 1881, and (3) the Gujarat Taluqdars' Act, 1888. However, these Acts had not the desired effect of adequately ameliorating their conditions generally. The relations of the tenants and the Talukdars have already been settled under the Bombay Tenancy and Agricultural Lands Act, 1948. Government now proposes to settle the relations of Talukdars with Government. As a measure of agrarian reform, Government proposes to abolish this tenure altogether.

2. The present Bill aims at achieving this objective. It provides for repeal of the three Acts referred in paragraph 1 above. Clause 3 provides for the abolition of the Talukdari tenure. All revenue surveys and settlements made are to be deemed to have been made under Chapters VIII and VIII-A of the Land Revenue Code. All Talukdari lands, except those which are wholly or partially exempt from payment of land revenue under a special contract or any law, agreement, settlement, etc., are made liable to the payment of land revenue, under the provisions of the Land Revenue Code and rules thereunder. Provision has also been made that all public roads, lanes and paths, etc., not situated within the limits of wantas shall be the property of the Crown (clause 6). Clause 7 provides for payment of compensation to Talukdars for extinguishment of rights under clause 6. Clause 14 provides for method of compensation for extinguishment or modification of any other rights. Clauses 8, 9 and 10 contain appeal provisions. Clause 15 empowers the Provincial Government to frame rules for carrying out the purposes of the Act. Clause 16 makes the provisions of the Land Revenue Code applicable to the Talukdari lands.

## APPENDIX I

## BOMBAY ACT No. LXII OF 1949

An Act to abolish the taluqdari tenure in the  
Province of Bombay

WHEREAS it is expedient to abolish the taluqdari tenure prevailing in certain parts of the Province of Bombay and to amend the law relating to the revenue administration of the estates held on the said tenure ; It is hereby enacted as follows :—

## Short title, extent and commencement

1. (1) This Act may be called the Bombay Taluqdari Tenure Abolition Act, 1949.

(2) It extends to the districts of Ahmedabad, Kaira, Broach and the Panch Mahals as constituted immediately before the 1st day of August 1949.

(3) It shall come into force on such date as the Provincial Government may, by notification in the *Official Gazette*, appoint in this behalf.

## Definitions

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "Code" means the Bombay Land Revenue Code, 1879 (Bom. V of 1879) ;

(2) "Taluqdars' Act" means the Gujarat Taluqdars' Act, 1888 (Bom. VI of 1888) ;

(3) "Taluqdari land" means land forming part of a taluqdari estate and includes land forming part of such estate and held by a cadet of a taluqdar's family for the purpose of maintenance ;

(4) "taluqdari tenure" means a land tenure on which the taluqdari land is held ;

(5) the words and expressions used in this Act shall be deemed to have the same meaning as they have in the Code.

## Abolition of taluqdari tenure and its incidents

3. With effect from the date on which this Act comes into force,—

(i) the taluqdari tenure shall wherever it prevails be deemed to have been abolished ; and

(ii) save as expressly provided by or under the provisions of this Act, all the incidents of the said tenure attaching to any land comprised in a taluqdari estate shall be deemed to have been extinguished.

## Revenue surveys to be deemed to be surveys under the Code

4. All revenue surveys or revised revenue surveys of taluqdari estates directed by the Provincial Government under section 4 of the Taluqdars'

Act and all settlements made shall be deemed to have been made under Chapter VIII and VIII-A of the Code and the settlement registers and other records prepared of such surveys shall be deemed to have been prepared under the corresponding provisions of the Code.

#### Liability of taluqdari land to payment of land revenue

5. (1) Subject to the provisions of sub-section (2),—
- (a) all taluqdari lands are and shall be liable to the payment of land revenue in accordance with the provisions of the Code and the rules made thereunder, and
  - (b) a taluqdar holding any taluqdari land or a cadet of a taluqdar's family holding any taluqdari land hereditarily for the purpose of maintenance, immediately before the coming into force of this Act, shall be deemed to be an occupant within the meaning of the Code or any other law for the time being in force.
- (2) Nothing in sub-section (1) shall be deemed to affect—
- (a) the right of any person to hold any taluqdari land wholly or partially exempt from the payment of land revenue under a special contract or any law for the time being in force ;
  - (b) the right of any person to pay jama only under any agreement or settlement recognised under section 23 or under a declaration made under section 22 of the Taluqdars' Act so long as such agreement, settlement or declaration remains in force under the provisions of this Act.

#### All public roads, etc. not situate in wantas to vest in the Crown

6. All public roads, lanes and paths, the bridges, ditches, dikes and fences, on, or beside, the same, the bed of the sea and of harbours, creeks below high water mark, and of rivers, streams, nallas, lakes, wells and tanks, and all canals, and water courses, and all standing and flowing water, all unbuilt village site lands, all waste lands and all uncultivated lands (excluding lands used for building or other non-agricultural purposes), which are not situate within the limits of the wantas belonging to a taluqdar in a taluqdari estate shall, except in so far as any rights of any person other than the taluqdar may be established in and over the same and except as may otherwise be provided by any law for the time being in force, vest in and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the Crown and all rights held by a taluqdar in such property shall be deemed to have been extinguished and it shall be lawful for the Collector, subject to the general or special orders of the Commissioner, to dispose them of as he deems fit, subject always to the rights of way and of other rights of the public or of individuals legally subsisting.

*Explanation.*—For the purposes of this section, land shall be deemed to be uncultivated, if it has not been cultivated for a continuous period of three years immediately before the date on which this Act comes into force.

**Compensation to taluqdars for extinguishment of rights under the preceding section**

7. (1) Any taluqdar having any rights in such property shall be entitled to compensation in the manner provided in the following paragraphs, namely :—

- (a) within a period of twelve months from the date on which this Act comes into force, the taluqdar shall apply in writing to the Collector stating the nature of his right, the grounds of his claim and the amount of compensation claimed by him for the extinguishment of his rights ;
- (b) the Collector shall hold a formal inquiry in the manner provided in the Code and if the Collector is satisfied that the applicant had any rights in the land and that such rights have been extinguished under the last preceding section, shall make an award in the manner prescribed in section 11 of the Land Acquisition Act, 1894 (I of 1894), subject to the following conditions :—

- (i) if the property acquired is waste or uncultivated but is culturable land the amount of compensation shall not exceed three times the assessment of the land :

Provided that if the land has not been assessed, the amount of compensation shall not exceed such amount of assessment as would be leviable in the same village on the same extent of similar land used for the same purpose ;

- (ii) if the property is land over which the public has been enjoying or acquired a right of way or any individual has any right of easement, the amount of compensation shall not exceed the amount of the annual assessment leviable in the village for uncultivated land in accordance with the rules made under the Code or if such rules do not provide the levy of such assessment, such amount as in the opinion of the Collector shall be the market value of the right or interest held by the claimant ;
- (iii) if there are any trees or structures on the land, the amount of compensation shall be the market value of such trees or structures, as the case may be ;

*Explanation.*—For the purposes of this section, the “ market value ” shall mean the value as estimated in accordance with the provisions of sections 23 and 24 of the Land Acquisition Act, 1894 (I of 1894), in so far as such provisions may be applicable.

(2) Every award made under sub-section (1) shall be in the form prescribed in section 26 of the Land Acquisition Act, 1894 (I of 1894), and the provisions of the said Act, shall, so far as may be, apply to the making of such award.

### Appeal against the Collector's award

8. An appeal shall lie against an award of the Collector to the Bombay Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1939 (Bom. XII of 1939), notwithstanding anything contained in the said Act.

### Procedure before the Revenue Tribunal

9. (1) The Bombay Revenue Tribunal shall, after giving notice, to the appellant and the Provincial Government, decide the appeal and record its decision.

(2) in deciding appeals under this Act, the Bombay Revenue Tribunal shall exercise all the powers which a Court has and follow the same procedure which a Court follows in deciding appeals from the decree or order of an original Court under the Code of Civil Procedure, 1908 (V of 1908).

### Limitation

10. Every appeal made under this Act to the Bombay Revenue Tribunal shall be filed within a period of sixty days from the date of the award of the Collector. The provisions of sections 4, 5, 12 and 14 of the Indian Limitation Act, 1908 (IX of 1908), shall apply to the filing of such appeal.

### Court fees

11. Notwithstanding anything contained in the Court-fees Act, 1870 (VII of 1870), every appeal made under this Act to the Bombay Revenue Tribunal shall bear a court-fee stamp of such value as may be prescribed.

### Finality of the award and decision of the Revenue Tribunal

12. The award made by the Collector subject to an appeal to the Bombay Revenue Tribunal and the decision of the Bombay Revenue Tribunal on the appeal shall be final and conclusive and shall not be questioned in any suit or proceeding in any Court.

### Inquiries and proceedings to be judicial proceedings

13. All inquiries and proceedings before the Collector and the Bombay Revenue Tribunal under this Act shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code (XLV of 1860).

### Method of compensation for the extinguishment or modification of any other rights

14. (1) If any person is aggrieved by any of the provisions of this Act as extinguishing or modifying any of his rights in any land other than those in respect of which provision for the payment of compensation has been made under section 7 and if such person proves that such extinguishment or modification amounts to the transference to public ownership of such land or any right in or over such land, such person may apply to the Collector for compensation within a period of twelve months from the date on which this Act comes into force.

(2) The Collector shall, after holding a formal inquiry in the manner provided in the Code, make an award deciding such amount of compensation as he deems reasonable and adequate. In deciding the amount of compensation, the Collector shall be guided by the provisions of sub-section (1) of section 23 and section 24 of the Land Acquisition Act, 1894 (1 of 1894).

(3) An appeal shall lie from the said award to the Bombay Revenue Tribunal.

(4) The provisions of sections 7 to 13 (both inclusive) shall, so far as may be, apply to the proceedings in respect of such award or appeal, as the case may be.

15. (1) The Provincial Government may, by notification published in the *Official Gazette*, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provisions such rules may provide for the following matters :—

- (a) the value of Court-fee stamp payable on an appeal to the Bombay Revenue Tribunal under section 11 ;
- (b) any other matter which is to be or may be prescribed under this Act.

(3) Rules made under this section shall be subject to the condition of previous publication.

#### Application of the Code to the taluqdari lands

16. Subject to the provisions of this Act, the provisions of the Code apply and are hereby declared to apply to all taluqdari lands subject to the modifications specified in Schedule I.

#### Repeal

17. The enactments specified in Schedule II are hereby repealed:

Provided that the repeal of the said enactments shall not in any way be deemed to affect,—

- (a) the validity, invalidity, effect or consequences of any alienation of or any incumbrance created on a taluqdari land or of anything already done or suffered to be done under the said enactments before the date of the commencement of this Act ;
- (b) any obligation or liability already incurred or accrued before such date ;
- (c) any declaration made or any agreement or settlement recognised, any partition confirmed and any management of the taluqdari estate assumed under the provisions of any of the enactments hereby repealed,

and any proceedings connected with such partition or management instituted before the aforesaid date shall be continued and disposed of, as if this Act had not been passed.

## SCHEDULE I

(See section 16)

| Year. | No. | Short title.                       | Extent of modification.   |
|-------|-----|------------------------------------|---|
| 1     | 2   | 3                                  | 4   |
| 1879  | ... | The Bombay Land Revenue Code, 1879 | <p>(1) In section 3, clause (13), after the words " the Provincial Government " the words " and includes a taluqdar " shall be inserted.</p> <p>(2) In section 38, after the words " unalienated portions of villages " the words " or in villages or portions of villages comprised in a taluqdari estate " shall be inserted.</p> <p>(3) In section 46,—</p> <p>(i) after the words " any holder of alienated land " the words " or a taluqdar " shall be inserted ;</p> <p>(ii) after the words " the said holder ", the words " or taluqdar, as the case may be " shall be inserted.</p> <p>(4) In section 56,—</p> <p>(i) after the words " alienated holding " wherever they occur, the words " or taluqdari land " shall be inserted ;</p> <p>(ii) for the words " such occupancy or alienated holding " wherever they occur and for the words " such occupancy or holding " the words " such occupancy, alienated holding or land " shall be substituted.</p> <p>(5) In section 57,—</p> <p>(i) for the words " a holding " the words " a holding or land " shall be substituted ;</p> <p>(ii) for the words " such holding " the words " such holding or land " shall be substituted.</p> <p>(6) In section 58, after the words " share of a village " wherever they occur, the words " or of a village or portion of a village comprised in a taluqdari estate " shall be inserted.</p> <p>(7) In section 69, after the word " unalienated " the words " or taluqdari " shall be inserted.</p> <p>(8) In section 76, after the words " alienated land " the words " or any taluqdari land " shall be inserted.</p> <p>(9) In section 80,—</p> <p>(i) after the words " an occupancy " the words " or any taluqdari land " shall be inserted ;</p> <p>(ii) after the word " occupant " wherever it occurs the words " or holder " shall be inserted.</p> |

| Year. | No. | Short title. | Extent of modification.   |
|-------|-----|--------------|---|
| 1     | 2   | 3            | 4   |
|       |     |              | (10) In section 85, sub-section (1), after the words " alienated share of a village " the words " or of a village or portion of a village comprised in a taluqdari estate " shall be inserted.  |
|       |     |              | (11) In section 91A, sub-section (1), after the words " alienated share of a village " the words " or of a village or portion of a village comprised in a taluqdari estate " shall be inserted.   |
|       |     |              | (12) In section 111, after the word " estate " where it occurs for the first time the words " including a taluqdari estate " shall be inserted.   |
|       |     |              | (13) * In section 114, the words " or in a taluqdari estate " shall be deleted.   |
|       |     |              | (14) In section 118, after the word " alienated " wherever it occurs the words " or taluqdari " shall be inserted.  |
|       |     |              | (15) In section 136, sub-section (1), after the words " alienated land " the words " or taluqdari land " shall be inserted.   |
|       |     |              | (16) In section 150,—<br>(i) in clause (b), after the words " alienated holding " the words " or taluqdari land " shall be inserted ;<br>(ii) in clause (f), after the words " alienated holding " the words " or any taluqdari land " shall be inserted. |
|       |     |              | (17) In section 153, after the words " alienated holding " wherever they occur, the words " or any taluqdari land " shall be inserted.  |
|       |     |              | (18) In section 159, after the word " holding " the words " or land " shall be inserted.  |
|       |     |              | (19) In section 181, after the words " or alienated holding " the words " or any taluqdari land " shall be inserted.  |
|       |     |              | (20) In section 214, in clause (d) of sub-section (2), after the words " unalienated land " the words " or taluqdari land " shall be inserted.  |
|       |     |              | (21) In section 216, sub-section (1), after the words " alienated shares of villages " the words " and villages or shares of villages comprised in taluqdari estates " shall be inserted.   |
|       |     |              | (22) In section 217, after the words " alienated village " the words " or a village or the share of a village comprised in a taluqdari estate " shall be inserted.  |
|       |     |              | (23) In section 218, after the word " alienated " wherever it occurs the words " or taluqdari " shall be inserted.  |

\* Section 114 of the Code deleted by the Bombay Khoti Abolition Act, 1949.

## SCHEDULE II

(See section 17)

## Enactments repealed

| Year.<br>1 | No.<br>2 | Short title.<br>3                                  | Extent of repeal.<br>4 |
|------------|----------|--|------------------------|
| 1862       | ... VI   | The Ahmedabad Taluqdars' Act, 1862.                | The whole Act.         |
| 1881       | ... XXI  | The Broach and Kaira Incumbered Estates Act, 1881. | The whole Act.         |
| 1888       | ... VI   | The Gujarat Taluqdars' Act, 1888.                  | The whole Act.         |

## APPENDIX J

## The Bombay Taluqdari Tenure Abolition Act, 1949

No. 9398/45-M.—In exercise of the powers conferred by section 15 of the Bombay Taluqdari Tenure Abolition Act, 1949 (Bom. LXII of 1949), the Government of Bombay is pleased to make the following rule, namely :—

Every appeal made under the said Act to the Bombay Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1939, shall bear a court-fee stamp of Rupees three.

## APPENDIX K

## L.A. BILL No. XL OF 1949

## A Bill to abolish the khoti tenure in the Province of Bombay

WHEREAS it is expedient to abolish the khoti tenure prevailing in the districts of Ratnagiri and Kolaba in the Province of Bombay and to provide for certain consequential and incidental matters hereinafter appearing ; It is hereby enacted as follows :—

## Short title, extent and commencement

1. (1) This Act may be called the Bombay Khoti Abolition Act, 1949.

(2) It extends to the districts of Ratnagiri and Kolaba.

(3) It shall come into force on such date as the Provincial Government may, by notification in the *Official Gazette*, specify.

## Definitions

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

- (i) "Code" means the Bombay Land Revenue Code, 1879 (Bom. V of 1879) ;
- (ii) "dhara land" means land held by a dharekari and in the Ratnagiri district includes land held by a quasi-dharekari ;
- (iii) "dharekari" means a landholder who holds land on the dhara tenure ;
- (iv) "Khoti Act" means the Khoti Settlement Act, 1880 (Bom. I of 1880) ;
- (v) "khot's dues" means,—
  - (a) the rent paid to a khot by a quasi-dharekari or permanent tenant of khoti land in the district of Ratnagiri, in accordance with the provisions of section 33 of the Khoti Act, and
  - (b) the khoti fayda paid by any tenant of the khoti nisbat land in the district of Kolaba, in accordance with the terms of the kabulayat or in accordance with the orders passed under section 38 of the Khots Leases Act, 1865 (Bom. I of 1865), exclusive of the survey assessment due to the Provincial Government and the cess leviable under section 93 of the Bombay Local Boards Act, 1923 (Bom. VI of 1923), in respect of such land ;
- (vi) "khoti khasgi land" means land owned by and in possession of a khot ;
- (vii) "khoti land" means land in respect of which a khot had, as such, any right or interest in the district of Ratnagiri according to the provisions of the Khoti Act and in the district of Kolaba according to the custom of the tenure ;
- (viii) "khoti nisbat land" means land in a khoti village held by permanent tenants on condition of the payment of survey assessment and *fayda* or held by other tenants on condition of the payment of rent ;
- (ix) "khoti village" means a village, or a portion or share of a village, to the extent to which a khot has any right or interest in such village, or portion or share thereof ;
- (x) "quasi-dharekari" means a landholder of any of the denominations named in the first column of the Schedule to the Khoti Act.

(2) Any word or expression which is defined in the Code and not defined in this Act shall be deemed to have the meaning given to it by the Code.

(3) References in this Act to the provisions of the Khoti Act and the incidents of the khoti tenure shall, notwithstanding the repeal of the said Act and the abolition of the said tenure by this Act, be construed as references to the said provisions and incidents as they were in force immediately before this Act comes into force.

### Abolition of khoti tenure

3. With effect from and on the date on which this Act comes into force,—

- (1) the khoti tenure shall, wherever it prevails in the districts of Ratnagiri and Kolaba, be deemed to have been abolished ; and
- (2) save as expressly provided by this Act, all the incidents of the said tenure shall be deemed to have been extinguished, notwithstanding any law, custom, or usage or anything contained in any sanad, grant, kabulayat, lease, decree or order of any Court or any other instrument.

### Khot, dharekari, etc. to be occupants of certain lands

4. (a) In the case of a khoti khasgi land, the Khot—
- (b) in the case of a dhara land, a dharekari or a quasi-dharekari,
- (c) in the case of a khoti nisbat land—
  - (i) in the district of Ratnagiri, a permanent tenant, and a khot in respect of land in the possession of other tenants, and
  - (ii) in the district of Kolaba, any permanent tenant,

shall be primarily liable to the Provincial Government for the payment of land revenue due in respect of such land held by him and shall be entitled to all the rights and shall be liable to all the obligations in respect of such land as an occupant under the Code or any other law for the time being in force, subject to the rights of any transferee lawfully subsisting :

Provided that in the case of a tenant other than a permanent tenant in possession of khoti nisbat land in the district of Kolaba such tenant shall not be entitled to the rights of an occupant unless and until he pays to the Provincial Government such amount of the occupancy price as may be prescribed by rules made in this behalf.

### Payment of khot's dues

5. (1) Nothing in section 4 shall in any way affect the liability of a quasi-dharekari or permanent tenant to pay to a khot the khot's dues in respect of the land held by him in the district of Ratnagiri under the provisions of the Khoti Act and the liability of a tenant of khoti nisbat land in the district of Kolaba according to the custom of the tenure.

(2) The khot's dues so payable shall notwithstanding any law, custom or agreement, be deemed to be the rent under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXII of 1948), and the provisions of the said Act shall, so far as may be, apply to the determination and payment of the said dues.

### Commutation of khoti dues

6. (1) Any person referred to in the last preceding section as being liable to pay the khot's dues to a khot may apply to the Mamlatdar for the commutation of the khot's dues payable by him.

(2) Such application shall be in writing and shall be in the form prescribed by rules made under this Act.

(3) On receipt of such application, the Mamlatdar shall after giving notice to the khot and after holding a formal inquiry determine the amount of commutation :

Provided that the amount of commutation shall not exceed three times the amount of the khot's dues or if such khot's dues are payable in kind, three times the value of such dues at the date of the application.

(4) The Mamlatdar shall on determination of the commutation value direct the applicant to deposit the amount within such period as he thinks reasonable. On such deposit the Mamlatdar shall direct the land in respect of which the khot's dues were payable as being free from the liability for the payment of such dues and shall also direct the amount to be paid to the khot.

### Khot to hand over accounts, etc. to authorised Officer

7. (1) Every khot shall deliver to such officer and within such period as the Provincial Government may direct all accounts and other records relating to the khoti village kept by him in the Ratnagiri district under the provisions of the Khoti Act and in the Kolaba district under the terms of the kabulayat.

(2) If a khot fails without reasonable cause to deliver any such accounts or records, he shall, on conviction, be punished with imprisonment which may extend to six months or with fine which may extend to Rs. 1,000 or with both.

### Uncultivated and waste lands and all property of the nature specified in section 37 of the Code vests in the Crown

8. For the removal of doubt, it is hereby declared that all uncultivated and waste lands in a khoti village not appropriated by any khot before the date on which this Act comes into force, and all other kinds of property referred to in section 37 of the Code, situate in a khoti village, which are not the property of the individuals or of any aggregate of persons legally capable of holding property and except in so far as any rights of such persons may be established in or over the same and except as may be otherwise provided in any law for the time being in force, are together with all rights in or over the same or appertaining thereto, the property of the Crown, and it shall be lawful to dispose of or set apart the same for the authority in the manner and for the purpose provided in section 37 or 38 of the Code, as the case may be.

### Extinction of khot's right of reversion

9. From the date on which this Act comes into force a khot shall not be entitled to acquire any right in any khoti land by right of reversion.

*Explanation.*—For the purposes of this section, the right of reversion shall mean a right by which a khot was entitled to acquire lands held by a privileged occupant under section 10 of the Khoti Act or dhara or khoti nisbat land in the district of Kolaba according to the custom of the tenure.

### Right to trees

10. The rights to teak, black wood and other trees specially reserved under the Indian Forest Act, 1927 (XVI of 1927), or any other law for the time being in force shall vest in the Crown. In the case of all other trees in khoti khasgi land such rights shall vest in the khot and in the case of other lands such rights shall vest in the persons who are entitled to the rights of an occupant under this Act.

### Application of the Code to lands in khoti village

11. Save as otherwise expressly provided in this Act, the provisions of the Code shall apply to lands in a khoti village.

### Method of compensation for the extinguishment or modification of any rights in land

12. (1) If a khot or any other person is aggrieved by any of the provisions of this Act as extinguishing or modifying any of his rights in land and if such person proves that such extinguishment or modification amounts to transference to public ownership of any land or any right in or over such land, such person may apply to the Collector for compensation.

(2) Such application shall be made in the form prescribed by rules made under this Act within six months from the date on which this Act comes into force.

(3) The Collector shall after holding a formal inquiry in the manner provided by the Code award such compensation as he deems reasonable and adequate :

Provided that the amount of compensation for the extinguishment of the right of reversion and of the right to receive the khot's dues shall not exceed the maximum of the average of the amount proved to have been realised by the khot as such dues during three years immediately before the date on which this Act comes into force :

Provided further that in the case of extinguishment or modification of any other right of a khot or any right of any other person the Collector shall be guided by the provisions of sub-section (1) of section 23 and section 24 of the Land Acquisition Act, 1894 (I of 1894).

(4) Subject to the provisions of sub-section (5), the award of the Collector shall be final.

(5) Any person aggrieved by the award of the Collector may appeal to the Bombay Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1939 (Bom. XII of 1939).

(6) In deciding appeals under sub-section (5), the Bombay Revenue Tribunal shall exercise all the powers which a Court has and follow the same procedure which a Court follows in deciding appeals from the decree or order of an original Court under the Code of Civil Procedure, 1908 (V of 1908).

### Limitation

13. Every appeal made under this Act to the Bombay Revenue Tribunal shall be filed within a period of sixty days from the date of the award of the Collector. The provisions of sections 4, 5, 12 and 14 of the Indian Limitation Act, 1908 (IX of 1908), shall apply to the filing of such appeal.

### Court-fees

14. Notwithstanding anything contained in the Court-fees Act, 1870 (VII of 1870), every appeal made under this Act to the Bombay Revenue Tribunal shall bear a court-fee stamp of such value as may be prescribed.

### Provisions of Bom. LXVII of 1948 to govern the relations of khot and tenants

15. Nothing in this Act shall in any way be deemed to affect the application of any of the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVII of 1948), to any of the khoti lands or the mutual rights and obligations of a khot and his tenants, save in so far the said provisions are in any way inconsistent with the express provisions of this Act.

### Rules

16. The Provincial Government may make rules for the purpose of carrying out the provisions of this Act. Such rules shall be subject to the condition of previous publication and shall, when finally made, be published in the *Official Gazette*.

### Repeal

17. The enactments specified in the Schedule are hereby repealed to the extent specified in column 4 thereof :

Provided that the repeal of the said enactments and the provision declaring any incident of the khoti tenure to have been extinguished shall not in any way affect any legal proceeding pending at the date of the commencement of this Act and such legal proceeding shall be continued and finally disposed of as if this Act had not been passed.

## SCHEDULE

(See section 17)

| Year. | No. | Short title.                       | Extent of repeal       |
|-------|-----|------------------------------------|------------------------|
| 1     | 2   | 3                                  | 4                      |
| 1865  | I   | The Khots Leases Act, 1865         | ... Sections 37 and 38 |
| 1879  | V   | The Bombay Land Revenue Code, 1879 | ... Section 114.       |
| 1880  | I   | The Khoti Settlement Act, 1880     | ... The whole.         |

## STATEMENT OF OBJECTS AND REASONS

The Khoti tenure obtains in the districts of Ratnagiri and Kolaba. In the Ratnagiri district, the khoti system is governed by the Khoti Settlement Act, 1880, whereas in the Kolaba district, the tenure is governed by customs and usage and the provisions of sections 37 and 38 of the Khots Leases Act, 1865. The khot's duties were the promotion of cultivation of waste lands and collection of land revenue on behalf of Government. In the context of the present administration, the khots have become an anachronism. As a measure of agrarian reform, Government proposes to abolish the khoti system and bring the administration of khoti villages and lands in line with the ryotwari system.

2. The present Bill is designed to achieve the aforesaid objective. It repeals the two Acts referred to above. It provides for the abolition of the khoti tenure obtaining in the Ratnagiri and Kolaba districts (clause 3). Clause 4 fixes the primary responsibility for payment of land revenue and gives rights of occupancy to khots, dharekaris, quasi-dharekaris, etc. This provision does not affect the liability of tenants to pay khot's dues (clause 5). Clause 6 contains provision for commutation of khot's dues. All uncultivated and waste lands in a khoti village not appropriated by any khot, before the Act comes into force, are to vest in the Crown (clause 8). A khot's right of reversion in any khoti land is extinguished (clause 9). The provisions of the Bombay Land Revenue Code, 1879, are made applicable to the lands in a khoti village (clause 11). Provision has been made for the method of compensation for the extinguishment or modification of any rights in such lands (clause 12). The Provincial Government has been empowered to make rules for the purpose of carrying out the provisions of the Act (clause 16).

Dated the 23rd June 1949.

(Sd.) MORARJI DESAI.

## APPENDIX L

## BOMBAY ACT No. VI OF 1950

(Brought into force with effect from 15th May 1950)

## An Act to abolish the khoti tenure in the Province of Bombay

WHEREAS it is expedient to abolish the khoti tenure prevailing in the districts of Ratnagiri and Kolaba in the Province of Bombay and to provide for certain consequential and incidental matters hereinafter appearing ; It is hereby enacted as follows :—

## Short title, extent and commencement

1. (1) This Act may be called the Bombay Khoti Abolition Act, 1949.

(2) It extends to the districts of Ratnagiri and Kolaba as constituted immediately before the thirtieth day of July 1948.

(3) It shall come into force on such date as the Provincial Government may, by notification in the *Official Gazette*, specify.

## Definitions

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

- (i) " Code " means the Bombay Land Revenue Code, 1879 (Bom. V of 1879) ;
- (ii) " dhara land " means land held by a dharekari and in the Ratnagiri district includes land held by a quasi-dharekari ;
- (iii) " dharekari " means a landholder who holds land on the dhara tenure ;
- (iv) " khot " includes,—
  - (a) a mortgagee lawfully in possession of a khotki,
  - (b) all co-sharers in a khotki ;
- (v) " Khoti Act " means the Khoti Settlement Act, 1880 (Bom. I of 1880) ;
- (vi) " khot's dues " means,—
  - (a) the rent paid to a khot by a quasi-dharekari or permanent tenant of khoti land in the district of Ratnagiri, in accordance with the provisions of section 33 of the Khoti Act, and
  - (b) the khoti fayda paid by any tenant of the khoti nisbat land in the district of Kolaba, in accordance with the terms of the kabulayat or in accordance with the orders passed under section 38 of the Khots Leases Act, 1865 (Bom. I of 1865),

exclusive of the survey assessment due to the Provincial Government and the cess leviable under section 93 of the Bombay Local Boards Act, 1923 (Bom. VI of 1923), in respect of such land ;

- (vii) "khoti khasgi land" means,—
- (a) in the Ratnagiri District, khoti land held by and in possession of a khot other than khoti nisbat land and land held by a privileged occupant as defined in the Khoti Act ;
  - (b) in the Kolaba District,—
    - (i) land which is entered in the khot's own name as khoti khasgi or in that of a co-sharer in a khotki in the records of the original survey ; and
    - (ii) land acquired since the original survey by the khot by purchase or other lawful transfer otherwise than in his capacity as a khot ;
- (viii) "khoti land" means land in respect of which a khot had, as such, any right or interest in the district of Ratnagiri according to the provisions of the Khoti Act and in the district of Kolaba according to the custom of the tenure ;
- (ix) "khoti nisbat land" means,—
- (a) in the district of Ratnagiri, land which in a khoti village before the coming into force of this Act has reverted to the khot under section 10 of the Khoti Act ;
  - (b) in the district of Kolaba,—
    - (i) land in a khoti village which may have come into the possession of the khot by lapse for failure of heirs of a tenant or by forfeiture on the tenant's failure to pay rent or by the resignation of the tenant ;
    - (ii) land which may have been entered at the original survey in the khoti nisbat padit khata and since brought into cultivation otherwise than at the khot's own expense ;
- (x) "khoti village" means a village, or a portion or share of a village, to the extent to which a khot has any right or interest in such village, or portion or share thereof ;
- (xi) "permanent tenant" means a holder of khoti land who has a permanent tenancy in such land ;
- (xii) "quasi-dharekari" means a landholder of any of the denominations named in the first column of the Schedule to the Khoti Act.

(2) Any word or expression which is defined in the Code and not defined in this Act shall be deemed to have the meaning given to it by the Code.

(3) References in this Act to the provisions of the Khoti Act and the incidents of the khoti tenure shall, notwithstanding the repeal of

the said Act and the abolition of the said tenure by this Act, be construed as references to the said provisions and incidents as they were in force immediately before this Act comes into force.

### Abolition of khoti tenure

3. With effect from and on the date on which this Act comes into force,—

- (1) the khoti tenure shall, wherever it prevails in the districts of Ratnagiri and Kolaba, be deemed to have been abolished ; and
- (2) save as expressly provided by this Act, all the incidents of the said tenure shall be deemed to have been extinguished, notwithstanding any law, custom, or usage or anything contained in any sanad, grant, kabulayat, lease, decree or order of any court or any other instrument.

### Khot, dharekari and tenants to be occupants

4. (1) (a) In the case of a khoti khasgi land, the khot ;
- (b) in the case of a dhara land, the dharekari or quasi-dharekari ;
- (c) in the case of land held by a permanent tenant, the permanent tenant ;
- (d) (i) in the case of khoti nisbat land, any tenant in possession of the land ; and
- (ii) if there be no tenant in possession of such land, the khot ;

shall be primarily liable to the Provincial Government for the payment of land revenue due in respect of such land held by him and shall be entitled to all the rights and shall be liable to all the obligations in respect of such land as an occupant under the Code or any other law for the time being in force :

Provided that in the district of Ratnagiri, in the case of a tenant (other than a permanent tenant) in the possession of khoti nisbat land, such tenant shall be entitled to the rights of an occupant on payment to the khot of the occupancy price equivalent to six multiples of the survey assessment fixed on the land :

Provided further that in the district of Kolaba, in the case of a tenant (other than a permanent tenant) in the possession of khoti nisbat land such tenant, and in the case of a khot in respect of khoti nisbat land in his actual possession such khot, shall be entitled to the rights of an occupant on payment to the Provincial Government of the occupancy price equivalent to six multiples of the survey assessment fixed on the land.

(2) The occupancy price payable under this section shall be in addition to the amount of the commuted value payable by any person under section 5.

(3) With effect from the date on which this Act comes into force, the land in respect of which any person is entitled to the rights of an

occupant under sub-section (1), shall be free from the liability for the payment of khot's dues in respect thereof, and all rights of a khot in his capacity as a khot in such land shall be deemed to have been extinguished.

(4) Nothing in sub-section (3) shall in any way affect the liability of any person to pay in respect of the land in his possession the amount of the khot's dues for the current year ending on the 31st day of July 1950 and the amount of the arrears of such dues for any previous year in respect of the said land.

### Commutation of khot's dues

5. (1) A quasi-dharekari or a permanent tenant or a tenant of khoti nisbat land shall be liable to pay the commuted value of the khot's dues which were payable by him immediately before the coming into force of this Act in respect of the land held by him. Such commuted value shall be estimated and paid in the manner prescribed in sub-sections (2) and (3).

(2) The Mamlatdar shall give notice in the prescribed manner to the persons referred to in sub-section (1) and the khot, and after holding a formal inquiry shall determine the amount of the commuted value of the khot's dues :

Provided that the amount of commuted value shall not exceed three times the amount of the khot's dues, if payable in cash or three times the value of such dues if payable in kind, subject to the maximum of a sum equal to six times the survey assessment of the land, or if the khot's dues are payable in crop share, three times the commuted value of such dues reckoned in the manner provided for in sub-section (3).

(3) In estimating the commuted value of the khot's dues payable in crop-share, a third crop-share shall be held as equivalent to two multiples of survey assessment fixed on the land and any other crop-share as a proportional multiple of such assessment :

Provided that the commuted value of the produce payable on any warkas land actually used for the purpose of rab manure in connection with rice cultivation shall be held as equivalent to one survey assessment of such land.

### Occupancy price or commutation value recoverable as arrears of land revenue

6. The amount of the occupancy price payable under section 4 and the amount of the commutation value payable under section 5, if not deposited with the Mamlatdar or paid to the khot, in accordance with the directions within the period specified in the direction, shall be recoverable as arrears of land revenue. The amount deposited or recovered shall be paid to the khot or credited to the Crown, as the case may be.

### **Khot to hand over accounts, etc., to authorised Officer**

7. (1) Whenever an officer authorised by the Provincial Government in this behalf so directs, a khot shall produce before him or such other officer as may be specified in the direction accounts and other records relating to the khoti village kept by him in the Ratnagiri district under the provisions of the Khoti Act and in the Kolaba district under the terms of the kabulayat.

(2) If a khot fails without reasonable cause to deliver any such accounts or records, he shall, on conviction, be punished with fine which may extend to Rs. 200. In the case of a continuing failure to deliver any such accounts or records, the khot shall be punished with an additional fine which may extend to Rs. 25 for every day during which such failure continues after conviction for the first such failure.

### **Uncultivated and waste lands and all property of the nature specified in section 37 of the Code vests in the Crown**

8. For the removal of doubt, it is hereby declared that all uncultivated and waste lands in a khoti village not appropriated by any khot and not entered into the revenue or survey records as khoti khasgi before the date on which this Act comes into force, and all other kinds of property referred to in section 37 of the Code, situate in a khoti village, which are not the property of the individuals or of any aggregate of persons legally capable of holding property and except in so far as any rights of such persons may be established in or over the same and except as may be otherwise provided in any law for the time being in force, are together with all rights in or over the same or appertaining thereto, the property of the Crown, and it shall be lawful to dispose of or set apart the same for the authority in the manner and for the purpose provided in section 37 or 38 of the Code, as the case may be.

### **Extinction of khot's right of reversion**

9. From the date on which this Act comes into force a khot shall not be entitled to acquire any right in any khoti land by right of reversion.

*Explanation.*—For the purposes of this section, the right of reversion shall mean a right by which a khot was entitled to acquire lands held by a privileged occupant under section 10 of the Khoti Act or dhara or khoti nisbat land in the district of Kolaba according to the custom of the tenure.

### **Right to trees**

10. The rights to trees specially reserved under the Indian Forest Act, 1927 (XVI of 1927), or any other law for the time being in force except those the ownership of which has been transferred by the Crown under any contract, grant or law for the time being in force shall vest in the Crown.

### Application of the Code to lands in khoti village

11. Save as otherwise expressly provided in this Act, the provisions of the Code shall apply to lands in a khoti village.

### Method of compensation for the extinguishment or modification of any rights in land

12. (1) If a khot or any other person is aggrieved by any of the provisions of this Act as extinguishing or modifying any of his rights in land and if such person proves that such extinguishment or modification amounts to transference to public ownership of any land or any right in or over such land, such person may apply to the Collector for compensation.

(2) Such application shall be made in the form prescribed by rules made under this Act within six months from the date on which this Act comes into force.

(3) The Collector shall after holding a formal inquiry in the manner provided by the Code award such compensation as he deems reasonable and adequate :

Provided that—

- (a) the amount of compensation for the extinguishment of the right of reversion in lands in a khoti village in the district of Ratnagiri shall not exceed the amount calculated at the rate of Rs. 2 per 100 acres of such land ;
- (b) the amount of compensation for the extinguishment of any right to appropriate any uncultivated and waste lands not appropriated by any khot and not entered in the revenue or survey records as khoti khasgi immediately before the 1st day of August 1949, shall not exceed the amount calculated at the rate of Rs. 5 per 100 acres of such land :

Provided further that in the case of the extinguishment or modification of any other right of a khot or any right of any other person the Collector shall be guided by the provisions of sub-section (1) of section 23 and section 24 of the Land Acquisition Act, 1894 (I of 1894) :

Provided also that if any question arises whether any land is dhara, khoti khasgi or khoti nisbat or is held by a permanent tenant or other tenant, the Collector shall after holding a formal inquiry in the manner provided by the Code decide the question.

(4) Subject to the provisions of sub-section (5), the award or decision of the Collector shall be final.

(5) Any person aggrieved by the award or decision of the Collector may appeal to the Bombay Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1939 (Bom. XII of 1939).

(6) In deciding appeals under sub-section (5), the Bombay Revenue Tribunal shall exercise all the powers which a Court has and follow the same procedure which a Court follows in deciding appeals from

the decree or order of an original Court under the Code of Civil Procedure, 1908 (V of 1908).

### Limitation

13. Every appeal made under this Act to the Bombay Revenue Tribunal shall be filed within a period of sixty days from the date of the award of the Collector. The provisions of sections 4, 5, 12 and 14 of the Indian Limitation Act, 1908 (IX of 1908), shall apply to the filing of such appeal.

### Court-fees

14. Notwithstanding anything contained in the Court-fees Act, 1870 (VII of 1870), every appeal made under this Act to the Bombay Revenue Tribunal shall bear a court-fee stamp of such value as may be prescribed.

### Provisions of Bom. LXVII of 1948 to govern the relations of khot and tenants

15. Nothing in this Act shall in any way be deemed to affect the application of any of the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVII of 1948), to any of the khoti lands or the mutual rights and obligations of a khot and his tenants, save in so far the said provisions are not in any way inconsistent with the express provisions of this Act.

### Rules

16. The Provincial Government may make rules for the purpose of carrying out the provisions of this Act. Such rules shall be subject to the condition of previous publication and shall, when finally made, be published in the *Official Gazette*.

### Repeal

17. The enactments specified in the Schedule are hereby repealed to the extent specified in column 4 thereof :

Provided that the repeal of the said enactment and the provision declaring any incident of the khoti tenure to have been extinguished shall not in any way affect any legal proceeding pending at the date of the commencement of this Act and such legal proceeding shall be continued and finally disposed of as if this Act had not been passed.

## SCHEDULE

(See section 17)

| Year.<br>1 | No.<br>2 | Short title.<br>3                  | Extent of repeal.<br>4 |
|------------|----------|------------------------------------|------------------------|
| 1865       | I        | The Khots Leases Act, 1865         | .. Sections 37 and 38. |
| 1879       | V        | The Bombay Land Revenue Code, 1879 | ... Section 114.       |
| 1880       | I        | The Khoti Settlement Act, 1880     | ... The whole.         |

## APPENDIX M

## REVENUE DEPARTMENT

## The Bombay Khoti Abolition Act, 1949

No. 9705/45.—In exercise of the powers conferred by section 16 of the Bombay Khoti Abolition Act, 1949 (Bom. VI of 1950), the Government of Bombay is pleased to make the following rules, namely :—

1. **Short title.**—These rules may be called the Bombay Khoti Abolition Rules, 1949.
2. **Definitions.**—In these rules,—
  - (a) “ Act ” means the Bombay Khoti Abolition Act, 1949 ;
  - (b) “ Form ” means a Form appended to these rules.
3. **Form of notice.**—The notice to be given by a Mamlatdar under sub-section (2) of section 5 of the Act shall be in Form “ A ”.
4. **Form of application.**—The application to be made to the Collector for compensation under sub-section (2) of section 12 of the Act shall be in Form “ B ”.
5. **Court-fees.**—Every appeal under the Act to the Bombay Revenue Tribunal shall bear a court-fee stamp of Rs. 3.

## FORM “ A ”

(See rule 3)

To

A. B.

Whereas in the capacity of a quasi-dharekari/a permanent tenant/a tenant of Khoti-nisbat land/a khot you are liable to pay/entitled to receive the commuted value of the khot's dues which were payable/receivable by you immediately before the coming into force of the Bombay Khoti Abolition Act, 1949 (Bom. VI of 1950), in respect of the marginally-noted land(s) \* in the village of the taluka of the district, notice is hereby given that a formal inquiry will be held by me in order to determine the amount of the commuted value of the khot's dues.

You are hereby required to attend before me in person at 12 p.m. in my court on at which time and place an inquiry to determine the said commuted value of the khot's dues will be made.

And you are hereby required to produce before me at the above mentioned time and place the relevant documents.

Date.....

Place.....

Seal

Mamlatdar of.....

\* Survey No., Area, Assessment.

## FORM " B "

(See rule 4)

To

The Collector of Ratnagiri/Kolaba.

Name of the applicant.....

Village.....

Taluka.....

Sir,

I, Khot/a mortgagee lawfully in possession of the following khoti lands/a co-sharer in the following khoti lands beg to state that—

- (a) I am a holder of the marginally-noted land(s) \* forming part of the Khoti Khasgi/Khoti nisbat lands in the Khoti village taluka district .
- (b) I am a dharekari/a quasi-dharekari/a permanent tenant/an ordinary tenant of the marginally-noted land(s) in the village taluka district .

2. Under the provisions of section of the Bombay Khoti Abolition Act, 1949, the following rights of mine in such land/lands are extinguished/modified (specify the rights) I therefore claim Rs. as compensation.

3. The amount of compensation claimed is arrived at as follows :—

.....

4. Extracts from the Record of Rights and other relevant village records in respect of such land(s) are enclosed. I also enclose the following documents evidencing my right in question.

(Here give a list of documents)

(Names of witness, if any, should be stated. It should also be stated whether they are to be summoned or whether the applicant will produce them.)

Yours faithfully,

Signature of the applicant.

Date.....

Place.....

---

\* Survey No., Area, Assessment.

## APPENDIX N

## BOMBAY ACT No. XVIII OF 1950

## An Act to amend the Bombay Khoti Abolition Act, 1949

WHEREAS it is expedient to amend the Bombay Khoti Abolition Act, 1949 (Bom. VI of 1950), for the purpose hereinafter appearing ; It is hereby enacted as follows :—

## Short title

1. This Act may be called the Bombay Khoti Abolition (Amendment) Act, 1950.

## Amendment of Bom. VI of 1950

2. Throughout the Bombay Khoti Abolition Act, 1949 (Bom. VI of 1950),—

- (i) for the words "Province of Bombay" the words "State of Bombay",
- (ii) for the words "Provincial Government" the words "State Government", and
- (iii) for the words "the Crown" the word "Government", shall be substituted.

## STATEMENT OF OBJECTS AND REASONS

References in the Bombay Khoti Abolition Act, 1949, to the expressions "Province of Bombay", "Provincial Government" and "the Crown" are required to be altered to "State of Bombay", "State Government" and "Government", in view of the provisions of the Constitution of India which has come into force.

Dated the 4th April 1950.

(Sd.) MORARJI DESAI.

## APPENDIX O

## FORM OF KABULAYAT FOR KOLABA KHOTS

Agreement passed by the Khots of the villages of

in the Taluka of the \_\_\_\_\_ District  
 Whereas we the undersigned Khots of village \_\_\_\_\_ have a  
 right of managing as Khots subject to our entering into an annual  
 agreement, we do hereby agree as follows :—

1. Whereas the total amount of the assessment of the said village has been fixed at the last revision settlement at Rs. \_\_\_\_\_ we hereby agree to pay the same, subject to any abatement which may

be conceded by Government, in two equal instalments as specified below :—

|                  | Rs. |
|------------------|-----|
| on the 5th March | ... |
| on the 5th May   | ... |

2. The local fund cess payable under the Bombay Local Boards Act, 1923, or any other law for the time being in force on the amount of assessment mentioned in clause 1 shall be paid by us in two instalments along with the assessment as specified in clause 1. For collecting local fund cess we shall get remuneration according to the sanctioned scale at the pleasure of Government.

3. Without pleading any excuse whatsoever such as regal or heavenly calamity, fire, waste, disease, etc., the absconding or the failure of any of the Dharekaries or of any tenant in respect of Khoti Nisbat land, we shall pay the revenue agreeably to what is stated in clauses 1 and 2.

4. As many of us as have signed this Kabulayat shall carry on the wahiwat of the village according to our respective shares. Therefore, we, by amicable understanding among ourselves, shall prepare statements concerning the several shares showing what Vasul (revenue) is to be recovered by a particular sharer from a particular tenant of his and submit the same before 30th of November to the Mamlatdar of the Taluka. As the entry of the amount as may have been stated in the survey papers as being recoverable from the tenant. We pray that on our submitting such a statement we may be granted permission to carry on wahiwat and to make recoveries accordingly. In cases in which a share in a Khoti village has been partitioned by metes and bounds and duly recorded as such in the Record of Rights, a separate Kabulayat should be taken from the holder of such shares and no particulars regarding the Vasul in respect of such share need be entered in the joint statement prepared by us under this clause.

5. We shall take copies of the papers and orders which may be issued by Government in connection with the wahiwat in accordance therewith, and we shall deliver to the wahiwatdar of the next year the said papers and (other) papers which there may be with us relating to the management of the village except such as may have been purchased by us at our costs and explain the same to him and shall produce the said papers whenever the Government may require the same for inspection. In the event of the village coming under Government management for any cause we shall hand over the said papers back when the village shall be released from attachment.

6. We shall collect dues in such instalments and on such dates as the Collector from time to time prescribes and at the following rates :—

- (a) With respect to Dhara lands, only the survey assessment and the local fund cess in cash as shown in the village registers to be legally due in the said year ;

(b) with respect to Khoti Nisbat lands of all kinds (i.e. Kharip, Rabi, Warkas and Garden) ;

(i) the survey assessment and the local fund cess in cash as shown in the village registers to be legally due in the said year, and

(ii) customary Khoti Faida in kind or, where it is customary as to levy it, in cash together with bundles of straw as stated below :—

*Note 1.*—The rate at which Khoti Faida is leviable in kind or cash as the case may be should be entered below :—

In kind —

|        |      |        |        |
|--------|------|--------|--------|
| Kharip | Rabi | Warkas | Garden |
|--------|------|--------|--------|

In cash —

|        |      |        |        |
|--------|------|--------|--------|
| Kharip | Rabi | Warkas | Garden |
|--------|------|--------|--------|

|                                 |                                 |                                 |                                 |
|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| Rs.<br>plus bundles of<br>straw | Rs.<br>plus bundles of<br>straw | Rs.<br>plus bundles of<br>straw | Rs.<br>plus bundles of<br>straw |
|---------------------------------|---------------------------------|---------------------------------|---------------------------------|

*Note 2.*—The Faida may be converted into cash according to the market rate of the village concerned, if the parties agree to this course.

For the dues which we collect we shall immediately give to the person paying the same a receipt in the form prescribed by the Collector as provided in clause 8.

We shall not receive anything more than what is stated in the Dakhala which we shall receive in respect of the above lands showing what amount is to be received from a particular tenant.

7. As regards the recovery of dues which are payable in kind under clause 6, we shall make the said recovery by the measure which may be current in the Taluka and the standard of which is kept in the Taluka office.

8. As to the Vasul, which is to be taken from each tenant agreeably to what is stated in the aforesaid clauses, we shall before the instalments commence, enter in the receipt book of each tenant, the dues claimable from him on account of Jamabandi, so much amount as may have been entered against him in the Jamabandi papers, and we shall recover that much amount only. We shall enter payments of the amount in the receipt book at the very time (the amount is paid) and sign the entry but if the receipt book is not produced at the time of payment, a receipt will be given on a slip of paper. Should it be found on enquiry that we have failed to act accordingly, we shall pay to Government such fine not exceeding Rs. 100 as may be ordered by the Collector.

9. If any Dharekari absconds without giving his land to another person for wahiwat, etc. or dies without leaving any heir, or if any tenant of the Khoti Nisbat land dies without leaving any heir, or

absconds, we shall report the fact to the Mamlatdar. Then after the necessary inquiries are made and orders passed for any alterations or entries regarding the land to be made in the Khoti Khata, we shall carry out the orders which may have been passed and take steps for the cultivation of the land and for the payment of the fixed assessment to Government. But pending the receipt of final orders we shall not fail to take necessary steps for the cultivation of the land.

10. Without prejudice to the duties and obligations that are or may be cast upon us under the Indian Forest Act, 1927, and the rules made thereunder, we shall be entitled to get one-third share of the net proceeds, after deducting expenses, of all fellings made by Government in the Reserved Forest of the village, reduced by 20 per cent of the amount of such share.

*Note* : The clause shall be amended in the case of villages in which the right to one-third share is restricted to certain kinds of trees or where no rights exists.

11. Excepting the trees in the reserved forests referred to in clause 10, the ownership of trees shall be held to vest in the Dharekaris or the Khots according as the land in which the trees are situated belongs to the Dharekaris or the Khots. But this provision will not apply to such original teak and black-wood trees in Khoti Nisbat lands as have been included in Government Resolution, Revenue Department, No. 8581/24, dated 2nd May 1927, and have remained undisposed of at this date. When the cutting of such teak and black-wood trees takes place, one-third share of the sale proceeds after deducting the expenses shall be paid to the Khots.

12. We shall not cut down any trees which belong to us under clause 11, if they are on the roadside or near any tank or Dharmashaia or such other place where travellers halt and the trees are useful for affording shelter.

13. If any assessment be fixed by the Collector in respect of the unassessed "Khajan" (coast land) and "Pulanvat" (sandy lands), etc. and other unassessed land which may be lying in the aforesaid village, we shall pay the same in instalments as mentioned in clause 1.

14. Whenever we may be called upon by Government or by any officer not lower in rank than an Aval Karkun to appear before them or him we shall appear without any objection. Should we fail to do so, we shall pay such fine not exceeding Rs. 50 as may be ordered by the Collector.

15. We shall carry out all the terms of this Kabulayat and pay the fixed instalments as stated in the above clauses without practising force or zulum on any person. If any one of us fails to comply with this, those of us who may be present or solvent shall be bound, without pleading the excuse of the absence of others, to pay the amount of the assessment according to the fixed instalments and to carry out the

terms of the Kabulayat. If force or zulum is found to have been practised upon any person in connection with the wahiwat (management) of the village, we shall pay such fine not exceeding Rs. 100 as may be ordered by the Collector.

16. For the proper realization of the revenue and wahiwat as above, we shall furnish a competent surety to the satisfaction of Government officers.

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