PART II.

CHAPTER VII.—Provincial Systems.

69. Before proceeding to make proposals for the improvement of the revenue administration of the States, it is necessary to consider here the revenue systems in the neighbouring provinces, particularly in view of what is said in Sir Francis Wylie's note about the possibility of the States being absorbed in them. If such a thing were to happen, I suppose that all three provinces, the Central Provinces Orissa and Bihar will be involved as contiguity and administrative convenience will be the principal factors.

70. *The Central Provinces and Berar.*— The early history of the Central Provinces' system as it existed under the Marathas has been referred to. At the present day two different systems prevail in the Central Provinces and Berar respectively. In the Central Provinces the system known as the *malguzari* system prevails with the exception of small areas known as *ryotwari*. The essence of this *malguzari* system is that the *malguzars* who were formerly village headmen similar to the *gaontias* and *sarberakars* have been granted proprietary rights in the village which includes the right of transfer by sale or otherwise. The *malguzars* own all the land in the village and the cultivators are their tenants. The rights of the tenants are protected by a Tenancy Act which underwent drastic amendments in 1940. Under the old law, there were two different classes of tenants known as "absolute occupancy" and "occupancy" tenants and these classes are retained by the law as amended. Both these classes of tenants had protection conferred on them in the matter of fixation of rents *i.e.*, the rents could be fixed by a settlement officer. Absolute occupancy tenants could not be ejected from their holdings by the landlord for any cause but the holdings could be sold in execution of a decree for arrears of rent. Occupancy tenants could also not be ejected except by a decree for arrears of rent, or by a decree for ejectment passed on the ground of diversion or other act rendering him liable to ejectment. The rent of an absolute occupancy tenant could not be enhanced during the currency of a settlement, but the rent of an occupancy tenant could be enhanced by agreement with the landlord, or on his application, by a revenue officer on grounds such as increase of prices, the rent being unduly low or increase of area. An absolute occupancy tenant had the right of simple mortgage or conditional sale or sublease for ten years; he also had the right of transfer to a person other than a co-tenant or to a person who would inherit the holding, subject to the right of pre-emption of the landlord which was in practice not exercised on payment of consent money. Occupancy tenants could sublease for a year at a time, could transfer to a co-tenant or a person who would inherit in the absence of nearer heirs except by simple mortgage, but the Act did not prohibit or render illegal other transfers if done with the consent of the landlord and other persons entitled to obtain possession; in fact it was purely up to such persons to make an application to be placed in possession but this could not be done if they had given written consent; in other words transfer with the consent of the landlord (or others) was possible. The consent of the landlord was of course in practice to be purchased. The law of inheritance was the personal law of both classes of tenants, but in the case of occupancy tenants inheritance by collateral was restricted to males within seven degrees. Both classes of tenants had the right to make improvements in the holding ; they had the same right to fruit trees as in the holding itself, could appropriate *babul* trees on the holding, could propagate lac on *palas* trees and take the produce thereof. Occupancy rights accrued on entry into possession of land and the rent was the rent agreed upon between *malguzar* and tenant. Sub-tenants held under a tenant or under the *malguzar* in respect of his home-farm or *sir* land on terms agreed upon for periods not exceeding one year and could be ejected in execution of a decree for arrears. The Tenancy Act prescribed nothing about settlements and matters arising between the Government and *malguzar* or other landlord, or about general matters regarding the procedure of revenue officers and other matters and for these there was a separate Land Revenue Act. The Land Revenue Act laid down in detail the appointment and procedure of various classes of revenue officers, the maintenance of land records provisions relating to the recovery of revenue from the *malguzars* or zamindars or other persons paying revenue direct

to the Government, provisions regarding settlement, partition of *malguzari* estates, appointment and other matters relating to village officials. Generally the land Revenue Act deals comprehensively with most matters concerning land revenue administration, and the Tenancy Act is a subsidiary Act for what may be regarded as a special purpose. Other laws connected with land in the Central Provinces are the Land Alienation Act and the Settlement Act.

In the so-called *ryotwari* villages of the Central Provinces which are very few in number, the position roughly is that the Government is the direct landlord. The ryots pay revenue to a *patel* whose duty it is to collect and credit the revenue; they have no rights of transfer except to a co-sharer or person who would inherit the right, and may be ejected for such reasons as non-payment of land revenue or transfer contrary to law.

The Tenany Act as amendend recently roughly alters the former position as follows :

An occupancy tenant is given the same right of inheritance as an absolute occupancy tenant, that is, unrestricted personal law. He can sublet for five years and may transfer by sale to any person in the same manner as an absolute occupancy tenant, that is, in both cases the landlord has a right of pre-emption but in the case of an occupancy tenant if the landlord permits the transfer, that is, he waives his right of pre-emption, he is entitled to a consent money of five per cent. of the consideration or one and a half times the rental, whichever is higher; an absolute occupancy tenant pays only three per cent. of the consideration or the annual rent of the holding, if the landlord does not pre-empt. An occupancy tenant cannot be ejected from his holding for arrears of rent; but both occupancy and absolute occupancy holdings are liable to be sold for arrears. An occupancy tenant can however be ejected for diversion of his holding to non-agricultural purposes. Arrears of rent can also be recovered by attachment of movable property. An extremely important change is that absolute occupancy rights, by paying ten times the rent, and occupancy rights, by paying twelve and a half times the rent, can be converted into proprietary rights in the land known as *malik-makbuza* paying land revenue direct to the government, and the tenancy brought to an end. The right to fell any tree which is obstructing cultivation, or, if he has not the same right in the trees as in the holding itself, to purchase such right, has been conceded, as well as the right to the leaves of *tenau* plants or trees in his holding notwithstanding any previous custom or entry in a record, in addition to the right to propagate lac. The permission of a revenue officer is necessary to cut trees other than *babul* on a holding and the timber will belong to the *malguzar* if the tree was recorded formerly in the *malguzar's* name.

In the Central Provinces there are areas under zamindars who pay a *takoli* like the zamindars of the States. This *takoli* was formerly a much smaller amount than the payment made by *malguzars* which is roughly fifty per cent. of the village 'assets', but recently the *takoli* has been enhanced considerably with the result that the distinction between zamindars and *malguzars* has tended to disappear. In the zamindari areas mostly there have been *thekedars* and *gaontias* and the Central Provinces Land Revenue Act gives certain protection to them. It would make this report far too long to give a description of these.

71. *Berar.* - In Berar except for small areas, the general position is that all land which has not been alienated or recognised as the property of persons, is the property of Government, a position similar to that prevailing in the States. Persons acquiring the right to occupy land in the possession of Government do so on payment of a premium, or purchase in auction, and acquire thereby transferable rights which are for all practical purposes proprietary though the land still remains the property of government in law. Diversion of agricultural land to other purposes is done on payment of a premium on account of the enhancement in value. Land revenue is paid direct, or usually through a *patel* who gets a commission on the land revenue of the village. This is the real *ryotwari* system similar to that prevalent in the Bombay and Madras Presidencies and elsewhere.

72. *Settlements.*—The Settlement Act of the Central Provinces prescribes the period of settlement as thirty years (twenty years in backward areas); the maximum period for a settlement is forty years. The assessment is based upon the "profits of agriculture" in reckoning which, such factors

as depreciation, money equivalent of personal labour, expenses and interest are to be taken into consideration. In Berar these provisions are contained in the Land Revenue Code itself.

73. *Orissa.*—In Orissa there are three or four different systems prevailing. In the old districts of Cuttack, Balasore and Puri there is the Orissa Tenancy Act of 1913 amended recently in certain important directions; in the Sambalpur district, the old Central Provinces Laws are applicable; Angul has special regulations and the areas received from the Madras Presidency have separate laws. Of these it is sufficient to describe briefly the first three.

The important feature of the areas to which the Tenancy Act applies is that there are portions to which the Permanent Settlement of 1793 applies. There are temporarily settled areas as well, and a few *khasmahal* estates held direct by government. The permanently settled as well as the temporarily settled areas, other than the *khasmahals*, are held by persons other than Government in proprietary rights in the Central Provinces except that there are fewer proprietors and more sub-infeudation The main tenures in Orissa are the proprietors known as zamindars of *malguzars*; under them come the persons who once held villages as headmen, *viz.*, the *muqaddams*, the *sarbarakars* and *padhans*; these persons are usually the sub-proprietors paying their revenue through the zamindars. Then there are the ryots holding at fixed rates or occupancy and non-occupancy. In addition there are tenure holders with the powers of establishing tenants and collecting rent; there are also under tenure-holders. Persons holding over thirty acres are usually regarded as tenure-holders unless the contrary is proved, that is, it has been assumed that the larger holdings of land are not *prima facie* meant for personal cultivation. A ryot is defined as a person holding land for the purpose of cultivation. Tenures are transferable, subject to a payment to the landlord for registration, with or without consent. Where consent is required a fee has to be paid as prescribed in the Act. As far as the ryoti tenure is concerned a "settled ryot" must have held land continuously in a village for 12 years, and a "settled ryot" acquires occupancy rights in all land held by him as a ryot in the village. In land not included in a village, occupancy rights are acquired by continuous occupation for 12 years provided there is no written contract to the contrary. A ryot with occupancy rights has to pay rents at 'fair and equitable rates', the rent paid for the time-being being taken as fair and equitable till the contrary is proved. For arrears of rent, the landlord may bring a suit and proceed to ejectment. The rent of an occupancy ryot may be enhanced by a contract up to 12½ per cent. but cannot be enhanced again for a period of 15 years; it can also be enhanced by order of a court on a suit brought by the landlord on the ground of increase in prices or that it is too low or that the productive power of land has been increased by fluvial action. A reduction can be claimed by the ryot on the ground of deterioration of the soil or fall in prices. By recent amendments, full rights in trees, (subject to previous recorded rights of the landlord, if any) have been granted to occupancy ryots, and they have also received the right of sale, exchange, gift, or bequest without the landlord's consent; formerly alienation was subject to the landlord's consent, and payment. Non-occupancy ryots are liable to pay such rent as may be agreed upon and may be ejected for failure to pay arrears. The landlord may sue a non-occupancy ryot for ejectment if he does not agree to enhancement of rent and the court may eject him if he does not agree to a fair and equitable rent. In respect of under-ryots the law fixes the maximum rent payable and prohibits ejectment during the period of a written lease. The law contains provisions for the preparation of a record of right and settlement of rents. In the matter of fixation of rents agreement between the landlord and tenant is an important factor and a rent agreed upon will be accepted by the revenue officer unless he considers it unfair; this is probably governed by the provision that the rent being paid is presumed fair till the contrary is proved. A table of rates for each class of land may be prepared by the revenue officer where considered practicable. There is a Board of Revenue to control matters connected with settlement and detailed instructions are contained in the survey and settlement manual. Landlords have powers of distraint of crops; for recovery of rent holdings and tenures are liable to be sold.

For the recovery of Government dues there is the Public Demands Recovery Act the provisions of which can be applied by the Government for the purpose of recovery by landlords. The Act contains provisions relating to judicial procedure. Generally speaking, the system of land tenures in Orissa is rather more complicated than the system in the Central Provinces.

In Sambalpur, the old Central Provinces laws are in force. Here the system is intermediate between the position prevailing in the Central Provinces before the grant of *malguzari* rights and the present system. The *gaontias* of Sambalpur differ from *malguzars* in having proprietary rights in the *bhogra* (corresponding to *sir*) only and in the waste land they have merely the position of trustees. As they have permanent rights to hold as *gaontias* transfers of the *bhogra* mean transfers of the interest of management also, in practice at least. The system in Sambalpur is in most other respects the same as in the Central Provinces.

At Angul, which was formerly a State, certain special regulations are in force on account of the backward nature of the tract which includes Kondhmahals. Here the Deputy Commissioner exercises criminal, civil and revenue powers concurrently up to a certain limit. Public demands are recovered by an order to make payment and, failing that, by sale of movable property. Immovable property is not usually sold. The whole of Angul is a government estate and the government has direct dealings with interests in land without the mediation of a zamindar. There are *sarbarakars* and collection of revenue is effected through them. In the government estates other than Angul, recovery of revenue is effected through kanungoes. In the Nayanand estate of Balasore recovery is effected through tahsildars and there are no *sarbarakars*.

In estates not under government there is no maintenance of land records by government and the matter is left entirely to the proprietors. It is said that in a few estates records are satisfactorily maintained but in most, they are not satisfactory.

74. *Bihar.*—Bihar, like Orissa, was a part of Bengal, and for the purpose of this enquiry it is necessary to consider only the system of Chota-Nagpur adjoining the States or actually including some of them. The rest of Bihar is still governed to a large extent by Bengal regulations, areas like the Santal parganas having some special regulation. The revenue law of Chota-Nagpur is the Chota-Nagpur Tenancy Act of 1908. Like the Orissa Tenancy Act, it follows to some extent the Bengal Tenancy Act. The different classes of tenants like tenureholders, occupancy and non-occupancy ryots or under-ryots are very similar to the Orissa tenants, the difference lying in the existence of ryots having *khuntkatti* rights, and *mundari khuntkattidars*. Occupancy ryots, non-occupancy ryots and settled ryots are the same as in Orissa. Ryots having *khuntkatti* rights are the descendents of the original clearers of the soil and such ryots have the privilege in respect of their lands that if the tenancy was created more than 20 years before the commencement of the Act, the rent payable cannot be enhanced in the absence of an original contract to the contrary, and if the rent is enhanced, the enhanced rent shall not exceed half the rent payable by an occupancy ryot. In other respects *khuntkatti* ryots have the same rights as occupancy ryots. Occupancy ryots have now the right to transfer land to any person residing in the police station area but in the case of aboriginals, transfers are restricted to aboriginal castes; usefructuary mortgage for 7 years or lease for five years is permitted to aboriginal and scheduled castes. A decree for sale cannot be passed against aboriginals of non-aboriginals except for arrears of rent, agricultural loans, etc. The feature of the *mundari khuntkattidar* tenancy is that the right of a *mundari* to hold jungle lands for the purpose of bringing suitable portions under cultivation by himself or male members of his family is recognised. The rent of such a tenancy may be enhanced only if the tenancy was created within 20 years immediately preceding the petition for enhancement, and the enhanced rent cannot exceed half the rent of occupancy land. A *mundari* tenancy cannot be transferred by sale whether by order of a court or otherwise. Recovery of dues is effected by the Deputy Commissioner taking the land under management. Such land cannot be mortgaged except by usufructuary mortgage for a period not exceeding seven years.

Distinct from the *mundari khuntkatti* tenancy but analogous are the *bhuinhari* holdings, but these have no rights in waste land and the holder of a *bhuinhari* holding may be a member of any aboriginal tribe. *Bhuinhari* holdings are subject to the same restrictions of transfer as other aboriginal holdings. In other respects the Chota-Nagpur Tenancy Act is very similar to the Orissa Tenancy Act.

The settlement of the rents is made under special rules and differs from the settlements under the Orissa Tenancy Act. The settlement of Chota Nagpur really follows the soil unit system of the Central Provinces.

The position regarding the Santal parganas is roughly the same as that of Angul.

75. *The Need for Revenue Law in the States.*—We may now proceed to a consideration whether these systems can be applied to the whole or portions of the Agency. The need for the framing of a law for the States has been clearly recognised and stated in the Political Adviser's confidential note and it does not seem necessary to make out an elaborate case for it. It may briefly be stated that the present position is highly detrimental to the interests of the cultivating classes as well as the State. Just as the zamindars show a strong disinclination to accept sanads which determine their rights and prefer to leave as much undefined as possible, so the Rulers do not seem to favour precise laws which would tie their own hands down to any extent, and in the few laws which have been framed, they have left many matters indeterminate or vague. A law in these parts is necessary to protect the interests of cultivators and lay down the legitimate sphere of the State without allowing scope for arbitrariness, as well as to lay down the principles of sound revenue administration which would safeguard the legitimate revenues of the State. The manner in which many States have alienated large portions of the State shows that the Rolers in fact need protection against themselves. That previously there was mismanagement and maladministration to a shocking extent is clear partly from what prevails now and from what prevailed a few years ago before the agitation of 1938. Although considerable improvement in the administration seems to have resulted, this is not the result of any change in the system or attitude of the Rulers which is likely to be permanent, but is largely the result of compelling circumstances and the pressure brought to bear by the Political Department. From the impression I received in conversation with the Rulers it seemed to me that some of them have the idea that all this agitation and interference is a passing phase which will be forgotten in a few years, and things will then go on as before. Unless therefore there is a change in the system which will take the administration to a large extent beyond the idiosyncracies of individual Rulers, there is little doubt that the administration will deteriorate. In this connection the conflict of interests between the Rulers and the ruled, and lack of scope for princely licence already stressed, may be recalled again. Mr. Bowstead has drawn attention to the complicated system of land tenures prevalent in Orissa and the dangers of an overcrowded bar but there is nothing to warrant an assumption that the revenue law in the States will necessarily be as complicated as in Orissa, and, on the whole, I do not think that anything really deplorable has resulted in the British districts from too many unemployed people seeking employment at the bar, so much so, that a return to the condition when there were no bars or law would not be contemplated by anybody. As regards the view certain people hold that a law is no protection, this view does not appear to be put forward by people who are placed in the position they contemplate for others; while it is true that a law can be evaded or rendered largely nugatory in practice, this position is fully taken into account by me, and it is on account of that very factor, that I have a recommendation to make regarding an agency for the proper enforcement of the law proposed.

76. *The Unsuitability of Provincial Laws.*—Coming now to the question whether the Laws of neighbouring provinces are applicable, we have seen that the revenue systems of all three areas, namely the Central Provinces, Bihar and Orissa are based mainly on the existence of intermediary proprietors between the State and the cultivator, and the areas where direct relations prevail are very small and fragmentary. In the States, on the other hand, the opposite is the case on the whole, and except in the zamindari areas and tenure villages, there is no intermediary proprietor

as far as the great majority of villages is concerned; the position approximates closely in this respect to that in Berar. It is true that in a number of Chhattisgar States, the *gaontias* pose as *malguzars* and agitate for the grant of proprietary status but in no State has this been conceded, nor is it proposed to do so anywhere except in the State of Kawardha where the Ruler mooted some such proposal. The arguments advanced by the *gaontias* for the grant of such rights is that their present position being insecure in view of the liability to ejectment, they do not find sufficient incentive to improve their villages, and this would be provided if proprietary, transferable rights are given. The opposite argument is also advanced, that is, that they have often effected improvements in villages and developed them and stand to lose everything if they were ejected; this of course is more an argument against ejectment than for the grant of proprietary rights. Some *gaontias* argue that in fact they are *malguzars* and transferable rights should be granted. In Kawardha the argument advanced in favour of the proposal to grant *malguzari* rights is that it would provide a body of loyal supporters for the State which would be helpful in times of agitation. To begin with it may be stated that the *gaontiahi* tenure is based upon a '*patta*' or agreement issued at settlement and terminating at the next settlement. Only in the case of the so-called protectod *gaontias* is there any undertaking on behalf of the State to renew the agreement at settlement; in other cases, the State can theoretically create new *gaontias* though in practice this is not *usually* done. Thus the *gaontias* theoretically hold for a limited term each time and there is neither guaranteed continuity nor rights of transfer mortgage or lease as in the case of malguzari status. The distinctions between *gaontias* and *malgujars* have already been mentioned in describing the village headmen of the States and it has been pointed out, that, they have not even the modified rights of *gaontias* in Sambalpur. While a *gaontia* in the States can be ejected from his post and the *bhogra* for a breach of the rules, or even on the vague ground of disloyalty the *malguzars* cannot be ejected for any cause. Even the protected *gaontias* have no such rights and the claim of *malguzari* status is entirely untenable.

Before deciding whether such rights should be granted it may be profitable to examine the history of tracts in which it has been granted. In the Central Provinces, the system prevailing before the grant of *malguzari* status was much the same at it is now in the States. "The systems above described which may be summarised by saying that most villages were left in the hands of lessees (patels, gaontias, malguzars or thekedars as they were variously described) who held leases on farm of the village land revenue from the government, prevailed in the open country or khalsa * *" (Dyer's Introduction to the Land Revenue and Settlement Systems of the Central Provinces—para. 26). Regarding the grant of proprietary status which was done by a proclamation in June 1854, the ideas which contributed to the grant such status are described by Dyer as follows :

"The English administrators approached the problem of the land settlement of India with pre-conceived ideas of land ownership based on the English system which were alien to the traditions of the country, and the question was debated in turn in all parts of India under the British sovereignty whether the right of ownership in the land vested or should be recognised in the zamindars or land holders who were responsible for the collection of the government revenue or in the ryots or cultivators who tilled the soil from which the revenue is paid * *. The other (school) urged the benefits which the country would receive from an enlightened landed aristocracy, or middle class with a stake in the country, whose interests would necessarily keep them loyal to the established government and who would develop their property to the advantage of the State, the cultivators and themselves. In Bengal where the question was first dealt with, it was settled by recognising the proprietary right in the large zamindar". Dyer goes on to say that the opposite school headed by Sir Thomas Munro held the field when the presidencies of Madras and Bombay were settled, as the zamindari system failed to realise anticipations owing to the sub-division of estates and the growth of a succession of middlemen and of a system of rack-renting. By the time part of the Central Provinces was due for settlement, Sir William Sleeman criticised the ryotwari

settlement on the ground that it prevented anyone who is supported on the rent of land, or the profits of agricultural stock, from rising above the grade of a peasant, and so depriving society of one of its best and most essential elements," (a rather assailable proposition as there are many cultivators under the ryotwari system holding large areas of land and doing a flourishing money-lending business as well). He suggested that the remedy was in village settlements where the estate was of moderate size and this was the system adopted in the Saugor Nerbudda territories. In 1870, Colonel Keatinge, the officiating Chief Commissioner who had served many years in Nimar and "had thus real experience of the local conditions such as few officers of the time possessed" wrote against the policy of a proprietary right settlement in the Central Provinces "because in his view it had little foundation in the pre-existing state of things and was unsuited to the local circumstances" as follows :—

"The Government had before it the condition of the peasantry of both Eastern and Western India, and on its decision of this question of "superior proprietary right" will rest whether in the future the cultivators of Chanda, Nimar and Sambalpur are to share in the prosperity of the Maratha Kunbis, or to swell the wealth of a class which will in many respects resemble the zamindars of Bengal. The Nagpur districts have been settled for 30 years, and we already have the spectacle of an emigration from them into the ryotwari districts of Berar. This fact may well make government pause before going further. * * *

If I am asked why the village managers in Nimar are now to be converted into landlords and why Government is to be subjected to the difficulties and inconveniences which the change will occasion, I can only reply that it is because the Settlement Officers deputed to the Central Provinces originally came from the north-west and brought their system with them".

Col. Keatinge recommended a *de novo* settlement on the principles of the ryotwari system of the Bombay Presidency. The Government of India's orders which were passed in 1875 contained the following among other conclusions. "It is clear that a serious mistake was made in applying to these districts a system of settlement foreign to the tenures of the country and unsuitable to the people. The only point now remaining for consideration is how far it is possible to remedy the mistake". The Secretary of State (The Marquis of Salisbury in Disraeli's administration) concurred in this view and desired that "every opportunity should be taken, consistently with good faith, of diminishing the area over which it (the proprietary system) operates" and added that "it may be deserving of your consideration whether you cannot, by authorising an offer of pecuniary compensation from time to time induce malguzars * * * * to accept a commutation of their proprietary rights". In Sambalpur, the inexpediency of extending the *malgujari* system was recognised and what was in substance a *ryotwari* settlement was made, under which the *gaontia* was treated as a village headman, who collected the revenue and the proprietary rights conferred on him were limited to his *bhogra* or home-farm, while the ryots on land other than the home-farm became government ryots, paying the government revenue assessed on their several holdings and not rent, ouster being allowed only for non-payment of revenue and the right of the ryot being heritable but not transferable. Conclusions similar to Col. Keatinge's have been arrived at by others also who have examined the revenue history of these tracts. Thus Wills in his settlement report on the Bilaspur zamindaris in 1913, after showing that the *gaontia* was formerly merely a rent-collecting official with no real responsibility for the revenue, concludes "What was then required in these zamindaris was first, a definite recognition of the ryots' status and, secondly, a definite recognition of the gaontia's office as carrying with it no proprietary rights whatever and no real responsibility for the village revenue, but wide administrative duties hereditarily transmitted, in return for which certain lands were allotted to him free * * *. As it was, a foreign system was imposed on these estates, the modification of which so as to bring it into closer conformity with what the people had evolved for themselves, has since been one of the main problems of zamindari managements". After the creation of *malguzars* out of village headmen, the need for protection of the tenants became apparent as early 1873. In moving the first Tenancy Bill in 1883 for consideration, Sir C. Ilbert, expressed himself as follows : "We found a body of cultivators

paying revenue to the State through their village headmen. Under, and for the purposes of the revenue system which we introduced, we converted the headmen into proprietors or landlords, the cultivators into their tenants and the payments made by the cultivators into rent * * *. Under the circumstances there will be little dispute as to the necessity for legislation, or as to the main principles on which legislation should proceed * * *. And as to the principles of legislation it is clear that we must not allow what was intended to be a boon to the immediate revenue payers to be a curse to those from whom the revenue is ultimately derived." Thus it was that a tenancy law came into being and at the present day the law as it has developed and the actual position created has been one of no ordinary complexity.

Roughly the same position was created in Bengal which at that time included Bihar and Orissa. Discussing the background to the Permanent Settlement, the Land Revenue Commission of Bengal (Floud Commission) say in para. 38 of their report "At that time nobody thought it possible that rents could be further enhanced, and when there was more waste land than there were ryots to cultivate it, nobody thought that it would pay a zamindar to evict his ryots." The results of the Permanent Settlement on the revenue of Government and the rights of ryots and developments leading upto the enactment of the Tenancy Act of 1885 have been described in paragraphs 44 to 62 of the Land Revenue Commission report and it would make this report unnecessarily lengthy to quote, or to describe the situation here. The Chota-Nagpur Tenancy Act and the Orissa Tenancy Act were framed to cover similar needs and, in general form and to a large extent in substance, they follow the Bengal Tenancy Act. The remarks of the Land Revenue Commission, regarding the effects of sub-infeudation seem to me to apply to a large extent to the position of Bihar and Orissa also : "The development of sub-infeudation has led to a revenue system of immense complexity particularly in districts like Bakargunj where as many as 15 or 20 grades of tenure-holders are not uncommonly found. This chain of middlemen has shifted from one to the other the responsibility of collecting rents, and looking after the interests of the tenants. The system has severed the connection between the zamindars and ryots in estates where subinfeudation exists and has defeated the intention of Lord Cornwallis to establish a landlord and tenant system in Bengal on the English model". While there has not been so much sub-infeudation in the Central Provinces, there has been an enormous amount of sub-division of village shares, and today, shares which are fractions of one pice (Whole=16 annas) may commonly be found, and the position of many of these *malguzars* is hardly better than the peasant which Sir William Sleeman thought he would rescue him from. The position reached in Bengal and described by the Land Revenue Commission in respect of the benefits hoped for from the zamindari system is true of other areas as well : "If it was the case that Lord Cornwallis hoped that it would result in the creation of a class of landlords who would supply capital for the improvement of land and the extension of cultivation and if he aimed at a system such as then existed in England, his hopes have not been realised. It cannot be denied that the extension of cultivation since the Permanent Settlement has with few exceptions been the work of the actual cultivators rather than of zamindars as a class". In the Central Provinces also, *malguzars* as a class have done little to improve their villages. Few indeed have the financial capacity for this purpose and the bigger *malguzars* who hold a number of villages are generally absentee landlords whose only interest in the village is the revenue it produces. In the States, I have found that *thekedars* and *gaontias* are primarily interested in improving their own home-farm or *bhogra* land and some at least of the tanks claimed by the *thekedars* as built by them seem to have been constructed with *begar* rendered by the villagers. In Bastar, where one of the conditions imposed on the *thekedar* is that of building or improving a tank or well and planting mango groves there have been numerous cases of ejectment for failure to fulfil these conditions and in some of the cases where fulfilment of the *theka* promise has been reported, this is seen to be only nominal (see report on Bastar regarding improvements made by *thekedars*). Any argument, in favour of leasing out villages or creating proprietary rights on these grounds, is therefore not borne out in practice and as far

as leasing is concerned, the usual practice in respect of it is that it begins with an initial payment by the *thekedar* or *gaontia*, often forced up in auction, and he is more interested in recouping this in the first instance than in improving the village at further expense. Thus it is that shortly before the *theka* falls due for renewal in Bastar many *thekdars* make feverish attempts to plant mango trees many of which perish, or to do enough work on a well or tank to satisfy the tahsildar who inspects; frequently an extension of time is asked for. To return to the grant of proprietary rights, many attempts have been made in recent years in the Central Provinces to retrieve the position created by the grant of proprietary rights and various proposals have been considered such as the purchase of villages sold in the execution of civil court decrees or by other means, and these have all been dropped on financial grounds. Not only is the *malguzari* system not a success from the point of view of the development of villages or relations between tenants and landlord but, like the Permanent Settlement of Bengal, it involves considerable financial loss to the State. Responsibility for the revenue of a village whether through a *malguzar* or *gaontia* without proprietary status, can be borne satisfactorily only where the payment to be made to the State is considerably less than the total income from the village. In the areas where proprietary status was granted and land revenue based on village assets (including ryotwari rentals, rental value of home farm and miscellaneous income) it was found that even 66 per cent. of the assets as land revenue could not be borne and ultimately this was fixed at 50 per cent. for the Central Provinces, "Fifty per cent. exclusive of road cess, etc. should be fixed all over the Central Provinces * * *. Experience in other Provinces has shown that if the Government takes much more than 50 per cent. the settlement breaks down in a few years." This is the reason why the *sarbarakari* system in Orissa where the sarbarakar gets only about 10 per cent. or less of the village rentals as his remuneration, is gradually breaking down, in such States as Dhenkanal where the responsibility for revenue is rigorously enforced. The comparatively better position in Gangpur where the *gaontia* gets 25 per cent. has already been mentioned and in the Chhattisgarh States also where the *gaontia* gets a high remuneration, sometimes as much as fifty per cent. of the total rental, the system of responsibility is working better. This position may be contrasted with the position in Berar where the ryotwari system prevail and the *patel* is merely a collector, and has no responsibility for the revenue; here the collecting agency costs less than 10 per cent. The State is thus, in the *malguzari* areas, put to a great loss while the benefits to the villagers is generally nil. In Bengal, the Land Revenue Commission has mentioned the financial loss to the State and has also pointed out that the low cost of collection and the punctuality of payment have tended to obscure the defects of the system which has been to deprive the Government of the close contact with and intimate knowledge of rural conditions which the ryotwari system affords; this as well as the excessive litigation caused is a feature of the malguzari system as well. The Commission recommended that the Permanent Settlement and the zamindari system should be replaced by a *ryotwari* system, under which the Government will be brought into direct relationship with the actual cultivators. In the Central Provinces one of the most important steps taken in amending the tenancy legislation is to grant absolute occupancy as well as occupancy tenants the right to become owners of land in their own right, paying revenue directly to Government, on payment of a small multiple of rent to the *malguzar*. The effect of this, if suitable circumstances prevail, may be the gradual supersession of the *malguzari* system and evolution of a *ryotwari* system. The Sambalpur Land Laws Committee viewed the Central Provinces step with approval remarking "The system of having one Malik in a village with a number of tenants under him has been tried and the result has not at all been encouraging * * *. The relation between landlords and tenants has deteriorated gradually". Thus the case against the grant of proprietary rights to *goantias* and other village headmen or lessees seems to be overwhelming. I have personal experience of the *ryotwari* areas of Berar as well as of the *malguzari* area of the Central Provinces and on the basis of my experience in addition to the views quoted above, I should offer the strongest possible opposition to convert the present village headmen into *malguzars*. Such a step, even if attended with no immediate financial loss to the State would, apart from the

complicated legislation necessary for the protection of the ryots, mean public loss in the long run as the *malguzar* would get all the unearned increment resulting from the future development of the State; the protection of the tenants would be a difficult feat of administration which the States are not capable of. The Kawardha proposal really seems to be a scheme, not to confer *malguzari* status as was done by the Government of India in 1854 as a gift, but to do so on payment, which while no doubt helping to ease the position created by the building of a costly new palace would leave an unwholesome legacy for the future. There can then be no question of either adopting the Central Provinces laws with any measure of completeness which would facilitate any future absorption into the province or of introducing a *malguzari* system.

Similar is the position with reference to the Orissa Tenancy Act or the Chota-Nagpur Tenancy Act. Both these Tenancy Acts are based upon the similar law of Bengal which may be regarded as their parent. The accrual of occupancy rights in all three cases required 12 years cultivation of lands in the village. In Chota-Nagpur there are the *mundari khuntkattidari* tenancy and the *bhuinhari* holdings as well as ryots with *khuntkatti* rights, the like of which is not to be found in the States. The 12 years' possession rule is something entirely arbitrary and I can find no circumstance in the States which would justify its imposition except perhaps for the protection of sub-lessees who have held for long periods and improved the land. In Bengal it was introduced in 1859 in order to obliterate a previous distinction between '*khudkasht*' and '*paikasht*' ryots. Since then it appears to have been adopted absolutely arbitrarily in other places. without any local reason, and was once a feature of the Central Provinces Tenancy Act from which it has now long been removed. In Dalziel's settlement report of Orissa (1932) it is stated that the principle of 12 years' possession appeared "to have crept into the Act of 1859 as a mere afterthought but it has continued to hold the field in all subsequent legislation. The bengal Tenancy Act (Act VIII of 1885) extended the principle much further by providing that any person who has continuously held land as a ryot in any village for 12 years became a settled-ryot and that every settled ryot should have a right of occupancy in all lands held by him as a ryot in the village. This part of the Bengal Tenancy Act was extended in Orissa in 1891". I have not been able to find anything in Maddox's settlement report which suggests that any such rule was necessary in Orissa. In the States, I can see no necessity for any such rule for ryots at present, and in fact the introduction of the rule would certainly amount to the imposition of a disability upon the cultivator. The position regarding the 12 years' rule in Hindol and Athmallik which are the only two States to introduce it has been stated already, in both these cases the rule is an exotic one and has not yet crystallised. In Kanker where the old Central Provinces practice was copied, it is now proposed to abolish the distinctions. The ryot throughout the area under enquiry acquired the right to hold continuously so long as he paid the revenue as soon as he acquired possession of the land. The adoption of the 12 years' rule in the States would therefore be a measure of injustice.

Even apart from all these considerations, the laws of the Provinces as they are, do not suit the circumstances of the States The peculiar position in the States in which a close definition of the States' rights is necessary has already been alluded to. Moreover, as this is the first law to be applied, there is need for several new provisions to deal with existing features and to give them the right orientation. It is not therefore practicable to adopt the provincial laws and it is absolutely necessary to frame a new law or laws.

If the States are ever absorbed into the province I suppose the Rulers will be zamindar and the ryots tenants. It is unnecessary to complicate the matter further by recognising proprietary or semi-proprietary rights in middle-men. There are already zamindars and tenure-holders and even sub-zamindars who will constitute the third degree of sub-infeudation if the Rulers become zamindars.

77. *One Law or Several Laws.*—We come now to the question whether one law can be framed for all the States or separate laws are necessary. If the position as found in each State is simply to be crystallised and codified, then identical laws are impossible for even two or three States. On the other hand the present position in many States has many undesirable

features which demand modification. Then again, if the law is to incorporate all peculiarities of all States, then not only is a single law impracticable but the task is also beyond me unless I spend a considerable time in each State, weigh and decide all conflicting claims put forward by tunureholders, zamindars and others. That one law for the whole agency, if practicable, presents immense advantages is obvious; it is equally obvious that it is impossible to incorporate all features of each State and still have a single law which can be understood properly. The question then arises, are the systems of the various States susceptible of being fitted into a broad legal framework dealing with main principles in which the detail is left to be filled in with special rules in each State ? It is clear that even such a measure would be an advantage in face of the possibility of 39 different laws in a comparatively small area. I venture to think that the question can be answered in the affirmative provided that certain very necessary alterations are made in the system of village management and recovery of land revenue along with other essential reforms in other matters. It has already been pointed out that there is a considerable measure of uniformity in the systems of all the States. All the systems are based upon the principle that the State owns all land which has not been alienated. Further, apart from rent-free grants and certain zamindari tenures, there are no intermediate proprietors as the headmen of villages have not been given proprietary rights in any State. (The *birtia* villages of Sonepur seem to be an exception but these are really in the nature of *brahmottar* grants). The rent-free grants even do not present any features which are not susceptible of reduction to a common level. The ryoti tenures are all practically identical throughout the Agency. This is a considerable measure of agreement in important matters and if it is possible now to reduce the varying powers of the village headman in each State to a common basis, the problem is largely solved, as in procedure, settlements and similar matters there would be no difficulty in having common principles. It has been seen that the system of village headmen with responsibility for the revenue is breaking down in places where it has not been bolstered up by a considerable sacrifice of revenue on the part State. The evils of the existing system of leasing out villages or leaving the management to *sarbarakars* or *gaontias* have, I think, been brought out sufficiently clearly in the individual reports. The system of auctioning or selling the village headmanship is most pernicious one ; the *thekedari* system at its best is expected to provide capital for village improvement but this can hardly be forthcoming if the headman has to make an initial payment to the State. The first consideration of such a village headman is to reimburse himself by exploiting all the possibilities in the village. (See report on Udaipur where a *gaontia*, even before his appointment was formally confirmed, started demanding *salami* from a new comer). In some States, the *thekedar* or *gauntia* has the power of alloting waste lands in the village and wherever the land has any value it may be taken as certain that he recovers a *nazrana*; in a few States the *wazib-ul-arz* prohibits this nominally but it is pretty certain that this rule is evaded in practice and with the connivance of the ryot. In a State like Nandgaon where cultivation is thick and land valuable, there is frequent friction between the ryots and the *gaontia* on account of the latter attempting to allot the little waste land available for cultivation while the ryots desire to retain it for grazing and other purposes. The power to accept surrender of lands has also placed a potent weapon in the headman's hands for profit and wherever the land has any value the *thekedar* attempts to promote surrender. Wherever the transfer of land requires the services of the *gaontai* he does not fail to profit by it. The system of auctioning villages is popular with the States because it usually provides the Ruler with occasional income in the shape of *salami*. The case of Raigarh has already been mentioned. The practice of auction gradually results in the acquisition of proprietary rights and the Sarangarh practice of auctioning a village at the instance of a *gaontia* and sharing the premium may be recalled. The system of short term *thekas* and sub-leasing prevalent in Kanker and introduced in Surguja is particularly harmful from the point of view of village development and the interests of the cultivators. The evils of village management through lesses are sufficiently apparent everywhere I think to put an end to the system. If the *malguzari* system has resulted in so much abuse and trouble as well as loss when the *malguzar* has secure rights, a short-term lease certainly has all the possibilities of the same evils to a

higher degree. With a system of *thekedars* with powers to allot lands and accept surrenders, apart from the possibility of abuse and harassment, the land records cannot be satisfactorily maintained. Though leases may bring in a certain amount of *nazrana* it is clear that on the whole the State suffers a loss in the shape of a heavy "draw-back" intercepted by the *gaontia* and in the *nazranas* which the headman intercepts and which would in a system of direct management go to the State. The powers of *thekedars*, as already mentioned, have been reduced from time to time on account of abuse, and in view of the corrupt practices inherent in the system, it is essential in the interests of proper village management and State revenue to seek a different system. In Bastar the need for abolition of the *thekedari* system has been recognised and new *thekas* are not created while old thekas which are forfeited are not reissued. Throughout the Orissa States with the exception of a few like Gangpur or Pal-Lahra powers of allotment or reallotment of land have been taken away and *sarbarakars* in these areas are little more than collectors of revenue. In Patna recently the powers of allotment and allotment of land have been appropriated by the State. In the Chhattisgarh States of Surguja and Koreo there is a move towards the *ryotwari* system.

Thy system of farming out villages to headmen with responsibility for the revenue may now be regarded as a primitive method of management the utility of which, if any, has expired with the time when cultivators were difficult to find, and it is not suited to an age of rapid communications and rapidly increasing population; it has not fulfilled expectations of village improvements and has on the other hand resulted often in harassment of ryots and the powers of *thekedars* and *gaontias* have had to be reduced from time to time; the responsibility for the revenue of the village has resulted in the system breaking down in many places with the consequence that in two States (Nilgiri and Athgarh) the system of village headmen has been abolished altogether and in Baudh the headmen have been relieved from the responsibility of paying the land revenue. Nearly everywhere the States have been compelled to help the headmen with certificate procedure and other means (even in the Central Provinces *malguzars* seek the help of the tahsildar) and for many villages headmen willing to accept the responsibility for revenue cannot be found; the mass removal of headmen in Athmallik for quite trivial arrears of revenue in some cases is described in the report on that State.

The *ryotwari* system is moreover the only system which the States can have as a common factor and to prevent the loss of State revenue in the shape of heavy 'drawbacks' intercepted by the headmen.

CHAPTER VIII.—The Ryotwari System Proposed

78. The excellence of the system of direct management known as *ryotwari* and the uniformity of authoritative opinion in respect of it has already been noted. I am of opinion that this system should be introduced into the States. By suggesting a *ryotwari* system I am not suggesting anything new or foreign to the area; it will be shown presently how this system can be evolved out of the existing system; in a number of ways the position in many States where the headman has no rights of disposal of land is very similar to it. Briefly in the *ryotwari* system, there is a Village headman, who is, or should be, one of the local cultivators, with strong local interests and influence in the village. It is essential to the success of the system that the headman should, to the largest extent possible, be a local resident, and not as often happens under the *thekedari* system, (particularly so where easy money is the first consideration) an outsider. This headman, as far as possible the choice of the villagers, will be a sort of local agent of the State, responsible for the *collection* of the revenue and having other administrative duties to discharge. Being a local man and well known to the villagers, there will be greater confidence in him than in the case of a temporary peon who acts as collector and has opportunities of cheating as well with comparative impunity. The State can also place greater faith in him as a collecor of revenue. As a remuneration for the collection of revenue and discharge of other duties, the headman gets a remuneration which is usually a small percentage of the total land revenue. Having only the duty of collection to do, and bearing no personal responsibility