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Land Rights in Bengal.

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During the debate on the Bengal Tenancy Amendment Bill of 1928, the Honorable Member in charge of the Bill (Sir P. C. Mitter) said:—"Rightly or wrongly, from 1793 onwards the zamindars have been the proprietors of the soil." And again "Today what is the legal position of the Zamindar and the Raiyat? In 1793 the Zamindar was made the proprietor of the soil." Anybody who reads the discussions on the Amendment Bill cannot but be surprised at the conflicting opinions expressed on this important and fundamental matter. It is desirable that the confusion of thought should be removed and we should have clear ideas about land rights in Bengal.

In English law, there cannot be any absolute property in land, in the sense in which it applies to other things. There can only be an ownership of an estate in the land, i.e., one can only enjoy the incidents of some definite interest in the land. But the term 'proprietor' has long been used in Indian Tenancy laws and whatever may be the legal implications of the term for practical purposes we may safely speak of 'proprietory interest in land' so far as Bengal is concerned, without giving rise to much confusion of thought. In this connection three classes stand out in Bengal; the State 'the Zamindars, independent Talukdars and other actual proprietors of land' with whom the permanent settlement was made and the Raiyats. The vast number of intermediary interests between the Zamindar and the Raiyat, that has grown up in Bengal also stand out as a separate class; but so far as their relation with the raiyats is concerned they may be treated on the same footing with the Zamindars as the landlord class.

For quite a long time the question has been discussed whether the State owns the land and with it the connected question whether land revenue is a tax or a rent. Eminent authorities have given their opinion that the State in India, in the early Hindu and Muhammadan days had no

pretensions of being proprietors of the soil, and that its right to the land revenue depend for its sanction on immemorial custom, which always had been a potent factor in the East. The extravagant claim of the State being the sole owner of the soil is a comparatively later growth and one of the results of the decline of the Mogul rule. Recently the Indian Taxation Enquiry committee thoroughly reviewed the historical and legal aspects of the question and came to the unanimous conclusion that "In the case of land under Permanent Settlement, the Government have now no proprietary right, and that as regards Khas Mahal estates and waste lands outside the permanently settled areas, they have full proprietorship."

One thing is clear. The right of the State to a share in the produce of the land is undisputed; and all land is in a manner hypothecated as security for land revenue. Apart from that it is now of little practical importance whether the state may technically be called proprietor of land or not. Hence the two main classes whose interests in land are to be considered are the landlords and the tenants.

The Permanent Settlement of Bengal (Regulation I of 1793) was the beginning of the systematic attempt to put property in land in Bengal, from a basis of law and contract. It declared that the Zamindars, independent Talukdars and other actual proprietors of land, with or on behalf of whom a settlement had been concluded with the Government and their heirs and legal successors will be allowed to hold their estates at the stipulated assessment for ever. The 'wording of this declaration has been a more fruitful source of confusion and misunderstanding as to the status of various parties that have an interest in land in Bengal than perhaps anything else.

In issuing instructions for the permanent settlement the Court of Directors had suggested that the settlement should be made with the landholders but at the same time maintaining the rights of all descriptions of persons. The Act of 1793 certainly put the zamindars on a definite legal basis as regards property in land. But the rights which the Government possessed and those possessed by the zamindars were admittedly not exhaustive of all interests in land.

The fact remains that many of the cultivators had been in possession of the soil from before and they did not owe their position to the zamindars who were now declared ‚actual proprietors'. They had their rights in land created and recognised by the Common Law and Customs of the country. During the discussions which preceded the enactment of the Permanent Settlement, it was evident that the authorities were fully aware of these rights and of the necessity of protecting them. But in the regulations of 1793 no clear and definite laws were enacted defining the rights of the raiyats and having them adjusted once for all. The Government contented with reserving to itself the right to interfere in future. This omission is certainly to be accounted for by the extreme intricacy and difficulty of the subject and has been candidly expressed by Sir John Shore in the minute of 8th December, 1789 as follows:— 'The most cursory observation shows the situation of things in this country to be singularly confused. The relation of a zamindar to government and a raiyat to zamindar is neither that of a proprietor, nor a vassal, but a compound of both. The former performs acts of authority unconnected with proprietary rights the latter has rights without real property; and the propertyof the one and the rights of the other are in a great measure held at discretion; much time will I fear, elapse before we can establish a system perfectly consistent in all its parts. Nor am I ashamed to distrust my own knowledge since I have frequent proofs that new enquiries lead to new information. Perhaps, circumstances of the time justify the diffidence of Sir John Shore, and explain the inaction of Government, but it did not and could not take away the existing rights of the raiyats, As the late Mr. Justice Ameer Ali says: "Though the rights and obligations of the raiyats were not definitely ascertained and recorded before the conclusion of the Permanent Settlement, their rights were not altered or affected in any way by that settlement". The history of subsequent legislation in Bengal shows that this was recognised and acted up to by Government. In introducing the Tenancy Bill in 1885, the Hon'ble Mr. Illbert said in this connection":—It was said, that at the time of the permanent settlement and as part of the same agreement, a formal declaration was made declaring the property in the soil to be vested in the zamin-

dars. And throughout the regulation of 1793, which confirmed and gave effect to the Permanent Settlement, the zamindars are described as "proprietors" and actual proprietors" of land; and that this declaration and description are inconsistent with the notion of proprietary right in the land being vested in any other class of persons. As to the use of the term "proprietor" no serious argument can be based on it.

I have heard magic of the property, But I have never understood that there was any such magic in the phrase "proprietor" as to wipe out any rights qualifyng those of the person to whom the phrase was applied and it would be especially difficult to show that it had any such effect in the regulations of 1793. In the next place the term was freely applied to the zamindars of Bengal and other persons of the same class, in regulations and other official documents of a date anterior to I793 and therefore could not possibly be taken as indicating or to use a technical term connecting rights created at that date.

But the spirit of active legislation in settling the law of landlord and tenant in Bengal on a proper basis had not come on the government much too soon. In 1793 the only provision made was as regards the grant of *pattas* by the landlords, and the expression of pious hopes that the zamindars would act in the best interests of the tenants. Both the zamindars and the tenants were unwilling for their own reasons to have the *pattas;* and what is worse these were turned into instruments of oppression in a way which the framers of our early laws could never contemplate.

Soon after the settlement many zamindars were unable to discharge their liability to government and the latter in its turn became restive about the revenue. The necessity of putting its revenue on a secure basis had first set the government thinking about settlement and definition of land rights. The same necessity set it strengthening the hands of the landlords. Promises of safeguarding the rights of the raiyats were forgotton. Till 1859 the history of tenancy legislation in Bengal is the history of conti. nuous absorption of the tenant-right by that of landlord- Of these, Regulation of 1799 is perhaps the most notorious and the most ruinous as to its effects.

The inevitable reaction came and Act X of 1859 was passed which had been well called "the first modern tenant law in Bengal." From that time onwards a sustained effort was made to improve the Tenancy Law in Bengal and the Great Tenancy Act was passed in 1885 which had been with slight alterations the law of landlord and tenant in the province till substantial changes were introduced by the Amendment Act of 1928.

A review of the present legal position of landlord and tenant as regards the most important attributes of proprietorship does not reveal the zamindars and other landlords as absolute proprietors of the soil. The most important incidence of proprietorship in land is the right to the the economic rent as evolved by competition for land and this can only be secured by the power of the landlord to enhance the rent and eject the tenants at his will. In all these respects we find the essential elements of proprietorship lacking in the position of the Bengal landlord. There is nothing like competitive rent in Bengal. Rent has been defined by the Bengal Tenancy Act of 1885 as lawfully payable by the tenant to his landlord for the use or occupation of the land" And this amount being controlled by the provision of the Tenancy Act is far from being the economic rent as evolved by the process of natural competition. Some raiyats hold at rents or rates of rent fixed in perpetuity; and the rent of any tenant who has an actual or presumptive possession of his holding since the Permanent Settlement cannot be charged except on the ground of an alteration in the area of the holding. The rent of an occupancy-raiyat can be enhanced only up to $12\frac{1}{2}$ per cent. by contract and by suit in a court only under certain specific conditions fixed by law. As the law stands at present no tenant can be ejected except in execution of a decree and there can be no ejectment for non-payment of rent.

It is further important that the interest of a raiyat who holds at a fixed rate of rent is capable of being transferred or bequeathed in the same manner and to the same extent as any other immovable property, and by the recent Amendment Act of 1928 the interest of an occupancy-

raiyat has been made transferable on payment of a fixed landlord's fee.

Thus we find that the tenants in Bengal—at any rate the great majority of them, comprising those who hold at fixed rates and those who have occupancy rights—have substantive interest in their holdings originating in many cases in the customs of the country and not by any act of, or contract with the landlords and now recognised and protected by the existing law of Landlord and Tenant in the land. The correct view of land rights in Bengal is that the several classes have divided ownership in land; they own separate and distinct interests in it More than 40 years ago, Baden-Powell wrote: "The actual right of the landlord as it now exists, is an estate in the soil....limited by the rights of tenure-holders and raiyats.....and of course by the government's right to its revenue." This still remains the position today. Every holder in Bengal is of the nature of a firm of which the actual cultivator is the active and managing partner. He gives the landlord not the economic rent but, what is his due as a share in the profits of the transaction. And this is strictly regulated by law and the circumstances of each case.

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The Dutch East Indies.

There are two distinct types of agriculture followed, the native and the estate. While the former is essentially bound up, except in the case of native rubber, with the production of an adequate food supply, the latter's chief object is the growing of crops for export. Both types of agriculture have been thoroughly organised and their prosperity is undoubtedly due to the efficiency and smooth running of private and Government research and educational schemes.