

Report of
the EXPERT GROUP on
State Enactments
having a bearing on
COMMERCIAL BANKS
lending to AGRICULTURE

X9(J):6.2.N7c
L1
141895

X9(J):6.2.N7t
L1
141895

1971

REPORT OF THE EXPERT GROUP
ON STATE ENACTMENTS
HAVING A BEARING ON COMMERCIAL BANKS
LENDING TO AGRICULTURE



Reserve Bank of India
Bombay

Price Rs. 6-00

Owner : Reserve Bank of India, Bombay.
Printed by Dhirubhai J. Desai at States' People Press, Ghoga Street, Fort, Bombay-1 and Published by
Shri U. S. Navani for the Reserve Bank of India, Bombay.

CONTENTS

| | PAGE |
|--|-------|
| CHAPTER 1: INTRODUCTION | |
| Terms of Reference | 1 |
| Composition of the Group | 2 |
| Work of the Group | 2-3 |
| Acknowledgements | 3 |
| CHAPTER 2: BACKGROUND AND FORMULATION OF APPROACH | |
| New Context | 4 |
| Inhibiting Factors | 4-5 |
| Facilities for Co-operatives | 5-8 |
| CHAPTER 3: LAND ALIENATION RIGHTS OF AGRICULTURISTS | |
| Scheduled Tribes/Castes etc. | 9-10 |
| Tenant — cultivators | 10 |
| Bhoodan Landholders and Landholders in Gramdan Villages | 10-11 |
| Fragment Holders | 11 |
| Oral Tenants and Share-croppers | 11-13 |
| CHAPTER 4: PRIORITY OF CHARGES | |
| Charge Accruing by Law | 14 |
| Charge on Land/Interest in Land by Declaration | 14-15 |
| Priority in favour of Land Development/ Mortgage Banks | 15 |
| Priority of Charge according to Point of Time | 15-16 |
| Facility for Creation of Charge on Land/Interest in Land in favour of Commercial Banks | 16-17 |
| Priority for Charges in favour of Government | 17 |
| CHAPTER 5: RECOVERY AND OTHER OPERATIONAL DIFFICULTIES OF COMMERCIAL BANKS | |
| Moneylending Legislation | 18-19 |
| Debt Relief Legislation | 19 |
| Acquisition and Disposal of Agricultural Lands by Banks | 19-20 |

CHAPTER — 1

INTRODUCTION

One of the study groups appointed in 1968, the National Credit Council, to examine the need for adopting area/project approach in financing schemes for extending commercial credit to agriculture including credit for commercially viable projects in the rural electrification and minor irrigation fields, drew attention to legislative and administrative aspects, which had a bearing on the entry of commercial banks in the field of agricultural credit and felt that some of the provisions in State enactments were somewhat outmoded in the light of current requirements of agriculture. It, therefore, recommended that there was need for a study, in depth, by an Expert Group, of these laws from the point of view of social objectives of such legislation and the need to enlarge the role of commercial banks in meeting the growing credit requirements of agriculture. The need for such a study was also stressed at the seminar on financing of agriculture by commercial banks convened by the Reserve Bank of India in December 1968. In pursuance of these recommendations, the Governor of the Reserve Bank of India appointed, in September 1969, this Expert Group with the following terms of reference.

Terms of Reference

- (i) To examine the provisions of the State laws relating to abolition of intermediaries, land tenure and tenancy reforms and similar other enactments which confer different degrees of rights in land on the tenant-cultivators and landholders belonging to backward classes, tribals, etc., with particular reference to right of transferability through sale or mortgage or right to create a charge on land/crops and to suggest modifications, if any, required to facilitate their dealings with the commercial banks;
- (ii) To examine the State laws relating to agricultural debt relief and regulation of moneylending, with particular reference to regulation of interest rates, scaling down of past debts, priority to charges among the different credit agencies, recovery of overdues, etc. and to suggest modifications, if required, in favour of institutional credit agencies;
- (iii) To examine the provisions of the State legislation imposing ceiling on land holdings, and to suggest modifications, if any, in regard to lands coming into the possession of the institutional credit agencies, because of foreclosures;
- (iv) To examine the provisions of various land reforms legislation relating to the regulations on sale of land applicable to lands coming into the possession of institutional credit agencies during the process of recovery of loans in respect of (a) categories of persons to whom agricultural land could be sold, (b) the price at which land could be sold, (c) leasing out of land temporarily, (d) sale of fragments, (e) right of pre-emption of adjoining landholders, etc., and to suggest amendments or administrative measures for safeguarding the interest of the institutional credit agencies;
- (v) To recommend measures for simplification of procedures for registration of documents and of equitable mortgages, recovery of overdues, etc., and
- (vi) Other related measures/actions which will increase the commercial banks' participation in agricultural development programme.

Composition of the Group

1.2 The composition of the Group was as follows :

- | | | | |
|---|-----------------|---|-----------------|
| 1. Shri R. K. Talwar, Chairman, State Bank of India, Bombay. | <i>Chairman</i> | 9. Dr. C. D. Datey, Chief Officer, Agricultural Credit Department, Reserve Bank of India, Bombay. | <i>Member</i> |
| 2. Shri K. Gopal Rao, Chairman, Andhra Bank Ltd., Hyderabad. | <i>Member</i> | 10. Shri V. M. Jakhade, Adviser, Economic Department, Reserve Bank of India, Bombay. | <i>Member</i> |
| 3. Shri K. P. J. Prabhu, Custodian, Canara Bank, Mangalore. | <i>Member</i> | 11. Dr. H. B. Shivamaggi, Director, Division of Rural Economics, Economic Department, Reserve Bank of India, Bombay. | <i>Convener</i> |
| 4. Shri H. H. Trivedi,* Managing Director, Gujarat State Co-operative Land Development Bank Ltd., Ahmedabad. | <i>Member</i> | 12. Shri T. V. Ramachandran, <i>Joint Convener</i> Research Officer, Division of Rural Surveys, Economic Department, Reserve Bank of India, Bombay. | |
| 5. Shri G. V. K. Rao, Agricultural Production Commissioner & Special Secretary, Government of Mysore, Bangalore. | <i>Member</i> | Shri V. K. Sheth, Secretary, Agricultural Finance Corporation Ltd., was designated by the Corpo- ration as an alternate member to Shri Rudra- moorthy. Shri K. Venkatachari, Chief Officer (Law), State Bank of India, Shri N. V. Sunda- ram, Deputy Legal Adviser, Legal Department, Reserve Bank of India and Shri R. Ramachandra Rao, Legal Officer, Legal Department, Reserve Bank of India, were closely associated with the work of the Group. Shri R. Sundaravaradan, Assistant Chief Officer, Agricultural Credit De- partment, Reserve Bank of India, attended one of the meetings of the Group on behalf of Dr. C. D. Datey. | |
| 6. Shri Ram Sahay,** Housing Commissioner, Government of Uttar Pradesh, Lucknow. | <i>Member</i> | Work of the Group | |
| 7. Shri B. Rudramoorthy, Managing Director, Agricultural Finance Corporation Ltd., Bombay. | <i>Member</i> | 1.3 At the first meeting held on 23 Septem- ber, 1969, the Group discussed the nature of | |
| 8. Shri P. H. Abhyankar,@ Member, Maharashtra Revenue Tribunal, Government of Maharashtra, Bombay. | <i>Member</i> | | |

* Shri Trivedi could not attend the third and fourth meetings of the Group, due to illness.

** Shri Ram Sahay was Commissioner — Secretary, Agricultural Production, Government of Uttar Pradesh, at the time of his appointment as a member of this Group.

@ Shri P. H. Abhyankar retired from service of the Government of Maharashtra but continued as a member of the Group.

issues referred to it and the scope of its work, and decided to study in depth all the relevant provisions of State enactments. It also decided to issue questionnaires to State Governments, elected commercial banks and all the state co-operative land development/mortgage banks and state co-operative banks. Appendix I reproduces specimen each of the questionnaires issued to these agencies. As some of the big commercial banks have their offices spread over many States, it was thought advisable, in view of large number of enactments involved, to request each of the selected commercial banks to confine its reply to a specified State. These banks were also requested to give details of difficulties faced by them in financing agriculture in the State concerned and also to suggest measures which they considered necessary for their increased involvement in agricultural credit. Fifteen Governments of States and Union Territories, twenty-three commercial banks, eighteen state co-operative land development/mortgage banks and twenty state co-operative banks responded to our questionnaires. The Group held four meetings.

Acknowledgements

1.4 The Group wishes to place on record its gratitude to the various State Governments which supplied copies of the relevant enactments as

also sent their replies to the questionnaire. We would also like to thank the commercial banks for co-operating with us and sending replies to our questionnaire which were found very useful in the formulation of our recommendations. The state co-operative banks and the state co-operative land development/mortgage banks rendered our job easy by sending exhaustive and informative replies to our questionnaires. The Group is grateful to all these institutions for their kind co-operation. Our special thanks are also due to the Regional Offices of the Agricultural Credit Department of the Reserve Bank of India for the assistance rendered in our work. The Group would also like to place on record its appreciation of the devoted work done by the staff of the Division of Rural Economics and Division of Rural Surveys—in particular by Shri I. V. Mamnani and Kum. V. G. Chandwadkar.

1.5 The members of the Group owe a special debt of gratitude to Dr. H. B. Shivamaggi, Convener and Shri T. V. Ramachandran, Joint Convener who worked hard and enthusiastically for collecting, processing and co-ordinating the material required by the Group, prepared informative and valuable studies for facilitating discussions, assisted the Group in its discussions at all the meetings, made useful suggestions for our consideration and drafted the Report through its various stages.

BACKGROUND AND FORMULATION OF APPROACH

New Context

2.1 The success brought about by the adoption of scientific and progressive techniques in the development of Indian agriculture has created a new sense of awareness and enthusiasm in the Indian farmer. The Fourth Five Year Plan, drawn up in the wake of the optimism thus engendered, envisages an annual increase of five per cent in agricultural production during the Plan period mainly through the adoption, in an ever increasing measure, of the new strategy in agricultural production involving,

- a) augmentation and intensive utilisation of irrigation facilities;
- b) use of high-yielding and hybrid varieties of seeds together with relatively large doses of fertilisers and pesticides; and
- c) multiple cropping through short duration crops.

2.2 The new strategy envisaged in the Plan calls for heavy additional capital investment, which, in turn, entails credit requirements of an order admittedly beyond the capacity of the co-operative sector to provide. The multi-agency approach to cater to the credit requirements of the agricultural sector was thus inevitable.

Inhibiting Factors

2.3 It is against this background that the Group approached the task of identifying the inhibiting factors arising out of legal enactments and has recommended the extent to which, and the manner in which, these enactments would require to be modified to facilitate the operations of commercial banks in the provision of finance to agriculturists.

2.4 One of the main inhibiting factors in the provision of agricultural credit by commercial banks relates to restrictions placed by certain

enactments on the cultivator's transferability right in land as a result of which many cultivators cannot offer their land as security for loans from commercial banks. The number of cultivators who would not be eligible to create encumbrance on their lands in favour of commercial banks is not significant in States like Kerala, Maharashtra, Mysore, Punjab, Haryana and Tamil Nadu; however, the number of such cultivators appears high in other States. By and large, cultivators who are affected by restrictions on transferability of land are scheduled castes and tribes, backward classes and castes, tenants who were vested with ownership rights by virtue of land reform laws, owners of fragments, beneficiaries of *Bhoodan* and *Gramdan* movements and allottees of land from Government. Several States provide exemptions from such restrictions on alienation when made in favour of co-operatives and the Government, but no exemption is made in respect of commercial banks. The inability of these classes of cultivators to create charge/mortgage on their lands would, without doubt, stand in their way of obtaining adequate credit from commercial banks.

2.5 Moneylending legislation in States, mainly aiming at curbing or regulating the activities of moneylenders, contains certain features which are likely to create difficulties for commercial banks. For example, there are provisions in these enactments for licensing/registration of moneylenders, fixation of maximum interest rates, protection of certain class of assets of cultivators from attachment in execution of decrees, etc. which will apply to commercial banks if they are not specifically exempted from their purview. The intention of States to exempt banks from the purview of these provisions is, however, clear but the exemption does not, in effect, operate in favour of all commercial banks due to inadequate definition of the term 'bank'. Similarly, debt relief legislation enacted in several States has provided for moratorium on debts, scaling down of

debts, repayment of scaled down debts in instalments and compulsory reduction of interest and principal. Wherever such provisions have not been specifically made applicable only to past debts, the banks are likely to be adversely affected. Restrictions are also imposed on acquisition and disposal of agricultural lands by banks and they might find these restrictions coming in the way of speedy realisation of such security in the event of default. Most of these restrictions do not apply to co-operative societies.

2.6 A review of the legislation enacted in this regard would clearly reveal that the laws have been made with the specific intention of protecting cultivators from usurious moneylenders. The restrictions on the transferability of land and/or the acquisition and disposal of land have been made with a view to ensuring that the land does not pass on to the moneylender. By their very nature, these laws were never intended to be made applicable to institutional credit agencies. However, at the time they were enacted, besides the Government, only one institutional credit agency, viz., co-operatives, was engaged in the provision of finance to cultivators. It was, therefore, logical that exemptions from the legislation were provided only in respect of the co-operative sector. With the entry of commercial banks in the field of agricultural finance, this picture has changed, and it is but fair and equitable that commercial banks should be treated for the purpose of these laws on par with co-operatives, rather than bracketed with moneylenders. We have, therefore, recommended amendment of these laws to provide for exemptions in favour of commercial banks as well.

2.7 We also feel that conferment of the right to alienate land/interest in land in favour of institutional credit agencies by cultivators, who do not possess such rights now, will not affect the basic objectives of land reforms legislation. On the other hand, the basic objectives of land reforms legislation, viz., protecting the rights of the weaker sections of the farming community and enabling them to realise the full benefits of land reforms by fully developing their lands and thus further strengthening their position, can be better achieved by providing them access

to credit facilities from institutional credit agencies. Thus, our recommendations, in this regard, are a positive and essential step in the direction of attaining the goals of land reforms. At the same time, we do not want any relaxation in the existing restrictions regarding sale of land being made to a particular type or specified class of agriculturists in case an institutional credit agency is required to foreclose the loan and take such steps as are necessary to bring the land mortgaged to it to sale.

Facilities for Co-operatives

2.8 Besides the restrictive features in the legislation referred to above, there are a few provisions in State enactments which offer certain facilities to co-operative societies. Most State enactments confer a 'first charge' in favour of co-operative societies for recovery of amounts due to them from their members. The charge in favour of the society would be entitled to priority over any other charge created by the member whether earlier or subsequent in point of time. In addition to this, some of these enactments stipulate that alienation of property subject to a first charge in favour of co-operative societies, is void. These provisions would virtually preclude members of co-operative credit societies from obtaining finance, particularly development loans against mortgage of land from commercial banks. Even in respect of land development/mortgage banks, two State enactments grant priority of charge on property in favour of land mortgage banks over all other claims against the property, excepting, however, the claims of the State Government in respect of land revenue. Thus, a land development/mortgage bank in these States can secure a first charge on land even though a commercial bank had granted a loan earlier against a mortgage of the same property. These provisions could seriously hamper the operations of commercial banks.

2.9 Here again, co-operatives, being the sole institutional agency besides the Government, had to be given the facility of a first charge vis-a-vis private moneylenders so that in their recovery operations, co-operatives are not unduly

hampered. No such protection is, however, needed for co-operatives vis-a-vis commercial banks. Further, it is but reasonable that as between two institutional credit agencies, priority of charge be determined according to the point of time of creation of encumbrance. It is possible that cultivators borrow short-term loans for current farm operations from co-operatives and term loans for development purposes from co-operatives or any other institutional credit agency and vice versa. In such circumstances, we feel that the existing practice in some States, regarding priority of claims between a co-operative granting a short-term loan and a co-operative land mortgage bank granting a long-term loan against common landed security may be emulated; priority of claim in respect of common landed security will be available to the institutional credit agency providing term loans for development purposes. Appropriate modification to State legislation covering this aspect is, therefore, recommended.

2.10 Co-operative societies in several States also enjoy a few further facilities. These mainly relate to the manner in which a charge on land could be created and exemption from stamp duty/registration fee. In eleven States, a charge on land can be created in favour of co-operatives by a mere declaration. Again, many State laws provide for the adoption of a simplified procedure in regard to registration of mortgages in favour of land development/mortgage banks; such registration can be effected merely by forwarding to the registering officer a copy of the instrument whereby the property is mortgaged. Co-operative societies also enjoy exemption from stamp duty and registration fee in most States. These facilities granted to co-operatives should be viewed as a measure of support to cultivators rather than a benefit to the co-operative system. The underlying objective of these measures would appear to be to help the agriculturist and reduce his cost of borrowing in regard to loans obtained from co-operative credit agencies and if this be so, there is no doubt that similar facilities would require to be extended to agriculturists who avail of credit from commercial banks as well. We have recommended accordingly.

2.11 The Reserve Bank of India had recently worked out a scheme for direct financing of primary agricultural credit societies by commercial banks. The scheme, which contemplates financing of primary agricultural credit societies by commercial banks in areas where district central co-operative banks are weak, is now being experimented in five States, viz., Andhra Pradesh, Haryana, Madhya Pradesh, Mysore and Uttar Pradesh. To effectively carry out this task assigned to them, commercial banks will require certain statutory facilities and we have recommended that these should now be provided for in the statute.

2.12 The Group has also commented upon certain other inhibiting factors which could be rectified through administrative action. These relate mainly to the availability of proper land records extension of the facility of equitable mortgages, and expeditious obtention of encumbrance certificates from the appropriate authorities.

2.13 It may be mentioned in this connection that many of the aspects which the Group has reviewed have been a subject matter of discussions at seminars held in the recent past and certain broad suggestions have already been made in this regard. In fact, it can be said that State Governments are by now aware of the impediments which some of the provisions in State enactments place in the way of commercial banks' operations in the sphere of agricultural credit. The task of our Group was, therefore, not only to examine all the relevant aspects but also to indicate the exact lines on which State Governments should proceed to pave the way for the smooth and efficient functioning of commercial banks in the field of agricultural credit. The Group set itself a two-fold task in this context. The first one was to present to each State Government as clear and complete a picture as possible of the statutory hurdles for the expansion and smooth operation of commercial bank credit in the agricultural sector. Towards this end, enactments of each State having a bearing on commercial banks' lending were reviewed and the extent to which provisions therein came in

the way of expansion of their agricultural credit business or in carrying out this business in an efficient manner were identified. These are indicated, Statewise, in Appendix II. The second task was to enable State Governments to take the next step expeditiously. For this purpose, a model bill, incorporating the recommendations of the Group, has been prepared. The enactment of legislation on the lines of the model bill would be the simplest way for quick action on the part of State Governments, for it will obviate the need for the time-consuming process of amending a large number of enactments. A separate legislation of this type would not only expedite the whole programme but also would leave no scope for any ambiguity in the legal provisions having a bearing on the agricultural credit operations of commercial banks and other institutional credit agencies. The model bill, which is given as an annexure to the Report, also serves as a summary of our recommendations in so far as they relate to legislative measures.

2.14 It would be observed that most of the recommendations of the Group are aimed at removing the difficulties in creating a valid charge/mortgage on land in favour of commercial banks and the realisation of such security. These recommendations are based on the assumption that it would be necessary for commercial banks to take land as security in regard to advances granted by them to agriculturists. It is, however, being pointed out that commercial banks are essentially purveyors of short-term credit and there should not be any occasion for them to insist on security of land in addition to hypothecation of crop and pledge/hypothecation of inputs. This aspect would require some elaboration.

2.15 Credit requirements of agriculturists for agricultural purposes fall into two categories, viz., (i) term loan (medium-term or long-term) for investment purposes such as development of land and purchase of farm equipments; (ii) short-term loan for meeting expenses on current farming operations.

2.16 When loans are to be granted by banks for investment purposes that have a longer gestation period and thus require a longer period

for repayment, the need to take land as security can hardly be disputed. The insistence of land as security, may, however, present some difficulties in the case of certain classes of cultivators who have no recorded rights in land. In their case, a distinction may have to be drawn between investment in the land itself such as sinking a well or deepening an existing well, levelling the land to make it suitable for wet cultivation, bunding the land for retention of water or moisture, etc., and investment in oil engines, electrical motors and pump-sets, tractors, power tillers, etc. While it may not be possible for banks to grant loans for investments falling in the first category without a mortgage of land, banks may grant loans facilitating investments falling in the second category without insisting on mortgage of land, provided the implements and machinery are furnished as security and the bank's charge thereon is secured by appropriate arrangements and documents.

2.17 In regard to provision of short-term loans, the most suitable method of financing is the crop loan system already adopted by co-operatives in practically all States. Under this system, loans are generally granted on the basis of personal security with a charge on anticipated crops. By virtue of its simplicity, the crop loan system facilitates a wider coverage of cultivators—a matter of strategic significance in a country where small farmers are numerically large and a sizeable proportion thereof have lands on lease on various terms and conditions. The repayment of such a loan should be expected normally out of the sale proceeds of the crop for which credit is provided, and therefore, such credit need not be denied to a cultivator who cannot provide land as security for the loan. This will be particularly so in the case of cultivators such as oral tenants and share-croppers who for one reason or the other do not have a recorded right in land. It should be sufficient if in such cases the cultivator is required to provide guarantors for the loan availed of by him.

2.18 There is, however, a vital distinction in the provision of short-term finance by co-opera-

tive credit societies and by commercial banks. Co-operative societies normally provide only short-term loans and the cultivator needs unencumbered land to borrow from land mortgage banks for his developmental requirements. In the case of a commercial bank, however, the entire productive needs of the cultivator (short-term and long-term) can be provided by the bank and the cultivator will not normally seek any other institution for meeting his credit requirements for approved purposes. To leave an unencumbered asset with the cultivator in such circumstances would not only be unnecessary, but would also offer needless temptation to the cultivator to resort to avoidable unproductive borrowings. In any case, the retention of security of land with the bank would ensure that such borrowings, whenever they become necessary, are resorted to with the knowledge and concurrence of the bank.

2.19 While, therefore, a loan need not be denied to a person on the ground of his inability to provide land as security, where land is available, it would be legitimate for banks to seek security therein even in regard to short-term loans. In fact, this is the reason why several Co-operative Societies Acts make it obligatory on the member of a society to create a charge on his land or interest in land by means of a declaration for loans taken by him. We are commending provisions for the creation of a similar charge in favour of commercial banks. Since we are also providing for the postponement of the charge in favour of the lending institution which provides short-term loans for development of land etc., insistence on the borrower creating a charge on his land or interest in land for a long-term loan, allows for sufficient flexibility to the borrower while at the same time safeguarding the interests of commercial banks.

LAND ALIENATION RIGHTS OF AGRICULTURISTS

3.1 As a background, we may note that the pattern of ownership and rights in agricultural lands underwent a significant change after the introduction of land reforms. Prior to land reforms, there were broadly three groups of landholders, viz., *raiyatwari* landholders, *zamindars* and similar other intermediaries, and various categories of tenants including share-croppers. While the first two groups possessed unrestricted rights of alienation in land, the tenants did not have any such right. After the abolition of *zamindari* tenures and introduction of land reforms, many tenants in *zamindari* areas were given proprietary rights in land whereas those in *raiyatwari* areas were given the right to purchase land subject to certain restrictions. These restrictions which related to the transferability rights of tenant-purchasers on land were laid down to ensure that the weaker sections of the farming community do not lose their lands in the process of obtaining loans from private credit agencies.

3.2 With the abolition of *zamindari* and other intermediary tenures and the conferment of ownership rights on bonafide tenants, it was expected that there would no longer be many categories of landholders but that only two broad categories would remain, viz., landholders who personally cultivated their lands and temporary tenants who cultivated lands belonging to disabled persons and similar class of landholders who were unable to personally cultivate their lands for the time being. However, we find that there are still more than two categories of landholders with varying rights in a few States even after the removal of many other interests in land. This probably was mainly due to the reason that there were many layers of rights in the same land and it was found difficult to confer full ownership rights on any one layer. Thus, there are some cultivators who do not have the minimum necessary transferability

rights in their lands on account of some restrictive provisions in the land reform laws. Besides, the non-official land gift movement, viz., *Bhoodan* and *Gramdan*, started by Acharya Vinoba Bhave, has since gained official recognition in that, most of the States have enacted legislation to govern redistribution of lands acquired under it; but the allottees acquire only restricted rights in those lands. Similarly, allottees of land under programmes for distribution of newly reclaimed land as also surplus land acquired under the legislation relating to ceiling on land holdings, do not enjoy adequate transferability rights. Finally, there are special restrictions on the alienation rights of people belonging to scheduled tribes/castes and backward castes/classes. Appendix III gives a bird's eye view of the alienation rights of various classes of landholders in different States.

Scheduled Tribes/Castes etc.

3.3 The problem of alienation rights of landholders belonging to scheduled tribes/castes acquires importance because, besides some of the Union Territories and Nagaland, there are 47 districts in which they constitute more than one-third of the population (Appendix IV). By and large, landholders belonging to these tribes/castes do not have the right to create an encumbrance on their lands in favour of commercial banks. For instance, cultivators belonging to hill-tribes in the Agency tracts in Andhra Pradesh can transfer their land only to another member of their tribe. If transfer is to be made to a person who is not a member of the tribe, written consent of the Agent to the Government or of any prescribed officer is necessary. In Bihar, such restrictions extend not only to tribals but also to others in specified districts and, in addition, specific types of transfers have been restricted. For example, in Santhal Parganas district, a tribal can enter into a complete

usufructuary mortgage only with another tribal. Non-tribals may, however, be permitted by notification of the State Government, to enter into a similar mortgage for a period not exceeding six years for one-fourth of paddy land or first class *bari* lands (uplands) with another *raiyat* of the same district or with a co-operative society or a land mortgage bank or a recognised grain *gola*. Similar restrictions extend to backward classes/castes also.

3.4 Since these restrictive provisions were mainly aimed at protecting these classes of cultivators from the rapacity of private credit agencies, we feel that these should be so modified as to enable them to create encumbrances on lands held by them, in favour of institutional credit agencies for raising loans for development of farm business.

Tenant-cultivators

3.5 As a part of land reforms programme, State Governments have passed legislation providing for security of tenancy, fixation of fair rent and conferment of ownership status on tenants. In pursuance of this, many tenants in some States have become owners of lands previously held by them on lease, by paying full price of land fixed by Government, while in some others they are in the process of becoming owners as they are paying the price of land in instalments. The alienation rights of tenants coming under these categories are not uniform. Thus, tenant-purchasers in Maharashtra are not permitted, without the sanction of the District Collector, to alienate land pending full payment of price for it to Government. However, transfer to State Government and co-operatives without such permission is allowed. In Gujarat, such tenant-purchasers have been recently permitted to mortgage their lands in favour of State Bank of India, its Subsidiaries and nationalised banks. On the other hand, a tenant-cultivator who is entitled to purchase the ownership right in Kerala acquires full rights in land from the date of his application to the Land Tribunal for purchase. The privileged tenants in Assam who are tenants of religious institutions can transfer their

land only to persons belonging to the same faith.

3.6 According to the 1961 Census data, nearly one-fourth of the cultivated land in the country was under tenancy (Appendix V). Further, area cultivated under pure and mixed tenancy arrangements accounted for more than one-third of the cultivated area in Assam, Jammu & Kashmir, Kerala, Punjab, Haryana and West Bengal. By and large, these tenants do not have adequate alienation rights in land. In this context, we would like to underline the urgency for effective implementation, by State Governments, of the following recommendations made in the Fourth Plan which may expedite the process of tenants acquiring occupancy and alienation rights in lands that they cultivate: (1) it is necessary to make the existing tenancies non-resumable, (2) there is need for effective transfer of ownership right to the tenants, and (3) the tenant should have right to hypothecate his interest in land to institutional credit agencies in order to raise loans and make improvements on land cultivated by him.

Bhoodan Landholders and Landholders in Gramdan Villages

3.7 Under the *Bhoodan* and *Gramdan* movements, about 43 lakh acres and about 38 thousand villages, respectively, have been donated, as at the end of March 1967 (Appendix VI). The total area of *Bhoodan* lands is significant in Bihar, Uttar Pradesh, Madhya Pradesh, Rajasthan, Andhra Pradesh, Orissa, Maharashtra and Gujarat. The number of *Gramdan* villages is relatively large in Bihar and Orissa. Enactments in States to regulate distribution of *Bhoodan* lands and lands in *Gramdan* villages do not ordinarily provide for mortgage of allotted lands by allottees to lending institutions for the purposes of obtaining credit. However, in Andhra Pradesh, Gujarat, Kerala, Madhya Pradesh, Orissa and Uttar Pradesh, allottees of *Bhoodan* lands are permitted to mortgage their land to co-operative societies or the State Government. Further, in Gujarat and Uttar Pradesh, mortgages in favour of specified commercial banks have been

permitted. Land allotted under *Bhoodan* in Tamil Nadu cannot be transferred for a period of twelve years after allotment; presumably transfers thereafter are permitted.

3.8 It is evident that the problem is less difficult in the case of allottees of *Bhoodan* land at least in some States because they have been permitted to mortgage their lands to co-operatives and the State Government. In such cases, only an extension of this facility to other institutional credit agencies including commercial banks is required. In other cases, it will be necessary to amend the legislation itself so as to enable the *Bhoodan* Committee to permit an allottee to mortgage his land in favour of institutional credit agencies. In regard to *Gramdan* lands, the arrangements existing in Bihar may be noted. In this State, although the lands in *Gramdan* villages are under the management and control of the *Gram Sabha* and allottees actually cultivating these lands do not have any right to transfer their interests in land allotted to and cultivated by them, they can hypothecate their interests in land in favour of Government or a co-operative society or any other public institution for securing payment of any money borrowed from them, subject to the permission of the *Gram Sabha* for this purpose. It is learnt that the Bihar Government is contemplating to amend the Bihar *Gramdan* Act, 1965, with a view to providing adequate land alienation rights to *Gramdan* allottees so as to enable them to obtain agricultural finance from institutional credit agencies. In Rajasthan, transfer by *Gramdan* allottees to Government or a co-operative society or any institution approved by the State Government, is allowed under a recent ordinance promulgated by the State Government. We feel that it would be desirable for State Governments to explore the possibilities of enabling *Gramdan* allottees to borrow from institutional credit agencies for agricultural production and development purposes.

Fragment Holders

3.9 Legislation relating to consolidation of holdings and prevention of fragmentation has

been enacted in all States except Jammu & Kashmir, Kerala, Nagaland and Tamil Nadu. A fragment as determined under the provisions of these enactments, is not permitted to be transferred to any one except to the holder of a contiguous plot, or, as in some cases, to a co-sharer. In Mysore, transfer is permitted to others also with the permission of the *tehsildar*, if contiguous landholder is not agreeable to purchase. In some of the enactments, a specific provision has been included permitting mortgage of a fragment to the Government and in certain cases also to co-operatives. In view of this, it would appear that a fragment cannot be offered as security for a loan from a commercial bank in States where the legislation does not permit it.

3.10 The enactments also lay down that transfer of a fragment by sale can be made to the owner of the contiguous plot of land and if he does not want to purchase, it can be sold to the Government. In case the fragment is to be sold in connection with the recovery of a loan advanced by a land development/mortgage bank, it can purchase the fragment in case the owner of the contiguous plot is not prepared to purchase it. Thus, the sale of a mortgaged fragment is not freely allowed.

3.11 It may, however, be said that we may hardly come across cultivators who do not possess land, other than in fragments, and hence have to depend solely on security of fragments for obtaining credit. Nevertheless, in order to provide access to credit to agriculturists who have only fragments, we recommend that commercial banks should, like co-operatives, be permitted to lend against the security of fragments.

Oral Tenants and Share-croppers

3.12 Any discussion on the restrictions placed on the alienability rights of agriculturists would not be complete without dealing with the special problems of oral tenants and share-croppers. Although intermediary tenures have been abolished and many tenancy enactments have been passed, still tenant cultivation through oral leases is prevalent on a significant scale. It is reported that in some States, many recorded

tenants who 'voluntarily' surrendered their tenancy rights have been reduced to the status of oral tenants and share-croppers. In the absence of adequate and recorded rights in land, it is reported that they find it difficult to borrow even to meet current farm expenditure, leave alone developmental needs. In so far as crop loans to such agriculturists are concerned, co-operative societies have already made a beginning in providing crop finance on the basis of guarantors, provided the concerned agriculturist indicates the specific survey number in the village he is cultivating and the lending agency is convinced of his bonafides as a cultivator of that particular piece of land. The co-operatives have been able to make progress in this direction largely because of their intimate knowledge of, and their proximity to, the local cultivators and their environment. With the progressive expansion into rural areas, commercial banks also should be in a position to offer crop loans even to those cultivators who, for one reason or other, will not have recorded tenancy rights in land. However, the task of commercial banks in this respect would be made easier if the implementation of land reforms with a view to conferring adequate rights on this class of cultivators is expedited. For, in the final analysis, the ability of commercial banks to help share-croppers and similar other cultivators would depend on the extent to which land reforms have successfully tackled their problems. Further, pending the fulfilment of such a programme, it would be necessary for State Governments to create circumstances in which commercial banks are enabled to finance share-croppers. This would be done only if banks are enabled to (i) satisfy themselves about the existence of tenancy, and (ii) identify the plot of land under tenant cultivation. Already, in some areas, banks have moved in this matter and, with the help of village councils, have prepared lists of oral tenants and share-croppers, indicating the particulars of the lands they are cultivating. These lists, though informal in nature, have been found useful in identifying the oral tenants and share-croppers and the land cultivated by them for the purpose of financing their farm credit needs. However, commercial banks, by and large, would

be in a position to prepare such lists only in areas where they have taken up special programmes of financing; but in this matter, the State Governments have a special and immediate responsibility to assist banks by devising ways and means for recording these particulars in an authentic and verifiable manner. By way of illustration, special interim registers may be kept for this purpose in the record of land rights until such time as proper land rights have been conferred on those who are currently share-croppers. It may be noted in this connection that the general consensus at the Chief Ministers' Conference, held in November 1969, was that the task of revising the land records and preparing an up-to-date record of tenants and sub-tenants will be accorded a very high priority. The meeting of the State Revenue Officials and others on Small Farmers Development Agencies called by the Planning Commission, Government of India, in August 1970, has suggested that "as the full scale survey and settlement operations is a multi-stage and time-consuming process, it was agreed that some pragmatic and *ad hoc* interim measures will have to be taken for the revision of the record of rights in the areas selected." It is also necessary in our view, to vest share-croppers with suitable rights to create a charge on the crops raised by them to the extent of their interest therein to secure financial assistance from a bank, notwithstanding the fact that they are not the owners of the land on and from which the crop is raised.

3.13 It may be stated that in a few States like Maharashtra, Mysore, Tamil Nadu, Kerala, Punjab and Haryana, the proportion of cultivators who would not be eligible to create a charge or mortgage on their lands is not significant. In other States, there are many cultivators whose rights to alienate land in favour of commercial banks are restricted and therefore, they may not be able to offer their lands as security for bank credit. It is important to note that most of the weaker sections among cultivators fall in this group and thus, commercial banks may find it difficult to provide adequate credit to them unless necessary exemptions are provided. The restrictions on transferability of land held by

them have been incorporated in the legislation mainly with a view to preventing easy credit on onerous terms resulting ultimately in lands passing into the hands of private moneylenders and others. This is evident from the fact that alienation of land in favour of Government and co-operatives is usually permitted. Similar facility in favour of commercial banks has, however, not been provided, since their entry into the field of agricultural finance is only recent. Therefore, continuance of such restrictions in

their case may not be desirable if the full benefit of this new policy change is to be extended to a large number of cultivators. We, accordingly, recommend that State Governments should be empowered by legislation to vest any class or classes of agriculturists, whose rights of alienation of land are wholly or partly restricted or who do not have such rights at present, with the right to create a charge or mortgage on their lands as will enable them to secure finance from commercial banks.

CHAPTER—4

PRIORITY OF CHARGES

4.1 The granting of transferability rights to agriculturists to enable them to offer their lands as security to institutional credit agencies is the first necessary step which State Governments have to take in order to enable these agencies to fully cater to their credit requirements. The next step is to ensure that rights thus conferred on cultivators are not circumscribed by provisions in any other law. The problem in this respect may flow from the fact that a charge arising in favour of a co-operative in respect of a loan granted by it is accorded priority over that of any other credit agency except Government, irrespective of the date on which the loan is granted. The multi-agency approach in the sphere of agricultural credit indicates the need for treating all institutional credit agencies engaged in purveying credit to agriculturists on par so that none is handicapped because of special facilities or priorities provided to another. Thus, it is in the interest of agriculturists as well as lending banks to examine such provisions afresh.

Charge Accruing by Law

4.2 While a mortgage is created only by act of parties, a charge arises as provided in Section 100 of the Transfer of Property Act, 1882, both by operation of law and by act of parties. Provision for the accrual of a charge in favour of co-operatives by operation of law is found in all State enactments relating to co-operatives.

4.3 The charge accruing in favour of co-operatives by operation of law is called the first charge. The concept of a first charge is that the charge of the society for recovery of amounts due to it and covered by the charge is entitled to priority over any other charge created by the member whether earlier or subsequent in point of time. This is contrary to the normal rule that the lender who is earlier in point of time is also earlier in point of charge. The first

charge conferred on co-operatives by law is, however, subject to claims of State Government in respect of land revenue and also dues of the State Government recoverable as land revenue.

4.4 The property over which the first charge in favour of co-operatives extends includes, in general, movables in all States; in four of them, immovables are also covered. In some States, the property over which the first charge extends is limited to what has been acquired with the loan from the co-operative holding the charge. Generally speaking, the enactments also stipulate that alienation of property subject to first charge is void if made without the previous permission of the co-operative holding the charge; in four States, however, there is no provision regarding alienation of property subject to first charge. State-wise details are given in Appendix VII.

Charge on Land/Interest in Land by Declaration

4.5 Enactments in eleven States provide for creation of a charge on land/interest in land by a member in favour of a co-operative society by means of a mere declaration. This has been provided mainly to obviate the inconveniences and difficulties resulting from the time-consuming and elaborate procedures involved in the creation of a mortgage. The salient features of the provision relating to creation of charge by declaration, given State-wise in Appendix VIII, are:

(i) The charge on land/interest in land can be created by a mere declaration in all these States.

(ii) The charge, to become effective, has to be recorded in the record of land rights/registered with the prescribed authority in four States; in the remaining States, the charge though required to be recorded/registered is not stated to be void if not so recorded/registered.

(iii) Such recording/registering is done by the society sending the declaration to the prescribed authority. Sometimes, it is merely stated that the record of rights shall include particulars of charge created by the declaration.

(iv) The charge created by declaration is also termed first charge in eight States.

(v) In Andhra Pradesh, Kerala and Mysore, however, the charge created by declaration in favour of co-operatives is subject to prior claims; such prior claim has, however, to arise out of a registered alienation of property in Kerala and Mysore.

(vi) Alienation of property subject to a charge created by declaration in favour of a co-operative is void in Andhra Pradesh, Mysore, Punjab, Haryana, Rajasthan and Tamil Nadu; however, alienation of such property is allowed if made in favour of Government and land development/mortgage bank in Gujarat, Kerala, Madhya Pradesh and Maharashtra; in Gujarat, alienation can be made, in addition, in favour of nationalised banks, State Bank of India and its Subsidiaries; and in Jammu & Kashmir, it includes additionally alienation in favour of Jammu & Kashmir Bank Ltd., and scheduled banks.

(vii) In Gujarat, Kerala and Maharashtra, the charge in favour of the co-operative society is subject to the claims of the land development bank.

4.6 These provisions in regard to priority of charge in favour of co-operatives and restrictions on alienation of property over which co-operatives acquired a charge were incorporated to safeguard their interests vis-a-vis private credit agencies. The advent of commercial banks and other institutional credit agencies to supplement the efforts of co-operatives has altered the setting. These provisions, if not amended, will, it is feared, come in the way of other institutional credit agencies pursuing an active agricultural credit policy.

Priority in favour of Land Development/Mortgage Banks

4.7 There are no special problems for commercial banks arising from legal provisions relating to land development/mortgage banks except in Tamil Nadu and Orissa. According to a recent amendment to the Tamil Nadu Co-operative Land Mortgage Banks Act, 1934, a mortgage executed in favour of a mortgage bank after the 4th July 1968 shall, subject to the claim of the Government in respect of land revenue, have priority over all other claims against the property secured by such mortgage. In Orissa, the claim of the land mortgage banks is termed as first charge. Thus, if a commercial bank gives an advance against the security of land, and a land mortgage bank grants a loan subsequently on the security of the same land, then notwithstanding the fact that the mortgage in favour of the commercial bank is prior in point of time, that in favour of the land mortgage bank would rank prior to the charge in favour of the commercial bank. Obviously this provision would place a commercial bank granting a term loan for development purposes at a disadvantage vis-a-vis land mortgage banks.

Priority of Charge according to Point of Time

4.8 The commercial banks have, therefore, suggested that as between institutional credit agencies the general principle of priority as between loans based on common security should be as adumbrated in the Transfer of Property Act, 1882. That is to say, the first charge in favour of co-operatives will continue to arise by law but will be subject to any prior claim in respect of loans granted by other institutional credit agencies. Thus, while co-operatives will continue to enjoy the facility of first charge vis-a-vis private credit agencies, commercial banks will not be placed at a disadvantage.

4.9 In some States, where land which is already subject to a charge in favour of a co-operative society cannot be further alienated even in favour of a co-operative land mortgage/development bank, beneficiaries of crop loans

from primary credit societies may not be able to secure term-loans from land mortgage/development banks or commercial banks. In its reply to our questionnaire, one State Government has drawn attention to this fact and stated that this is causing some difficulty in giving further advances on the same security and also in releasing such portion of the property as is not required as security when the amount of loan outstanding is reduced subsequently. We are, therefore, of the view that further alienation of property already subject to a charge in favour of any institutional credit agency should be permitted if such alienation is required for raising credit for developmental purposes from another institutional credit agency. However, in so far as a crop loan is concerned, if a cultivator is not able to get all his crop loan requirements from a co-operative society because of the limitations imposed by, say, individual maximum borrowing power, it should be possible for him to split up his security between two agencies, offering one part of the security to the co-operative society which is in a position to give a part of the crop loan and another portion of the security to a commercial bank which advances the remaining crop loan credit required.

4.10 It is further provided in some States that if a borrower of a short-term loan or medium-term loan from a co-operative against a charge on land, created by declaration, raises a long-term loan subsequently from a land development bank, the latter will get priority in respect of recoveries although the encumbrance in its favour was later in point of time than the charge created in favour of the short and medium-term credit structure. We feel that the principle underlying this arrangement is logical as development loans which are generally larger in size and longer in duration require greater security and, therefore, recommend that landed security created in favour of an institutional credit agency for a term loan for development purposes should get priority over that created in favour of another institutional credit agency for a crop loan irrespective of the point of time at which the encumbrances were created. In other words, if a commercial bank granted a crop loan and

if the borrower obtains a term loan subsequently from the land development/mortgage bank, the commercial bank should, in principle, be agreeable to forgo the right of the first charge in favour of the land development/mortgage bank. The effect of this recommendation is that where crop loans and term loans are provided by two different institutional credit agencies, priority of claim should be made available to the agency providing term loan for development purposes. However, since commercial banks are expected to provide integrated credit to cultivators, we would suggest that a cultivator who intends to raise a term loan for developmental purposes but who is already indebted by way of crop loan to a commercial bank should be permitted to raise a term loan from another institutional agency only with the knowledge and concurrence of the commercial bank to which he is indebted by way of crop loan.

4.11 As between two institutional credit agencies providing term loans for development purposes against the same landed security, the priority of claim will arise according to the point of time of creation of the encumbrances. This would mean that the Tamil Nadu and Orissa enactments referred to above will need modification so as to ensure that development loans granted by banks against landed security are accorded priority over the loans of land mortgage banks if they are prior in point of time.

Facility for Creation of Charge on Land/Interest in Land in favour of Commercial Banks

4.12 As has been mentioned earlier in the chapter, in regard to agricultural financing, it would be necessary to treat commercial banks and co-operative societies on par and it is but fair and reasonable that the facilities available to co-operative societies should also be extended to commercial banks which have entered the field of agricultural credit to supplement the efforts of co-operative societies. The simplified procedure involved in the creation of a charge by declaration operates more for the benefit of cultivators, and facilitates expeditious disposal of loan applications. In view of these considera-

tions, we are of the opinion that the facility of creation of charge by declaration, automatic registration thereof in the office of Sub-Registrar and recording of it in the land records, should also be extended to commercial banks.

Priority for Charges in favour of Government

4.13 The enactments relating to co-operatives in force in all States stipulate that all charges created in favour of co-operative societies are subject to claims of State Government in respect of land revenue and moneys recoverable as land revenue. However, in some States, in respect of loans granted by State Government to agriculturists under the Agriculturists' Loans Act, 1884 and the Land Improvement Loans Act, 1883, which are recoverable as land revenue, priority is given according to the date of grant of loan or creation of encumbrance on property offered as security for loans as between these two credit agencies. Details are given in Appendix IX. Commercial banks responding to our questionnaire have desired that they should

also be eligible for concessions similar to those extended to co-operatives.

4.14 Protection afforded to co-operatives in the manner described above was conceived at a time when Government loans to cultivators were sizeable in amounts and there was perhaps a fear of clash in the process of recovery of dues owed to co-operatives and Government. The importance of *taccavi* loans both in absolute and relative terms has declined considerably in recent years and the Government's role as a direct agricultural credit agency is gradually narrowing down. In view of this, it could be suggested that commercial banks need not harbour any fear in regard to the prior claims of Government in the recovery of loans granted by them.

4.15 The problem, however, would exist in certain areas where State Governments continue to disburse *taccavi* loans direct to cultivators. Having regard to this, we recommend that commercial banks may be accorded the same treatment as co-operatives in the matter of priority in recovery of loans vis-a-vis Government loans.

RECOVERY AND OTHER OPERATIONAL DIFFICULTIES OF COMMERCIAL BANKS

5.1 In this chapter, we propose to deal with certain other legal restrictions which commercial banks may face in the process of lending and recovery of moneys advanced to agriculturists. These are discussed under the following heads:

(1) legislation pertaining to moneylending, (2) legislation pertaining to agricultural debt relief, (3) acquisition and disposal of agricultural lands by banks, (4) facilities for the recovery of loans by banks in the event of default by borrowers and (5) certain other items including commercial banks financing agriculturists through primary agricultural credit societies.

Moneylending Legislation

5.2 Legislation aimed at regulation of moneylending has been undertaken mainly to protect agriculturist-borrowers from the onerous terms and conditions attached to loans advanced by private moneylenders and from the fraudulent and extortionate practices adopted by them; this has been done by introducing the licensing system and other measures to regulate their credit operations.

5.3 The basic objectives underlying the various legislative enactments on regulation of moneylending can be broadly stated to be (a) to bring about an improvement in the terms on which private credit is available to agriculturists and place legal restrictions on the unreasonable exactions of moneylenders; and (b) to enable the civil courts to do greater justice as between lenders and borrowers than is possible under the ordinary code of civil procedure.

5.4 To secure the first objective, provisions relating to (1) licensing and/or registration of moneylenders, (2) fixation of maximum interest rates and (3) maintenance of accounts by moneylenders, grant of regular receipts, etc.,

have been made. To attain the second objective, provisions relating to (1) empowering the courts to 'reopen' the closed transaction and go behind the written contract, (2) protection of certain forms of assets such as plough and other agricultural implements and bullocks from attachment in execution of decrees and (3) empowering the court to direct payment of amount decreed by instalments, have been made.

5.5 If commercial banks and other institutional credit agencies are not exempted from the provisions of these enactments, it will imply, firstly, that they will have to obtain licences from the concerned authority of the State Government for granting loans to agriculturists. Secondly, these loans will be subject to ceilings on interest rates as stipulated therein even though some of the ceilings are quite out of line with current rates. It may be stated that interest rate ceilings laid down in the enactments vary from six to fifteen per cent on secured loans and from nine to twenty-four per cent on unsecured loans (Appendix X).

5.6 Most of the enactments have defined a loan in such a manner that it does not include a loan given by a co-operative society or a bank. While the words 'co-operative societies' in the legislation can cover all types of co-operatives and thus exempt them from its purview, the position is not so in regard to commercial banks (Appendix X). For, moneylending enactments have defined a bank with reference to the banking companies functioning at the time they were enacted and do not, therefore, include banks that came into existence by later enactments. Further, the existence of more than one enactment in a State, either due to reorganisation of States or due to enactments covering different types of moneylenders, also led to banks being not uniformly and properly defined.

5.7 While the basic objective of exempting banks from the purview of the moneylending legislation is evident, non-exemption of a particular type of banks from its purview indicates only the need to widen the definition of the term "bank", taking into account developments subsequent to the passing of these enactments. Further, in the changed context, banks are endeavouring to work for the benefit of those very persons whom these laws aim to protect. In view of this, we suggest that the definition of a bank may be widened so as to include all commercial banks and other credit institutions such as Agro-Industries Corporations and the Agricultural Refinance Corporation set up under separate Acts, the Agricultural Finance Corporation Ltd., etc., for purpose of granting exemption from the legislation. Further, wherever the existing law has already empowered the State Government to exempt credit institutions from such legislation, it should take expeditious action to do so.

Debt Relief Legislation

5.8 The debt relief legislation was undertaken during the thirties by most of the then Provincial Governments to alleviate the distress caused by the mounting burden of debt during and after the Great Depression. These enactments provided for moratorium on debts, scaling down of debts, repayment of scaled down debts in instalments and compulsory reduction of interest and principal.

5.9 As in the case of moneylending legislation, States have endeavoured to exempt debts due to co-operatives and commercial banks from the purview of the debt relief legislation (Appendix XI). In so far as banks are concerned, the question of adverse effect of this legislation on bank dues may not pose a serious problem whenever it applies to past debts as is the case in some States. Wherever the debt relief enactments do not specifically apply only to past debts, banks are likely to be adversely affected.

5.10 Non-exemption of any category of banks

from the purview of this legislation will mean that debts due to them — either in respect of principal or interest or both — can be scaled down by the authority constituted for this purpose in case the matter is referred to it. There is provision for a second stage scaling down of debts with reference to the paying capacity or assets of the debtor. Such scaling down is either based on the *damdupat* principle or on rates of interest specified, or both. For instance, the legislation in Tamil Nadu fixes the interest rate at six and quarter per cent per annum and that in Kerala, at seven per cent per annum in the case of debts due to banks (not exempted from its purview) as against six per cent in the case of others.

5.11 Since the main object of debt relief legislation is to protect debtors from private moneylenders, it appears reasonable to remove such of the inhibiting factors that affect commercial banks. Hence, we recommend that debts due to commercial banks and other institutional credit agencies from agriculturists may also be exempted from the purview of debt relief legislation for reasons indicated in the section on moneylending legislation.

Acquisition and Disposal of Agricultural Lands by Banks

5.12 One of the main problems confronting institutional credit agencies financing the credit requirements of cultivators is whether they can, in the event of default by borrowers, foreclose the mortgage, auction lands/interest therein mortgaged or charged to them and take possession thereof in case there are no bidders at reasonable price. The relevant questions in this context are: (1) Can the institutional credit agency foreclose the mortgage and acquire lands mortgaged to it, in case of default? (2) Will it be able to acquire lands above the ceiling limit at least for a short period during the process of recovery of loans? (3) If not, what is the procedure laid down for the disposal of lands for the recovery of dues of the credit agency? (4) Can the credit agency lease out lands, which it

has acquired in the process of recovery of loans, pending final disposal? (5) Can the credit agency freely auction lands acquired by it? (6) Can the borrower create a tenancy on the land which he has mortgaged to a credit agency? (7) If yes, has the land to be sold to the tenant in possession, in case of default?

5.13 Basically, these difficulties will give rise to two sets of problems. Firstly, when loans are secured against charge/mortgage of lands and when repayment of instalments on such loans falls in arrears, banks may have to bring mortgaged lands to sale. Situations may arise when banks may not be able to get adequate price for land brought to sale by them. If such an eventuality developed, banks may perforce be required to acquire the land on their own, necessitating their holding land in excess of the ceiling limit stipulated in the concerned legislation. Secondly, pending the disposal of land acquired by banks in the manner described above, they may like to put it under cultivation by temporarily leasing it out. Such an arrangement may lead to the creation of tenancy rights in favour of the lessee. It is hoped that the series of events enumerated above are unlikely to occur in practice on a significant scale, if loans are made for genuine productive purposes and utilised properly; but the contingency remains. These are examined here with a view to indicating the line of action which States may take in this respect.

Ceiling Legislation

5.14 The general policy followed by State Governments is to exempt certain types of farms, and lands held by certain charitable and religious institutions, from the legislation pertaining to ceiling on land holdings. Among the institutional credit agencies, co-operatives and the Government are also generally exempt from the legislation. The rationale underlying exemption in favour of co-operative credit institutions is that they have undertaken financing of agriculturists mainly for the purpose of helping them and this they should be able to do without fear of any loss.

5.15 In this context, it is relevant to draw attention to the experience of land development banks which points out that exemption of institutional credit agencies from the ceiling legislation is only an enabling provision as the occasions to acquire land above the ceiling limit would occur rarely. Thus, according to one apex land development bank, the proportion of its dues which are realised by sale of property is hardly one per cent. Further, the amount is somehow repaid before the actual possession of the land is taken over by the bidder in auction or by the bank, in case there is no successful bidder. Even coercive measures for recovery are to be resorted to only in exceptional cases, but actual sale of landed property can be considered as more or less negligible. However, with the expansion in loan business, acquisition of land by a lending agency may become necessary as is the case in another state land development bank.

5.16 The experience of the long-term co-operative credit structure suggests that it is logical to permit commercial banks to purchase land in case of need and also to exempt them from the ceiling provisions. This point has been conceded by at least four State Governments in their replies to our questionnaire. This kind of exemption to banks does not also compromise with the main objective of the ceiling legislation which is to bring about more equitable distribution of available land amongst agriculturists. Further, while the non-exemption of commercial banks from the ceiling legislation will handicap them in recovering overdues, the actual use of the exemption may have to be resorted to by banks only in exceptional cases; banks may not in fact like to acquire land unless there is no other way out.

5.17 Banks are least likely to desire to hold land beyond the minimum period required in the circumstances, due to the restriction imposed on them under Section 9 of the Banking Regulation Act, 1949. This Section permits a banking company to hold immovable property, howsoever acquired, except that required for its own use, for a period of seven years only (and

for an additional period of five years with the permission of the Reserve Bank of India. This period is long enough for a bank to arrange for disposal of land it has acquired. Rather than interpret this Section as restrictive, we consider that it serves as a desirable pressure on banks to dispose of lands as early as possible. In particular, exemption to commercial banks from the ceiling legislation will be adequately counter-balanced by leaving this Section untouched. In doing so, we are providing a built-in safeguard against banks holding large tracts of land for a long period.

5.18 Public sector banks are not, however, subject to the limitation indicated in Section 9 of the Banking Regulation Act, 1949. However, it may be noted that in the case of land development/mortgage banks which are also exempted from the ceiling limit, there is a provision which places a time limit for disposal of land acquired by them and there is no reason why public sector banks should not be subjected to a similar time limit. The relevant provision of the Mysore Co-operative Societies Act, 1959, states that it shall be lawful for the State Land Development Bank or a land development bank to purchase any mortgaged property brought to sale. However, the property so purchased shall be disposed of by such bank by sale within such period as may be fixed by the Registrar of Co-operative Societies. In view of this, we recommend that the public sector banks also should be subjected to a time limit as prescribed under Section 9 of the Banking Regulation Act, 1949. This can be done by empowering the State Government to stipulate a time limit within which all commercial banks should dispose of agricultural lands/interest therein coming into their possession.

5.19 While disposing of lands through sale, however, co-operatives are required to adhere to the stipulation about the agencies to whom land can be sold. Thus, Section 130 of the Maharashtra Co-operative Societies Act, 1960, lays down that the properties purchased by the land development bank may be disposed of subject to the condition that such sales shall be in favour only of agriculturists eligible to hold land

under the Bombay Tenancy and Agricultural Lands Act, 1948 or any corresponding law for the time being in force. We do not see any reason to accord any special treatment to commercial banks in this respect and they also should dispose of acquired lands subject to the same conditions as have been stipulated for co-operative credit agencies.

5.20 Pending sale of land, banks may have to arrange for cultivation of land by leasing it out temporarily. The pertinent point, in this context, is that temporary or short-term lease should not lead to accrual of tenancy rights, since that will make it more difficult for banks to dispose of the lands by sale. For in some States, once tenancy is created on the mortgaged land, the tenant will get certain rights which are not liable to be attached and sold in execution of a decree or order of a civil court. Therefore, it is better to stipulate specifically that tenants holding land from banks will not be eligible for tenancy rights that may ordinarily accrue to them otherwise.

5.21 A similar difficulty may arise in the case of mortgaged lands on which borrowers create tenancy after mortgaging them. A provision restraining a mortgagor of a co-operative from creating tenancy for a specified number of years or except with the consent of the co-operative, on land mortgaged to it, exists in some States and it may be necessary to make a similar provision in favour of other institutional credit agencies also. There are two ways of doing this. One way is that a bank can take a declaration in writing from the borrower that he would not create tenancy on the land against which the loan is secured till the loan is fully repaid. Such declaration may not be adequate in practice; therefore, we consider that it would be desirable to make a specific provision in the law itself.

Facilities for Recovery of Loans

5.22 No banking system will function efficiently if it is not able to recover its loans and advances in time promptly. Bearing this factor in mind, as also the resources structure, co-ope-

ratives have been given special facilities to expedite the process of recovery of their dues. In pursuance of this objective, enactments relating to co-operatives in all States stipulate that disputes arising in the co-operative sector should be settled by the Registrar of Co-operative Societies or by an Arbitrator appointed by him for the purpose and there is a provision for appeal against the award to a Tribunal or the State Government, under the legislation. In addition, these enactments usually contain a provision barring jurisdiction of civil courts in respect of disputes arising in the co-operative sector. Among disputes enumerated in the enactments, to be decided by the Registrar or Arbitrator, is the one relating to amount due by a member to a co-operative society.

5.23 There are separate provisions in respect of the co-operative credit structure engaged in distributing short-term and medium-term loans and land development/mortgage banks for effective and speedy recovery of their respective dues. However, in Bihar, the Co-operative Societies Act, in force, does not contain any special provisions relating to land mortgage banks; nor is there any separate enactment relating to them in the State.

5.24 Disputes arising from non-payment of dues by members on the specified dates are referred to the Registrar at the instance of the society or, as in some States, the Registrar is empowered to act on his own, and decide the issue himself or refer it to an Arbitrator. In some States, there is no specific provision as to who should institute the proceedings. Pending the issue of an order by the Registrar/award by the Arbitrator, attachment of property of the indebted member can be ordered by the Registrar/Arbitrator if he is satisfied that any person, with intent to delay or obstruct the enforcement of any order/award, is about to dispose of the whole or any part of his property or to remove the whole or any part of his property from the jurisdiction of the Registrar/Arbitrator. The order issued by the Registrar/award granted by the Arbitrator at the conclusion of proceedings, if not carried out, can be executed, on a certi-

ificate signed by the Registrar, either as a decree of a civil court or can be used for recovery of dues as arrears of land revenue by revenue authorities. The Registrar is also empowered to order sale of property with or without attachment. In Bihar, the Registrar is empowered to order distraint and sale of crops and the mortgaged property.

5.25 A land development/mortgage bank can, when an instalment or part of an instalment has fallen due for repayment but has not been repaid within the stipulated time, refer the matter to the Registrar of Co-operative Societies. Usually, a written demand for repayment has to be served on the defaulting member who is to be given time for repayment. If repayment is not made within the stipulated time, the Registrar applies the distraint clause and is empowered to distraint agricultural produce or standing crop on the property sufficient to cover the instalment amount and expenses involved in distraint, cost of sale, etc. Additionally, if default in payment of instalments continues and if the power to sell mortgaged property is conferred on the land mortgage bank by the mortgage deed, the bank will proceed to sell the property without intervention of court after serving notice to the defaulter. In Gujarat, Madhya Pradesh, Maharashtra and Rajasthan, however, land mortgage banks acquire the right to sell the property of the mortgagor under the enactment itself irrespective of whether the mortgage deed confers such a right on the bank or not. The property is to be sold in public auction and the mortgagee bank itself is entitled to purchase the property in case that becomes necessary.

5.26 The content of these special facilities for recovery of dues of co-operatives, usually referred to as the summary procedure, is that officials authorised in this behalf can proceed against the defaulter without the intervention of the civil courts and recover co-operative overdues as arrears of land revenue. The concerned officials have also been given powers of the court so that they will not have any difficulty in exercising legal provisions for the recovery of dues promptly.

5.27 Many commercial banks, in their replies to our questionnaire, have sought similar facilities in respect of recovery of their loans to agriculturists. It is relevant to mention here that prior to the State Bank of India (Subsidiary Banks) Act, 1959, the dues of the Patiala State Bank were recoverable as arrears of land revenue by issue of a recovery certificate under provisions of the Patiala Recovery of State Dues Act, 2002 Bk (since repealed).

5.28 Apart from the general delay in getting decrees through litigation in courts, one commercial bank has quoted two specific features of these decrees. The first one relates to the Code of Civil Procedure, 1908, with its preliminary and final decree in a suit for sale, and consequent delay in disposal of cases. Secondly, the Code stipulates that the interest rate to be decreed by a court during the period covered by the date of institution of the suit and the date of its disposal will be at the discretion of the court. Further, the interest rate allowed after the decree is six per cent per annum. Therefore, the said commercial bank has suggested amendment to the Banking Regulation Act, 1949, to enable commercial banks' advances to be treated as arrears of public revenue, stipulating how the revenue recovery proceedings should be set in motion. Another suggestion made is that Section 69 of the Transfer of Property Act, 1882, may be so amended as to confer on commercial banks the right of sale of mortgaged property, without intervention of court.

5.29 Besides, there is the argument that non-existence of facilities in favour of commercial banks will lead to complacency on the part of cultivator-borrowers and further, there is no particular purpose in not extending such facilities to commercial banks as they are also required to take care of the credit needs of agriculturists.

5.30 The opposite point of view is reflected in a reply of one bank according to which dependence on Government machinery for recovery of dues may not be much useful as it involves considerable delay. However, the bank has suggested legal provisions for distraint in

respect of long-term loans. A similar point is made in another reply which has called for speedy and inexpensive disposal of cases filed by banks against cultivators for recovery of dues. The replies of State Governments to our questionnaire are of a general nature. While, according to one, it is too early for the Government to consider extending facilities to commercial banks similar to those enjoyed by co-operatives, another is reported to be considering the proposal. According to another State Government, it is administratively very difficult for the Government to extend such facility.

5.31 At this stage, it is pertinent to examine what could be done to help commercial banks in the event of litigation being forced on them due to continued default by borrowers. In such a situation, there is no agency/authority like the Registrar of Co-operative Societies whom they can approach to secure repayment of loans without the intervention of the court. It may also be difficult for Governments to commit their revenue machinery for recovery of dues of banks. This may bring in its wake its own difficulties. Our concern in this connection, therefore, is whether commercial banks and other credit institutions extending credit to agriculture should also be given some special facilities to recover their dues expeditiously. In this connection, the All-India Rural Credit Review Committee suggested that some assistance, even if it falls short of that available to co-operatives, should be extended to commercial banks also.

5.32 We feel that the need for some special recovery facilities may be met by designating an official of the State Government as the authority to issue, on being approached by a commercial bank, an order for attachment and sale of mortgaged property in case of default which would have the same force in law as a decree from a civil court. Introduction of such a summary process will help in building up healthy relations between commercial banks and cultivator-borrowers.

Commercial Banks Financing Primary Agricultural Credit Societies

5.33 In order to ensure that the agricultural

production programme does not suffer on account of weakness of some central co-operative banks and consequent inadequacy of credit, the scheme of commercial banks financing agriculturists through primary agricultural credit societies has been worked out by the Reserve Bank of India and is being experimented in five States. This scheme will serve two purposes, viz., commercial banks would, without waiting for organisation of a network of branches in rural areas, be able to extend credit to agriculturists in areas where central co-operative banks are weak and secondly, it will help adoption of modern technology which requires larger credit by a larger number of farmers.

5.34 The extent of coverage of the scheme would depend on provision of some statutory as well as administrative facilities to commercial banks so that they will be broadly on par with central co-operative banks in the financing of primary agricultural credit societies. On important procedural aspects involved, guidelines to commercial banks have been indicated by the Agricultural Credit Department of the Reserve Bank of India through a separate hand-book. There are, however, certain other facilities which banks would require in order to ensure that they will be in a position effectively to deal with primary agricultural credit societies which are financed by them. These requirements pertain to matters such as (1) eligibility of commercial banks to become members of primary agricultural credit societies, (2) eligibility of primary credit societies to borrow from commercial banks, (3) access to banks to all records of societies, (4) access to banks to the audit, inspection and enquiry reports of societies prepared by the Co-operative Department, (5) assistance from the Registrar of Co-operative Societies in case there is a dispute between a commercial bank and the primary society which is financed by it, and (6) right to attach the assets of the society in case of default.

These are essentially statutory facilities and we have provided therefor in the model bill drafted by us.

Mortgages executed by Managers of Joint Hindu Families

5.35 The Co-operative Societies Acts of many States include a provision to the effect that where a mortgage executed in favour of a land development/mortgage bank is called in question on the ground that it was executed by the manager of a joint Hindu family for a purpose not binding on the members (whether such members have attained majority or not) thereof, the burden of proving the same shall lie on the party alleging it. It is also provided that mortgages in respect of loans by a land development/mortgage bank, by the manager of a joint Hindu family, for the improvement of agricultural land or of the methods of cultivation or for financing any other means to raise the productivity of the land or for the purchase of land, shall be binding on every member of such joint Hindu family, notwithstanding any law to the contrary. Since loans of commercial banks and other institutional credit agencies to agriculturists will also be for agricultural production and development purposes, it is necessary to extend similar facilities to these agencies also.

Application of the Hindu Minority and Guardianship Act, 1956

5.36 The Co-operative Societies Acts of some States also include a provision to the effect that Section 8 of the Hindu Minority and Guardianship Act, 1956, shall apply to mortgages in favour of a land development/mortgage bank, subject to the modification that reference to the court therein shall be construed as reference to the Collector or his nominee, and the appeal against the order of the Collector or his nominee shall lie to the Commissioner. This facility in favour of co-operatives obviates the need for references to the court which involve time-consuming procedures. Extension of a similar facility to mortgages in favour of commercial banks and other institutional credit agencies will facilitate their agricultural credit operations.

CHAPTER—6

FACILITIES TO AGRICULTURISTS FOR BORROWING FROM COMMERCIAL BANKS

6.1 There are certain procedural matters which require simplification with a view to enabling a larger number of cultivators to take advantage of the commercial banks' entry into the field of agricultural finance. These matters pertain to: (1) land records, (2) registration of mortgages, (3) certificate of encumbrance on property, (4) stamp duty, registration fee and charge for encumbrance certificate and (5) facilities for creation of equitable mortgages. These are discussed in the following paragraphs. Although these items relate to procedure, the remedy may not lie only in administrative action but may necessitate, in some cases, legislative action also.

Land Records

6.2 Availability of proper and up-to-date land records is essential for the purpose of ascertaining the extent of land/interest therein, held by an intending borrower; this forms an integral part in the appraisal of loan applications. Every co-operative society maintains a register of lands wherein are contained, details of land held as an owner or as a tenant in respect of all its members; this register is required to be prepared carefully on the basis of village land revenue records and is required to be kept up-to-date by annual check and verification. This procedure underlines the importance of up-to-date information regarding land holdings of borrowers as a necessary guide to indicate the extent of their interest in land and the genuineness of personal cultivation.

6.3 The question is whether commercial banks should also start maintaining similar registers. This may not be possible because the area of operation of a branch of a commercial bank is not delimited to a village or a small group of villages and it may have to deal with applications of intending borrowers hailing from

a large number of villages. Besides, the intimate knowledge that the managing committee of a primary agricultural credit society possesses of its members, their lands, etc., the emphasis on mutual supervision in a co-operative and the availability of a village lobby that enables it to have up-to-date information on the disposition of holdings and ownership thereof in a village, are special features which are not available to a commercial bank branch, at least at the present stage. It, therefore, stands to reason that satisfactory arrangements should be made to enable commercial banks to get adequate and dependable information about the operational holding of an intending borrower and the nature of his interest therein to support his bona-fide interest in land and cultivation. These details can be made available only if land records are maintained up-to-date.

6.4 The nature of land records and the details contained therein are indicated in Appendix II. It is evident that in areas coming under *zamindari* and other intermediary tenures, the position in regard to settlement and preparation of record of land rights is relatively not satisfactory. The absence of up-to-date records in regard to ownership of land will create difficulties for institutional credit agencies in their loaning operations.

6.5 Another aspect which needs consideration is that, though required under law, tenancies are not properly recorded in the record of rights, and a large body of tenants continues to hold land on an informal or oral basis. The details regarding tenancy available in the record of land rights are also indicated in Appendix II. By and large, these records do not properly indicate tenancy arrangements.

6.6 The need to complete and maintain record of land rights up-to-date for the successful

implementation of land reforms legislation itself cannot be overstressed. As regards its importance for the success of the credit programme, there is no need on our part to add any further emphasis than to quote the All-India Rural Credit Review Committee which has stated as under :

“We consider that if institutional credit for agriculture is to expand, the least that the State Governments have to do is to ensure the maintenance of up-to-date and accurate record of rights in lands whether of ownership or tenancy” (P. 619).

6.7 Further, as mutation of entries is not promptly made in land records, as and when necessary, following partition of land amongst heirs, more than one person would be found to be holding land bearing the same survey number. As non-mutation of entries in land records gives rise to the problem of joint-*pattadars*, financing one amongst a group of joint-*pattadars* will involve some difficulties. It may be noted that in almost all States, non-payment of land revenue by any one of the joint-*pattadars* will entitle the State Government to bring the entire property to sale. The practicability of a bank financing all the joint-*pattadars* jointly or of securing an undertaking from one of the joint-*pattadars* to be financed to the effect that he will be willing to pay the land revenue on the entire holding is open to question as it is unlikely for all joint-*pattadars* to agree to borrow in the first place, and from the same bank in the second place, and there is no logic in burdening one borrower with the land revenue of all the remaining joint-*pattadars*. As such, it is preferable to deal with each individual *pattadar* separately.

6.8 The initiative for mutation has, however, to come from individual *pattadars*; therefore, it appears reasonable to suggest that they should be required to apply for mutation within a stipulated period of time from the date of applying for loan to establish their rights in land and to facilitate borrowing for agricultural purposes.

6.9 In this context, a brief reference to the proposal for issue to cultivators of ‘Pass Book’ by the Rajasthan Government, ‘*Khedut Khata-vahi*’, by the Gujarat Government, ‘Farm Title Pass Book’ by the Mysore Government and ‘*Jot Bahi*’ by the Uttar Pradesh Government may be made. The contents of these books are given in Appendix XII. A common feature of these books is that they indicate details of land held and rights therein. The book issued in Mysore and Uttar Pradesh contains, in addition, particulars of rights in land held by persons other than the *pattadar*/farm holder. The Rajasthan book contains details of sources of irrigation as also encumbrances in favour of the co-operative credit societies and land development banks. The Gujarat book contains details of *taccavi* loans issued. In our opinion, it is useful to prepare such books and issue them to all agriculturists including tenants. Such books could be issued as and when land records are brought up-to-date. However, it should be noted that these books require to be brought up-to-date every year so that banks can have a clear picture through these books about the rights in land held by an intending agriculturist-borrower as on the date of issue. These books will serve as *prima facie* evidence to rights in land and provide the starting point to banks to proceed to verify such rights and details pertaining to encumbrances on the land referred to therein. We, therefore, recommend to State Governments to expedite bringing of record of rights up-to-date and issue such books quickly.

Registration of Mortgages

6.10 The State enactments relating to co-operative land development/mortgage banks in Gujarat, Madhya Pradesh, Maharashtra, Mysore, Orissa, Rajasthan and Uttar Pradesh, provide for special arrangement for registration of mortgages executed in favour of the land development/mortgage banks. Thus, under the Maharashtra Co-operative Societies Act, 1960, it is not necessary to present for registration mortgage/lease deeds executed in favour of land development banks provided that the land development bank concerned sends, within such

time as may be prescribed, a copy of the instrument whereby property is mortgaged (or leased), to the registering officer within the local limits of whose jurisdiction the whole or any part of the property mortgaged (or leased) is situated. The registering officer is required to file a copy of it in Book No. 1 prescribed under Section 51 of the Indian Registration Act, 1908.

6.11 A variant of this is the provision in the Co-operative Societies Acts in force in Andhra Pradesh, Assam, Gujarat, Jammu & Kashmir, Kerala, Orissa, Punjab, Haryana, Tamil Nadu, Uttar Pradesh and West Bengal, according to which it is not necessary for any officer of a land mortgage bank or of the State Land Mortgage Bank to appear in person or by agent at any registration office in any proceedings connected with the registration of any instrument executed by him in his official capacity or to sign as provided in Section 58 of the Indian Registration Act, 1908. Only in three States, viz., Gujarat, Orissa and Uttar Pradesh, both the above sets of provisions have been made.

6.12 The co-operative credit societies also require simple mortgage of land in some cases. However, they do not get the benefit either of automatic registration of mortgages or of exemption from personal attendance for the purpose of registration as in the case of land mortgage banks. To an extent, this is logical, because short-term loans can be granted against a charge on land by declaration; but when it comes to medium-term loans, co-operatives do not enjoy the privilege accorded to land mortgage banks, except in Assam and Mysore.

6.13 Thus, if short-term loans are given against landed security, the formality of renewing the mortgage every year has to be gone through by the cultivator. The co-operative credit structure in some States (Tamil Nadu, Kerala and Orissa) has sought to overcome this difficulty by innovating a practice known as the 'Continuity Mortgage Bond'. This bond, once executed, is valid for a period of twelve years. Against the mortgage, members can borrow every year upto the credit limit sanctioned. In order to keep

the bond 'alive' during the twelve-year period, a nominal amount, say Re. 1, has to be kept outstanding at any point of time.

6.14 Most of the commercial banks that responded to our questionnaire have expressed the desire that facilities available to land mortgage banks by way of automatic registration should be extended to them also. This is supported by the fact of delays in the Sub-Registrar's office. According to one commercial bank, only ten to twelve registrations are done per day ordinarily in an office. Thus, if a bank has more than this number of documents to be executed in a day, it will have to pay a late fee for registrations done beyond office hours. With the expansion of credit to the agricultural sector, the number of deeds to be registered and copied in the relevant book will increase significantly. For expeditious disposal of loan applications, therefore, we recommend that commercial banks and co-operatives should also be eligible to execute mortgages as and when they are offered as security. The mortgagee bank may be required to send a copy of the deed to the Sub-Registrar as soon as possible. Additionally, the encumbrance should be recorded in the record of land rights. A time limit for sending a copy of declaration creating charge or of the mortgage deed to the Sub-Registrar of the area may be laid down by the State Government. In this context, it is necessary to point out the need to increase the number of registration offices as also the staff in the existing ones.

Certificate of Encumbrance on Property

6.15 In the earlier section, a reference was made to the special procedure adopted for registration of documents relating to mortgage of immovable property made in favour of land mortgage banks in some States. These documents, as also those required to be registered under Section 17(1) (b) and (c) of the Indian Registration Act, 1908, are to be filed by the registering officer in Book No. 1.

6.16 A certificate issued by the Sub-Registrar regarding encumbrances on the basis of entries

in the books in his office is known as the certificate of encumbrance on property or commonly termed the non-encumbrance certificate. This certificate is based on a search of the records in the Sub-Registrar's office. Under the Act, any person is entitled to search the books. Based on this search, the Sub-Registrar issues the certificate. It would appear from the replies received from state land mortgage banks and state co-operative banks that, in a majority of States, these institutions arrange to obtain the certificate themselves from the Sub-Registrar.

6.17 In so far as examination of encumbrances on land is necessary for commercial banks before lending, these banks have also to obtain an encumbrance certificate whenever mortgage security is found necessary. We feel, therefore, that, as has already been done in some States, the Sub-Registrars should be advised to issue these certificates expeditiously as and when commercial banks approach the officials in this behalf. Further, commercial banks should be eligible for such facilities as are available to land development/mortgage banks in carrying out the search with a view to quick disposal of loan applications.

6.18 It appears that there is scope for improving the arrangements to carry out the search expeditiously. As indicated earlier, the office of the Sub-Registrar maintains Book No. 1 in which all non-testamentary documents relating to immovable property are copied. Since 1967, the filing system has come into vogue and thus there is saving in labour in respect of copying of registered documents. In addition to Book No. 1, current indexes of the book are also to be maintained under the Act at the Sub-Registrar's office. In this connection, it is relevant to mention that in Maharashtra, the Sub-Registrar maintains the index village-wise where survey numbers and sub-divisions are posted and the number of the particular registered document is entered against the survey number or sub-division to which the transaction under such document pertains. In addition, an alphabetical index of names together with addresses

of individuals creating encumbrances is also maintained. The practice in vogue in Maharashtra is presumably in force in all the States; if not, it appears desirable to adopt it. An important limitation that will persist despite restoration of this practice will be in areas where land records are in arrears. The need for bringing them up-to-date has already been emphasised.

Exemption from Stamp Duty/Registration Fee/ Charge for obtaining Encumbrance Certificate

6.19 The expenses to be incurred by a borrower in connection with obtaining a loan from any credit agency include, besides the interest payable thereon, stamp duty on the document creating the mortgage, fee levied for registering the mortgage and charge payable for searching the records of the Sub-Registrar and the issue of encumbrance certificate. These expenses will arise only if borrowers or creditors desire to secure the loan by mortgage of immovable property.

6.20 The charges prescribed in respect of these vary from State to State. The Indian Stamp Act, 1899, enables State/Central Government to levy/remit the stamp duty payable on any instrument or class of instruments or any of the instruments belonging to such class or any instruments when executed by or in favour of any particular class of persons or by or in favour of any member of such class. Section 78 of the Indian Registration Act, 1908, enables State Governments, in a similar manner, to prescribe a scale of fees in respect of search and issue of encumbrance certificate.

6.21 The legislation relating to co-operatives in each State contains a provision empowering the Government to exempt co-operatives from stamp duty and any fee payable under the law relating to registration. The details of exemption available to borrowers of co-operatives in respect of stamp duty and registration fee are given in Appendices XIII and XIV.

6.22 As a measure of support, some State

Governments have exempted documents executed in favour of commercial banks for provision of agricultural credit from stamp duty and registration fee or stamp duty only; these details are also given in Appendices referred to above. Exemption from charge for obtaining certificate regarding encumbrances is not generally available to borrowers from commercial banks (Appendix XV).

6.23 At this stage, it may be pertinent to point out that as exemptions from payment of stamp duty, registration fee and non-encumbrance certificate fee are intended for the benefit of the cultivator, these should be available to him whether he borrows from a commercial bank or a co-operative. Secondly, such exemption appears necessary because many small holders may be cultivating land without possessing proper title deeds to land and may not, therefore, be able to borrow against an equitable mortgage even when such a mortgage is permissible. But as it is, even the position relating to loans obtained from co-operatives is not the same in all the States. For instance, Rajasthan Government has exempted from stamp duty all the loans borrowed from co-operatives whereas such exemption is available for loans only upto Rs. 5,000 in Uttar Pradesh. Further, the exemption is not the same for co-operative loans and commercial bank loans in most of the States.

6.24 Some State Governments are inclined to approach the stamp duty issue relating to commercial bank loans for agricultural purposes from the point of revenue and therefore, do not want to lose any revenue by exempting loans from commercial banks. However, the loss of revenue in waiving stamp duty/registration fee for commercial bank loans as well may not be material; after all commercial banks have entered into the field of agricultural financing only to supplement the efforts of co-operatives and if co-operatives were to finance the transactions in the normal course, no revenue would have accrued to the Government in regard to these transactions. In so far as we are concerned, there is no need to express our views regarding advisability of exemption of agricultural loans

from stamp duty, registration fee and fee for encumbrance certificate. What we would like to emphasise is that these exemptions are a concession to the cultivator and not to the lending institution. The Group, therefore, feels that whatever facilities are available to cultivators when they borrow from co-operatives should also be available to them when they borrow from commercial banks and other institutional credit agencies. For instance, if loans from co-operatives are totally exempted from stamp duty and registration fee irrespective of the size of the loan involved, this concession should be extended for agricultural loans from commercial banks also. However, if stamp duty is levied either at half or full rate in the case of co-operative loans, the same should apply to loans from commercial banks also.

Facilities for Creation of Equitable Mortgages

6.25 Many commercial banks have expressed the view that the number of centres where equitable mortgages could be created should be increased with a view to enlarging the facilities available to banks and borrowers in this regard.

6.26 The advantages inherent in a mortgage by deposit of title deeds are three-fold: firstly, it obviates the need for preparation and execution of the mortgage document; secondly, stamp duty and registration fee are avoided; and thirdly, the time taken in registration of the mortgage document is saved. This facility is, however, available only in certain notified towns and it is, therefore, not surprising that there should be a general demand for the extension of this facility to a larger number of centres (Appendix XVI).

6.27 The main constraint in extending this facility to a large number of centres would be the consequential loss of revenue to State Governments. It may, however, be possible to stipulate that the facility would be available at new centres only for borrowings from institutional agencies by agriculturists and thereby soften the impact on revenue. The State Governments should really not be concerned about this loss of revenue, as in any case, exemption from

stamp duty/registration fee is available to co-operative societies in most States, and these transactions would in the normal course have otherwise been financed by co-operatives.

6.28 The issue really is whether extension of this facility to a larger number of centres is warranted. We have recommended that in respect of stamp duty and registration fee on mortgage of land, commercial banks and co-operatives should be treated on par, and have also proposed a simplified procedure for registering mortgages executed in favour of commercial banks. These recommendations, if ac-

cepted, would, to a large extent, provide the same advantages as an equitable mortgage has over a registered mortgage. In the context of the non-availability of proper title deeds on lands, a registered mortgage on land is always preferable to an equitable mortgage and if the creation of a registered mortgage is made less costly and less cumbersome, the reliance of commercial banks on equitable mortgages would be very much less. Nevertheless, in the interim period, it would no doubt be of considerable help if at least all district head-quarter towns are notified as centres where such mortgages can be created for agricultural loans.

CHAPTER—7

SUMMARY OF RECOMMENDATIONS

7.1 It is in the context of the massive credit requirements for successful implementation of the new agricultural strategy and the inability of the co-operatives alone to meet the demand, that the multi-agency approach has come to be accepted.

7.2 In order that the commercial banks — they have entered this field only recently — are enabled to cater to the credit requirements of as large a number of agriculturists as possible, certain restrictive features of the various State enactments, particularly those relating to right of alienation in land or interest therein, need to be removed. It is also necessary that certain facilities given to agriculturists borrowing from co-operatives be extended to those who borrow from commercial banks, because in our view, these facilities are primarily for the benefit of the individual cultivator-borrower rather than for that of the lending institution. Our recommendations cover all these aspects and we are glad to note that some measures have already been taken by some of the State Governments.

7.3 The implementation of our recommendations would involve amendments to a large number of State enactments. In order to expedite action as also to ensure that an unambiguous and clearcut legal framework is provided for the operations of commercial banks in the agricultural sector, a single consolidated piece of legislation would be more advisable. We have, therefore, prepared a draft model bill for the purpose, which is given as an Annexure to this Report:

7.4 A summary of our recommendations is given below.

LEGISLATIVE PROVISIONS

Land Alienation Rights of Agriculturists

(i) Cultivators who have no rights or have only restricted rights of alienation in their lands

or interests therein — such as landholders belonging to scheduled tribes/castes, backward classes/castes, tenant-cultivators, fragment holders, allottees of *Bhoodan* land and of Government land — should be vested with rights to alienate land/interest in land held by them in favour of banks for the purpose of obtaining loans for agricultural purposes.

(ii) In the case of share-croppers, who form a special category and who do not have any recorded rights in land, banks would be able to grant loans only if their status is properly recorded in the record of land rights. Further, they should be enabled to create a charge on the crops raised by them, notwithstanding the fact that they are not the owners of the land over which the crop is raised by them.

Priority of Charges

(iii) The general principle of priority as between institutional credit agencies in regard to loans based on common security, should be as adumbrated in the Transfer of Property Act, 1882. This will ensure that the concept of first charge in favour of co-operatives does not adversely affect commercial banks. However, all institutional credit agencies should have priority of charge vis-a-vis private credit agencies.

(iv) The restriction on alienation of land subject to a charge in favour of a co-operative should be relaxed so as to permit subsequent alienation thereof for securing supplementary credit from another institutional credit agency. This would be similar to the provision by which property subject to a charge in favour of a co-operative credit society is allowed to be alienated in favour of a land development bank.

(v) On the same basis, where crop loan for current production purposes is granted by one institutional credit agency and term loan for development purposes is granted by another institutional credit agency against common secu-

rity, priority of security should accrue to the agency providing term loan provided the encumbrance in its favour was made with the knowledge and concurrence of the institution holding the encumbrance for crop loan for current production purposes. The existing priorities under the co-operative legislation as between the co-operative credit societies and land mortgage banks will remain unaffected.

(vi) As between two institutional credit agencies providing term loans for development purposes against common security, priority of claim should arise according to the point of time of creation of encumbrances.

(vii) On the analogy that the simplified procedure pertaining to the creation of a charge on land/interest in land by declaration in favour of co-operatives facilitates expeditious disposal of loan applications, provision should be made to enable agriculturists to create a charge on land/interest therein by declaration in favour of commercial banks. Appropriate arrangements should also be made to have such charge noted in the record of rights and in the office of the Sub-Registrar.

(viii) To overcome the prolonged delays involved in securing registration of mortgages created in favour of commercial banks, it is necessary to provide that it would be sufficient if a copy of the mortgage deed is sent for registration to the Sub-Registrar. The mortgage so created should also be noted in the record of rights.

Recovery and other Operational Difficulties

(ix) Enactments relating to moneylending regulation and debt relief should exclude commercial banks from their purview.

(x) To facilitate prompt recovery of dues of commercial banks without having to resort to protracted and time consuming litigation in civil courts, the State Government should empower an official with authority to issue an order, having the force of a decree of a civil court, for payment of any sum due to a bank by sale of the property charged/mortgaged in favour of the bank.

(xi) As banks may have need to foreclose mortgages of land executed in their favour, bring the property to sale and purchase the property if there are no bidders at auctions conducted for the purpose, they should be permitted to purchase the land and, if necessary, acquire land in excess of the ceiling limit fixed. However, State Governments may fix a time limit within which land acquired by banks is to be sold. Ultimate disposal of land by banks will, of course, have to be subject to State enactments as regards the persons to whom land can be sold etc.

(xii) In order to facilitate commercial banks financing agriculturists through primary agricultural credit societies, the societies should be made eligible to borrow from commercial banks. Further, the commercial banks concerned should be eligible for such facilities as are ordinarily available to a central co-operative bank.

ADMINISTRATIVE MEASURES

(xiii) To enable banks to get adequate and reliable information about the operational holding of an intending borrower and the nature of his interest therein to support his bonafide interest in land and cultivation, the urgency to bring land records up-to-date has been re-emphasised.

(xiv) Meanwhile, it is urgently necessary to prepare and maintain interim registers indicating the existence of share-croppers and other informal tenants and the particulars of land cultivated by them; unless this is done, this class of cultivators may not be able to get adequate support from institutional credit agencies.

(xv) As and when land records are brought up-to-date, pass books such as those already in vogue in some States may be issued by State Governments to owners and tenants so that such a pass book can serve as prima facie evidence to the rights in land of an agriculturist and as a starting point to banks to verify such rights and details pertaining to encumbrances thereon.

(xvi) Cultivators borrowing from commercial banks should be exempted from payment of stamp duty, registration fee and charge for issue

of non-encumbrance certificate to the extent to which they are eligible for these concessions if they borrow from co-operatives.

(xvii) The number of centres where equit-

able mortgages can be created in favour of commercial banks for the purpose of agricultural borrowing needs to be increased until such time as the legislative and other measures recommended by the Group are given effect to.

R. K. Talwar
G. V. K. Rao
K. P. J. Prabhu
C. D. Datey
K. Gopal Rao
P. H. Abhyankar
Ram Sahay
B. Rudramoorthy
V. M. Jakhade
H. B. Shivamaggi
T. V. Ramachandran

Bombay,
December 16, 1970.

**THE AGRICULTURAL CREDIT OPERATIONS AND
MISCELLANEOUS PROVISIONS (BANKS) BILL, 1970**

Arrangement of Clauses

**CHAPTER—1
Preliminary**

**Clause
Number**

1. Short title, extent and commencement.
2. Definitions.

CHAPTER—2

**Rights of agriculturists to
alienate land/interest in land
in favour of banks**

3. Removal of restrictions on alienation.
4. State Government may by notification vest agriculturists not having alienable rights with such rights.
5. Charge on crop and other movable property in favour of a bank.
6. Creation of charge on land in favour of a bank by declaration.

CHAPTER—3

**Charges and mortgages in favour
of banks and their priorities**

7. Removal of disability in creation of charges and mortgages.
8. Priority of charges and mortgages in favour of Government, a bank and a co-operative society.
9. Registration of charge and mortgage in favour of banks.
10. Noting of charge or mortgage created in favour of a bank in the Record of Rights.
11. Restrictions on creation of tenancy by an agriculturist-borrower.

CHAPTER—4

**Arrangements for recovery
of dues by banks**

12. Removal of bar to attachment and sale by process of court.

13. Recovery of dues of a bank through a prescribed authority.
14. Right of a bank to acquire and dispose of immovable property.
15. Exemption to banks from restriction on acquisition of land in excess of ceiling.

CHAPTER—5

**Financing of co-operative
societies by banks**

16. Bank eligible to become member of a co-operative society.
17. Power of co-operative societies to borrow from banks.
18. Inspection of books of a co-operative society by a bank.
19. Disputes between a bank and a co-operative society.
20. Settlement of disputes.
21. Procedure for hearing of disputes.
22. Decision of Registrar or his nominee or Board of nominees.
23. Recovery of money awarded.
24. Powers of a bank to proceed against defaulting members of a co-operative society.
25. Audit, inspection and inquiry reports of societies to be available to banks.

CHAPTER—6

Miscellaneous

26. Exemption from legislations relating to moneylending and agriculturists' debt relief.
27. Mortgages executed by managers of joint Hindu families.
28. Modified application of Section 8 of Act XXXII of 1956.
29. Power of State Government to make rules.

THE AGRICULTURAL CREDIT OPERATIONS AND MISCELLANEOUS PROVISIONS (BANKS) BILL, 1970

A BILL

To make provisions to facilitate adequate flow of credit for agricultural production and development through banks and other institutional credit agencies and for matters connected therewith and/or incidental thereto.

Be it enacted in the Twenty-second Year of the Republic of India as follows:—

CHAPTER — 1 Preliminary

1. (1) This Act may be called the Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act, 1970.
- Short title, extent and commencement.
- (2) It shall extend to the whole of the State of

(3) It shall come into force from such date as the State Government may, by notification in the State Gazette, appoint in this behalf and different dates may be appointed for different provisions of the Act and for different portions of the State.

2. In this Act, unless the context otherwise requires, —
- Definitions.

(a) "agriculture" and "agricultural purpose" shall include making land fit for cultivation, cultivation of land, improvement of land including development of sources of irrigation, raising and harvesting of crops, horticulture, forestry, planting and farming and cattle breeding, animal husbandry, dairy farming, seed farming, pisciculture, apiculture, sericulture, piggery, poultry farming and such other activities as are generally carried on by agriculturists, dairy farmers, cattle breeders, poultry farmers and other categories of persons engaged in similar activities including marketing of agricultural products, their storage

and transport and the acquisition of implements and machinery in connection with any such activity.

(b) "agriculturist" means a person who is engaged in agriculture.

(c) "Agro-Industries Corporation" means a company or other body corporate, one of the principal objectives of which is to undertake activities connected with or intended for the development of agriculture and not less than fifty-one per cent of the paid-up share capital of which is held by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments.

(d) "bank" means:—

(i) a banking company as defined in the Banking Regulation Act, 1949;

(ii) the State Bank of India constituted under the State Bank of India Act, 1955;

(iii) a Subsidiary Bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959;

(iv) a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;

(v) any banking institution notified by the Central Government under Section 51 of the Banking Regulation Act, 1949;

(vi) the Agricultural Refinance Corporation constituted under the Agricultural Refinance Corporation Act, 1963;

(vii) the Agro-Industries Corporation as defined in sub-Section (c);

(viii) Agricultural Finance Corporation Limited, a company incorporated under the Indian Companies Act, 1956; and

(ix) any other financial institution notified by the State Government in the Official Gazette as a bank for the purpose of this Act.

(e) "co-operative society" means a co-operative society registered or deemed to be registered under the Co-operative Societies Act, , the object of which is to provide financial assistance as defined in clause (f) of this Section to its members and includes a co-operative land mortgage/development bank; and

(f) "financial assistance" for the purpose of this Act means assistance granted by way of loans, advances, guarantee or otherwise for agricultural purpose.

CHAPTER — 2

Rights of agriculturists to alienate land/interest in land in favour of banks.

3. Notwithstanding anything contained in any law for the time being in force or any custom or tradition, it shall be lawful for an agriculturist whose rights of alienation of land or of any interest therein are restricted to alienate the land or his interest therein, including by creation of a charge or mortgage on such land or interest in favour of a bank for the purpose of obtaining financial assistance from that bank.

Removal of restrictions on alienation.

4. Notwithstanding anything contained in any law for the time being in force, the State Government may, by notification in the Official Gazette, vest any class or classes* of agriculturists not having rights of alienation in land or any interest therein, with rights of alienation including the right to create a charge or mortgage on such land or interest in favour of a bank for the purpose of obtaining financial assistance from that bank without any restrictions, or subject to such restrictions as may be specified in the notification.

State Government may, by notification, vest agriculturists not having alienable rights with such rights.

5. (1) It shall be lawful for an agriculturist to create a charge on the movable property owned by him or on the crops raised by him, standing or otherwise or other produce from land cultivated by him, to the extent of his interest therein, in favour of a bank, to secure financial assistance from that bank, notwithstanding that he may not be owner of the land on and from which the crop is raised.

Charge on crop and other movable property in favour of a bank.

(2) Notwithstanding anything to the contrary in the.....Co-operative Societies Act, ...or any other law for the time being in force, no charge in respect of financial assistance extended by a co-operative society to an agriculturist shall have priority over a charge on the crops raised by him, standing or otherwise, or any other movable property in respect of any financial assistance given to him by a bank, provided the financial assistance made by the bank is prior in point of time to that of the financial assistance extended by the co-operative society.

(3) A bank may distrain and sell through an official of the State Government, designated in this behalf by the State Government, the crop or other produce or other movables charged to that bank to the extent of the agriculturist's interest therein and appropriate the proceeds of such sale towards all moneys due to the bank from that agriculturist.

6. (1) Where an agriculturist creates a charge on land, or any other immovable property which he owns or in which he has an interest in respect of any financial assistance given to him by a bank, he may make a declaration on the lines of the form set out in the Schedule hereto or as near thereto as circumstances permit, declaring that thereby he creates, in favour of the bank, a charge on such

Creation of charge on land in favour of a bank by declaration.

*Note: It would be desirable to avoid the constitutional validity of this clause being questioned on grounds of excessive delegation. Towards this end, the State Government may specify in this clause the classes of agriculturists by reference to their names obtaining in the State or to the relevant legislation by which agriculturists may have acquired interest in the land.

land or his interest therein, or other immovable property as the case may be, to secure the financial assistance given to him by the bank.

(2) A declaration made under sub-Section (1) may be varied from time to time by the agriculturist with the consent of the bank in whose favour the declaration has been made. Such variation shall take effect from such date on which the variation, if it had been an original declaration, would have effect under Section 9.

CHAPTER—3

Charges and mortgages in favour of banks and their priorities

7. Notwithstanding anything to the contrary contained in the Co-operative Societies Act, or any other law for the time being in force and notwithstanding that any land or interest therein stands already charged or mortgaged to a co-operative society, it shall be lawful for an agriculturist to create a charge or mortgage on such land or interest therein in favour of a bank as security for any financial assistance given to the agriculturist by that bank.

8. (1) Notwithstanding anything to the contrary in any law for the time being in force, —

(a) no charge or mortgage created on any land or interest therein, after the commencement of this Act; in favour of Government or a co-operative society shall have priority over a charge or mortgage on such land or interest created by an agriculturist in favour of a bank as security for financial assistance given to the agriculturist by the bank after the commencement of this Act and prior to the charge or mortgage in favour of Government or the co-operative society; and

Removal of disability in creation of charges and mortgages.

Priority of charges and mortgages in favour of Government, a bank and a co-operative society.

(b) any charge or mortgage created on any land or interest therein in favour of a bank in respect of financial assistance given to an agriculturist by that bank shall have priority over any other charge or mortgage that may have been created over such land or interest in favour of any person other than Government, a co-operative society or any other bank, prior to the date on which the charge or mortgage was created in favour of the bank.

(2) Where different charges or mortgages over the same land or interest therein have been created by an agriculturist in favour of Government, a co-operative society or a bank or more than one bank, any such charge or mortgage created as security for financial assistance given by Government, co-operative society or the bank or banks by way of term loan for development purposes shall have priority over the other charges or mortgages created in favour of Government, co-operative society or any of the banks provided prior notice of any such financial assistance by way of term loan for development purpose had been given to such Government, co-operative society or bank and such Government, co-operative society or bank has concurred in such financial assistance, and where more than one such charge or mortgage is as security for financial assistance given by way of term loan, the charges or mortgages by way of security for term loan for development purposes will rank for priority in accordance with the dates of their creation.

Explanation: For the purposes of this Section, "term loan for development purpose" shall mean financial assistance which would generally lead to improvement of agriculture and/or building up of assets in agriculture but shall not include financial assistance for meeting working capital expenses/seasonal agricultural operations and marketing of crops.

(3) Nothing in this Section shall apply to borrowings only from one or more co-operative societies including land mortgage banks.

9. (1) Notwithstanding anything contained in the Indian Registration Act, 1908, a charge in respect of which a declaration has been made under sub-Section (1) of Section 6, or in respect of which a variation has been made under sub-Section (2) of that Section, or a mortgage executed by an agriculturist in favour of a bank in respect of financial assistance given by that bank, shall be deemed to have been duly registered in accordance with the provisions of that Act with effect from the date of such charge, variation or mortgage as the case may be, provided that the bank sends to the Sub-Registrar within the local limits of whose jurisdiction the whole or any part of the property charged or mortgaged is situate, within the time stipulated by the State Government for this purpose, by registered post acknowledgement due, a copy of the document creating such charge, variation or mortgage duly certified to be a true copy by an employee of the bank authorised to sign on its behalf.

(2) The Sub-Registrar receiving the declaration in respect of a charge or variation or a mortgage referred to in sub-Section (1) shall, as immediately as practicable on receipt thereof, record, in a register to be maintained in this behalf, the fact of the receipt of such declaration, variation or mortgage for registration.

10. Whenever a charge or a mortgage on land or interest therein is created in favour of a bank by an agriculturist, the bank may give intimation to the *Tahsildar/Mamlatdar* or such other revenue official as may be designated in this behalf by the State Government, of the particulars of the charge or mortgage in its favour. The *Tahsildar/Mamlatdar* or the other revenue official shall make a note of the particulars of charge or mortgage in the Record of Rights relating to the land over which the charge or mortgage has been created.

11. (1) Notwithstanding anything contained in any law for the time being in force, an agri-

Restrictions on creation of tenancy by an agriculturist-borrower.

culturist who has availed himself of financial assistance from a bank by creating a charge or mortgage on land or interest therein, shall not, so long as the financial assistance continues to be outstanding, lease or create any tenancy rights on such land or interest therein without prior permission in writing of the bank if he has not already leased or created tenancy rights thereon at the time of availing of the financial assistance from the bank;

(2) Any lease granted or tenancy rights created in contravention of this Section shall be void.

CHAPTER — 4

Arrangements for recovery of dues by banks

12. Nothing in any law shall prevent in any manner a bank from causing any land or any interest therein charged or mortgaged to it by an agriculturist to secure any financial assistance, to be attached and sold through a civil court and applying the proceeds of such sale towards all moneys due to it from that agriculturist including the costs and expenses as may be awarded by the court.

13. (1) An official of the State Government notified by the State Government as the prescribed authority for the purpose of this Section may, on the application of a bank, make an order on any agriculturist or his heir or legal representative, directing the payment of any sum due to the bank on account of financial assistance availed of by the agriculturist, by the sale of any land or any interest therein upon which the payment of such money is charged or mortgaged.

Provided that no order shall be made by the prescribed authority under this Section for the sale of any land or any interest therein or any other immovable property upon which the pay-

Noting of charge or mortgage created in favour of a bank in the Record of Rights.

Recovery of dues of a bank through a prescribed authority.

ment of money is charged or mortgaged unless the agriculturist or the heir or legal representative of the agriculturist, as the case may be, has been served with a notice by the prescribed authority calling upon him to pay the amounts due.

(2) Every order passed by the prescribed authority in terms of sub-Section (1) shall be deemed to be a decree of a civil court and shall be executed in the same manner as a decree of such court.

(3) Nothing in this Section shall debar a bank from seeking to enforce its rights in any other manner open to it under any other law for the time being in force.

14. (1) Notwithstanding anything contained in any law for the time being in force, a bank shall have power to itself acquire agricultural land or interest therein or any other immovable property which has been charged or mortgaged to it by an agriculturist in respect of any financial assistance availed of by him, provided the said land or interest therein or any other immovable property has been sought to be sold by public auction and no person has offered to purchase it for a price which is sufficient to pay to the bank the moneys due to it.

(2) A bank which acquires land or interest therein or any other immovable property in exercise of the power vested in it under sub-Section (1) shall dispose it of by sale, within a period to be specified by the State Government in this behalf.

(3) If the bank has to lease out any land acquired by it under sub-section (1), pending sale thereof as indicated in sub-Section (2), the period of lease shall not exceed one year at a time and the lessee shall not acquire any interest in that property notwithstanding any provisions to the contrary in any other law for the time being in force.

(4) A sale by a bank of land or interest therein in terms of this Section shall be subject

to any provisions of any law in force which may place restrictions on purchase of land by non-agriculturists or ceiling for acquisition of land or by a person not belonging to a particular tribe or scheduled caste or fragmentation of land.

15. Nothing in any law for the time being in force placing a ceiling or limit on the holding of land shall apply to a bank acquiring land in terms of Section 14 and holding such land till such time the bank is in a position to sell the land in the manner provided in Section 14 or otherwise, at a price which is adequate to cover its dues.

Exemption to banks from restrictions on acquisition of land in excess of ceiling.

CHAPTER — 5

Financing of co-operative societies by banks

16. Notwithstanding anything contained in the ... Co-operative Societies Act, ..., or any law for the time being in force, it shall be lawful for a bank to become a member of a co-operative society.

Bank eligible to become member of a co-operative society.

17. Notwithstanding anything contained in the Co-operative Societies Act,, it shall be lawful for any co-operative society to borrow from a bank.

Power of co-operative societies to borrow from banks.

18. (1) A bank shall have the right to inspect the books of any co-operative society which has either applied to the bank for financial assistance or is indebted to the bank on account of financial assistance granted earlier.

Inspection of books of a co-operative society by a bank.

(2) The inspection may be carried out by an Officer or any other member of the paid staff of the bank with the previous sanction in writing of the Registrar of Co-operative Societies.

(3) The Officer or any other member of the paid staff of the bank, undertaking such inspection, shall, at all reasonable times, have access to the books of accounts, documents, secu-

rities, cash and other properties belonging to or in the custody of the co-operative society inspected by him, and shall also be supplied by such society such information, statements and returns as may be required by him to assess the financial condition of the society and the safety of financial assistance to be made to the society or already made to it.

19. (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or the business of a co-operative society, between a bank financing a co-operative society and the co-operative society so financed, other than disputes regarding the disciplinary action taken by the society or its committee against a paid employee of the society, shall be referred by either of the parties to the dispute to the Registrar of Co-operative Societies for decision.

(2) Where any question arises whether, for purposes of the foregoing sub-Section, a matter referred to for decision is a dispute or not, the question shall be decided by the Registrar of Co-operative Societies whose decision shall be final.

20. (1) If the Registrar is satisfied that any matter referred to him or brought to his notice is a dispute within the meaning of Section 19, the Registrar shall decide the dispute himself or refer it for disposal to a nominee or a Board of nominees appointed by him.

(2) Where any dispute is referred under the foregoing sub-Section for decision to the Registrar's nominee or Board of nominees, the Registrar may at any time, for reasons to be recorded in writing, withdraw such dispute from his nominee or Board of nominees and may decide the dispute himself or refer it again for decision to any other nominee or Board of nominees, appointed by him.

(3) Notwithstanding anything contained in Section 19, the Registrar may, if he thinks fit, suspend proceedings in regard to any dispute if the question at issue between a co-operative society and a bank is one involving complicated questions of law and fact, until the question has been tried by a regular suit instituted by one of the parties to the dispute. If any such suit is not instituted within two months from the Registrar's order suspending proceedings, the Registrar shall take action as is provided in sub-Section (1).

21. The Registrar or his nominee or Board of nominees hearing a dispute under the last preceding Section shall hear the dispute in the manner that may be prescribed by the Registrar in this behalf.

22. When the dispute is referred for decision, the Registrar or his nominee or the Board of nominees may, after giving a reasonable opportunity to the parties to the dispute to be heard, make an award on the dispute, on the expenses incurred by the parties to the dispute in connection with the proceedings and fees, expenses payable to the Registrar or his nominee or, as the case may be, to the Board of nominees. Such an award shall not be invalid merely on the ground that it was made after the expiry of the period fixed for deciding the dispute by the Registrar and shall, subject to appeal or review or revision by the Co-operative Tribunal of the State, be binding on the parties to the dispute.

23. Every award given by the Registrar or the Registrar's nominee or the Board of nominees under Section 22, shall, if not carried out, on a certificate signed by the Registrar, be deemed to be a decree of a civil court and shall be executed in the same manner as a decree of such court.

24. (1) If a co-operative society is unable to pay its debts to a bank from which it has borrowed, by reason of its members defaulting in the payment of the moneys due by them, the bank may direct the committee of such society to proceed against such members by taking action under the.....Co-operative Societies Act,.....

Powers of a bank to proceed against defaulting members of a co-operative society.

(2) If the committee of the co-operative society fails to proceed against its defaulting members within a period of ninety days from the date of receipt of such direction from the bank, the bank itself may proceed against such defaulting members in which event, the provisions of the... Co-operative Societies Act,....., the rules and the bye-laws made thereunder shall apply as if all references to the society or its committee in the said provisions, rules and bye-laws were references to the bank.

(3) Where a bank has obtained a decree or award against a co-operative society indebted to it, the bank may proceed to recover such moneys firstly from the assets of the co-operative society and secondly from the members of the co-operative society to the extent of their debts due to the society.

25. The Registrar of Co-operative Societies shall draw the attention of the bank financing a co-operative society to the defects noticed in every audit or inquiry or inspection of such society conducted as per provisions of the Co-operative Societies Act,...., and shall also supply a copy each of such audit, inquiry or inspection report if demanded, in writing, by the bank.

Audit, inspection and inquiry reports of societies to be available to banks.

CHAPTER — 6

Miscellaneous

26. Nothing in any law for the time being in force dealing with moneylending or agriculturists' debt relief shall apply to financial assistance availed of by an agriculturist from a bank.

Exemption from legislations relating to moneylending and agriculturists' debt relief.

27. (1) Notwithstanding anything contained in any law for the time being in force, mortgages executed after the commencement of this Act by the manager of a joint Hindu family in favour of a bank for securing financial assistance for an agricultural purpose shall be binding on every member of such joint Hindu family.

Mortgages executed by managers of joint Hindu families.

(2) Where a mortgage executed in favour of a bank is called in question on the ground that it was executed by the manager of a joint Hindu family for a purpose not binding on the members (whether such members have attained majority or not) thereof, the burden of proving the same shall lie on the party alleging it.

28. Section 8 of the Hindu Minority and Guardianship Act, 1956, shall apply to mortgages in favour of a bank subject to the modification that reference to the court therein shall be construed as reference to the Collector or his nominee and the appeal against the order of the Collector or his nominee shall lie to the Commissioner.

Modified application of Section 8 of Act XXXII of 1956.

29. The State Government may make rules to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act and all such rules shall be published in the Official Gazette.

Power of State Government to make rules.

SCHEDULE

Declaration under Section 6(1)

I, (aged years) residing at
 being desirous of availing myself of financial assistance from the Bank make
 this declaration as required by Section 6(1) of the Agricultural Credit Operations and Mis-
 cellaneous Provisions (Banks) Act, 1970, that I, own/have interest
 as a tenant in the land specified below, and I hereby create a charge on the said land/interest
 in land in favour of the bank for securing the financial assistance which the bank may make
 and for all future assistance, if any, which the bank may make to me together with interest
 and costs and expenses thereon.

| Name of Village | Name of Taluka | Name of District | Survey No. | | Boundaries | | Area | |
|--------------------|-------------------|---------------------|-----------------|---------------|---------------|---------------|-------|---------|
| | | | City Survey No. | | South East | North West | Acres | Gunthas |
| | | | Plot No. | Plot Hissa | | | | |

| Assessment | | Approximate Value | Encumbrances, if any | | Remarks, if any |
|------------|-------|----------------------|----------------------|--------|--------------------|
| Rupees | Paise | | Nature | Amount | |

In witness whereof, I, Shri hereunder set my hand this
day of in the year one thousand nine hundred and.....

Witnesses

Signed and delivered by the abovenamed in the presence of:—

(1)

(2)

Signature of declarant

Attested by

Forwarded with compliments to the Village Officer with a request to include the particulars of the charge created under the declaration in the Record of Rights and to return to the bank for its record.

Manager/Agent,

.....Bank

Place

Returned with compliments to the Manager/Agent Bank. The charge created under the declaration is duly included in the Record of Rights on the day of 19.....

Village Officer

Forwarded with compliments to the Sub-Registrar with a request to record the particulars of the charge created under the declaration in his Office.

Manager/Agent,

.....Bank

Place

Returned with compliments to the Manager/Agent Bank. The charge created under the declaration is duly recorded.

Sub-Registrar

Statement of Objects and Reasons

One of the main objectives of the legislation relating to social control of banks in 1968 and the nationalisation of fourteen major Indian commercial banks in 1969 was to ensure that adequate proportion of commercial bank credit goes to the agricultural sector and other priority sectors. An examination of the State laws has shown that there are certain provisions therein which inhibit the entry of commercial banks into the field of financing of agriculture. It will, therefore, be necessary to modify these laws for the purpose of enabling commercial banks to undertake financing of agriculture on a large scale. An Expert Group constituted by the Reserve Bank of India to study the enactments having a bearing on commercial banks lending to agriculture suggested the modification of certain provisions in the State laws to facilitate the

smooth and efficient operation of commercial banks in the sphere of agricultural credit. The Expert Group also suggested that instead of amending the various State laws, it would be preferable if a single consolidated legislation incorporating the various amendments suggested by it is enacted. This approach not only facilitates expeditious action but also provides for laying down a clear and unambiguous statutory framework for the agricultural credit business of commercial banks. Further, facilities available to the co-operatives and/or land development banks could be extended to other institutional credit agencies only through a separate legislation. The proposed Bill is, therefore, being enacted to enable commercial banks and other institutional credit agencies to serve expeditiously as an effective instrument of national policy.

**THE AGRICULTURAL CREDIT OPERATIONS AND
MISCELLANEOUS PROVISIONS (BANKS)
BILL, 1970**

Brief Notes on Clauses

Clause—1: This clause is self-explanatory.

Clause—2: Definitions :

(a) *“agriculture” and “agricultural purpose”* : This definition is wide enough to include all types of activities relating to agriculture as also dairying, pisciculture, apiculture, sericulture, piggery, poultry farming and other activities. A wider definition is desirable so as to enable banks to extend credit for agricultural production and development as also activities connected with agriculture such as dairying, and other activities incidental to it such as marketing of agricultural products, their storage and transport and the acquisition of implements and machinery connected with any such activity. It may also be noted that this Act is purported to provide safeguards and facilities in respect of bank loans for agriculture only and as such it is felt that all activities allied to agriculture should also have the benefit of this law.

(b) *“agriculturist”* : This definition has been so worded as to bring within its fold every person engaged in agriculture as defined above. At the same time, it has been provided that only those engaged personally in agriculture are eligible for inclusion under the definition. Thus, while it will extend to cover a tenant personally cultivating land of another, non-cultivating landholders whose lands are under tenant-cultivation will be excluded from its purview.

(c) *“Agro-Industries Corporation”* : It is proposed that the benefits and facilities to be conferred on banks under the legislation should also be extended to the Agro-Industries Corporations as they are also engaged in supplying agricultural machinery to agriculturists under hire-purchase and other arrangements and hence the definition of Agro-Industries Corporation has been provided.

(d) *“bank”* : Since the main object of the legislation is to cover the difficulties faced by banks in financing agriculture, a bank has been defined to cover banking companies incorporated in India under the Indian Companies Act, 1956, the State Bank of India, its Subsidiaries and the nationalised banks established by separate statutes as also the banks incorporated abroad. In addition, it also includes other existing institutions engaged in financing agriculture and also provides scope for inclusion of any other bank notified by the Central Government under Section 51 of the Banking Regulation Act, 1949; any other institution that may come into existence in the future for financing agriculture can also be exempted by a notification.

(e) *“co-operative society”* : The definition of co-operative society for purposes of the Act will include all types of co-operatives engaged in extending financial assistance to agriculture. Thus, besides including a primary agricultural co-operative credit society and a primary land mortgage bank, the definition will also cover marketing and processing co-operatives engaged in financing agriculturists.

(f) *“financial assistance”* : For purposes of this Act, it means assistance given by a bank to an agriculturist or a co-operative society by way of loan, advance, guarantee or otherwise for an agricultural purpose.

Clause—3: There are certain classes of agriculturists who although are owners of lands held by them are restricted wholly from alienating their rights therein. Examples of this type are the landholders belonging to scheduled tribes in some parts of the country. Secondly, there are landowners who are allowed to alienate their rights therein in favour of specified institutional credit agencies only. Examples of these are the

tenant-purchasers of land in Maharashtra and Mysore, as also allottees of Government land and *Bhoodan* land in some States. They are allowed to alienate their land in favour of Government and co-operatives or Government only.

As such, a landholder of the former type can obtain only short-term loan for current farm expenses on the basis of personal security. However, for the purpose of obtaining medium and long-term loans, particularly when the loan is required for a purpose other than purchase of farm machinery which could be hypothecated for the loan, he will not be able to offer any tangible security. In the case of latter class of cultivators, restriction as to the credit agency from which they can borrow will deprive them of the choice to choose from among the institutional credit agencies operating in the sphere of agricultural credit.

Recently, one State Government issued a notification under which landholders with restricted rights were given the right to mortgage their lands in favour of commercial banks. But this perhaps has no legal validity as the existing laws do not provide for conferring such rights through issue of such notification. The State Government may, therefore, re-word this Section so as to indicate specifically the list of landholders who are made eligible by this enactment to transfer their land/right in land in favour of banks for obtaining financial assistance for agricultural purpose.

Clause—4: This clause enables the State Government to vest the right to alienate land/interest in land on any class of landholders who do not have such rights provided the alienation is made in favour of banks. This will apply in the case of tenants, *Bhoodan* allottees, etc., who have fixity of tenure but no alienation rights. This can be done by Government by issuing a notification under the clause to the effect, in the official Gazette, and the Government is also empowered to place such restrictions as it may feel necessary. This is essential from the point of view of widening the coverage of agriculturists by banks. It may be noted that the State Government is not empowered under

the clause to permit alienation in favour of private credit agencies.

Clause—5: Sub-clause (1) enables an agriculturist and, in particular, a tenant-cultivator to create a charge on crops raised by him on tenanted land or other produce or any other movable property in favour of a bank.

Sub-clause (2): The dues to a co-operative are a first charge on the crops and other movable property of a member irrespective of the date on which the loan was borrowed from a co-operative. It is, therefore, necessary to provide that in the case of financial assistance granted by a bank against a charge on crop and other movable property, its charge will not be postponed to any subsequent claim arising in favour of a co-operative due to a loan granted by the co-operative after the grant of a loan by a bank.

Sub-clause (3) enables a bank to seek the assistance of a Government official designated by the State Government in this behalf to dis-train crops and other movables charged to it and sell the same if the indebted agriculturist defaults in repayment of the financial assistance availed of by him from the bank.

Clause—6: This clause is on the lines of the provision extant in the Co-operative Societies Acts of many States. According to this clause, a charge can be created on land/interest in land in favour of a bank by a mere declaration, on the lines indicated, by the borrower. This is considered essential, firstly, from the point of view of providing security for financial assistance speedily and secondly, for the ease with which such security can be created. The clause also provides for varying the declaration according to changing circumstances.

Clause—7: This clause enables an agriculturist to secure financial assistance from a bank by creating an encumbrance on land which is already charged or mortgaged to a co-operative. This is essential because some enactments relating to co-operatives stipulate that land encumbered in favour of a co-operative cannot be alienated in favour of any person. The continuation of the restriction will prevent an agricul-

turist indebted to a co-operative, say, for short-term loans, from obtaining a medium-term/long-term loan from a bank against the same security.

Clause — 8 : Sub-clause 1(a) lays down, in essence, that the order of priorities as between institutional credit agencies will be according to date of creation of encumbrances, i.e., as mentioned in the Transfer of Property Act, 1882. The need for such a provision arises from the fact that co-operatives in all States acquire a first charge in respect of their dues irrespective of the date on which their dues arose.

Sub-clause 1(b) is intended to maintain that while priorities as between institutional credit agencies will be according to point of time of creation of encumbrances in their favour, the same will not apply in regard to private credit agencies. Thus, it is provided that a bank will have priority over the claim of a private party even if the latter claim is earlier in point of time. This clause not only safeguards interests of banks but also can be said to discourage lending by private credit agencies against encumbrances on land in their favour.

Sub-clause (2) lays down that as between institutional credit agencies, the agency providing financial assistance by way of term loan for development purpose will have priority over the others irrespective of the date of creation of encumbrances. That is to say, where crop loans for seasonal agricultural operations and term loans for development purposes are given by two institutional credit agencies against common security, priority of claim should accrue to the agency providing term loan. However, such priority will accrue only if notice of intention to raise a term loan is given to the institutional credit agency in whose favour the agriculturist has created a charge/mortgage on land/interest therein as security for crop loan availed by him and that agency concurs with the alienation to be made for obtaining a term loan against the same security from another institutional credit agency. Further, as between two institutional agencies providing term loans for development purposes against common security, priority of

claim should accrue according to the point of time of creation of encumbrance.

Sub-clause (3), however, stipulates that priority of charges/mortgages as between a co-operative society and a land mortgage bank will continue to be governed by provisions in the law pertaining to them.

Clause — 9 : This clause provides for automatic registration of a charge/mortgage created by an agriculturist in favour of a bank if the bank forwarded a copy of the charge/mortgage to local Registering Officer. The time within which the bank is to send the same can be fixed by the State Government. This will obviate the usual time-consuming formalities involved in registering a mortgage deed. However, the charge/mortgage will take effect from the date it is made. This provision is aimed at simplifying procedures connected with disbursement of credit to farmers. As it is, there is an arrangement for automatic registration of the mortgage, executed in favour of land mortgage banks.

Similarly, a charge on land declared in favour of a co-operative is, according to some State enactments, to be recorded in the Record of Rights when communicated by the co-operative. These facilities are in the interest of the farmer, and therefore, proposed to be extended to him in respect of financial assistance from banks, as defined in this Act. Where, however, stamp duty is to be paid for loans exceeding certain exempted limit (Rs. 5,000 in many States), arrangement can be made by the State Government to collect it through the lending bank while continuing the procedures of automatic registration.

The Registering Officer is required in terms of sub-clause (2) to record the same in a register to be maintained for this purpose as immediately as possible on receipt of the communication from a bank.

Clause — 10 : As it is, a charge created by declaration in favour of a co-operative is to be recorded with Revenue officials. By requiring banks also to do the same in regard to charge and also mortgage, it would facilitate institutional credit agencies to ascertain the encum-

branches on land of the intending borrower at one place. The Revenue official is required to make a note of the charge/mortgage in the Record of Rights.

Clause—11: This clause provides that the agriculturist who creates a charge on or mortgages his land to a bank shall not create tenancy/lease thereon without prior permission of the bank; leases/tenancy created without such permission shall be void. However, this will not affect an existing tenancy. Incidentally, it also means that a landholder will not be able to borrow against the tenanted land as it is not personally cultivated by him. On the other hand, the tenant can get a loan.

Clause—12: The heed for this clause arises from the fact that with a view to protecting the tribals from moneylenders, it has been laid down that lands held by them cannot be sold even in pursuance of a decree of a civil court. Similarly, in some other State enactments, the interest of a tenant cannot be attached or sold even in pursuance of a decree of a civil court. These types of landholders are being enabled to borrow from banks against their interest in land. This clause empowers an institutional credit agency to attach the land belonging to a borrower, in the event of his default, sell the same through a civil court and apply the sale proceeds towards the repayment of its dues.

Clause—13: Ordinarily, it is expected that commercial banks will, in case of need, resort to litigation in civil courts for recovery of sums due from agriculturists. Since civil court suits take a long time for settlement and the procedure involved in them is cumbersome, it is necessary to secure quick settlement of such dues. Such an arrangement is necessary from the point of view of dispelling complacency on the part of the borrowers. Further, in the initial years of lending to agriculturists, difficulties are likely to be experienced and these need to be attended to and thereby sustain the enthusiasm of banks. These are sought to be done by enabling banks to refer non-payment of their dues by agriculturists to an official of the State Government designated by it and the order is-

sued by the official is to be treated as a decree of the civil court and in pursuance of it the property on which a charge or mortgage has been created by the agriculturist can be sold. It may, however, be noted that the recoveries to be made under the clause cannot be made as revenue recoveries.

Clause—14: This clause is a sequel to the preceding one in that if the bank is forced to bring the property charged or mortgaged to it to sale and if it fails to sell the same in a public auction, it should be entitled to purchase the property on its own. A facility similar to this one is available to the co-operative land mortgage banks under the Co-operative Societies Acts.

In sub-clause (2), however, it is mentioned that immovable property acquired by a bank in pursuance of sub-clause (1) should be sold by it. The period within which such sale should be made is left to the State Government for decision.

Sub-clause (3) enables a bank to lease the property out to any person subject to the condition that the lease shall not exceed one year at a time. A provision to this effect is necessary because in some States leasing out of land is prohibited. Further, a tenant of the bank will not be entitled to any rights accruing out of the tenancy such as the right to purchase land as it may restrict the market for land.

The object of sub-clause (4) is to restrain the bank from selling the land to any person, which may defeat the objectives of land reforms legislation. It is, therefore, provided that sale of land by a bank shall be subject to such conditions as will apply under legislation relating to land reforms, e.g., sale of land being restricted only to agriculturists or certain class of agriculturists.

Clause—15: As clause 14(1) enables a bank to acquire immovable property, it is necessary to exempt the bank from any legislation relating to ceiling on land holdings in vogue in the States till such time as the lands are in its possession. This is sought to be done in this

clause. The absence of a provision to this effect would make it difficult for banks to recover the dues expeditiously for there may arise situations when it will be necessary for banks to acquire land in excess of ceiling limit.

Clause—16: This clause enables a bank to become a member of a co-operative society which is to be financed by it. This is mainly to bring the bank within the jurisdiction of the Registrar of Co-operative Societies in regard to adjudication of disputes.

Clause—17: Usually the Co-operative Societies Acts stipulate that societies can borrow from members and other persons, subject to such conditions as may be prescribed in their bye-laws. Normally, the bye-laws provide for a primary co-operative credit society to borrow from the central co-operative bank and whenever deviations are made from this policy, it is necessary for the society to obtain permission from the Registrar of Co-operative Societies to do so. In view of the fact that central co-operative banks in some districts of the country are very weak and are not in a position to provide adequate credit to agriculturists, it has been proposed that primary agricultural credit co-operative societies in the area of operation of such co-operative banks should borrow from the commercial banks. This clause provides a legal basis for such an arrangement.

Clause—18: This clause is analogous to a clause in the Co-operative Societies Acts, enabling a central co-operative bank to inspect the books of accounts etc., of a society indebted to it. Such an inspection will be required to be done by a bank both before and after financing a society. By providing facilities for such an inspection, a bank can satisfy itself about the working of the society and correspondingly an obligation on the society to co-operate fully with such inspection.

Clause—19: A dispute arising between a bank and a society financed by it will in the normal course be settled between the two directly. However, if such a settlement is not possible, this clause comes into operation and its object is to prevent such disputes being taken to a

court of law and instead be referred to the Registrar of Co-operative Societies for decision.

Clause—20: This clause empowers the Registrar to decide the dispute himself or refer it to his nominees for decision. However, if the dispute in question involves complicated issues on law and fact, choice is given to the disputants to seek redressal from a court of law. If the disputants fail to do so, the Registrar can decide these issues also.

Clause—21: There is no set procedure for hearing of disputes and the Registrar may prescribe the same.

Clause—22: The decision on a dispute between a bank and a co-operative society financed by it, given by the Registrar or his nominee is given the status of an award and the award which may include expenditure connected therewith is binding on both the parties subject, however, to appeal or review.

Clause—23: Since the award is binding on both the parties, it is expected that it will be implemented. This clause gives the award the status of a civil court decree to be executed as such.

Clause—24: A financing bank is empowered under this clause to direct the society financed by it to take action against its defaulting members under the Co-operative Societies Act. Failure on the part of the co-operative society to comply with the direction will entitle the financing bank to take action against the defaulters directly. In such an event, the financing bank will be eligible to all facilities available to the defaulting co-operative under the Co-operative Societies Act, rules and bye-laws. The bank is allowed to recover moneys due to it firstly from the assets of the society and secondly from the members of the society to the extent of their dues.

Clause—25: The Registrar of Co-operative Societies is entitled to inspect, audit and supervise the co-operative societies and in addition, can conduct inquiries at the behest of the creditor of a society in terms of the Co-operative Societies Act. This clause enables a bank

to have access to these reports in respect of a society financed by it.

Clause—26: Most of the State legislations relating to regulation of moneylending and relief to indebted agriculturists have exempted loans granted by or debts owed to banks. These relate to maximum rate of interest that can be charged, scaling down of debts, etc. However, there are a few States where the exemption granted is not complete. Since lending operations of banks are subject to regulation of the Reserve Bank of India and it will be operationally difficult for banks to comply with these legislative measures, there is no further need to restrict them in this regard and hence it is necessary to exempt them from the purview of these legislations in respect of their loans to agriculture.

Clause—27: This is similar to a provision contained in the Co-operative Societies Act in many States. The clause has the effect of permitting the manager of a joint Hindu family to create encumbrances on land held by the family if the encumbrance is to secure financial assistance for development of agriculture as defined in the Act.

Clause—28: This involves a procedural change only in that mortgages of minor's property can be done with the permission of the Collector instead of the court. The change is similar to the facility already available to co-operatives.

Clause—29: Mainly for purposes of clauses 10, 13 and 14, the State Government has to lay down rules and procedures to be followed. This clause empowers the Government to make rules for the purposes of this Act.

APPENDICES

CONTENTS

| APPENDIX NO. | | PAGE |
|-----------------|--|---------|
| I | Questionnaires issued by the Expert Group... .. | 52-65 |
| II | Statewise review of enactments having a bearing on commercial banks lending to agriculture | 66-154 |
| III | Right to alienate land/rights in land — Statewise position... .. | 155-169 |
| IV | List of districts in which the proportion of scheduled castes and scheduled tribes is more than 33 per cent to the total population of the district | 170 |
| V | Area operated under tenancy | 171 |
| VI | Statewise Bhoodan land and Gramdan villages | 172 |
| VII | First charge in favour of co-operatives arising by law | 173 |
| VIII | Charge in favour of co-operatives created by declaration | 174-175 |
| IX | Priority of co-operative loans over Government loans | 176 |
| X | Money lending legislation — Applicability to banks and rates of interest specified | 177-180 |
| XI | Debt relief legislation — Exemption to banks | 181-182 |
| XII | Farm title books issued by State Governments | 183-186 |
| XIII | Stamp duty payable on agricultural loans of co-operatives/commercial banks | 187 |
| XIV | Registration fee payable by borrowers of co-operatives/commercial banks | 188 |
| XV | Fee for non-encumbrance certificate payable by borrowers of co-operatives/commercial banks | 189 |
| XVI | Towns notified under Section 58(f) of the Transfer of Property Act, 1882, for creation of equitable mortgages | 190 |

APPENDIX — I

QUESTIONNAIRES ISSUED BY THE EXPERT GROUP

The Expert Group issued questionnaires to (i) state governments, (ii) commercial banks, (iii) state co-operative banks and (iv) state co-operative land mortgage/development banks.

The questionnaire issued to co-operative institutions referred to above, was the same in respect of each type of institution in the different States. As regards State Governments and commercial banks, however, a separate questionnaire was prepared in respect of each State after a study of the State laws available to the Group. Specimen questionnaires issued to the State Government of Maharashtra and to a commercial bank in respect of Bihar and those issued to Governments of Union Territories and co-operative institutions are reproduced in the following pages.

QUESTIONNAIRE FOR MAHARASHTRA GOVERNMENT

I. CULTIVATORS ELIGIBLE TO BORROW

(1) Types of cultivators

Under the Tenancy and Agricultural Lands Acts, applicable to different parts of the State, tenant-purchasers are allowed to mortgage their lands in favour of State Government or co-operatives, but they cannot mortgage in favour of commercial banks. Similarly, the tenants who are in the process of becoming owners (that is those who have not paid the full price) also cannot mortgage their lands in favour of commercial banks. As a result, these cultivators may find it difficult to obtain credit from commercial banks. This holds good in the case of ordinary tenants also who have been permitted to mortgage their lands or create a charge on their interest in their tenanted lands in favour of co-operatives but not in favour of commercial banks. Does the State Government contemplate to allow mortgages in favour of

commercial banks also so that the cultivators are in a position to benefit from the finances available from commercial banks?

It is understood that *ex-inam* landholders who have been reallocated *ex-inam* lands under new tenure and landholders who have been given land under the land redistribution programme cannot mortgage their lands to commercial banks. Please confirm and let us know whether the Government intends to give them transferability rights in their lands for the specific purpose of obtaining loans from credit institutions including commercial banks.

(2) Bhoodan allottees and others

There may be some other landholders such as allottees of *bhoodan* lands and/or Government land who do not have transferability rights in their lands. Is it contemplated to allow them to transfer their lands in favour of credit institutions including commercial banks so as to enable them to obtain loans required for agriculture?

(3) Fragment holders

Mortgage or transfer of fragments to a co-operative institution is exempted from certain provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Is there any move to extend this exemption to commercial banks so that fragment holders may not have any difficulty in borrowing for agricultural purposes? Can the lending institution sell the mortgaged fragment to any one to recover its dues?

(4) Lands held by scheduled tribes

According to Section 36 of the Maharashtra Land Revenue Code, 1966, the State Government is empowered to declare that occupancies of persons belonging to scheduled tribes in the State, as a whole or in part thereof, shall not be

transferred ~~except~~ the previous permission of the Collector. ~~Has~~ the Government issued any modification under the ~~above~~ powers and if so, please supply the details thereof. Also indicate whether co-operatives are exempt from the above restriction and, if so, whether similar exemption is contemplated in respect of commercial banks.

II. SECURITY FOR LOANS

(5) Charge in favour of co-operatives

Under Section 48 of the Maharashtra Co-operative Societies Act, 1960, a member-cultivator has to create a charge on the land and other immovable properties and interest therein in favour of a society from which he borrows. *The member cannot transfer any such lands or property until the dues to the society have been fully repaid.* In the case of mortgage executed in favour of a land development bank, it has priority over the charge on land created in favour of a co-operative society or any claim of the Government. As a result, commercial banks may hesitate to give loans on the security of lands on which a charge has already been created in favour of a co-operative society. Further, the interests of commercial banks may be adversely affected if the cultivator creates a charge in favour of a co-operative on land, already mortgaged to a commercial bank for obtaining a loan. Does the State Government contemplate to give priority to mortgages executed in favour of commercial banks as has been done in the case of land development banks? Or is it contemplated to apply the relevant provisions of the Transfer of Property Act, 1882, so that the claims of different institutional credit agencies based on common security are decided according to the dates of these claims?

(6) Priorities in favour of land development banks

In some States, a mortgage executed in favour of a land mortgage bank has priority over any claim of Government arising from a loan under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884,

granted after the execution of the mortgage. Such a provision tends to affect adversely the claims of other institutional credit agencies. Does a similar provision exist in favour of land development banks in your State? If so, is it contemplated to extend similar facilities to commercial banks or is it contemplated to apply the relevant provisions of the Transfer of Property Act, 1882, so that the claims of different institutional credit agencies based on common security are determined and disposed of according to the dates of the creation of the respective securities?

(7) Ceiling on land holdings

It is not clear whether the ceiling on existing holdings applies to lands which the lending institutions may have to acquire in the process of recovery of their dues. Please clarify the position and let us know whether it is contemplated to exempt the lands held by lending institutions from the ceiling limit as has been done in the case of land development banks in some States.

(8) Mutation of entries in Land Records

It is reported that mutation of entries in *pattas* is not made immediately after the sale. This requires a recourse to Village Accounts etc., to ensure that there has been no alienation of land. Sometimes only joint-*pattas* are available and in that case the failure of any one *pattadar* to pay land revenue can bring the entire holding to sale. The State Government may, therefore, indicate arrangements made to facilitate issue of *pattas* expeditiously.

(9) Record of Rights

In the absence of *pattas*, extracts from Record of Rights are used in some States. As to how far such extracts from Record of Rights can be used for creation of equitable mortgages may also be indicated.

(10) No dues certificate

Banks have to satisfy themselves that the intending borrowers have no borrowing arrangements with co-operatives and therefore, need no dues certificates from co-operatives. These

are difficult to get at times and entail delay. State Government may indicate arrangements made/contemplated for issue of no dues certificates expeditiously.

III. FACILITIES FOR THE CULTIVATORS

(11) Exemption from stamp duty, registration fee, etc.

It is understood that loans obtained from co-operative credit institutions are exempted from stamp duty and registration fee. Please confirm and give us the details and also let us know whether loans obtained from commercial banks are also eligible for this exemption.

(12) Non-encumbrance certificate

In some States, cultivators who intend to borrow from co-operative institutions are not required to obtain non-encumbrance certificates as the lending institutions themselves approach the concerned authorities and obtain the required certificates. Please indicate whether there is any such arrangement in your State. Also let us know whether it is contemplated to introduce such facility in your State in the case of borrowings from commercial banks.

IV. FACILITIES FOR BANKS

(13) Moneylending

In the Bombay Money-Lenders Act, 1946, "bank means a banking company as defined in the Banking Regulation Act, 1949 and includes the Reserve Bank of India, the State Bank of India and any other banking institution notified by the Central Government under Section 51 of the Banking Regulation Act, 1949" (Section 2(1)). However, loan to or by bank does not come within the purview of the Act (Section 2(9)(e)).

Banks are exempted from the provisions of the legislation. Please confirm.

(14) Debt relief

The Bombay Agricultural Debtors' Relief Act, 1947, exempts dues owed to scheduled banks. But such exemption is not available to non-scheduled banks. Is it contemplated to

modify the exemption category in Section 3 of the Act so as to include all banks and other institutional credit agencies in the exemption list?

(15) Registration of mortgages

Land development banks are not required to register mortgages as it would suffice if these banks send copies of the instruments to the Registering Officer. Is it contemplated to give similar facilities to commercial banks?

(16) Recovery of dues

If an instalment due to a land development bank becomes overdue, the Registrar or Collector has been authorised to distrain the produce of the mortgaged lands including the standing crops thereon. The question arises as to how the dues of other credit agencies such as co-operative credit societies or commercial banks are recovered when the crop is attached for the recovery of dues of one credit agency.

A mortgage executed in favour of a land development bank cannot be called and questioned in any insolvency proceedings. Is it contemplated to give similar facilities to commercial banks?

Dues of co-operative credit institutions are recoverable as arrears of land revenue. Is there any move to treat the dues of commercial banks as arrears of land revenue so as to facilitate their recovery?

V. OTHERS

(17) Others

Are there any other steps (simplification of procedures, recovery facilities and such other facilities as have been given to co-operatives) which your State Government has introduced or proposes to introduce in the near future so as to help cultivators and commercial banks in their loan operations? These may be indicated in detail with special reference to the items mentioned in the terms of reference of the Group.

(18) The following enactments of the State Government have, according to us, a bearing on commercial banks lending to agriculture.

Kindly furnish us a copy of each one of these enactments amended up-to-date as early as possible.

1. The Bombay Maleki Tenure Abolition Act, 1949.
3. The Bombay Bhagdari Tenure Narwadari Act, 1949.
3. The Bombay Bhagdari and Narwadari Tenures Abolition Act, 1949.
4. The Bombay Personal Inams Abolition Act, 1952.
5. The Bombay Kauli and Katuban Tenures (Abolition) Act, 1953.
6. The Bombay Bhil Naik Inam Abolition Act, 1955.
7. The Bombay Merged Territories Miscellaneous Alienation Abolition Act, 1955.
8. The Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950.
9. The Bombay Shilotri Rights (Kolaba) Abolition Act, 1955.
10. The Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953.
11. The Bombay Inams (Kutch Area) Abolition Act, 1958.
12. The Bombay Inferior Village Watans Abolition Act, 1958.
13. The Bombay Watan Vazifdari Rights Abolition Act, 1950.
14. The Bombay Agricultural Debtors' Relief Act, 1947.
15. The Bombay Money-Lenders Act, 1946.
16. The Maharashtra Co-operative Societies Act, 1960.
17. The Bombay Tenancy Act, 1939.
18. The Bombay Tenancy and Agricultural Lands Act, 1948.
19. The Hyderabad Tenancy and Agricultural Lands Act, 1950.
20. The Maharashtra Land Revenue Code, 1966.
21. The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961.
22. The Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.
23. The Saurashtra Prevention of Fragmentation and Regulation of Holdings Act, 1954.
24. The Bombay Vidarbha Region Agricultural Tenants (Protection from Eviction & Amendment of Tenancy Laws) Act, 1957.
25. The Bombay Shetki Watan (Ratnagiri) Abolition Act.
26. The Hyderabad Abolition of Inams Amendment Act, 1954.

QUESTIONNAIRE IN RESPECT OF BIHAR TO COMMERCIAL BANKS

I. CULTIVATORS ELIGIBLE TO BORROW

(1) Types of cultivators

In view of large population belonging to scheduled castes, scheduled tribes, backward and aboriginal classes in the State, the land laws contain certain provisions aimed at protecting the interests of these weaker sections.

Thus, *ryots* not belonging to scheduled castes, tribes and backward classes can sell and mortgage their lands (simple or usufructuary) without any restrictions. *Ryots* belonging to scheduled castes, scheduled tribes and backward classes can, however, enter only into an usufructuary mortgage with another *ryot* of the same class but for other transfers including sale, Collector's permission is necessary. *Ryots* in this context include ex-intermediaries whose estates and tenures have been abolished under Section 3 of the Bihar Land Reforms Act, 1950, and who have been allowed to retain lands in *khas* possession, homesteads and buildings in their possessions as *ryots* having occupancy rights on payment of rent (Sections 5, 6 & 7).

In Santal Parganas district of the State, *ryots* belonging to aboriginal tribes are not allowed to sell or mortgage their lands. Other

ryots in the district are not allowed to sell their lands but can enter into *bhugat bandha* (complete usufructuary) mortgage upto one-fourth of their paddy and first class *bari* land (upland) for a period not exceeding six years with a land mortgage bank, grain *gola*, co-operative society or a *ryot* of the same district. Further, on the expiry of the period of transfer, no further transfer of any of the lands of the transferor *ryot* is permissible for a period of six years.

In the Chota Nagpur division of the State (comprising the districts of Ranchi, Palamau, Singhbhum, Hazaribagh and Dhanbad), *ryots* belonging to scheduled castes, scheduled tribes or backward classes can sell to another aboriginal resident with the permission of the Deputy Commissioner. They can enter into a complete usufructuary mortgage only. Other *ryots* in the area can sell and transfer by simple mortgage their rights in the holding to another person who is a resident within the local limits of the district in which the holding is situated or to a co-operative society. Further, a *ryot* can enter into a *bhugat bandha* mortgage of his holding for any period not exceeding seven years. If the mortgagee, however, is a co-operative society, the period can extend upto fifteen years.

However, it is learnt that under Section 49F of the Bihar Tenancy Act, 1885, as amended by the Bihar Tenancy (Amendment) Act, 1969, a tenant belonging to the scheduled tribe or scheduled caste can, with the Collector's permission, and a tenant belonging to the backward class may, without such sanction, enter into a simple mortgage with a society registered under the Bihar and Orissa Co-operative Societies Act, 1935, or a bank with a view to enable such landholder to obtain medium and long-term institutional credit. While permitting sale in execution of a decree for recovery of such loans, by amending Section 49M, sale in favour of a person other than a member of the scheduled tribe or the scheduled caste is barred. Similar facility is allowed by amending Sections 46, 47 and 49 of the Chota Nagpur Tenancy Act, 1908, by the Chota Nagpur Tenancy

(Amendment) Act, 1969. In view of this, what steps — legislative or executive — are necessary to enable all types of cultivators to borrow from institutional credit agencies including banks?

(2) Other ryots

Non-occupancy *ryots*, under-*ryots* and share-croppers in the State are not allowed to sell or mortgage their interest in land. Can these types of *ryots* be made eligible to borrow from commercial banks and if so, how?

(3) Fragment holders

Under the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, a fragment holder is eligible to sell or mortgage it only to the holder of a contiguous plot of land or to a co-sharer. In case such fragments are offered as security to banks, they may not be able to accept a mortgage of these or bring them to sale. How can loans of banks against such fragments be made possible?

(4) Bhoodan allottees etc.

There may be some landholders such as allottees of *bhoodan* lands and of land distributed under Government land distribution programme who do not have transferability rights in their lands. Please indicate whether such landholders can be allowed to transfer their lands in favour of credit institutions including commercial banks so as to enable them to obtain loans required for agricultural development.

II. SECURITY FOR LOANS

(5) Charge on movable/immovable property

It is learnt that there is no specific provision to give priority to charge on land or mortgage of land created in favour of co-operative credit institutions. Cultivators may have to borrow from more than one agency on common security. In view of this, will commercial banks experience any difficulty in financing

members and if so, what steps are necessary to overcome these?

(6) Priorities in favour of land mortgage banks

In some States, a mortgage executed in favour of a land mortgage bank has priority over any claim of Government arising from a loan under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, granted after the execution of the mortgage. Such a provision tends to affect adversely the claims of other institutional credit agencies. Does a similar provision exist in favour of land mortgage banks in your State? If so, what action is necessary to ensure that loans of commercial banks are equally secured?

(7) Ceiling on land holdings

Section 4 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, lays down the ceiling on existing holdings. The institutional credit agencies have not been exempted from ceiling provisions and as such they may find it difficult to recover their dues through the process of foreclosure of mortgaged property and acquisition of land if that becomes necessary. Will this non-exemption affect their entry into the sphere of agricultural credit and if so, how can this difficulty be overcome?

(8) Mutation of entries in Land Records

It is reported that mutation of entries in *pattas* is not made immediately after the sale. Sometimes only joint *pattas* are available and in that case the failure of any one *pattadar* to pay land revenue can bring the entire holding to sale. In such circumstances, how best can commercial banks finance cultivators?

(9) Record of Rights

In the absence of *pattas*, extracts from Record of Rights are used in some States. As to how far such extracts from Record of Rights can be used for creation of equitable mortgages may also be indicated.

III. FACILITIES FOR CULTIVATORS

(10) Exemption from stamp duty, registration fee, etc.

Section 64 of the Bihar and Orissa Co-operative Societies Act, 1935, empowers the State Government to exempt co-operatives from the payment of stamp duty, registration fee, etc. Please give the details. Since the facility accrues in the main to cultivators, in some States, loans upto Rs. 5,000 advanced by commercial banks to agriculturists have already been exempted from stamp duty. Please indicate whether such facility is extended to banks and other institutional credit agencies in your State.

(11) Registration of documents

In some States, land development/mortgage banks are not required to register mortgages with the Sub-Registrar as it would suffice if these banks send copies of such instruments to the Registering Officer. Does such a practice obtain in your State? Is it necessary for commercial banks to secure such a facility and will the arrangement be satisfactory?

(12) Procedure for non-encumbrance certificate

In some States, cultivators who intend to borrow from co-operative institutions are not required to obtain non-encumbrance certificate as the lending institution itself approaches the concerned authority and obtains the required certificate. Please indicate whether there is any such arrangement in your State. Would banks like to depend upon the non-encumbrance certificate issued in the above manner?

IV. FACILITIES FOR BANKS

(13) Moneylending

The Bihar Moneylenders Act, 1938 and the Bihar Moneylenders (Regulation of Transactions) Act, 1939, protect the debtors against creditors. Section 3 of the latter Act has empowered the State Government to exempt, by notification, any moneylender or class of money-

lenders from the purview of the operation of all or any of the provisions of the Act. Accordingly, the joint stock banks have been exempted from many of the provisions except Section 5 of the Act of 1939 which stipulates that no credit institution should charge interest exceeding nine per cent per annum in the case of unsecured loans. Kindly confirm.

(14) Debt relief

Please confirm that there is no debt relief legislation in force in the State.

(15) Recovery of dues

The dues of co-operative societies have been included in Schedule I of the Bihar and Orissa Public Demand Recovery Act, 1934. Such inclusion enables their dues to be recovered without resorting to litigation and recourse to court. Is there any other method available for achieving the same object in respect of commercial banks?

V. OTHERS

(16) Are there any other difficulties experienced by commercial banks in their loan operations? These may be indicated in detail with special reference to the terms of reference of the Group.

(17) List of enactments

The following enactments of the State have, according to us, a bearing on commercial banks lending to agriculture in the State. Please indicate if there are any other enactments (not included here) which according to you have a bearing on the subject and also furnish relevant extracts from the same.

1. The Bihar Land Reforms Act, 1950,
2. The Bihar Tenancy Act, 1885,
3. The Chota Nagpur Tenancy Act, 1908,
4. The Santal Parganas Tenancy (Supplementary Provisions) Act, 1949,
5. The Bihar Land Reforms (Fixation of Ceil-

ing Area and Acquisition of Surplus Land) Act, 1961,

6. The Bihar Privileged Persons Homestead Tenancy Act, 1947,
7. The Bihar Consolidation of Holdings & Prevention of Fragmentation Act, 1956,
8. The Bihar Money Lenders Act, 1938,
9. The Bihar Money Lenders (Regulation of Transactions) Act, 1939,
10. The Bihar and Orissa Co-operative Societies Act, 1935,
11. The Bihar and Orissa Public Demands Recovery Act, 1914,
12. The Bihar Abolition of Zamindaries Act, 1948,
13. The Bihar Rent (Commutation Proceedings) Validating Act, 1950, and
14. The Bihar State Management of Estates and Tenure Act, 1949.

QUESTIONNAIRE FOR UNION TERRITORIES AND NAGALAND

I. CULTIVATORS ELIGIBLE TO BORROW
I. Owners

Please indicate the different types of tenure-holders in the Union Territory/State and indicate the rights enjoyed by them in regard to sale, mortgage and transfer of land held by them. In particular, kindly specify whether any of the tenure-holders with limited rights, enjoy any special rights to transfer land by way of mortgage in favour of co-operative credit societies/co-operative land mortgage banks.

Are these owners entitled to create a mortgage in favour of commercial banks? If not, is it proposed to permit them to do so?

2. Tenants

Is tenancy permitted in the Union Territory/State and if so, kindly indicate the types of tenants and the rights of each type of tenants to sell, mortgage or transfer their right in land as also any special rights to transfer their right

by way of mortgage in favour of co-operative societies/co-operative land mortgage banks?

Please also specify whether each type of tenant can borrow from the commercial bank by mortgaging his right? If not, is it proposed to permit them to do so?

3. Bhoodan allottees and other allottees of land

Do *bhoodan* allottees and other allottees of Government land have full transferability rights in land allotted to them? If not, is it proposed to vest them with right of transfer in favour of co-operatives/commercial banks to enable them to obtain loans from these institutions for agricultural development?

4. Fragment holders

Is there any legislation aimed at prevention of sub-division and fragmentation of land holdings? If yes, does the Act provide for any restriction on the transfer of such fragments? Are co-operatives/banks allowed to accept such fragments as security and bring them to sale in case of need?

II. SECURITY FOR LOANS

5. Charge in favour of co-operatives

Is there a provision in the Co-operative Societies Act in force in the Union Territory/State, for the creation of a charge on land/crops by the borrower-cultivator in favour of a co-operative? If yes, please indicate separately the circumstances in which (a) a charge on land, (b) charge on crops and (c) mortgage of land is taken. Could there be circumstances in which a co-operative would take security in all the said three forms? If yes, please indicate the circumstances in which this could be done, and also indicate the inter se priorities.

Is it necessary to register the charge, and, if so, with whom and the cost thereof? Will the charge/mortgage created in favour of co-operative rank prior to a loan from a bank even if the former was availed of later than the loan from a commercial bank?

6. Priorities in favour of land mortgage banks

In some States, a mortgage executed in favour of a land mortgage bank has priority over any claim of Government arising from a loan under the Land Improvement Loans Act, 1883 or the Agriculturists' Loans Act, 1884, granted after the execution of the mortgage. Does a similar provision exist in the Union Territory/State? The existence of such a provision affects adversely the claims of other institutional credit agencies.

7. Ceiling on land holdings

The legislation relating to ceiling on land holding generally exempts co-operatives from the purview of such legislation and thus enables them to hold land in excess of the ceiling. Is there a similar legislation in your Union Territory/State and are co-operatives similarly exempted? As commercial banks also may have to acquire and hold land above the ceiling limit in the process of recovery of their dues, is it contemplated to exempt them also from the provision of the ceiling legislation?

8. Mutation of entries in Land Records

It is reported that mutation of entries in *pattas* is not made immediately after the sale. This requires a recourse to Village Accounts etc., to ensure that there has been no alienation of land. Sometimes only joint-*pattas* are available and in that case the failure of any one *pattadar* to pay land revenue can bring the entire holding to sale. Government may, therefore, please indicate arrangements made to facilitate issue of *pattas* expeditiously.

9. Record of Rights

In the absence of *pattas*, extracts from Record of Rights are used in some States. As to how far such extracts from Record of Rights can be used for creation of equitable mortgages may also be indicated.

10. No dues certificate

Banks have to satisfy themselves that the intending borrowers have no borrowing arrange-

ments with co-operatives and therefore, need no dues certificate from co-operatives. These are difficult to get at times and entail delay. Government may indicate arrangements made/contemplated for issue of no dues certificates expeditiously.

III. FACILITIES FOR CULTIVATORS

11. Exemption from stamp duty, registration fee, etc.

Are all loans obtained by cultivators from co-operatives exempt from the payment of stamp duty and registration fee? Please furnish details. Since the benefit of exemption accrues to cultivators, commercial banks desire that loans granted by them should also be given similar exemption. Some States have already given such exemption to loans from commercial banks. Is it, therefore, contemplated to provide similar exemption to loans from commercial banks?

12. Registration of mortgages

The Co-operative Societies Act in force in some States provides that mortgage deeds executed in favour of land development/mortgage banks need not be registered by the Sub-Registrar of Mortgages but the mortgage deed executed in the office of the land development/mortgage bank by the borrower can be treated as registered by simply forwarding a copy of the instrument to the registering authority. Is it contemplated to give similar facilities to commercial banks?

13. Procedure for non-encumbrance certificate

In some States, an agriculturist who wants to borrow from co-operative against mortgage of land is not required to obtain a non-encumbrance certificate from the Sub-Registrar of Mortgages as the certificate is obtained for him by the co-operative concerned. Does a similar facility exist in your Union territory/State? If so, please give details. If, however, such a practice is not prevalent, from the point of view of enabling cultivators to obtain loans without

delay and without expense, will similar facility be made available to co-operative banks and commercial banks alike?

IV. FACILITIES FOR BANKS

14. Moneylending

Is there any legislation relating to regulation of moneylending in the Union Territory/State? Does it include commercial and co-operative banks and their loans in its purview?

15. Debt relief

Is there any legislation aimed at providing relief to agricultural debtors, and, if so, does it cover debts owed to all institutional credit agencies or only some of them? In particular, are debts owed to commercial banks excluded from the purview of the legislation?

16. Recovery of dues

The dues of co-operatives are recoverable as arrears of land revenue in most of the States. Further, facilities have been given to land mortgage banks to recover their dues smoothly by availing the services of Registrars of Co-operative Societies. In some States, the need for co-operatives to resort to litigation is obviated by authorising the Registrars to act as civil courts. Do such facilities obtain in the case of co-operatives in the Union Territory/State and is it contemplated to extend similar facilities to commercial banks?

V. OTHERS

17. Besides the above, there may be other facilities provided in your Union Territory/State to facilitate commercial banks lending to agriculture. These may be indicated, in detail, with reference to the terms of reference of the Group.

18. Kindly furnish a list of enactments that cover the points referred above with up-to-date amendments. In addition, please indicate whether there are any other enactments, not covered by the points referred to above which,

according to you, have a bearing on the subject and furnish a copy each of the same.

QUESTIONNAIRE IN RESPECT OF UNION TERRITORIES AND NAGALAND TO COMMERCIAL BANKS

I. CULTIVATORS ELIGIBLE TO BORROW

1. Type of cultivators (Owners)

Please indicate the different types of tenure-holders in the Union Territory/State and indicate the rights enjoyed by them in regard to sale, mortgage and transfer of land held by them. In particular, kindly specify whether any tenure-holders, with limited rights, enjoy any special rights to transfer land by way of mortgage in favour of co-operative credit societies/co-operative land mortgage/development banks.

Are these owners entitled to create a mortgage in favour of commercial banks? If not, what steps — legislative or executive — are necessary to enable them to do so?

2. Tenants

Is tenancy permitted? If so, kindly indicate the types of tenants and the rights of each type to sell, mortgage or transfer their right in land as also any special right to transfer their right by way of mortgage in favour of co-operative societies/co-operative land mortgage/development banks.

Please also specify whether each type of tenant can borrow from commercial bank by mortgaging his right. If not, please indicate how they can be permitted to do so.

3. Bhoodan allottees and other allottees of land

Do *bhoodan* allottees and other allottees of Government land have full transferability rights in land allotted to them? If not, please indicate the limitations vis-a-vis commercial banks and how they can be enabled to obtain loans from them for agricultural development.

4. Fragment holders

Is there any legislation aimed at prevention of sub-division and fragmentation of land? If yes, does the legislation provide for any restriction on the transfer of such fragments? In case such fragments are offered as security to commercial banks, they may not be able to accept a mortgage of them. Please indicate how this difficulty can be overcome.

II. SECURITY FOR LOANS

5. Charge in favour of co-operatives

Is there a provision in the Co-operative Societies Act in force in the Union Territory/State, for the creation of a charge on land/crops by the borrower-cultivator in favour of a co-operative? Will the charge/mortgage created in favour of co-operative rank prior to a loan from a bank even if the former was availed of later than the loan from a commercial bank? In the circumstances, how can banks ensure that their loans are not adversely affected by borrower's raising a loan from a co-operative after availing of a loan from a bank?

6. Priorities in favour of land mortgage/development banks

In some States, a mortgage executed in favour of a land mortgage bank has priority over any claim of Government arising from a loan under the Land Improvement Loans Act, 1883 or the Agriculturists' Loans Act, 1884, granted after the execution of the mortgage. Does a similar provision exist in the Union Territory/State? If yes, how will banks like loans based on common security to be determined and disposed of? What steps are necessary?

7. Ceiling on land holdings

The legislation relating to ceiling on holding in States generally exempts co-operatives from the purview of such legislation and thus enables them to hold land in excess of the ceiling. Is there a similar legislation in your Union Territory/State and are co-operatives similarly exempted? Commercial banks also may have to

acquire and hold land above the ceiling limit in the process of recovery of their dues. If commercial banks are not exempted, it may affect their operations in the sphere of agricultural credit and therefore, indicate how this can be overcome.

8. Mutation of entries in Land Records

It is reported that mutation of entries in *pattas* is not made immediately after the sale. Sometimes only joint-*pattas* are available and in that case the failure of any one *pattadar* to pay land revenue can bring the entire holding to sale. In the circumstances, how best can commercial banks finance cultivators?

9. Record of Rights

In the absence of *pattas*, extracts from Record of Rights are used in some States. As to how far such extracts from Record of Rights can be used for creation of equitable mortgages may also be indicated.

10. No dues certificate

Banks have to satisfy themselves that the intending borrowers have no borrowing arrangements with co-operatives and therefore, need no dues certificate from co-operatives. Please indicate arrangements made/contemplated for obtaining no dues certificates expeditiously.

III. FACILITIES FOR CULTIVATORS

11. Exemption from stamp duty, registration fee, etc.

Are all loans obtained by cultivators from co-operatives exempt from the payment of stamp duty and registration fee? Please furnish details. Since the benefit of exemption accrues to cultivators, please indicate how similar exemption can be given in respect of loans taken from commercial banks.

12. Registration of mortgages

The Co-operative Societies Act in force in some States provides that mortgage deeds executed in favour of land development/mortgage

banks need not be registered by the Sub-Registrar of Mortgages but the mortgage deed executed in the Office of the land development/mortgage bank by the borrower can be treated as registered by simply forwarding a copy of the instrument to the registering authority. How far can a similar facility for borrowings from commercial banks be useful?

13. Procedure for non-encumbrance certificate

In some States, an agriculturist who wants to borrow from co-operative against mortgage of land is not required to obtain a non-encumbrance certificate from the Sub-Registrar of Mortgages as the certificate is obtained for him by the co-operative concerned. Does a similar facility exist in your Union Territory/State? If so, please give details. Will the banks like to depend upon the non-encumbrance certificate issued in the above manner?

14. Moneylending

Is there any legislation relating to regulation of moneylending in the Union Territory/State? Does it include commercial and co-operative banks and their loans in its purview?

15. Debt relief

Is there any legislation aimed at providing relief to agricultural debtors and if so, does it cover debts owed to all institutional credit agencies or only some of them? In particular, are debts owed to commercial banks excluded from the purview of the legislation?

16. Recovery of dues

The dues of co-operatives are recoverable as arrears of land revenue in most of the States. Further, facilities have been given to land development/mortgage banks to recover their dues smoothly by availing of the services of Registrars of Co-operative Societies. In some States, the need for co-operatives to resort to litigation is obviated by authorising the Registrars to act as civil courts. Do such facilities obtain in the case of co-operatives in the Union

Territory/State? How will banks like to depend upon Government machinery for recovery of their loans in case of need?

V. OTHERS

17. Besides the above, there may be other difficulties to commercial banks in lending to agriculture. Kindly enumerate them and also indicate the steps — legislative or executive — necessary to overcome these. Please furnish relevant extracts from enactments in respect of each of them.

QUESTIONNAIRE TO STATE CO-OPERATIVE BANKS

1. Loans to owners and tenants

Both short-term and medium-term loans are granted to owners of agricultural land. In many States, co-operatives are specially empowered under the law to lend to cultivators of land, who are not full owners. These categories of landholders enjoy only restricted rights over the land. Please indicate whether there are any such categories of landholders in your State and if so, the districts in which they are found.

2. Quantum of loan to owners and tenants

Does your bank extend short-term and/or medium-term loans to landholders with restricted rights referred to above?

If so, do you extend them loans on the same scale as applicable to a full owner of land? If not, indicate the manner and extent to which the scales are reduced.

Does the bank extend loans to all categories of tenants? If so, what are the conditions stipulated for the grant of loans to different categories of tenants and is the scale of finance admissible to them the same as in the case of owners of land? If your answer is in the negative, please state the reasons why the same scale of finance is not permitted.

What type of loans are granted to tenants? Are they eligible to mortgage land and if so, under which enactment of the State?

3. Security for loans

What is the security insisted upon for short-term and medium-term loans granted to (a) owners with restricted rights and (b) tenants? Does the bank accept the mortgage of land by such borrowers or does it insist upon any additional security from them?

4. Evidence of ownership/tenancy of land

Does each cultivator in your State possess a *patta* in respect of land owned by him or cultivated by him as tenant?

If such *patta* is not available, how does the bank ensure the accuracy of details of land owned/cultivated by a cultivator?

5. Charge on land/crop

Is there a provision in the Co-operative Societies Act in force in your State, for the creation of a charge on land/crops by the cultivator-borrower in favour of a co-operative? If yes, please indicate separately the circumstances in which (a) a charge on land, (b) charge on crop and (c) mortgage of land is taken. Could there be circumstances in which the bank would take security in all the said three forms? If yes, please indicate circumstances in which this could be done, and also indicate the inter se priorities.

Is it necessary to register the charge and if so, with whom and the cost thereof?

6. Mortgage of land

For which type of loans is mortgage of land insisted upon? Indicate the types of mortgages taken by co-operatives — equitable mortgage or usufructuary mortgage or simple mortgage.

If usufructuary mortgage of land is taken, does the bank lease the mortgaged land to the mortgagor himself or to some other person?

When mortgage of land is taken, is the mortgage raised in respect of the entire holding of the borrower or a portion of his holding

sufficient to cover the loan? What is the currency of such mortgage?

7. Registration of mortgages

Does the bank register mortgages of land? If yes, indicate the procedure adopted and also specify the usual charges payable and charges payable in respect of mortgages executed in favour of the co-operative.

8. Encumbrances on land

Does your bank insist upon a non-encumbrance certificate for the grant of loan? What are circumstances in which such a certificate is insisted upon and who is responsible for obtaining the same, the intending borrower or the co-operative? Please indicate the procedure for obtaining the certificate and in case the co-operative is responsible for obtaining it, has the existing arrangement been found useful in avoiding delays and can any steps be taken to improve upon the same? Are any charges payable in respect of this and do these apply to co-operatives also?

9. Stamp duty

Loans from co-operatives to cultivators are generally exempt from stamp duty. Please indicate the extent to which such loans are exempt and the rates applicable in respect of loans above the exemption limit.

10. Taking possession of mortgaged land

Has the bank had an occasion to bring to sale land mortgaged to it? In such cases, was the sale made by negotiation or auction? In cases where there were no bidders at the time of auction sale, your bank might have found it unavoidable to take possession of such lands and lease them out for cultivation. Please indicate if there are any such cases, and if so, whether you have been able to lease them out on rent which you feel as reasonable.

11. Sale of mortgaged lands

In the process of recovery of overdue loans, your bank might have found it unavoidable to

bring up for auction the mortgaged lands of certain defaulters. In such cases, we would like to know whether there were bidders for lands involved and whether the prices offered were adequate to recover your dues. If not, give concrete examples so as to bring out the difficulties being faced in recovery through the sale of mortgaged lands.

12. Creation of tenancy by owners after mortgaging land

Are there any instances of difficulties of recovery of loans because the borrower created tenancy on his land after taking a loan from your bank?

13. Recovery of overdue loans

All the State Co-operative Societies Acts provide for a summary procedure for recovery of overdues of co-operatives as arrears of land revenue.

Please indicate:

- i) the machinery used for such recoveries,
- ii) the extent to which the use of this machinery, for the purpose, has been useful (giving the proportion of overdues recovered through summary recovery procedure to the total overdues to be recovered during the last three years),
- iii) the experience in terms both of time and expeditiousness of recovery by recourse to this machinery and
- iv) the problems, procedural and practical, that have cropped up in the full recourse to this facility. Please also indicate any measures found necessary, on the basis of experience, to improve the present arrangement for recoveries.

14. Mortgage of fragments

Has your bank given loans on the mortgage of lands which are considered as "fragments" under the Prevention of Fragmentation and

Consolidation of Holdings Act? If yes, please indicate whether there were difficulties in the recovery of loans arising from certain restrictions on sale of such "fragments".

QUESTIONNAIRE TO LAND DEVELOPMENT/MORTGAGE BANKS

1. There may be a few categories of landholders in your State to whom your bank has not advanced loans either because they do not have mortgageability rights in their lands or because your bank feels that it will be taking undue risk in lending to these landholders in view of the restricted rights they have in their lands. Kindly indicate if there are any such categories of landholders in your State and if so, the districts where they are mainly found.

2. In the process of recovery of overdue loans, your bank might have found it unavoidable to bring up for auction the mortgaged lands of certain defaulters. In such cases, we would like to know whether there were bidders for the lands involved and whether the prices offered were adequate to recover your dues. If not, give concrete examples so as to bring out the difficulties being faced in recovery through the sale of mortgaged lands.

3. In case where there were no bidders at the time of auction sale, your bank might have found it unavoidable to take possession of such lands and lease them out for cultivation. Please indicate if there are any such cases, and if so, whether you have been able to lease them out on rent which you feel as reasonable.

4. Are there any instances of difficulties of recovery of loans because borrowers created

tenancy on their land after taking loans from your bank?

5. Give any statutory handicaps and other difficulties which you have been facing in your loan operations.

6. Has your bank given loans on the mortgage of lands which are considered as "fragments" under the Prevention of Fragmentation and Consolidation of Holdings Act? If yes, please indicate whether there were difficulties in the recovery of loans arising from certain restrictions on sale of such "fragments".

7. In order to avoid delay and difficulty in obtaining encumbrance certificate, there is an arrangement in some States according to which the land development/mortgage bank itself directly obtains the required certificate. Please indicate to what extent this arrangement has proved useful in avoiding delay and whether any further steps could be taken to improve the present arrangement in this respect.

8. All the State Co-operative Societies Acts provide for a summary procedure for recovery of overdues of co-operatives as arrears of land revenue. Please indicate i) the machinery used for such recoveries, ii) the extent to which the use of this machinery, for the purpose, has been useful (giving the proportion of overdues recovered through summary recovery procedure to the total overdues to be recovered, during the last three years), iii) the experience in terms both of time and expeditiousness of recovery by recourse to this machinery and iv) the problems, procedural and practical, that have cropped up in the full recourse to this facility. Please also indicate any measures found necessary, on the basis of experience, to improve the present arrangement for recoveries.

APPENDIX—II

STATEWISE REVIEW OF ENACTMENTS HAVING A BEARING ON COMMERCIAL BANKS LENDING TO AGRICULTURE

A review of different factors affecting commercial banks' lending to agriculture in each State is given in this Appendix. This is based on information collected by the Expert Group on its own, the State enactments made available to it as also those emanating from replies to its questionnaires.

Though the Group has attempted with the help of material available to it, to present a review of the legislative and other provisions as up-to-date as possible, an amendment or two might have been missed. Further, while in some States a consolidated enactment relating to land reforms has not been passed, in some others, there is no single consolidated legislation for the entire State. Moreover, some States did not supply us the concerned enactments or supplied only a few of them. As a result of these difficulties, it is possible that the review presented here is not complete and up-to-date in

respect of a few items relating to some of the States. In a few States, amendments to existing legislation are on the anvil to meet the requirements of commercial banks and as such details furnished herein may be found redundant. Therefore, it is to be emphasised that the nature and content of the approach of the Group should receive primary attention so that omission if any on account of limitations may be made good consistently with the recommendations of the Group. Thus the restrictive provisions that come in the way of commercial banks given Statewise in the following pages should be taken only as a broad indication of the problem.

We have also attempted to give a broad idea of the measures already taken/initiated by State Governments to facilitate the operation of commercial banks in the sphere of agricultural credit. The information is mainly based on the replies to our questionnaires.

ANDHRA PRADESH

The Expert Group examined the following enactments of the State:

- (1) The Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948;
- (2) The Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961;
- (3) The Andhra Pradesh (Telengana Area), Tenancy and Agricultural Lands Act, 1950;
- (4) The Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959;
- (5) The Andhra Pradesh Bhoodan and Gramdan Act, 1965;
- (6) The Hyderabad Prevention of Fragmentation and Consolidation of Holdings Act, 1956;
- (7) The Andhra Tenancy Act, 1956;
- (8) The Andhra Pradesh (Andhra Area)

- Money-lenders Act, 1957;
- (9) The Andhra Pradesh (Telengana Area) Moneylenders Act, 1349, Fasli;
- (10) The Andhra Pradesh (Scheduled Areas) Money-lenders Regulation, 1960;
- (11) The Andhra Pradesh (Andhra Area) Pawnbrokers Act, 1943;
- (12) The Andhra Pradesh (Andhra Area) Agriculturists Relief Act, 1938;
- (13) The Andhra Pradesh (Telengana Area) Jagirdars Debt Settlement Act, 1952;
- (14) The Andhra Pradesh (Telengana Area) Agricultural Debtors' Relief Act, 1956;
- (15) The Andhra Pradesh (Scheduled Tribes) Debt Relief Regulation, 1960;
- (16) The Andhra Pradesh Co-operative Societies Act, 1964.

Based on a review of these enactments, the following points emerge:

X9(J):6.2.N74

21

141895

I. Land Alienation Rights of Agriculturists

As there is no comprehensive legislation for entire Andhra Pradesh, the position regarding alienation rights of agriculturists varies in Telengana and Andhra area of the State. After the abolition of estates, *jagirs* and *inams*, the intermediaries were granted *ryotwari pattas* in respect of their home farm lands and their principal tenants were granted *pattas* for the lands held by them and as such these two categories of landholders were brought on par with *ryots* in *ryotwari* area.

As regards alienation rights of tenants, rights enjoyed by sub-tenants of former intermediaries or cultivating tenants of *ryots* in Telengana area are more than in Andhra area. These classes do not appear to have alienation rights in Andhra area even if they hold lease in writing. In Telengana, an ordinary tenant having a lease in writing can sub-let, assign, mortgage or create a charge on his interest in land in favour only of a co-operative farming society of which he is a member though his interest in land cannot be sold or attached in execution of a decree or order of a civil court. The tenant, who acquires the status of a protected tenant after six years of continuous possession, has also a right to purchase the land held by him under tenancy upto a stipulated extent. These tenants are permitted by a recent amending legislation to mortgage or create a charge on their interest in land in favour of the Government, a co-operative society including a land mortgage bank or any other institution which is empowered under the relevant law in force for the time being to grant loans to agriculturists.

Besides these, there are certain categories of agriculturists subject to restrictions regarding land alienation: (i) In the Agency tract areas in the districts of East Godavari, West Godavari, Vishakhapatnam, Srikakulam, Adilabad, Khammam, Warrangal and Mahbubnagar, any transfer of immovable property owned by a tribal unless made to any other member of a scheduled tribe or a co-operative society solely composed of the members of scheduled tribe or with consent in writing of the prescribed officer is void. (ii)

Allotment of land made by Government to political sufferers, ex-servicemen, landless labourers, etc., either by way of outright gift or conditioned upon payment of concessional price carries restrictions about alienation by the allottees so as to prohibit transfer by way of mortgage even to co-operatives. (iii) In a similar manner, according to the terms of the grant, a member of the depressed class to whom *patta* has been given by the Government cannot alienate his land by way of mortgage, sale, etc., except in favour of those belonging to backward classes. (iv) Under the rules framed by the State Government, allottees of *bhoodan* land can mortgage land allotted to them only to Government, co-operatives and *Panchayat Samitis* for obtaining loans for the development of land. (v) Holder of a fragment can transfer it only to a contiguous landholder. However, fragments can be transferred to the Government or a co-operative society including a land mortgage bank as security for any loan from these agencies. (vi) Holders of certain categories of minor *inams* and service *inams* as well as holders of land of the religious, charitable or educational institutions do not appear to enjoy full alienation rights.

II. Ceiling on Land Holdings

The Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 stipulates the ceiling limit on present as well as future acquisition of land. Co-operative farming societies approved by the Government and other co-operative societies including land mortgage banks are, however, exempted from the provisions of the Act.

III. Land Records

Recording of tenants in Andhra area is not usually being done. However, in Telengana area, after the enactment of tenancy law, register showing protected tenants and non-protected tenants is being maintained.

IV. Equitable Mortgages

The creation of equitable mortgage is permissible in the State. However, out of 223 towns

as per 1961 Census, 205 are notified under Section 58(f) of the Transfer of Property Act, 1882, for creation of equitable mortgages.

V. Moneylending

There are four enactments on moneylending in the State and all of them exempt co-operatives from their purview. As regards commercial banks, however, the definition of 'bank' in the Andhra Pradesh (Telengana Area) Moneylenders Act, 1349 (Fasli) alone is comprehensive enough to exclude all banks from the purview of the Act. In the remaining enactments, the definition of 'bank' is not comprehensive enough to exclude all banks.

VI. Debt Relief

All the four enactments, on the subject, exclude co-operatives from their purview. As regards exemption to the banks, while the Andhra Pradesh (Telengana Area) Jagirdars Debt Settlement Act, 1952 and the Andhra Pradesh (Telengana Area) Agricultural Debtors Relief Act, 1956 exempt the scheduled banks, the Andhra Pradesh (Andhra Area) Agriculturists Relief Act, 1938 exempts debts due to any Corporation formed in pursuance of an Act of Parliament of the United Kingdom or of any special Indian law. Thus, the State Bank of India, its Subsidiaries and nationalised banks that came into existence in pursuance of special enactments of Parliament may qualify for exemption but the debts of the remaining banks can be scaled down. In particular, the court is empowered in terms of Section 13 of the Act to scale down all interest on any debt incurred by an agriculturist after the commencement of the Act so as not to exceed six and quarter per cent per annum simple interest. The State Government is, however, empowered to alter and fix any other rate of interest from time to time. The Andhra Pradesh (Scheduled Tribes) Debt Relief Regulation, 1960 which extends over the scheduled areas of the State does not exempt any category of banks from its purview and therefore, debts owed to them can be scaled down in accordance with the provisions of the Regulation.

VII. Legislation pertaining to Co-operatives

The features of the Andhra Pradesh Co-operative Societies Act, 1964 which will have a bearing on commercial banks operations in the field of agricultural credit are:

1. Priority of charges

Subject to any claim of the Government in respect of land revenue, society shall have a first charge upon crops or other agricultural produce, cattle, fodder for cattle, agricultural or industrial implements or machinery, raw materials for manufacture and any finished products manufactured from such raw materials owned by the indebted member. Such charge is available against any amount recoverable as arrears of land revenue or claim of the Government arising from a loan under the Land Improvement Loans Act, 1883, granted after the incurring of debt to the society.

Alienation of property subject to charge is void if made without previous written permission of the society.

Charge is not available against:

- (a) necessary wearing apparel, cooking vessels, beds, etc.,
- (b) ploughs, implements of husbandry, one pair of ploughing cattle, manure and seed grain necessary for cultivation in the ensuing year (Section 35).

Besides, co-operatives enjoy the following facilities:

1. Subject to any claim of Government in respect of land revenue, member can create a charge by declaration on land or other immovable property or interest in any land or such property, in favour of the society. Alienation of property subject to charge is void; provided claims of Government for land revenue and of any person in whose favour a charge or mortgage is created before the date of registration of the declaration shall be valid. The declaration shall be sent by registered post by the society to the Sub-Registrar and it shall be void if not registered (Section 36).

2. The Government is empowered to

exempt co-operative societies from payment of stamp duty on instruments executed on behalf of these societies and any fee payable under the law relating to registration (Section 41).

3. Dispute touching the constitution, management or the business of a society, between society and its members or between society and any other society shall be referred to the Registrar whose decision shall be final. If any question arises whether a dispute is or is not one touching the constitution, management or the business of a society, it shall be decided by the Registrar (Sections 61 & 62).

4. Every order for recovery of any amount may be executed a) by the civil court, on a certificate signed by the Registrar, as a decree of that court or (b) by the Collector, on an application made to him within twelve years from the date fixed, if any, or payment or date of order alongwith a certificate signed by the Registrar, as if the amount due was an arrear of land revenue or (c) by the Registrar by sale with or without attachment of the property of the person against whom the order has been passed (Section 70).

5. The Registrar may, on application from a society for the purpose and subject to rules, order a sale of property subject to charge under Section 35 to recover any debt due to a society (Section 71).

6. The Registrar when exercising any power under this Act for the recovery of any amount by attachment and sale or by sale without attachment or when passing any orders on any application made to him for recovery, shall be deemed to be a civil court (Section 72).

7. The Registrar is empowered to attach property before decision if he is satisfied that any person, with intent to defeat the order, is about to dispose of the property (Section 73).

8. A mortgage executed in favour of a land mortgage bank will have priority over any claim of the Government arising from a loan under the Land Improvement Loans Act, 1883, granted subsequent to the execution of the mortgage (Section 92).

9. A land mortgage bank can purchase any mortgaged property brought to sale. The bank is exempted from the provisions of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Section 93).

10. The Registrar is empowered to grant a certificate upon which arrears of land mortgage banks can be recovered as arrears of land revenue.

The Registrar is competent to direct conditional attachment of property of the mortgagor until the arrears of the land mortgage bank are paid (Section 101).

11. If the instalment of the land mortgage bank is in arrears for more than one month, the Registrar may direct distraint and sale of produce of the mortgaged land including the crop thereon or any other movable property of the defaulter on application from the bank subject to the condition that such implements or cattle necessary for his livelihood are not to be sold (Section 103).

12. The land mortgage bank has power to bring the mortgaged property to sale without the intervention of the court if such power is expressly conferred on the bank by the mortgage deed (Section 104).

13. The title of the purchaser of mortgaged property (in pursuance of Section 104), shall not be questioned on account of procedural irregularities (Section 107).

14. A mortgagor shall not grant a lease of the property mortgaged to the land mortgage bank for a period exceeding six years and any lease granted in contravention of this shall be void (Section 110).

15. The appearance of the officials of land mortgage banks either in person or by agent at any registration office in any proceedings connected with registration of any instruments is not necessary (Section 111).

16. A mortgage executed in favour of a land mortgage bank by the manager of a joint Hindu family shall be binding on the members if the loan secured by the mortgage was granted for

the purchase of any land or the improvement of any agricultural land or for the improved cultivation of such land and where such mortgage is called in question on the ground that it was executed for a purpose not binding on the members of the joint Hindu family, the burden of proving the same shall be on the party raising it (Section 114).

17. No order, decision or action taken or directions issued under this Act by an arbitrator or a liquidator or the Registrar, shall be liable to be called in question in any court (Section 121).

VIII. Action taken by State Government

1. To overcome the difficulty arising out of limitations on transfer of tribals' land, the State Government has decided to strengthen the Andhra Pradesh Scheduled Tribes Co-operative Finance and Development Corporation Ltd., Visakhapatnam so as to make it the sole credit advancing agency to members of the scheduled tribes in the scheduled areas of the State. The Corporation will act as intermediary between commercial banks and the tribals and this proposal is under active consideration.

2. Instructions have been issued to co-operative societies (credit and land mortgage banks) to issue 'no dues' certificates in respect of persons who apply for loans from commercial banks, within a week from the receipt of references from the bank concerned. Where societies fail to furnish the certificate in time, the Deputy Registrar of Co-operative Societies may direct societies to furnish a statement, under the Rules, within a prescribed time. If the society fails to furnish the statement, any subordinate of the Deputy Registrar can be deputed to prepare the statement and recover the cost.

3. Government is reported to have agreed to remit stamp duty on hypothecation agreements. The question of remission of stamp duty and registration fee in respect of mortgages in relation to agricultural finance is reported to be under consideration.

4. The State Government is examining the

suggestion of exempting commercial banks from the purview of the legislation relating to ceiling on land holdings.

5. To speed up the work of registration and copying of the mortgage deeds, executed in favour of bank, a provision has been made to accept with those documents, printed copies of the documents under Registration Rule 115 of the Indian Registration Act, 1908. If the mortgage deeds are presented with printed forms thereof, the process of copying documents will be eliminated and these will be delivered back to the banks with least delay on the part of the Registration Department. This provision of filing of documents prepared on printed forms has been recently extended to mortgage deeds executed in favour of banks also.

IX. Provisions in the State Enactments having a bearing on Commercial Banks Lending to Agriculture

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

Sections 30 & 31 : No sub-division or sub-letting of any land by a tenant and no assignment of any interest in land held by a tenant shall be valid. Notwithstanding this, however, it shall be lawful for a tenant to be a member of a co-operative farming society and as such member to sub-let, assign, mortgage or create a charge on his interest in the land in favour of such society. Further, Section 31 stipulates that no interest of a tenant in any land held by him as a tenant shall be liable to be attached or sold in execution of a decree or order of a civil court.

Section 43: As per Section 43 of the Act, as amended recently by Act No. XI of 1969, it shall be lawful for a protected tenant to mortgage or create a charge on his interest in land in favour of the Government, co-operative society including land mortgage bank or any other institution which is empowered under the relevant law for the time being in force in the State to grant loans to agriculturists. These credit agencies are empowered to cause tenant's interest in land to be sold for recovery of dues.

The Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959:

Section 3: Notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a member of a scheduled tribe shall be absolutely null and void unless made in favour of any other member of a scheduled tribe or a society registered under any law relating to co-operative societies composed solely of members of the scheduled tribe or with the previous sanction of the State Government, or subject to rules made in this behalf, with the previous consent in writing of the Agent or any prescribed officer. Transfer means mortgage with or without possession, lease, sale, gift, exchange or any other dealing with immovable property not being a testamentary disposition and includes a charge on said property.... Further 'transfer' in this Section includes a sale in execution of a decree....

The Hyderabad Prevention of Fragmentation and Consolidation of Holdings Act, 1956 :

Section 7 : No person shall transfer any fragment in respect of which a notice has been given under sub-Section 2 under Section 5 except to the owner of a contiguous survey number or recognised sub-division of a survey number. However, the holder of such fragment may mortgage or transfer it to the Government or to a land mortgage bank or any other co-operative society as security for any loan advanced to him. No such fragment shall be leased to any person other than a person cultivating a land which is contiguous to the fragment.

The Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 :

Section 16 : Nothing in this Act shall apply to (a) lands held by a State or the Central Government, (b) lands held by religious, charitable or educational institutions and (c) lands held by (i) co-operative farming societies approved by the Government, and (ii) other co-operative so-

cieties including land mortgage banks.

The Andhra Pradesh (Scheduled Areas) Money-lenders Regulation, 1960:

Section 2 : This Regulation extends to scheduled areas of the State. According to Section 2(2), bank means a banking company as defined in Section 5(c) of the Banking Regulation Act, 1949 and Section 2(10) (ii) specifically excludes an advance made by a bank, a company or a co-operative society.

The Andhra Pradesh (Andhra Area) Pawnbrokers Act, 1943:

Section 2(5): Loan means an advance..... but does not include an advance made by a banking company as defined in Section 277-F of the Indian Companies Act, 1956 or a co-operative society.

The Andhra Pradesh (Andhra Area) Money-lenders Act, 1957:

Section 2(6): Loan means an advance but does not include an advance made by a bank or a co-operative society. Bank means a banking company as defined in Section 5 of the Banking Regulation Act, 1949 and includes the State Bank of India and the State Bank of Hyderabad.

The Andhra Pradesh (Telengana Area) Jagirdars Debt Settlement Act, 1952:

Section 3 : Section 3 of the Andhra Pradesh (Telengana Area) Jagirdars Debt Settlement Act, 1952 as well as the Andhra Pradesh (Telengana Area) Agricultural Debtors Relief Act, 1956 which are in force in the Telengana area of the State, states that save as otherwise expressly provided, 'nothing in the Act shall affect any sum due to a co-operative society and any sum due to a scheduled bank'. The savings clause applies to Sections 11(3) and 4(3) of the respective Acts according to which any proceeding under the Acts shall contain the amounts and particulars of all debts due by the debtor including those owed to a co-operative society and/or a scheduled bank.

**The Andhra Pradesh (Andhra Area)
Agriculturists Relief Act, 1938:**

Section 4: Nothing in this Act shall affect debts and liabilities of an agriculturist in respect of any sum due to any co-operative society including a land mortgage bank or any debt due to any corporation formed in pursuance of an Act of Parliament of the U.K. or of any special Indian law or Royal Charter or Letters Patent.

**The Andhra Pradesh (Scheduled Tribes)
Debt Relief Regulation, 1960:**

Section 3: This Regulation extends to the whole of the scheduled areas of the State for scaling down debts of scheduled tribes. The Regulation exempts any liability in respect of any sum due to a co-operative society including a land mortgage bank.

ASSAM

The Expert Group examined the following enactments of the State :

1. The Assam State Acquisition of Zamindaris Act, 1951;
2. The Assam (Temporarily-Settled Districts) Tenancy Act, 1935;
3. The Assam Gramdan Act, 1961;
4. The Assam Consolidation of Holdings Act, 1960;
5. The Assam Fixation of Ceiling on Land Holdings Act, 1956;
6. The Assam Moneylenders Act, 1934;
7. The Assam Co-operative Societies Act, 1949;
8. The Assam Co-operative Land Mortgage Bank Act, 1960.

Based on a review of these enactments, the following points emerge :

I. Land Alienation Rights of Agriculturists

The land tenure system in the State consists of the permanently settled areas, the temporarily settled areas and the tribal areas in which are included the Mizo hills district and Meghalaya.

The Assam State Acquisition of Zamindaris Act, 1951, abolished the intermediaries in the permanently settled areas. Under it, the intermediary proprietors and tenure holders were allowed to retain their private lands up-to a stipulated limit and were vested with the rights of landholders i.e. permanent, heritable and transferable rights. *Raiyats* i.e. those who acquired rights to hold land from proprietors or tenure holders were also vested with the rights of landholders. Similar rights also accrued under the

Goalpara Tenancy Act, 1929 or the Sylhet Tenancy Act, 1936, if the *raiayat* had held the land in continuous possession for twelve years.

In the temporarily settled areas, where intermediaries have not been abolished, the persons holding directly under the State, also called proprietors and landholders, have rights similar to those of their counterparts in the permanently settled areas. In some parts of the tribal areas, the intermediary rights enjoyed by the chiefs were acquired by the State.

The landholders who do not enjoy unrestricted rights of alienation are :

1) In the tribal areas of the State, district/regional councils which are authorised under clause (a) of sub-para (i) of para 3 of the Sixth Schedule of the Constitution to make laws in respect of land, generally impose severe restrictions on the transfer of lands from tribal people to non-tribal people. For instance, in the United Khasi-Jaintia Hills, no land in the district can be sold, bartered, leased or transferred from tribal to non-tribal and viceversa without the previous permission of the District Council. However, under the Agricultural Land Improvement Loans Rules, an applicant for loan may, on the basis of a certificate issued by the District Council to the cultivator indicating the nature of his rights therein, mortgage the rights to Government.

2) Neither the *Gram Sabha* nor an allottee of *Gramdan* land has any transferable right in land acquired under the *Gramdan* Movement.

3) A fragment can be transferred to the

contiguous landholder or the State Government or a co-operative society or a land mortgage bank as security for any loan from these agencies.

In the temporarily settled areas, the persons holding land from a proprietor, landholder or settlement holder are classified into privileged tenants, occupancy tenants, non-occupancy tenants and sub-tenants. The status of a privileged tenant is acquired after continuous possession of land for twelve years at a rate of rent not exceeding the revenue rate or half the revenue rate plus service to be rendered or on payment of *bhog*. Similarly, occupancy right in a tenancy is also acquired after holding land in continuous possession for twelve years.

4) A privileged tenant can transfer his holding freely but the transfer is binding on the landlord only if the latter had been given previous written notice. Such notice is not necessary if the transfer is made to a co-sharer or heirs. Privileged tenant of temple/mosque lands can, however, transfer his right in lands only to person of the same faith.

5) An occupancy tenant has same rights of transferability as a privileged tenant.

6) A non-occupancy tenant has no right to transfer without the consent in writing of the landlord.

7) Sub-tenants have no right to transfer their holdings.

8) An *Adhiar* i.e. share-cropper has no alienation right in respect of land cultivated by him.

9) The tenancies in the hill districts are not generally regulated and there are no tenancy rights.

10) Settlement holders in the State hold land as per terms of settlement deeds.

II. Ceiling on Land Holdings

The Assam Fixation of Ceiling on Land Holdings Act, 1956 which is applicable to seven districts of the State, stipulates the ceiling limit on present as well as future acquisition of land. Only co-operative farming societies, *Gram Sabhas* and land mortgage banks are exempted from the provisions of the Act.

III. Land Records

Annual land records are maintained by *mandals* in respect of temporarily settled areas. In the permanently settled areas, land records are under preparation. The principal records are: (i) *Chitha*, showing fieldwise the name of owner and the crops grown, (ii) *Jamabandi* which is the record of holding showing the name of each holder and his revenue liability and (iii) the village map showing field numbers. It seems that separate record of tenants is not kept. Recently, instructions have been issued to record these details in districts where re-settlement operations are in progress.

IV. Equitable Mortgages

There are 60 towns as per 1961 Census but none of them has been notified under Section 58 (f) of the Transfer of Property Act, 1882, for creation of equitable mortgages.

V. Moneylending

The Assam Money Lender's Act, 1934 empowers the State Government to exempt banks from the provisions of the Act by issuing notification. Such banks as are notified by the State Government will be exempted.

VI. Debt Relief

The Assam Debt Conciliation Act, 1936, provides for relieving agriculturists from indebtedness by amicable settlement between them and their creditors. It would appear that commercial banks advancing loans for agricultural purposes will also come under the purview of the Act.

VII. Legislation pertaining to Co-operatives

The features of the Assam Co-operative Societies Act, 1949 which will have a bearing on commercial banks operations in the field of agricultural credit are:

1. Priority of charges

Society shall have a first charge on

- a) crops and agricultural produce for two years from the date of loan or supply

of seed, manure, labour, fodder for cattle or any other thing incidental to the conduct of agricultural operations, if the loan is for such supply;

- b) upon crops and cattle, agricultural implements, warehouse, if the loan is for purchase of cattle, implements or warehouse for storage of produce;
- c) upon raw materials, industrial implements, machinery, business premises, if purchased wholly or partly from out of loan from the society;
- d) upon land purchased, improved, redeemed out of loan from the society.

Charge in favour of the society shall not affect claims of any bonafide purchaser or transferee for value without notice (Section 46).

Besides, co-operatives enjoy the following facilities :

1. Where land is mortgaged to a society, the mortgagor shall not be entitled, without approval of the society, to transfer or mortgage his equity of redemption or to create a charge upon or lease out such property for a period exceeding three years (Section 29).

2. It shall not be necessary for any office bearer of a registered society to appear in person or by agent at any registration office in any proceeding connected with registration of any instrument executed by him in his official capacity or to sign as provided in Section 58 of the Indian Registration Act, 1908 (Section 49).

3. The Government has power to exempt, by notification, co-operatives from payment of stamp duty and any fee payable under the law for registration of documents (Section 50).

4. Registrar can order attachment of property before order if he finds it necessary (Sections 64 & 81).

5. No civil or revenue court shall have jurisdiction in respect of any dispute referred to the Registrar (Section 79).

6. The Registrar of co-operative societies will act as civil court while exercising powers for recovery of loans (Section 82).

7. Dues of co-operatives are recoverable as arrears of land revenue and also as public demand (Section 83).

8. Government may, by notification, exempt co-operatives from the Assam Money Lender's Act for the time being in force (Section 99).

Under the Assam Co-operative Land Mortgage Bank Act, 1960, land mortgage banks enjoy the following facilities :

1. If an instalment remains unpaid for more than a month, the land mortgage bank may apply to the Registrar for its recovery by distraint and sale of produce of the mortgaged land including the standing crops thereon (Section 8).

2. If a power is expressly conferred by the mortgage deed, the land mortgage bank can bring the mortgaged property to sale without intervention of the court (Section 11).

3. Where property is sold in exercise of the power under the Act, title of the purchaser shall not be questioned on ground of any irregularity (Section 18).

4. Land mortgage bank shall have right to purchase any mortgaged property sold under the Act and nothing in the Assam Fixation of Ceiling on Land Holdings Act, 1956, fixing a maximum limit of agricultural holding shall apply to the acquisition of land by a land mortgage bank (Section 20).

5. A mortgagor shall not grant a lease of the property mortgaged to a land mortgage bank for a period exceeding three years; any lease granted in contravention of this provision shall be void (Section 24).

6. Mortgage executed in favour of a land mortgage bank shall have priority over any claim of the Government arising from a loan under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, granted after the execution of the mortgage (Section 27).

7. It shall not be necessary for any officer of a land mortgage bank to appear in person or

by agent at any registration office for registration of documents executed on behalf of the bank (Section 29).

VIII. Action taken by State Government.

The Government of Assam has waived payment of stamp duty on documents relating to agricultural loans upto Rs. 50,000/- each for a period of three years with effect from 18-10-1968. The exemption applies to State Bank of India and United Bank of India only.

IX. Provisions in State Enactments having a bearing on Commercial Banks Lending to Agriculture

The Assam (Temporarily-Settled Districts) Tenancy Act, 1935

Section 11: A privileged *raiyat* shall have an unrestricted right of transfer but no transfer shall be binding on landlord until a written notice thereof has been given to him. A privileged *raiyat* holding land under a religious institution such as a temple, *satra* or mosque can transfer only to those persons professing the same faith.

Section 19: An occupancy *raiyat* shall have unrestricted right of transfer in respect of his holding but no transfer shall be binding on the landlord until a written notice thereof has been given to the landlord.

Provided that the right of an occupancy *raiyat* holding under a religious institution such as a temple, *satra* or mosque shall be restricted to transfer to persons belonging to the same religion as the institution in which the ownership of the land is vested.

Section 36: A non-occupancy holding shall be heritable but not transferable without the consent in writing of the landlord.

Section 42: An under-*raiyat* (i.e. sub-tenant) has heritable rights but not transferable. However, a sub-tenant of a privileged tenant can transfer his holding to a co-sharer or heirs.

The United Khasi-Jaintia Hills Land Transfer Act, 1953

No land within the district shall be sold, bartered, leased or transferred from tribal to non-tribal and from non-tribal to tribal without the previous permission of the District Council. The Council has not passed any law to issue leases or *pattas* in favour of the holders. Settlement holders have rights of transferability subject to certain conditions.

| | |
|---------------|--|
| Jowai Hills | } Land transfer restrictions are similar to those in United Khasi-Jaintia Hills. |
| Mikir Hills | |
| Mizo District | |
| Garo Hills | |

The Assam Gramdan Act, 1961 (Applicable to whole State except hill districts)

Section 23(b): The allotment of land in a *Gramdan* village for cultivation shall not confer on an allottee any heritable or transferable interest in the land allotted.

Section 30: The *Gram Sabha* shall have power to borrow money on the security of any property other than land belonging to it.

The Assam Consolidation of Holdings Act, 1960 (applicable to districts of Lakhimpur, Sibsagar, Nowgong, Darrang, Kamrup, Goalpara and Cachar)

Section 21: In any area where a Scheme of consolidation has come into force, no land shall be transferred, leased or mortgaged so as to create a new plot of less than five *bighas* in size except to the owner of a contiguous plot or to the State Government or to a land mortgage bank or any other co-operative society as security for any loan advanced.

The Assam Fixation of Ceiling on Land Holdings Act, 1956 (Lakhimpur, Sibsagar, Nowgong, Darrang, Kamrup, Goalpara and Cachar)

Section 4(1): Notwithstanding anything to the contrary in any law, custom or agreement, no person, either by himself or through any member of his family, shall be entitled to hold as

owner or tenant, lands which exceed the limit of 150 *bighas* in the aggregate.

Section 20: Notwithstanding anything to the contrary in any law, usage, contract or agreement from and after the commencement of this Act, no person either by himself or through any member of his family as owner or tenant shall acquire or possess by transfer, exchange, lease, agreement or settlement any land which with or without the lands already held by him or any

member of his family, shall in the aggregate exceed the limit fixed under Section 4 of this Act.

The Assam Money Lender's Act, 1934.

Section 2(A): A loan advanced before or after the commencement of the Act by a bank notified by the Government under Section 2(A) of the Act is exempted from the provisions of the Act.

BIHAR

The Expert Group examined the following enactments of the State :

1. The Bihar Tenancy Act, 1885,
2. The Chota Nagpur Tenancy Act, 1908,
3. The Santal Parganas Tenancy (Supplementary Provisions) Act, 1949,
4. The Bihar Land Reforms Act, 1950,
5. The Bihar Bhoodan Yagna Act, 1954,
6. The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956,
7. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961,
8. The Bihar Money Lenders (Regulation of Transactions) Act, 1939 and
9. The Bihar and Orissa Co-operative Societies Act, 1935.

Based on a review of these enactments, the following points emerge :

I. Land Alienation Rights of Agriculturists

The Bihar Land Reforms Act, 1950 provided for the abolition of *zamindari* in the permanently and temporarily settled areas of the State. After abolition, the intermediaries—proprietors, tenure holders under-tenure-holders and trustees—were entitled to retain their entire private or privileged land or land in possession of temporary lessees as occupancy *raiyats*. The principal tenants of the intermediaries i.e. *raiyats* at fixed rates, occupancy and non-occupancy *raiyats* also came into direct relationship with the State but otherwise held the land under the Government on the same terms and conditions

as under the intermediaries. Thus, *raiyats* who had acquired the right of occupancy as also those holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity acquired the same rights as a permanent tenure holder. Their lands are transferable and heritable in the same manner as any other immovable property. The rights enjoyed by these *raiyats* and others are governed by the Bihar Tenancy Act, 1885 which extended over eleven districts of the State. Of the remaining districts, five (Palamau, Ranchi, Hazaribagh, Singhbhum and Dhanbad) are governed by the Chota Nagpur Tenancy Act, 1908 and the remaining one by the Santal Parganas Tenancy (Supplementary Provisions) Act, 1949. There are also certain provisions relating to tenancy, applicable to the entire State, in the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961.

The landholders who do not enjoy similar rights of land alienation are :

- (i) The occupancy *raiyats* belonging to scheduled tribes, scheduled castes and backward classes and coming under the purview of the Bihar Tenancy Act, 1885 can enter only into a *bhugat bandha* mortgage, a complete usufructuary mortgage, with another aboriginal and that too only for a period not exceeding seven years. They cannot enter into any other type of mortgage. Transfers to any other person can be made with the permission of the Collector and the transfer can be made by

registered deed only. Recently, these landholders have been enabled to mortgage their interest in land by way of simple mortgage with the previous sanction of the Collector in the case of scheduled tribes or scheduled castes and without such previous sanction in the case of backward classes, in favour of co-operatives, or a company or corporation owned by or in which not less than fifty one per cent of the share capital is held by the State Government or Central Government or partly by the State Government and partly by the Central Government and which has been set up with a view to providing agricultural credit to cultivators. Further, no decree or order shall be passed by any court for the sale of the right of an aboriginal in land except for the recovery of any dues recoverable as public demands or in respect of dues arising from loans granted by institutional credit agencies, referred above. However, sale of land of a member belonging to scheduled tribe or caste can be made only to a member of the same tribe/caste.

Secondly, under the Chota Nagpur Tenancy Act, 1908, an aboriginal or scheduled caste *raiyat* can create mortgage on land only for a period not exceeding five years. However, he can create a *bhugat bandha* mortgage where the period of mortgage can exceed five years but not fifteen years if the mortgagee is a co-operative society and seven years in the case of others. Sale of rights of these holders of land can be ordered by a court only for arrears of rent or recovery of loans granted and recoverable as public demands. An aboriginal can sell only to another in the same police station while a scheduled caste *raiyat* and any other *raiyat* can transfer only to a person who is resident within the district in which the holding is situated. Recently, through an amendment of the Act, an occupancy *raiyat* who is a member of the scheduled tribe or scheduled caste, with the previous sanction of the Deputy Commissioner and an occupancy *raiyat* who is a member of the backward class, without previous sanction of the Deputy Commissioner, may transfer by simple mortgage his right in a holding or any portion thereof, to a co-operative society or

bank registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935) or to a company or a corporation owned by or in which not less than 51 per cent of the share capital is held by the State Government or Central Government or partly by the State Government and partly by the Central Government, with a view to provide agricultural credit to them. An occupancy *raiyat* who is not a member of the scheduled tribe, scheduled caste or backward class, may, without the previous sanction of the Deputy Commissioner, transfer his right in his holding or any portion thereof by sale, exchange, gift, will, mortgage or otherwise to any other person. Moreover, to ensure that lands belonging to the members of scheduled tribes and scheduled castes do not pass on to other persons, restriction has been imposed that the sale of land for recovery of loan from a member of scheduled tribe or scheduled caste shall be confined only to members of scheduled tribes and scheduled castes, as the case may be.

Thirdly, an aboriginal *raiyat* in Santal Parganas can transfer his right only to a bona-fide cultivating aboriginal *raiyat* of the *pargana* or *taluk* or *tappa* in which the holding is situated. Non-aboriginal *raiyats* in the district may be permitted by the Government by notification to transfer their rights in their holdings upto the extent of one-fourth of their paddy and first class *bari* lands by *bhugat bandha* mortgage to a co-operative society or a land mortgage bank or a grain *gola* recognised by the Government or a *raiyat* of the same district. Such a mortgage shall not be for a period exceeding six years and on the expiry of the period, no further transfers of any of the lands of the transferor shall be allowed for a period of six years.

(ii) Non-occupancy *raiyats* have rights that are heritable but not transferable.

(iii) An under-*raiyat* i.e. sub-tenant can be ejected at the expiry of the lease or at will. Under the ceiling legislation, however, an under-*raiyat* is entitled to a minimum holding of five

acres. The right of occupancy accrues to an under-*raiyat* after twelve years of continuous possession of land. Under the recent amendment of the Bihar Tenancy Act, 1885, it is reported that an under-*raiyat* belonging to the scheduled tribe or caste in the areas outside the Chota Nagpur and the Santal Parganas can enter into a simple mortgage with co-operatives.

(iv) Allottees of *bhoodan* land shall not be competent to sub-let or transfer the land by sale, exchange, gift or otherwise except with the previous permission of the *Bhoodan Yagna* Committee in writing.

(v) Holder of a fragment can transfer it only to a co-sharer or to a contiguous landholder.

II. Ceiling on Land Holdings

The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 stipulates ceiling limit on present holding and future acquisition of land. The ceiling area which a co-operative society may hold shall be the aggregate of the land held by its individual members subject to the ceiling for each member. The Government has power, under the Act, to exempt land not exceeding 250 acres of Class III land or its equivalent of other lands held under personal cultivation by any religious institution of public nature.

III. Land Records

Records of almost all the districts are 40 to 50 years old and need revision. After abolition of *zamindari*, Government tried to reconstruct the existing records (without a cadastral survey) through enquiries in 1954. For this purpose, the old survey records were copied out including land held as *bakasht* by the intermediaries as well as *raiyats*; objections were invited from interested parties before the records were finalised. This process known as Field *Bujharat* has been completed in some districts and is in progress in others. This process gives only rough idea which needs to be followed up by survey and settlement operations. The decision to enter the names of share-croppers in record of rights was later rescinded.

IV. Equitable Mortgages

The creation of mortgage by deposit of title deeds is permissible in the State. However, out of 153 towns as per 1961 Census, only eleven have been notified under Section 58(f) of the Transfer of Property Act, 1882.

V. Moneylending

Under the Bihar Money-Lenders (Regulation of Transactions) Act, 1939, the State Government is empowered to exempt any money-lenders or any class of money-lenders for special reasons from the provisions of the Act. In pursuance of the same, all banks are reported to have been exempted, by notification, from the purview of certain sections of the Act, viz., taking of money-lender's licenses, fixing rate of interest and right of debtor to pay the decree by instalments.

VI. Debt Relief

There is no legislation relating to debt relief in the State.

VII. Legislation pertaining to Co-operatives

The features of the Bihar and Orissa Co-operative Societies Act, 1935 which will have a bearing on commercial banks operations in the field of agricultural credit are :

1. Priority of charges

Society shall have a first charge on crops or other agricultural produce for two years if loan is granted for purchase of seed or manure and upon cattle, fodder, agricultural/industrial implements, machinery, etc. purchased wholly or partly with a loan from the society. Charge shall be subject to any claim of the Government in respect of land revenue or any money recoverable as land revenue or as a public demand or to any claim of a landlord in respect of rent or any money recoverable as rent (Section 23).

Any debt due to a registered society authorised under Section 16, from a non-member, shall be a first charge upon his property to the same extent as a debt due from a member

is under Section 23, a first charge on the property of the member (Section 23 A).

Besides, co-operatives enjoy the following facilities :

1. Any dispute touching business of a society between the society and its members shall be referred to the Registrar who shall have power of review as vested in a civil court. Registrar's decision in disputes referred to him shall be final (Section 48).
2. Registrar is empowered to attach property before award if he is satisfied that any person, with intent to delay or defeat the execution of any order, is about to dispose of the property (Section 50).
3. Order passed by the Registrar shall be enforced in the same manner as a decree of a civil court (Section 51).
4. Any sum payable in accordance with an order of the Registrar shall be recoverable as public demand or as an arrear of land revenue (Section 52).
5. No civil or revenue court shall have any jurisdiction in respect of any dispute required to be referred to the Registrar. No order of the Registrar shall be liable to be challenged on any ground whatsoever except want of jurisdiction (Section 57).
6. A society may apply to the Registrar to recover the debt or outstanding demand from a member by distraining any crop or other products standing or ungathered or reaped or gathered and deposited on the holding of the defaulter (Section 57 A).
7. When any conflict arises between an order for distraint under this Act and order of a civil court for attachment or sale of the property which is subject of the distraint, the order for distraint shall prevail (Section 57 Q).
8. The State Government may, by notification, exempt co-operatives from payment of stamp duty and any fee payable under the law relating

to registration for the time being in force (Section 64).

VIII. Action taken by the State Government

1. Divisional Commissioners have been directed to ensure that certificates of possession over the land offered as security by the borrowers and technical feasibility reports are issued to the Agricultural Finance Corporation Ltd. and commercial banks within seven days of requisition for the same.
2. District Registrars have been directed to ensure that non-encumbrance certificates are issued within a week and priority is given to those who seek to take loans from commercial banks and the Agricultural Finance Corporation Ltd.
3. In order to maintain effective supervision and co-operation of the activities pertaining to financing of agriculture by commercial banks and other financial institutions and to keep close liaison with financial institutions in order to ensure steadily increasing and regular flow of funds, the State Government has established a Directorate of Institutional Finance under the Department of Planning.
4. A State Co-ordination Committee for financing of agriculture by commercial banks consisting of the representatives of the State Government and the banking organisations has been constituted under the chairmanship of the Development Commissioner.
5. The State Government has also constituted a Co-ordination Committee for each district in the State consisting of the representatives of the local banking organisations and concerned State Government officials.
6. The State Government by its notification dated December 20, 1969 has remitted the stamp duty on documents of mortgage to secure agricultural credit extended by scheduled banks as under :
 - (a) for loans upto Rs. 5,000/- full remission; and

- (b) for loans of Rs. 5,000/- to Rs. 10,000/- half remission.

This notification shall remain in force for two years from the date of issue.

IX. Provisions in State Enactments having a bearing on Commercial Banks Lending to Agriculture :

The Bihar Tenancy Act, 1885

Section 49F: Provided that a tenant who is a member of the Scheduled Tribes or Scheduled Castes may, with the previous sanction of the Collector, or a tenant who is a member of the backward classes may, without such previous sanction, enter into a simple mortgage in respect of any tenure, holding or tenancy or portion thereof with a society or bank registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935) or with a company or a corporation owned by, or in which not less than fifty-one per cent of share capital is held by, the State Government or the Central Government, or partly by the State Government and partly by the Central Government, and which has been set up with a view to provide agricultural credit to cultivators.

Section 49M(1): Notwithstanding anything contained in this Act,—

- (a) no decree or order shall be passed by any court for the sale of the right of a tenureholder or under-*raiyat* who is a member of the Scheduled Tribes, Scheduled Castes or backward classes in his tenure or tenancy, or in any portion thereof, nor shall any such right be sold in execution of any decree or order, except a decree for an arrear of rent which has accrued in respect of the tenure or tenancy or a decree for dues based on a simple mortgage in respect of a tenure or tenancy or a portion thereof as mentioned in the proviso to sub-Section (2) of Section 49F :
- (b) no decree or order shall be passed by any court for the sale of the right of a *raiyat*,

who is a member of the Scheduled Tribes, Scheduled Castes, or backward classes, in his holding or in any portion thereof, nor shall such right be sold in execution of any decree except as provided in sub-Section (2) or a decree for dues based on a simple mortgage in respect of a holding or a portion thereof as mentioned in the proviso to sub-Section (2) of Section 49F2 :

Provided that where such tenure, tenancy or holding or portion thereof belongs to a member of the Scheduled Tribes or Scheduled Castes and it is being sold in execution of a decree for dues based on a simple mortgage as mentioned in the proviso of sub-Section (2) of Section 49F, it shall not be sold to a person who is not a member of the Scheduled Tribes or, as the case may be, the Scheduled Castes

The Chota Nagpur Tenancy Act, 1908

Section 46: Restrictions on transfer of their rights by *raiyats*. (1) No transfer by a *raiyat* of his right in his holding or any portion thereof —

- (a) by mortgage or lease, for any period, expressed or implied, which exceeds or might in any possible event exceed five years, or
- (b) by sale, gift or any other contract or agreement, shall be valid to any extent:

Provided that a *raiyat* may enter into a *bhugut bandha* mortgage of his holding or any portion thereof for any period not exceeding seven years or of the mortgagee be a co-operative society for any period not exceeding fifteen years :

Provided further that —

- (a) an occupancy-*raiyat* who is a member of the Scheduled Tribes may transfer with the previous sanction of the Deputy Commissioner his right in his holding or a portion of his holding by sale, exchange, gift or will to another person who is a member of the Scheduled Tribes and who is a resident within the local limits of the area

of the police-station within which the holding is situate :

- (b) an occupancy-*raiyat* who is a member of the Scheduled Castes or backward classes may transfer with the previous sanction of the Deputy Commissioner his right in his holding or a portion of his holding by sale, exchange, gift, will or lease to another person who is a member of the Scheduled Castes or as the case may be, backward classes and who is a resident within the local limits of the district within which the holding is situate :
- (c) an occupancy-*raiyat* who is a member of the Scheduled Tribes or Scheduled Castes may, with the previous sanction of the Deputy Commissioner, or an occupancy-*raiyat* who is a member of the backward classes may, without such previous sanction, transfer by simple mortgage his right in his holding or any portion thereof to a society or bank registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935), or to a company or a corporation owned by, or in which not less than fifty-one per cent of the share capital is held by, the State Government or the Central Government or partly by the State Government and partly by the Central Government, and which has been set up with a view to provide agricultural credit to cultivators; and
- (d) an occupancy-*raiyat* who is not a member of the Scheduled Tribes, Scheduled Castes or backward classes may, without the sanction of the Deputy Commissioner, transfer his right in his holding or any portion thereof by sale, exchange, gift, will, mortgage or otherwise to any other person.

(3) No transfer in contravention of sub-Section (1) shall be registered, or shall be in any way, recognised as valid by any Court, whether in exercise of civil, criminal or revenue jurisdiction.

Section 47 : Restriction on sale of *raiyat's* right under order of Court. — No decree or order shall be passed by any Court for the sale of

the right of a *raiyat* in his holding or any portion thereof, nor shall any such right be sold in execution of any decree or order :

Provided as follows :

Any holding or portion of a holding belonging to an occupancy-*raiyat*, who is not a member of the Scheduled Tribes, Scheduled Castes or backward classes, may be sold, for the recovery of a loan granted by a co-operative society or bank or ...

The Santal Parganas Tenancy (Supplementary Provisions) Act, 1949

Section 20(1) : No transfer by a *raiyat* of his right in his holding or any portion thereof, by sale, gift, mortgage, will, lease or any other contract or agreement express or implied, shall be valid unless the right to transfer has been recorded in the record of rights, and then only to the extent to which such right is so recorded.

Section 20(2) : No right of an aboriginal *raiyat* in his holding which is transferable shall be transferred in any manner to any one but a bona-fide cultivating aboriginal *raiyat* of the *pargana* or *taluka* or *tappa* in which the holding is situated.

Section 21(1) : Government may by notification permit non-aboriginal *raiyats* in the district to transfer their rights in their holdings upto the extent of one-fourth of their paddy and first class *bari* lands by *bhugat bandha* or complete usufructuary mortgage to a co-operative society or a land mortgage bank or a grain *gola* or a *raiyat* of the district. Such transfer shall be for a period of six years and on the expiry of the period no further transfer of the lands of the transferor shall be permissible for a period of six years.

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

Section 5(1) : It shall not be lawful for any person to hold, except as otherwise provided under this Act, land in excess of the ceiling area.

Section 5(4) : The ceiling area which a co-operative society may hold in addition to such area as may be mortgaged or sub-let to it under

Section 20 or entrusted to its management by the *Gram Panchayat* or the Collector under Section 27, shall be the aggregate of the land held by its individual members, subject to the ceiling area for each member.

The Bihar Bhoodan Yagna Act, 1954

Section 14: The grantee will get the same right, title and interest as the donor had in the land subject to the maximum of occupancy right. However, the grantee or his heir shall not be

competent to sub-let or transfer the land by sale or gift or otherwise but shall be competent to transfer the same by exchange with the previous permission in writing of the *Bhoodan Yagna Committee*.

The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956

Section 31: Transfer of fragments can be made only to a co-sharer or to a person having land adjoining such fragment.

GUJARAT

The Expert Group examined the following enactments of the State :

- (1) The Bombay Tenancy and Agricultural Lands Act, 1948;
- (2) The Bombay Maleki Tenure Abolition Act, 1949;
- (3) The Panch Mahals Mehwassi Tenure Abolition Act, 1949;
- (4) The Bombay Personal Inams Abolition Act, 1952;
- (5) The Bombay Merged Territories (A.T.A.) Act, 1953;
- (6) The Bombay Merged Territories (B.M.T.A.) Act, 1953;
- (7) The Bombay Merged Territories (B.W.A.) Act, 1953;
- (8) The Bombay Merged Territories Mata-dari Tenure Abolition Act, 1953;
- (9) The Saurashtra Estates Acquisition Act, 1952;
- (10) The Gujarat Patel Watans Abolition Act, 1961;
- (11) The Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950;
- (12) The Gujarat Agricultural Lands Ceiling Act, 1960;
- (13) The Saurashtra Land Reforms Act, 1951;
- (14) The Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958;
- (15) The Gujarat Surviving Alienations Abolition Act, 1963;
- (16) The Saurashtra Prevention of Fragmentation and Regulation of Holdings Act, 1954;

- (17) The Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947;
- (18) The Saurashtra Bhoodan Yagna Act, 1953;
- (19) The Bombay Money-Lenders Act, 1946;
- (20) The Bombay Agricultural Debtors Relief Act, 1947;
- (21) The Saurashtra Agricultural Debtors Relief Act, 1954;
- (22) The Gujarat Co-operative Societies Act, 1961.

Based on a review of these enactments, the following points emerge :

I. Land Alienation Rights of Agriculturists

In regard to abolition of intermediaries, Gujarat falls into three broad areas, viz., former Bombay area, Saurashtra area and Kutch area. In the former Bombay area which was predominantly *ryotwari*, the existing intermediary tenures like personal *inams*, *Paragana* and *Kulkarni watans*, etc. were converted into *ryotwari* tenure. Wherever these intermediaries did not have full proprietary rights, lands were settled with them or their permanent tenants as occupants. The tenants were, however, required to pay purchase price for acquiring the occupancy. In the Saurashtra area, the important intermediary tenures, viz., *Girasdari* and *Barkhali* were also abolished and intermediaries were made occupants in respect of their '*Gharkhed*'

lands i.e. lands personally cultivated by them. The principal tenants became occupants on payment of purchase price and to enable them to do so the former Saurashtra Land Mortgage Bank advanced loans for the purpose. The *Barkhali* tenure-holders were also declared occupants in respect of their *Gharkhed* lands and the tenants were also declared occupants in respect of the remaining land occupied by them and were not required to pay any purchase price for the same. Similarly, *inams* and *jagirs* in the Kutch area were abolished by vesting the personally cultivated lands of intermediaries with them and the remainder with their occupancy and other tenants. These measures did not, by and large, confer any rights on sub-tenants.

There are in all about 29 tenure abolition Acts covering the above points. Of these, seven confer restricted occupancy rights on tenants who acquire occupancy rights under them. These restrictions are mainly in respect of alienation rights of land/interest in land. The last of the intermediary tenures, i.e. *Devasthan inams*, has also been recently abolished vesting occupancy status of old tenure on *inam* tenure holders, while the cultivators of these lands will acquire right to purchase rights under tenancy legislation on new tenure.

As regards permanent and protected tenants holding land under any of the categories of landholders referred above, the Bombay Tenancy and Agricultural Lands Act, 1948 conferred on them occupant status on April 1, 1957, in case of tenants of small holders, on April 1, 1962, in the Bombay area and on April 1, 1967, in the Kutch area. In the Saurashtra area, tenancies are prohibited. The remaining tenants, i.e. ordinary tenants also have security of tenure in respect of the land that cannot be resumed by the landlord.

The rights of alienation of landholders are as under :

1. Landholders who are ex-intermediaries and with whom lands personally culti-

vated by them were settled are free to transfer their lands to any one except to a non-agriculturist. They are called occupants-Class I (also known as occupants under the old tenure).

2. Intermediaries who did not enjoy full proprietary rights in lands and tenants (of ex-intermediaries) to whom land was re-granted either on payment of occupancy price or without payment of occupancy price are called occupants—Class II or restricted tenure-holders. The restrictions relate to their alienation rights i.e. mortgage is permitted in favour of co-operatives and the Government only. Recently, the State Government, by a resolution, has permitted these landholders to mortgage lands held by them in favour of the State Bank of India, its Subsidiaries and nationalised banks.
3. Tenants who acquired the right to purchase the occupancy of land cultivated by them on the tillers' day also have right to alienate lands in their possession in favour of Government and co-operatives. Their title to land is complete only when payment of purchase price is complete. State Government is contemplating legislation to extend to them alienation rights similar to those in the case of tenants of ex-intermediaries.
4. Landholders belonging to scheduled tribes cannot transfer their land without the previous sanction of the Government. They are allowed to mortgage their land in favour of the Government and co-operatives only.
5. Ordinary tenants can mortgage or create a charge on their interest in land in favour of a co-operative society only.
6. *Bhoodan* allottees acquire, under the

Act, the rights and liabilities of occupants.

7. Allottees of Government land have already been permitted by the Government to mortgage the land allotted to them in favour of commercial banks for obtaining loans from them.
8. Fragment holders can mortgage and transfer fragments without the previous permission of the Collector in favour of Government or a land mortgage bank or any co-operative society as security for loan, but sale of the fragments can be made only to contiguous plot holders, failing which these will be taken over by the Government.

Ceiling on Land Holdings

The Gujarat Agricultural Lands Ceiling Act, 1960, stipulates a ceiling limit on present holding as well as future acquisition of land. Lands held or leased by land mortgage banks and such co-operative societies as are approved by the State Government are exempted from the provisions of the Act. Further, no sale shall be valid if it is made in favour of a person who is not an agriculturist or who being an agriculturist cultivates land above two-thirds of ceiling limit or who is not an agricultural labourer. However, sale of land when made by co-operatives can be made to non-agriculturists with the permission of the Collector.

III. Land Records

The land records are maintained annually. The main land records are (i) record of rights, (ii) register of holdings (*Khata Vahi*) and (iii) land register.

The record of rights is the principal land record maintained at the village level. Entries in the record are made survey number-wise and against each survey number is shown the name of occupant, area and assesment of the land, names of tenants and sub-tenants along with

the rents payable by them and the nature of tenancy and the crops grown.

A person is required to report the acquisition of rights within three months from the date of each acquisition.

IV. Equitable Mortgages

Creation of equitable mortgages is permissible in the State. However, only thirteen out of 181 towns in the State (Census 1961) have been notified under Section 58(f) of the Transfer of Property Act, 1882, for creation of equitable mortgages.

V. Moneylending

Under the Bombay Money-Lenders Act, 1946, which is in force in the State, bank means a banking company as defined in the Banking Regulation Act, 1949 and includes the Reserve Bank of India and any other banking institution notified by the Central Government under Section 51 of the Banking Regulation Act, 1949. Loans by banks as defined above are exempt from the purview of the Act.

VI. Debt Relief

The Bombay Agricultural Debtors Relief Act, 1947 and the Saurashtra Agricultural Debtors Relief Act, 1954 exempt debts due to scheduled banks only. The proceedings under these enactments are already over.

VII. Legislation pertaining to Co-operatives

The features of the Gujarat Co-operative Societies Act, 1961, which will have a bearing on commercial banks operations in the field of agricultural credit are:

1. Priority of Charges

Subject to prior claim of Government in respect of land revenue or any money recoverable as land revenue, society shall have a first charge upon member's (i) crops or other agricultural produce raised with or without loan from the society, (ii) cattle, fodder for cattle,

agricultural or industrial implements, machinery, raw materials, workshop, godown purchased wholly or partly with a loan from the society and (iii) any movable property mortgaged with the society and remaining in his custody.

Prior claim of Government in respect of dues other than land revenue shall be restricted to the assets created out of the funds in respect of which the Government has a claim.

Alienation of property subject to charge without previous permission of the society shall be void (Section 48).

Besides, co-operatives enjoy the following facilities :

1. Member can create a charge by declaration on land or interest therein in favour of the society.

Alienation of property subject to charge is void. Provided that mortgage in favour of a mortgage bank or in favour of the State Government for irrigation finance shall be valid. Society may release part of the property from its charge on part payment of its dues.

Charge created by declaration shall be a first charge subject to prior claims of the Government in respect of land revenue or any money recoverable as land revenue, to the charge created under an award made under debt relief legislation and to any mortgages created in favour of a land mortgage bank. Record of rights shall include particulars of charge and it shall be valid whether recorded or not (Section 49).

2. Government is empowered to exempt societies, by notification, from payment of stamp duty and any fee payable under the law relating to registration of documents (Section 43)

3. Disputes touching constitution, management or business of society between society and its members shall be referred to the Registrar. The question whether a dispute is or is not one

touching constitution, management or business of the society shall be decided by the Registrar whose decision shall be final (Section 96).

4. Registrar is empowered to attach property before award if he is satisfied that any person, with intent to delay, defeat or obstruct execution of award, is about to dispose of the property (Section 100).

5. Every order of the Registrar, if not carried out, shall, on a certificate signed by the Registrar, be executed as a decree of a civil court or according to the provisions of the Bombay Land Revenue Code 1879 for recovery as arrears of land revenue (Section 103).

6. Registrar is empowered to grant a certificate for recovery of crop loan/seasonal finance dues as arrears of land revenue (Section 106).

7. A mortgage executed in favour of a land mortgage bank shall have priority over any claim of the Government arising from a loan under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, granted after the execution of the mortgage (Section 122).

8. It shall not be necessary to register mortgages executed in favour of a land mortgage bank, provided the bank sends a copy of the instrument to the Registering Officer within the prescribed time and in the prescribed manner (Section 125).

9. Where a mortgage executed in favour of a land mortgage bank is called in question on the ground that it is executed by the manager of a joint Hindu family for a purpose not binding on the members thereof, the burden of proving the same shall lie on the party raising it. A mortgage executed by a manager of a joint Hindu family in favour of a land mortgage bank for improvement of agricultural land or of methods of cultivation or for financing means to raise productivity of land or for purchase of land shall be binding on all members of the family (Section 128).

10. No mortgagor of property mortgaged to a land mortgage bank shall, except with the prior written consent of the bank and subject to such terms and conditions as the bank may impose, lease or create any tenancy right on any such property (Section 129).

11. Section 8 of the Hindu Minority and Guardianship Act, 1956 shall apply to mortgages in favour of a land mortgage bank subject to the modification that any reference to the court therein shall be construed as reference to the Collector (Section 130).

12. If any instalment or part thereof remains unpaid for more than a month from due date, the land mortgage bank may apply to the Registrar for recovery of such instalment by distraint and sale of the produce of the mortgaged land including the standing crops thereon, provided that no distraint shall be made after the expiry of twelve months from due date (Section 133).

13. In case of default in payment of mortgage money, the land mortgage bank shall have power to bring the mortgaged property to sale without intervention of the court (Section 134).

14. It shall be lawful for a land mortgage bank to purchase property sold under this Act and such property shall be disposed of by sale within prescribed period and subject to Tenancy Act or leased out on conditions laid down by the State Government; nothing in any law fixing a maximum limit of agricultural holdings shall apply to the acquisition of land by land mortgage banks (Section 135).

15. When any property is sold in exercise of power under Section 134, the title of the purchaser shall not be questioned on ground of any irregularity (Section 138).

16. On an application by a land mortgage bank, Registrar may grant a certificate for the recovery of its dues as arrears of land revenue (Section 139).

17. It shall not be necessary for any officer of

a land mortgage bank to appear in person or by agent at any registration office in any proceedings connected with registration of any instrument executed by him in official capacity or to sign as provided in Section 58 of the Indian Registration Act, 1908 (Section 143).

18. Registrar is empowered to recover amount due under an award by sale with or without attachment of the property of the person against whom such award has been obtained; the Registrar, while exercising powers for such recovery, shall be deemed to be a civil court (Section 159).

19. No civil or revenue court shall have any jurisdiction in respect of any dispute required to be referred to the Registrar; no order, decision or award shall be questioned in any court on any ground whatsoever except for want of jurisdiction (Section 166).

VIII. Action taken by State Government,

The State Government has taken following steps to facilitate financing of agriculturists by commercial banks.

1. To assist commercial banks in verification of title deeds, the Revenue Department has issued orders to permit nationalised banks to inspect certain village forms and for supply of copies of public records and other information essential to lending agencies.

2. The Government is willing to depute agricultural officers to help commercial banks.

3. Revenue Department has issued orders permitting a second charge to be created on agricultural lands by way of security for advances in favour of the State Bank of India, its Subsidiaries and nationalised banks in case the State Government or co-operatives have a first charge. The Government has also granted general permission to the occupants on new tenure to mortgage their lands to these banks.

4. Government has remitted stamp duty and registration fee in respect of instruments relat-

ing to agricultural loans and advances for an amount not exceeding Rs. 5,000/- in favour of the State Bank of India, its Subsidiaries and nationalised banks under the Bank's Scheme of agricultural finance.

5. The scheme of grant of subsidy for failed tube-wells has been extended to tube-wells financed by nationalised banks:

6. Non-encumbrance certificate will be issued free of charge in respect of application for loan upto Rs. 3,500/- and half fee for application for loan exceeding Rs. 3,500/- in case of State Bank of India, its Subsidiaries and nationalised banks.

7. The State Government is contemplating amendment in the tenancy legislation to facilitate mortgage of land by new tenure-holders in favour of commercial banks so as to bring commercial banks on par with co-operatives in this behalf.

8. The State Government will have no objection to permit transfer of fragment in favour of commercial banks.

9. The State Government is considering exemption from provisions of ceiling legislation in favour of commercial banks. Further, the Government is contemplating to place commercial banks on par with co-operatives in regard to sale of lands to non-agriculturists.

10. The State Government is considering to incorporate provision in the Bombay Land Revenue Code for recovery of commercial banks' dues as arrears of land revenue.

11. The Government has taken steps to issue 'Farmer's Pass Book' to cultivators which is expected to expedite sanctioning of loans by commercial banks, as this book contains information regarding titles, encumbrances, etc., on land.

IX. Provisions in the State Enactments having a bearing on Commercial Banks Lending to Agriculture

The Saurashtra Estates Acquisition Act, 1952

Section 6: No sale, mortgage or transfer of

any kind whatsoever of village site land, cultivable waste land, bid land or uncultivable waste land effected by *Girasdar* or a *Barkhalidar* after the 17th day of April, 1951, shall be effective so as to confer any rights or remedies on the parties to such transfer or any person claiming under them, unless it is confirmed by an officer authorised in this behalf by the Government.

The Saurashtra Land Reforms Act, 1951

Section 38: It shall be lawful for a tenant (of a *Girasdar*) to mortgage the occupancy holding which he intends to acquire in order to borrow money from the State Bank of India or a co-operative society registered under the Gujarat Co-operative Societies Act, 1961. Such mortgage shall be deemed to be lawful and subsisting after the occupancy is acquired. The money so advanced shall be recoverable as an arrear of land revenue.

The Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950

Section 4(2): The occupancy of the land re-granted under sub-Section (1) of same Section shall not be transferable or partible by metes and bounds without the previous sanction of the Collector and except on payment of amount determined by the Government. It is reported that similar restrictions are found in (a) Miscellaneous Aic M.T. Act, 1955 (b) Inferior Villages Watan Abolition Act, 1959 and (c) Bombay Inami Abolition (Kutch Area) Act, 1958.

The Bombay Tenancy and Agricultural Lands Act, 1948 (extends to Bombay area of the Gujarat State)

Section 27(1): Except as provided in Section 32(F), no sub-division or sub-letting of land held by a tenant or assignment of any interest therein shall be valid.

Section 27(3): Notwithstanding anything contained in sub-Section (1), it shall also be lawful for a tenant to mortgage or create a charge on his interest in the land in favour of the State

Government under the Land Improvement Loans Act, 1883, the Agriculturists' Loans Act, 1884, or the Bombay Non-Agriculturists' Loans Act, 1928, or in favour of a co-operative society in consideration of a loan advanced to him by such co-operative society and without prejudice to any other remedy open to the State Government or the co-operative society, as the case may be, in the event of his making default in payment of such loan in accordance with the terms on which such loan was granted, it shall be lawful for the State Government or the co-operative society, as the case may be, to cause his interest in the land to be attached and sold and the proceeds to be applied in payment of such loan.

Section 28: Save as expressly provided in this Act or as provided in the Gujarat Co-operative Societies Act, 1961 or the Bombay Agricultural Debtors Relief Act, 1947, for the recovery of loans permitted under Section 27, any interest in the land held by him as a tenant shall not be liable to be attached, seized or sold in execution of a decree or order of a Civil Court.

Section 43: No land purchased by a tenant under Sections 32, 32F, 321, 320 or 32U, or sold to any person under Section 32P or 64 shall be transferred by sale, gift, exchange, mortgage, lease or assignment or partitioned without the previous sanction of the Collector, and except on payment of such amount as the State Government may by general or special order determine.

No sanction shall be necessary where the land is to be mortgaged in favour of the State Government or a co-operative society for raising a loan for effecting any improvement of land. These agencies are also eligible to sell the interest of a tenant in case of default. Any transfer or partition of land in contravention of sub-Section (1) shall be invalid.

Section 63(3): Nothing in this section (transfer to non-agriculturists barred) shall apply to a mortgage of any land or interest therein in favour of a co-operative society as security for a loan advanced by it.

Section 64A: Nothing in Sections 63 (transfers to non-agriculturists barred) and 64 (sale of agricultural land to particular person) shall apply to sales effected by or in favour of a co-operative society under the Gujarat Co-operative Societies Act, 1961.

The Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958

Section 33(1): No sub-division or sub-letting of the land held by a tenant or assignment of any interest therein shall be valid.

Section 33(3): Notwithstanding anything contained in sub-Section (1), it shall also be lawful for a tenant to mortgage or create a charge on his interest in the land in favour of the State Government or in favour of a co-operative society in consideration of a loan advanced to him by the Government or such co-operative society and without prejudice to any other remedy open to the State Government or the co-operative society as the case may be in the event of his making default in payment of such loan in accordance with the terms on which such loan was granted, it shall be lawful for the State Government or the co-operative society as the case may be to cause his interest in the land to be attached and sold and the proceeds to be applied in payment of such loan.

Section 34: Save as expressly provided in this Act or as provided in the Co-operative Societies Act, 1912, for the recovery of loans permitted under Section 33, any interest in the land held by him as a tenant shall not be liable to be attached, seized or sold in execution of a decree or order of a civil court.

Section 57: No land purchased by a tenant or sold to any person under Section 91 or 122 shall be transferred by sale, gift, exchange, mortgage, lease or assignment or partitioned without the previous sanction of the Collector. Provided that nothing in this Section shall apply to lands purchased by occupancy tenant.

Section 89(3): Nothing in this Section (transfers to non-agriculturists barred) shall apply to a

mortgage of any land or interest therein effected in favour of a co-operative society as security for loan advanced by the society.

The Bombay Land Revenue Code, 1879

Section 36(2): Occupancies of persons belonging to scheduled tribe notified by the Government shall not be transferred without the previous sanction of the Government. However, they are allowed to mortgage the property in favour of the State Government or co-operatives for securing loan. In case of default, these agencies can cause occupancy to be attached and sold.

Section 36(4): Notwithstanding anything contained in sub-Section (1) or in any other provisions of this Code, or in any law for the time being in force, it shall be lawful for an occupant class II to mortgage his property in favour of the State Government or in favour of a co-operative society. In the event of default, these credit agencies are allowed to cause his interest in land to be sold.

The Gujarat Agricultural Lands Ceiling Act, 1960

Section 6: With effect from the appointed day, no person shall be entitled to hold whether as owner or tenant or partly as owner and partly as tenant land in excess of the ceiling area.

Section 30: No land allotted under Section 29 shall be transferred by way of sale (including sale in execution of a decree of a civil court or of an award or order of any other competent authority), gift, mortgage, exchange, lease or otherwise or sub-divided even by court decree without the previous sanction of the Collector. However, it shall be lawful for a person to whom land is allotted by the State Government from out of land that vests in it to mortgage or create a charge on his interest in the land allotted to him in favour of the State Government or in favour of a co-operative society. These credit agencies are also allowed to cause his interest in land to be sold in case of default.

The Saurashtra Bhoodan Yagna Act, 1953

Section 13: The grantee of the land shall acquire the rights and incur the liabilities of an occupant in such land.

The Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947

Section 7: No person shall transfer any fragment in respect of which a notice has been given under sub-Section (2) of Section 6 except to the owner of a contiguous survey number or recognised sub-division of a survey number. However, the holder of a fragment can mortgage or transfer it to the State Government or a co-operative land mortgage bank or any other co-operative society as security for any loan advanced to him by the Government or such bank or society, as the case may be.

The Saurashtra Prevention of Fragmentation and Regulation of Holdings Act, 1954

Section 6: Save with the permission of the Collector, no person shall transfer any fragment in respect of which a notice has been given under Section 5(2) unless thereby the fragment becomes merged in a contiguous survey number or recognised sub-division of a survey number. No such fragment shall, notwithstanding anything contained in any law for the time being in force or any instrument or agreement, be leased, where lease is by law allowed, to any person other than person's cultivating any land which is contiguous to the fragment; provided that the holder of such fragment may and shall be deemed always to have been entitled to mortgage and transfer it to the Government or a co-operative land mortgage bank or any other co-operative society as security for any loan advanced to him by the Government or such bank or society as the case may be without the previous permission of the Collector.

The Bombay Money-Lenders Act, 1946

Section 2(9)(e): A loan to or by a bank is outside the purview of the legislation and bank means a banking company as defined in the Banking Regulation Act, 1949 and includes the Reserve Bank of India and any other banking

institution notified by the Government of India under Section 51 of the Banking Regulation Act, 1949.

The Bombay Agricultural Debtors Relief Act, 1947

Section 3: Save as expressly provided, nothing

in the Act shall affect the debt due to any scheduled bank and any sum due to merged State Bank. The saving clause applies to all debts to a bank being included in the statement by the debtor and the need of the creditor bank to produce books of accounts.

JAMMU & KASHMIR

The following enactments of the State were examined by the Expert Group :

1. The Jammu & Kashmir Tenancy Act, 1980 (Svt.);
2. The Jammu & Kashmir Big Landed Estates Abolition Act, 2007 (Svt.);
3. The Jammu & Kashmir Common Lands (Regulation) Act, 1956;
4. The Jammu & Kashmir Consolidation of Holdings Act, 1962;
5. The Jammu & Kashmir Land Acquisition Act, 1990 (Svt.);
6. The Jammu & Kashmir Alienation of Land Act, 1995 (Svt.);
7. The Jammu & Kashmir State Evacuees' (Administration of Property) Act, 2006 (Svt.);
8. The Jammu & Kashmir Bhudan Yagna Act, 1960;
9. The Jammu & Kashmir Regulation of Accounts Act, 2001 (Svt.);
10. The Jammu & Kashmir Agriculturists Relief Act, 1983 (Svt.);
11. The Jammu & Kashmir Co-operative Societies Act, 1960.

Based on a review of these enactments, the following points emerge :

I. Land Alienation Rights of Agriculturists

With the object of removal of intermediaries between the tillers of the soil and the State,

intermediaries and big landed estates were generally abolished excepting certain intermediary tenures such as superior owners (*Ala Maliks*) and landlords in respect of lands held by occupancy tenants. Under the Jammu & Kashmir Big Landed Estates Abolition Act, (Svt. 2007), at present, there are two classes of proprietors of land, viz., the proprietors originally so called and the tiller proprietors. The latter are persons to whom ownership rights of the original proprietors in lands beyond the prescribed ceiling (which were extinguished) were transferred to the extent of their actual possession in *kharif Samvat 2007*.

1. There are no restrictions on the rights of a proprietor to transfer his land except in respect of the fuel and fodder reserves and unculturable wastes (which are held by him in excess of the ceiling of 182 *kanals*), the transfer of which is prohibited.

2. A tiller-proprietor to whom land has been transferred under the Jammu & Kashmir Big Landed Estates Abolition Act, 2007 (Svt.) is not competent to transfer his land or any interest therein except where the transfer is in favour of (a) the Government, (b) a local body, (c) the State Land Development Bank or a land development bank established under the provisions of the Jammu & Kashmir Co-operative Societies Act, 1960 or (d) a *Panchayat* constituted under the Jammu & Kashmir Village Panchayat Act, 2008 (Svt.).

Further, the recently inserted Section 3(A) of the Jammu & Kashmir Alienation of Land Act, 1995 (Svt.) makes it lawful for a person to

transfer land in the form of a simple mortgage in favour of the Jammu & Kashmir Bank Ltd., or a bank for the time being included in the Second Schedule of the Reserve Bank of India Act, 1934 and having an office for transacting the business of banking in the State, subject to the proviso that in any suit based on such mortgage, the mortgaged land shall be sold only to permanent resident of the State who is a member of an agricultural class for the purposes of this Act. Land development banks are deemed to belong to agricultural class for the purpose of this Act under Section 93 of the Jammu & Kashmir Co-operative Societies Act, 1960. However, it would appear that this amendment will not enable tillers getting land under Section 5 of the Jammu & Kashmir Big Landed Estates Act, 2007 (Svt.), to transfer land or any interest therein held by them, as per Section 20 of the Act. The Government is reportedly considering an amendment of the latter Act so that tillers also can get loans from banks against mortgage of their lands.

3. Occupancy tenants are defined differently in the Kashmir valley, Ladakh and Gilgit and other districts of the State. An occupancy tenant holding directly under the State is entitled to transfer his right of occupancy by sale, mortgage or gift. For an occupancy tenant of a landholder to transfer, as above, permission of the Revenue Officer is necessary. Under Section 62 of the Jammu & Kashmir Tenancy Act, 1980 (Svt.), if an occupancy tenant whose tenancy rights are subject to a mortgage dies without heirs entitled to succeed, under the Act, the rights of the mortgagee shall be extinguished.

Protected tenants are defined to include all those other than occupancy tenants cultivating lands since 1965. Under Section 68(A) of the Jammu & Kashmir Tenancy Act, 1980 (Svt.), any transfer of a right of protected tenant, except transfer by mortgage in favour of the State, a co-operative bank or a land development bank, in respect of land shall be null and void and shall cause forfeiture of such right in land. If the tenant dies without heirs entitled to succeed under the Act, his right shall be extinguish-

ed. The Government is reported to be considering an amendment to the definition of land under the Jammu & Kashmir Alienation of Land Act, 1995 (Svt.) to include protected tenancy also so that protected tenants can also mortgage land in favour of agencies specified in Section 4(A) of the Act.

4. Section 25 of the Jammu & Kashmir Bhudan Yagna Act, 1960 provides that a *bhudan* holder shall hold land subject to the condition that he shall not transfer any interest in the land. Further, under Section 27, land held by a *bhudan* holder shall not be liable to attachment or sale in execution of any decree or order passed by a civil court.

5. Under the Jammu & Kashmir Consolidation of Holdings Act, 1962, no tenure holder, except with permission in writing of the Settlement Officer (Consolidation) previously obtained, shall transfer by way of sale, gift or exchange any part of his holding in the consolidation area. A transfer made in contravention of this provision shall not be valid.

6. The displaced persons allotted evacuee or surplus lands are called allottees. They do not appear to have any right of alienation in respect of land allotted to them. It is reported that legislation conferring such rights on allottees is before the State legislature.

7. Under Section 26 of the Jammu & Kashmir Evacuees (Administration of Property) Act, 2006 (Svt.), the Government may, by notification, declare that in such areas and for such periods as specified in the notification, transfers of any immovable property or class of immovable property shall be prohibited, and where any such declaration has been made no transfer of any immovable property shall be made during the period in that area except with the previous approval in writing of the Collector of that district.

8. Mortgage by conditional sale by a member of an agricultural class in favour of a person who is not a member of an agricultural class is

prohibited under Section 12 of the Jammu & Kashmir Alienation of Land Act, 1995 (Svt.).

II. Ceiling on Land Holdings

Section 25 of the Jammu & Kashmir Big Landed Estates Abolition Act, 2007 Svt., stipulates ceiling limit on present holding as well as future acquisition of land by a proprietor (182 *kanals*) and by a tiller (160 *kanals*), Section 3(c) of the Act, however, exempts co-operative societies from the provisions of the Act and land development banks are exempted from this provision under Section 77(2) of the Jammu & Kashmir Co-operative Societies Act, 1960.

The banks are not competent under the general law of the State to acquire any immovable property in the State by means of purchase, gift or otherwise.

III. Land Records

Land records are maintained annually for the entire surveyed area. The main records are: (i) *khasra girdavari*, (ii) *jamabandi* and (iii) mutations register.

The *khasra girdavari* is an annual record and indicates possession and the entries are verified by the *patwari* on the basis of total enumeration. *Jamabandi* is the record of rights. Although *jamabandi* is required to be prepared every four years, this has not been done in most areas since sometime prior to partition. Efforts are being made to write up new *jamabandis* and half the work has been completed during the last two years.

The names of tenants and sub-tenants are entered in annual records together with the rents payable by them. Partners-in-cultivation are also entered in the land records.

Khasra girdavari is a basic record on the basis of which entries are made in the register of mutations and *jamabandi* subsequently. At the time of each harvest inspection, changes in rights, rents and possession of land are recorded in *khasra girdavari* by the *patwaris*. These

entries are further checked by the supervisory staff.

IV. Equitable Mortgages

There are 43 towns as per 1961 Census; none of them has been notified under Section 58(f) of the Transfer of Property Act, 1882, for creation of equitable mortgages.

V. Moneylending

According to Section 2(f)(iii) of the Jammu & Kashmir Regulation of Accounts Act, 2001 Svt., a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certified auditor under any law for the time being in force is excluded from the purview of the Act. Bank for the purposes of the Act is defined as a company carrying on the business of banking.

VI. Debt Relief

In exercise of the powers given under Section 1 of the Jammu & Kashmir Agriculturists' Relief Act, 1983 Svt., the Government by a notification dated July 7, 1926, exempted all suits and proceedings arising out of such suits when any party thereto is a company registered under the State Companies Act or is incorporated or registered in the then British India or in any native State in India, from the provisions of the Act.

VII. Legislation pertaining to Co-operatives

The features of the Jammu & Kashmir Co-operative Societies Act, 1960 which will have a bearing on commercial banks operations in the field of agricultural credit are:

1. Priority of charges

Subject to prior claims of Government in respect of land revenue or money recoverable as land revenue and to the provisions of Tenancy Act, 1980 (Svt.), co-operative society shall have a first charge on crops and other agricultural produce, cattle, fodder for cattle and agricultural implements and machinery, etc., of the

indebted member, whether raised/purchased with or without a loan from the society. Alienation of property subject to charge shall be void without previous permission in writing of the society which holds the charge (Section 31).

Besides, co-operatives enjoy the following facilities :

1. A member can create a charge on land or other immovable property in favour of a society by mere declaration. Declaration shall be sent by registered post by the society to the Sub-Registrar for registration and declaration which is not registered shall be null and void. A copy of the particulars of charge shall be forwarded by society to the *Tehsildar* for an entry in the Revenue Records. Alienation of property subject to charge or any interest therein shall be null and void. Provided that it shall be lawful for a member to create subsequent charges in favour of the State Government or a land development bank or the Jammu & Kashmir Bank or a scheduled bank (Section 31-A).

2. Government is empowered to remit, by notification, stamp duty chargeable in respect of any instrument executed by or on behalf of society and any fee payable under the law relating to registration of documents (Section 35).

3. Disputes touching constitution, management or business of society between members and society shall be referred to the Registrar for decision and no court shall have jurisdiction in respect of such disputes. The question whether any dispute is one touching constitution, management or business of society shall be decided by the Registrar (Section 63).

4. On an application by a society for recovery of sums advanced by it for financing of crop or seasonal finance, the Registrar may grant a certificate for recovery of the amount stated therein as arrears of land revenue (Section 64A).

5. A mortgage executed in favour of a land development bank shall have priority over any

claim of the Government arising from a loan under the Aid to Agriculturists and Land Improvements Act, 1993 Svt., granted after the execution of the mortgage (Section 76).

6. It shall be lawful for a land development bank to purchase any mortgaged property sold under this Act and the property so purchased shall be disposed of by sale within prescribed period. Nothing in the Jammu & Kashmir Big Landed Estates Abolition Act, 2007 Svt., fixing a maximum limit of agricultural holding shall apply to the acquisition of land by a land development bank (Section 77).

7. It shall not be necessary to register mortgages in favour of a land development bank, provided the bank sends a copy of the mortgage deed to the registering authority (Section 78A).

8. If any instalment remains unpaid for more than one month from due date, the land development bank may apply to the Registrar for recovery of such instalment or part thereof by distraint and sale of the produce of the mortgaged land including the standing crops thereon; provided that no distraint shall be made after the expiry of twelve months from due date (Section 81).

9. Where a power of sale without intervention of court is expressly conferred by mortgage deed, the land development bank shall, in case of default of payment of mortgage money, have power to bring the mortgaged property to sale without the intervention of the court (Section 82).

10. Where any property is sold in exercise of a power of sale under Section 81, the title of the purchaser shall not be questioned on the ground of any irregularity (Section 85).

11. A mortgagor shall not grant a lease of the property mortgaged to a land development bank for a period exceeding five years; any lease granted in contravention of this provision shall be void (Section 88).

12. It shall not be necessary for any officer of the land development bank to appear in person or by agent at any registration office in any proceedings connected with registration of any instrument executed by him in his official capacity or to sign as provided in Section 59 of the Jammu & Kashmir Registration Act, 1977 Svt., (Section 89).

13. Land development banks shall be deemed to belong to agricultural class throughout the State for the purposes of the Jammu & Kashmir Alienation of Land Act, 1995 (Svt.) (Section 93).

14. Section 20 of the Jammu & Kashmir Big Landed Estates Abolition Act, 2007 Svt., shall be so amended as to include land development banks among the agencies to whom a tiller can transfer land or any interest therein (Section 94).

15. On an application of a society, Registrar may make an order directing payment of debt by sale of the property subject to charge under Section 31 (Section 96).

16. Every order of the Registrar shall, if not carried out, on a certificate signed by him, be executed in the same manner as a decree of civil court or according to the law for recovery of arrears of land revenue or by sale with or without attachment of the property of the person against whom the order is passed (Section 97).

17. Registrar, when exercising any powers under the Act for recovery of any amount, shall be deemed to be a civil court (Section 98).

18. Registrar is empowered to direct attachment of property before award if he is satisfied that any person, with intent to delay or obstruct the enforcement of order, is about to dispose of the property (Section 99).

19. No civil or revenue court shall have jurisdiction in respect of any dispute required to be referred to the Registrar, no order, de-

cision or award made under this Act shall be questioned in any court on any ground whatsoever (Section 113).

VIII. Provisions in the State Enactments having a bearing on Commercial Banks Lending to Agriculture

The Jammu & Kashmir Big Landed Estates Abolition Act, 2007 Svt.

Section 3: Nothing in this Act shall apply to any land owned by a co-operative society (This section exempts co-operative societies from the provisions of Section 25 imposing ceiling on land holding. Land development banks are exempted from this provision under Section 77 of the Jammu & Kashmir Co-operative Societies Act, 1960).

Section 20 (1): Except as otherwise provided in this Act and except where transfer is made in favour of Government, a local body, State Land Development Bank or land development banks established under the provisions of the Jammu & Kashmir Co-operative Societies Act, 1960, or a *Panchayat* constituted under the Jammu and Kashmir Village Panchayat Act, 2008 (Svt.), no tiller to whom land shall be transferred under the provisions of Section 5 shall transfer such land or any interest therein.

Section 20A: Transfer of land in favour of any person who is not a State subject is prohibited.

Section 21: Transfer of any holding or part thereof in contravention of the provisions of this Act shall be void.

The Jammu & Kashmir Alienation of Land Act, 1995 Svt.

Section 4: Transfer of land in favour of any person who is not a State subject is prohibited.

Section 4A: Notwithstanding anything contained in this Act, it shall be lawful for a person to transfer land in the form of a simple mortgage in favour of the Jammu & Kashmir

Bank Ltd. or a Bank for the time being included in the Second Schedule of the Reserve Bank of India Act, 1934 and having an office for transacting the business of banking in the State, subject to the proviso that in any suit based on such mortgage, the mortgaged land shall be sold only to a permanent resident of the State who is a member of an agricultural class for purposes of this Act. Land development banks are deemed to belong to agricultural class for the purpose of this Act under Section 93 of the Jammu & Kashmir Co-operative Societies Act, 1960.

Section 12: In any mortgage of land made after the commencement of this Act, by a member of an agricultural class in favour of any person who is not a member of an agricultural class, any condition which is intended to operate by way of conditional sale shall be null and void.

The Jammu & Kashmir Tenancy Act, 1980 Svt.

Section 60(1): Subject to the provisions of the Jammu & Kashmir Alienation of Land Act, 1995 Svt., if an occupancy tenant intends to transfer his right of occupancy, in whole or part, by sale, mortgage or gift, he shall apply to the Revenue Officer for permission to proceed with such transfer; provided that in the case of occupancy tenants holding directly under the State, such permission shall not be necessary.

Section 62: If an occupancy tenant whose rights are subject to a mortgage dies without heirs entitled to succeed under Section 67 of this Act, the right of the mortgagee shall be extinguished.

Section 67(5): Succession to right of occupancy — If the deceased tenant has left no such heirs as are mentioned in sub-Section (1) or in Section 68 of this Act, on whom his right of occupancy may devolve, the right shall be extinguished.

Section 68(A): (1) The provisions of Sections 67 and 68 of this Act shall apply *mutatis mutandis* to protected tenants. (2) (a) Any transfer of a right of protected tenancy, except transfer by mortgage in favour of the State, a co-operative bank or the land development bank, in respect of land shall be null and void and shall cause forfeiture of such right in land.

The Jammu & Kashmir Bhudan Yagna Act, 1960

Section 25(c): *Bhudan* holder shall hold the land subject to the condition that he shall not transfer any interest in the land.

Section 27: Land held by a *bhudan* holder shall not be liable to attachment or sale in execution of any decree or order passed by a civil court.

The Jammu & Kashmir Consolidation of Holdings Act, 1962

Section 5 (d) (ii): No tenure-holder, except with the permission in writing of the Settlement Officer (Consolidation) previously obtained, shall transfer by way of sale, gift or exchange any part of his holding in the consolidation area.

Section 52(2): A transfer made in contravention of provisions of Section 5(d)(ii) shall not be valid or recognised, notwithstanding to the contrary anything contained in any law for the time being in force.

The Jammu & Kashmir State Evacuees (Administration of Property) Act, 2006 Svt.

Section 26: The Government may declare, by notification, that in such areas and for such periods as specified in the notification, transfers of any immovable property or class of immovable property shall be prohibited, and where any such declaration has been made no transfer of any immovable property shall be made except with the previous written approval of the Collector of the District in which the property or the greater part thereof is situated.

The Jammu & Kashmir Regulation of Accounts Act, 2001 Svt.

Section 2(f) (iii) : Definition of 'loan' excludes a loan advanced by a bank, a co-operative society or a company whose accounts are subject to

audit by a certified auditor under any law for the time being in force in the State.

Section 2(a): 'Bank' means a company carrying on the business of banking.

KERALA

The Expert Group examined the following enactments of the State:

- (1) The Edavagai Rights Acquisition Act, 1955,
- (2) The Jenmikaram Payment (Abolition) Act, 1960,
- (3) The Pattazhi Devaswom Lands (Vesting and Enfranchisement) Act, 1961,
- (4) The Kanam Tenancy Act, 1955,
- (5) The Kerala Land Reforms Act, 1963,
- (6) The Kerala Government Land Assignment Act, 1960,
- (7) The Travancore-Cochin Bhoodan Yagna Bill, 1956,
- (8) The Kerala Revenue Recovery Act, 1968,
- (9) The Kerala Record of Rights Act, 1968,
- (10) The Thiruppuvaram Payment (Abolition) Act, 1969,
- (11) The Sreepadam Land Enfranchisement Act, 1969,
- (12) The Kerala Money-Lenders Act, 1958,
- (13) The Kerala Agriculturists' Debt Relief Act, 1970,
- (14) The Kerala Co-operative Societies Act, 1969,
- (15) The Kerala Co-operative Land Mortgage Banks Act, 1960, and
- (16) The Kerala Land Development Act, 1964.

Based on a review of these enactments, the following points emerge:

Land Alienation Rights of Agriculturists

Broadly, there are three types of landholders in Kerala, viz. owners of land with *ryotwari patta*, tenants who hold land under various categories of intermediaries and cultivating tenants. The owners of land with *ryotwari patta* have full and complete alienation

rights over land except that certain voluntary transfers after the publication of the Kerala Land Reforms Bill, 1963 by persons holding land in excess of ceiling area are invalid. The intermediary interests in land were many and all of them except four relating to *Viruthi* and *Service inam* lands, *Oodupally* lands, *Sripadaravazai* lands and private forests of *Jemis* have been abolished by separate enactments. Further, the Kerala Land Reforms Act, 1963 has listed out the various types of tenants and conferred fixity of tenure on them by Section 13. Moreover, Section 50 of the Act lays down that subject to provisions therein every tenant with fixity of tenure shall have heritable and transferable rights in respect of his holding. Cultivating tenants are those who hold land from these two categories of landholders. Section 53 of the Act entitles this class of tenants also to purchase the right, title and interest of the landlord and intermediaries. This right is subject, however, to certain conditions such as the right of the landlord to resume land. According to Section 59 of the Act, as recently amended, the cultivating tenant shall pay the purchase price in lump sum or in instalments; however, the right, title and interest of the land owner/intermediary shall vest in the cultivating tenant from the date of his application to the Land Tribunal for the purchase. Creation of tenancy in future is prohibited.

The landholders who do not enjoy similar rights of alienation are:

- 1) The Kerala Land Assignment Rules stipulate that lands assigned under these rules shall be heritable but not alienable. However, the assignee is allowed to mortgage such land to the Government, Co-operatives, Rubber Board, Tea Board, etc., as security for obtaining loans for land improvement.

2) Allotment of *bhoodan* land, also made under the rules referred to above, confers similar restricted rights.

3) A tenant who has no fixity of tenure has no transferable right.

There is no legislation at present on consolidation of holdings and prevention of fragmentation in the State.

II. Ceiling on Land Holdings

The Kerala Land Reforms Act, 1963 lays down the ceiling on present holding and future acquisition of land. However, lands purchased by the Kerala Co-operative Central Land Mortgage Bank are exempted so long as such lands continue in the possession of the Bank. Similar exemption is available in respect of lands purchased by the Kerala Financial Corporation and remaining under its management but taken over prior to 1-4-1964. Further, lands mortgaged to the Government or to a co-operative society including a co-operative land mortgage bank or the Kerala Financial Corporation or the Kerala Industrial Development Corporation or to the State Small Industries Corporation as security for loans are exempted from the provisions of the Act till the mortgage subsists. Exemption is valid only for three years from the commencement of the Act. Explanation IV of Section 85 (2) of the Act also states that lands to be surrendered shall as far as possible be lands other than those mortgaged to these agencies.

III. Land Records

The principal land record was the Settlement register. After the introduction of the basic tax system, the Settlement register has been replaced by the Basic tax register. This Register contains particulars of tax on each holding and the name of the owner. As a supplement to the Basic tax register, 'E' register is maintained which contains information about all charges regarding the area and tenure of lands. Besides, a register is maintained for entering new lands surveyed and brought under *ayacut* lands lying outside the cadastral survey limit.

There is no land record showing the names of tenants or sub-tenants and rents payable by them.

A separate legislation, viz., the Kerala Record of Rights Act, 1968 has been enacted for preparation of record of tenancies on State-wide basis.

IV. Equitable Mortgages

Out of 92 towns in the State (as per 1961 Census) only seventeen have been notified under Section 58 (f) of the Transfer of Property Act, 1882, for creation of equitable mortgages.

V. Moneylending

The Kerala Money-Lenders Act, 1958 exempts advances by a bank from the provisions of the Act; a bank for the purpose of the Act is a banking company as defined in Section 5 (c) of the Banking Regulation Act, 1949 and includes the State Bank of India and any Subsidiary bank.

VI. Debt Relief

The Kerala Agriculturists' Debt Relief Act, 1970, exempts debts due to Reserve Bank of India, State Bank of India and Subsidiaries, provided the right of the bank did not arise by reason of any assignment made subsequent to 1st July 1957. As regards nationalised banks, the exemption is available in respect of transactions entered into after 18th July, 1969. The exemption available to other banks is limited to any debt exceeding three thousand rupees borrowed under a single transaction and due before the commencement of the Act (which will be allowed to be repaid in eight equal half-yearly instalments). Any sum advanced for the purpose of agriculture by an institution receiving financial assistance from the Agricultural Refinance Corporation is also exempt from the purview of the Act.

VII. Legislation pertaining to Co-operatives

The features of the Kerala Co-operative Societies Act, 1969 which will have a bearing on commercial banks operations in the field of agricultural credit are:

1. Priority of charges

Subject to any prior claim of the Government in respect of land revenue or any money recoverable as land revenue, society shall have a first charge upon crops or other agricultural produce raised with a loan from society and upon cattle, fodder for cattle, agricultural or industrial implements or machinery or raw materials for manufacture, purchased wholly or partly out of a loan from society.

Alienation of property subject to charge, except with previous written permission of the society, shall be void.

Charge of the society shall be available against any claim of the Government arising from a loan granted after the grant of loan by the society (Section 35).

Besides, co-operatives enjoy the following facilities;

1. Member can create a charge on his land or interest therein as a tenant, in favour of the society by a mere declaration. Alienation of property subject to charge is void; provided that i) standing crops on such land can be alienated with previous written permission of the society, ii) such land may be mortgaged in favour of the Government or a land mortgage bank and iii) part of the property may be released from charge by the society on part payment of the dues.

Declaration shall be sent by the society by registered post to the Sub-Registrar for registration and a declaration which has not been registered shall be null and void.

Charge created under declaration shall be a first charge subject to claims of Government in respect of land revenue or any money recoverable as land revenue and to claims of land mortgage banks in respect of mortgage money and to prior registered alienation in favour of any person (Section 36).

2. Government may remit in respect of any class of societies the stamp duty and any fee payable under any law relating to the registration of documents (Section 40).

3. Disputes between a society and its members shall be referred to the Registrar and no court shall have jurisdiction to entertain any suit or proceeding in respect thereof (Section 69).

4. The Registrar may, on an application of a society, direct the payment of any dues to the society by a member by sale of the property or any interest therein, which is subject to a charge under Section 35, if the member has failed to pay the debt within thirty days from the date of service of notice (Section 75).

5. Every order made by the Registrar shall, (a) if not carried out, on a certificate signed by the Registrar, be executed as a decree of civil court, or (b) be executed according to the law for the time being in force for the recovery of arrears of land revenue, or (c) be executed by the Registrar by sale with or without attachment of any property of the person against whom order has been passed (Section 76).

6. While exercising the powers of recovery conferred upon him, the Registrar is deemed to be a civil court (Section 77).

7. Registrar is empowered to attach property before order if he is satisfied that any person, with intent to delay or obstruct enforcement of the order, is about to dispose of the property (Section 78).

8. No civil or revenue court shall have any jurisdiction in respect of any matter for which provision is made in this Act (Section 100).

The Kerala Co-operative Land Mortgage Banks Act, 1960, provides for the following facilities to land mortgage banks:

1. If any instalment payable under a mortgage in favour of a land mortgage bank has remained unpaid for more than one month from the date on which it fell due, the amount may be recovered through Registrar by distraint and sale of the produce of the mortgaged land including the standing crops thereon (Section 8).

2. Where a power is expressly conferred by a mortgage deed on committee of the bank, in case of default of payment of mortgage money or any part thereof, the bank may bring the mortgaged property to sale without intervention of the court, after giving three months notice to the mortgagor (Section 12).

3. Land mortgage bank is competent to purchase the mortgaged property sold under provisions of this Act but the property so purchased shall be disposed of by sale within the period fixed by the Trustee (Section 18).

4. When property is sold in exercise of powers under this Act, title of the purchaser shall not be impeachable on the ground of any irregularity (Section 20).

5. A mortgage executed in favour of a land mortgage bank shall have priority over any claim of Government arising out of a loan under the Land Improvement Loans Act, 1883 or the Agriculturists' Loans Act, 1884 or the Cochin Agricultural Improvement Loans Act, 1093 or the Travancore Land Improvements and Agricultural Loans Act, 1094, granted after the execution of mortgage (Section 28).

6. It shall not be necessary for any officer of a land mortgage bank to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity or to sign as provided in Section 58 of the Indian Registration Act, 1908 (Section 31).

7. Where a mortgage executed in favour of a land mortgage bank is called in question on the ground that it was executed by the manager of a joint Hindu family, for a purpose not binding on the members thereof, the burden of proving the same shall be on the party raising it. A mortgage executed in favour of a land mortgage bank by the manager of a joint Hindu family shall be binding on members thereof, if the loan secured by the mortgage was granted for improvement of agricultural land or of

methods of cultivation or for purchase of land (Section 38).

VIII. Provisions in State Enactments having a bearing on Commercial Banks Lending to Agriculture

The Kerala Land Reforms Act, 1963

Section 81 (h): Exempts from the ceiling provision lands mortgaged to the Government or to a co-operative society including a land mortgage bank, the Kerala Financial Corporation, the Kerala Industrial Development Corporation or the State Small Industries Corporation as security for loans so long as the mortgage subsists; exemption is valid for a period of three years from the commencement of the Act.

Section 81 (i) & (j): Exempt from the ceiling provision lands purchased under Section 18 of the Kerala Co-operative Land Mortgage Banks Act, 1960, by the Kerala Land Mortgage Bank so long as such lands continue in the possession of the bank. Similar exemption is available to the Kerala Financial Corporation in respect of lands taken over prior to 1.4.1964.

Section 84: The right of full proprietors to sell and mortgage land held by them is full and complete except that certain voluntary transfers of land in excess of ceiling area made after the publication of the Bill, 1963, are not valid.

Section 85(2): Where any person holds lands in excess of ceiling area including lands mortgaged to the Government or to a co-operative society or to a co-operative land mortgage bank or to the Kerala Financial Corporation or to the Kerala Industrial Development Corporation or to the State Small Industries Corporation as security for any loan, the excess lands to be surrendered shall, as far as possible, be lands other than those so mortgaged.

The Kerala Government Land Assignment Act, 1960

Section 8: All the provisions, restrictions, conditions and limitations contained in any

patta or other document evidencing the assignment of Government land or of any interest therein shall be valid and take effect according to their tenor, notwithstanding any law for the time being in force or any custom or contract to the contrary. Rule 8 of the Land Assignment Rules stipulates that lands granted shall be heritable but not alienable. However, the assignee may mortgage such lands to the Government, co-operative institutions, Rubber Board, Tea Board, etc., as security for obtaining loans for agricultural purpose or land improvement purposes.

The Travancore-Cochin Bhoodan Yagna Bill, 1956

Section 21: A person to whom land is granted under Section 20 of the Act shall be registered in the revenue records as a *bhoodan* holder and the holder shall not transfer any interest in the land.

Section 23: Land held by a *Bhoodan* holder shall not be liable to attachment or sale in execution of any decree or order passed by civil court against him.

The Kerala Money-Lenders Act, 1958

Sections 2(1A) & 5(iii): "Bank" means a bank-

ing company as defined in Section 5 of the Banking Regulation Act, 1949 and includes the State Bank of India and its Subsidiaries. Loan is so defined as to exclude an advance made by a bank as defined above.

The Kerala Agriculturists' Debt Relief Act, 1970

Section 2(4): The Act exempts from its purview:

- i) Debts due to Reserve Bank of India, State Bank of India and its Subsidiaries, provided the right of the bank did not arise by reason of any assignment made subsequent to 1st July 1957;
- ii) Debts due to nationalised banks on account of any transaction entered into after 18th July 1969;
- iii) Any debt exceeding three thousand rupees borrowed under a single transaction and due before the commencement of the Act to any banking company; provided that such debt shall be allowed to be repaid in eight equal half-yearly instalments;
- iv) Any sum advanced for the purposes of agriculture by an institution receiving financial assistance from the Agricultural Refinance Corporation.

MADHYA PRADESH

The Expert Group examined the following enactments of the State:

1. The Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950;
2. The Madhya Pradesh Land Revenue Code, 1959;
3. The Madhya Bharat Zamindari Abolition Act, 1951;
4. The Madhya Bharat Abolition of Jagirs Act, 1951;
5. The Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952;
6. The Bhopal Abolition of Jagirs and Land Reforms Act, 1953;
7. The Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960;
8. The Madhya Pradesh Bhoodan Yagna Adhiniyam, 1968;
9. The Madhya Pradesh Moneylenders Act, 1934;
10. The Madhya Pradesh Anusuchit Janjati Rini Sahayata Adhiniyam, 1967;
11. The Madhya Pradesh Co-operative Societies Act, 1960; and
12. The Madhya Pradesh Sahakari Bhoomi Vikas Bank Adhiniyam, 1966.

Based on a review of these enactments, the following points emerge :

I Land Alienation Rights of Agriculturists

With the enactment of the Madhya Pradesh Land Revenue Code, 1959, every tenant (with some exceptions, mostly sub-tenants and Government landholders on conditional *pattas*) became a *bhumiswami* (landowner). The *bhumiswamis* were allowed to resume lands held by sub-tenants (who were called occupancy tenants) within one year. Otherwise, the occupancy tenant got *bhumiswami* rights. Thus, there is now only one class of tenure-holder, i.e., *bhumiswami*. However, in certain areas, recording of occupancy tenants as *bhumiswamis* is yet to be done.

The transferability rights of *bhumiswamis* in land in respect of transfers 'otherwise than by will' are subject to certain restrictions. The restrictions are more stringent if the *bhumiswami* belonged to an aboriginal tribe. The restrictions are :

i) A *bhumiswami*, unless he is in the exempted category like widow, minor, etc., cannot lease his land. Any person who is admitted as a tenant in contravention of law immediately acquires the right of occupancy in the land and is also entitled to ownership after one year.

ii) No usufructuary mortgage of land by a *bhumiswami* is valid if it is for a period of more than six years and unless it is a condition of the mortgage that on the expiry of the period specified in the mortgage deed, the mortgage shall be deemed to be redeemed in full.

iii) The total amount of interest under other types of mortgages should not exceed half the principal amount.

iv) Transfer of land (other than mortgage without possession) cannot be made to a person, who by such transfer would become entitled to land which together with land held by him will exceed the ceiling limit. The ceiling restriction applies also in cases of sales by court decrees.

v) In the case of a court decree, only that part of the holding which is in excess of five acres of irrigated land or ten acres of unirrigated land is liable for attachment and sale.

vi) No partition shall be allowed, if it results in creating a holding which will be below five acres of irrigated land or ten acres of unirrigated land.

When the *bhumiswami* belongs to an aboriginal tribe, he cannot transfer any interest in his land to a person who does not belong to that tribe, without the permission of the competent authority. Further, the land of an aboriginal tribal cannot be attached or sold in execution of any decree or order.

The above restrictions do not apply in respect of transfers made by *bhumiswami* in favour of the Government and co-operatives and by a *bhumiswami* who is a displaced person, in favour of the Dandakaranya Development Authority.

Recently, the State Government issued an Ordinance amending Section 165 of the Madhya Pradesh Land Revenue Code, 1959. According to the amendment, transfer by a *bhumiswami* of his interest in land to secure payment of an advance made to him by a commercial bank, on the guarantee of the State Government, for purpose of agriculture or improvement of holding is permitted. Further, it also confers on such bank and the Government, the power to sell the right of the *bhumiswami* for the recovery of such advance or the amount of guarantee.

As regards *bhoodan* allottees, they become *bhumiswamis* after holding the land continuously for ten years. In the meantime, the *Bhoodan Yagna* Board is the *bhumiswami*. However, a *bhoodan* landholder can transfer his interest in land as security for loans from a co-operative society or the Government.

The number of occupancy tenants in the State is negligible. An occupancy tenant is not entitled to transfer by way of sale, gift, mort-

gage, sub-lease (with certain exceptions) or otherwise his right in the land. Exception has been made for securing payment of an advance made by a co-operative society or the Government. The co-operative society can also sell the right of the occupancy tenant for the recovery of such advance.

Since tenancies are prohibited, ordinary tenants do not have any transferable right in land. Lessees of Government can mortgage their lands in favour of institutional credit agencies only if permitted to do so as per terms of the grant.

II. Ceiling on Land Holdings.

In terms of Section 7 of the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960, no person is entitled to hold land in excess of 25 standard acres. The ceiling legislation does not, however, apply to land development banks. In the case of a co-operative society, the ceiling is raised to the total ceiling as could be held by all the members on its register with the general or special approval of the State Government.

III. Land Records

Land records are maintained for the entire surveyed area. The principal records are :

i) *Khasra*, which gives information plot-wise about the area of each plot, the name of owner, the name of the tenant or sub-tenant and the rent payable by him, the crops grown and classification of cultivated and uncultivated lands; and

ii) *Khatauni*, which gives information about the number of plots held by cultivator, the area of each plot, the land revenue payable and the amount realised.

The soil classification is shown in some parts in the *khasra* and in other parts in the *khatauni*. The *khasra* is a five-year register except in Bhopal where a separate register is opened each year.

Information about the names of tenants and sub-tenants and the rents payable by them is given in the *khasra*. Partners-in-cultivation (*bataidars*) are also shown in the *khasra*.

IV. Equitable Mortgages

Out of 219 towns in the State (as per 1961 Census) none has been notified under Section 58(f) of the Transfer of Property Act, 1882, for creation of mortgage by deposit of title deeds.

V. Moneylending

Under Section 2 of the Madhya Pradesh Moneylenders Act, 1934, banks are exempted from the provisions of the Act. Bank according to the Act means a company carrying on the business of banking and registered under any of the enactments relating to companies for the time being in force or incorporated by any Central Act.

VI. Debt Relief

Under Section 2 of Madhya Pradesh Anu-suchit Janjati Rini Sahayata Adhiniyam, 1967, bank for the purpose of the Act is defined to include a banking company as defined in Section 5 of the Banking Regulation Act, 1949 and the State Bank of India and its Subsidiaries and any other financial institution notified by the State Government. Debt due to a bank as defined above and to a corporation incorporated under any law, for the time being in force, which provides credit facilities to members of scheduled tribes is exempt from the provisions of the Act.

VII. Legislation pertaining to Co-operatives

The features of the Madhya Pradesh Co-operative Societies Act, 1960, which will have a bearing on commercial banks operations in the field of agricultural credit are :

1 Priority of Charges

1. Society shall have a first charge upon crops and other movable property of an indebted-

ed member. The charge shall be subject to any prior claim of the State Government in respect of land revenue or any money recoverable as arrears of land revenue; however, claims of Government arising out of loan granted under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, after the grant of loan by the society will be subject to first charge. Alienation of property subject to charge shall be void if made without previous written permission of the society (Section 40).

Besides, co-operatives enjoy the following facilities:

1. A member can create a charge on land or his interest therein as a tenant, in favour of a society by mere declaration. Alienation of property subject to charge shall be void. Provided that it shall be lawful for the member to mortgage such land or part thereof in favour of a land mortgage bank or the State Government for irrigation finance. A copy of the declaration shall be forwarded by the society to the *Tahsildar* for making necessary entries in annual papers or record of rights. Charge shall be valid whether so recorded or not. Subject to prior claims of Government in respect of land revenue or any money recoverable as land revenue and to any charge created under an award under debt relief legislation, the charge created by declaration shall be a first charge in favour of the society. The charge shall take precedence over claims of the Government arising from loans granted under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, after the grant of loan by the society (Section 41).

2. All instruments executed by or on behalf of a society have been exempted from payment of stamp duty and registration fee by the Government in exercise of the powers conferred on it by the Indian Stamp Act, 1899 and the Indian Registration Act, 1908 (Section 78).

3. Disputes touching constitution, management or business of a society between its members and the society shall be referred to the

Registrar. If any question arises whether a dispute referred to the Registrar is a dispute touching the constitution, management or business of the society, the decision thereon by the Registrar shall be final and shall not be called in question in any court (Section 64).

4. Registrar is empowered to attach property before award if he is satisfied that any person, with intent to delay or obstruct the execution of any award, is about to dispose of the property (Section 68).

5. No civil or revenue court shall have any jurisdiction in respect of any dispute required to be referred to the Registrar; no decision under this Act shall be questioned in any court on any ground whatsoever (Section 82).

6. On application of a society, Registrar is empowered to make an order directing payment of debt by sale of the property or interest therein subject to charge under Sections 40 and 41 (Section 84).

7. Every order made by the Registrar shall, if not carried out, on a certificate signed by the Registrar, be executed in the same manner as a decree of a civil court, or be executed according to the law in force for the recovery of arrears of land revenue, or be executed by attachment and sale or sale without attachment of the property of the person against whom order has been passed (Section 85).

8. Registrar shall be deemed to be a civil court while exercising powers under this Act for recovery of any amount (Section 90).

Under the Madhya Pradesh Sahakari Bhoomi Vikas Bank Adhinyam, 1966, co-operative land development banks enjoy the following facilities:

1. If any instalment payable under a mortgage or any part thereof remains unpaid for more than a month, the land development bank may apply to Registrar for the recovery of such instalment by distraint and sale of produce of

mortgaged land including the standing crops thereon and other movable property of defaulting member within twelve months of date on which instalment fell due (Section 14).

2. In case of default in payment of instalments, the land development bank, after complying with certain requirements of notice etc., can bring the mortgaged property to sale without the intervention of the court (Section 18).

3. It shall be competent to a land development bank to purchase the mortgaged property sold under the Act; provided that the property so purchased shall be disposed of by sale within prescribed period (Section 25).

4. When a sale has been made under Section 19 and confirmed under Section 21, the title of the purchaser shall not be impeachable on grounds of any irregularity (Section 27).

5. No mortgagor of property mortgaged to a land development bank shall lease any such property after the execution of mortgage (Section 33).

6. A mortgage executed in favour of a land development bank shall have priority over any claim of the State Government arising from a loan under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, granted after the execution of the mortgage (Section 35).

7. Where a mortgage in favour of a land development bank is in respect of land in which an occupancy tenant has an interest, the mortgage may be against the security of such interest and rights of mortgagee shall not be affected by the failure of occupancy tenant to comply with requirements of Madhya Pradesh Land Revenue Code, 1959 and the sale of land and his interest therein shall be subject to prior charge of the land development bank (Section 35).

8. It shall not be necessary to register mortgages executed in favour of the Central Land Development Bank or land development

banks if a copy of the instrument creating the mortgage is sent to the Registering Officer within the prescribed time. One copy of the instrument will also be sent within 30 days to the *Tahsildar*, within whose jurisdiction the land is situated, for making entries in the record of rights. A copy of entry made in annual papers or the record of rights (maintained under the M.P. Land Revenue Code, 1959), which include the particulars of every charge, created under mortgage deed, shall be sent to the land development bank within 30 days (Section 36).

9. If a mortgage executed in favour of a land development bank is called in question on the ground that it was executed by the manager of a joint Hindu family for a purpose not binding on the members thereof, the burden of proving the same shall be on the party raising it; mortgages executed for financing purchase or improvement of land or for productive purposes shall be binding on the members of the family (Section 40).

10. Section 8 of the Hindu Minority and Guardianship Act, 1956, shall apply to mortgages in favour of a land development bank subject to the modification that reference to the court therein shall be construed as reference to the Collector. In case where the minor has a joint interest in the joint Hindu family, it will not be necessary to seek permission to mortgage his interest in favour of the land development bank for advancing loan against the security of joint Hindu family property (Section 42).

VIII. Action taken by the State Government

1. The State Government is contemplating amendment to the Madhya Pradesh Land Revenue Code, 1959, so as to enable landholders to secure payment of loans from commercial banks on security of the land. After the amendment, the restriction that the total amount of interest accruing under the mortgage should not exceed half of the sum of the principal amount, will not apply. Meanwhile, the State Government, by an ordinance, has allowed transfer by a *bhumiswami* of his interest in land

to secure payment of an advance made to him by a commercial bank, on the guarantee of the State Government for the purpose of improvement of agriculture.

2. The State Government has recently decided to exempt small farmers having holdings of ten acres or less from payment of stamp duty on mortgages executed in favour of commercial banks for obtaining loans upto Rs. 10,000/- for irrigation purposes.

3. The State Government has issued instructions to the Chief Inspector of Registration (Registration Department) to arrange to furnish such information as is required by the commercial banks in connection with the provision of agricultural credit.

4. Section 155 of the Madhya Pradesh Land Revenue Code, 1959, has been amended so that moneys recoverable as arrears of land revenue include all moneys guaranteed by the State Government to the extent of amount guaranteed under a contract of guarantee which provides that they shall be recoverable in the same manner as an arrear of land revenue.

IX. Provisions in the State Enactments having a bearing on Commercial Banks Lending to Agriculture

The Madhya Pradesh Land Revenue Code, 1959

Section 165: Restrictions on transfer of land by a *bhumiswami* indicated herein include :

1. No mortgage of any land by a *bhumiswami* can be valid unless, he is left with five acres of irrigated or ten acres of unirrigated land free of any encumbrance or charge;
2. No usufructuary mortgage of any land by a *bhumiswami* for a period exceeding six years is valid and unless on condition that on expiry of period specified in mortgage deed, the mortgage is deemed to be redeemed in full;
3. The total amount of interest accruing under a mortgage, other than a usufructuary mortgage, created by a *bhumiswami* shall not exceed half of the principal amount advanced by the mortgagee;

4. A *bhumiswami* cannot transfer land to anyone who by such transfer will come to possess land in excess of the prescribed ceiling; this does not apply to transfer in favour of a co-operative society;
5. No land of a *bhumiswami* can be sold in execution of a decree or order of court to a person who as a result will hold land more than the prescribed ceiling; co-operatives have been exempted;
6. Land belonging to a *bhumiswami*, who is a member of an aboriginal tribe, shall not be transferred to a person not belonging to such tribe without the permission in writing of the appropriate authority;
7. Only land in excess of five acres of irrigated land or ten acres of unirrigated land can be attached or sold in execution of any decree or order;
8. Land belonging to a *bhumiswami*, who is a tribal, cannot be attached or sold in execution of any decree or order;
9. *Bhumiswami* may transfer any right in land to secure payment of an advance made to him by a commercial bank on the guarantee of the State Government for purposes of agriculture etc., and the bank or the Government shall have the right to sell the right of the *bhumiswami* for the recovery of such advance or guarantee.

Section 168: Only the exempted categories of *bhumiswamis*, which include co-operatives, can lease out land.

Section 170: Transfer of land made by a *bhumiswami* in contravention of Section 165, i.e. either transfer of land by a tribal holder without permission or transfer so as to make the holding of the transferee in excess of the ceiling area can be avoided by his heirs within two years of such transfer.

Section 178(3): No partition shall be allowed if it results in creating a holding which will be

below five acres of irrigated land or ten acres of unirrigated land.

Section 182(1): A Government lessee, subject to any express provisions in this Code, shall hold his land in accordance with the terms and conditions of the grant.

Section 183(2): Transfer of his interest in his service land by sale, gift, mortgage, sub-lease or otherwise (except by way of sub-lease for a period not exceeding one year) by a person holding land on the condition of rendering service as a village servant shall be void. The right of the holder cannot be attached or sold in execution of a court decree.

Section 195: No occupancy tenant shall be entitled to transfer by way of sale, gift, mortgage, sub-lease or otherwise his right in the land or any portion thereof and every such sale, gift, mortgage, sub-lease or other transfer shall be avoidable as provided in Section 197. However, he can transfer his interest in favour of Government (for an advance under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884) and a co-operative society. The Government and the co-operative society can also sell the right of the occupancy tenant for the recovery of such advance.

The Madhya Pradesh Bhoodan Yagna Adhiniyam, 1968

Sections 33 and 30(c): A *bhoodan* allottee, who has held land for a period of ten years conti-

nuously, becomes a *bhumiswami* in place of the Bhoodan Yagna Board. Pending the acquisition of such right, however, an allottee can mortgage the land only in favour of co-operatives and the Government.

Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960

Section 3(i) & (m): Lands held by land development banks are exempted from the provisions of the Act. Similarly lands held by such co-operative societies as hold land, not exceeding the total area arrived at by multiplying the ceiling area in respect of each of the members by the total number on the register of membership for the time being and approved by general or special order by the State Government, are exempted from the provisions. However, Government may by notification under Section 3(n) exempt any class of land from the provisions of the ceiling legislation.

The Madhya Pradesh Anusuchit Janjati Rini Sahayata Adhiniyam, 1967 (Debt Relief)

Section 6: Debt due to a bank is exempted from the provisions of the Act. Bank is defined in Section 2(2) so as to include a banking company as defined in Section 5 of the Banking Regulation Act, 1949, as also the State Bank of India and its Subsidiaries and any other financial institution that may be notified by the State Government.

MAHARASHTRA

The Expert Group examined the following enactments of the State :

1. The Bombay Bhagdari and Narwadari Tenures Abolition Act, 1949,
2. The Bombay Personal Inams Abolition Act, 1952,
3. The Bombay Kauli and Katuban Tenures (Abolition) Act, 1953,
4. The Bombay Bhil Naik Inams Abolition Act, 1955,
5. The Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955,
6. The Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950,
7. The Bombay Merged Territories (Janjira and Bhor) Khoti Tenure Abolition Act, 1953,
8. The Bombay Inferior Village Watans Abolition Act, 1958,
9. The Bombay Tenancy and Agricultural Lands Act, 1948,
10. The Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958,

11. The Hyderabad Tenancy and Agricultural Lands Act, 1950,
12. The Maharashtra Land Revenue Code, 1966,
13. The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961,
14. The Bombay Bhoodan Yagna Bill, 1954,
15. The Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947,
16. The Bombay Money-lenders Act, 1946,
17. The Bombay Agricultural Debtors' Relief Act, 1947 and
18. The Maharashtra Co-operative Societies Act, 1960.

Based on a review of these enactments, the following points emerge :

I. Land Alienation Rights of Agriculturists

The State is divisible into three areas so far as land reform measures are concerned, viz., former Bombay area, Marathwada area and Vidarbha area.

In the former Bombay area which was predominantly *ryotwari*, the existing non-*ryotwari* tenures were converted into *ryotwari* (excepting *deosthan inams* the abolition of which is under consideration of Government). The tenure holders were declared occupants. When tenure holders did not enjoy full proprietary rights, lands were settled with their permanent tenants and sometimes also with ordinary tenants, on payment of occupancy price. While tenure holders i. e. occupants class I, have full transferable rights in respect of land vested with them, those to whom land was regranted by the Government have restricted alienation rights as applicable to occupants class II i.e. they can mortgage land in favour of the State Government and co-operatives only. Tenant-purchasers under the tiller's day legislation and allottees of surplus and Government waste land also come under this category. The Government is considering amendment to legislation so that occupants class II can also be enabled to mortgage land in favour of nationalised banks. Ordinary tenants have right to mortgage land in favour of co-operatives and the State Government only.

In the Vidarbha area, the ex-intermediaries got full transferability rights while the tenant-purchasers and tenants acquire the right to mortgage land in favour of Government and co-operatives as occupants class II. Tenant-purchasers in this area can, however, mortgage their lands to the State Bank of India also.

In the Marathwada area also, the tenants of *ex-jagirdars* became occupants class II. Tenant-purchasers in this area have to secure Collector's permission to transfer land. Protected tenants and ordinary tenants can borrow only from Government for short-term purposes. These enactments also enable the credit agencies concerned to sell the right in land held by the landholder in case of need.

Landholders belonging to scheduled tribes cannot alienate land in favour of any credit agency including co-operatives except with the permission of the Collector. *Bhoodan* lessee cannot transfer land or any interest therein.

Fragment holders can mortgage fragments to State Government, co-operatives and land development banks. But sale of fragments can be made only to a contiguous landholder, failing which it would be transferred to the Government.

II. Ceiling on Land Holdings

The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, stipulates ceiling on existing holdings as well as future acquisition of lands. The co-operatives including land development banks are exempt from the provision relating to ceiling under the Maharashtra Co-operative Societies Act, 1960. Further, agriculturists are not permitted to sell lands to any non-agriculturists or even to agriculturists who by such purchase are likely to come into possession of land in excess of two-thirds of the ceiling limit. However, land can be sold to agricultural labourer. Co-operatives are exempt from the provisions in the Bombay Tenancy and Agricultural Lands Act, 1948, regarding sale of land only to agriculturists or to those who are likely by such purchase to hold land in excess of ceiling referred above.

III. Land Records

Marathwada area: Same as in Telengana area of Andhra Pradesh.

Vidarbha area: The land records are maintained annually. The main land records are *khasra* and *jamabandi*. These records show the names of tenants or sub-tenants and the rent payable by them. Partners-in-cultivation are also entered in the records.

Bombay area: Same as indicated in Gujarat.

IV. Equitable Mortgages

The creation of equitable mortgage on land is permissible in the State. However, only landholders with full proprietary rights i.e. ex-intermediaries can create equitable mortgage on land in favour of commercial banks; other categories of landholders in the State are permitted to create mortgage in favour of Government and co-operatives only. Only two out of 265 towns in the State (as per Census 1961) have been notified under Section 58(f) of the Transfer of Property Act, 1882, for creation of equitable mortgages.

V. Moneylending

The Bombay Moneylenders Act, 1946, defines a bank as defined in the Banking Regulation Act, 1949 and includes Reserve Bank of India, State Bank of India and any other banking institution notified by the Central Government under Section 51 of the said Act.

VI. Debt Relief

The Bombay Agricultural Debtors' Relief Act, 1947, exempts debts due to scheduled banks and merged State Bank.

VII. Legislation pertaining to Co-operatives

The provisions of the Maharashtra Co-operative Societies Act, 1960, which will have a bearing on commercial banks operations in the field of agricultural credit are:

1. Priority of Charges

Subject to any prior claim of Government in respect of land revenue or any money reco-

verable as land revenue, society shall have a first charge upon i) crops or other agricultural produce raised with or without a loan from society, ii) cattle, fodder for cattle, agricultural or industrial implements or machinery or raw materials or workshop or godown purchased wholly or partly with loan from the society and iii) any movable property pledged or mortgaged with society and remaining in the member's custody.

Prior claim of Government in respect of dues other than land revenue shall be restricted to the assets created out of the funds in respect of which the Government has a claim.

Alienation of property subject to charge without permission of the society shall be void (Section 47).

Besides, co-operatives enjoy the following facilities:

1. Member can create a charge on his land or interest therein by a mere declaration in favour of the society. Alienation of property subject to charge created by declaration shall be void. However, a mortgage of such land in favour of a land development bank or State Government shall be valid. Further, the society may release part of the property on part payment of its dues.

Charge created by declaration shall be a first charge subject to claims of Government in respect of land revenue or any money recoverable as land revenue or all claims of land development bank in respect of its dues or an award made under debt relief legislation in force.

Record of Rights shall include particulars of charge created by declaration and the charge shall be valid whether recorded or not (Section 48).

2. Government is empowered to exempt, by notification, stamp duty chargeable in respect of instruments executed by or on behalf of the society and any fee payable under the law relating to registration of documents (Section 42).

3. Any dispute between members and the society touching its constitution, management

or business shall be referred to the Registrar. The question whether any dispute is or is not one touching constitution, management or business of society shall be considered by the Registrar whose decision shall be final. No court shall have jurisdiction in respect of any dispute required to be referred to the Registrar (Section 91).

4. Registrar is empowered to attach property before award if he is satisfied that any person, with intent to defeat, delay or obstruct execution of the award, is about to dispose of the property (Section 95).

5. Every order of the Registrar, if not carried out, shall, on a certificate signed by the Registrar, be executed as a decree of a civil court or be executed according to the law in force for recovery of arrears of land revenue (Section 98).

6. Registrar is empowered to grant a certificate for recovery of loans due to resource societies undertaking financing of crop and seasonal finance as arrears of land revenue (Section 101).

7. A mortgage executed in favour of a land development bank shall have priority over any claim of the Government arising from a loan granted under the Land Improvement Loans Act, 1883 or the Agriculturists' Loans Act, 1884, after the execution of mortgage. Where a mortgage in favour of a land development bank is in respect of land in which a tenant-purchaser or a tenant has an interest, the mortgage may be against the security of such interest; rights of the mortgagee shall not be affected by failure of the tenant-purchaser or tenant to comply with the provisions of tenancy legislation in force and sale of land or interest therein shall be subject to prior charge of the land development bank (Section 120).

8. It shall not be necessary to register mortgages in favour of a land development bank, provided the bank sends a copy of the instrument to the Registering Officer within prescribed time (Section 122).

9. Mortgages in respect of loans by a land development bank by the manager of a joint Hindu family for improvement of agricultural land or of methods of cultivation or for financing means to raise productivity of land or for purchase of land, shall be binding on every member of such joint Hindu family. If a mortgage executed in favour of a land development bank is called in question on the ground that it was executed by the manager of a joint Hindu family for a purpose not binding on the members thereof, the burden of proving the same shall be on the party alleging it (Section 125).

10. Section 8 of the Hindu Minority and Guardianship Act, 1956, shall apply to mortgages in favour of a land development bank, subject to the modification that reference to the court therein shall be construed as reference to the Collector or his nominee (Section 126).

11. No mortgagor of property mortgaged to, a land development bank shall, except with the prior written consent of the bank and subject to such conditions as the bank may impose, lease or create tenancy rights on any such property (Section 127).

12. Property purchased by or transferred to land development banks may be disposed of by such banks by sale within period fixed by the Trustee, subject to the condition that such sales shall be in favour only of agriculturists entitled to hold land under the tenancy legislation in force, or may be leased out on terms and conditions laid down by the State Government. Nothing contained in any law fixing the maximum limit for agricultural holding shall apply to the acquisition or holding of land by a land development bank (Section 130).

13. If any instalment or part thereof remains unpaid for more than one month from due date, the land development bank may apply to the Registrar for recovery of the instalment by distraint and sale of produce of the mortgaged land including the standing crops thereon; provided that no distraint shall be made after the expiry of twelve months from due date (Section 132).

14. In case of default in payment of mortgage money, the land development bank shall have power to bring the mortgaged property to sale by public auction, without intervention of the court; it shall be lawful for a land development bank to purchase any mortgaged property sold under this Act (Section 133).

15. Where any property is sold in exercise of power of sale under Section 133, the title of the purchaser shall not be questioned on the ground of any irregularity (Section 136).

16. Arrears of sums advanced by a land development bank shall, on a certificate granted by Registrar, be recoverable as arrears of land revenue (Section 137).

17. Nothing contained in Section 40 of the Bombay Agricultural Debtors' Relief Act, 1947, or any corresponding law for the time being in force shall apply to alienation in favour of the land development banks (Section 140).

18. Registrar is empowered to recover dues under an award by attachment and sale or sale without attachment of the property of the indebted member. Registrar is deemed to be civil court while exercising powers of recovery (Section 156).

19. No civil or revenue court shall have jurisdiction in respect of disputes required to be referred to the Registrar. No orders, awards or decisions made under the Act shall be questioned in any court on any ground whatsoever except for want of jurisdiction (Section 163).

VIII. Provisions in the State Enactments having a bearing on Commercial Banks Lending to Agriculture

The Bombay Tenancy and Agricultural Lands Act, 1948

Section 27(i): Except as provided in Section 32(F) no sub-division or sub-letting of land held by a tenant or assignment of any interest therein shall be valid.

Section 27(3): Notwithstanding anything contained in sub-Section (1), it shall be lawful

for a tenant to mortgage or create a charge on his interest in the land in favour of the State Government or in favour of a co-operative society in consideration of a loan advanced to him and without prejudice to any other remedy open to the State Government or the co-operative society, as the case may be, in the event of his making default in payment of such loan in accordance with the terms on which such loan was granted, it shall be lawful for the State Government or the co-operative society, as the case may be, to cause his interest in the land to be attached and sold and the proceeds to be applied in payment of such loan.

Section 28: Save as expressly provided in this Act or as provided in the Maharashtra Co-operative Societies Act, 1960 or the Bombay Agricultural Debtors' Relief Act, 1947, for the recovery of loans permitted under Section 27, any interest in the land held by him as a tenant shall not be liable to be attached, seized or sold in execution of a decree or order of a civil court.

Section 43: No land purchased by a tenant under Sections 32, 32F, 321, 320, 330 or 43-ID or sold to any person under Section 32P or 64 shall be transferred by sale, gift, exchange, mortgage, lease or assignment or partitioned without the previous sanction of the Collector.

No such sanction shall be necessary where the land is to be mortgaged in favour of Government or a co-operative society for raising a loan for effecting any improvement of such land.

Any transfer or partition of land in contravention of sub-Section (1) shall be invalid.

Section 63: Nothing in this Section (transfers to non-agriculturists barred) shall apply or be deemed to have applied to a mortgage of any land or interest therein effected in favour of a co-operative society as security for the loan advanced by such society or any transfer declared to be a mortgage by a court under Section 24 of the Bombay Agricultural Debtors' Relief Act, 1947.

Section 64A: Nothing in Sections 63 (transfer to non-agriculturists barred) and 64 (sale of agricultural land to a particular person) shall apply to sales effected by or in favour of a co-operative society under the Bombay Co-operative Societies Act, 1925.

The Bombay Tenancy & Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958

Section 33(1): No sub-division or sub-letting of land held by a tenant or assignment of any interest therein shall be valid.

Section 33(3): Notwithstanding anything contained in sub-Section (1), it shall also be lawful for a tenant to mortgage or create a charge on his interest in the land in favour of the State Government or in favour of a co-operative society in consideration of a loan advanced to him by such co-operative society and without prejudice to any other remedy open to the State Government or the co-operative society, as the case may be, in the event of his making default in payment of such loan in accordance with the terms on which such loan was granted, it shall be lawful for the State Government or a co-operative society, as the case may be, to cause his interest in the land to be attached and sold and the proceeds to be applied in payment of such loan.

Section 34: Save as expressly provided in this Act or as provided in the Co-operative Societies Act, 1912 for the recovery of loans permitted under Section 33, any interest in the land held by him as a tenant shall not be attached, seized or sold in execution of a decree or order of a civil court.

Section 57(1): No land purchased by a tenant or sold to any person under Section 91 or 122 shall be transferred by sale, gift, exchange, mortgage, lease or assignment or partitioned without the previous sanction of the Collector. However, occupancy tenants are exempted.

Section 89: Nothing in this Section (transfers to non-agriculturists barred) shall apply to

a mortgage of any land or interest therein in favour of a co-operative society as security for a loan granted by such society.

Section 91A: Nothing in Sections 89 (transfers to non-agriculturists barred) and 91 (sale of agricultural land to particular person) shall apply to sales effected by or in favour of a Co-operative Bank under the Bombay Co-operative Societies Act, 1925.

The Hyderabad Tenancy and Agricultural Lands Act, 1950 (This Act extends to Marathwada area)

Section 30: No sub-division or sub-letting of any land by a tenant and no assignment of any interest held by a tenant shall be valid. A tenant can, however, become a member of a co-operative farming society and as such member can sub-let, assign, mortgage or create a charge on his interest in land in favour of such society.

Section 31: No interest of a tenant in any land held by him as tenant shall be liable to be attached or sold in execution of a decree or order of a civil court.

Section 43: A protected tenant or an ordinary tenant can mortgage or create a charge on his interest in the land in favour of the Government for a loan under the Hyderabad Agriculturists Loans Act, 1950 and the Government is empowered to cause his interest in land to be sold in event of default.

Section 49: Nothing in Sections 47 (transfer to non-agriculturists barred) and 48 (sale of agricultural land to particular person) shall apply to sales effected by or in favour of a co-operative bank registered under the Maharashtra Co-operative Societies Act, 1960.

Section 50(B): (1) No land purchased by a tenant under Sections 38, 38A, 38E, 38F, 38G, 38H or 48 or sold to any person under Section 53F, 53G or 98C shall be transferred by sale, gift, exchange, mortgage, lease or assignment or partitioned without the previous sanction of the Collector.

(2) Any transfer or partition of land in contravention of sub-Section (1) shall be invalid.

The Maharashtra Land Revenue Code, 1966

Section 36(2): Occupancies of persons belonging to such scheduled tribes which the State Government may, by notification, declare, shall not be transferred except with the previous sanction of the Collector.

Section 36(4): Notwithstanding anything contained in sub-Section (1) or in any other provision of this Code, or in any law for the time being in force it shall be lawful for an occupant - class II to mortgage his property in favour of the State Government or in favour of a co-operative society in consideration of loan advanced to him and without prejudice to any other remedy open to the State Government or a co-operative society in the event of such occupant making default in payment of such loan, it shall be lawful for these agencies to cause the occupancy to be attached and sold and the proceeds to be applied towards the payment of such loan.

The Bombay Bhoodan Yagna Bill, 1954

Section 22: A *bhoodan* lessee shall not sub-let or otherwise transfer the land or any interest therein.

The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961

Section 4: Subject to the provisions of the Act, no person shall hold land in excess of the ceiling area. However, co-operatives including land development banks are exempt

from these provisions under the Maharashtra Co-operative Societies Act, 1960.

Section 9: No person shall, at any time on or after the appointed day, acquire by transfer or partition any land if he already has land in excess of the ceiling area, or land which together with any other land already held by him will exceed in the total of the ceiling area.

The Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947

Section 7: (1) No person shall transfer any fragment in respect of which a notice has been given under sub-Section (2) of Section 6 except to the owner of a contiguous survey number or recognised sub-division of a survey number. Provided that the holder of such fragment may mortgage or transfer it to the State Government or a land mortgage bank or any other co-operative society as security for any loan advanced to him by the State Government or such bank or society, as the case may be.

The Bombay Money Lenders Act, 1946

Section 2: "Bank" means a banking company as defined in the Banking Regulation Act, 1949 and includes the Reserve Bank of India, the State Bank of India and any other banking institution notified by the Central Government under Section 51 of the said Act. The 'bank' as defined above is excluded from the provisions of the Act.

The Bombay Agricultural Debtors Relief Act, 1947

Section 3: Save as otherwise expressly provided, nothing in this Act shall affect any sum due to a co-operative society or a scheduled bank or a merged State Bank.

MYSORE

The following enactments of the State were reviewed by the Expert Group :

1. The Mysore Land Reforms Act, 1961;
2. The Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954;

3. The Mysore (Religious and Charitable) Inams Abolition Act, 1955;
4. The Bombay Merged Territories and Areas (Jagirs Abolition) (Mysore Amendment) Act, 1963;

5. The Mysore Land Revenue Act, 1964 ;
6. The Mysore Land Grant Rules ;
7. The Mysore Bhoodan Yagna Act, 1963 ;
8. The Mysore Prevention of Fragmentation and Consolidation of Holdings Act, 1960;
9. The Mysore Money-lenders Act, 1961;
10. The Mysore Agricultural Debtors Relief Act, 1966; and
11. The Mysore Co-operative Societies Act, 1959.

Based on a review of these enactments, the following points emerge:

I. Land Alienation Rights of Agriculturists

Mysore is predominantly a *raiyatwari* area. Whatever intermediary interests existed were abolished except in case of some minor *inams*. The State Government has enacted legislation for abolition of these also but its implementation remains to be done. The *raiyats* have full rights of alienation. However, no sale or mortgage of land by *raiyat* will be valid if made in favour of a person who is not an agriculturist or an agriculturist who holds land in excess of the ceiling limit.

The landholders who do not enjoy similar alienation rights are :

1. A person holding land in excess of the ceiling fixed is not allowed to alienate it pending declaration by that person of his lands and determination by the Land Tribunal of the extent of land to be surrendered by him.
2. A landholder who has resumed land from tenants cannot transfer the land so resumed by sale, gift or exchange for a period of six years from the date of resumption. He can, however, sell the land to the evicted tenant or co-operatives or the Government.
3. An allottee of *bhoodan* land cannot sub-let nor can he transfer the land by sale, gift or otherwise.

4. A grantee of land under the *Saguvali Chits* can mortgage land only in favour of the Government and co-operatives.

5. A holder of fragment can sell land to a contiguous plot holder at such price at which any other person is prepared to purchase. If he is not agreeable, other persons are allowed to purchase the fragment with the *Tahsildar's* permission. However, fragments can be sold in favour of co-operative societies approved by the Government.

Under the Mysore Land Reforms Act, 1961, every person who was a permanent tenant, protected tenant or other tenant or sub-tenant is entitled to be registered as an occupant in respect of the lands held by him. This is, however, subject to certain conditions and payment of compensation. The right of ownership will accrue to the tenant only when he pays the full amount of compensation.

6. The tenant acquiring occupancy right as above is not permitted to transfer the land by sale, mortgage, gift, exchange, lease or assignment for a period of six years from the date of allotment. However, he can mortgage his land in favour of the State Government or a co-operative society.

7. The tenants arising out of *inams* abolition legislation are known as *Kadim* tenants, permanent tenants, other tenants and minor *inam* holders; while the *Kadim* tenants are registered as occupants, the remaining type of tenants acquire occupancy rights on payment of stipulated premia.

8. In case of tenants, the Mysore Land Reforms Act, 1961, enables them to create a mortgage or a charge in favour of the Government or a co-operative society for securing a loan. Further, these credit agencies are exempted from Section 34 of the Mysore Land Reforms Act, 1961, which prohibits attachment, seizure or sale of the interest of a tenant under the execution of a decree or order of the civil court.

II. Ceiling on Land Holdings

The Mysore Land Reforms Act, 1961, stipulates the ceiling limit on land that can be held as landowner, landlord, tenant or as a mortgagee with possession or otherwise and also on future acquisition of land.

The lands held or leased by such co-operatives as are approved by the State Government and whose objective is the improvement of the economic and social conditions of peasants or ensuring the full and efficient use of land for agriculture and allied pursuits are exempted from the ceiling limit of eighteen standard acres. Further, the Mysore Co-operative Societies Act, 1959, states that the ceiling limit on holding of land shall not apply to acquisition of land by a land development bank.

III. Land Records

The following records are maintained annually:

(i) Index of land: This register gives information, survey number-wise, about all occupied and un-occupied lands regarding their extent, names of occupants and the assessment. The changes in the register are posted annually.

(ii) *Khata* or ledger: This register gives information about the lands held by each individual, land revenue payable and the amount actually recovered.

(iii) *Pahani*-crop register: This includes information given in the Index register and furnishes details of crops raised on each plot of land.

The above records are maintained for the Government and settled *inam* villages but not in respect of unsurveyed and unsettled villages.

A tenancy and crop-register has also been prescribed. In this register, all forms of tenancies are to be entered giving the names of tenants and the rents payable by them. It is reported that this register has not been maintained in all villages.

IV. Equitable Mortgages

Out of 230 towns in the State (as per Census 1961), 35 have been notified under Section 58(f) of the Transfer of Property Act, 1882, for creation of equitable mortgages.

V. Moneylending

A banking company as defined in the Banking Regulation Act, 1949, including the State Bank of India and any other banking institution notified under Section 51 of that Act is exempt from the provisions of the Mysore Money-lenders Act, 1961.

VI. Debt Relief

The Mysore Agricultural Debtors Relief Act, 1966, exempts debts due to a scheduled bank. This Act has since been struck down by the State High Court.

VII. Legislation pertaining to Co-operatives

The features of the Mysore Co-operative Societies Act, 1959, which will have a bearing on commercial banks operations in the field of agricultural credit are:

1. Priority of charges

Subject to any prior claim of the Government in respect of land revenue or any money recoverable as land revenue, the society shall have a first charge upon crops and other agricultural produce, cattle, fodder for cattle, agricultural or industrial implements or machinery or raw materials or finished products belonging to the indebted member. Alienation of property subject to charge shall be void except with previous written permission of the society. Charge shall be available against any claim of the Government arising from a loan granted under the Land Improvement Loans Act, 1883 or the Agriculturists' Loans Act, 1884, after the grant of loan by the society (Section 32).

Besides, co-operatives including land development banks enjoy the following facilities:

1. Member can create a charge on his land or

interest therein in favour of society by mere declaration. Alienation of property subject to charge under declaration shall be void. Provided that standing crops on such land may be alienated with previous written permission of the society. Society shall communicate particulars of charge to the Deputy Commissioner for necessary entries in the record of rights. Subject to prior claims of Government in respect of land revenue or any money recoverable as land revenue and the prior claims of any person in whose favour alienation of the land or interest therein has been effected and duly registered, before the grant of loan by the society, there shall be a first charge in favour of the society on land or interest therein specified in the declaration (Section 33).

2. Co-operative societies may get exemption/reduction of certain duties and fees such as stamp duty, registration fee, etc., from the State Government (Section 37).

3. It shall not be necessary for an official of a co-operative society to appear in person at any registration office in any proceedings connected with registration of any instrument executed by him in official capacity or to sign as provided in Section 58 of the Indian Registration Act, 1908 (Section 39).

4. Disputes touching the constitution, management or the business of a co-operative society between society and its members shall be referred to the Registrar for decision and no court shall have jurisdiction in respect of such disputes. The question whether a dispute is or is not one touching constitution, management or business of the society shall be decided by the Registrar whose decision will be final (Section 70).

5. A mortgage executed in favour of a land development bank shall have priority over any claim of the Government arising from a loan under the Land Improvement Loans Act, 1883 or the Agriculturists' Loans Act, 1884, granted after the execution of the mortgage (Section 83).

6. It shall be lawful for a land development bank to purchase any mortgaged property sold under this Act and the property so purchased shall be disposed of by sale within prescribed period; nothing in any law fixing a maximum limit of agricultural holding shall apply to the acquisition of land by a land development bank (Section 84).

7. Registration of mortgages or leases executed in favour of a land development bank is not necessary if the bank sends a copy of the instrument to the Registering Officer within such time and in such manner as may be prescribed (Section 85A).

8. Mortgages executed by the manager of a joint Hindu family in favour of a land development bank for carrying out improvement of agricultural land or of methods of cultivation or for financing any other means to increase the productivity of land or for purchase of land, shall be binding on every member of the family. If a mortgage executed in favour of a land development bank by the manager of a joint Hindu family is called in question on the ground that it was executed for a purpose not binding on the members thereof, the burden of proving the same shall be on the party alleging it (Section 87A).

9. No mortgagor of property mortgaged to a land development bank, shall except with the prior consent in writing of the bank, lease or create any tenancy rights on any such property (Section 87B).

10. If any instalment payable under a mortgage executed in favour of a land development bank or any part of such instalment has remained unpaid for more than one month from due date, the bank may apply to the Registrar for the recovery of such instalment or part thereof by distraint and sale of the produce of the mortgaged land, including the standing crops thereon (Section 88).

11. Where a power is expressly conferred by the mortgage deed on a land development bank,

the committee of the bank shall, in case of default in payment of mortgage money, bring the mortgaged property to sale without intervention of the court; it shall be lawful for a land development bank to purchase any mortgaged property sold under this Act (Section 89).

12. Where any property is sold in exercise of the power of sale under Section 89, the title of the purchaser shall not be questioned on the ground of any irregularity (Sections 89C (3) and 92).

13. The arrears stated to be due to a land development bank in a certificate granted by the Registrar shall be recoverable as arrears of land revenue (Section 89D).

14. Nothing contained in Section 40 of the Bombay Agricultural Debtors' Relief Act, 1947 or any corresponding law in force in any part of the State shall apply to any alienation in favour of land development banks (Section 89G).

15. A mortgagor shall not grant a lease of the mortgaged property for a period exceeding five years; any lease granted in contravention of this provision shall be void (Section 95).

16. The Registrar on the application of a co-operative society may give an order directing the payment of any debt due to the society by any member by sale of the property which is subject to a charge under Section 32 (Section 99).

17. The Registrar may, on an application by an approved society, after making an enquiry in such manner as may be prescribed, grant a certificate for the recovery of its dues on account of financing of crops or seasonal finance, as arrears of land revenue (Section 100).

18. Every order made by the Registrar shall, if not carried out, on a certificate signed by him, be executed in the same manner as a decree of civil court or according to the law for the time being in force for the recovery of arrears of land revenue, or by sale with or without attachment of any property of the person against

whom the order has been obtained (Section 101).

19. The Registrar or any person empowered by him shall be deemed, when exercising any power under this Act for the recovery of any amount, to be a civil court (Section 102).

20. The Registrar is empowered to attach property before order if he is satisfied that any person, with intent to delay or obstruct enforcement of decision or order, is about to dispose of the property (Section 103).

21. No civil or revenue court shall have any jurisdiction in respect of any dispute required to be referred to the Registrar; no order, decision or award made under the Act shall be questioned in any court on any ground whatsoever (Section 118).

VIII. Action taken by the State Government

The State Government has taken the following steps to facilitate financing of agriculturists by commercial banks.

1. The Government has exempted stamp duty in respect of instruments executed by farmers in favour of scheduled banks for loan amount not exceeding five thousand rupees. The Government is considering extension of this facility to all institutional credit agencies providing agricultural credit.

2. The Government has taken steps to issue Patta and Receipt Books to farmers which are expected to expedite sanctioning of loans by commercial banks, as these books contain information regarding encumbrances on land.

3. The State Government has issued instructions to the Revenue Authorities to co-operate with scheduled banks by noting in the Record of Rights the loans advanced by scheduled banks to the agriculturists on the deposit of title deeds within fifteen days of the receipt of the letter from the bank.

4. The State Government is considering amendments to the Mysore Land Reforms Act,

1961 and some other enactments to bring commercial banks on par with co-operatives and land development banks.

5. The Government is contemplating amendment of the Mysore Bhoodan Yagna Act, 1963, to enable *bhoodan* allottees to mortgage their lands in favour of commercial banks.

6. The Government of Mysore has constituted a study group on bank finance during April 1969 and the various difficulties experienced by commercial banks in Mysore are examined from time to time whenever banks bring forth their problems.

**IX. Provisions in State Enactments
having a bearing on Commercial Banks
lending to Agriculture**

The Mysore Land Reforms Act, 1961

Section 19: Notwithstanding anything contained in any other law or in Section 80, no land resumed from a tenant (under Section 14) shall within six years from such resumption be transferred by sale, gift or exchange. The proviso to the section, however, permits sale of the land only to the tenant who has been evicted from that land at a value to be determined by the Tribunal.

Section 21: No sub-division or sub-letting of the land held by a tenant or assignment of any interest therein shall be valid except in certain specified cases. However, nothing in this sub-Section shall affect the rights, if any, of a permanent tenant. Moreover, in terms of sub-Section(3), it shall be lawful for a tenant to mortgage or create a charge on his interest in land in favour of the State Government or a co-operative society in consideration of a loan advanced to him. In the event of his default in repayment of the loan, it is lawful for the State Government or a co-operative society to cause his interest in the land to be attached and sold to persons to whom land can be sold and proceeds applied in payment of such loan.

Section 34: Save as expressly provided in this Act or in the Mysore Co-operative Societies Act, 1959, no interest of a tenant in any land held by him as a tenant shall be liable to be attached, seized or sold in execution of a decree or order of a civil court.

Section 61: Notwithstanding anything contained in any law, no land in respect of which occupancy has been granted under Chapter III or under Section 77 shall, within six years from the date of such grant, be transferred by sale, gift, exchange, mortgage, lease or assignment. However, sub-Section (2) states that it shall be lawful for the occupant registered as such or his successor-in-title, to mortgage or create a charge on his interest in the land in favour of the State Government or a co-operative society in consideration of a loan advanced to him. Any transfer or partition in contravention of this provision shall be invalid.

Section 74: On and from the date notified under sub-Section (1) of Section 66, no person owning land in excess of the ceiling limit specified in Section 63 or 64 shall alienate his holding or any part thereof by way of sale, gift, exchange or otherwise until he has furnished a declaration under Section 66, and the extent of land, if any, to be surrendered in respect of that holding has been determined by the Tribunal and an order has been passed by it under Section 67 and any alienation made in contravention of this Section shall be null and void.

Section 80: No sale (including sales in execution of a decree of a civil court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift or exchange or lease of land or interest therein or mortgage of land or interest therein, shall be valid in favour of a person who is not an agriculturist or an agriculturist who holds land as owner or tenant or partly as owner and partly as tenant in excess of the ceiling stipulated or who is not an agricultural labourer.

Section 81: Nothing in Section 80 shall apply to the sale, gift or mortgage of any land or

interest therein in favour of the Government or (sale of any land or interest therein) in favour of a co-operative society or the mortgage of any land or interest therein in favour of a co-operative society for loan advanced by such society. Similar facility is available to land development banks under the Mysore Co-operative Societies Act, 1959.

Section 103 (e): The provisions of Sections 10, 14 to 22, 35 to 42, 44 to 61, 63, 64, 80 and 84 to 88 of the Act (regarding tenancies, conferment of ownership on tenants, ceilings, etc.) shall not apply to lands held or leased by such co-operative societies as are approved by the State Government (Mysore Co-operative Societies Act, 1959, grants exemption to land development banks from provisions relating to ceiling on land holding).

The Mysore Bhoodan Yagna Act, 1963

Section 22(3): The *bhoodan* tenant or his heirs shall not be competent to sub-let or transfer the land or any portion thereof by sale, gift or otherwise.

The Mysore (Religious and Charitable) Inams Abolition Act, 1955

Section 7(3): The holder of a minor *inam* shall not be entitled to alienate the land vesting in him, except by way of a lease for a term not exceeding five years. Provided that nothing in this sub-Section shall apply to an alienation effected with the previous sanction of the prescribed authority.

Section 8(3): The *inamdar* shall not be entitled to alienate the land vested in him, except by way of a lease for a term not exceeding five years. Provided that nothing in this sub-Section shall apply to an alienation effected with the previous sanction of the prescribed authority.

Section 25: Every tenant of the *inamdar* other than a *Kadim* tenant or a permanent tenant shall be continued as a tenant under the

Government. No sub-letting of the land or assignment of any interest held by a tenant shall be valid. Such sub-letting or assignment shall terminate tenancy.

The Land Grant Rules

Lands are granted under the *Saguvali Chits* as per the Land Grant Rules. Mortgage of lands under these *Saguvali Chits* is provided for in favour of the Government and the co-operative institutions.

Mysore Prevention of Fragmentation and Consolidation of Holdings Act, 1966

Section 5: No person shall sell any fragment in respect of which a notice has been given under sub-Section (2) of Section 4 of this Act. However, subject to the provisions of Sections 39 and 80 of the Mysore Land Reforms Act, 1961 (stipulating that the landlord should offer first to sell the land to the tenant and that sale of land can be made only to certain persons), whenever a fragment is proposed to be sold, the owner of a contiguous survey number or recognised sub-divisions of survey number shall be given the option to purchase fragment at such price at which any other person is prepared to purchase. Only if he fails, other persons are allowed to purchase subject to the *Tahsil-dar's* permission.

The Mysore Moneylenders Act, 1961

Section 2: A loan to or by a bank is excluded from the provisions of the Act. Bank for the purpose means a banking company as defined in the Banking Regulation Act, 1949 and includes the State Bank of India and any other institution notified under Section 51 of the said Act.

The Mysore Agricultural Debtors' Relief Act, 1966

Section 3: Save as otherwise expressly provided, nothing in the Act shall affect any sum due to a scheduled bank.

NAGALAND

It would appear that the Assam State laws are still in operation in Nagaland subject to modifications resulting from the customary laws of the area which are specially recognised under the Constitution.

Based on a review of the replies of the State Government and the commercial bank which filled in the questionnaire regarding Nagaland, the following points emerge:

In all areas of the State excluding the Dimapur Mouza, traditionally, land is owned by the village as a whole. It is only recently that ownership of land by individuals has in some cases been recognised. Ownership in such cases is recognised in favour of persons actually making use of the land. Determination of ownership in individual cases is left to the village Elders. In the Dimapur Mouza, however, land settlement has been officially recognised and *pattas* conferring perpetual lease subject to the right to revise the rate of land revenue once in ten years have been issued in favour of individual owners. Ownership of land whether within Dimapur Mouza or outside is transferable by sale or otherwise and can also be mortgaged. There is no system of tenure-holders with limited rights. Accordingly, the question of conferring special rights to transfer land in such cases does not arise.

The landowners are entitled to create

mortgages in favour of commercial banks. There are, however, certain administrative instructions under which transfer to a non-indigenous person of the area requires special permission from the Government. In the event, therefore, of the commercial bank having to foreclose the mortgage, the subsequent sale by it would be subject to this restriction.

There are no tenancy arrangements in the State nor are there any *bhoodan* allottees. In Dimapur Mouza, Government has allotted some lands on the basis of annual leases which do not confer any transferable right on allottees. There is no law regarding prevention of fragmentation of land holdings.

In Dimapur Mouza, *pattas* provide the record of rights. In other areas, land ownership is traditionally established with reference to the personal knowledge of the *Gaon Bara* (the village Elder). There is no system of registration of mortgages. A certificate of registration can be obtained from the Deputy Commissioner's office. Even so, transfer of land can still take place within the village without any registration in accordance with tribal custom. There is no legislation regarding ceiling on land holdings, regulation of moneylending or for the relief of agricultural debtors. The Assam Co-operative Societies Act, 1949, is in force in the State.

ORISSA

The Expert Group examined the following enactments of the State :

1. The Orissa Estates Abolition Act, 1951;
2. The Orissa Land Reforms Act, 1960;
3. The Orissa Tenancy Act, 1913;
4. The Orissa Agricultural Land (Utilisation) Act, 1969;
5. The Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956;
6. The Orissa Merged Territories (Village Offices Abolition) Act, 1963;
7. The Orissa Offices of Village Police (Abolition) Act, 1964;
8. The Orissa Bhoodan Yagna Act, 1953;
9. The Orissa Money-Lenders Act, 1939;
10. The Orissa (Scheduled Areas) Moneylenders' Regulation, 1967;
11. The Orissa (Scheduled Areas) Debt Relief Regulation, 1967; and

12. The Orissa Co-operative Societies Act, 1962.

Based on a review of these enactments, the following points emerge :

I. Land Alienation Rights of Agriculturists

The rights of all intermediaries have been abolished under the Orissa Estates Abolition Act, 1951. The principal tenants of the intermediaries such as occupancy and non-occupancy *raiyats* etc., also came into direct relationship with the State but otherwise held the lands on the same terms and conditions as under the intermediaries. Under the Orissa Land Reforms Act, 1960, however, the occupancy *raiyats* and non-occupancy *raiyats* as also sub-tenants and under-*raiyats* and lessees of Government in personal cultivation of land and recorded as such, were recognised as *raiyats* with permanent, heritable and transferable rights.

However, a *raiyat* belonging to a notified scheduled tribe in a notified area is not allowed to make any transfer except where it is in favour of a person belonging to a scheduled tribe. Transfer to a person not belonging to a scheduled tribe is void if made without the previous permission of the Revenue Officer. The Revenue Officer is not to give such permission in the case of sale unless he is satisfied that a purchaser belonging to the scheduled tribe and willing to pay the market price for the land is not available. Even in regard to sales in pursuance of the Court decree, the Court has to specifically authorise sale to any person not belonging to a scheduled tribe. These restrictions apply *mutatis mutandis* to a transfer by a member of the scheduled castes but not to a transfer by a member of the scheduled tribes within a scheduled area. The Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956, also stipulates similar restrictions on transfer which includes mortgage also. However, a mortgage in favour of a land development bank or a co-operative society by a mem-

ber of scheduled tribes/castes is permitted as per recent amending Ordinance No. 1 of 1970.

Tenancies after the commencement of the Orissa Land Reforms Act, 1960, are prohibited. However, a privileged *raiyat*, which includes co-operatives including land development banks from among the institutional credit agencies, is allowed to lease out his lands to any tenant. The rights of a tenant are not transferable except in favour of a co-operative society.

An allottee of *bhoodan* land can mortgage his land only to the State Government or any co-operative society for the purpose of incurring a loan for reclamation, cultivation or improvement of land subject to such loan being recoverable as land revenue. *Bhoodan* lands cannot be encumbered otherwise. There is at present no legislation about prevention of fragmentation.

II. Ceiling on Land Holdings

The Orissa Land Reforms Act, 1960, stipulates ceiling limit on present holding as well as future acquisition of land. The ceiling provisions do not apply to a privileged *raiyat* i.e. a co-operative society or a co-operative land development bank.

III. Equitable Mortgages

Out of 62 towns in the State (as per Census 1961), none has been notified so far under Section 58(f) of the Transfer of Property Act, 1882, for creation of equitable mortgage.

IV. Land Records

The bulk of the occupied area has either been surveyed or is under survey, except the Agency Tracts. During the survey, a record of rights was prepared. In the *zamindari* areas, the record of rights included information about lands held by tenants of *zamindars*. The names of sub-tenants were also recorded. There was no Government Agency, however, at the village level to incorporate changes in the record of rights. Many *zamindars* kept an up-to-date

record of rights but in many cases it was not made available to the Government.

In the *khas mahals*, the record of rights included the names of Government tenants (*pattadars*) and their sub-tenants. The *sarbar-kars* were required to keep the record of rights up-to-date by incorporating mutations. It has not, however, been done in all cases.

The village agency in South Orissa, C.P. areas and the ex-State areas was also responsible for maintaining the record of rights up-to-date.

In no area, the names of *Bhagchasis* (crop-sharers) who are cultivating a considerable area are shown in the land records.

V. Moneylending

There are two enactments on moneylending in the State, viz., the Orissa Moneylenders Act, 1939, and the Orissa (Scheduled Areas) Moneylenders' Regulation, 1967. The State Government has exempted all scheduled banks from the provisions of Sections 5, 8, 9, 10 and 11 of the former Act. The non-scheduled banks will be exempt from the purview of the legislation only if notified by the Government. The latter enactment, which extends to all scheduled areas of the State, excludes 'banks' defined to mean a banking company as defined in Section 5 of the Banking Regulation Act, 1949 and includes State Bank of India, its Subsidiaries and any other financial institution notified in this behalf by the State Government from its purview.

VI. Debt Relief

The Orissa (Scheduled Areas) Debt Relief Regulation, 1967, which extends to all the scheduled areas of the State, exempts banks from its provisions. The definition of bank for purposes of this enactment is the same as in the Orissa (Scheduled Areas) Moneylenders' Regulation, 1967.

VII. Legislation pertaining to Co-operatives

The features of the Orissa Co-operative Societies Act, 1962, which will have a bearing

on commercial banks operations in the field of agricultural credit are :

1. Priority of Charges

The co-operatives will have a first charge upon the lands, crops and other agricultural produce, cattle, fodder for cattle, agricultural or industrial implements or machinery, raw materials and finished products of the member subject to any claim of the State Government in respect of land revenue or any money recoverable as land revenue. Alienation of land subject to charge without previous written permission of the society shall be void. Charge created in favour of society shall have priority over any claim of Government in respect of loan granted under Land Improvement Loans Act, 1883 or the Agriculturists' Loans Act, 1884 or the Bihar and Orissa State Aid to Industries Act, 1923, after the grant of loan by society (Section 34).

Subject to any claim of the Government in respect of land revenue or any money recoverable as land revenue, any debt due to a land development bank in respect of a mortgage executed by a member in its favour shall be a first charge upon the land so mortgaged (Section 85).

Besides, co-operatives and land development banks enjoy the following facilities :

1. State Government is empowered to remit stamp duty and registration fee payable by societies (Section 38).

2. Disputes touching constitution, management or business of a society between the society and its members shall be referred to the Registrar, whose decision shall be final and no such dispute shall be entertained in any civil court. The question whether a dispute is one touching constitution, management or business of a society shall be decided by the Registrar whose decision shall be final and shall not be called in question in any court (Section 68).

3. Mortgage executed in favour of a land development bank shall have priority over any

claim of the Government arising from a loan under the Land Improvement Loans Act, 1883 or the Agriculturists' Loans Act, 1884, granted after the execution of the mortgage (Section 85).

4. Mortgages executed in favour of a land development bank by the manager of a joint Hindu family shall be binding on all members thereof, if the loan secured by the mortgagor was granted for any purpose of agricultural development of the land in accordance with the bye-laws of the bank. Where a mortgage executed in favour of a land development bank is called in question on the ground that it is executed by the manager of a joint Hindu family for a purpose not binding on members thereof, the burden of proving the same shall be upon the party alleging it (Section 85A).

5. Section 8 of the Hindu Minority and Guardianship Act, 1956, shall apply to mortgages in favour of a land development bank subject to the modification that reference to the court therein shall be construed as reference to the Collector (Section 85B).

6. Land development banks are allowed to purchase any mortgaged property sold under the provisions of the Act and the property so purchased shall be disposed of by such bank by sale within such period as may be fixed by the Trustee. Nothing in the Orissa Land Reforms Act, 1960, fixing a maximum limit of agricultural holding shall apply to acquisition of land by a land development bank (Section 86).

7. If any instalment or part thereof under a mortgage has remained unpaid for more than a month, land development bank can recover it through Registrar by distraint and sale of produce of the mortgaged land including the standing crop thereon (Section 90).

8. Provisions contained in Sections 85 and 90 shall; *mutatis mutandis*, apply in respect of a mortgage executed in favour of a society (Section 34(6)).

9. Property mortgaged to land development bank can be brought to sale in case of default by borrower of payment of mortgage money or part thereof, without the intervention of court, if the mortgage deed confers such powers on the bank (Section 91).

10. Where any property is sold in exercise of a power of sale under Sections 90 and 91, the title of purchaser will not be questioned on the ground of any irregularity (Section 94).

11. A mortgagor shall not grant a lease of the mortgaged property for a period exceeding five years; any lease granted in contravention of this provision shall be void (Section 97).

12. It shall not be necessary to register a mortgage executed in favour of a land development bank provided the bank sends a copy of the mortgage deed to the Registering Officer within prescribed time. It shall not be necessary for any officer of a land development bank to appear in person or by agent at any registration office for registration of any instrument executed in his official capacity (Section 98).

13. It shall not be necessary for persons belonging to scheduled tribes or scheduled castes to obtain permission of the prescribed authority for mortgaging any immovable property belonging to them in favour of any society including a land development bank (Section 98A).

14. The Registrar may, on an application of the society, make an order directing the payment of any debt or outstanding demand due to the society by any member by sale of the property or any interest therein subject to charge under Section 34 (Section 102).

15. Every order passed by the Registrar shall, if not carried out, on a certificate signed by the Registrar, be deemed to be a decree of civil court and executed as such or executed in the manner prescribed for recovering arrears

of land revenue or be executed by the Registrar by sale with or without attachment of any property of the person against whom the order is obtained (Section 103).

16. When exercising powers under the Act for the recovery of any amount by sale with or without attachment or when passing any orders on any application made to him for recovery of dues, the Registrar shall be deemed to be a civil court (Section 104).

17. The Registrar can order attachment of property before award or order if he is satisfied that the party is about to dispose of the whole or any part of his property or about to take the same away from the jurisdiction of the Registrar (Section 105).

18. It shall be lawful for a tenant (whether occupancy or otherwise) to mortgage to the society his rights in his holding as security for a loan or to sell such right for the purpose of repaying such loan (Section 106).

19. No civil or revenue court shall have any jurisdiction in respect of any dispute required to be referred to the Registrar (Section 121).

VIII. Action taken by the State Government

1. The State Government is contemplating to amend the Orissa Land Reforms Act, 1960 and the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956, so as to enable the cultivators belonging to scheduled tribes and scheduled castes to obtain loans from institutional credit agencies including commercial banks.

2. Stamp duty has since been exempted for loans upto Rs. 5,000/- for deeds executed before the 1st October, 1972, by farmers mortgaging properties in favour of scheduled banks for obtaining loans for agricultural purposes including loans for special farming such as poultry, piggery, dairy, fishery, etc.

3. Instructions have been given for issue of non-encumbrance certificate as quickly as possible.

IX. Provisions in the State Enactments having a bearing on Commercial Banks Lending to Agriculture

The Orissa Land Reforms Act, 1960

Section 6(2): A transfer after the commencement of this Act by way of lease of any land held by a *raiyat* shall be void. But it shall be lawful for a *raiyat* who is a person under disability or a privileged *raiyat* (which includes a co-operative society or a land development bank) to lease out his lands to any tenant.

Section 7: No rights of a tenant in any land held by him as such shall be transferable.

Section 22: Any transfer by a *raiyat* belonging to a scheduled tribe shall be void except where it is in favour of (a) a person belonging to a scheduled tribe or (b) a person not belonging to a scheduled tribe, when such transfer is made with the previous permission in writing of the Revenue Officer.

State Government may, having regard to the law and custom applicable to any area prior to the commencement of the Act, by notification, direct that the restrictions provided in sub-Section (1) shall not apply to lands situated in such area or belonging to any particular tribe throughout the State or in any part of it.

No such holding shall, unless the Court otherwise directs, be sold in execution of a decree to any person not belonging to a scheduled tribe.

Provisions of this Section shall apply, *mutatis mutandis*, to a transfer by a member of a scheduled caste.

Provided that nothing in this Section shall apply to such transfers by a member of scheduled tribe within a scheduled area.

Section 37: Nothing in this chapter (i.e. relating to ceiling and surplus land) shall apply to lands held by a privileged *raiyat* (which includes a co-operative society and a land development bank),

The Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956

Section 3(1): Any transfer of immovable property situated within a scheduled area by a member of a scheduled tribe shall be null and void unless made in favour of another member of a scheduled tribe or with the previous consent in writing of the competent authority.

Section 6: In execution of a money decree, the right, title or interest held by a member of a scheduled tribe in any immovable property within any scheduled area cannot be attached and sold except as and if prescribed.

The Orissa Bhoodan Yagna Act, 1953

Section 16(2): All alienations by way of mortgage, sale, lease, exchange, gift, bequest or otherwise of lands granted under the Act shall be void and in-operative and no such land shall be liable to attachment or sale in execution of a decree or order passed by a civil court.

However, the grantee may, for the purposes of incurring a loan for reclamation, cultivation or improvement of land, mortgage the same with the State Government or any co-operative

society subject to such loan being recoverable as arrears of land revenue.

The Orissa Moneylenders Act, 1939

Section 2: A bank is defined as a company carrying on the business of banking and (i) registered under any of the enactments relating to companies for the time being in force in India or (ii) incorporated by any Central Act.

Banks are not exempt from the provisions of the Act, but State Government is empowered to exempt any class of moneylenders from any provisions of the Act.

The Orissa (Scheduled Areas) Moneylenders Regulation, 1967

Section 2: A bank is defined as one defined in Section 5 of the Banking Regulation Act, 1949, and includes the State Bank of India and its Subsidiaries and any other financial institution notified in this behalf by the Government.

Moneylender is so defined as to exclude banks from the purview of this Act.

The Orissa (Scheduled Areas) Debt Relief Regulation, 1967

Section 2: The provisions of this Regulation shall not apply to the claims in respect of any liability due to a bank. A 'bank' means a banking company as defined in Section 5 of the Banking Regulation Act, 1949 and includes the State Bank of India, Subsidiary banks and any other financial institution notified in this behalf by the State Government.

PUNJAB AND HARYANA

The following enactments were reviewed by the Expert Group:

- (1) The Punjab Security of Land Tenures Act, 1953;
- (2) The Punjab Abolition of Ala Malikiyat and Talukdari Rights Act, 1952;
- (3) The Punjab Occupancy Tenants (Vesting

of Proprietary Rights) Act, 1953;

- (4) The Punjab Resumption of Jagirs Act, 1957;
- (5) The Pepsu Abolition of Ala Malikiyat Rights Act, 1954;
- (6) The Pepsu Occupancy Tenants (Vesting of Proprietary Rights) Act, 1954;

- (7) The Pepsu Tenancy and Agricultural Lands Act, 1955;
- (8) The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948;
- (9) The Punjab Bhudan Yagna Act, 1955;
- (10) The Punjab Tenancy Act, 1887;
- (11) The Punjab Debtors' Protection Act, 1936;
- (12) The Punjab Relief of Indebtedness Act, 1934;
- (13) The Punjab Regulation of Accounts Act, 1930;
- (14) The Punjab Registration of Money-lenders Act, 1938;
- (15) The Punjab Co-operative Societies Act, 1961;
- (16) The Punjab Co-operative Land Mortgage Banks Act, 1957;
- (17) The Punjab Pre-emption Act, 1913; and
- (18) The Utilisation of Surplus Area Scheme, 1960.

Based on a review of these enactments, the following points emerge :

I. Land Alienation Rights of Agriculturists

Punjab and Haryana are predominantly *ryotwari* areas. Vestiges of intermediaries existing in both the States were abolished by the Punjab Abolition of Ala Malikiyat Act, 1953, in the Punjab and by a similar enactment in 1954 in the area covered by the former Pepsu State.

Similarly, occupancy tenants in both the States were vested with full proprietary rights over the lands held by them under the Occupancy Tenants (Vesting of Proprietary Rights) Act enacted in 1953 in the Punjab and in 1954 in Pepsu.

The 'permissible' limit of land that can be held by a landowner or an allottee of the Government land or a tenant is 30 acres under the Punjab Security of Land Tenures Act, 1953.

The Pepsu Tenancy and Agricultural Lands Act, 1955, also stipulates the 'permissible' limit of land under personal cultivation at 30 acres in respect of landowners and allottees. Landlords can resume land from tenants upto the permissible limit. However, the tenant is entitled to retain upto five standard acres until he is provided alternate land by the State Government. A tenant holding land for twelve years continuously is eligible to retain upto fifteen standard acres. These tenants can purchase ownership rights in respect of land held by them upto the stipulated extent. However, land in respect of which ownership rights have been acquired cannot be alienated to any agency except Government or the Punjab State Co-operative Land Mortgage Bank for a period of six years. Under the Punjab enactment, the right of a tenant to purchase ownership rights accrues only if he has held the land in continuous possession for six years and if the land is surplus land. However, he has right to transfer his interest in land. In both cases, the right to purchase does not accrue to a tenant/lessee of the Government and under the Punjab enactment, in respect of land held from local bodies or in respect of any unallotted evacuee land. Further, the right of a tenant to purchase land is not given to him, if the land is leased to him by a land mortgage bank. The State Government is, however, empowered under Section 21(A) of the Punjab Security of Land Tenures Act, 1953, to issue a notification removing the difficulties faced by any class of tenants or owners.

Finally, the Punjab Pre-emption Act, 1913, which extends to Punjab and Haryana States, stipulates that the right of pre-emption accruing under the Act, will arise only in respect of sales other than sales in execution of a decree.

The following categories of landholders do not enjoy similar rights of alienation:

(i) A fragment holder can transfer his fragment only to a contiguous plot holder. In case of sales, if the latter is unwilling to purchase the fragment, it will be taken over by the Government. According to the Government of Haryana, the Sections relating to the fragmentation are in-operative in the State as no rules have been framed under the Act so far.

(ii) An allottee of *bhudan* land shall not transfer his interest in land. Further, *bhudan* land shall not be liable to attachment or sale in execution of any decree or order passed by a civil court.

(iii) A landholder or a tenant holding land not exceeding five standard acres or agricultural labourers in former Pepsu area will be allotted land by the Government from out of surplus land under the Utilisation of Surplus Area Scheme, 1960. Such allottees are not competent to transfer their rights in the land till all the dues in respect of land are cleared. However, they can mortgage their land to a land mortgage bank for raising a loan.

(iv) Tenants other than occupancy tenants cannot transfer their interest in land.

II. Ceiling on Land Holdings

The Punjab Security of Land Tenures Act, 1953 and the Pepsu Tenancy and Agricultural Lands Act, 1955, stipulate the ceiling limit on present holding and future acquisition of lands. The co-operative farming societies are exempted from ceiling provision. Land mortgage banks are exempted from this provision under the Punjab Co-operative Land Mortgage Banks Act, 1957.

III. Land Records

The following are the principal records which are maintained:

(1) *Mis-Haquiats* (record of rights) is prepared at the time of settlement for each estate.

(2) *Jamabandi* (register of holdings of owners and tenants): It is written up every four years. If a *patwari* has four villages in his circle, he prepares one quadrennial each year. The quadrennial *jamabandi* shows particulars of each owner's and tenant's holding, field numbers comprised in each, the land revenue payable by the owner and the rent payable by the tenant.

(3) *Khasra girdwari* (harvest inspection book): This register is maintained field-wise, showing classification of soil, ownership and tenancy and the crops sown. The rents paid to landlords are also entered. The entries are made twice a year at the time of harvest inspection by the *patwari* by a check on the spot.

(4) Mutation Register: As mentioned above, detailed entries are made in the *jama-bandi* as well as *khasra girdwari* showing the names of tenants, the nature of rights and the rents payable by them.

IV. Equitable Mortgages

Out of a total of 187 towns in both the States (as per Census 1961), none has been notified under Section 58(f) of the Transfer of Property Act, 1882, for creation of equitable mortgages.

V. Moneylending

Both, the Punjab Regulation of Accounts Act, 1930 and the Punjab Registration of Money-Lenders Act, 1938, exclude loan by a bank which is defined to mean a company carrying on the business of banking and registered under any of the enactments relating to companies for the time being in force or incorporated by an Act of Parliament.

VI. Debt Relief

The Punjab Debtors' Protection Act, 1936, excludes from its purview debt owed to banks defined as in the moneylending legislation. The Punjab Relief of Indebtedness Act, 1934, ex-

cludes debts due to scheduled banks or any banking company registered under the Indian Companies Act, 1917.

VII. Legislation pertaining to Co-operatives

The features of the Punjab Co-operative Societies Act, 1961, which will have a bearing on commercial banks operations in the field of agricultural credit are:

1. Priority of Charges

Subject to any prior claim of the Government in respect of land revenue or any money recoverable as land revenue, society shall have a first charge upon the crops and other agricultural produce, cattle, fodder for cattle, agricultural or industrial implements or machinery, raw materials or finished products belonging to the indebted member. Alienation of property subject to charge except with previous written permission of the society shall be void. The charge shall be available as against any claim of the Government arising from a loan granted under the Land Improvement Loans Act, 1883 or the Agriculturists' Loans Act, 1884, after the grant of loan by the society (Section 31).

Besides, co-operatives enjoy the following facilities:

(1) A member can create a charge on land or his interest therein as a tenant in favour of a society by means of mere declaration. Alienation of property subject to charge under declaration shall be void. Provided that for the purpose of paying in full to the society, the member may, with the previous written permission of the society and subject to conditions imposed by it, alienate the whole or part of such land or interest therein. Provided further that standing crops on any such land may be alienated with previous permission of the society. Subject to prior claims of the Government in respect of land revenue or any money recoverable as land revenue, society shall have a first charge on land or interest therein specified in

the declaration. The Record of Rights shall also include particulars of charge created under declaration.

Explanation: For the purposes of this Section, society shall mean any co-operative society or class of co-operative societies specified in this behalf by the Government by general or special order (Section 32).

(2) Government is empowered to exempt, by notification, payment of stamp duty on instruments executed by or on behalf of society and any fee payable under the law relating to registration (Section 38).

(3) Disputes touching constitution, management or business of the society between members and the society shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such disputes. On a question whether a dispute is or is not one touching management, constitution or business of the society, the Registrar's decision shall be final and shall not be called in question in any court (Section 55).

(4) On an application from a society for recovery of any debt due to it, the Registrar may, subject to rules, order sale of property subject to first charge under Section 31, after serving notice on the indebted member (Section 62).

(5) Order of the Registrar, if not carried out, on a certificate signed by the Registrar, shall be deemed to be a decree of a civil court and shall be executed in the same manner as a decree of such court, or by attachment and sale or by sale without attachment of the property of the indebted member, or according to the law for recovery of arrears of land revenue (Section 63).

(6) Registrar is empowered to attach property before award if he is satisfied that any person, with intent to defeat or delay the execution of the decision, is about to dispose of the property (Section 65).

(7) Registrar or person authorised by him is deemed to be a civil court when exercising powers for recovery of any amount (Section 66).

(8) No civil or revenue court shall have any jurisdiction in respect of any dispute required to be referred to the Registrar. No order, decision or award made under this Act shall be questioned in any court on any ground whatsoever (Section 82).

Further, under the Punjab Co-operative Land Mortgage Banks Act, 1957, land mortgage banks have following facilities:

(1) If two consecutive instalments or part thereof payable under a mortgage has remained unpaid for more than three months from due date, the land mortgage bank shall apply to the Registrar for recovery of such instalments by distraint and sale of produce of the mortgaged land including standing crops thereon; provided that no distraint shall be made after the expiry of twelve months from due date (Section 12).

2. Where a power is expressly conferred on the land mortgage bank, the bank shall, in case of default of payment of mortgage money due, have power to bring the mortgaged property to sale without intervention of the court (Section 15).

3. Notwithstanding any law including that imposing a ceiling on agricultural holdings, it shall be lawful for the land mortgage bank to purchase mortgaged property, which shall be disposed of by the bank by sale within period prescribed by the Trustee (Section 21).

4. Where mortgaged property is sold by the land mortgage bank in exercise of its powers under the Act, the title of the purchaser shall not be impeachable on the ground of any irregularity (Section 23).

5. The duration of any lease executed by a mortgagor of property mortgaged to a land mortgage bank after the execution of the mortgage shall in no case exceed five years (Section 27).

6. A mortgage executed in favour of a land mortgage bank shall have priority over any claim of the Government arising from a loan under the Land Improvement Loans Act, 1883, granted after the execution of mortgage (Section 29).

7. It shall not be necessary for any officer of a land mortgage bank to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity or to sign as provided in Section 58 of the Indian Registration Act, 1908 (Section 32).

8. Where a mortgage executed in favour of a land mortgage bank is called in question on the ground that it was executed by the manager of a joint Hindu family for a purpose not binding on the members, whether major or minor, the burden of proving the same shall be on party raising it (Section 34).

VIII. Action taken by State Government — Haryana

The State Government has taken the following steps to facilitate financing of agriculturists by commercial banks:

(1) The Government has remitted stamp duty in respect of mortgages without possession executed by agriculturists in favour of scheduled banks for securing loans upto Rs. 15,000/- in the case of sandy and drought affected areas (so notified by the State Government) and upto Rs. 10,000/- in the case of other areas, for sinking and/or electrification of tube-wells, and for financing pump-sets and other equipments. Exemption is given for a period of two years with effect from November 6, 1969.

(2) The State Government is considering amendment of Section 31 of the Pepsu Tenancy and Agricultural Lands Act, 1955, to provide relaxation in favour of commercial banks also.

(3) The State Government is considering amendment of Section 31 of the Punjab Co-

operative Societies Act, 1961, to equate commercial banks with co-operative societies.

(4) The Government is considering to give priority to commercial banks for the mortgages executed in their favour over any claim of Government arising from a loan under the Land Improvement Loans Act, 1883 or the Agriculturists' Loans Act, 1884, granted after the execution of the mortgage.

(5) The case of automatic registration by inquiry in the case of mortgages executed in favour of commercial banks and land mortgage banks is under consideration of the Government.

(6) The Government is considering extension of facility of recovering dues of commercial banks by permitting sale of mortgaged lands without the intervention of the court.

IX. Provisions in the State Enactments having a bearing on Commercial Banks Lending to Agriculture

The Punjab Security of Land Tenures Act, 1953

Section 19(A): The co-operative farming societies are exempted from the provision relating to ceiling on land holding if each member's holding does not exceed the permissible area (The Punjab Co-operative Land Mortgage Banks Act, 1957, exempts land mortgage banks from ceiling provision).

The Pepsu Tenancy and Agricultural Lands Act, 1955

Section 32K: Provisions of Section 32A (i.e., regarding ceiling on land holding) shall not apply to lands held by co-operative farming societies, provided the land owned by an individual member does not exceed the permissible limit (The Punjab Co-operative Land Mortgage Banks Act, 1957, exempts land mortgage banks from the ceiling provision).

Section 31(I): No land in respect of which proprietary rights are acquired by a tenant under

this Act shall be transferred by sale, mortgage, gift or otherwise during a period of six years from the date of obtaining a certificate declaring him to be the landowner. This does not apply to land mortgaged with the State Government or the State Co-operative Land Mortgage Bank.

The Pepsu Tenancy & Agricultural Lands Act, 1955

Section 32(I): The State Government may utilise the surplus land to allot to landowners or to tenants holding land not exceeding five standard acres in order to make their holdings equal to five standard acres, and to landless agricultural workers etc. Persons settled with such surplus land are called settlers. Under 'the Utilisation of Surplus Area Scheme, 1960' prepared in terms of the Act, the settlers are not competent to transfer their rights in the land till all the dues in respect of the land are cleared but are entitled to mortgage the land to a land mortgage bank for raising a loan. Government is, however, empowered to amend the rules.

The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948

Section 7: No person shall transfer any fragment in respect of which a notice has been given under sub-Section (2) of Section 6, unless thereby the fragment becomes merged in a contiguous survey number or recognised sub-division of a survey number.

Section 9: Any transfer of land contrary to the provisions of this Act shall be void.

Section 11: Sale of fragment can be made only to the owners of contiguous survey numbers or recognised sub-divisions of survey numbers, and in case of their refusal to purchase at the fixed price, it may be transferred to the State Government.

The Punjab Bhudan Yagna Act, 1955

Section 25(c): Person to whom land is allotted

under the Act, shall not transfer any interests in the land.

Section 27 : Subject to any decree passed under Section 18, land held by a *bhudan* holder shall not be liable to attachment or sale in execution of any decree or order passed by a civil court.

The Punjab Relief of Indebtedness Act, 1934

Section 7 : Debt ... shall not include ... debts due to the Imperial Bank of India or to any banking company registered under the Indian Companies Act, 1913, prior to 1st April 1937 or any scheduled bank.

RAJASTHAN

The Expert Group examined the following enactments of the State:

1. The Rajasthan Land Reforms and Resumption of Jagirs Act, 1952;
2. The Ajmer Abolition of Intermediaries and Land Reforms Act, 1955;
3. The Rajasthan Tenancy Act, 1955;
4. The Rajasthan Holdings (Consolidation & Prevention of Fragmentation) Act, 1954;
5. The Rajasthan Money-lenders Act, 1963;
6. The Rajasthan Jagirdars' Debt Reduction Act, 1956;
7. The Rajasthan Relief of Agricultural Indebtedness Act, 1957; and
8. The Rajasthan Co-operative Societies Act, 1965.

Based on a review of these enactments, the following points emerge:

I. Land Alienation Rights of Agriculturists

Intermediary tenures were abolished under the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952, the Ajmer Abolition of Intermediaries and Land Reforms Act, 1955 and the Rajasthan Zamindari and Biswedari Abolition Act, 1959. Under these enactments, all lands of intermediaries were made liable to payment of land revenue. All principal tenants of intermediaries who were entered in the revenue records as having heritable and transferable rights retained their rights and were called *khatedar* tenants. The *khudkasht* lands (i.e. lands personally cultivated) of an intermediary were

settled with him. However, he acquired *khatedari* rights in respect of them only on resumption of the *jagir* by the Government. Pending the same, the *khudkasht* right was not transferable except by way of exchange, partition or gift for the purpose of maintenance.

The Rajasthan Tenancy Act, 1955, provided for security of tenure, conferment of ownership rights on tenants and for ceiling on land holdings. The Act classified tenants into three categories, viz., *khatedari* tenants and tenants of *khudkasht* or sub-tenants; every tenant other than the two categories mentioned above was classified as *ghair khatedar* tenant. Tenants of *khudkasht* or sub-tenants who held land at the commencement of the Act were eligible to acquire *khatedari* rights in respect of the area not resumable by the *khatedar*, by paying the amount of compensation fixed in this respect either in lumpsum or in ten annual instalments. Although *khatedari* rights accrue after issue of a certificate, the alienation rights were restricted till after the full compensation is paid. Similarly, tenants getting land under the command areas of various irrigation projects for compensation amount payable in instalments, do not get alienation rights unless all instalments are paid.

However, under an Ordinance promulgated in December, 1969, amending Section 43 of the Rajasthan Tenancy Act, 1955, the Government has conferred on all *khatedar* and *ghair khatedar* tenants the right to hypothecate or mortgage their interest in land in favour of State Government, land development bank or a co-operative society or any scheduled bank or any credit institution notified in this behalf by the Government. In the case of usufructuary mortgage, the mortgage deed must provide that the

mortgage amount shall be deemed to be paid off by the usufruct of the property within ten years. The right to mortgage given to *ghair-khatedar* tenants is exercisable with the general or special permission of the District Collector. In the event of sale of land belonging to a member of scheduled caste/tribe by a bank due to foreclosure of loan, the sale can be made only in favour of another member of the same denomination.

Grantees of land from the Government under the Rajasthan Government Grants Act, 1961, hold land under specific conditions, one of which is that they do not have right to mortgage their land. If, however, they are also treated as *ghair khatedar* tenants, they will also be subject to same restrictions.

Landholders acquire land under the Rajasthan Colonisation Act, 1954 and the various rules framed thereunder. In general, the allottee tenants are to acquire *khatedari* rights by payment of compensation but pending acquisition of these rights, their rights of alienation are limited. They are also covered under the Ordinance referred to above. Sub-tenants do not have any alienation rights.

Allottees of land under the *Bhoodan* and *Gramdan* Acts do not acquire any transferability rights in land allotted. However, under an Ordinance issued in October, 1969, a *gramdan kisan* is allowed to transfer his interest in land to a person who has joined the *gramdan* community in respect of village in which the land is situated or to the *gram sabha* or a co-operative society or the Government or any institution approved by the State Government. In the case of *gramdan kisan* of scheduled caste/tribe, there is further restriction on his transferring his interest in land to *gramdan kisan* who is also a member of scheduled tribe/caste. *Gram sabhas* also have been authorised to raise money on security of property from any institution.

Under the Rajasthan Holdings (Consolidation and Prevention of Fragmentation) Act,

1954, no person shall transfer any fragment in respect of which a notice has been given under Section 6, unless thereby the fragment becomes merged in a contiguous survey number or a recognized sub-division of a survey number. Any transfer contrary to this provision shall be void. Thus, it would appear that fragments cannot be mortgaged. Further, sale of a fragment can be made only to the holder or a tenant of the contiguous survey number or recognized sub-division of survey number, and in case of their refusal to purchase for the fixed price, it may be transferred to the State Government.

II. Ceiling on Land Holdings

The Rajasthan Tenancy Act, 1955, provides for ceiling limit on present holding and future acquisition of lands. Section 30(J) of the Act, empowers the State Government to exempt any person, or class of persons, land or holding from the operation of the ceiling limit if it considers such exemption to be necessary. Land development banks have been exempted from the ceiling provisions under the Rajasthan Co-operative Societies Act, 1965.

III. Land Records

1. Former Rajasthan Area: The main land records are *khasra girdvari* and *jamabandi* which contain the names of tenants and sub-tenants and rents payable by them. The names of *sajhis* (partners-in-cultivation) are also shown.

In the undisputed cases, a *patwari* is competent to make corrections or changes in respect of tenancy or other rights, such as possession, rents, etc. But in the disputed cases, no changes can be effected without the orders of the Sub-divisional Officer.

2. Ajmer area: The main land records are: (1) *Khewat* which is a register of the proprietors of lands in a village and (2) *Khasra girdvari* which shows the crops grown, the

names of tenants and sub-tenants and the rents payable by them. A *patwari* is not authorised to effect any changes in the *khewat*. In undisputed cases of sales, gifts, mortgages, successions, adoptions, etc., the changes in the records are made by *Naib-Tahsildars* and *Tahsildars*. In disputed cases, entries are made according to decisions of the Sub-divisional Officer and superior courts. Corrections in the settlement records can be made only on the orders of the Collector.

IV. Equitable Mortgages

Only eight out of 145 towns in the State (as per Census 1961) have been notified under Section 58(f) of the Transfer of property Act, 1882, for creation of equitable mortgages.

V. Moneylending

The Rajasthan Money-lenders Act, 1963, excludes from its purview loan by a bank. Bank for purposes of the Act is as defined in Section 5 of the Banking Regulation Act, 1949 and includes the State Bank of India and any other banking institution notified by the Central Government under Section 51 of the said Act.

VI. Debt Relief

The Rajasthan Jagirdars' Debt Reduction Act, 1956, excludes debts due to a scheduled bank. However, the portion of the definition which excludes the debt due to specified institutions has been declared void. It would, therefore, imply that now there is no distinction between the debts of the non-scheduled banks and the scheduled banks.

The Rajasthan Relief of Agricultural Indebtedness Act, 1957, does not apply to debts due to scheduled banks.

VII. Legislation pertaining to Co-operatives

The features of the Rajasthan Co-operative Societies Act, 1965, which will have a bearing on commercial banks operations in the field of agricultural credit are :

1. Priority of charges

Society shall have a first charge upon crops and other agricultural produce, cattle, fodder for cattle, agricultural and industrial implements, machinery, etc., of the indebted member; charge will be subject to any prior claim of the Government in respect of land revenue or any money recoverable as land revenue, but it shall be available against any claim of the Government arising from a loan granted under the Rajasthan Agricultural Loans Act, 1956, after the grant of the loan by the society; property subject to charge cannot be alienated without prior written permission of the society. Any transfer made in contravention of this provision shall be void (Section 38).

Besides, co-operatives enjoy the following facilities :

1. A member can create a charge on immovable property, in respect of a loan other than short-term loan, by means of mere declaration in favour of the society. Alienation of property subject to charge shall be void. Subject to prior claims of Government in respect of land revenue or any money recoverable as land revenue and to the claims of land development bank in respect of its dues, there shall be a first charge in favour of the society on the immovable property specified in the declaration. Upon an application by the member or the society, an entry relating to charge created by declaration shall be made in the annual registers maintained under the Rajasthan Land Revenue Act, 1956. Registration of the declaration shall not be compulsory (Section 39).

2. The Government may, by notification, exempt the payment of the stamp duty in respect of any instrument executed by or on behalf of a co-operative society, and any fee payable under the law relating to registration of documents (Section 44).

3. Disputes touching the constitution, management or business of the society shall be referred to the Registrar for decision and no

court shall have jurisdiction to entertain any suit or other proceeding in respect of such disputes. If any question arises as to whether a dispute referred to the Registrar under this section is a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court (Section 75).

4. A mortgage executed in favour of a land development bank shall have priority over any claim of the Government arising from a loan granted under the Rajasthan Agricultural Loans Act, 1957, after the execution of the mortgage; where a mortgage in favour of a land development bank is in respect of land in which a tenant has an interest, the mortgage may be against the security of such interest and rights of the mortgagee shall not be affected by the tenant's non-compliance with the requirements of tenancy law and the sale of the land or his interest therein under such law shall be subject to the prior charge of the land development bank (Section 93).

5. It shall not be necessary to register mortgages or leases executed in favour of land development banks, provided that the bank concerned sends a copy of the instrument to the Registering Officer within prescribed time (Section 95).

6. A mortgage in favour of a land development bank by the manager of a joint Hindu family for the improvement of agricultural land or of methods of cultivation or for financing any other means to raise productivity of land or for purchase of land, shall be binding on every member of such family; if a mortgage in favour of a land development bank is called in question on the ground that it was executed by the manager of a joint Hindu family for a purpose not binding on the members thereof, the burden of proving the same shall lie on the party alleging it (Section 98).

7. Section 8 of the Hindu Minority and Guardianship Act, 1956, shall apply to the mortgages in favour of a land development

bank, subject to the modification that reference to the court therein shall be construed as reference to the Collector (Section 99).

8. No mortgagor of property mortgaged to a land development bank, shall, except with the prior information in writing to the bank, lease or create any tenancy rights on any such property (Section 100).

9. Property purchased by a land development bank may be disposed of by sale within the period fixed by the Trustee, subject to the condition that sales shall be in favour of only agriculturists eligible to hold land under tenancy law, or may be leased out on terms and conditions laid down by the Government; nothing contained in any law for the time being in force fixing the maximum limit of agricultural holdings shall apply to the acquisition or holding of land by land development banks (Section 103).

10. If any instalment or any part of such instalment payable under a mortgage executed in favour of a land development bank, has remained unpaid for more than one month from the due date, the bank may apply to the Registrar for the recovery of such instalment or part thereof, by distraint and sale of the produce of the mortgaged land, including the standing crops thereon (Section 105).

11. Land development bank shall, in case of default of payment of the mortgage money, or any part thereof, have power to bring the mortgaged property to sale by public auction without intervention of the court; it shall be lawful for a land development bank to purchase any mortgaged property sold under this Act (Section 106).

12. Where any property is sold in the exercise of a power of sale under Section 106, the title of the purchaser shall not be questioned on the ground of any irregularity (Section 109).

13. On an application made by a land development bank for the recovery of arrears of any sum advanced by it to any of its mem-

bers, the Registrar may grant a certificate for the recovery of the amount stated therein to be due as arrears. The arrears stated to be due therein shall be recoverable according to the law for the time being in force for the recovery of arrears of land revenue (Section 110).

14. The Registrar may give an order directing the payment of any debt or outstanding demand due to the society by any member by sale of the property or any interest therein, which is subject to a charge under sub-Section (1) of Section 38 (Section 117).

15. Every order made by the Registrar shall if not carried out (a) on a certificate signed by the Registrar, be deemed to be a decree of a civil court and shall be executed in the same manner as a decree of such court or (b) be executed according to the law for the time being in force for the recovery of arrears of land revenue or (c) be executed by sale with or without attachment of any property of the person against whom such order is passed (Section 118).

16. The Registrar shall be deemed, when exercising any powers under this Act for the recovery of any amount, to be a civil court (Section 119).

17. If the Registrar is satisfied, that any person with intent to delay the enforcement of any order, decision or award is about to dispose of the whole or any part of his property, he may direct the attachment of the said property before award (Section 120).

18. No civil or revenue court shall have any jurisdiction in respect of any dispute required to be referred to the Registrar. Save as provided in this Act, no order, decision or award made under this Act shall be questioned in any court on any ground whatsoever (Section 137).

VIII. Action taken by State Government

The State Government has taken following steps to facilitate financing of agriculturists by commercial banks :

1. The State Government has exempted stamp duty on mortgages executed by agriculturists for obtaining loans for agricultural purposes from scheduled banks.

2. Section 43 of the Rajasthan Tenancy Act, 1955, has been amended to enable *khatedar* tenants and *ghair khatedar* tenants with special or general permission of the Government to hypothecate or mortgage their interest in favour of scheduled banks for the purpose of obtaining loans. The Government has already authorised District Collectors for grant of such permission in favour of *ghair khatedar* tenants.

3. The State Government has taken steps to issue 'Pass Books' to all cultivators which are expected to expedite sanctioning of loans by commercial banks as these books contain information about details of mortgages of land and clearance of title etc.

IX. Provisions in the State Enactments having a bearing on Commercial Banks Lending to Agriculture

The Rajasthan Tenancy Act, 1955

Section 10(2): Khudkasht right is not transferable except by exchange or partition or by gift for purpose of maintenance.

Section 32(j): The Government is empowered to exempt, by notification, any class of persons or lands from this provision. Land development banks have been exempted from the ceiling provision under the Rajasthan Co-operative Societies Act, 1965.

Section 37: The rights of a tenant in a holding shall not be liable to seizure, attachment or sale by process of any civil court.

Section 43: A *khatedar* tenant or a *ghair khatedar* tenant with the general or special permission of the State Government may hypothecate or mortgage his rights in the holding in favour of the State Government or a land development bank or a co-operative society or any scheduled bank or any other institution

notified by the Government in that behalf for purpose of obtaining loan. A *khatedar* tenant may transfer his rights in his holding in the form of an usufructuary mortgage for a period not exceeding ten years. A usufructuary mortgage upon expiry of ten years shall be deemed to have been satisfied in full without any payment whatsoever.

The Rajasthan Government Grants Act, 1961

Sections 2 & 3: Lands granted under the Act cannot be mortgaged as the Rajasthan Tenancy Act, 1955, is not applicable to such grants.

The Rajasthan Holdings (Consolidation and Prevention of Fragmentation) Act, 1954

Section 7: No person shall transfer any fragment in respect of which a notice has been given under sub-Section (2) of Section 6, unless thereby the fragment becomes merged in a contiguous survey number or recognised subdivision of a survey number.

Section 9: The transfer of any land contrary to the provisions of this Act shall be void.

Section 11: Fragment can be sold only to owner or a tenant of the contiguous plot or to the Government.

The Rajasthan Bhoodan Yagna Act, 1954

Section 24(c): Holder of land allotted under the Act shall not transfer any interest in the land.

The Rajasthan Gramdan Act, 1960

Section 28(b): *Gramdan kisan* shall not transfer his interest in the land except to: (i) a person who has joined *Gramdan* community in respect of the village in which the land is situate, (ii) the *Gram Sabha*, (iii) a co-operative society and (iv) Government or any institution approved by the State Government; *Gramdan kisan* belonging to scheduled caste/tribe shall not transfer his interest except to a person of the *Gramdan* community and who is also a member of the scheduled tribe/caste.

The Rajasthan Moneylenders Act, 1963

Section 2(i): It defines the bank as a banking company defined in the Banking Regulation Act, 1949 and includes the State Bank of India and any other banking institution notified by the Central Government under Section 51 of the said Act. A loan to or by a bank is exempted from the provisions of the Act.

The Rajasthan Jagirdars' Debt Reduction Act, 1956

Section 2: Debt shall not include any sum due to a scheduled bank.

The Rajasthan Relief of Agricultural Indebtedness Act, 1957

Section 4(c): Debt shall not include any sum due to a scheduled bank.

TAMIL NADU

The following enactments of the State were reviewed by the Expert Group :

1. The Tamil Nadu Estates (Abolition & Conversion into Ryotwari) Act, 1948;
2. The Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963;
3. The Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963;
4. The Tamil Nadu Lease-holds (Abolition and Conversion into Ryotwari) Act, 1963;
5. The Tamil Nadu Cultivating Tenants Protection Act, 1955;
6. The Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961;
7. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961;

8. The Tamil Nadu Bhoodan Yagna Act, 1958;
9. The Tamil Nadu Money-Lenders Act, 1957;
10. The Tamil Nadu Pawnbrokers Act, 1943;
11. The Tamil Nadu Debtors' Protection Act, 1934;
12. The Tamil Nadu Agriculturists Relief Act, 1938;
13. The Tamil Nadu Co-operative Societies Act, 1961; and
14. The Tamil Nadu Co-operative Land Mortgage Banks Act, 1934.

Based on a review of these enactments, the following points emerge :

I. Land Alienation Rights of Agriculturists

With the exception of intermediary tenures such as the *sreepadam* tenure in Kanyakumari district and some intermediary tenures in Gudalur taluka, the entire State is covered by *ryotwari* tenure. The *ryotwari patta*-holders possess full proprietary rights in their holdings.

The landholders who do not possess similar rights are: i) the cultivating tenants though eligible for security of tenure do not possess the right to mortgage their interest in land to any credit agency including co-operatives; (ii) A tenant in Kanyakumari district and the Gudalur taluka of the Nilgiris district where the Malabar Tenancy Act, 1929 applies, is also protected from eviction but has no alienation right in respect of land cultivated by him; (iii) A tenant of a public trust can transfer land held by him to a tenant co-operative farming society only; (iv) Allottees of *bhoodan* land shall acquire such rights and liabilities and subject to such conditions, restrictions and limitations as may be prescribed by the State *Bhoodan* Board. It is understood that allottees have no right to sell or mortgage their land for a period of twelve years. It is reported that State Board has no objection to advancing loans to the allottees against mortgage of the land to

be made by the Board but in case of default, it holds that the remedy of the financing institution should stop with the sale of the mortgaged land and should not extend to other property owned by the *Bhoodan* Board. The Act does not prohibit the State *Bhoodan* Board from mortgaging the lands that vest in it and (v) *Harijans* who have been assigned land by the Government cannot sell these lands to non-*harijans* and assignment made to landless poor free of land price cannot be alienated within a period of ten years.

There is, at present, no law on consolidation of land holdings and prevention of fragmentation.

II. Ceiling on Land Holdings

The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, lays down the maximum area which a person can hold. It also prohibits future acquisition of land above the ceiling limit. The Act exempts *gramdan* and *bhoodan* lands and lands owned by such co-operative societies as are approved by the Government from the provisions of the Act. Under Section 73 (iv) of the Act, any land held by any industrial or commercial undertaking approved by the Government will also be exempt from the provisions of the Act. According to the State Government, commercial banks can, in genuine cases, come up for exemption under this section.

III. Land Records

The important records which are maintained are (i) the settlement register, (ii) field measurement book, (iii) village account No. 2 (*adangal*), (iv) village account No. 10 (*chitta*) and (v) village maps.

The entries in the settlement register show the survey number, extent, assessment, classification of the land (whether wet, dry or *poromboke* etc.).

The field measurement book contains the map of every field along with the sub-division

thereof. It also gives detailed measurements of each field.

The *adangal* shows the survey number, extent and assessment of the field, classification of the land, the *patta* number, the names of crops raised in a year in the field, the month of cultivation and the outturn of the harvest and the crop etc. The Government has ordered that the names of the cultivating tenants should also be noted in the *adangal*.

The Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969, enacted recently provides for the preparation and maintenance of a reliable record of tenancy rights. The record prepared will have evidentiary value in any court of law and the tenants can rely on extracts from record of rights as security in respect of tenancies held by them.

IV. Equitable Mortgages

Out of 338 towns as per 1961 Census, only thirteen have been notified under Section 58(f) of the Transfer of Property Act, 1882 for creation of equitable mortgages.

V. Moneylending

There are two pieces of legislation on the subject, viz., The Tamil Nadu Moneylenders Act, 1957 and the Tamil Nadu Pawnbrokers Act, 1943. The former exempts from its purview bank as defined in Section 5 of the Banking Regulation Act, 1949 and the State Bank of India and the State Bank of Hyderabad. The latter Act also excludes loan by a bank which for the purpose of the Act means a banking company as defined in Section 5 of the Banking Regulation Act, 1949. The State Government is of the view that the State Bank of India is not exempt from the provisions of the Tamil Nadu Pawnbrokers Act, 1943 and the same will apply to nationalised banks also.

V. Debt Relief

The Tamil Nadu Debtors Protection Act, 1934, excludes loan by a bank and bank for the

purpose of the Act is defined as a company carrying on the business of banking and registered under any of the enactments relating to companies for the time being in force or incorporated by any Central Act.

The Tamil Nadu Agriculturists Relief Act, 1938, stipulates that nothing contained in the Act shall affect debts and liabilities of an agriculturist due to co-operative societies including a land mortgage bank or any debt due to any corporation formed in pursuance of an Act of Parliament of the United Kingdom or any special Indian Law. Section 13 of the Act stipulates interest rate at six and quarter percent per annum simple interest in the case of debts not exempted. The section also provides that the State Government may, by notification in the official Gazette, alter and fix any other rate of interest from time to time.

VII. Legislation relating to Co-operatives

The features of the Tamil Nadu Co-operative Societies Act, 1961 and the Tamil Nadu Co-operative Land Mortgage Banks Act, 1934, which will have a bearing on commercial banks operations in the field of agricultural credit are:

Priority of Charges

1. The co-operative society will have a first charge upon the crops or other agricultural produce raised with the help of the society loan and on cattle, fodder for cattle, agricultural and industrial implements or machinery and raw materials supplied or purchased in whole or in part out of the loan from the society. This charge is subject to the prior claim if any, of the Government in respect of land revenue or any money recoverable as land revenue. However, claims of Government arising out of loan granted under the Land Improvement Loans Act, 1883, after the grant of loan by society, will be subject to first charge in favour of the society. Transfer of property subject to charge without the written permission of the society will be void (Section 32).

2. Any mortgage created in favour of the land mortgage bank after July 4, 1968, shall have priority over all claims against the mortgaged property subject to the claims of Government in respect of land revenue (Section 28(2) of the Tamil Nadu Co-operative Land Mortgage Banks Act, 1934).

Besides, co-operatives enjoy the following facilities :

1. A member of a society of which majority of the members are agriculturists, can create a charge on land or other immovable property in favour of the society by means of mere declaration. Alienation of property subject to charge under declaration is void. Declaration shall be sent by registered post by the society to the Sub-Registrar for registration and the Sub-Registrar shall issue a copy thereof to the society. Any declaration which has not been registered shall be void (Section 33).

2. The Government is empowered to exempt by notification payment of stamp duty on instruments executed by or on behalf of society and any fee payable under the law of registration (Section 43).

3. Disputes touching the constitution, management or business of society between society and its members shall be referred to the Registrar. The question whether a dispute is, or, is not one, touching constitution, management or business of the society shall be decided by the Registrar (Section 73).

4. Registrar is empowered to recover any sum due under an order by sale with or without attachment of the property of the person against whom the order has been passed (Section 91).

5. The Registrar may recover any debt or outstanding demand due to society by any member by sale of property subject to charge under Section 32 after giving seven days notice to defaulting member (Section 92).

6. The Registrar or any person authorised by him shall be deemed to be a civil court

while exercising powers for recovery of any amount (Section 93).

7. No order or award passed, decision or action taken or direction issued under this Act by an arbitrator, a liquidator, the Registrar or any officer authorised by him, shall be liable to be called in question in any court (Section 100).

8. The Registrar is empowered to attach property before order if he is satisfied that any person with intent to delay, or defeat the execution of decision is about to dispose of property (Section 108).

Further, land mortgage banks have following facilities under the Tamil Nadu Co-operative Land Mortgage Banks Act, 1934 :

1. If any instalment payable under a mortgage to a land mortgage bank has remained unpaid for more than one month from due date, the bank may apply to the Registrar to recover such instalment by distraint and sale of produce of mortgaged property including the standing crops thereon; provided that no distraint shall be made after expiry of twelve months from due date (Section 9).

2. The land mortgage bank can bring mortgaged property to sale without the intervention of the court in the case of default of payment, if such a power is expressly conferred on it by the mortgage deed (Section 13).

3. It shall be competent to a land mortgage bank to purchase the mortgaged property brought to sale; the property so purchased shall be disposed of by sale within the period fixed by the Trustee (Section 19).

4. When a sale has been made under Section 13 and confirmed under Section 15, the title of the purchaser will not be impeached on the ground of any irregularity (Section 21).

5. Any sum due to a land mortgage bank may be recovered as arrears of land revenue and for the purposes of such recovery, the Registrar shall have the power of Collector (Section 22A).

6. The duration of any lease executed by a mortgagor of property mortgaged to a land mortgage bank after the execution of the mortgage shall in no case exceed five years (Section 26).

7. A mortgage executed in favour of a land mortgage bank shall have priority over any claim of the Government arising from a loan under the Land Improvement Loans Act, 1883, granted after the execution of the mortgage (Section 28).

8. It shall not be necessary for the officials of the land mortgage bank to appear in person at any registration office for registration of any instrument executed in his official capacity (Section 30).

9. Where a mortgage executed in favour of a land mortgage bank by the manager of a joint Hindu family is called in question on the ground that it was executed for a purpose not binding on the members thereof, the burden of proving the same shall be on the party raising it. A mortgage executed in favour of a land mortgage bank by the manager of a joint Hindu family for securing finance for improvement of agricultural land or of methods of cultivation and for purchase of land, shall be binding on the members of the family (Section 32).

VIII. Action taken by State Government

The Government of Tamil Nadu has taken following steps to facilitate the financing of agriculturists by commercial banks :

1. The Government has reduced registration fee to half and encumbrance fee to nil in respect of agricultural loans upto Rs. 5,000 granted by commercial banks. Members of the scheduled caste are totally exempted from payment of registration fee and encumbrance certificate search fee. The question of granting stamp duty concessions to *ryots* obtaining loans from commercial banks for agricultural purposes is under consideration of the Government.

2. The Government is considering a proposal to amend the Tamil Nadu Agriculturists

Relief Act, 1938, to exempt scheduled banks, the Agricultural Refinance Corporation and the Tamil Nadu Agro-Industries Corporation Ltd., from the provisions of the Act.

3. Special staff has been sanctioned for splitting up of joint *pattas* and for issuing separate *pattas* to facilitate financing of joint *patta*-holders.

IX. Provisions in State Enactments having a bearing on Commercial Banks Lending to Agriculture

The Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961

Section 36: Tenant of a public trust can transfer possession of land held by him in favour of a tenant co-operative farming society only of which he has been a member. The tenants do not have powers to alienate their interest in land in favour of any other credit agency.

The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961

Section 73 (iii) and (iv): The definition of a person in the Act includes a bank and the Act lays down the maximum area which a person may hold. The Act does not apply to any land owned by co-operative societies (other than societies registered or deemed to have been registered under the Madras Co-operative Societies Act, 1932 or under the Travancore-Cochin Co-operative Societies Act, 1951) as are approved by the Government. Under clause (iv), the Government is empowered to exempt any land held by industrial or commercial undertaking from the provisions of the Act.

The Tamil Nadu Bhoodan Yagna Act, 1958

Section 19(i): The State (*Bhoodan Yagna*) Board may grant any land vested in it and the grantee of the land shall acquire therein such rights and liabilities..... as may be prescribed, and the same shall have effect, any other law to the contrary notwith-

standing. It is understood that the allottees do not have any right to mortgage their lands for a period of twelve years.

The Tamil Nadu Moneylenders Act, 1957

Section 2: According to the section, 'bank' means a banking company as defined in Section 5 of the Banking Regulation Act, 1949 and includes the State Bank of India and the State Bank of Hyderabad. A loan advanced by a bank as defined above is excluded from the purview of the Act.

The Tamil Nadu Pawnbrokers Act, 1943

Section 2(5): The Act exempts an advance made by a banking company as defined in Section 5(i) (c) of the Banking Regulation Act, 1949, from the provisions of the Act.

The Tamil Nadu Agriculturists Relief Act, 1938

Section 4(e): Section 4(e) of the Act exempts any liability due to any co-operative society or any debt due to any corporation formed in pursuance of any Act of Parliament of the U.K. or of any special Indian Law from the purview of the Act. Section 13 of the Act stipulates that, in any proceedings for recovery of debt, the court shall scale down all interest due on any debt incurred by an agriculturist after the commencement of the Act, so as not to exceed six and quarter per cent per annum simple interest. The section also provides that the State Government may, by notification in the Official Gazette, alter and fix any other rate of interest from time to time. Thus, rate of interest on debts of banks other than State Bank of India and its Subsidiaries and nationalised banks can be scaled down.

UTTAR PRADESH

The Expert Group examined the following enactments of the State :

1. The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950;
2. The Jaunsar-Bawar Zamindari Abolition and Land Reforms Act, 1956;
3. The Kumaun and Uttarkhand Zamindari Abolition and Land Reforms Act, 1960;
4. The Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960;
5. The Uttar Pradesh Consolidation of Holdings Act, 1953;
6. The Uttar Pradesh Bhoodan Yagna Act, 1952;
7. The United Provinces Debt Redemption Act, 1940;
8. The Uttar Pradesh Zamindars Debt Reduction Act, 1952;
9. The Jaunsar-Bawar Pargana (District Dehra-Dun) Debt Control Regulation, 1948;

10. The Dudhi-Robertsganj (District Mirzapur) Agriculturists Debt Relief Act, 1951;
11. The Uttar Pradesh Co-operative Societies Act, 1965; and
12. The Uttar Pradesh Co-operative Land Development Banks Bill, 1964.

Based on a review of these enactments, the following points emerge :

I. Land Alienation Rights of Agriculturists

Legislation for abolition of intermediaries was taken up with the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, under which a multiplicity of tenures was done away with. The Act created three types of tenure-holders, viz., *bhumidars*, *sirdars* and *asamis*. A small class of cultivators mostly sub-tenants of *zamindars* were given a transitional form of tenure known as '*adivasis*'. However, after the complete abolition of intermediaries, they were given '*sirdar*' rights. The *sirdars* can acquire *bhumidari* rights on payment of a sum equal to ten times the rent at hereditary rates or twelve times the hereditary rates, if paid in four annual

instalments. They have following rights in land:

1. A *bhumidar* has permanent, heritable and alienable rights in his holding. But he is not allowed to mortgage land where possession of land is transferred to mortgagee. Further, no *bhumidar* shall have the right to transfer or sell land other than tea garden to any person where such person shall as a result of such transfer have his holding exceeding twelve and half acres.

2. A *sirdar* also has permanent and heritable rights but his right to transfer his interest in land is restricted. As per a recent amendment of the U.P. Zamindari Abolition and Land Reforms Act, 1950, a *sirdar* can mortgage, without possession, his interest in his land as security for loan from the State Government, co-operatives, the State Bank of India or any scheduled bank or the Uttar Pradesh State Agro-Industries Corporation.

The rights of institutional credit agencies other than co-operatives in respect of land mortgaged to them by a *sirdar* are not the same as in the case of co-operatives, for according to the Uttar Pradesh Co-operative Land Development Banks Bill, 1964, the land development bank is entitled to purchase any property mortgaged to it by a *sirdar* by depositing necessary funds with Government to acquire *bhumidari* rights as per the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and thereafter the land development bank can dispose of the land by sale. In a similar manner, the debt due to a co-operative from a *sirdar* can be realised by treating it as an arrear of land revenue and selling the right.

3. Persons granted land by the *Bhoodan* Committee acquire the right of a *sirdar* as per Section 14 of the Uttar Pradesh Bhoodan Yagna Act, 1952.

4. In the hill areas of the State, the *hissedar khudkasht* is the only class of tenure-holder having heritable and transferable rights.

Tenants in this area will become *bhumidars* and *sirdars* when the land records are brought up-to-date.

5. There appears to be no restriction on mortgage of fragments. However, sale of a fragment can be made only in favour of a contiguous plot holder.

6. Co-sharer of a land may also find difficulty to get loan against the security of his share in land as the Revenue Department maintains no record to verify the share of each co-sharer.

7. Leases of land in future are prohibited except in the case of persons suffering from a disability. The lessees of disabled persons (or persons authorised to lease out land) are known as '*asamis*'. These also include persons who hold land covered by water or situated in the bed of a river or tract of shifting cultivation or land held from *Gaon Sabhas*. Rights of *asamis* are heritable but not transferable. Lands are also cultivated through '*sajhis*' i.e. partners-in-cultivation. Land with *sajhidars* is treated as land under personal cultivation and these *sajhidars* are not treated as tenants.

II. Ceiling on Land Holdings

The Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960, prescribes ceiling limit on present holdings and future acquisition of land. Land acquired by any co-operative society by purchase from a tenure-holder in lieu of mortgage debt or acquisition of land by a land development bank is exempted from the provisions of ceiling legislation.

III. Land Records

The principal records are as follows:

(i) A village map, which defines the boundary of the village and also of each field in the village.

(ii) *Khasra* is a field book in which the *Lekhpal* enters all plots of land in a village

serially together with their area, source of irrigation, different crops grown and other agricultural statistics.

(iii) *Khatauni* is a record of rights of tenure-holders (i.e. owners) and sub-tenure-holders (i.e. tenants) arranged tenure-wise together with the period of possession.

Besides, entries in the land records are made annually and are expected to be maintained up-to-date. *Khatauni* has been made a triennial record since 1968, *Fasli*. The names of tenants and the rent payable by them are thus shown in the record of rights. The names of partners-in-cultivation or *sajhis* are also generally mentioned in the remarks column of the *Khasra*.

IV. Equitable Mortgages

Only four out of 275 towns in the State (as per Census 1961) have been notified under Section 58(f) of the Transfer of Property Act, 1882, for creation of equitable mortgages.

V. Moneylending

The Usurious Loans Act, 1918, empowers the State Government to notify that it shall not apply to any area or class of persons or class of transactions.

VI. Debt Relief

There are five enactments on the subject, viz., The United Provinces Debt Redemption Act, 1940, (2) The Jaunsar-Bawar Pargana (District Dehra-Dun) Debt Control Regulation, 1948, (3) The Dudhi-Robertsganj (District Mirzapur) Agriculturists Debt Relief Act, 1951, (4) The Uttar Pradesh Zamindars Debt Reduction Act, 1952 and (5) The Uttar Pradesh Regulation of Agricultural Credit Act, 1940. According to available information, provisions of the last mentioned enactment are no longer applicable. The remaining four enactments exempt debts due to scheduled banks from their purview. The Uttar Pradesh Zamindars Debt Reduction Act, 1952, does not include an

advance made on or after July 1, 1952 and the United Provinces Debt Redemption Act, 1940, affects only a debt made before June 1, 1940.

VII. Legislation pertaining to Co-operatives

The features of the Uttar Pradesh Co-operative Societies Act, 1965, which will have a bearing on commercial banks operations in the field of agricultural credit are:

1. Priority of Charges

Subject to any claim of the Central or the State Government in respect of land revenue or any money recoverable as land revenue or arising from a loan granted by it before, but not after, the grant of loan by the society, there shall be a first charge in favour of the society upon the crops and other agricultural produce raised, cattle, other livestock, agricultural implements, transport and other equipments, raw materials purchased and manufactured articles and upon the land purchased or redeemed or house or building purchased or constructed from out of a loan from the society (Section 39).

Besides, co-operatives enjoy the following facilities:

1. Disputes relating to the constitution, management or the business of a co-operative society between society and its members shall be referred to the Registrar and no court shall have jurisdiction in respect of any such dispute. The question whether a dispute is or is not one, touching constitution, management or business of the society shall be decided by the Registrar whose decision shall be final and shall not be called in question in any court (Section 70).

2. On an application from a society for recovery of any debt due to it, the Registrar may, subject to rules, order sale of property subject to charge under Section 39, after giving one month's notice to the debtor (Section 91).

3. Every order of the Registrar, if not carried out, shall be executed (a) on a certificate

signed by the Registrar, in the manner provided by law for recovery of arrears of land revenue, or (b) by attachment and sale or sale without attachment of any property of the indebted member, or (c) in the same manner as a decree of a civil court (Section 92).

4. Registrar or person authorised by him shall be deemed to be a civil court when exercising powers for recovery of any amount on any application made to him (Section 93).

5. Registrar is empowered to attach property before order if he is satisfied that any person, with intent to delay or obstruct enforcement of order, is about to dispose of the property (Section 94).

6. No civil or revenue court shall have jurisdiction in respect of any dispute required to be referred to the Registrar (Section 111).

7. Mortgage deeds executed by members of the society relating to the business of such society are exempted from stamp duty when the amount of loan does not exceed Rs. 5000/- and are chargeable half the rate of duty if the amount of loan exceeds Rs. 5000/-.

Further, land development banks enjoy the following facilities under the Uttar Pradesh Co-operative Land Development Banks Bill, 1964:

1. A mortgage executed in favour of a land development bank shall have priority over any claim of the Government arising from a loan under the Land Improvement Loans Act, 1883, granted after the execution of mortgage (Section 10).

2. It shall be lawful for a land development bank to purchase any mortgaged property sold under the Act. However, when a land development bank purchases any mortgaged holding of a *sirdar* it shall deposit necessary funds with Government to acquire *bhumidari* rights and then dispose of land by sale. Further, nothing in the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 or any other law fixing

a maximum limit on agricultural holding shall apply to the acquisition of land by a land development bank (Section 11).

3. If an instalment or part thereof remains unpaid for more than a month from due date, the land development bank may apply to the Registrar for recovery of such instalment by distraint and sale of produce of the mortgaged land including the standing crops thereon, provided that no distraint shall be made after twelve months from due date (Section 15).

4. Where a power of sale is expressly conferred on the bank by mortgage deed, the bank shall, in case of default of payment of mortgage money, have power to bring the mortgaged property to sale without intervention of the court (Section 16).

5. Where any property is sold in exercise of powers under Section 16, the title of the purchaser shall not be questioned on the ground of any irregularity (Section 19).

6. Mortgagor shall not, except with the prior consent in writing of the land development bank, grant a lease or create any other rights in the mortgaged property. Any lease granted or rights created in contravention of this provision shall be void (Section 22).

7. It shall not be necessary to register mortgages executed in favour of a land development bank if a copy of the instrument is sent by registered post within three months to the Registering Officer. It shall not be necessary for any officer of a land development bank to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity or to sign as provided in Section 58 of the Indian Registration Act, 1908 (Section 23).

8. Where a mortgage executed in favour of a land development bank is called in question on the ground that it was executed by the manager of a joint Hindu family for a purpose

not binding on the members thereof, the burden of proof shall rest upon the party which calls such mortgage in question. A mortgage in favour of a land development bank executed by the manager of a joint Hindu family for securing finance for improvement of agricultural land or of methods of cultivation or for financing means to raise productivity of land and for purchase of land, shall be binding on members of the family (Section 26).

9. Section 8 of the Hindu Minority and Guardianship Act, 1956, shall apply to mortgages in favour of a land development bank subject to the modification that reference to the court therein shall be construed as reference to the Collector (Section 27).

VIII. Action taken by State Government

1. The cultivators who are sanctioned loans by the State Bank of India under the scheme of provision of credit for purposes of agricultural production in Varanasi, Etah, Azamgarh and Lakhimpurkheri districts have been allowed concession in stamp duty upto 75 percent in respect of loans upto Rs. 5,000/- and 50 per cent in respect of loans over Rs. 5,000/-.

2. The Uttar Pradesh Public Money (Recovery of Dues) Act, 1965, is reported to have been amended recently. According to the amendment, money from defaulters could be realised as arrears of land revenue in the case of State-sponsored schemes in which the State Government had guaranteed or had agreed to guarantee the repayment of a loan advanced by the State Bank of India or any other scheduled bank.

IX. Provisions in the State Enactments having a bearing on Commercial Banks Lending to Agriculture

The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950

Section 153(2): The interest of a *sirdar* or an *asami* shall not be transferable except as ex-

pressly permitted by this Act. A *sirdar* may, in prescribed circumstances, mortgage, without possession, his interest in his holding, as security for a loan from the State Government or a co-operative society or the State Bank of India or any scheduled bank or from the U.P. State Agro-Industries Corporation.

Section 154: Save as provided in sub-Sections (2) and (3), no *bhumidar* shall have the right to transfer by sale or gift any land other than tea gardens to any person other than a charitable institution, where such person shall, as a result of the transfer, become entitled to land which together with land held by him and his family will in the aggregate exceed twelve and half acres. Land development banks are exempted from this restriction.

Section 168(A): Notwithstanding the provisions of any law for time being in force, no person shall transfer by way of sale, gift or exchange any fragment situated in consolidated area except to a contiguous landholder or where the transfer is not in favour of contiguous landholder, the whole of the plot to which the fragment pertains is thereby transferred. The transfer of any land contrary to this provision shall be void.

The Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960

Section 6(xvi): Ceiling provision does not apply to land acquired by any co-operative society by purchase from a tenure-holder in lieu of mortgage debt. Lands held by land development banks are exempted from this provision under the Uttar Pradesh Co-operative Land Development Banks Bill, 1964.

The Uttar Pradesh Bhoodan Yagna Act, 1952

Section 14: Bhoodan allottees acquire the same rights as a *sirdar*.

The United Provinces Debt Redemption Act, 1940

Affects debts incurred before June 1, 1940.

The Uttar Pradesh Zamindars Debt Reduction Act, 1952

Affects debts incurred before July 1, 1952.

The Uttar Pradesh Regulation of Agricultural Credit Act, 1940

According to the State Government, the

provisions of this Act are no longer applicable.

The Jaunsar-Bawar Pargana (District Dehra-Dun) Debt Control Regulation, 1948

The Dudhi-Robertsganj (District Mirzapur) Agriculturists Debt Relief Act, 1951

These Acts exempt the loans of scheduled banks from their purview.

WEST BENGAL

The Expert Group examined the following enactments of the State :

- (1) The West Bengal Estates Acquisition Act, 1953;
- (2) The West Bengal Land Reforms Act, 1955;
- (3) The West Bengal Land (Requisition and Acquisition) Act, 1948;
- (4) The West Bengal Bhudan Yagna Act, 1962;
- (5) The West Bengal Gramdan Act, 1964;
- (6) The Chota Nagpur Tenancy (West Bengal Amendment) Act, 1962;
- (7) The Bengal Tenancy Act, 1885;
- (8) The Bengal Agricultural Debtors Act, 1936;
- (9) The Bengal Money-Lenders Act, 1940; and
- (10) The Bengal Co-operative Societies Act, 1940.

Based on a review of these enactments, the following points emerge:

I. Land Alienation Rights of Agriculturists

Under the West Bengal Estates Acquisition Act, 1953, all intermediaries, defined to include *raiyyats* and under-*raiyyats*, were allowed to retain agricultural land in their *khas* possession upto 25 acres and the remainder vested in the Government. Thus, all the intermediaries are now holding land directly under Government as *raiyyats*. The persons holding land under these *raiyyats*, known as *bargadars* were not

covered by the Act referred above. The *raiyyats* are the owners of the land and have transferable and heritable rights in respect of land held by them.

There are, however, certain restrictions on the alienation rights of *raiyyats*. These are: (i) A mortgage by a *raiyyat* of his holding can be only by a simple mortgage or usufructuary mortgage for a period not exceeding fifteen years. (ii) In regard to *raiyyats* belonging to scheduled tribes, there are additional restrictions on their mortgage rights. Thus, they can create a simple mortgage in favour only of the Government or a registered co-operative society and a complete usufructuary mortgage for a period not exceeding seven years in favour of a person belonging to their own tribe. Usufructuary mortgage with others is permitted upto seven years only with previous permission of the Revenue Officer. Recently, Government has decided to issue instructions to the District Collectors to allow mortgage of land by the scheduled tribes in favour of commercial banks for obtaining loans for setting up shallow tube-wells, pump-sets and other agricultural machinery, in cases where the loans are recommended by the Block Development Officer/District Agricultural Officer of the district. (iii) Sale of land by a scheduled tribe landholder can be made to the Government for a public or charitable purpose or a member of the scheduled tribe only. Sales to others can be made only with prior permission. The restrictions on landholders belonging to scheduled tribes/castes in Purulia district are similar to those applicable to similar categories of landholders in the Chota Nagpur area of Bihar.

Bhudan allottees can alienate land allotted to them, if permitted in writing by the *Bhudan Yagna Board*.

An allottee of *Gramdan* land can transfer his interest in land in favour of a member of the *Gram Parishad* with the consent of the *Gram Parishad*. He is also permitted to hypothecate his interest in land in favour of the State Government or a co-operative society with the consent of the *Gram Parishad*.

A *bargadar* is neither a tenant under the Bengal Tenancy Act, 1885, nor a *raiyat* under the West Bengal Land Reforms Act, 1955. He is a person who under the system generally known as *adhi, barga* or *bhag*, cultivates land of another person on condition of delivering a share of the produce of the land. The relationship between a *raiyat* and his *bargadar* is governed by the West Bengal Land Reforms Act, 1955. The enactment empowers the *raiyat* who owned less than seven and half acres of land to resume the land from *bargadars* if required for personal cultivation, provided the *bargadar* is left with at least two acres for his cultivation. However, the extent of land so resumed by the *raiyat* alongwith any other land under his personal cultivation should not exceed seven and half acres. The enactment does not, however, confer on the *bargadar* any right of transferability in respect of the land cultivated by him. The *bargadars* do not, also, have any right to purchase even the land that is non-resumable by the *raiyat*.

There is at present no law on consolidation of land holdings and prevention of fragmentation.

Section 8 of the West Bengal Land Reforms Act, 1955, deals with the right of pre-emption. If a *raiyat* transfers a portion or share of his holding to any person other than a co-sharer or contiguous landholder, any co-sharer or any contiguous *raiyat* may, within four months from the date of such transfer, apply to the Revenue Officer for transfer of the said portion or share of the holding to him on deposit of

the consideration money together with further sum of ten per cent of that amount.

Co-operative or commercial banks are not likely to be affected by this provision in as much as the consideration money together with such other sums as are proved to have been paid by the transferee or the person interested, plus ten per cent of the consideration money will be paid to the transferee or the person interested before the Revenue Office allows the application.

II. Ceiling on Land Holdings

The West Bengal Estates Acquisition Act, 1953, provides for ceiling limit on the extent of agricultural land in *khas* possession which an intermediary was permitted to retain. The legislation empowers the State Government to enquire into any transfer of land made after 5th day of May, 1953, if in the opinion of the Government, there are prima facie reasons for believing that such transfer was not bonafide. After enquiry, if the transfer was found not bonafide, transfer shall be cancelled and the surplus lands would be taken over both from the transferor as well as from the transferee.

Under Section 4 of the West Bengal Land Reforms Act, 1955, no *raiyat* shall be entitled to hold more than 25 acres of land excluding the homestead. Both the enactments exempt co-operative farming societies subject to the condition that individual members of such societies do not hold land above ceiling limit. There is no exemption from the ceiling limit to any institutional credit agency. Therefore, in case the area of land to be purchased exceeds the limit, the excess land, if any, would be taken over by the Government.

III. Land Records

There is no system of maintaining land records annually. A record of rights was, however, prepared. It contains the names of landlords, tenants and sub-tenants and the rents payable by them. Names of *bargadars* (share-croppers) were not recorded in the record of

rights. Provisions have been made in the West Bengal Land Reforms Act, 1955, for maintenance and revision of the record of rights. In the record of rights prepared after the abolition of *zamindari*, the names of share-croppers have generally been recorded in most of the districts.

IV. Equitable Mortgages

As indicated earlier, cultivators are allowed to create only a simple mortgage or an usufructuary mortgage on land. Further, the West Bengal Land Reforms Act, 1955, stipulates that transfers of land by *raiyats* including *raiyats* of scheduled tribe can be made only by registered instruments. Only three out of 184 towns in the State (as per Census 1961) have been notified under Section 58(f) of the Transfer of Property Act, 1882, for creation of equitable mortgages.

V. Moneylending

A loan according to the West Bengal Money-Lenders Act, 1940, does not include a loan by a bank and a bank for this purpose means a banking company as defined in Section 5 of the Banking Regulation Act, 1949 and includes the State Bank of India, any Subsidiary of it and any financial institution that may be notified in this behalf by the State Government. However, no bank shall be so declared to be a notified bank unless it complies with such conditions as may, with the approval of the State Legislature, be prescribed.

VI. Debt Relief

According to the State Government, the West Bengal Agricultural Debtors Act, 1936, is not in force.

VII. Legislation pertaining to Co-operatives

The features of the West Bengal Co-operative Societies Act, 1940, which will have a bearing on commercial banks operations in the field of agricultural credit are :

1. Priority of charges

Subject to any claim of the State Government in respect of land revenue or any sum recoverable as land revenue or as a public demand or of a landlord in respect of rent or any sum recoverable as rent, society shall have a first charge upon crops/other agricultural produce for two years if the loan was for purchase of seed, manure, fodder for cattle or for irrigation facilities and upon the cattle, agricultural or industrial implements, machinery etc., purchased out of a loan from the society and upon land purchased or redeemed out of loan from the society. However, claims of any bona-fide purchaser or transferee for value without notice of the property subject to charge shall not be affected by this provision (Section 47).

Besides, co-operatives enjoy the following facilities :

1. Government is empowered to exempt, by notification, payment of stamp duty on instruments executed by or on behalf of society and any fee payable under the law relating to registration (Section 53).

2. Any dispute touching the business of a society between members and the society shall be referred to the Registrar (Section 86).

3. Where a dispute involves property pledged as collateral security, the person deciding the dispute may issue an award which shall have the same force and effect as a final mortgage decree of a civil court (Section 88).

4. The mortgagor of property mortgaged to a land mortgage bank shall not without the concurrence of the bank transfer or mortgage his equity of redemption or create a charge upon such property for a period exceeding five years (Section 96).

5. A mortgage executed in favour of a land mortgage bank shall have priority over any claim of the Government arising from a loan under the Land Improvement Loans Act,

1883, granted after the execution of the mortgage (Section 98).

6. If an instalment or part of it due under mortgage remains unpaid for more than one month from due date, the land mortgage bank may apply to the Registrar for the recovery of such sum by distraint and sale of not more than half the produce of the mortgaged land, including standing crops thereon. However, no distraint shall be made after the expiry of twelve months from the date on which instalment fell due (Section 99).

7. Where a power of sale without intervention of the court is expressly conferred by the mortgage deed, the bank shall, if any instalment is not paid in full on due date, have power to bring the mortgaged property to sale without intervention of the Court (Section 101).

8. It shall be competent to a land mortgage bank to purchase any mortgaged property sold under this Act and the property so purchased shall be disposed of by the bank by sale within such period as may be fixed by the Trustee (Section 110).

9. When a sale has been made in exercise of power to sell under Section 101 and has been confirmed under Section 106, the title of the purchaser shall not be questioned in any court by the mortgagor or his successor in interest (Section 111).

10. It shall not be necessary for any officer of a land mortgage bank to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity or to sign as provided in Section 58 of the Indian Registration Act, 1908 (Section 120).

11. Where a mortgage executed in favour of a land mortgage bank is called in question on the ground that it was executed by the manager of a joint Hindu family for a purpose not binding on the members thereof, the burden of proof shall rest upon the party which calls such mortgage in question; where such

mortgage is for the purpose of securing finance for improvement of agricultural land or for methods of cultivation or for purchase of land, it shall be binding on members of the family (Section 122).

12. Registrar is empowered to attach property before order if he is satisfied that any person, with intent to delay or defeat the enforcement of decision or order, is about to dispose of the property (Section 125).

13. Any sum payable to a society in accordance with any award under the Act shall be recoverable in the manner provided in the Third schedule i.e. (a) by the Collector as a public demand upon requisition by the society, or (b) by any civil court having local jurisdiction, as a decree of such court, upon application by the society (Section 130).

14. No civil or revenue court shall have jurisdiction in respect of any dispute required to be referred to the Registrar. No order, decision or award under this Act shall be liable to be called in question in any court on any ground whatsoever except for want of jurisdiction (Section 133).

VIII. Action taken by State Government

1. State Government has decided to extend the provisions of the Public Demands Recovery Act to the loans to be advanced by commercial banks to cultivators for shallow tube-wells, pump-sets and other agricultural equipments.

2. The State Government has issued necessary instructions to the District Collectors to allow mortgage of land by scheduled tribes in favour of commercial banks for obtaining loans for setting up shallow tube-wells, pump-sets and other agricultural equipments in cases where the loans are recommended by the Block Development Officer/District Agricultural Officer.

3. The Government is considering amendment of the provisions of Sections 7 and 14C

of the West Bengal Land Reforms Act, 1955, so as to include equitable mortgage among mortgages that may be executed by a *raiyat* including a member of a scheduled tribe in favour of scheduled banks and co-operatives for the specific purpose of obtaining loans for development of agriculture. The Government has further decided to extend the facility of creating equitable mortgage by the *raiyats* to other towns in addition to the Presidency town.

4. The Government is prepared to issue executive instructions for expeditious arrangements for issue of 'No dues' certificate.

5. The Government is agreeable to consider issue of notification in terms of Section 2(1) of the Bengal Moneylenders Act, 1940, to exempt all banks from the purview of the Act.

IX. Provisions in State Enactments having a bearing on Commercial Banks Lending to Agriculture

The West Bengal Land Reforms Act, 1955

Section 4: Co-operative farming societies are exempt from the provision relating to ceiling on land holding, provided individual members of such societies do not hold land above ceiling limit (Similar provision exists in the West Bengal Estates Acquisition Act, 1953).

Section 5: A transfer of the holding of a *raiyat* or a share or portion thereof shall be made by an instrument which must be registered and the registering officer shall not accept for registration any such instrument unless certain formalities as mentioned in the section are complied with.

Section 7: A mortgage by a *raiyat* of his holding or any share thereof other than — a) a simple mortgage, or b) an usufructuary mortgage for a period not exceeding fifteen years, shall be void.

Section 14C: The transfer of the holding or part of the holding of a *raiyat* belonging to a

scheduled tribe shall be void except in the following cases: (a) a complete usufructuary mortgage for a period not exceeding seven years with a person belonging to the same tribe as the transferor or (b) a simple mortgage to the Government or a registered co-operative society or (c) a complete usufructuary mortgage for a period not exceeding seven years to any person with prior permission of the Revenue Officer.

Section 14D: No transfer by a *raiyat* belonging to scheduled tribe shall be valid unless made by a registered instrument.

Section 14F: No decree or order shall be passed by any court for the sale of the holding or any portion thereof of a *raiyat* belonging to the scheduled tribe nor can such holding be sold in execution of any decree or order.

The West Bengal Gramdan Act, 1964

Section 18(b): The interest of the allottee in the land allotted can be hypothecated, with the consent of the *Gram Parishad*, in favour of the State Government or any co-operative society registered under the Bengal Co-operative Societies Act, 1940. Allottee can transfer his interest with the consent of *Gram Parishad* to another member of the *Gram Parishad*.

The West Bengal Bhudan Yagna Act, 1962

Section 8: The Board may settle, on such terms, conditions and restrictions as may be prescribed, any land vested in it with landless persons residing within the area within which such land is situated. According to the Government, the Board has decided not to allow the lessee to sub-let, transfer or alienate, the land or any part thereof without the previous consent in writing of the Board.

The Bengal Moneylenders Act, 1940

Section 2(1): A loan according to the Act does not include a loan by a co-operative society or

a bank. Bank for this purpose means a banking company as defined in Section 5 of the Banking Regulation Act, 1949 and includes the

State Bank of India, any Subsidiary of it and any other financial institution that may be notified in this behalf by the State Government.

ANDAMAN AND NICOBAR ISLANDS

The following points emerge from the replies to the questionnaire relating to Andaman and Nicobar islands:

I Land Alienation Rights of Agriculturists

All the land in this Union Territory is owned by the Government and is held by cultivators as grantees and licencees. A licencee is initially given land as a non-occupancy tenant. If he cultivates the land for more than two years, he becomes an occupancy tenant with the additional right to transfer, gift or mortgage the land subject to the following conditions.

In case any amount is due to Government, a transfer can be made only with the written permission of the Chief Commissioner. The occupancy tenant is not permitted to mortgage his land unless he is left with at least two hectares of unencumbered land. None can transfer his right if after such transfer the total extent of land held by him will be reduced below two hectares. These conditions will not apply if a loan is obtained from the Government

or the co-operative society. The interest of an occupancy tenant, the extent of which is less than two hectares, cannot be attached or sold by a court. In addition, the occupancy right of a tribal cannot be attached or sold. Non-occupancy tenants have no right to transfer.

A grantee can hold land for a specified period not exceeding 30 years and can transfer his interest in land with the previous permission of the Chief Commissioner.

II Land Records

There is a presumption in law in respect of entries in the record of rights. These extracts, it would appear, can be used. Licencees or *pattas* are generally issued in individual names.

III Moneylending & Debt Relief

There is legislation pertaining to the moneylenders in this Union Territory and it appears that banks are exempt from its purview. There is no legislation providing for relief of indebtedness of agriculturists.

CHANDIGARH

The following enactments of the Union Territory were reviewed by the Expert Group:

1. The Punjab Security of Land Tenures Act, 1953,
2. The Punjab Registration of Moneylenders Act, 1938 and
3. The Punjab Co-operative Societies Act, 1961.

Based on a review of these enactments, the following points emerge:

I) Land Alienation rights of Agriculturists

According to the Government, there is only one type of owners of land in the Union Territory, namely, owner-proprietors who have full rights to sell, mortgage and transfer lands held by them. The tenants are only tenants-at-will who have no right to sell, mortgage or transfer lands in favour of any credit agency. There are no *bhoodan* allottees or allottees of Government land nor is there any legislation aimed at prevention of fragmentation of land holdings in force.

II. Ceiling on Land Holdings

The Punjab Security of Land Tenures Act, 1953, is in force and under it only registered co-operative societies formed for the purpose of co-operative farming are exempt from the purview of the ceiling limit as laid down by this Act.

III. Equitable Mortgages

Chandigarh is a town notified for creation of mortgage by deposit of title deeds under Section 58(f) of the Transfer of Property Act, 1882.

Under the Delhi Land Reforms Act, 1954, all tenants and sub-tenants have been declared *bhumidars* with full transferability rights. Tenants holding under them are called *asamis* and they do not have transferable rights.

The other enactments in force in the Union Territory appear to be the following:

1. The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948,

IV. Moneylending

The Punjab Registration of Money-lenders Act, 1938, is in vogue in this Union Territory. For details please see under Punjab/Haryana.

V. Debt Relief

There is no legislation relating to relief of indebtedness of agriculturists.

VI. Legislation pertaining to Co-operatives

The Punjab Co-operative Societies Act, 1961, is in force in this Union Territory. The facilities available to co-operatives are as enumerated in the portion relating to Punjab/Haryana.

DELHI

tion and Prevention of Fragmentation) Act, 1948,

2. The Punjab Regulation of Accounts Act, 1930 and

3. The Punjab Registration of Money-lenders Act, 1938.

These legislations are reviewed under Punjab/Haryana.

GOA, DAMAN AND DIU

The following points emerge from the replies to the questionnaire relating to Goa, Daman and Diu:

I. Land Alienation Rights of Agriculturists

In Goa, free-hold lands belonging to private parties, i.e., landlords, comunidades and religious institutions are vested with full rights of ownership and they can sell and mortgage lands held by them. Comunidades are a sort of private corporations based on the old village comunidades. Members of comunidades are descendants of the first settlers of the village known as '*Gauncares*'. Under the Portuguese law, auction of comunidade land used to be held every three years and the highest bidder got a lease for three years. With the enactment of the Goa, Daman and Diu Agricul-

tural Tenancy Act, 1964, auction of land is not possible.

The comunidades and religious bodies cannot sell or mortgage lands given on tenancy basis unless authorised by Government.

The rights of lessees whether in private lands or in comunidades are governed by the above Act. Under it, the tenant has a right to mortgage or create a charge on his interest in land in favour of the Government or a co-operative society in consideration of a loan granted to him by the agency. In the event of default, the agency has also the right to sell his right to secure repayment of the loan.

In Daman area, there is only one class of tenure-holders, viz., land provided by Govern-

ment on perpetual tenancy basis. The tenants have right of sale, mortgage, etc., after obtaining permission from the Collector of Daman under Section 8(b) of the Daman (Abolition of Proprietorship of Villages) Regulation Act, 1962. The rules framed under the above Act permit transfer of land by way of mortgage in favour of the Government, a co-operative society or a scheduled bank for the purpose of carrying out improvements on the land or for a purpose connected with the cultivation of land.

II. Land Records

In the Goa area, details of ownership of land are available in the Land Registration Office. Names of tenants are not normally recorded therein.

III. Moneylending

The Diploma Legislation No. 1063 dated

August 17, 1939, has fixed the rate of interest at not exceeding six per cent for loans on real security and at not exceeding eight per cent for other loans. This restriction does not, however, apply to bank loans, pawnshops, popular credit funds and institutions of property credit.

IV. Debt Relief

There is no legislation on the subject.

V. Legislation pertaining to Co-operatives

The Maharashtra Co-operative Societies Act, 1960, is in force in Goa. The details furnished under this Section in Maharashtra are applicable to this Territory. However, Section 101 of the Act which enables the Registrar to issue a certificate for recovery of crop loans and which is treated as a court decree, has been deleted.

HIMACHAL PRADESH

I. Land Alienation Rights of Agriculturists

Persons holding land from Government are called landowners and they have full rights of alienation. The occupancy tenants holding land under the landowners have permanent and heritable rights. They have a right to purchase ownership. The non-occupancy tenants also

have security of tenure subject to the right of the landowner to resume land. Landowner can resume only if he possesses land assessed to less than Rs. 125 and the limit of resumable land is fixed at five acres provided the tenant is left with three-fourths of area held by him as tenant. The tenant has no transferable right.

MANIPUR

The following points emerge from the replies to the questionnaire relating to Manipur:

I. Land Alienation Rights of Agriculturists

Broadly, there are two kinds of land tenures.

Pattadars and settlement holders who have permanent, heritable and transferable rights in the land. Annual lease holders who have no right to alienate their land by way of sale or mortgage. There is also another class of land

which is allotted under the Manipur Land Revenue and Land Reforms Act, 1960. One of the conditions of such allotment is that the land shall not be transferred by the allottee within ten years from the date of allotment without the written consent of the Deputy Commissioner. Such land may, however, be mortgaged to a co-operative society, co-operative bank or a land mortgage bank or the Government without the consent of the aforesaid official. Under Section 158 of the Act, transfer of land by a person who is a member of the scheduled tribe

can be made only to another member of the scheduled tribe. Transfer to others can be made with previous written permission of the Deputy Commissioner. Transfer by way of mortgage to a co-operative society is, however, allowed.

In the hill areas, rights over land are governed by tribal customs.

Every landowner can lease his land to another person on rent for a period not exceeding five years. On the expiry of every five years, the tenancy is deemed to be renewed unless the landlord requires it for personal cultivation. Every tenant has got the right to mortgage his interest in the land for consideration of loans from co-operative societies or co-operative land mortgage banks.

There are no *bhoodan* allottees in this Territory. The Manipur Land Revenue and Land Reforms Act, 1960, also provides for restriction on the sale, mortgage and exchange of

land so as to prevent fragmentation. It would appear that there are no restrictions in creating a simple mortgage on a fragment but sale of land so as to create a fragment is not allowed.

II. Ceiling on Land Holdings

No exemption has been given in the Act allowing the land mortgage banks or commercial banks to hold lands in excess of the ceiling limit.

III. Moneylending and Debt Relief

The commercial banks and co-operative banks are exempted from the Moneylenders Act in force in Manipur. There is no legislation relating to relief of indebtedness of agriculturists.

IV. Legislation pertaining to Co-operatives

The facilities available to co-operatives are the same as those enumerated in the case of Assam.

PONDICHERRY, KARAIKAL, MAHE AND YANAM

The following enactments of the Union Territory were examined by the Expert Group:

1. The Mahe Land Reforms Act, 1968,
2. The Karaikal Tenants Protection Order, 1960 and
3. The Pondicherry Co-operative Societies Act, 1965.

Based on a review of these, the following points emerge :

I. Land Alienation Rights of Agriculturists

In Pondicherry area, lands are held on *raiyatwari* tenure and the *raiyats* have full alienation rights. The ordinary tenants in this area are on par with their counterparts in Tamil Nadu.

In Karaikal, which is also adjoining Tamil

Nadu, the tenants are protected under the Karaikal Tenants Protection Order, 1960, under which they are protected from eviction. The rights of tenants are, however, neither alienable nor heritable.

In Mahe, under a notification issued under the Mahe Land Reforms Act, 1968, the right, title and interest of landowners other than small holders is vested in the cultivating tenants free from all encumbrances. The tenants are also allowed to mortgage and sell their rights.

There is no tenancy law in Yanam (adjoining Andhra Pradesh).

There are no *bhoodan* allottees in the area. There is no law to prevent fragmentation of land holdings and co-operative banks accept fragments as security and can bring them to sale.

II. Ceiling on Land Holdings

There is no legislation pertaining to ceiling on land holding in Pondicherry, Karaikal and Yanam. The Mahe Land Reforms Act, 1968, stipulates a ceiling on land holding, which, however, is not applicable to lands purchased by a co-operative land mortgage bank, so long as such lands continue in the possession of the bank.

III. Moneylending and Debt Relief

There is no legislation on these subjects in the Territory.

IV. Legislation pertaining to Co-operatives

The provisions of the Pondicherry Co-operative Societies Act, 1965, are similar to those of the Tamil Nadu Co-operative Societies Act, 1961 and the Tamil Nadu Co-operative Land Mortgage Banks Act, 1934.

TRIPURA

The following points emerge from the replies to the questionnaire in respect of Tripura:

I. Land Alienation Rights of Agriculturists

At present, there are only two kinds of tenure holders in the Union Territory of Tripura: (i) *Raiyat* holding land under the Government and paying land revenue direct to the Government and (ii) Under-*Raiyat* including share-cropper holding land under the *raiyyat* and paying rent to him. The rights of a *raiyyat* in his land are permanent, heritable and transferable. The interest of an under-*raiyyat* is heritable but not transferable except in the case of simple mortgage or a charge on his interest in favour of the Government or a co-operative society in consideration of any loan advanced to him by the Government or such society.

There is also a special provision regarding transfer of land by a member of the scheduled tribe. No transfer of land by a member of the scheduled tribe shall be valid unless the transfer is made to another member of the scheduled tribe or in the case of a transfer to a person not belonging to the scheduled tribe, it is made with the previous written permission of the Collector or the transfer is by way of mortgage to a co-operative society.

Land allotted by Government to the landless agriculturists cannot be transferred by the

allottees within ten years from the date of allotment without the written consent of the Collector except in those cases where land is mortgaged to a co-operative society or a co-operative bank or a land mortgage bank or the Government.

There are no *bhoodan* allottees in the Territory.

II. Ceiling on Land Holdings

The legislation pertaining to ceiling on land holdings does not exempt co-operatives from the provisions of the Act. It would appear that co-operative banks will have to obtain special permission from the State Government for holding lands in excess of ceiling limit.

III. Land Records

It would appear that no record of rights is kept in this Union Territory.

IV. Moneylending and Debt Relief

There is no legislation on the subjects in this Union Territory.

V. Legislation pertaining to Co-operatives

The Bombay Co-operative Societies Act, 1925, is in force in this Union Territory.

APPENDIX — III

RIGHT TO ALIENATE LAND/RIGHTS IN LAND—STATEWISE POSITION

| Category of Landholder | Nature of Restrictions, if any |
|---|---|
| 1. Andhra Pradesh | |
| Andhra Area | |
| 1. Landholders (<i>Raiyats</i>) | — |
| 2. Landholders of minor <i>inams</i> and service <i>inams</i> | Neither mortgage nor sale to any agency. |
| 3. Tenants | Protection from eviction but no transferable rights. |
| Telengana Area | |
| 1. Landholders (<i>Pattadars</i>) | — |
| 2. Protected Tenants | Can mortgage or create a charge in favour of Government, co-operatives including land mortgage banks or an institution empowered under the relevant law for the time being in force to lend to agriculturists. |
| 3. Ordinary tenants | Only tenants with lease deed can alienate land in favour of a co-operative farming society as member thereof. Other tenants have no rights. Interest of a tenant cannot be attached/sold even in pursuance of a court decree. |
| Scheduled Areas | |
| 1. <i>Girijans</i> and other tribals | Can mortgage to a co-operative. Mortgage in favour of others with prior permission in writing of the designated officer or a member of scheduled tribe — Sales only to members of the same tribe. |
| Entire State | |
| 1. <i>Bhoodan</i> and <i>gramdan</i> allottees | Under the rules, allottees can mortgage land to Government, co-operatives and <i>Panchayat Samitis</i> only for obtaining loans for development of land. |
| 2. Allottees of Government land | No transfer allowed. |
| 3. Allotment of Government land to persons belonging to depressed classes | Transfer (sale and mortgage) permitted only to those of the same class. |
| 4. Fragment holders | Transfer only to contiguous landholder or to Government or to a co-operative society or a land mortgage bank as security for loan. |
| 5. Tenants of charitable/religious or educational institutions | They do not enjoy full alienation rights. |

| Category of Landholder | Nature of Restrictions, if any |
|---|---|
| 2. Assam | |
| Permanently settled areas | |
| 1. Landholders (including former proprietors and tenure-holders*) | — |
| 2. Settlement holders | Rights as indicated in settlement deed. |
| 3. <i>Raiyats</i> | — |
| Temporarily settled areas | |
| 1. Proprietors | — |
| 2. Landholders | — |
| 3. Settlement holders | Rights as indicated in settlement deed. |
| 4. Privileged tenants | Previous written notice to be given to landlord. Transferee must belong to the same religious faith in case land is held from religious institutions. |
| 5. Occupancy tenants | As in the case of privileged <i>raiya</i> ts. |
| 6. Non-occupancy <i>raiya</i> ts | Cannot transfer without the consent in writing of landlord. |
| 7. Sub-tenants | No transferable right. |
| Entire State | |
| (Except autonomous districts) | |
| 1. <i>Adhiars</i> (oral tenants) | No right to alienate land. |
| 2. Allottees of <i>gramdan</i> lands | Neither the <i>Gram Sabha</i> nor allottees have any transferable right. |
| 3. Fragment holders | Transfer, lease, mortgage to contiguous land holder, Government and co-operative credit societies including land mortgage banks as security for loan. |
| Autonomous districts: Tribal areas | |
| (Mizo hills and Meghalaya) | |
| Most of the lands are held by the people according to customs prevalent in the area. No land within the district shall be sold, bartered or transferred from tribal to non-tribal and from non-tribal to tribal without the previous permission of the District Council. Under the Agricultural Land Improvement Loans Rules, an applicant for loan may on the basis of a | |
| * Including <i>raiya</i> t obtaining occupancy rights under the Goalpara Tenancy Act, 1929, or the Sylhet Tenancy Act, 1936. | |

| Category of Landholder | Nature of Restrictions, if any |
|--|--|
| 1. Tenants | <p>certificate issued by the District Council indicating the nature of his rights therein, mortgage the rights to Government.</p> <p>No right to transfer land.</p> |
| 3. Bihar | |
| Entire State (Except Santal Parganas) | |
| <i>Raiyats</i> other than those belonging to scheduled tribes/castes and backward classes. | |
| 1. Proprietors & tenure-holders | — |
| 2. Occupancy <i>raiya</i> ts | — |
| 3. <i>Raiya</i> ts (fixed rent or fixed rate of rent) | — |
| 4. Non-occupancy <i>raiya</i> ts | No right to sell or mortgage |
| 5. Under- <i>raiya</i> ts | —do— |
| Chota Nagpur (Palamau, Ranchi, Hazaribagh, Singbhum and Dhanbad) | |
| 1. Aboriginal scheduled tribe/caste or backward class <i>raiya</i> ts | <p>Can mortgage for period not exceeding five years; <i>Bhugat bandha</i>* for fifteen years in favour of co-operatives and seven years in case of others is allowed. Sale by a tribal to a tribal of the same police station only and by a member of scheduled caste in favour of any one within the district is permitted. Recently an occupancy <i>raiya</i>t who is a member of the scheduled tribe or scheduled caste with the previous sanction of the Deputy Commissioner and a member of backward class without such permission can create simple mortgage in favour of co-operatives or to a company or a corporation owned by the Central or State Government or to a company in which not less than fifty one per cent of share capital is held by the Central or the State Government.</p> |
| 2. Non-aboriginal occupancy <i>raiya</i> ts | |
| Santal Parganas | |
| 1. Aboriginal <i>raiya</i> ts | <p>Transfer only to a bonafide aboriginal of the same locality—sale allowed only if right entered in record of rights.</p> |

* *Bhugat bandha* means a complete usufructuary mortgage under which the mortgagee is to satisfy the loan with usufruct of the mortgaged property within the specified period.

| Category of Landholder | Nature of Restrictions, if any |
|---|---|
| 2. Non-aboriginal <i>rai'yats</i> | May be permitted by the Government to transfer right on one fourth of paddy and first class <i>bari</i> land by <i>bhugat bandha</i> in favour of co-operatives, land mortgage banks and grain <i>gola</i> for six years. No transfer after expiry of six years is allowed. |
| Districts other than specified above | |
| 1. Occupancy <i>rai'yats</i> belonging to scheduled tribes/castes and backward classes. | Can create a <i>bhugat bandha</i> mortgage with another aboriginal for a period upto seven years. Transfers to any other person can be made with the permission of the Collector only. Allowed recently to create simple mortgage with the previous sanction of the Collector in the case of scheduled tribe/caste <i>rai'yats</i> and without such previous permission in the case of backward class <i>rai'yats</i> in favour of co-operatives or a company or corporation owned by or in which not less than fifty one per cent of the share capital is held by the State Government or by the Central Government. However, sale of land of a member belonging to scheduled tribe or caste can be made only to a member of the same tribe/caste. |
| 2. Scheduled tribe/caste under- <i>rai'yats</i> Entire State | Can enter into a simple mortgage with co-operatives. |
| 1. Fragment holders | Can transfer only to a co-sharer or contiguous landholder. |
| 2. <i>Bhoodan</i> allottees | Allottees will require previous permission of <i>Bhoodan Yagna</i> Committee for transfer. |
| 4. Gujarat @ | |
| 1. Occupants Class I | No restrictions but mortgage with possession to non-agriculturists is not allowed in Bombay area. |
| 2. Tenants of ex-intermediaries vested with occupancy or Occupants Class II | Mortgage is allowed in favour of the Government, co-operatives, State Bank of India, Subsidiaries and nationalised banks. |
| 3. Landholders (scheduled tribes) | Mortgage is allowed in favour of Government/co-operatives. |
| 4. Tenant-purchasers + | Mortgage is allowed in favour of the Government/co-operatives. |
| 5. <i>Bhoodan</i> allottees | Acquire rights of Occupants Class II. |
| 6. Ordinary tenants | Mortgage is allowed in favour of co-operatives only. |

@ No sale shall be valid if it is made in favour of a person who is not an agriculturist or who being an agriculturist cultivates land above two-thirds of ceiling limit or who is not an agricultural labourer.

+ Cultivators with restricted tenure can mortgage their lands to State Bank of India and its Subsidiaries and nationalised banks also.

| Category of Landholder | Nature of Restrictions, if any |
|--|--|
| 7. Fragment holders | Can mortgage and transfer without the previous permission of the Collector in favour of Government or a land mortgage bank or any co-operative society but the sale of fragment can be made only to contiguous landholder, failing which it will be taken over by the Government |
| 8. Government allottees | Can mortgage in favour of commercial banks. |
| 9. Sub-tenants | No right to transfer. |
| 5. Jammu and Kashmir * | |
| 1. Proprietors | — |
| 2. Tiller-proprietors | Transfer to Government, co-operatives, scheduled banks, a local body, land development banks and village <i>panchayat</i> is permitted. |
| 3. Occupancy tenants | Can transfer with the permission of the Revenue Officer. |
| 4. Protected tenants | Transfer to Government, co-operatives or a land development bank is permitted. |
| 5. <i>Bhoodan</i> allottees | Cannot transfer to any agency. |
| 6. Landholders in consolidation area | Can transfer only with the previous written permission of the Settlement Officer. |
| 7. Displaced persons holding evacuee or surplus land | Do not appear to have alienation rights. |
| 6. Kerala | |
| 1. Landowners with <i>raiyatwari patta</i> | No restrictions except that certain voluntary alienations made after publication of the Kerala Land Reforms Bill, 1963 are void. |
| 2. Tenants with fixity of tenure | — |
| 3. Tenants without fixity of tenure | No rights. |
| 4. Fragment holders | No restrictions. There is no law about prevention of fragmentation. |
| 5. Allottees of Government land | * Mortgage in favour of Government, co-operatives, Rubber Board, Tea Board, etc., is permitted but not in favour of commercial banks. |
| 6. <i>Bhoodan</i> allottees | —do— |

* Land in the State cannot be sold to any person not permanently resident in the State and who is not a member of an agricultural class.

| Category of Landholder | Nature of Restrictions, if any |
|---|--|
| 7. Madhya Pradesh | |
| 1. <i>Bhumiswamis</i> (Other than tribals) | Allowed to mortgage and sell subject to the condition that the transfer should not reduce the transferor's holding below five acres of irrigated land or ten acres of unirrigated land or increase the transferee's holding above ceiling. This applies to sales in pursuance of court decree also. No usufructuary mortgage for a period more than six years is valid. The total amount of interest under mortgage should not increase half the principal amount. Transfer to co-operatives/Government and to commercial banks against the security of Government for agricultural purposes is permitted. A <i>bhumiswami</i> , unless he is in exempted category, cannot lease his land. |
| 2. <i>Bhumiswamis</i> (Tribals) | In addition to above restrictions, transfer can be made to persons not belonging to scheduled tribe with the permission of the competent authority only and land cannot be attached/sold even in pursuance of court decree. Transfer to co-operatives/Government and to commercial banks against security of the Government is permitted. |
| 3. Occupancy tenants@ | Transfer only to Government/co-operatives. |
| 4. Ordinary tenants | No right of alienation. |
| 5. <i>Bhoodan</i> allottees | Acquire <i>bhumiswami</i> rights after holding land continuously for ten years. In the interregnum, they can transfer their interest in land in favour of co-operatives/Government only. |
| 6. Fragment holders | There is no legislation on the subject. To prevent fragmentation, however, the Land Revenue Code provides that no partition shall be allowed, if it results in creating a holding which is below five acres of irrigated land or ten acres of unirrigated land. |
| 7. Government lessees | Can mortgage land only if permitted as per terms of the grant. |
| 8. Maharashtra ★ | |
| 1. Occupants Class I and ex-intermediaries in Vidarbha who have been given land ownership rights in some lands. | — |

@ Practically all occupancy tenants are reported to have become *bhumiswamis* though recording of them in village records is pending still in a few districts.

★ In all cases, sale of land to non-agriculturists or to agriculturists likely to acquire land in excess of ceiling is prohibited.

| Category of Landholder | Nature of Restrictions, if any |
|---|---|
| 2. Tenant-purchasers | |
| a) former Bombay area | Mortgage to Government/co-operatives only as Occupants Class II. |
| b) Vidarbha | Mortgage to Government/co-operatives and the State Bank of India. |
| c) Marathwada | Require Collector's permission. |
| 3. Protected Tenants and Ordinary tenants (Marathwada) | Mortgage to Government only for short-term purposes. |
| 4. Ordinary tenants (Bombay area and Vidarbha) | Mortgage to Government/co-operatives only. |
| 5. <i>Ex-watan</i> and miscellaneous landholders | —do— |
| 6. Scheduled tribes | Require permission of Collector. |
| 7. <i>Bhoodan</i> allottees | No transferable rights. |
| 8. Fragment holders | Mortgage to Government/co-operatives including land development banks and sale to contiguous land holder/Government. |
| 9. Mysore* | |
| 1. Landowners (<i>Raiyats</i>) | No restrictions. However, a <i>raiyyat</i> holding land in excess of the ceiling fixed is not allowed to alienate it pending declaration by that <i>raiyyat</i> of his lands and determination by the Land Tribunal of the extent of land to be surrendered by him. |
| 2. Landowners who have resumed land from tenants | Resumed land can be sold only to evicted tenant if sold within six years of resumption. Resumed land can, however, be mortgaged and sold to Government/co-operatives. |
| 3. New owners, permanent tenants, protected tenants or other tenants or sub-tenants acquiring occupancy rights under the Mysore Land Reforms Act, 1961. | Right of ownership accrues only on payment of full amount of compensation. Transfer within six years after acquiring occupancy is not permitted. Mortgage in favour of the State Government and co-operatives is allowed. |
| 4. Tenants arising out of <i>inam</i> abolition legislation known as <i>kadim</i> tenants, permanent tenants, other tenants and minor <i>inam</i> holders | <i>Kadim</i> tenants are registered as occupants. Others get occupancy right on payment of stipulated premia. Mortgage in favour of the State Government and co-operatives is allowed. |

* Sale of land or interest in land can be made only to an agriculturist who holds land as owner and/or tenant, land which does not exceed the ceiling stipulated. Similar restrictions apply to mortgage in which possession of mortgaged property is delivered to the mortgagee.

| Category of Landholder | Nature of Restrictions, if any |
|---|---|
| 5. Ordinary tenants | Can mortgage or create a charge on interest in the land in favour of Government/co-operative societies. The credit agencies can cause their interest to be sold in case of default. |
| 6. <i>Bhoodan</i> allottees | The allottees are not allowed to transfer the land in favour of any agency. |
| 7. Fragment holders | A fragment can be sold to the contiguous plot holder at such price at which any other is prepared to purchase. If he is not agreeable, other persons are allowed to purchase the fragment with the <i>Tahsildar's</i> permission. However, fragment can be sold in favour of co-operative societies approved by the Government. |
| 8. <i>Ex-inam</i> and similar type of landholders | Do not have mortgageability rights in those lands without the previous permission of competent authority. |
| 9. Religious bodies and trusts holding land. | Do not appear to have adequate alienable rights in land. The Mysore State Co-operative Land Development Bank does not advance loans to them. |
| 10. Grantees of land under <i>Saguvali Chits</i> | Can mortgage only in favour of the Government/co-operatives. |
| 10. Nagaland | |
| 1. Village ownership | Land is owned by the village as a whole in the entire State excepting in the Dimapur <i>Mouza</i> . It is only recently that ownership of individuals in some cases is recognised. |
| 2. Individual landowners | In the Dimapur <i>Mouza</i> , land settlement has been recognised and <i>pattas</i> conferring perpetual leases have been issued in favour of the individual owners. Ownership of land by individuals whether within the Dimapur <i>Mouza</i> or outside is transferable by sale or otherwise and also by mortgage. However, the transfer to a non-indigenous person of the area requires special sanction from the Government. |
| 3. Annual lease—holders | No transferable rights. |
| 11. Orissa | |
| 1. <i>Raiyats</i> | |
| a) not belonging to scheduled tribe/ caste | |
| b) belonging to scheduled caste/tribe | Transfer is allowed in favour of persons belonging to scheduled tribe/caste only. Transfer in favour |

| Category of Landholder | Nature of Restrictions, if any |
|--|--|
| | of others requires permission of the Revenue Officer. Mortgage in favour of a land development bank or a co-operative society is permitted. |
| 2. Tenants or share-croppers (<i>Bhagchasis</i>) | No transferable rights. |
| 3. <i>Bhoodan</i> allottees | Transfer allowed in favour of Government/co-operatives only. |
| 4. Fragment holders | No legislation. |
| 12. Punjab and Haryana* | |
| 1. Landowners including occupancy tenants who have been conferred proprietary rights of landowners | No restrictions. However, tenants have right of pre-emption in respect of sales other than sales in execution of a court decree. |
| 2. Other tenants | No rights. |
| 3. Fragment holders | Sale only to contiguous land holder failing which to the Government. In Haryana, sections relating to fragmentation are in-operative as no rules have been framed under the Act so far. |
| 4. <i>Bhoodan</i> allottees | No right to transfer in favour of any agency. |
| 5. Allottees of surplus land (In Pepsu area) | They are not competent to transfer their rights in the land till all dues in respect of land are cleared. In the interregnum, they can mortgage their land in favour of a land mortgage bank for raising a loan. |
| 6. Tenants in process of becoming owners | |
| a) In Punjab area | After payment of the first instalment of the price of land, they will have full ownership rights in land. |
| b) In Pepsu area | Within six years from acquiring ownership rights, they can alienate land only to the Government or the Punjab State Co-operative Land Mortgage Bank. |
| 13. Rajasthan** | |
| 1. <i>Khatedars</i> | — |
| 2. <i>Khatedars</i> belonging to scheduled castes/tribes | Sale can be made only to another member of the same denomination. |
| 3. <i>Ghair Khatedars</i> | Allowed to mortgage in favour of co-operatives, Government, any scheduled bank and any institution |

* Since no landowner or an allottee of the Government land or tenant can hold land above the 'permissible' limit, sale can be made only to those who will not by the purchase acquire land in excess of 'permissible' limit.

** Sale of land is subject to purchaser not acquiring land in excess of the ceiling as a result of the purchase.

| Category of Landholder | Nature of Restrictions, if any |
|---|--|
| | notified by the Government but permission of Collector is necessary. In the case of usufructuary mortgage, it should not be for a period of more than ten years. |
| 4. Tenants of <i>Khud'asht</i> | Acquire <i>Khatedari</i> rights on issue of certificate but alienation rights accrue on paying the compensation in full. |
| 5. Grantees of land under the Government Grants Act, 1961. | They hold land under specific conditions one of which is that they do not have right to mortgage their land. If, however, they are also treated as <i>ghair khatedars</i> , they will have same alienation rights as <i>ghair khatedar</i> tenants. |
| 6. Holders of land under the Rajasthan Colonisation Act, 1954 or under the command areas of irrigation projects | In general, these landholders get ownership rights only on payment of compensation. However, they are also covered in the Ordinance regarding <i>ghair khatedar</i> tenants. |
| 7. <i>Bhoodan</i> allottees | No alienation rights. |
| 8. <i>Gramdan</i> allottees | They can transfer their interest in land to a person who has joined the <i>Gramdan</i> community in respect of village in which land is situated or to the <i>Gram Sabha</i> or to a co-operative society or to any institution approved by the State Government. |
| 9. <i>Gramdan</i> allottees belonging to scheduled caste/tribe | They can transfer their interest in land to <i>Gramdan kisan</i> who is also a member of scheduled tribe/caste or institution as specified in the case of <i>Gramdan</i> allottees. |
| 10. Fragment holders | No transfer of fragment in respect of which a notice has been given is allowed unless thereby the fragment becomes merged in a contiguous survey number. Sale of fragment can be made only to contiguous plot holders and in case of their refusal, it can be transferred to the State Government. |
| 11. Sub-tenants | No transferable rights. |
| 14. Tamil Nadu | |
| 1. <i>Raiyats</i> | |
| 2. Cultivating tenants | No transferable rights. |

| Category of Landholder | Nature of Restrictions, if any |
|---|---|
| 3. <i>Bhoodan</i> allottees | Rights as determined by <i>Bhoodan</i> Board. It is understood that they cannot mortgage land for a period of twelve years. |
| 4. Tenants of public trusts | They can transfer land only to tenant co-operative societies. |
| 5. Fragment holders | No legislation on the subject. |
| 6. Land assigned by the Government to <i>harijans</i> and landless persons free of land price | <i>Harijans</i> cannot sell these lands to non- <i>harijans</i> and land assigned to landless free of land price cannot be alienated within a period of ten years. |
| 15. Uttar Pradesh* | |
| 1. <i>Bhumidars</i> | No restrictions except that transfer by way of usufructuary mortgage is not permitted. |
| 2. <i>Sirdars</i> | Cannot transfer their land but mortgage without possession can be created in favour of Government, co-operatives including land development banks, State Bank of India or scheduled banks or the Uttar Pradesh State Agro-Industries Corporation. Land development banks are also entitled to purchase any property mortgaged to them by a <i>sirdar</i> by depositing necessary funds with Government to acquire <i>bhumidari</i> rights and thereafter the land development banks can dispose of the land by sale. Debt due to a co-operative society from a <i>sirdar</i> can be realised by treating it as an arrear of land revenue and selling the right. |
| 3. <i>Adhivasis</i> | Transitional form of tenure with no rights. |
| 4. <i>Asamis</i> | No transferable rights. |
| 5. <i>Sajhis</i> (Partners-in-cultivation) | —do— |
| 6. <i>Bhoodan</i> allottees | As in the case of <i>sirdars</i> . |
| 7. Fragment holders | Right to mortgage exists but sale can be made only to an adjoining landholder. |
| 8. <i>Hissedar Khulkasht</i> (In the hill areas of the State) | |

* Sale of holding by any class of cultivators should not increase the holding of the transferee above twelve and half acres.

| Category of Landholder | Nature of Restrictions, if any |
|---|---|
| 16. West Bengal** | |
| 1. <i>Raiyats</i> not belonging to scheduled tribes | Full transferable rights; but can enter into only a simple mortgage or usufructuary mortgage for a period not exceeding fifteen years. |
| 2. <i>Raiyats</i> belonging to scheduled tribes | Simple mortgage in favour of Government or a registered co-operative society. Usufructuary mortgage with a transferee belonging to the same scheduled tribe to which transferor belongs and for a period not exceeding seven years; usufructuary mortgage to others for the same period with previous permission of the Revenue Officer - Sale to Government or a member of scheduled tribe only. Other sales require prior permission - Transfers by registered instruments only. Recently, Government has decided to issue instructions to the District Collectors to allow mortgage of land by the scheduled tribes in favour of commercial banks for obtaining loans for setting up shallow tube-wells, pumpsets and other agricultural machinery, in cases where the loans are recommended by the Block Development Officer/District Agricultural Officer. |
| In Purulia district, the restrictions on landholders belonging to scheduled tribe/caste are similar to those applicable to similar categories of landholders in the Chota Nagpur area of Bihar. | |
| 3. <i>Bargadars</i> | No transferable rights. <i>Raiyats</i> who owned less than seven and half acres of land can resume land from <i>bargadars</i> if required for personal cultivation, provided <i>bargadar</i> is left with atleast two acres for his cultivation. The extent of land so resumed by the <i>raiyyat</i> alongwith any other land under his personal cultivation should not exceed seven and half acres. |
| 4. <i>Bhoodan</i> allottees | Conditions and restrictions will be as those prescribed by the <i>Bhoodan Yagna</i> Board. |
| 5. <i>Gramdan</i> allottees | No transfer by allottees of interest in land shall be valid unless made to a member of <i>Gram Parishad</i> and with the consent of the <i>Gram Parishad</i> . However, allottees may hypothecate their interest in land in |

** Since no *raiyyat* or *bargadar* can hold more than twenty five acres of land excluding homestead, sale of land can be made only to those who will not by the purchase acquire land in excess of this limit.

| Category of Landholder | Nature of Restrictions, if any |
|--|--|
| | favour of the State Government or a co-operative society with the consent of the <i>Gram Parishad</i> . |
| 6. Fragment holders | No legislation on subject. However, if part of a holding or a share of it is transferred to any agency, a co-sharer or tenant who has got land contiguous to the holding can exercise his right of pre-emption. Provision exists for payment of sale price and compensation. |
| 17. Union Territories | |
| Andaman and Nicobar Islands | |
| 1. Occupancy tenants | Cannot mortgage or sell unless atleast two hectares of land is left with them. However, this will not apply when property is mortgaged to the Government or co-operatives. |
| 2. Occupancy tenants belonging to scheduled tribes | In addition to the above, the right cannot be attached or sold. |
| 3. Non-occupancy tenants | No transferable rights. |
| 4. Grantees | Can transfer with prior permission of the Chief Commissioner. |
| 5. Licencees | They are initially given rights of non-occupancy tenants. If they cultivate land for more than two years, they get rights of occupancy tenants. |
| Goa, Daman & Diu | |
| 1. Owners Individuals, Comunidades* and religious bodies. | No restrictions but comunidades/ religious bodies cannot sell, mortgage, transfer land leased out. |
| 2. Tenants of individuals | Permitted to mortgage or create a charge in favour of Government/co-operatives in Goa area and also scheduled banks in Daman area - Can sell with Collector's permission in Daman. |

* Comunidades are a sort of private corporations based on the old village comunidades. Members of comunidades are descendants of the first settlers of the village, known as *Gauncars*. Every son of *Gauncar* when he reaches a particular age, say of fourteen, sixteen, eighteen years, according to the rules of each comunidade, becomes automatically a member of the comunidade.

| Category of Landholder | Nature of Restrictions, if any |
|--|---|
| Chandigarh | |
| 1. Owner proprietors | — |
| 2. Tenants | No transferable rights. |
| Delhi | |
| 1. <i>Bhumidars</i> | — |
| 2. <i>Asamis</i> | No transferable rights. |
| Himachal Pradesh | |
| 1. Landowners | — |
| 2. Occupancy tenants | No transferable rights. |
| 3. Non-occupancy tenants | —do— |
| Manipur | |
| 1. <i>Pattadars</i> and settlement holders | — |
| 2. Settlement holders under annual lease | No transferable rights. |
| 3. Allottees under the Manipur Land Revenue and Land Reforms Act, 1960 | No right to transfer within ten years from the date of allotment without written consent of the Deputy Commissioner. However, land can be mortgaged to a co-operative society or Government or a land mortgage bank without such consent. |
| 4. Scheduled tribe allottees | Transfer can be made only to another member of the scheduled tribe. Transfer to others will require previous permission of the Deputy Commissioner. Transfer by way of mortgage to a co-operative society is permitted. |
| 5. Tenants | Right to mortgage in favour of co-operative societies or co-operative land mortgage banks only. |
| 6. Fragment holders | Sale can be made only to a contiguous plot holder. |
| 7. Land in hill areas | Rights over land are governed by tribal customs. |

| Category of Landholder | Nature of Restrictions, if any |
|--|---|
| Pondicherry, Karaikal, Mahe and Yanam | |
| 1. <i>Raiyats</i> | — |
| 2. Tenants | No rights of alienation. |
| a) Pondicherry } b) Karaikal } c) Yanam } d) Mahe } | |
| | No legislation |
| | — |
| Tripura | |
| 1. <i>Raiyats</i> | — |
| 2. <i>Raiyats</i> belonging to scheduled tribes | Mortgage to a co-operative society is allowed. Sale can be made only to another member of the scheduled tribe. Sale to others can be made only with prior permission of the Collector. |
| 3. <i>Under-raiyats</i> | Can create simple mortgage or a charge on interest in land in favour of Government or co-operatives. |
| 4. Government land allottees | Land allotted to landless agriculturists by Government cannot be transferred within ten years from the date of allotment without the written consent of the Collector. Mortgage in favour of a co-operative society or a co-operative bank or a land mortgage bank or the Government is allowed without such consent. |

APPENDIX—IV

LIST OF DISTRICTS IN WHICH THE PROPORTION OF SCHEDULED CASTES AND SCHEDULED TRIBES IS MORE THAN 33 PER CENT TO THE TOTAL POPULATION OF THE DISTRICT

| | | | |
|-------------------------------------|------|-------------------------------------|------|
| Assam | | Sambalpur | 45.4 |
| (Total No. of Districts 11) | | Bolangir | 38.2 |
| Garo Hills | 85.9 | Baudh Khondmals | 60.9 |
| United Khasi & Jaintia Hills | 81.6 | Sundargarh | 67.8 |
| United Mikir and North Cachar Hills | 80.0 | Keonjhar | 61.0 |
| Mizo Hills | 98.1 | Mayurbhanj | 69.3 |
| Bihar | | Rajasthan | |
| (Total No. of Districts — 17) | | (Total No. of Districts — 26) | |
| Santal Parganas | 45.8 | Sawai Madhopur | 44.6 |
| Palamau | 45.2 | Dungarpur | 64.7 |
| Ranchi | 66.2 | Sirohi | 40.1 |
| Singbhum | 50.3 | Udaipur | 38.9 |
| Gujarat | | Bundi | 36.0 |
| (Total No. of Districts — 17) | | Banswara | 67.2 |
| Panchmahals | 37.8 | Uttar Pradesh | |
| Broach | 46.6 | (Total No. of Districts — 54) | |
| Surat | 53.4 | Mirzapur | 34.1 |
| Dang | 92.9 | West Bengal | |
| Madhya Pradesh | | (Total No. of Districts — 16) | |
| (Total No. of Districts — 43) | | Jalpaiguri | 58.3 |
| Shahadol | 57.1 | Cooch Bihar | 47.8 |
| Sidhi | 43.3 | West Dinajpur | 34.6 |
| Jhabua | 87.6 | Birbhum | 37.1 |
| Dhar | 58.5 | Bankura | 40.6 |
| West Nimar | 51.1 | Purulia | 36.9 |
| Betul | 41.5 | Nagaland | |
| Mandla | 65.6 | (Total No. of Districts — 3) | |
| Chhindwara | 42.4 | Kohima | 81.2 |
| Seoni | 61.4 | Mokokchung | 94.5 |
| Surguja | 42.7 | Tuensang | 97.0 |
| Bilaspur | 36.3 | Union Territories | |
| Rajgarh | 57.0 | Chamba | 47.3 |
| Bastar | 77.8 | Sirmur | 34.3 |
| Maharashtra | | Kinnaur | 89.8 |
| (Total No. of Districts — 26) | | Laccadive, Minicoy and Amindive Is- | |
| Dhulia | 41.5 | lands | 97.0 |
| Orissa | | Manipur | 33.6 |
| (Total No. of Districts — 13) | | Tripura | 42.0 |
| Kalahandi | 52.1 | Dadra and Nagar Haveli | 90.2 |
| Koraput | 73.3 | | |

Source : Based on 1961 Census data.

APPENDIX—V

AREA OPERATED UNDER TENANCY

| State | National Sample Survey : 17th Round 1960-61, ('000 acres) | | | 1961 Census | | | | | |
|-----------------------|---|--------------------|-------------|--|-------|------------------------|-------|------------------------|-------|
| | Area operated | Area under tenancy | % of 2 to 1 | Percentage distribution of cultivating households and area cultivated Total cultivating households for each State = 100. Total cultivated area for each State = 100. | | | | | |
| | | | | Ownership | | Pure tenancy | | Mixed tenancy | |
| | | | | Cultivating households | Area | Cultivating households | Area | Cultivating households | Area |
| | 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. | 9. |
| 1. Andhra Pradesh | 28,219 | 2,582 | 9.15 | 78.98 | 76.68 | 6.28 | 3.68 | 14.74 | 19.64 |
| 2. Assam | 4,649 | 714 | 15.36 | 62.91 | 65.37 | 15.39 | 9.36 | 21.70 | 25.27 |
| 3. Bihar | 24,536 | 2,515 | 10.25 | 67.82 | 67.82 | 7.35 | 7.35 | 24.83 | 24.83 |
| 4. Gujarat | 23,215 | 1,353 | 5.83 | 86.54 | 86.67 | 4.07 | 2.62 | 9.39 | 10.71 |
| 5. Jammu and Kashmir | 1,875 | 265 | 14.13 | 58.21 | 53.06 | 4.90 | 7.05 | 33.89 | 39.89 |
| 6. Kerala | 3,314 | 507 | 15.30 | 54.90 | 42.79 | 32.53 | 34.72 | 12.57 | 22.49 |
| 7. Madhya Pradesh | 41,789 | 2,674 | 6.40 | 80.21 | 80.09 | 5.55 | 3.28 | 14.24 | 16.63 |
| 8. Tamil Nadu | 13,107 | 2,169 | 16.55 | 76.21 | 78.06 | 10.96 | 6.64 | 12.83 | 15.28 |
| 9. Maharashtra | 40,975 | 3,581 | 8.74 | 78.49 | 77.31 | 7.29 | 3.84 | 14.22 | 18.85 |
| 10. Mysore | 24,277 | 4,409 | 18.16 | 70.47 | 67.38 | 10.11 | 4.84 | 19.42 | 27.78 |
| 11. Orissa | 12,604 | 1,355 | 10.75 | 77.83 | 78.09 | 4.89 | 2.87 | 17.28 | 19.04 |
| 12. Punjab@ | 13,605 | 4,815 | 35.39 | 51.66 | 51.40 | 13.76 | 9.77 | 34.58 | 38.83 |
| 13. Rajasthan | 36,552 | 1,780 | 4.87 | 88.96 | 89.01 | 3.87 | 2.55 | 7.17 | 8.44 |
| 14. Uttar Pradesh | 46,978 | 3,786 | 8.06 | 89.53 | 91.39 | 3.22 | 1.69 | 7.25 | 6.92 |
| 15. West Bengal | 12,557 | 2,216 | 17.65 | 65.64 | 65.05 | 13.34 | 10.18 | 21.02 | 24.77 |
| 16. Union Territories | 1,333 | 231 | 17.33 | — | — | — | — | — | — |
| All-India | 3,29,585 | 34,952 | 10.60 | 76.34* | 77.59 | 7.70* | 4.22 | 15.46* | 18.19 |

@ Including Haryana also.

* All-India total is inclusive of Union Territories in respect of households whereas in the case of cultivated area it is exclusive.

Sources : 1 National Sample Survey, Tables with notes on tenancy in rural India — 17th Round.

2 Indian Journal of Agricultural Economics, Vol. XX No. 4 — October - December 1965.

APPENDIX—VI

STATE-WISE BHOODAN LAND AND GRAMDAN VILLAGES

(Upto 31st March 1967)

| State | Land received (in acres) | Land distributed (in acres) | Land rejected (in acres) | Land to be distributed (in acres) | Number of Gramdan Villages |
|----------------------|-----------------------------|--------------------------------|-----------------------------|--------------------------------------|----------------------------|
| 1. | 2. | 3. | 4. | 5. | 6. |
| 1. Assam | 23105 | 509 | 8 | 22588 | 1163 |
| 2. Andhra Pradesh | 241952 | 103309 | 86385 | 52258 | 3583 |
| 3. Orissa | 189139 | 113345 | 19846 | 55948 | 6364 |
| 4. Uttar Pradesh | 435574 | 201642 | 173564 | 60368 | 753 |
| 5. Kerala | 26293 | 5774 | 7999 | 12520 | 409 |
| 6. Tamil Nadu | 80433 | 21519 | — | 58914 | 3319 |
| 7. Delhi | 300 | 180 | 120 | — | 74 |
| 8. Punjab | 14739 | 3601 | 3380 | 7758 | 1280 |
| 9. Gujarat | 103530 | 50984 | 27994 | 24552 | 751 |
| 10. Maharashtra | 150802 | 107111 | 33346 | 5345 | 2681 |
| 11. Madhya Pradesh | 405402 | 156506 | 174531 | 74365 | 2161 |
| 12. Mysore | 20086 | 3181 | 53 | 16852 | 96 |
| 13. West Bengal | 12960 | 3898 | 8426 | 636 | 627 |
| 14. Bihar | 2121462 | 331842 | 1067006 | 722614 | 13198 |
| 15. Rajasthan | 432868 | 84781 | 122488 | 225599 | 1011 |
| 16. Himachal Pradesh | 5240 | 2531 | — | 2709 | — |
| 17. Jammu & Kashmir | 211 | 5 | — | 206 | — |
| | 4264096 | 1190718 | 1730146 | 1343232 | 37775 |

Source : The Causes and Nature of Current Agrarian Tensions, Ministry of Home Affairs.

APPENDIX—VII

FIRST CHARGE IN FAVOUR OF CO-OPERATIVES ARISING BY LAW

| State | Charge subject to claims of Government for land revenue/money recoverable as land revenue | Alienation of property subject to charge with society's previous permission in writing | Property subject to charge | | |
|--------------------|---|--|---|------------------------------|---|
| | | | Land (Any/purchased/redeemed with loan) | Crops (Any/raised with loan) | Implements etc. (Any/purchased with loan) |
| | 1 | 2 | 3 | 4 | 5 |
| Andhra Pradesh | Yes+ | Yes | — | Any | Any |
| Assam/Nagaland* | — | — | with loan | with loan (for 2 years) | with loan |
| Bihar | Yes@ | — | — | with loan (for 2 years) | with loan |
| Gujarat | Yes@@ | Yes | — | Any | with loan++ |
| Jammu and Kashmir | Yes** | Yes | — | Any | Any |
| Kerala | Yes | Yes | — | with loan | with loan |
| Madhya Pradesh | Yes | Yes | — | Any | Any |
| Maharashtra | Yes@@ | Yes | — | Any | with loan++ |
| Mysore | Yes | Yes | — | Any | Any |
| Orissa | Yes | Yes | Any | Any | Any |
| Punjab and Haryana | Yes | Yes | — | Any | Any |
| Rajasthan | Yes | Yes | — | Any | Any |
| Tamil Nadu | Yes | Yes | — | with loan | with loan |
| Uttar Pradesh | Yes | — | with loan | with loan | with loan |
| West Bengal | Yes@* | — | with loan | with loan (for 2 years) | with loan |

+ Charge available against any claims of Government in respect of money recoverable as land revenue.

* Charge subject to claims of bonafide purchaser or transferee for value without notice.

@ Charge also subject to money recoverable as a public demand or claims of landlord for rent or any money recoverable as rent.

@@ Claim of Government for money recoverable as land revenue restricted to the assets created out of such funds.

++ Charge also on any movable property pledged or mortgaged with society and lying in member's possession.

** Charge also subject to the provisions of Jammu & Kashmir Tenancy Act, 1980 (Svt.).

APPENDIX—VIII

CHARGE IN FAVOUR OF CO-OPERATIVES CREATED BY DECLARATION

| State | Property that can be declared (1) | Declaration registered with/recorded in (2) | Declared property alienable in favour of (3) | Declaration subject to prior encumbrances (4) |
|----------------------|---|--|--|---|
| 1. Andhra Pradesh | Land/other immovable property /interest in land or in such property | Sub-Registrar (void if not registered) | — | Government for land revenue; prior charge/mortgage. |
| 2. Gujarat | Land/interest in land as a tenant | Record of Rights | Government, land mortgage banks* | Declaration charge also first charge subject to claims of Government (for land revenue or money recoverable as land revenue), land mortgage banks and charge created under Bombay Agricultural Debtors' Relief Act, 1947. |
| 3. Jammu and Kashmir | Land/immovable property | Sub-Registrar (void if not registered); also recorded in Revenue Records | Government, land development banks, scheduled banks, Jammu & Kashmir Bank Ltd. | |
| 4. Kerala | Land/interest in land as a tenant entitled to fixity of tenure | Sub-Registrar (void if not registered) | Government, land mortgage banks | Declaration charge also first charge subject to claims of Government (for land revenue or any money recoverable as land revenue), land mortgage banks and prior registered alienation. |

| | | | | |
|-----------------------------|--|--|--------------------------------------|---|
| 5. Madhya Pradesh | Land/interest in land as a tenant | Record of Rights | Government, @ land mortgage banks | Declaration charge also first charge subject to claims of Government (for land revenue or any money recoverable as land revenue) and charge created under law relating to agricultural debtors. |
| 6. Maharashtra | Land/interest in land as a tenant | Record of Rights | Government, @ land development banks | Declaration charge also first charge subject to claims of Government (for land revenue or any money recoverable as land revenue), land development banks and charge created under Bombay Agricultural Debtors Relief Act, 1947. |
| 7. Mysore | Land/interest in land as a tenant | Record of Rights | † | Declaration charge also first charge subject to claims of Government (for land revenue or any money recoverable as land revenue) and prior registered alienation. |
| 8. Punjab } 9. Haryana } | Land/interest in land as a tenant | Record of Rights | †† | Declaration charge also first charge subject to claims of Government (for land revenue or any money recoverable as land revenue). |
| 10. Rajasthan | Immovable property (for loans other than short-term loans) | Annual Registers | — | Declaration charge also first charge subject to claims of Government (for land revenue or any money recoverable as land revenue) and land development banks. |
| 11. Tamil Nadu | Land/other immovable property | Sub-Registrar (void if not-registered) | — | — |

* By a resolution, the Government has allowed alienation of property subject to charge, in favour of the State Bank of India, its Subsidiaries and nationalised banks.

@ For obtaining irrigation finance.

† Standing crops on the land mentioned in the declaration can be alienated with previous written permission of the society.

†† Alienation of property subject to charge is allowed only for paying in full to the society.

NOTE : There is no provision for creation of charge by declaration in Assam, Bihar, Nagaland, Orissa, Uttar Pradesh and West Bengal.

APPENDIX - IX

PRIORITY OF CO-OPERATIVE LOANS OVER GOVERNMENT LOANS

| State | Priority of Short and Medium Term Loans of Co-operatives over subsequent Loans of Government under | | | Priority of Long Term Loans of Co-operatives over subsequent Loans of Government under | | |
|-------------------|--|--------|--|--|--------|---|
| | LIL Act | AL Act | Others | LIL Act | AL Act | Others |
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Andhra Pradesh | Yes | | All loans (prior also) | Yes | | |
| Assam/Nagaland | | | | Yes | Yes | |
| Bihar | | | | | | |
| Gujarat | | | | Yes | Yes | Yes |
| Jammu and Kashmir | | | | Aid to Agriculturists and Land Improvements Act, 1993 (Svt.) | | |
| Kerala | | | All loans | Yes | Yes | Cochin Agricultural Improvement Loans Act, 1093, Travancore Land Improvement & Agricultural Loans Act, 1094 |
| Madhya Pradesh | Yes | Yes | | Yes | Yes | |
| Maharashtra | | | | Yes | Yes | |
| Mysore | Yes | Yes | | Yes | Yes | |
| Orissa | Yes | Yes | Bihar & Orissa State Aid to Industries Act, 1923 | Yes | Yes | |
| Punjab/Haryana | Yes | Yes | | Yes | | |
| Rajasthan | | | Rajasthan Agricultural Loans Act, 1956 | | | Rajasthan Agricultural Loans Act, 1956 |
| Tamil Nadu | Yes | | | Yes | | |
| Uttar Pradesh | | | All loans | Yes | | |
| West Bengal | | | | Yes | | |

LIL — Land Improvement Loans Act, 1883.

AL — Agriculturists' Loans Act, 1884.

APPENDIX - X

MONEY LENDING LEGISLATION — APPLICABILITY TO BANKS AND RATES OF INTEREST SPECIFIED

| Enactment | Banks exempted from purview | Section | Maximum Rate of Interest (simple per cent per annum) allowed on | | |
|---|---|---------|---|-----------------|-----|
| | | | Secured loans | Unsecured loans | |
| | | | 2. | 3. | 4. |
| Andhra Pradesh | | | | | |
| i. The Andhra Pradesh (Telengana Area) Money Lenders Act, 1949, <i>Fasl</i> | Bank as per Banking Companies Act, 1949; incorporated under any other law | (10) | 6 [@] | 9 [@] | |
| ii. The Andhra Pradesh (Andhra Area) Pawnbrokers Act, 1943 | Bank as defined in Indian Companies Act, 1913 | (6) | 6½-9½ | — | |
| iii. The Andhra Pradesh (Scheduled areas) Money-lenders Regulation, 1960 | Bank as defined in Banking Companies Act, 1949 | (7) | 6½-9½ (Pledge loans) 9 (Other) | — | 12 |
| iv. The Andhra Pradesh (Andhra Area) Money-lenders Act, 1957 | Bank as defined in Banking Companies Act, 1949 and includes State Bank of India and State Bank of Hyderabad | (7) | 9 | | 12 |
| Assam | | | | | |
| The Assam Money-lenders Act, 1934 | Banks notified by the State Government | (8) | 9½ | | 12½ |
| Bihar | | | | | |
| i. The Bihar Money-Lenders Act, 1938 | } Bank notified by the State Government | (5) | 9 | | 12 |
| ii. The Bihar Money-lenders (Regulation of Transactions) Act, 1939 | | | | | |

@ Payment of simple interest on the sum payable as interest is allowed at a rate not exceeding half the rate of interest payable on principal.

| Enactment | Banks exempted from purview | Section | Maximum Rate of Interest, (sim- ple per cent per annum) allowed on | |
|---|--|---------|--|-------------------------|
| | | | Secured loans | Unse- cured loans |
| | 1 | 2 | 3 | 4 |
| Gujarat / Maharashtra | | | | |
| The Bombay Money-lenders Act, 1946 | Bank as defined in Banking Regulation Act, 1949, Reserve Bank and banking institutions notified by Central Government under Section 51 of Banking Regulation Act, 1949 | (25) | 12 | 15 |
| Jammu & Kashmir | | | | |
| The Jammu & Kashmir Regulation of Accounts Act, 2001 (Svt.) | Bank defined as a company carrying on the business of banking | | Not specified | |
| Kerala | | | | |
| The Kerala Money-lenders Act, 1958 | Bank as defined in Section 5 of the Banking Regulation Act, 1949 and includes State Bank of India and its Subsidiaries | (7) | 9 | 12 |
| Madhya Pradesh | | | | |
| The Madhya Pradesh Money-lenders Act, 1934 | Bank defined as company carrying on business of banking and registered under any law relating to companies or incorporated by any Central Act | | Not specified | |
| Mysore | | | | |
| The Mysore Money-lenders Act, 1961 | Bank as defined in Banking Regulation Act, 1949, includes State Bank of India and any banking institution | (28) | 15 | 18 |

| Enactment | Bank exempted from purview | Section | Maximum Rate of Interest (sim- ple per cent per annum) allowed on | |
|--|---|---------------|---|-------------------------|
| | | | Secured loans | Unso- cured loans |
| | 1 | 2 | 3 | 4 |
| | notified under Section 51 of Banking Regulation Act, 1949 | | | |
| Orissa | | | | |
| i. The Orissa Money-lenders Act, 1939 | Banks notified by the Govern- ment | (9) | 9 | 12 |
| ii. The Orissa (Scheduled Areas) Money-lenders, Regulation, 1967 | Bank as defined in Section 5 of the Banking Regulation Act, 1949; includes State Bank of India, its Subsidiaries and any financial institution noti- fied by the State Government | (7) | 9 | 12 |
| Punjab / Haryana | | | | |
| i. The Punjab Regulation of Accounts Act, 1930 | Bank defined as company carrying on business of bank- ing and registered under any law relating to companies or incorporated by any Act of Parliament. | Not specified | | |
| ii. The Punjab Registration of Money-lenders Act, 1938 | | | | |
| Rajasthan | | | | |
| The Rajasthan Money-lenders Act, 1963 | Bank as defined under Section 5 of Banking Regulation Act, 1949; includes State Bank of India and any banking insti- tution notified under Section 51 of the Banking Regulation Act, 1949 | (29) | 9 | 12 |
| Tamil Nadu | | | | |
| i. The Tamil Nadu Money- lenders Act, 1957 | Bank as defined under Section 5 of the Banking Regulation | (7) | 9 | 12 |

| Enactment | Banks exempted from purview | Section | Maximum Rate of Interest (sim- ple per cent per annum) allowed on | |
|---|--|---------|---|-------------------------|
| | | | Secured loans | Unse- cured loans |
| | 1 | 2 | 3 | 4 |
| | Act, 1949; includes State Bank of India and State Bank of Hyderabad | | | |
| ii. The Tamil Nadu Pawn- brokers Act, 1943 | Bank as defined under Section 5 of the Banking Regulation Act, 1949 | (6) | $6\frac{1}{4} - 9\frac{3}{8}$ | — |
| Uttar Pradesh | | | | |
| Usurious Loans Act, 1918 | Banks notified by the State Government | (3) | 12 | 24 |
| West Bengal | | | | |
| Bengal Money-lenders Act, 1940 | Bank as defined under Section 5 of the Banking Regulation Act, 1949; includes State Bank of India, its Subsidiaries and any financial institution noti- fied by the State Government. | (30) | 10 | $12\frac{1}{2}$ |

APPENDIX—XI

DEBT RELIEF LEGISLATION — EXEMPTION TO BANKS

| Enactment | Banks exempted from purview |
|---|--|
| Andhra Pradesh | |
| i) Andhra Pradesh (Telengana Area) Jagirdars Debt Settlement Act, 1952* | Scheduled Banks |
| ii) Andhra Pradesh (Telengana Area) Agricultural Debtors Relief Act, 1956 | Scheduled Banks |
| iii) Andhra Pradesh (Andhra Area) Agriculturists Relief Act, 1938 | Corporations formed under any special Indian Law |
| iv) Andhra Pradesh (Scheduled Tribes) Debt Relief Regulation, 1960 | — |
| Gujarat | |
| i) Bombay Agricultural Debtors Relief Act, 1947 | Scheduled Banks |
| ii) Saurashtra Agricultural Debtors Relief Act, 1954@ | Scheduled Banks |
| Jammu & Kashmir | |
| Jammu & Kashmir Agriculturists Relief Act, 1983 (Svt.) | Banks notified by Government |
| Kerala | |
| Kerala Agriculturists Debt Relief Act, 1970† | i) Nationalised banks ii) Institutions receiving financial assistance from Agricultural Refinance Corporation. |
| Madhya Pradesh | |
| Madhya Pradesh Anusuchit Jan-Jati Rini Sahayata Adhiniyam, 1967 | Bank as defined in Section 5 of the Banking Regulation Act, 1949, State Bank, its Subsidiaries and any other financial institution notified by the State Government. |
| Maharashtra | |
| Bombay Agricultural Debtors Relief Act, 1947 | Scheduled Banks and merged State Bank |
| Mysore | |
| Mysore Agricultural Debtors Relief Act, 1966** | Scheduled Banks |

* Enactment applicable to past debts.

@ According to the State Government, proceedings under this enactment are already over.

† Exemption to Reserve Bank of India, State Bank of India and its Subsidiaries, in respect of debts prior to 1st July 1957 and to banking companies in respect of debts exceeding Rs. 3000/- borrowed under a single transaction and due before the commencement of the Act.

** Act since struck down by the State High Court.

| Enactment | Banks exempted from purview |
|--|---|
| Orissa | |
| Orissa (Scheduled Areas) Debt Relief Regulation, 1967 | Bank as defined in Section 5 of the Banking Regulation Act, 1949, includes State Bank, its Subsidiaries and any other financial institution notified by State Government. |
| Punjab/Haryana | |
| i) Punjab Debtors' Protection Act, 1936 | Bank defined as company carrying on business of banking and registered under any law relating to companies or incorporated by Act of Parliament. |
| ii) Punjab Relief of Indebtedness Act, 1934 | Any banking company registered under Indian Companies Act, 1913 prior to 1.4.1937 and scheduled banks |
| Rajasthan | |
| i) Rajasthan Jagirdars' Debt Reduction Act, 1956@@ | Scheduled Banks |
| ii) Rajasthan Relief of Agricultural Indebtedness Act, 1957 | Scheduled Banks |
| Tamil Nadu | |
| i) Tamil Nadu Debtors Protection Act, 1934 | Company carrying on business of banking and registered under any law relating to companies or incorporated by any Central Act. |
| ii) Tamil Nadu Agriculturists Relief Act, 1938 | Corporation formed in pursuance of any special Indian law |
| Uttar Pradesh | |
| i) Uttar Pradesh Debt Redemption Act, 1940* | |
| ii) Uttar Pradesh Zamindars Debt Reduction Act, 1952* | |
| iii) Uttar Pradesh Regulation of Agricultural Credit Act, 1940++ | |
| iv) Jaunsar-Bawar Pargana (District: Dehra-Dun) Debt Control Regulation, 1948 | Scheduled Banks |
| v) Dudhi Robertsgunj (District : Mirzapur) Agriculturist Debt Relief Act, 1951 | Scheduled Banks |
| West Bengal | |
| Bengal Agricultural Debtors Act, 1936++ | Scheduled Banks |

* Enactment applicable to past debts.

@@ Portion of the definition exempting specified debts, since declared void.

++ According to the State Government, this Act is not in force.

APPENDIX—XII

FARM TITLE BOOKS ISSUED BY STATE GOVERNMENTS

1. Farmer's Pass Book — Gujarat

Member's Land Wealth
(as owner, tenant and Government lessee)

A — As Owner B — As Tenant C — As Government lessee for one year or otherwise

Survey No.

Acres/*Gunthas*

Total (A+B+C)

Rate of Assessment

Type of rights

Details of farm sheds, trees and wells (as per 7-12)

Short details of increase/decrease etc. due to sales

Signature of the *Talathi*/Secretary

Additional/Special details of A, B and C

Farmer's Receipts from and Payments to Government (Revenue Year)

Details—Total demanded—Total received (Amount in figures and words)—Receipt No. — — — — + Date

-----Signature of *Talathi*/Secretary

Land Revenue—Last Balance—Current Balance/Demand

Local Fund Cess

Education Cess

Irrigation Cess

Panchayat Levy

Other annual levies

Taccavi demanded—last balance—current demand } Principal—interest

Instalment of Co-operative Society

Tenant's instalment of Rent—last balance—current instalment—interest

Instalments of other loans

Miscellaneous recoveries other than those mentioned above

Details—Amount demanded—Amount recovered—Receipt No. — — — — — Date — — — — — Signature of

Talathi/Secretary

Non-Agricultural Special levies

Land Revenue Penalties

Demarcation stones

Others

2. Patta and Receipt Book - Mysore

I.

Account No.

Village

Taluk

District

II.

Pattadar's Name
 Lands included in the *patta*
 Survey No.
 Area
 Assessment
 Reason for variation
 Mutation Register No.

III.

Particulars of lessees, if any
 Name and Residence
 Extent of land obtained on lease
 Survey No. Area
 Total Rent or Proportion
 Lease period
 Mutation Register No.

IV.

Particulars of persons having other rights without possession
 Name
 Amount
 Survey No.
 Nature of the right and period
 Mutation Register No.

V.

Annual Inspection Certificate with Date

VI.

Land Revenue - Particulars of Instalments
 Particulars
 Survey No.
Pot Hissa No.
 Class of land
 Area Hectares Acres
 Assessment (Rs. Ps.)
 Arrears (Rs. Ps.)
 Total amount due including arrears (Rs. Ps.)
 Day Book Page No.
 Date
 Amount Collected :
 Land Revenue and Cess (Rs. Ps.)
 Total - Particulars (Rs. Ps.)
 Name of the Remitter
 Village Accountant's Signature and Date

3. Pass Book - Rajasthan

I *Particulars of land and land revenue*Account No. - Village - *Tehsil* - District -

Period of settlement

Farmer's Name - Community - Address - Cadre

Khasra No. and Name of the farmArea in *bigha*; measured with feet

Changed Area - Acres - Hectares

Type of Land

Source of Irrigation

Rate of revenue per *bigha*

Annual Land Tenure

Kharif - *Rabi* - Total

Special Particulars

}

}

}

Present/Previous

II *Particulars of changes in land and land revenue settlement*

Serial No.

Total of Account - *Kita* No. - Area in *bighas*

Particulars of changes

Addition or Substraction

Khasra No.Area - *Bighas* - Acres - Hectares

Type of land

Name of the Farmer and Account No.

Rate of land revenue per *bigha*

Revenue which increased or decreased

Total of Account after changes - *Kita* No.- Area in *bighas*

Special Particulars - No. and date of order under which change was accepted

III *Details of permanent settlement - recovery and dues*

Year

Crop

Previous Balance - Year - details - amount

Current year

Main - Temporary

Various:

Interest - Surcharge - Arability Cess -

Betterment Levy - Others - Particulars - Acres -

Total of various

Total of Current Year - Total

Previous Balance:

Year - Particulars - Acres

Current year:

Land Revenue - Permanent - Temporary

Various:

Interest - Surcharge - Arability Cess

Betterment Levy - Others - Particulars - Acres

Grand Total
 Name, designation and signature of person making recovery
 Balance Due:
 Previous - Year - Particulars - Acres
 Current Year :
 Land Revenue - Permanent - Temporary
 Various:
 Interest - Surcharge - Arability Cess
 Betterment Levy - Others - Particulars - Acres
 Total of the Balance due

IV Information for obtaining loan from Land Development Bank

Serial No. Amount - Whether land affected by Ceiling Act, how much?
 Name and Address of sub-tenant, if any. Particulars of present permanent development on land-
 signature
 Encumbrance on land by Land Development Bank - date; by Co-operative Bank - date
 Other Particulars:
 Loan - date - signature

V Particulars of Loans by Co-operative Society

Name - Medium-term Loan
 Previous Balance - Year - Principal - Interest - Total
 Particulars of Loan: Year - Date of receipt of loan - for how many years - Purpose - Amount of
 loan.- Year Total (Principal Interest-Total)
 Repayment (Principal Interest-Total)
 Balance (Principal Interest-Total)

4. Jot Bahi - Uttar Pradesh

Book showing the cultivated land holding

Village
 Pargana (Division within the Tehsil) - Tehsil - District
 Details of cultivated land holding:
 Name of the Farmholder, Father's Name and Residential address
 Khatauni Farm No. Year of starting the cultivation
 Khasra No.
 Area
 Land revenue payable
 Name of the tenant, if any, and the year of acquiring the right
 Name of the occupier, if any, and the year of occupation
 Verification of the changes
 Details of changes, if available
 Year of the Khatauni certifying
 Date and signature of the officer certifying
 Remarks

APPENDIX—XIII

STAMP DUTY PAYABLE ON AGRICULTURAL LOANS OF
CO-OPERATIVES/COMMERCIAL BANKS

| State | Exemption to Borrowers, from | |
|-----------------|--|---|
| | Co-operatives | Commercial Banks |
| Andhra Pradesh | Yes | Maximum limit Rs. 2·30 on unattested instruments relating to hypothecation, pawn or pledge; no exemption on attested instruments. |
| Assam | Yes | Exemption for loans upto Rs. 50000/- each for a period of three years with effect from 18·10·68 in respect of loans from State Bank of India and United Bank of India. |
| Bihar | Yes | No |
| Gujarat | Yes | Exemption for loans upto Rs. 5000/- from State Bank of India, its Subsidiaries and nationalised banks; for other banks similar exemption in respect of loans for electrification of wells, pumpsets and other agricultural implements. |
| Haryana | Yes | Exemption for loans from scheduled banks for a period of 2 years from 6.11.1969 for sinking and electrification of tube-wells, financing of pumps and other equipments upto Rs. 15000 in sandy and drought affected areas; upto Rs. 10000 in other areas. |
| Jammu & Kashmir | Yes | No |
| Kerala | Yes | No |
| Madhya Pradesh | Yes | No |
| Maharashtra | Yes | No |
| Mysore | Yes | Exemption for loans upto Rs. 5000/- from scheduled banks. |
| Nagaland* | Yes | *Exemption from stamp duty to all local persons |
| Orissa | Yes | Exemption for loans upto Rs. 5000/- from scheduled banks, with mortgage deed executed before 1.10.72. |
| Punjab | Yes | No |
| Rajasthan | Yes | Exemption for loans from scheduled banks. |
| Tamil Nadu | Yes | No |
| Uttar Pradesh | Yes, for loans upto Rs.5,000/-; half fee for loans above Rs. 5,000/- | Exemption for loans from State Bank of India in 4 districts; 75% concession—for loans upto Rs. 5000/-; 50% concession for loans above Rs. 5000/- |
| West Bengal | Yes | No |

APPENDIX—XIV
REGISTRATION FEE PAYABLE BY BORROWERS OF
CO-OPERATIVES/COMMERCIAL BANKS

| State | Exemption to borrowers from | | Remarks |
|-----------------|---|--------------------------------------|---|
| | Co-operatives | Commercial Banks | |
| Andhra Pradesh | | | |
| Telengana Area | Yes | | |
| Andhra Area | LMBs—Half upto Rs. 5000 | No | |
| Assam | Yes | No | |
| Bihar | Yes | No | |
| Gujarat | Yes | Exemption for loans upto Rs. 5000 | Exemption for loans upto Rs. 5000/- from State Bank of India, its Subsidiaries and nationalised banks; for other banks simi- lar exemption in res- pect of loans for elec- trification of wells, pumpsets and other agricultural imple- ments. |
| Haryana | Yes | No | |
| Jammu & Kashmir | Yes | No | Only land develop- ment banks are exempted. |
| Kerala | No | No | |
| Madhya Pradesh | Yes | No | |
| Maharashtra | Yes | No | |
| Mysore | Yes | No | Registration fee for co-operatives is Rs. 2.50 (postage Re 1/- R.R. fee Rs. 1.50). |
| Nagaland | Yes | No | |
| Orissa | Yes | No | |
| Punjab | Yes | No | |
| Rajasthan | Yes | No | |
| Tamil Nadu | Upto Rs. 5000/-; Half fee above Rs. 5000/- | Half fee upto Rs. 5000 | Full exemption to members of schedu- led castes. |
| Uttar Pradesh | Yes | No | |
| West Bengal | Yes | No | |

APPENDIX—XV

**FEE FOR NON-ENCUMBRANCE CERTIFICATE PAYABLE BY BORROWERS OF
CO-OPERATIVES/COMMERCIAL BANKS**

| State | Exemption to borrowers from | | Remarks |
|-----------------|--|--|--|
| | Co-operatives | Commercial Banks | |
| Andhra Pradesh | | | |
| Telengana area | Yes | No | |
| Andhra area | LMBs—upto Rs. 2000; Half fee Rs. 2000—Rs. 5000 | No | |
| Assam | | | |
| Bihar | Yes | No | |
| Gujarat | LDBs—upto Rs. 3500; Half fee above Rs. 3500 | @ Yes—upto Rs. 3500 Half fee above Rs. 3500 | @ Only to State Bank of India, Subsidiaries & nationalised banks |
| Haryana | No | No | |
| Jammu & Kashmir | — | — | |
| Kerala | Half prescribed fee | No | |
| Madhya Pradesh | — | — | |
| Maharashtra | — | No | |
| Mysore | Yes* | No | * No. concession to land development banks |
| Nagaland | — | — | |
| Orissa | — | No | |
| Punjab | — | — | |
| Rajasthan | — | — | |
| Tamil Nadu | Yes (Land Development Banks only) | Yes* upto Rs. 5000 | * Full exemption to members of scheduled castes |
| Uttar Pradesh | — | — | |
| West Bengal | — | — | |

APPENDIX XVI

**TOWNS NOTIFIED UNDER SECTION 58(f) OF THE TRANSFER OF PROPERTY ACT, 1882,
FOR CREATION OF EQUITABLE MORTGAGES**

| State | Districts | Towns according to Census 1961 | Towns notified under Section 58 (f) of the Transfer of Property Ac |
|--------------------|-----------|-----------------------------------|--|
| 1. Andhra Pradesh | 20 | 223 | 205 |
| 2. Assam | 11 | 60 | — |
| 3. Bihar | 17 | 153 | 11 |
| 4. Gujarat | 17 | 181 | 13 |
| 5. Jammu & Kashmir | 9 | 43 | — |
| 6. Kerala | 9 | 92 | 17 |
| 7. Madhya Pradesh | 43 | 219 | — |
| 8. Maharashtra | 26 | 265 | 2 |
| 9. Mysore | 19 | 230 | 35 |
| 10. Orissa | 13 | 62 | — |
| 11. Punjab/Haryana | 18 | 187 | — |
| 12. Rajasthan | 26 | 145 | 8 |
| 13. Tamil Nadu | 12 | 338 | 13 |
| 14. Uttar Pradesh | 54 | 275 | 4 |
| 15. West Bengal | 16 | 184 | 3 |
| 16. Nagaland | 3 | 3 | — |