PREFACE :

The Land Reforms Commission, Assam was set up by the Government of Assam in may, 1978 vide Govt. Notification No. RRT. 184/78/19 dated 27th May, 1978 to-

1. study the objectives of the Land Reforms Policy so far followed in the State and the particular measures incarrying out the policy into effect and to make re-commendation to the State Government regarding the adequacy or otherwise of the measures and modifications necessary;

2. study critically the land laws (including land reforms enactments) of the State and to recommend revision, consolidation with suitable recommendation for amendments and measures for their effective implementation;

3. study and review the present land settlement policy of the State Government in particular and make recommendations for any revision or modifications in the present context; and

4. examine and submit recommendations on any other relevant matter that may be referred to the Commission or considered relevant by the Commission in the above context.

The Commission was constituted with the following Members :-

1. Shri K.N. Saikia, Advocate, Gauhati — Chairman.
2. Shri B. Dowerah, I.A.S. (Retd) Gauhati — Member.
3. Shri M.C. Das, M.L.A. — Member.
4. Shri Jainal Abedin, Advocate, Dhubri — Member.
5. Shri Anil Kumar Biswas, Advocate, Silchar. — Member.

Shri K.N. Saikia relinqiushed the Chairmanship of the Commission on his elevation as a Judge of the High Court of Judicature, Assam, Meghalaya etc. etc. Shri B. Dowerah, one of the Members of the Commission was appointed as Chairman of the Commission under Govt. Notification No. RRT. 184/78/64 dated 28th April, 1979. Shri Dowerah took over tcharge as Chairman of the Commission on 28.5.79. The consequential vacancy caused in the membership of the Commission was filled up by Shri S. Goswami, I.A.S. (Retd.), vide Govt. Notification No. RRT. 184/78/65 dated 4th June, 1979. Shri Goswami worked as a Member of the Commission from 12.6.79 till 7.8.79 on which date he resigned his membership of the Commission on his appointment as Adviser, (Project) to the Hindustan Paper Corporation Ltd. In the vacancy caused by Shri Gowwami's resignation, Shri R. Baruah, I.A.S., Managing Director Assam Co-operative Apex Bank Ltd. was appointed as Member in addition to his own duties. Sri Baruah joined the Commission on 26.10.79. On his retirement from Government service, Shri Baruah was appointed as a full fledged Member of the Land Reforms Commission with effect from 1st March, 1981.

During the incumbency of Shri K.N. Saikia, a questionnaire covering all the Land Reform Laws and the Assam Land and Revenue Ragulation was prepared. The preparation of the questionnaire took a fairly long time as the Commission had to make at thorough study of all the land laws. The questionnaire was published in the local dailies and also printed in booklet form. The questionnaire in booklet form was circulated amongs the District Revenue Officials, the secretaries of the different Bar Associations in the State, Chairmaen of the Mahakuma Parisads and President of the Gaon Panchayats, non-official persons having an interest in land reforms and political leaders. Replies were

reveived mostly from Circle Officers and Assistant Settlement Officers. The Commission notes with regret that barring two Deputy Commissioners, the other did not give their replies and views sought for by the Commission in the questionnaire. No replies from any of the Bar Associations in the State reached the Commission. The replies received were not of the desired extent and were not found to be very useful.

The Commission's work was hampered to a considerable extent owing to the disturbed situation. The Commission had in its mind to visit all the districts for holding sittings for the purpose of obtaining a first hand knowledge of the trend of public opinion regarding land reform measures and their implementation and of the difficulties faced by the officials in implementing them. Because of the prevailing situation, the Commission had to restrict its visit to the districts of Goalpara, Kamrup, Cachar and Nowgong.

For the purpose of having a full insight into the mechanism of consolidation of land holdings, the Commission visited the States of Punjab and Haryana where remarkable success has been achieved in this direction. The Commission, in course of its visits, inspected the land records of consolidated holdings in a few villages. In these villages it also met some actual beneficiaries and discussed with them in order to assess the impact made by consolidation of holdings and other land reform measures in the lives of the peasantry.

The Report has been divided into two parts. The First Part, which was submitted to the Government in August, 1980, deals with the following land reform laws :-

1. The Assam Fixation of Ceiling on Land Holdings Act, 1956.
2. The Assam (Temporarily Settled Areas) Tenancy Act, 1971.
3. The Assam State Acquisition of Lands belonging to Religious or Charitable Institutions of Public Nature Act, 1959.
4. The Assam Consolidation of Holdings Act, 1960.

The Second part covers the primary land law of Assam contained in the Assam Land and Revenue Regulation. For convenience the two parts have been bound together.

The Commission was greatly handicapped for not having the services of a stenographer. Had the Government made the services of a stenographer available, much time could have been saved in preparation of the report.

The Commission in preparing the Report has spared no efforts to make it comprehensive and at the same time exhaustive. The Commission hopes the Report will meet the purpose for which it was constituted.

The Commission likes to place on record its grateful appreciation of the co-operation and the nice arrangements made by the Governments of Punjab and Haryana for its stay and tours within their States. The Commission had fruitful discussions with Shri Sher Sing, Minister of Revenue, Haryana. Shri L.C. Gupta, I.A.S., Financial Commissioner to the Government of Harya, Shri K.D. Vashudeva, I.A.S., Financial Commissioner, to the Government of Punjab and other Senior Revenue Officers of the two Governments. The Commission had also an opportunity to visit the Punjab Agricultural University, Ludhina. Dr. A.S. Cheema, Vice-Chancellor, Punjab Agricultural University showed keen interest on its visit. The Commission had very useful discussion on the inter relation between land reforms and agriculture with Dr. D.S. Sidhu, Professor and and Head of the Department of Economics and Sociology, Dr. S. S. Grewal, Dr. D. S. Athwal and other Members of the Department.

The Commission held in all 334 sittings during its tenure.

The Commission acknowledges with thanks the co-operation and asistance extended by the Deputy Commissioners, Sub-Divisional Officers and other revenue officials during its visits to different places. Thanks are also due to the members of the Bar Associations of Dhubri, Kokrajhar, Barpeta, Nalbari, Silchar and Karimganj for their frank discussions and valuable suggestions. The Commission is indebted to the leading persons who, in course of their meetings with the Commission, offered their considered views. The All Assam Mauzadars' Association also deserves thanks for the views expressed by them for affecting improvement in the system of revenue collection.

The Commission also puts on record the valuable services rendered in addition to their duties by Shri T.K.Bora, A.C.S., Secretary of the Commission and Shri B.R. Majumdar, A.C.S., Under Secretary to the Government of Assam in the Revenue Department who was specially deputed by the Government to assist the Commission. The services rendered by these two Officers made it possible for the Commission to discharge the responsibility reposed on it timely.

Last but not the least the Commission acknowledges the ungrudging pains taken by the staff to complete the task assigned to them.

The Commission recalls with happiness, the services of Shri H.C. Ghose, typist who alone did typing of the Report and of Shri D.C. Nath, U.D.A. who took dictations in long hand in addition to his own duties.

Dated Gauhati,
the 28th September, 1981.

(B. Dowerah)
Chairman.

(R. Baruah)
Member.

(A. K. Biswas)
Member.

(J. Abedin)
Member.

(M. C. Das)
Member.

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Part I

CHAPTER I

BACK GROUND OF LAND AND REVENUE ADMINISTRATION IN ASSAM

1.1 In any discourse on land reform measures with the object of evolving a rational policy and evaluating the adequacy or otherwise of the existing enactments concerning agrarian reforms, a brief background of the system of land administration in the past and their trend, is interesting as well as helpful in understanding the native and borrowed factors in the agrarian legislation of the State.

1.2 The Ahom Kings ruled the State of Assam till 1826. Before coming to the system of the land and revenue administration introduced by the Britishers, it is in the fitness of things that a reference should be made to the revenue administration prevailing in Assam during the reign of Ahom Kings. A detailed account of the land and revenue administration during the reign of Ahom Kings is not available. We have, therefore, to fall back upon the meagre accounts given by different authors of books on the history of Assam during reign of Ahom Kings. Gleaning whatever materials available from these books, a picture of the land and revenue administration prior to the coming of the Britishers, although not very clear, can be drawn.

1.3 In the system of the administration of the Kingdom "the Government was monarchical oligarchy, with the king as the supreme authority, acting at the advice of the council of three Ministers-Buragohain, Borgohain, Barpatragohain. The head of the executive and judiciary was the Barbarua. The Barphukan acted as the viceroy, and administered the province West of Kaliyabar (in Nowgon now). There were several other frontier wardens the Gohains posted at Sadiya, Marangi, Sala, Jagi and Kajalimukh. There were limited number of princely families from which the king could be selected. Likewise, there were several families, from which the three Ministers, the Barbarua and the Barphukan were recruited. The Frontier wardens had to be from the families from which the three members of the Cabinet could come. Estates (called Mel) were granted to the sons, wives and other near relations of a reigning king".

1.4 "The adult population of Assam was divided into Khels having to render specific services to the State, such as, arrowmaking, boat-building, boat-plying, house-building, provision-supplying, fighting, writing, revenue-collecting, superintendence of elephant, horses, hawks and forests etc. Each Khel was placed in charge of a Phukan, a Rajkhowa or a Barua, who was assisted by a gradation of officers, Hazarikas, Saikias and Boras. An adult male was called a Paik, and four Paiks constituted a 'Got'. One man in a 'Got' had to serve the State for three months in a year, and the remaining three Paiks looked after the cultivation and other domestic concerns of their absent comrade. In cases of emergency two and even three men were recruited from each 'Got' for State purposes, or the 'Got' maximum was reduced from four to three Paiks. The levey of one man from the 'Got' was called the Mul, of two the Dewal, and of three the Tewal. ..... In cases of war or other public occassions, the Officers-in-charge of the various Khels mobilised their respecttive quotas of men."*

**Page*-131 *of the Introduction to Prachya-Sasanavali-compiled and edited* by Dr. Moheswar Neog.

1.5. The Ministers and the high Officials were grated large estates known as Khats and Bilatas and these were cultivated by Paiks attachecd to them. The commenest subjects during the Ahom rulers were the Paiks. The Paiks paid their land revenue by rendering personal services, an exemption from which could be purchased. Gait in his History of Assam Writes "As a reward for the services each Paik was allowed two puras (nearly three acres) of the best rice land free of rent. If personal service was not required, he paid two rupees instead. He was given land for his house and garden for which he paid a poll or house tax of one rupee, except in Darrang where a hearth-tax of the same amount was levied upon each family using a separate cooking, place. Any one clearing land other than the above was allowed to hold it on the payment of one to two rupees a pura, so long as it was not required on a new census taking place to provide the Paiks with their proper allotments.

1.6 In the inundated parts of the country, the land was cultivated chiefly by immigrating raiyats or as they are now called 'Pam' cultivators, who paid a plough tax. The Hill tribes who grew cotton, paid a hoe-tax. Artisans and others who did not cultivate land paid a higher rate of hoe-tax amounting to five rupees per head for goldwashers and brass-workers, and three rupees in case of oil-pressers and fishermen".

1.7 From the remarks recorded by Gait that any one not being a Paik clearing and occupying land was liable to be deprived of his land to provide the Paiks with their proper allotment, if and when, such an action became necessary, it appears that amongst the commoners under the Ahom rulers, the Paiks received some sort of preferential treatment. This action was obviously not prompted, so much by the desire on the part of the rulers for their welfare as by their motives to ensure the ready availability of their services for State purposes like in cases of war and other public occasions from a well contented regiments of serfs.

1.8 The scanty references available in historical documents of Ahom times are at variance with one another as to whether the right over land was a transferable right.

1.9 A sale deed of a plot of land has been recorded in Gadadhar Singha's reign, which suggests a hereditary and transferable right on land.

1.10 On the other hand there is a clear indication in one "Buranji" that the sale of land was penal offence.*

1.11 Another reference clearly suggests that the king could not evict a tenant even when the land was needed for the erection of a rampart.*

1.12 It could be that the law differed according to different classes of subjects the Ahoms belonging to the ruling class had certain privileges which others did not.

1.13 A detailed survey of the country was undertaken during the reign of Sargodeo Godadhar Singha. According to Gait this was a note-worthy measure. Sargodeo Godadhar Singha, while he was fleeing from his enemy as a fugitive king, came to learn about the land measurement system of the Mohammadans which was prevelant in the Western part of Assam. When he became the king, he ordered a survey of land in Sibsagar which was completed only after his death. For the purpose of undertaking this survey some surveyors from Bengal and Coch Be-har were recruited. The area of each field was calculated by measuring the four sides with a bamboo pole, twelve feet long and multyplying the mean length by the mean breath. The boundaries were described by making reference to ancient trees, and physical features on the ground. It appears there was no field to field surveys as such. The surveys undertaken were confined to large areas which had been gifted to deities, temples, and individuals for performing religious rituals for obtaining blessings from Gods and Goddesses. These large estates were entered in a register called the "PERA KAKAT".

1.14 The unit of area was the pura, which contains 4 Standard bighas, each of 14,400 Sq. feet.

Tungkhungia Buuranji and Satsari Asom Buranji-Compiled by Dr. S.K. Bhuyan.

1.15 Another important aspect of revenue administration was the classification of land, according to the nature of the soil and the use to which the land had been put. Lands broadly fell into the following classifications :-

(1) Rupit (rice land)
(2) Pharingati (dry land, high land)
(3) Kathiya toli (Land for raising seedlings)
(4) Baotoli (Land fit for deep-water paddy)
(5) Bengena toli (Land for raising crops of brinjals)
(6) Bari or Bhiti (home-stead land)
(7) Habi (forest land)
(8) Dalani (marshy land with "dal" grass)
(9) Bakari (open waste land)
(10) Bil (collection of water, fishing waters)

Waste lands not settled with anybody, were referred to as Ubar.

1.16 It is however not known for what purpose the classification of land was made. It appears that the tax on land did not vary according to classification of lands. The tax imposed was at a flat rate although it varied from region to region.

1.17 The classification was most probably made to ensure even distribution of good and bad land amongst the Paiks so that they could fully sustain themselves from the yield from the land.

1.18 Before describing the system of land and revenue administration introduced by the Britishers, it would be interesting if a brief citation of events leading to the conquest of Assam by them is given.

1.19 During the later part of the 18th Century, the Mowamoria revolution aggravated by many palace intrigues shook the fourdation of Ahom rule, and the political unrest could be quelled by the then King with the help of the British, who sent a Captain Wells to reinstate the Ahom Prince Gaurinath Sinha.

1.20 The same palace intrigues and conflicts of interests amongst the powerful members of the nobility, chiefly between Badan Barphukan and Purnanda Buragohain paved the way for the Burmese to invade Assam.

1.21 It is also well known, how the atrocities of the Burmese in Assam and their subsequent rampages in the British territory in Cachar (Khaspur) led to the Anglo-Burmese War and the Burmese unable to withstand the British onslaugth fled to their main land. The pursuing British soldiers attacked the Burmese mainland, inflicting on them an ignominous defeat.

1.22 The Burmese King, acknowledging defeat, signed the treaty of Yandoboo in in February 24,1826. Under the terms of the treaty, the Burmese King agreed to abstain from all future interference in Assam, and ceded the territories of Assam, Arakan, Tenaserim and Martaban.

1.23 As the Britishers were uncertain about the continuance of their occupation of the country probably owing to the oppositions from the higher classes, they did not immediately make a whole-sale change in the pattern of administration of the country.

1.24 Lured by the addition of one more feather to the British Crown and the rich virgin soil of the country, they enconsed themselves as the future rulers of the destiny of the last independent Kingdom of Assam in the Indian subcontinent and started administration of the country. The system of land and revenue administration continued as in the days of the Ahom Kings. The only change they effected was the abolition of the custom of paying land rent in the form of rendering personal services. Everyone occupying land was required to pay lump sum of rupees three for homestead, garden and rice land.

1.25 Later on, in 1832 arrangements were made to introduce a land assessment in plains in place of the old poll-tax. Each district was divided into MAHALS which were re-settled annually until the year 1835. The procedure of realising the land tax was not uniform, but it was generally collected through the agency of Commission Agents, called Chawdhuries, Mauzadars and Kakatis. In 1836-42 a plan was undertaken for settlement of land for a short term period of a particular area known as a Mouza with a Chawdhury or a Mauzadar who took upon himself all risk of loss while on the other hand he enjoyed the additional rents which accrued from extended cultivations. In 1855, however the annual settlement had been again reverted to. The lands were classified into three main divisions namely (i) Basti or Bari (Homestead); (ii) Rupit (low rice land) and (iii) Faringati (high land). The rates assessed on the three classes differed from district to district. The difference in the rates of assessment for each district was probably due to the fact that the productivity of the soil and the economic condition of the people differed. The rates of assessment remained practically unchanged till 1870.

1.26 The British administration had already taken a firm root and the administrative machinery which started with handful officials grew larger with the passage of time. As a result, more funds became necessary to meet the increased expenditure on this account. The assessment of land revenue on the three classes of land, which was made some time in the year 1854 in the five districts of Kamrup, Darrang, Nowgong, Sibsagar and Lakhimpur, was raised in the year 1870 to meet the expenditure of the Government for the expanded adminstrative machinery. The revised rates of assessment were one rupee a bigha, for basti ten annas for rupit and eight annas for faringati land.

1.27 The conferment of a permanent, heritable and transferable right of use and occupancy on the cultivators holding land received considerable attention of the authorities. The Britishers started with the notion that all the soil belonged in absolute property to the Soverign, and that all private property in land existed by his sufference. Finally it was decided that the settlement of land was to be made to the occupant cultivators, the term of Settlement of land held permanently was to be ordinarily 10 years, discretion having been left with the Government to raise it to 15 years. The rates of assessment were to be fixed for the term of Settlement but liable to alteration in future settlement. Permanent holdings were made heritable and transferable on the condition that transfers were registered.

1.28 The word 'settlement' means settlement of an estate which in legal phraseology denotes the quantity of interest in realty owned by an individual, the aggregate of the rights over land vested in a particular person. The word 'estate' is often used to mean the land itself. When understood in the abstract sense, there may be wider or narrower estates, such as life estate, estate in fee-simple, estate tail. When understood in the concrete sense, it concieves of partition of the estate physically, for example impertible estates, par_ioned estates. Settlement of land, is actually associated with a bundle of rights over land conferred on an individual subject to the payment of a tax on land which is popularly known as land revenue. The aggregate of the rights over land can be enjoyed by a person as long as he pays the land-tax assessed on his holding. The making of permanent settlement in the year 1793 makes it clear.

1.29 Lands brought under cultivation during the currency of a settlement were to be assessed on actual measurements year by year. But no heritable and transferable right accrued in favour of the cultivators in respect of such lands until the next settlement. The heritable and transferable title was conferred on the cultivators only when they were found in possession.

1.30 The earlier decision to farm out Mouzas to Chaudhuries and Mouzadars for the collection of land revenue was rescinded and the fiscal circles or Mouzas were placed in carge of Mouzadars who were entrusted with the duty of collecting land revenue. These Mouzadars were allowed no interest in the land but were to get a Commission on the revenue collected.

1.31 Basing on these principles a set of Rules contained in the Bengal Government Resolution dated 9th October, 1870 known as the Settlement Rules of 1870 were the first public declaration on the part of the Government of the right in land possessed by the cultivators of the soil. They recognised a permanent, heritable and transferable registration of all transfers and successions, as attaching to all persons who took rights in land, subject to periodically from the Government for lands held permanently, but the rules conferred no such right in the case of those who took out only annual leases for shifting orfluctuating cultivation.

1.32 From 1871 to 1887 all settlements in the five upper districts of the Brahmaputra valley were made under the Settlement Rules of 1870. Periodic settlement, however, did not find favour with the Commissioner of the Province and the majority of the district officials, on the ground that the people would be frightened at a long term Settlement coming just as their revenue was doubled by the introduction of the new rates. The Government of Bengal, therefore, left it to the discretion of the Commissioner to introduce long term settlement whenever he might think fit. As very few decennial settlements had been made in 1871, the Government of Bengal drew the attention of the Commissioner to the Settlement Rules observing that it was "hard to believe that none, of those who have the best lands care for the security offered by a ten years settlement accompanied as it is by a hereditary and transferable right of their holdings". At the same time the Government of Bengal raised the question whether having regard to the fact that the cultivators who took out annual leases only had practically for many years inherited and transferred their holdings and so retained a permanent heritable and transferable interest in them, subject to the payment of such revenue as Government might demand from them, it was desirable "to introduce in Assam regular property in land, such as would leave Governnment no control, or whether it is more expedient to retain the system under which the land holder is a tenant of Goverhment, secure that Government will not treat him unfairly, turn him out, or deprive him of the profits of his industry". The then Lieutenant Governor Sir George Campbell thought that rights in land in Assam were in a sort of fluid state, and that they could perhaps be moulded as the Government might then determine.

1.33 This again raised the question of rights in land in the five districts of Kamrup, Darrang, Nowgong, Sibsagar and Lakhimpur. The consensus of the district officers was that 10 years settlement of rupit land or fixed cultivation was feasible and that in case of fluctuating cultivation it was not so. At the same time they however opined that the cultivators had nothing to gain by long term settlement as the rights and interest of the cultivators of land settled annually were in practice heritable and transferable although no such right had been conferred by the Settlement Rules of 1870 for the simple reason that the rules provided that annual settlement were to be made with actual occupants. No final decision in the matter was taken till 1883 when another effort was made, more successful in its result, to introduce long term settlement of khiraj land into Assam proper and Rules were laid down for the guidance of the Officers in effecting such settlement, the principle being that the settlements of land for a period of ten years were to be made only of land which, there was reason to believe were held permanently and were therefore, not likely to be resigned. A set of Rules known as the Decennial Settlement Rules were framed for guidance of the officers in effecting such Settlement. District Officers were further authorised to refuse to issue of annual leases, in such cases. A Form of decennial lease was also for the first time prescribed, which distinctly confered on the holder a permanent, heritable, and transferable right in lands covered by it. Whereas the annual lease conferred no such right, but required the holder to give up the land whenever Goverment might require it on receiving compensation only for the standing crops and houses. The settlements effected under these Rules were known as the first decennial settlement of Assam proper.

1.34 The Settlement Rules of 1879 and the Rules framed in 1883 known as the Decennial Settlement Rules prescribing the procedure and the Form of lease for long term Settlement (10 years) continued to remain operative till 1886.

1.35 The Assam Land and Revenue Regulation was enacted in the year 1886 by the Governor General-in-Council under the provisions of section I of the Government of India Act 1870. The prime object of Assam Land and Revenue Regulation 1886 was the collection of land revenue for augmenting the State coffer. Incidently the maintanance of records which was essential for the collection of land revenue also came within the purview of the Assam Land and Revenue Regulation. To meet the changed circumstances, the Land and Revenue Regulation 1886 was amended from time to time. The amendments were carried out solely from the point of view of land revenue administsation. The pressure on land was very much less than what is to-day.

1.36 Under the British rule land reforms received scant attention for improvement of the condition of the tillers of the soil. Whatever reforms were made connected with the administration of land, applied mainly to Zamindari tenures. The raiyats were, by and large, left untouched. The Zamindaries and the other intermidiaries held enormous privileges and they became affluent by thriving on the sweat of the tillers of the soil under them. The small measures, the so called land reforms undertaken by the Britishers were not so much prompted by consideration of improvement in production or from a sense of social justice. Behind the measures undertaken by the Britishers lay the motive of safeguarding British political influence in the rural areas and to save the rural markets from being completly pauperised. As a result of the utter neglect for improving the conditions of the peasantry and safeguarding their rights on lands held by them, rural India was virtually in a state of perpetual penury. Occurrences of famines almost became a regular feature in the rural areas. The burden of poverty became so much heavy that unable to bear it any longer, peasants revolted in several places in the country. These peasant-uprisings brought the Britishers to their senses that some sort of land reforms for ameliorating the conditions of the raiyats and the under-raiyats were extremly necessary. The most important piece of legislation in this direction namely, the Bengal Tenancy Act was enacted in the year 1885. The provisions of this Act, prompted the other provinces to adopt similar measures. These tenancy Acts conferred occupancy rights on those raiyats and under-raiyats who had been in possession of any land for twelve consecutive years. The occupancy rights included the rights of inheritance, transfer and mortgage. Ejectment of occupancy tenants at the seweet will of the 'landlord was prohibited even for non-payment of rent except in due process of law.

1.37 These tenancy Acts however left out the share-croppers who constituted the bulk of the Indian peasantry. They remained as tenants-at-will without any legal protection from arbitrary eviction and rack-renting. Even in the tenancy Acts promulgated by the Britishers, the tenants could not be given absolute protection from the big landlords for the simple reason that the ordinary raiyats could hardly prove consecutive possession of land for twelve years under the chaotic conditions prevailing then in the maintainance of land records and the domination of landlords. Those raiyats who took advantage of the provisions of the tenancy Act were mostly influential persons who held substantially large areas. The big raiyats never cultivated the land themselves but rented it to share-croppers or adhiars. The benefits of the tenancy Acts did not therefore percolate to the opressed peasantry and the share-croppers created by the big proprietors and the big landlords. In spite of the tenancy Acts enacted by the Britishers, the agrarian Society continued to be dominated by big landlords almost all over the country. The man behind the plough continued to lead the life of a serf without any bright future to look forward. After the attainment of Independence the structure of the agrarian society for the betterment of the economic condition of the peasantry and slso for the development of rural economy with a view to putting it on the road towards progress and prosperity received serious attention of the leaders of the country.

1.38 There was a consensus that the reformation of the land system was so urgently needed for the country that unless measures in that direction were undertaken with a strong will, there was little hope of redeeming the country's economy which was at its lowest ebb.

1.39 The question of land reforms was discussed at the highest political level in the year 1947 and as a result of the discussions, Agrarian Reforms Committee was constituted with Shri J.C. Kumarappa as its Charirman. The Kumarappa Committee examined question of land reforms in the country in great depth and submitted its report in the year 1949. The recommendations of the Kumarappa Committee contain the quite-ssence of all land reforms measures so far adopted in the country. The main recommen-dations of the Committee were as follows :-

1. (a) Elimination of scope of exploitation of one class by another.
   (b) To inculcate in the minds of the farmers a sense of self-assertion.
2. Abolition of all intermediaries between the State and the tiller.
3. Prohibition of subletting of land except in the cases of widows, minors and other disabled persons and
4. The setting of an administrative machinery with a sense of dedication to implement land reform measures.

Besides the basic recommendations mentioned above, the Committee also suggested that a ceiling on the size of the agricultural holding which a farmer should own and cultivate should be fixed, because the supply of land in relation to landless cultivators was so limited that any agrarian reforms without a ceiling on individual holdings would be infructuous.

1.40 On the basis of the recommendations of Kumarappa Committee land reform measures were given an important place in the five year plans. The first five year plan recommended, mainly :

(i) abolition of intermediaries between the State and the tillers ;

(ii) tenancy reforms to reduce rents' provide security of tenure and give tenants an opportunity to purchase the land they cultivate;

(iii) fixation of a ceiling on landholdings and the distribution of surplus land ;

(iv) improvement of the conditions of the agricultural workers, and

(v) Co-operative organisation of agriculture.

In setting out the above policy emphasis was laid on social justice and highest priority was given to agricultural production.

1.41 In the Second Five Year Plan Land Reforms measures were designed keeping in view a balanced economic development and social justice. The planners knew full well that land reforms provided the social, economic and institutional frame work for agricultural development and exerted influehce on the lives of the vast majority of the population extending even beyond the horizon of rural economy. The objectives of land reforms were stated to be two-fold; First, to remove such impediments upon agricultural production as arise from the character of the agrarian structure; and secondly, to create conditions for evolving, as speedily as may be possible, an agrarian economy with high levels of efficiency and poductivity.

1.42 In the interest of the tenantry stress was laid on tenancy reform. Abolition of intermediaries security of tenure, resumption for personal cultivation reduction in rent, acquisition of ownership rights by tenants, regulation distribution of land and size of holdings, consolidation of holdings, co-operative management etc. were the formulated aims of land reform.

1.43 The progress achieved under the objectives outlined above was reviewed by the standing committee of the National Development Council in September, 1957 and it decided that-

(i) tenants should be given effective protection from ejectment and from the so called "voluntary surrenders".

(ii) the voluntary right of purchase of ownership not having been generally exer-cised, tenants should be brought into direct relationship with the Government

and steps should be taken to make them owners of non-resumable areas on payment of compensation in easy instalments ;

(iii) ceiling on future acquisition of land should be imposed in states where such action had not already been taken, and

(iv) legislation in regard to ceiling on existing agricultural holding should be implemented speedily and States which have not yet enacted legislation should complete the legislative measures by the end of 1958-59.

1.44 Thus the twin objectives of the land reform programme in the First and and Second Five Year Plans were, to "remove such impediments to increase in agricultural production as arise from the agrarian structure inherited from the past", and "to eliminate all elements of explcitation and social injustice within the agrarian system". It was realised that land reform programme should be completed with least delay, so as to eliminate any feeling of uncertainity arising out of delay in implementation. By the time of the Third Five Year Plan most of the States had already enacted land reform legislations. The legislations on ceiling on agricultural holdings were intended to serve to bring about reduction in disparities and pave the way to the development of agriculture and increase of agricultural production. Consolidation of holdings had been undertaken in a number of States and measures had been initiated for prevention of excessive fragmentation of holdings.

1.45 The Fourth Five Year Plan tried to ensure that Land Reforms become a reality in the village and in the field. It was, howeer, realised that administration work involved in implementing the land reforms required complete records-of-rights showing ownership and their interest in the land and the terms and conditions of the Tenancy. The role of the administration in the implementation of land reforms was regarded as crucial. The land revenue staff in most cases proved to be insufficient.

1.46 In the Fifth Five Year Plan a critical assessment of the past experience in land reform was made. The strategy for the plan was to include a programme for institutional changes, concrete operational process implementing machinery, plople's involvement and the allocation of adequate funds for financing land reform.

1.47 Land Reforms comprise the whole spectrum of land reform measures beginning from the maintenance of land records and ending with agrarian reforms.

1.48 To many, agrarian reforms convey a vague idea. People, more often than not confuse it With agricultural development with modern agricultural technology. Strictly speaking agrarian reforms involve redistribution of surplus lands amongst the landless cultivators as well as reorganisation of the agrarian structure. Implementation of agrarian reforms involves some breakway from traditional customs and ideas which have taken a firm root in the country. Naturally, therefore, there would be voices of protest from vested interests and attempts had indeed been made by them to foil such attempts by taking advantage of loopholes in the enactments promulgated in this behalf. Meaninguful implementation of agrarian reforms obviously calls for a strong political will and a firm determination and a dedicated and responsible administrative machinery. The policy of any Government in the matter of land reforms is reflected in the laws enacted by the lagislature. There should be no incongruity between the policy professed and in its practice. Agrarian laws, in the fitness of things, shoud be pellucid for execution without confusion, and firm to prevent the socially dominant land owners from throwing their weight in frustrating the objectives.

1.49 In this connection it would not be out of place to quote the following observations made by the Task Force on Agrarian Relations Constituted by the Planning Commission in February, 1972, incorporated in the report of the National Commision on Agriculture 1976, Part XV (Pages 87-88) :-

> "66.5.20 The Task Force on Agrarian Relations was constituted by the Planning Commission in February, 1972, for the purpose of making a critical

assessment of the experience in land reforms, identifying the obstacles to efficient implementation, and for making proposals for more effective implementation of the agrraian reform programme. The Task Force was expected to help in the formulation of the Draft Fifth Plan Policy regarding Land reforms.

66.5.21 The findings and re-commendations of the Task Force relating to implementation of land reforms are outlined below. The Task Force observed, that "the laws for the abolition of intermediary tenures have been implemented fairly efficiently, while in the fields of terancy reforms and ceiling in holdings, legislation has fallen short of proclaimed policy and implementation of the enacted laws have been tardy and inefficient" (P.6.).

66.5.22 The Task Force attributed the poor performance of land reforms mainly to the "lack of political will". It said "with resolute and unambiguous political will all the other shortcoming and difficulties could have been overdome; in the absence of such will even minor fobstacles become formidable road blocks in the path of Indian land reform. Considering the character of political power structure it was only natural that the required political will was not forthcoming".(P.7).

66.5.23 Emphasising the absence of adequate pressure from below, it observed "The beneficiaries of land reform, particularly the share-croppers and agricultural labourers are weighed down by crippling social and economic disabilities. Except in a few scattered and localised pockets parcticallally over the country the the poor peasants and agricultural workers are passive, unorganised and inarticulate". (P.8).

66.5.24 Describing the inadequacy of the administrative machinery the Report said, "In all the States the responsibility for the implementation of measures of land reform rests with the revenue administration. Implementation of land reform is only one among its many functions. Traditionally high priority is given to maintenance of public order, collection of land revenue and other regulatory functions. Land reform does not, therefore, get the undivided attention it needs". The Task Force opined furthermore that "the attitude of bureaucracy towards the implementation of land reforms is generally lukewarm and often apathetic. This is, of course, inevitable because as in the case of man who wield political power, those in the higher echelons of the adminsitration are also substantial land-owners themselves or they have close links with big land-owners". (P.9).

66.5.25 The Task Force emphasised interference by law courts as a major hurdle in implementation of land reforms, since in every State prolonged litigation had obstructed and delayed the work of implementation. Explaining the socio-economic causes of the situation it observed, "In a society in which the entire weight of Civil and Criminal laws, judicial pronouncements and precedents, administrative tradition and practice is thrown on the the side of existing social order based on inviolability of private property, and isolated law aiming at the restructuring of property relation in the rural areas has hardly any chance of success. An whatever little chance of success was there completely evaporated because of the loopholes in the laws and protracted litigation". (PP.9-10).

66.5.26 The other points emphasised by the Task Force in connection with the poor performance of land reforms were :

(i) absence of correct and updated land records;
(ii) lack of financial support for land reform programmes;

(iii) weakness and irregularity of the reporting system and of evaluation which make it difficult to get reliable and upto-date data on different aspect of land reforms ; and

(iv) lack of proper coordination and guidance from the Centre for the formulation of uniform tenurial laws for the country as a whole and their effective and quicker implementation". (Page 87-89 of the Report of the National Commission on Agriculture, 1976 Part XV).

1.50 While executing agrarian reforms, the Commission feels there should not be any deviation at any stage from the intention of the schemes of Acts concerning land reforms. If any deviations do take place, the Commission is of the strong opinion that progress in land reforms will be stalled and the commitment made to the Nation will for ever remain a distant dream.

1.51 Since Independence the first land reforms measure undertaken by the Government of Assam was the Assam Adhiars Protection and Regulation Act, 1948. This law gave protection to the share-croppers from indiscriminate eviction, and fixed the share of the crop-rent to be paid by them to their landlords. This Act was amended in the years 1952, 1955, 1957 and 1960 plugging some of the loopholes in the principal Act for providing greater measures of protection to the share-cropper or Adhiars in conformity with the policy of the Government.

1.52 The next law in point of time is the Assam State Acquisition of Zamindaries Act 1951 which came into force on 15th day of June 1954. This Act was promulgated for acquisition of Zamindaries in the permanently settled areas in the State on payment of compensation to the owners with a view to eliminating the intermediaries and bringing the tenants directly under the State by conferring better rights over their land.

1.53 The third Act and the most important one, in the programme of agrarian reforms is the Assam Fixation of Ceiling on Land Holdings Act, 1956 which came into force on 15th February, 1958. This Act has its inception in the Directive Principles of State Policy enshrined in the Constitution of India towards securing the the ownership and control of the material resources of the community are so distributed as best to subserve the common good; and that operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

1.54 The fourth enactment is the Assam State Acquisition of Lands Belonging to Religious or Charitable Institutions of Public Nature Act, 1959. The intention of this Act is to acquire lands of such institutions in order to give a better status to the actual occupants, to ensure them security of tenures and to settle the un-occupied lands with landless people.

1.55 The Assam Gramdan Act, 1961 and the Assam Bhoodan Act, 1965, aim at facilitating donation of land as Gramdan and Bhoodan in persuance to the movements initiated by Acharya finova Bhave and providing a simplified legal procedure for transfer and management of land in gramdan villages. The objects of these Acts are :

(1) Redistribution by the State Bhoodan Board of lands donated by the landholders to the landless people in case of Bhoodans, and

(2) All round development in the Gramdan village under the areas of the Gaon Sobhas.

1.56 In the pre-independence days, three rent laws or Tenancy laws as they are commonly known existed in Assam. These laws are :-

(1) The Goalpara Tenancy Act, 1929,
(2) The Assam (Temporarily Settled Districts) Tenancy Act, 1935 and
(3) The Sylhet Tenancy Act, 1936.

All these Acts were framed taking the Bengal Tenancy Act of 1885 as a model. For the first time in our State, these Tenancy Acts conferred occupancy rights on those raiyats and under raiyats who were in possession of land as such for twelve consecutive years. The occupancy rights included the rights of inheritance, transfer and mortagage. Ejectment of an occupancy tenants at the sweet will of the lanlord was prohibited even for non-payment of rent except in the due process of law.

1.57 Unfortunately, however, these tenancy Acts left out the share-croppers who constituted the bulk of the peasantry in the State. They continued to remain as tenants-at-will without any legal protection from arbitrary eviction and rackrenting. Even the three the tenancy laws could not ive absolute protection to the tenants from big land owners for the simple reason that the ordinary raiyats could hardly prove consecutive possession of land for twelve years, against the plethora of perjured evidence marchsalled against them under the chaotic conditions prevailaing then in the maintenance of record-of-rights. Those raiyats who took advantage of the provisions of the tenancy laws were mostly influential persons who held substantially large areas. Those big raiyats never cultivated the land themselves but rented it to share-croppers or adhiars. The benefit of the Tenancy Laws therefore did not percolate to the oppressed peasantry and the share-croppers, created by the big properietors, big landlords and big tenants. The structure of agrarian society, in spite of these laws, remained powerfully cemented by the big and influential persons. The man behind the plough continued to lead the life of a serf without any bright future to look ahead. The Assam Adhiars Protection and Regulation Act of 1948 as amended from time to time did not go the whole hog of it, to ensure full protection to the share-croppers, and the administrative machinery Set up under this law to decide disputes between adhiars and landlords functioned in such a lackadaisical manner, that they served no useful purpose at all in protecting the rights and interest of the share-croppers or adhiars over their land and in the matter for payment of reasonable rent. The machinery known as the Adhi Reconciliation Board was presided over by the Circle Officers most of whom had a prejudice in favour of the landlords. Things came to such pass, that the alarming situation caught serious attention of the Government, and as a result the share-croppers were included in the definition of "Tenant" under the Assam (Temporarily Settled Areas) Tenancy Act, 1971 which repealed the Assam (Temporarily Settled Districts) Tenancy Act, 1935 and also the Assam Adhiars Protection and Regulation Act, 1948.

1.58 Sylhet Tenancy Act, 1936 and the Goalpara Tenancy Act 1929 were repealed by the Assam Land Holding (Adoption of Relationship under the Assam Land and Revenue Regulation 1886 in the Acquired permanently Settled Estates) Act, 1974 which was promulgated by the State Legislature for introducing a uniform pattern of land revenue administration in the permanently settled areas of the Goalpara District and the Karimgonj Sub-division of the Cachar District consequent upon the acquisition of the Zamindaries and intermediaries under the provisions of the Assam State Acquisition of Zamindaries Act, 1951. Before passing of the Assam Land Holding Act of 1974, the State Government only stepped into the shoes of the erstwhile Zamindars and Intermediary Temiue Holders and the tenants continued to remain as tenants directly under the State Government. Under the Act of 1974, the tenants acquired the status of land-holders as defined under the Assam Land and Revenue Regulation 1886. With the repeal of the the Goalpara Tenancy Act, 1929 and the Sylhet Tenancy Act, 1936, persons holding land under another person in the erstwhile permanently settled areas became tenants as definded under the Assam (Temporarily Settled Areas) Tenancy Act, 1971 and determination of tenancy rights is now governed by the provisions of this Act which have been made applicable in these areas with effect from January, 1975.

1.59 It appears that the Government of Assam has taken comprehensive legislative measures for effecting agrarian reforms in the State. The Commission will take up these enactments for examination how successfully they have been implemented in achieving the national guideline and what are the legal, administrative, political and other constraints which have rendered their implementation imperfect or difficult.

CHAPTER II

THE ASSAM FIXATION OF CEILING ON LAND HOLDINGS ACT, 1956.

2.1 We take up the Assam Fixation of Ceiling on Land Holdings Act, 1956, last two amendments to the Act having been made in the years 1970 and 1976. The amendments made in 1970 reduced the ceiling on land holding from 75 bighas (10 hectares) to 50 bighas (6.66 hectares). It may be wondered why the Commision has chosen to take up the ceiling law for examination since all lands held in excess of 50 bighas have since been acquired. In reply we would say that the ceiling law will continue to be in operation to govern future acquisition of land by succession, inheritance, gift which may result in total acquisition of land by an individual in excess of the present ceiling limit of 50 bighas (6.66 hectares) in future. Furthermore, we find that for judicious application of the provisions of the law and also to guard against erroneous interpretations in application of some of the provisions of the Act at the stage of implementation, and also in the appellate forum while deciding disputes and claims against orders passed by the Collectors, some provisions of the Act need clarity to remove doubts and confusion latent in them.

2.2 The peasants in our State are mostly illiterate and they hardly understand the implications of Ceiling and Tenancy laws and the rights conferred by these Acts on them. We, therefore, do feel that the State Government have a major role to play in giving a concrete shape to the progressive ideas contained in these enactments. The very essence of the ceiling law being agrarian reforms, the law must ensure that even the vacant lands forming part of surplus land go to the landless persons whose living is very much connected with the yields from land. A cultivator should not be taken to mean a person who cultivates paddy only. It should bring within its scope all those persons who are growers of all kinds of edible crops including fruit bearing trees. We have taken this view because the slight enlargement in the meaning of the word 'agriculturist' will cover a fairly large section of people who will derive benefit not only under the ceiling law but also under other land reform enactments.

Definition of "Agriculturist"

2.3 It has come to the notice of the Commission that while making settlement of ceiling surplus land, village artisans are left out as ineligible persons for settlement of such land under sections 16 and 17 of the Assam Fixation of Ceiling on Land Holdings Act, 1956. Such persons if they are already in possession of land acquired under the law could be evicted owing to the misconception latent in the Act that they do not fall within the scope of cultivating tenants. The villaege artisans, cater to the needs of the agriculturists by manufacturing implements of daily agricultural uses, and they, by and large, from the poorer section of the agrarian society.

2.4 Since the village artisans are very much a part of rural life, we feel that they should be treated as agriculturists and made eligible to obtain settlement of land in their occupation as tenants, under section 16(1) of the Assam Fixation of Ceiling on Land Holdings Act, 1956.

2.5 The word 'agriculturist' has not been defined in the Assam Fixation of Ceiling on Land Holdings Act, 1956.

2.6 In the absence of a definition of 'Agricultureist'. the cases of persons cultivating crops other than paddy may be left out from the bendefit of getting settlement of ceiling surplus land. In the context of what we have stated above, a definition of 'Agriculturist', which would include village artisans in the Act would be helpful.

2.7 We also feel, the village artisans, and persons cultivating crops, other than paddy and wheat, should not be disturbed from their possession of land on the ground that they are not cultivating tenants. As a matter of abundant precaution for protecting the interests of these classes of persons we would, therefore, include these agriculturist in the definition and define it as follows :-

> " 'Agriculturist' means a person who earns his livelihood wholly or mainly from agriculture and include an agricultural labourer or a village artisan".

2.8. It has been noticed that because of an element of vagueness regarding the classes of persons eligible to get settlement of ceiling surplus land under section 17, settlement may be made by the Collector for purposes not strictly in conformity with the objectives of the ceiling Act. Since the primary aim of ceiling legislation is redistribution of tenures from the 'haves' to the 'have-nots', we feel that only landless agriculturists (including village artisans) should be settled with such lands.

2.9 We would also urge that a landless cultivator should also be put in the list of definitions instead of including it under explanation to section 17 as it exists now. Once this is done, scope of giving settlement of land to other persons and for other purposes will be considerably be narrowed.

Joint family.

2.10 There appears to be a lot of confusion arising out of the definition of "joint family" as defined under explanation to clause (d) of section 3 of the Act. We have examined at length as to how best the meaning of joint family could be defined to eliminate the confusion created by the present definition.

2.11 Joint family has been defined in the Karnataka Land Reforms Act, 1961 as amended upto 1977 as follows :-

> "Joint family' means in the case of persons governed by Hindu Law, an undivided Hindu family, and in the case of other persons, a group or unit the members of which are by custom joint in estate or residence".

2.12 The above definition in the Karnataka Land Reforms Act, 1961 conforms to a common sense view of the meaning of 'joint family' and as such it is devoid of any confusion unlike the definition given under Explanation to clause (d) of section 3 of the Assam Fixation of Ceiling on Land Holdings Act, 1956. That the import of 'joint family' as given in our Act has a legal haze is apparent from paragraph 5 of the general guidelines for disposal of revision petitions under the Ceiling Act Act issued by the Secretary to the Government of Assam Revenue (Reforms) Department in the month of of July, 1977 for use of the officers concerned only, which we had an opportunity to to go through. After giving careful thoughts, the definition of 'joint family' is suggested as follows :-

> "Joint family' means a family of which the members are descendants from a common ancestor and have a common mess, and shall include wife and/or husband, as the case may be, but shall exclude married daughters, married sons and their children and also unmarried adult sons and un-married adult daughters if they are living separately or have separate messes".

Alternatively, definition of 'joint family' in the Karnataka Act quoted above may be adopted.

2.13 The definition suggested by us will take away partly the operation of the restrictive proviso under which even though an unmarried adult son or daughter lives

Separately or is having a separate mess, still he or she may be included in a joint family. But in the proposed amendment, the fact of their living separately or having separate mes will suo-moto exclude them from the ambit of the definition of 'joint family'. This is is considered by us fair and equitable in the context of the present structure of the family.

Unrecorded tenants.

2.14 In section 4(1), the operative section of the Act, the word 'tenant', we feel, needs further elucidation.

2.15 As the section reads now, unrecorded tenants may be left out. We would, therefore, suggest that after the word 'tenant' the following words may be inserted :-

"or tenant recorded in the record-of-rights or not",

Holding as "owner or tenant."

2.16 The Commission examined the definitions of 'owners' and 'tenants' as defined under section 3(i) and 3(o) respectively.

2.17 On examination and scrutiny of paragraph 5 of the guidelines issued by ine Secretary to the Government of Assam, Revenue (Reforms) Department refrerred to herein above, the Commission has reason to believe that the words "to hold as owner..... occuring in section 4(1) is generally misunderstood. The definition of 'owner' in sue sub-clause (i) of section 3, therefore, needs clarifications. The word as definined in ths Act carries with it a sense as it besides proprietors, land-holders or settlement-holder as defined in section 3 of the Assam Land and Revenue Regulation, there are other persons who could claim ownership over land. Since there could be no other persons who could be treated as owner in relation to the Assam Fixation of Ceiling on Land Holdings Act, 1956 the definition needs modification to make the meaning clearer, by substituting the word 'include' appearing in the definition by the word 'means'.

2.18 Government's view in paragraph 5 of the guidelines referred to above is apparently incorrect. Possession of land alone does not constitute holding the land as owner. In the Land Ceiling Act we are concerned only with two types of land-holdings, as owner, and as tenant.

2.19 In section 3(19) of the Tamil Nadu Land Reforms Act, 'to hold land' has been explained as follows :-

> "'to hold land' with its grammatical variations and cognate eppressions means to own land as owner or to possess or enjoy land as possessory mortgagee or as tenant or as intermediary or in one or more of those capacities".

2.20 The above explanation of the word 'to hold land' as given in the Tamil Nadu Land Reforms Act fortifies our view that there must always be a particular shade of title under the law before a person can be treated as holding land as owner. First example cited in paragraph 5 of the guide lines has been based on a correct legal perspective for the simple reason that devolution of ownerwhip had taken place on the sons on the death of the father. A judicial notice in such cases of the sons becoming owners of the lands of their deceased father should be taken.

2.21 The second example cited for the guidance of the concerned officers is in correct. In cases like these, a father duing his life time cannot by word of mouth aone transfer his rights over lard to his married son or sons. Such transfers of ownership unless it has taken place urder a registered deed of gift is invalid under the law. If such transfers of ownership over lard are recognised, the aim of ceiling law would be be defeated. We would, therefore, suggest that the second example in paragraph 5 of the guidelines may be deleted, or the correct legal import of such transfers if it is thought necessary at all, should be explained in conformity with the provisions of law.

2.22 The Commission, furthermore, feels that besides the modification already suggested in the definition of "owner", the words ""and any person who has legally derived

any right from them" be inserted after the words "The Assam Land and Revenue Regulation, 1886 (Regulation 1 of 1886)".

2.23 The amendments suggested by the Commission in the definition of the word 'owner' will remove all scopes for giving it a perverse interpretation of law.

2.24 From the detailed and lengthy instructions contained in paragraph 2 fof the Circular, one gets the impression that revisionery powers are to be used like an appellate body. Revisionery jurisdiction is normally invoked when there is a mis-carriage of justice due to substantial mis-application of the law. The Indian Civil Procedure Code has circumscribed the exercise of revisionery jurisdiction in civil cases, while it does not do so, in the case of exercise of appellate jurisdiction. Under the Revenue and allied laws courts exercising revisionery jurisdiction have to follow the legal guidelines relating to hearing of appeals and applications for revision as given in the Indian Civil Procedure Code.

2.25 Paragraph 3 of the Circular enables the petitioners or the applicants to pro duce oral evidence. This cannot be done in the course of hearing a petition for revision. The production of oral evidence is likely to lead to misuse of revisionery power and open the floodgate for all kinds of applications.

2.26 At an appropriate place in this Chapter, we have recommended structural changes in the law in the matter of seeking relief by land-owners or tenants aggrieved by orders of Collectors. We could not help commenting on paragraphs 2 and 3 as we stronly felt that the procedure evolved by the Government for disposal of revision petitions has gone wide off the mark under the law.

2.27 The definition of tenant as it appears under section 3(0) of the Assam Fixation of Ceiling on Land Holdings Act, 1956 is not adequate enough. The present definition leaves out tenancy created under implied agreement. The Commission, therefore, feels that a 'tenant' may be redefined as followes :-

> " 'Tenant' means a person who holds land under another person and is under an agreement, expressed or implied liable to pay rent to the other person, and includes his heirs, and legal representatives and person or persons deriving rights from such persons".

Land.

2.28 The definition of 'land' under section 3(f) of the Act includes land which is or may be utilised for quarring stones. Taking a very common sense view of the of the matter, land which is or may be utilised for quarring stones obviously cannot be utilised for agricultural purposes. The inclusion of quarries in definition of 'land' for the purpose of fulfilling the intention of the provisions of the ceiling law appears to be incongruous.

2.29 Section 9 of the Assam Land and Revenue Regulation provides that even in the case of a land-holder's estate, right over quarries, mines, minerals etc. remained in favour of the Government. These can be worked by the Government on payment of surface damage only to the landlord. We, therefore, find that the inclusion of stone quarries in the definition of 'land' is meaningless.

2.30 We accordingly recommend that the words "and also includes land which is or may be utilised for quarring stones" may be deleted from the definition of the word 'land'

Ceiling Limit

2.31 In course of the tours undertaken by the Commission in the districts of Kamrup and Goalpara there were divergence of opinions whether the existing ceiling limit should be retained or lowered. Most of the views expressed before the Commission, were in favour of retaining 50 bighas (6.66 hectars) as the limit of ceiling on land holding. The other views were that it may be lowered to 30 bighas (4 hectars) provided that the cultivators and farmers are assured of water throughout the year by a system of irrigation and of easy availability of institutional finance and timely supply of seeds and imputs. The Commission feels that the situation has not changed for justifying the reduction of the limit of 50 bighas to 30 bighas.

Orchard Land.

2.32 We have carefully looked into the provisions of the Ceiling Act where a person holding orchard land is allowed retention upto 4 bighas over the ceiling limit of 50 bighas. The application of this provision results in breaking up of good orchard land. Even the National Commission on Agriculture constituted in the year 1970 looked into this aspect of the case and recommended that whenever a part of an orchard land is distributed, the assignee should be required to maintain the orchard intact.

2.33 In fact we have great doubts whether inclusion of such a clause by itself will be able to help as the allottees who are normally landless persons may not have the necessary capital, inputs, and the knowhow to maintain it. Further, we feel that the law has made a subtle discrimination between an ordinary orchard-holder and a person holding land for growing tea. Whereas in the case of tea land, the law has not only exempted the entire area under tea cultivation from the operation of ceiling Act, but also provided lands used for purposes ancillary thereto as well as land for future expansion of tea cultivation, the law has made no provisions to keep the orchard intact.

2.34 The tea planters compared to orchard-holders have organisations of their own for looking after their interest. We, therefore, feel that it will be justified if the orchard-holders are allowed to retain the entire area of the orchard as it stood as on 24th March, 1971, irrespective of ceiling limit.

2.35 In view of the above recommendation the inclusion of orchard in the list of definitions under section 3 of the Act will be necessary.

2.36 We, therefore, suggest that 'Orchard land' should be defined as "Specific piece of land in any part of the State having citrus or other fruit bearing trees planted thereon in such numbers that they preclude, or, when full grown, will preclude, such land or any considerable portion thereof from being used primarily for any other agricultural purpose; and the trees so planted shall constitute an orchard; and the holder of such land shall be an orchard-holder".

Exemption of payment of 15 times of Land Revenue by tenants.

2.37 In keeping with the idea of agrarian reforms which prompted the legislature to enact the law fixing ceiling on land holdings, the Commission is of the view that cultivating tenants should be settled with his tenanted land without asking for the extra payment of 15 times the land revenue and providing for adjustment of compensation payable to them as tenants of the acquired land. We, therefore, recommend that in such cases a tenant should not be paid his share of compensation, except for the portion of the land not settled with him, and at the same time no demand should be made for realisation of amount of compensation payable to the owner. This will expedite and smoothen the pocess of settlement of land with the cultivating tenants although the State Government stand to lose the amount of compensation paid to the landlord. Considering the progressive nature of the ceiling legislation, it will be worth while taking such a measure in the best interest of the cultivating tenants. In this connection the Commission would like to point out that there are no legal provisions for realisation of amout of compensation from tenants to set-off the compensation paid to the proprietors in the Assam State Acquisition of Zamindaries Act, 1951. The Assam State Acquisition of Lands Belonging to Religious or Charitable Institutions of Public Nature Act, 1959 also does not contain any provision for realisation of any amount from the persons who were tenants under such Institutions to make good the annuity payable by the Government to the Institutions on account of the acquisition of their lands.

Time limit for obtaining settlement.

2.38 We find that the time limit of six months fixed under section 16(1) of the the Assam Fixation of Ceiling on Land Holdings Act, 1956 read with Rule 16(1)(b) framed thereunder for giving settlement of land to the cultivating tenants is already over in almost all the cases in which the lands found to be surplus had been acquired by the Government. As most of the tenants are ignorant of these provisions of the law, their claims for settlement of land could be treated as barred by afflux of time from the date

of Notification of Acquisition under section 8, since amended, or vesting of the land in the Government consequent upon the signing of the Final Statement by the Collector. It has been brought to the notice of the Commission that most of the cultivating tenants have not submitted any applications for settlement. A harsh and rigid application of the provisions of section 16 read with Rule 16(1)(b) will result in great hardship and injustice to such tenants.

2.39 We have carefully examined and re-examined the section 16(1) of the Act which makes it mandatory on the part of the Government to give settlement to the cultivating tenants within a prescribed period. There is nothing in the Act to indicate as to what would be the situation, in case, the Government fails to abide by this mandatory provision. We, therefore, feel that no time limit should be given for granting settlement of land by Government to the cultivating tenants. The exclusion of time limit will obviate unnecessary legal complications which may result from any aberration from the existing provisions owing to circumstances beyond the control of Government.

2.40 Rule 16(1)(b) prescribed a period of six months from the date of Notification or vesting for granting settlement under section 16(1) of the Act. But this Rule makes it obligatory on the part of a tenant to submit a written application whereas section 16(1) of the Act makes it obligatory on the part of the Government to give settlement within a prescribed period. The mandatory provision for giving settlement to cultivating tenants by the Government is perfectly in tune with the national policy of agrarian reforms. Obviously the mandatory direction contained in section 16(1) of the Act has been specifically incorporated for expeditious settlement of land with cultivating tenants. The Rule 16 (1)(b), however, rings a note discordant with the national guideline adopted in this behalf. The whole process appears to have been reversed by Rule 16(1)(b). Since particulars of the tenants are available to the Collector from the Final and Compensation Statements, there should not be any difficulty in granting settlement to cultivating tenants, without obtaining formal petitions from them. In fact, as such tenants will have to be given settlement, the formalities prescribed for filing applications by cultivating tenants appears to us to be uncalled for.

2.41 We, therefore, feel that section 16(1) of the Act needs modification, and Rules 16(1)(b),16(2) and 16(3) deletion.

Resumption of land.

2.42 We discussed the provisions of Chapter VI of Assam Fixation of Ceiling on Land Holdings Act, relating to ceiling for resumption of lands from tenants for personal cultivation by the landlords. We feel that the question of resumption of land by landlords is a matter affecting the relationship between the landlord and the tenant. As such it would have been more relevent to include these provision in Tenancy Act. Furthermore, section 24 of the Act ststes that there would be no ejectment of tenant except on some limited grounds. For the purpose of resumption after the expirey of 5 years from the commencement of the Ceiling Act, 1956, general application of this Chapter has outlived its utility. The volition for resumption of land for personal cultivation having been placed entirely on certain categories of landlords, the Commission feels that the right place for this subject matter is the Rent Law of the State. We shall, therefore, discuss the matter and give our views and recommendation on it in the Chapter dealing with the Tenancy Act.

Notice to returnees of the date of hearing.

2.43 The provisions contained in section 7 of the Act as amended by the Assam Fixation of Ceiling on Land-Holdings (Amendment) Act, 1976 were carefully examined by us. Second para of sub-section (2) of section 7 introduced by the Amending Act containing direction to the person making objection, to ascertain the date of hearing of his objection is against the normal principle of dispensation of justice. If the idea was to quicken the process of hearing, the same could ahave been achieved by directing the Collector to fix a date on the date of receipt of the objection. We feel that the para may be modified as follows :-

"On the date of receiving of an objection Collector shall inform the objector the date on which his objection will be considered. If on the day so fixed on any other date to which consideration may be postponed with due notice, the objector is absent without any ground or on grounds, which according to the Collector are not reasonable, the Collector then shall consider the objection in the absence of the objector and pass such order as he deems fit and proper making statements final".

Appeal.

2.44 Section 7 of the Act contains no provision for appeal against the orders of the Collector. Instead, section 7 as amended confers powers on the State Government to exrcise its revisionary jurisdiction relating to any Final Statement at any time of its own motion and pass such order as it deems fit after giving person or persons concerned an opportunity of being heard. We feel that as an order of the Collector affects the rights over land there should be a forum for appeal against such order.

2.45 We are, therefore, of the opinion that for the sake of justice, equity and good sense any person aggrieved by an order of the Collector under sub-section (2)(ii) of section 7 may be allowed within 30 days of the order to prefer an appeal before the Board of Revenue and necessary provisions be made by introducing a new sub-section (3). The present provision of the revisionary jurisdiction of State Government cannot be a substitute for regular appeal and it appears to have caused more delay because of executive preoccupations at the Government level.

2.46 In view of our suggestion stipulating a forum for appeal under sub-section(3) the following clause may be added to sub-section(4) after the word 'Court':-

"Except as provided under sub-section (3)".

2.47 We feel that law should not provide two forums concurrently regarding appeal and revision. In cases where there is reasonable evidence that final statement was not made by the Collector in conformity with the law resulting in improper determination of excess land, either the State Government should have the power to call for the records and make a reference to the Board of Revenue to take it up as an appeal, or the same may be disposed of, by the Government themselves as per existing provisions of the law. The Commission, however, strongly prefers the former procedure, and suggests modification of sub-clause (6) as follows :-

"Without prejudice to any action under any other previsions of this Act, the State Government may of its own motion call for any records relating to any Final Statement at any time and if they are satisfied that there is reasonable evidence that ceiling proceeding had not been duly disposed of or the Collector had not determinded the excess land in conformity with the Act, the Government may refer the proceedings to the Board of Revenue. On receipt of such proceedings, the Board of Revenue would proceed to dispose of the same as if it were an appeal filed under sub-section (3)".

2.48 There should also be a forum for appeal against orders of settlement under section 16 as owing to imperfect record-of-rights, genuine cultivating tenants may be excluded from getting settlement.

2.49 In case of settlement of vacant land under section 17 also there may be contesting applicants and so, a forum for appeal against orders passed under this section will provide good checks and balances.

2.50 The Commission considers the Assam Board of Revenue a suitable forum for appeal in both the cases.

Power of settlement.

2.51 Under Section 17 of the Act the State Government has retained the power of settlement of land not coming within the purview of section 16 without any justifica-

tion, as in the case of settlement of ordinary agricultural land Deputy Commissioner is the only Officer empowered in the Assam Land and Revenue Regulation. Two sets of authorities should not be provided for disposal of land in the initial stage. Further, we have recommended a forum for appeal against the orders of settlement of acquired land in the similar line as provided under the Assam Land and Revenue Regulation 1886 as the present ceiling law does not provide any such forum against any seemingly arbitrary or capricious order of an officer. The words "State Government appearing in section 16(3) and 17(1) and (2)" may therefore, be deleted.

Appeal against Settlement on vacant surplus lands.

2.52 There should be a new sub-section after section 17(3) providing for appeal to the Board of Revenue against an order of settlement by Collector as proposed herein before.

Compensation payable annual lease holders.

2.53 We have read Chapter IV which deals with the acquisition of ceiling surplus lands held under annual leases. Under these provisions a holder of annual lease land is not entitled to any compensation on account of acquisition under the ceiling Act except for fruit trees. This has obviously been done prompted by the fact that an annual lease confers only a right of user without any heritable and transferable interests. In cases of acquisition of annual lands, both under the Central and the State Acts, the lease-holders are paid compensations at the same rate. In such cases the procedure followed is that at the time of acquisition of lands under annual patta, the patta is first converted into periodic by realising the premium prescribed for conversion. This was done in view of the Government policy that all existing annual lands should be converted into periodic after realisation of premium. Besides, Government have already allowed annual lands to be mortgaged to Banks and Co-operative Societies on account of advances taken as agricultural loans. It has been accepted that annual lease may be mortgaged in certain cases and it is equated with periodic patta lands in cases of general equisition as stated earlier. There is, therefore, no justification in depriving the annual lease-holders of the compensation for acquisition of their surplus lands under the ceiling Act. This is further reinforced by the fact that in case of acquisition of surplus lands under the ceiling Act compensation is of token nature. Hence, we are of the view that the annual lease-holders should also be treated on equal footing with periodic lease-holders in the matter of payment of compensation under the ceiling Act. If necessary a provision may be made in the law to enable the Collector to deduct the necessary conversion premium out of the compensation payable to the settlement-holders-other-than-land-holders.

2.54 As regards the question of apportionment of compensation between the annual lease-holder and his tenant it may be argued that since sub-letting of land held under annual lease is prohibited under the provisions of the Assam Land and Revenue Regulation there will be legal difficulties in apportionment of compensation between the annual lease-holder and his tenants. In reply to this argument we would like to point out that the creation of a tenancy by an annual lease-holder on his land is permissible under the Assam (Temporarily Settled Areas) Tenancy Act, 1971. In this connection we would like to point out that application of the provisions of the Tenancy Act to annual land has not been prohibited under section 2 of the Act. Furthermore, section 4 has given a legal validity to the creation of a tenancy by a settlement-holder other than a land-holder which means an annual lease-holder.

2.55 Thus there should be no legal difficulties in taking judicial notice of existence of tenancy on an annual patta land for the purpose of apportionment of compensation under the Ceiling Act.

Special cultivation.

2.56 We examined the provisions of the Act relating to land used for special cultivation viz., Tea. Rule 5A(2) of the Rules framed in exercise of the powers conferred by section 40 of the Assam Fixation of Ceiling on Land Holdings Act, 1956 read with the proviso to section 4 of the Act, allows the owners of Tea Estates to hold land for future expansion of tea cultivation. The second proviso to this Rule states that the additional area allowed under sub-rule (2) of Rule 5A should not be diverted for any

purpose other than that for expansion of tea cultivation and that owner allowed to retain the additional area should give an undertaking in writing that he would not make any departure from the purpose for which the additional area is allowed. The law is silent as to what would be the position if the owners allowed the land to remain un-utilised for an indefinite period.

2.57 Having secured the land for future expansion of tea cultivation by giving an undertaking in writing that the land will not be used for other purpose, the garden owners may sit contented, and show a lack of endeavour in expanding the area under tea. This situation is possible because the law does not provide for any consequences that may befall when the owners of tea gardens take no interest in utilising the addi tional area allowed under the law for expansion of cultivation. It would indeed be un fortunate if lands allowed for utilisation in the best interest of the country's economy are not utilised by the owners of the Tea Estates.

2.58 We, therefore, feel that in order to ensure proper utilization of the additional area allowed for future expansion of tea cultivation there should be a reasonable time limit on quinquennial basis for covering such areas by tea, and the law should also pro-vide for automatic acquisition of such land in case of failure on the part of the owners of Tea Estates to do the same. Else, the purpose envisage in the Act may be defeated. Government should also take stemps for reviewing the position in the field with a view to ascertaining whether genuine use of the additional lands allowed under the Act have been made.

2.59 It may be argued by the tea garden owners that there are several constraints in undertaking schemes for expansion of area under tea cultivation expeditiously. These constraints may come from two sources. The Indian Tea Board have laid down rigid and time consuming procedure for according permission for expansion of the cultivated area. The other is the long time taken in obtaining institutional finance, we, however, feel that it should not be difficult for the authorities concerned to streamline the rules for obtaining permission for expansion from the Indian Tea Board and financial assis-tance from Banking institutions. The authorities in the helm of affairs in this matter should amend their Rules instead of insisting that no time limit should be imposed under the law for total utilisation of the area allowed for increasing tea cultivation within a fixed time limit.

2.60 There appears to be some contradictions between the provisions of the main Act and the Rules framed thereunder as regards the acquisition of ceiling surplus land from tea gardens.

2.61 For the purpose of acquisition of suplus lands under the provision of ceiling Act, a tea company has to be taken as a 'person' as defined in section 3(j). The Rules framed for determining the excess lands, if any, owned by a Company are not in con-sonance with the provisions of the Act. as we have been able to understand the Rules, the import is to treat each tea garden as a legal person. In fact, in practice this has been done. It appears this procedure is not consistent with the provisions of section 3(j) which defines 'person' as below :-

> " 'Person' includes an individual, a family, a joint family, a trustee, a com-pany, a body corporate, a partnership firm, a society or an association of individuals whether incorporated or not".

2.62 Under the Ceiling Act, therefore, amongst others, a body corporate is also a person. So in case of special cultivation a tea company or a firm is a person and provisions of ceiling law will apply with reference to that company or firm. The law has also spelt out the ancillary purposes which will also apply in relation to that per-son. The Act has delegated powers to the State Government only in respect of the following matters :-

(i) to allow more lands to be held for ancillary purposes, and
(ii) for increase in area under special cultivation of tea in accordance with the Rules prescribed by them. State has accordingly prescribed Rules 5A(1) and 5A(2) for this purpose.

2.63 In Rules 5A(1) Government has laid down the principles and conditions under which more lands could be held for only three specific ancillary purposes.

2.64 Neither the Collector nor the Government is, therfore, empowerd to give any additional area for ancillary purposes, over and above those permitted under Rule 5A(I).

2.65 It has come to our notice that Rule 5A(2) of the Act has been fragrautly violated at Government level by allowing retention of land by Tea Estate for **future ancillary purposes** not attracted by the provisions of the Act. Rule 5A(2) has limited connotation whereby the Collector can allow some lands for future expansion of the Tea Estate for increasing area under cultivation of tea in the manner stipulated in the Rules. No additional area can be allowed for future ancillary purposes based on area given for future expansion of tea cultivation.

2.66 In Land Ceiling Case of Hukanpukhri Tea Estate (T.L.C. 30/72) the proprietor of the Tea Estate came up with a revision petition before the Government stating amongst other grounds, that the tea estate required decentralisation of management, and therefore it needed more land separately for each division within the same estate. In this case Government allowed 140 acres for different ancillary purposes including land for a proposed additional factory, additional labour quarters, additional hospital etc. etc.

2.67 From the record it is clear that lands had already been allowed for different ancillary purposes.

2.68 Under Rule 5(A) Collector could allow additional area upto 8 hectares if no land was utilised for factory buildings, staff building, labour lines, hospital and dispensary. The return shows that the estate had already claimed and was allowed 7.34 acres for factory buildings, 11.82 acres for staff buildings, 208.32 acres for labour lines and 20.40 acres for hospital. Therefore, there was no scope for granting the additional 8 hectares for these purposes. Government orders passed in revision allowing additional area of 140 acres, therefore violate the legal provisions of Rule 5(A).

2.69 The Commission is shocked to find such deliberate violation of the provision of the Act.

2.70 There may be more similar instances of such violation, Government may review such cases for rectifying illegal orders.

2.71 It has come to our notice that surplus land acquired under the Ceiling Act from Tea companies had been settled with an individual for the purpose of establishment of a new Tea Estate by the Government. Such orders in our view are violative of the provisions of section 17 (iii) which spell out different categories of persons eligible for getting settlement of such land. The whole concept of Ceiling Law is redistribution of ownership of land from big land-holders to landless cultivators.

2.72 Sometimes surplus land of one tea estate is given to another Tea Company on the plea that the later has land much below the ceiling limit. Ceiling Law does not authorise the Government to make such settlement, as owner of such estate cannot be deemed to be a landless cultivator.

2.73 In this context we may refer to Government orders allowing the following lands in favour of Mothla Tea Estate :-

(1) Sarkari land	:	70 acres.
(2) Ceiling suplus land of Jokai Assam Tea Compay	:	530 acres.

(3) Ceiling surplus of
Bazaloni Tea Estate : 480 acres.

2.74 The settlement of ceiling surplus land is clearly enunciated in the provisions of section 17 of the Assam Fixation of Ceiling on Land Holdings Act, 1956 where three categories of eligible persons have been described. Mothla Tea Estate is certainly not a landless cultivator, i.e. a person who does not hold any land either as an owner or as a tenant or as both, exceeding 3 bighas, and whose only means of livelihood is cultivation. Hence the settlement of the ceiling surplus land to Mothla Tea Estate is clearly illegal and Government should take necessary measures for cancellation of such illegal orders.

2.75 Irregular orders not conforming to the provisions of the Ceiling Law have been passed in the following revision cases :-

2.76 1. Review petition filed by M/S. Mokalbari Kanoi Tea Estate Ltd., Dibrugarh in Ceiling Case No. 71/71-72.

In this case we found that a big chunk of area measuring about 200 acres had been allowed to the company for maintaining compactness of the tea area. The schedule of the different plots given in the order clearly shows that there is a P.W.D. Road on one side of each of the plots. In one case besides the road on one side there is a piece of vacant land allowed for rotational cultivation. In another plot there are labour quarters, play ground, schools on two sides. In another case there is a village on one side and the vacant area subsequently allowed on another side for future extension. Thus on the basis of the description given in the schedules, area allowed by Government was not necessary to maintain compactness and these plots are not lands lying within the boundaries of the actual planted area. Thus it is clear that there is mis-application of the law.

2.77—What is to be decided under the law is not compactness of the garden but the compactness of the planted area.

2.78 The boundaries of all tea gardens end at some places where there are villages. If the element of hazard from trespass is considered for determining garden ceiling surplus lands, Government shall have to create a buffer area along the boundary of the tea estates. This will obviously be contrary to law. The question of equity and justice have already been introduced when the law was framed. The question of equity should not have therefore been considered again in appeal or revision petition.

2.79 2. Revision petition filed by Naharjan Tea Estate of Golaghat Sub-division in Ceiling Case No. TLC. 47/71-72.

It is found that Government allowed the entire surplus land of 1573 bighas to be to be retained on the ground that it was not fit for ordinary cultivation, and subject to the condition that company is to surrender 1,200 bighas at convenient place elsewhere. This is a glaring example of mis-application of law as ceiling law does not provide for release of excess land duly determined by the Collector on the ground that it was not fit for ordinary cultivation. Further the order is very vague about the surrender of 1,200 bighas as no particulars of land has been mentioned and it is not known how 1,200 bighas could be made available and from where. The reason for reducing the surplus area by 373 bighas has not been mentioned.

2.80 3. Revision petition filed by Jorehaut Tea Company of Sibsagar district in Ceiling Case No. TLC. 1/71-72.

It appears that the Land Ceiling case instituted against the above mentioned Tea Company was finalised by the Director of Land Requisition, Acquisition and Reforms,

Assam in June, 1972 and communicated his decision vide No. TLC./71-72/47 dated 28.6.72. The Government orders dated 4.12.72 passed on the revision petition reveal that the Director of Land Requisition, Acquisition & Reforms finalised the Ceiling Case relating to 7 Tea Estates then belonging to the aforesaid Company, in an analogous hearing. The petitioner-Company contended that as three Tea Estates were transferred to the Assam Tea Corporation Ltd., there should have been separate case for the petitioner-Company in respect of the four Tea Estates belonging to them. They further prayed for allowing land on account of 'bamboo bari' for each garden. The case has been remanded to the Collector (Deputy Commissioner, Sibsagar) for initiating two ceiling cases.

2.81 In this case Assam Tea Corporation did not file any application before the Collector at the time of hearing of ceiling case. Secondly, section 4 sub-section 5 prohibits transfer or partition of any land on or after the commencement of the Assam Fixation of Ceiling on Land Holdings Act, 1970 until the land in excess of such limit was determined and possession taken over by the Collector. Obviously the above transfer was in violation of the provisions of the Ceiling Act and no notice of such transfer could be taken under the law.

2.82 It is also not clear why the Director of Land Requisition, Acquisition & Reforms has not been asked to take action in the light of the Government orders, because the Land Ceiling Case was disposed of by him.

2.83 From the records it appears that the four Tea Estates owned by the petitioner-Company fall into two districts (Lengherijan in Dibrugarh district and Borsapori, Noomalijarh and Rangagorah in Sibsagar district). Therefore the Director of Land Requisition, Acquisition & Reforms was the appropriate Collector for disposal of the case.

2.84 4. Review petition filed by M/S. New Jetinga Valley and Larching Tea Estate of Silchar Sub-Division in Ceiling Case No. LC. No. 8/73-74.

Records of the Land Ceiling Case are not available in the file. It, however, transpires from the orders passed by the Minister that the Collector allowed retention of land much in excess of the admissible limit by revising his orders dated 1.5.76 on 5.5.76. The reasons or revising the original orders were, however, not recorded. Against certain items of ancillary purposes the Collector allowed the Garden to retain more land than what they actually claimed in their return itself. The Minister by his orders dated 25.2.79 directed the Collector to verify the actual position and to take steps towards acquisition of the surplus lands, and also to fix up responsibilities on the delinquent officials. In this case the Minister, if he was satisfied about the irregularities in the Collector's orders, should have set them aside and determined the surplus area as per provisions of law.

2.85 5. Revision petition filed by M/S. New Timon Tea Company of Sibsagar Sub-Division in Ceiling Case No. 5/72-73.

Original records are not available in the file. Minister of State, Revenue passed final order on 2.5.77. It appears from the contents of Minister of State Revenue's order that 1743 bighas of land was determined as ceiling surplus by the Collector as against which the Tea Company surrendered 765 bighas and filed the revision petition in respect of the remaining area. The Minister allowed retention of further area of 158 bighas for ancillary purposes mentioned against columns 15, 16, 18, 19, 20 and 23. It was contended that lands allowed by the Collector against these columns were insufficient for maintaining economy and compactness. But the Land Ceiling Act does not provide any scope for considering retention of any land against the items mentioned in the aforesaid columns on the ground of maintaining economy and compactness. A Tea Estate is entitled to retain so much area of the land against the above mentioned columns as actually brought n use subject to limitation prescribed for rotational plantation.

2.86 With regard to column 25 of the return, there is no scope for allowing retention of more lands on the plea of affording safeguards against the apprehension of cattle trespass, encroachement and avoidable disputes; on the above considerations 800 bighas of lands determined as ceiling surplus has been set aparrt for afforrestation purpose and no individial is to be granted allotment in that part of the ceiling surplus land. This direction is not in conformity with the provisions of ceiling law. There is no scope for maintaining any buffer belt to protect gardens from apprehension of trespass.

2.87 6. Revision petition filed by the Sonari Tea Estate of Sibsagar Sub-Division in ceiling case No. 290/71-72.

It appears that the Government have held in their order dated 23rd January 1978 that 16 bighas 1 Katha 17 Lechas of land covered by Grant No. 324 of Abhoipur Mouza does not come within the purview of the Act as because the area falls within the Sonari town. The Sub-Divisional Officer in his report could not clearly state if the area was held under tea.

2.88 Section 2 of the Land Ceiling Act does not exclude town land, hence the Act applies on town land. Of course the definition of land is to be seen with relation to this particular land. Any way the Government order does not conform to the existing provisions.

2.89 Rule 5A(2) prescribes the conditions under which a Collector shall allow increase in the area under tea on a sliding scale according to the area under plantation of different Tea Estates held by the Companies. We feel that this is not in conformity with the Act as the Act does not provide such differentiation on the basis of constituent estates of individual Company.

2.90 The Ceiling Law operates on the basis of total land held by a Company. It may be justified to make discrimination in giving additional areas for tea on the basis of total plantated area of the Company. Such a progressive scale may have the objective of helping the smaller planters. Under the present rule there is discrimination between a planter holding equal area under tea-one holding land in one compact block, and the other under different estates. This may be clear from the following examples. :-

2.91 "X" a Tea Company has four Tea Gardens A-1, A-2, A-3 and A-4... The planted area of these gardens are A-1=100 hectares, A-2=300 hectares, A-3=700 hectares and A-4=1,000 hectares. If the ceiling case of the Tea Company "X" is finalised as one Tea Company and calculation is made garden-wise for allowing land for future extension of tea plantation, each of the Tea gardens will get the area as follows -

A-1 will get	50 hectares (50%)	— —	As per Rule of the Ceiling Act.	5(A) 2(a)
A-2 will get	90 hectares (30%)	— —	As per Rule	5(A) 2(b)
A-3 will get	140 hectares (20%)	— —	As per Rule	5(A) 2(c)
A-4 will get	150 hectares (15%)	— —	As per Rule	5(A) 2(d).

2.92 It is seen from the above calculation that the Tea company "X" having 4 gardens A-1, A-2, A-3 and A-4 whose total planted area is 2100 hectares is entitled to to 430 hectares of land for future extension of tea plantation.

2.93 "Y" a Tea Company has only one garden say 'B' whose total area under tea plantation is 2100 hectares same as company "X". The garden is entitled to retain land for future extension of tea plantation as per Rule 5(a) 2(d) i.e., only 15% of the total planted area which comes to 315 hectares.

2.94 It would appear from the above two examples that company "X" which owns more than one garden is getting more land than that of Tea Company "Y" who has only one tea garden, though planted area of both the Tea Companies is same in size. Thus a Tea Company having more tea gardens is entitled to more area for future extension than that of a tea company having the same area in one unit. There is no justification for this discrimination.

2.95 It is clear from the above examples that the persons holding area in one compact block gets lesser benefit under Rule 5(A)(2) than the one holding equal area in different estates.

2.96—We, therefore, suggest that the Rule should be modified. even though it may serve only a limited purpose now, to allow additional area on a progressive scale only on the basis of the size of total planted area of the Company.

2.97 The Present Rule may encourage fictitious divisions of one tea garden into more estates carrying different names.

2.98 If the determination of the retainable land for increase in cultivation was decided companywise instead of estatewise, there would not have been any room for the discrimination mentioned above.

Indian Registration Act.

2.99 We do not have much comment to make on the previsions contained in Chapter V relating to ceiling on future acquisition on land. We only feel that a similar provision may be embodied in the Indian Registration Act as a matter of abundant caution.

Land Reforms Committees

2.100 The ceiling law provides establishment of a Land Reforms Board at the State Level for advising the Government in carrying out the provisions of the ceiling law, for formulating policies relating to agrarian reforms, for preparing schemes of co-operative settlement of land and of Co-operative Farming Societies and for evaluating the progress of land reform measures.

2.101 The Commission is of the opinion that since the State Level Land Reforms Board constituted under section 20 of the Act, advises the Government on broad policy matters only, there should be Land Reform Committees at the Sub-Divisional levels to act as watch dogs over the functioning of the measures for implementation of land reforms policy.

2.102 Similarly Government may also consider the formation of Committees at Circle levels, so that there is constant evaluation and watch over the implementation of the provisions of the Ceiling Laws at grass root levels.

2.103 We, therefore, recommend that Statutory provisions may be made in Chapter VII of the Act towards that end.

2.104 It has been found that Government have acquired 17,20,410 bighas under the Ceiling Act out of which 9,36,289 bighas had been distributed. Thus more or less half the area acquired still remains to be distributed. Since the Ceiling cases have been disposed of, settlement should have been completed by now else delay would nduce encroachments by undesirable persons. Major portion of the surplus kand was from tea-companies. There is, therefore, reason to believe that acquisition from individual families have been below expectations. Another feature of the acquisition under the the Act is that only 2,37,471 bighas were available freely for settlement with landless persons. As noted earlier, if irregular settlement given by Government to different Companies, Firms, and Institutions are resumed, more lands will be available for landless people.

2.105 Following statistics give the different information on the implementation of the ceiling law.

1.	Total area acquired	—	17,20,410	bighas.
	(a) Tea garden	—	11,86,951	bighas.
	(b) Individual	—	5,33,459	bighas.
2.	Total area distributed	—	9,36,289	bighas.
3.	Number of families	—	2,53,303	
4.	(a) Area distributed to tenants	—	6,37,892	bighas.
	(b) Number of tenants	—	1,81,812	
5.	(a) Area distributed to landless persons under section 16	—	2,37,471	bighas.
	(b) Number of persons receiving settlement under section 16	—	69,551	
6.	Number of ceiling cases disposed of	—	20,137	
7.	Number of ceiling cases pending	—	96	

Source : *Directorate of Land Reforms, Assam.*

CHAPTER III

THE ASSAM (TEMPORARILY SETTLED AREAS) TENANCY ACT, 1971.

3.1 Prior to the attainment of Independence, landlord and tenant's relationship was governed by the Assam (Temporarily Settled Districts) Tenancy Act, 1935. This Act was amended in the year 1953 by the Assam (Temporarily Settled Districts) Tenancy Act, 1953. This amendment was made for conferring more substantial rights on privileged, occupancy, non-occupancy and under tenants. With the passage of time, there was a change in the concept of agrarian reforms. As the Assam (Temporarily Settled Districts) Tenancy Act of 1935 was found inadequate to meet the national aspiration, the State Government thought it expedient to repeal the Assam (Temporarily Settled Districts) Tenancy Act 1935. Accordingly the Assam (Temporarily Settled Areas) Tenancy Act was enacted by the Legislature in the year 1971 repealing the earlier Act of 1935. This measure breathed a spirit of progress and brought about a revolutionary change in Land Reforms in Assam. It was a big leap forward not only for firmly confirming the rights of the tenants over their lands, but also for elimination of the intermediaries between the State and the tenants by making legal provisions for acquisition of the right of ownership of landlords by tenants.

3.2 Share-croppers which form the largest section of the cultivating class, had flimsy rights over the lands cultivated by them. The Tenancy Act of 1971 took notice of this fact, and in order to safeguard the interest of the share-croppers, whose status, rights and liabilities were governed by the insufficient provisions of the Assam Adhiars' Protection and Regulation Act, 1948 (Assam Act XII of 1948), included them in the definition of 'tenants' so as to confer on them sustantial rights over their lands like other tenants. Although the Assam (Temporarily Settled Areas) tenancy Act of 1971 retained the basic features of the earlier Tenancy Act, it introduced many provisions of far reaching effect in the field of agrarian reforms. Unnecessary provisions have been weeded out, and many shortcomings removed, and the tillers of the soil under the landlords made practically the master of the land.

3.3 The Commission scrutinised the provisions of the Assam (Temporarily Settled areas) Tenancy Act, 1971 with a view to ascertaining whether the law could be further improved upon in the clear perspective of the National Policy of Progressive Land Reforms, and removing anomalies and discrepancies which have stood on the way to smooth implementation of tenancy reforms.

3.4 Unless the definitions are free from confusions and ambiguities, the officers in the field, as well as the appellate authorities at different tiers, may take decisions not in keeping with the aims and objects of the scheme of the Act. In order to protect against legal perversity in decisions, it is necessary to examine carefully, whether the definitions as given in the present Act have the legal lucidity and clarity for correct interpretation for application of the provisions of the law.

3.5 We, therefore, first take up for examination of the definitions given in section 3 under chapter I of the Act.

The definition of 'agriculture'.

3.6 In sub-section (1) of section 3 "agriculture" has been defined as follows :-

" 'Agriculture' includes horticulture, Pisciculture and other allied agriculture pursuits".

3.7 In our view the mention of "other allied agriculture pursuits" may be misunderstood and possibly misused by stretching the meaning too far. In the Tenancy Acts of Andra Pradesh, Bombay, Tamil Nadu and Kerala, the definition of 'agriculture' has been made clearer by spelling out the principal aim of agriculture.

3.8. We would, therefore, like to make the definition of 'Agriculture' more explicit, and accordingly recommend that 'agriculture' may be defined as follows :-

" 'Agriculture' include horticulture, raising of crops, fooder or thatching grass, or garden produce, dairy farming and cattle breeding and grazing, pisciculture but does not ihclude cutting of wood only".

'Agriculturist'.

3.9 In Chapter II where we have discussed the provisions of the Assam Fixation of Ceiling on Land Holdings Act, 1956, we have suggested a definition of 'agriculturist, and we have given our reasons for doing so. As there cannot be two different definitions of the same word in two different but closely related enactments, we recommend that 'agriculturist' in sub-clause (3) of section 3 may be redefined under this section in the line and manner already suggested by us.

Personal Cultivation

3.10 In the definition of "Personal Cultivation" under sub-section (10) of section 3, unlike the provisions of the Acts of other States, the Assam (Temporarily Settled Areas) Tenancy Act, 1971 contains two conditions viz :-

(i) The cultivation is to be accompanied by the bearing of risk by the owner; and

(ii) residence of the owner in the village in which the land is situated or in a nearby village or a place within a distance of 8 K. Ms. during the greater part of the agricultural season.

3.11 We feel that condition (i) is rather hypothetical, as in the case of a dispute it will be difficult to come to a conclusion on the point of bearing of the risk of cultivation by the owner. This may only help to manipulate facts.

3.12 We also feel that the compulsive clause making it incumbent upon an owner to reside within 8 K.Ms. from the land cultivated by him is arbitrary. Furthermore, the effect of the residence clause may be nullified by a landlord by putting up a house, although in fact, his actual place of residence may be more than 8 K.Ms. away. The residence clause, in our view, has not much bearing on the subject, where the primary point to aecsrtain will be supervision.

3.13 We, therefore, recommend that both the provisions should be deleted, and the the definition should be more clear-cut as given in the West Bengal Act which is as follows :-

3.14 " 'Personal cultivation' means cultivation by a person of his own land on his own account-

(a) by his own labour, or
(b) by the labour of any member of his family, or
(c) by servants or labourers on wages payable in cash or in kind or both".

Tenant.

3.15 On close scrutiny of the definition of 'Tenant' as defined in sub-clause (17) of section 3, it is found that tenant holding land under an oral agereement may not get the protedtions he is legally entitled to. In order to protect such classes of tenants we would like to modify the definition of 'Tenant' by including the following words after the word 'Persons' in the second line :-

'Under an agreement expressed or implied'.

3.16 The portion "but for special ocontract expressed or implied" will not, then, be necessary as the inclusion of the word "agreement" would cover the basic foundation of the tenancy.

Town Land.

3.17 The word "Town land" under sub-clause (18) of section 3 of the Act has been defined as meaning land within an area declared or deemed to be a Municipality or a Notified area under the Assam Municipal Act, 1956. With the constitution of the Gauhati Municipal Corporation, the definition of town land has been redefined in the Assam Re-assessment Act, 1936 by an amending Act to include also the lands falling within the Gauhati Municipal Corporation area. Under section 2 of the Tenancy Act, lands coming within the scope of the definition of town land, have been exempted from the operation of the provisions of the Assam (Temporarily Settled Areas) Tenancy Act, 1971. As the definition of town land in this Act stands, the provisions of the Tenancy Act has become operative in the entire Gauhati Corporation area as even the part of the Gauhati Town constituted as a Municipality under the Assam Municipal Act, 1956 has become non est with the constitution of the Gauhati Municipal Corporation under the Gauhati Municipal Corporation Act, 1969. While the definition of town land has been amended in the Assam Re-assessment Act, 1936 by a recent amendment to include also the Gauhati Municipal Corporation area, the definition of town land has been left unchanged in the Assam (Temporarily Settled Areas) Tenancy Act, 1971. The definition of town land was not amended in the Tenancy Act of 1971 most probably due to a misconception that tenants who had acquired tenancy rights on lands which earlier did not form part of the Gauhati Municipal Corporation area would lose their rights if the definition was projected to cover such areas. We feel that such a misconception, if any, has arisen because of a wrong interpretation of the legal implications. The Assam High Court in the case of Mahendralal Barua Vs. Ram Prosad reported in A.I.R. 1954 Assam, 109, held that the rights once acquired under the Tenancy Act were not extinguishable only because the land was later included in a Civil Station. Tenancy Acts of Bengal and Bihar have provided that any right acquired by a tenant could not be extinguished if a certain plot of land is subsequently excluded from the operation of the tenancy Act . Our law is silent on this point.

3.18 In view of the above legal position, the inclusion of Gauhati Municipal Corporation area will in no way affect adversely the rights of the tenants who held land outside the erstwhile Gauhati Municipal area. The Commission, therefore, feels that the definition of "town land" shoud be the same as the one recently defined in the Assam Re-assessment Act, 1936.

Proviso to 'Town land'.

3.19 We, therefore, propose that 'town land' defined in section 2(f) may be defined anew to include the Gauhati Municipal Corporation area constituted under the Gauhati Municipal Corporation Act, 1969. To remove any misgivings, we would also sugest that there should be a proviso under the definition of town land to the effect that if any agricultural land is subsequently included in town land, the rights acqured by a tenant prior to such inclusion shall subsist.

3.20 Section 4(1) and (2) describe the following classes of tenants recognised under the law :-

(i) occupancy tenants,
(ii) non-occupancy tenants and
(iii) under tenants who held lands as such under an occupancy tenant or non-occupancy tenant prior to the enactment of the Assam (Temporarily Settled Areas) Tenancy Act, 1971.

Section 4(3) puts a legal bar to the creation of undertenancy from the date of the commencement of the Act.

3.21 A person becomes a tenant as soon as he enters into an agreement to hold and cultivate the land of a settlement holder. As long as he does not use the land

violating the provisions of the Tenancy Act and the terms of the agreement with his landlord, he is entitled under the law to continue to hold the land as a tenant.

Classification of tenants is unnecessary.

3.22 We fail to understand why an invidious distinction has been created amongst the tenants by classifying them into non-occupancy and occupancy tenants. A tenancy is a legal status between an individual and a settlement-holder. This being the legal position, why a period of probation should be laid down for a tenant till he is considered fit enough to acquire the superior status of an occupancy tenant ? The position appears to be a solecism. If a tenant is not satisfied with his land and for some reasons, which are not contrary to the provisions of the Tenancy Act and which do not carry with them any inkling of co-ercion on the part of his landlord, the tenant can surrender the land following the procedure laid down in section 63 of the Tenancy Act. In the case of non-occupancy tenant, the landlords can manipulate things in such a way as would frustrate the acquisition of occupancy right by the tenants and they would be forced to quit the land before the completion of the statutory period of 3 years and he would, then, induct new tenants in their places who also in course of time will share the same fate. The peasants being poor and ignorant and due to lack of any organisations of their own to look after the protection of their own interest, can hardly prove themselves a match against the willy landlords. Most of the landlords who appeared before the Commission suggested that the period of 3 years for acquisition of occupancy right should be lengthened to at least 10 years. Let alone extending the period as desired by them, we feel, even the period of 3 years itself provided in the Assam (Temporarily Settled Areas Tenancy Act, 1971 gives a strong lever to oust the non-occupancy tenant on one pretext for another.

Ejection of nonoccupancy tenant

3.23 We have carefully examined sub-clause (d) of clause (2) of section 51 of the Assam (Temporarily Settled Areas) Tenancy Act, 1971 under which a non-occupancy tenant can be ejected from the land if the same is bonafide required by the landlord for his personal cultivation. This section may be advantageouly made use of by the landlord to the detriment of the non-occupancy tenant.

3.24 Since it is not at all difficult on the part of a landlord to prove that the land is bonafide required by him, a non-occupancy tenant will never be able, in fact, to continue the possession and acquire the right of occupancy.

3.25 As he is prone to ejectment from certain portion of his land till completion of 15 months no institutional finance will be made available to him in spite of his desire to make the best utilisation of the land. Such uncertainities do not help at all the man behind the plough.

3.26 In view of the glaring possibility of harassment of non-occupancy tenants under the cloak of law, there is hardly any protection for non-occupancy tenants.

3.27 In view of this position, as we feel it, there should be only one class of tenants under the tenancy law in place of the two classes as envisaged under the present Act.

3.28 Clause (d) sub-section (2) of section 51 should not be retained as a general provision, but may, at best, be made operative with reference to landlords belonging to the four categories only viz., widows, minors, disabled persons and serving members of defence forces.

3.29 Further if our suggestion made in the above para enabling only the four categories of landlords to file suit for ejectment of their tenants on the ground of personal cultivation is accepted, there would be no need for further restriction regarding filing of suit.

3.30 However, if it is desired to have a time limit in their cases also, it should be within the period of 3 years. This is because of the fact that a tenant under the present law acquires the right of occupancy in three years.

Transfer of tenancy and restrictions.

3.31 An occupancy tenant has the right of transferring his tenancy. This right is however not a general one. Under section 8 he can transfer his tenancy right on his holding only to an agriculturist. That also can be done only by him with the prior permission of the Government following the procedure laid down under Rules 4 to 7 of the Rules framed by the Government in exericise of the powers conferred by section 75(1) of the Act.

3.32 In our view the restriction imposed under the provision of section 8 on transfer of his rights by an occupancy tenant should have only two elements viz., :-

(i) transfer should be restricted to agriculturist, and
(ii) fixation of a minimum period after the expiry of which transfer may be allowed.

3.33 The existing provision allowing transfer with the prior permission of the Government following the elaborate procedure laid down in the Rules Referred to hereinabove is considered by us to be not conducive for the tenants and too cumbersome for them. This part of the provision viz., seeking of prior permission of the Government may, therefore, be deleted to serve the best interest of tenants as they may have to resort to transfer of their lands in acute distress.

Tenancy on Land under Annual lease.

3.34 While examining section 4(1) of the Tenancy Act of 1971 we have found that tenancy may be created on lands under annual leases. Under the provisions of the Assam Land and Revenue Regulation, 1886 as amended from time to time, an annual lease holder forfeits his right of use and occupancy as soon as he sublets the land. The laws contained in the two Acts in respect of same kind of lease are contradictory.

3.35 Since the Assam Land and Revenue Regulation is the basic land law, we feel that in order to bring consistency in the provisions of law, either the prohibition relating to land held under annual lease be so amended as to make sub-letting permissible or the inconsistency from the definition of occupancy tenants and non-occupancy tenants in the Tenancy Act be removed by deleting the words "or settlement-holder other than land-holder". In this connection we wouldlike to mention that we have suggested a major change by suggesting that there should be only one class of tenants.

3.36 The Commission, however, feels that the settlement of lands on annual leases should be entirely done away with. This matter will be taken up by the Commisssion in course of its examination of the provisions of the Assam Land and Revenue Regulation.

3.37 We discussed and examined the provisions of the Assam Tenancy Act of 1971 concerning acquisition of intermediary and ownership rights by tenants contained in sections 21 to 26 under Chapter VI. Under the existing provisions of the Act a tenant may acquire ownership of tenanted land belonging to different landholdiers to the extent of 50 bighas which may be far more than the land held by each of the landhlord under whom he holds. Application of the existing provisions may render a landlord who depends entirely on rent derived from tenanted land, landless. We have to ensure that the agrarian social balance is not violently shak en while undertaking land reform measures.

Restriction in the acquisition of ownership rights by tenants in case of small landholders.

3.38 The present procedure, which does not prohibit the acquisition of ownership rights of tenanted lands from different landlords, will help in the creation of a fresh set of big landlords replacing those, each of whom held lands less than the ceiling limit of 50 bighas of agricultural lands.

3.39 The questionnaire issued by the Commission included a question whether under this situation, a different ceiling limit for acquisition of tenanted land should be imposed.

3.40 There is a consensus in the replies received thata reasonable limit should be fixed for acquisition of ownership rights by tenants.

3.41 We feel that persons holding lands not exceeding a certain minimum area should be allowed to retain the land as owner in spite of having a tenant or tenants thereon. Such a provision will in no way affect the rights of the tenants over the land held by them.

3.42 Similar restriction in the purchase of landlords rights by cultivating tenant is found in the provisions of the Kerala Land Reforms Act, 1963 (section 53).

3.43 Section 104 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 allows acquisition of Proprietory rights by non-occupancy tenants subject amongst others, to the restriction that the land-owner shall be entitled to reserve either 14 acres of irrigated or 3 acres of unirrigated land for his personal cultivation.

3.44 We would, therefore, recommend that some legal restrictions should be introduced in the Tenancy Act in the matter of acquisition of ownership rights by a tenant from a landlord by way of providing a prohibitory clause in favour of landlords holding say upto 10 bighas of land.

The Acquisition of rights by under tenants.

3.45 While discussing the rights of occupancy tenants to acquire ownership right, intentionally, we left out the question of acquisition of intermediary rights by under-tenants. The scheme of the Assam (Temporarily Settled Areas) Tenancy Act, 1971 has been so designed that no provision has been made in the Act for the induction of new under-tenants by tenants. The Act only recognises those under-tenants who have been holding lands prior to December 3, 1971 on which date the Act came into force. All rights acquired by such tenants before the date mentioned herein above have received statutory protections under the Rent Law relating to agricultural and. Since we have earlier recommended that the acquisition of ownership right by a tenant should exclude certain areas for retention by the land-holders, a question may arise resulting in confusion as to whether such a limit also implies similar restrictions in the cases of under-tenants who have been holding lands as such, prior to December, 1971. We feel there is no need for placing any restriction in the case of existing under-tenants for the acquisition of the intermediary rights. The restrictions we have earlier recommended will only come into operation as soon as an existing under-tenant acquires the intermediary rights. It has been felt that a provision like the one allowing retention of a minimum area by aland-lord need not be kept in the case of tenants while his rights are being acquired by his under-tenants as law has already prohibited the creation of new under-tenants. Perpetuation of under-tenants even in small areas will, therefore, be not in conformity with the intention of the Act.

Maximum Rent.

3.46 Section 27 read with section 28 fixes the maximum rate of rent realisable by a landlord from a tenant.

3.47 We have examined the provisions of these two sections.

3.48 Section 28 of the Act fixes the maximum rate which is chargeable by a landlord on agricultural tenant under him.

3.49 It is clear from the provisions of section 28 that share-croppers have to bear a burden much heavier than that of a tenant who has token land on the basis of cash rent. Those paying cash rent are liable to pay a maximum rent calculated at three times the land revenue whereas a share-cropper has to pay it in kind the maximum of which has been fixed at 1/5th of the principal crop.

3.50 The value of 1/5th of any principal crop is obviously much higher than the maximum rate of rent fixed at three times the land revenue.

3.51 Both being cultivators, there appears to be discrimination in the matter of payment of rent.

3.52 Besides it has been found that the share-croppers are not inclined to take up improved agricultural practices as the cost thus incurred does not become commensu-

rate with the additional benefit accrued, because of the compulsion to part with a larger share of the produce, and the landlord gains additional rent without any investment at all. So from both the angles, we feel that there should be only one kind of rent namely cash-rent. If this suggestion is acceptable it will remove all disparities amongst tenants in the matter of payment of rent.

Sub-section (2) to section 34 will not be necessary if our suggestion for abolition of crop rent is accepted.

Rent suits.

3.53 Rent suits are now filed before the Civil Courts. In our view for quick disposal of these suits and also for the sake of convenience of the parties, Government may consider, whether necessary powers under the Civil Law can be vested in the Circl Revenue Officers. This will have the added advantage of bringing of all suits and disputes under the Tenancy Act into one integrated forum.

Rent recespts

3.54 Although sub-section (iv) of section 37 provides for payment of penal compensation by the land-lord in case of his failure to issue receipt for the rent paid by the tenants, there is no detailed provisions as to how or in what manner the tenant is to enforce this provision. If he is required to go to the Civil Court for this purpose, which involves time and expenses, the provision will not be very useful. In fact it is found that the landlords, by and large, do not issue rent erceipts. In order to make the provision effectives, Rule should provide that Revenue Officer would be competent to receive such complaints and dispose of them including imposition of penal compensation on the defaulting landlord.

Restoration of possessions.

3.55 The Tenancy Act of 1971 foresaw that in order to furstrate the provisions of the Tenancy Act, landlords or tenants might terminate or cause to be terminated the the cultivation of their land by tenants or under-tenants illegally. In order to fore-stall such cases, section 54A was inserted by the Assam Act XVIII of 1974. Section 54A directs that the aggrieved tenants or under-tenants may seek redress by applying to the Revenue Officer having jurisdiction in the area against illegal ejectments or terminations of cultivation whthin 90 days of the happening of the events. The Revenue Officer on receipt of such applications, after due enquirey, direct the landlords or the tenants that ten tenants or under-tenants should be restored to the possession of the land. In case, the landlords or the tenants or the persons do not restore possession within 7 days from the date of the orders becoming final under sub-section (2) of section 67, the Revenue Officer on applications by the tenants or under-tenants concerned, shall himself take possession of the holding and deliver it to such tenants or under-tenants as the case may be.

3.56 There are reports that in spite of the above legal provisions, landlords evade them by going to the Civil Courts against the tenants by way of filing title suits and obtaining interim injunctions preventing the tenants from entering upon the land for the purpose of cultivation. The Revenue Officers in such cases are rendered helpless in giving protection to the tenants and the under-tenants as desired under section 54A of the the Act. In several cases specially in the district of Nowgong where the preparation of record-of-rights of tenants is going on, the effect of the provisions of section 54A have been nullified by the landlords by obtaining injunctions preventing entry by tenants into their holdings by filing title suits. Although sub--section (e) of section 66 bars the jurisdiction of Civil Coursts to "claims to restoration of possession" yet the road remains open for the willy landlords to file a title suits disputing the very existence of such tenancies.

Amendment of subsection (e) of section 66.

3.57 We would, therefore, suggest that sub-section(e) should provide a clear bar to such malpractices by amending it as follows :-

> "Claims to restoration of possession under section 54A including dispute regarding existence of tenancy or under-tenancy in reltion to such land".

Amendment of subsection (2) of section 54A.

3.58 It has been found that quite often the Revenue Officers are not clear whether they are competent to ejcet the recalcitrant landlords or the tenants as the case may be, while taking possession of holdings under section 54A(2) of the Act. Obvioulsly the Revenue Officers will have to eject such persons forcibly. In order to remove any confusion, it is suggested that the last sentence of sub-section (2) may be amended by including the following words in between the words "holding" and "and" :-

"by evicting the landlord or tenant or person by use of force."

Provision for second appeal.

3.59 We have examined section 67(1)(a) vis-a-vis section 54A. Orders passed under section 54A are original orders passed by the Circle Revenue Officers. Section 67(1)(b) provides for appeal against such orders to the Deputy Commissioner or the Settlement Officer as the case may be. There is no provision for second appeal as section 67(1)(a) provides for appeal to the Assam Board of Revenue only against the original orders of of the Deputy Commissioners/Settlement Officers. We feel that in line with the provisions of the Assam Land and Revenue Regulation, a second forum for appeal may be provided by amending sub-clause (a) of sub-section (1) of section 67 as given below :-

"to the Assam Board of Revenue from original or appellate orders of the Deputy Commissioner or the Settlement Officers within 60 days of the order appealed against".

Exclusion of jurisdiction of Civil Court in tenancy matters.

3.60 We, however, feel that the suggestion made by us for amending sub-section(e) of section 66 with a view to ensuring restoration of possession to tenants and under-tenants illegally evicted by their landlords or tenants, will not be very much effective as long as the Ciivil Courts have the jurisdiction to decide any qustion as to whether a a person is a tenant or not. Under the present Act, we find no bar for a landlord going to the Civil Court for a decision on such an issue. Before proceedings under section 54A are started by a tenant in the court of Circle Revenue Officer, unscrupulou landlords without even the knowledge of the tenants may file Civil suits against them with an application for issue of interim injunction so as to stops them from getting relief from the Revenue Court. As we feel that a mere amendment of sub-section(e) will not be adequate enough for the protection of the tenants' possession of lands, there should be a specific law in the Tenancy Act itself that all questions as to whether a person is a tenant or not, shall be decided by the Circle Revenue Officer. All orders passed by the circle Revenue Officers will be subject to appeal to the authorities and in the manner provided under section 67 of the Act. If this recommendation is accepted, a new section shall have to be incorporated in the Tenancy Act at an appropriate place indicating the jurisdiction to decide dispute relating to title of the tenants by the Revenue Officer and section 68 of the Act shall also have to be deleted.

Proposal for a Bar to proceedings u/s. 145 Cr. P.C. in tenancy disputes and protection of tenants.

3.61 It is very often seen that while a dispute between a landlord and a tenant in Revenue Court or an application for relief in any matter referred to in the Tenancy Act is pending, the landlord tries to defeat the provisions of the Tenancy Act by taking recourse to (i) Criminal Court by filing an application under Section 145 Cr. P.C. or (ii) by filing a title suit in a Civil Court. It is, therefore, necessary to bar the jurisdictions of such courts while the dispute (application) between the landlord and the tenant is current. It appears section 29-A of the Kerala Land Reforms Act, bars proceedings under section 145 Cr. P.C. when a person claiming to be a tenant applies for preparation of record-of-rights or seeks other relief or action under the Tenancy Act. In such cases even when the Criminal Court passes orders adverse to the interest of the tenant, he cannot be ejected. We think that our Tenancy Act should have such a provision to make the tenants' rights effectives.

disposal of standing crop while passing orders under section 54A.

3.62 Section 54A is silent as to what should be done to the standing crops grown by the landlord of any other person after unauthorised ejectment of the tenant. Some orders have to be passed by the Revenue Officers regarding disposal of such crops. We have considered this question in consultation with the Acts of other States. It appears that in the West Bengal Land Reforms Act, such a provision exists in section 19-B.

There the disposal of standing crop have been examined from two angles, (1) where the land was cultivated by the owner or any person on his behalf other than a tenant, and (2) by a new tenant. In the first case 40% of the produce is to be forfeited to the the State Government and the remaining 60% is to be retained by the applicant i.e. the applicant tenant. Thus, the law stipulate payment of compensation to the tenant for deprivation of cultivation. In the other case where the land is cultivated by a new tenant engaged by the landlord, 50% of the crop harvested or to be harvested is to be given to the new tenant, while the remaining 50% goes to the applicant-tenant. We do not find much justification for making provisions for the new tenant inasmuch as he is expected to have knowledge or information about the existing tenancy on the land. We think that total deprivation of the crop of such landlord or new tenant engaged by him will have a deterrent effect against such unscrupulous acts.

3.63 We, therefore, suggest that after sub-section(2) of section 54A the following sub-section may be added :-

> "At the time of taking possession of the holding or delevering it to the tenant or sub-tenant under sub-section(2) above, if the Revenue Officer finds that the land had been cultivated by the owner or by any person on his behalf or by a new tenant engaged by the owner, the produce of the land will be forfeited in favour of the applicant viz., the original tenant..".

Appeals to Board of Revenue in place of Director of Land Records.

3.64 We find, although the provisions relating to preparation of record-of-rights in Chapter X and Rules in Chapter VII are analogous to those contained in the Settlement Rules under Assam Land and Revenue Regulation, yet the forums for appeals are not the same. In case of settlement operation, an appeal against the orders of the Settlement Officer lies with the Board of Revenue where as in the case of preparation of tenants' record-of-rights under the Tenancy act, an appeal against the order of Settlement Officer lies before the Director of Land Records or any other Officer authorised by State Government prior to the final publication under section 59(1) of the Tenancy Act. We think that in case of Tenancy Act also, sappeal against the original or appellate orders of the Settlement Officer should lie with the Board of Revenue.

3.65 We, therefore, suggest that sub-section(1) of section 59 be deleted and the words "except those in connection with preparation of record-of-rights under Chapter X and exceipt where otherwise expressly provided for" in beteween the words "Revenue Court" and "appeals" appearing in section 67(1) be omitted.

3.66 A close reading of sub-section (2) of section 59 gives an indiction that when it comes to the notice of the State Government that there has been large scale omissions or irregularities in preparing tenants' record-of-rights in respect of any local area, the Government may at any stage, on application or of its own motion, direct denovo preparation or revision of the record-of-rights or any portion thereof. The present section has not been suitably worded to convey clearly the meaning intended. The existing sub-section(2) is open to wide interpretation to cover even cases of individual persons aggrieved by the orders passed by the Director of Land Records, Assam under the second paragraph of sub-section (1) of section 59. Taking advantage of the looseness of the provisions of sub-section (2)of section 59, even an individual person may come up to the Government by filing a petition for revising the orders affecting him, although the correct forum for seeking redress would be the appellate court.

3.67 The Commission feels that this was obviously not the intention.

Provisions for revision of record-of-rights.

3.68 In the above context and with a view to ensuring correct preparation of tenants' record-of-rights in any local area, the Commission would like to suggest that there should be two authorities at two distinct stages to order revision when it is found a tenants' record-of-rights or any portion thereof has been vitiated by large nnumber of

omissions and serious irregularities. The two stages which the Commission has in its mind, are (a) before publication of final records, and (b) after publication of final records.

3.69 The Commission considers it to be expedient to empower the Settlement Officer who is appointed with the additional designation of "Revenue Officer" to direct that the record-of-rights in respect of any local area be cancelled and the operation for preparation of tenants' record-of-rights in respect of such local area becarried out de-novo from such stage as he may direct.

3.70 After final publication of the record of-rights of tenants, a revision orde-novo preparation, under the conditions mentioned above, should only be ordered by the Government alone.

3.71 If the above suggestions are accepted, sub-section (2) of section 59 and sub-rule (2) of Rule 34 shall have to be suitably redrafted to convey the correct intention and the proposed power of the Government incorporated in section 59 of the Act.

3.72 The powers of the Settlement Officer as suggested above may be embodied in a new section as "section 56A".

Remission & suspension of rent in times of natural calamities.

3.73 Wide spread natural calamities like floods, droughts, etc. occur very frequently in our State causing considerable damage to standing crops. In the Assam Land and Revenue Regulation of 1886 under Executive Instructions provisions have been made to suspend or remit the payment of land revenue by the Settlement holders, in cases of damage to standing crops by floods and droughts. The Tenancy Act contains no provisions for giveing relief to the tenants in the matter of payment of rent when they are in dire distress in times of natural calamities resulting in failure of crops. The relief contemplated in the proviso to section 28(b) of the Tenancy Act is to limit the rent payable by the tenant to double the land Revenue payable by the landlord. There is no gainsaying the fact that when the landlords are allowed benefit of suspension or remission of land revenue, their tenants should also be allowed similar relief as it is they who are directly affected. If, therefore, the landlords are entitled under the law to suspension or remission of land revenue in such situations, we see no reason why the landlords should not be debarred from claiming their pound of flesh from the tenants under them.

3.74 We, therefore, recommend that provisions for giving relief by way of suspension or remission of rent to tenants in times of distress caused by natural calamities should be incorporated in Chapter VII of the Tenancy Act and such a declaration or order included in the State government's order suspending/remitting the land revenue.

Restrictions on Exclusion of Act by agreement.

3.75 While examining the provisions of the Goalpara Tenancy Act 1929 (since repealed) and the provisions of the Sylhet Tenancy Act 1936 (since repealed) it is found that section 17 of the Goalpara Tenancy Act 1929 and section 198 of the Sylhet Tenancy Act, 1936 prohibited exclusion of the Acts by agreement, in other words, landlords and tenants were prohibited from contracting out of the provisions of the respective Acts. Section 123 of the Assam (Temporarily Settled Districts) Tenancy Acts, 1935 contained similar provisions, but there is no such provisions in the Assam (Temporarily Settled Areas) Tenancy Act, 1971.

3.76 The Commission feels that in order to prevent the provisions of the present Tenancy Act being defeated by agreements contrary to the provisions of the Tenancy Act, 1971 between landlords and tenants, a similar provision debarring exclusion of the present Act by agreement is necessary and the Act may be amended for the purpose.

CHAPTER IV

THE ASSAM STATE ACQUISITION OF LAND BELONGING TO RELIGIOUS OR CHARITABLE INSTITUTION OF PUBLIC NATURE ACT, 1959.

Background.

4.1 The Assam State Acquisition of Land Belonging to Religious or Charitable Institutions of Public Nature Act, 1959 as modified upto 31st December, 1975 applies as the name of the enactment suggests, to Religious or Charitable Institutions of Public Nature. The Heads of Religious and Charitble Institutions of Public Nature were virtually petty Zamindars and exacted as much benefit as they could from the individiauals to whom land held under these Institutions had been rented out by them. The rents derived from the tenants were advantageously utilised by the heads of the Institutions for their own personal financial benefits. They paid scant attention for development of the Institutions for spread of the culture and religious traditions with the primary objects of which these Institutions were established by the previous Rulers of the State by gifting large tracts of land under royal edicts. As a result, these Religious and Charitable Institutions fell into decay. As the Heads of the Institutions were thriving on rents which did not belong to them, Government thought it expedient to acquire all the lands belonging to such Institutions allowing them to retain possession of :-

(i) free of revenue, all such lands which on or before the last day of Chaitra, 1365 B.S. were in the ownership of the institution and were actually occupied by it by constructing buildings and raising orchards and flower gardens gardens together with the compound appurtenant thereto and all lands reserved for the resident devotees for residential purposes. The right of ownership of possession of such lands is not transferable or alienable;

(ii) tea garden lands, assessed at full revenue rate under the Assam Land and Revenue Regulation.

The tea garden lands allowed to be retained are subject to the operation of the Assam Fixation of Ceiling on Land Holdings Act, 1956. At present there are a few tea gardens opened on lands leased out by the Satradhikars of the Dakhinpat and Auniati Satras. The surplus lands of these tea estates have already been acquired under the provisions of the Assam Fixation of Ceiling on Land Holdings Act, 1956 as amended.

4.2 In the entire State there are 200 Religious and Charitable Institutions of Public Nature who held a total area of 3,71,197 bighas.

Implementation of the Act.

4.3 The present position as to the implementation of the Act will be found in the statement given below :-

No. of Institution in the State	Area held (in bighas)	Area acquired. (in bighas)	Area settled. (in bighas)	No. of persons settled.	
				U/S. 15	U/S. 16
1	2	3	4	5	6
209	3,71,197	3,26,178	35,000	Not made available	'Not made available

(Figures supplied by the Director of Land Requisition, Acquisition and Reforms, Assam, vide his letter No. LRA119/76/ Pt./145 dated 8.5.80).

4.4 From the above, it appears that out of the total area of 3,26,178 bighas only 35,000 bighas have been settled with tenants. There are still 2,91,178 bighas of land yet to be settled with tenants and persons eligible to get settlement under sections 15 and 16 of the Act.

4.5 The Act received the assent of the President in April, 1961. The settlement of 35,000 bighas of land only shows that the implementation of the provisions of the Act has indeed been sluggish.

4.6 Longer the delay, the greater is the risk of complications creeping in.

The definition of 'Tenant'.

4.7 We now take up the Act for examination section by section for the purpose of making recommendations and suggestions for removing legal defects and obscurities if any found in any of the provisions of the Act.

4.8 In clause (j) of section 2 of the Act, the definition of word "tenant" should be the same as suggested by us while discussing the Assam Fixation of Ceiling on Land Holdings Act, 1956 and the Assam (Temporarily Settled Areas) Tenancy Act, 1971.

4.9 Section 15 of the Act provides that the rayats on the date of notification of acquisition of land under section 3 should be given settlement. If a rayat has acquired the status of an occupancy tenant under the Assam (Temporarily Settled Areas) Tenancy Act, 1971, he should be given a periodic lease; if he has not acquired the rights of an occupancy tenant, he should be given settlement of land on annual lease.

Tenants in urban areas.

4.10 Section 15 is silent as to what should be done with tenants having lands belonging to such Institutions in urban areas where the provisions of the Tenancy Act of 1971 are not applicable. It also does not indicate as to what should be done in the case of tenants in occupation of non-agricultural lands previously owned by such Institutions.

4.11 Under section 3, sub-section (1), the acquisition by State Government is free from all encumbrances with effect from the 1st day of the Agricultural year next following the date of publication of notification of acquisition.

The definition of 'encumbrance'.

4.12 From the definition of "encumbrances," given in 'clause (c) of section 2 of the Act, it is lear that rights of a rayat or agricultural or non-agricultural tenant are not encumbrances under the Act. This being the position under the law, the erstwhile tenants in occupation of non-agricultural land or lands situated in urban areas retain their rights. As such they have to be given settlement of the lands either on periodic annual or short term basis as given to agricultural tenants. Because of absence of any provisions for settlement of such lands with the non-agricultural tenants, the Act could not be implemented to the point of giving settlement.

'Rayat'.

4.13 The word 'rayat' mentioned in clause(c) of section 2 is liable to create some confusion. It may be construed that apart from agriculture or non-agricultural tenants, the rayats mentioned in the section constitute a separate class of persons who held land under the Religious or Charitable Institutions. The word 'rayat' in vernacular means nothing but a tenant. In the Assam (Temporarily Settled Districts) Tenancy Act, 1935 (Assam Act III) since repealed, the word 'rayats' which occured in section 4(Classes of tenant) meant tenants. Hence the inclusion of word 'rayat' in clause (c) of section 2 of the Act although redundant need not create any confusion. Furthermore persons entitled to settlement under section 15 of the Act has been described as a rayat which clearly means a tenant who held land under the Religious or Charitable Institutions of

Public Nature as is evident from clause (a) of the section. We would suggest that word 'rayat' in clause (c) under section 2 may be deleted and the word 'rayat' occurring in section 15 be substituted by the word 'tenant'.

4.14 This slight amendment in both these section will remove any doubt that may be lurking.

4.15 This marked deficiency in the provisions of section 15 should be removed, and it should be amended to provide for giving settlement of land to all kinds of genuine tenants found on the lands on the date of acquisition. The setttlement of land within the Gauhati Municipal Corporation areas should be subject to the limitation prescribed by the Urban Land (Ceiling and Regulation) Act of 1976.

Authority to grant settlement.

4.16 It does not appear from the provisions of the Act as to which authority is empowered to give settlement of lands to tenants, although in the procedure for acquisition of such lands, the authorities empowered to take actions for acquisition have been clearly mentioned. We, therefore, suggest that after vesting of the land with the Government the power to give settlement should lie with the Deputy Commissioners and necessary clear provisions be made for this purpose.

Settlement of unoccupied and.

4.17 Settlement of unoccupied land should be based on a uniform policy covering Government waste land, ceiling surplus land and unoccupied land under this Act.

4.18 In the case of Government waste lands, settlement is offered to different categories of needy persons as per Land Settlement Policy decided by the Government from time to time. Preferences and priorities may vary depending on the acuteness of the problem faced by the community. Further, certain schemes like Agriculture Farming Corporation may or may not succeed and may have to be wined up. In such a situation, the preference retained in section 16 of the Act will have little significance. Hence, we suggest that the preference for settlement of unoccupied land, not only under this Act but also under section 17(3) of the Assam Fixation of Ceiling on Land Holdings Act, 1956 need not be spelt out but left to be decided by the State Government as per Land Settlement Policy taken by the Government from time to time.

Annuities.

4.19 It has been brought to the notice of the Commission that annuities payable to the Religious or Charitable Institutions of Public Nature are insufficient to meet the obligatory requirements connected with the maintenance of the Institutions and the expenses for the purposes of cultural and religious propagation, owing to the spiralling rise in the prices of essential commodities and services. In view of such a phenomenon, the Institutions are not stated to be in a position to meet their financial obligations with the annuities fixed rigidly taking the income and sources thereof as they existed as per provision of section 8.

Satras.

4.20 The very fact that the Cultural and Regilious Institutions of Public Nature like the Satras have been given perpetual annuity to compensate the loss sustained by them owing to the acquisition of their lands under the Act, testifies the intention of the Government that they should thrive. The contributions made by the religious institutions to the cultural and religious traditions of the people of Assam can hardly be denied. trend was developing in the minds of the younger generation that religious institutions of public nature had little to offer as food for their mental growth, morally as well as spiritually and that these institutions had no place in the modern ways of living. As the culture and tradition of the people of this State have their moorings in these institutions, a complete snapping of the age old ties of the social life of the people of the State with these institutions, could never take place. A reveralsal of the trend is discernible in the minds of the new generation. There has been a marked change in their social and spiritual outlook. The time now is opportune for the religious institutions like Satras to take full advantage in the change in the attitude of the younger generation for sustaining the growing ardour in their minds for their moral and spiriual development.

4.21 To attract the younger generation, the religious institutions have to keep themselves in steps with a progressive society. They should improve the conditions of the Temples, Namghars and Mosques and the services rendered by them. With the amount of annuity fixed in perpetuity years ago, the religious and Charitable institutions are hard put it, to do this owing to the soaring prices of all essential commodities.

4.22 The Commission, therefore, suggests that there should be provisions in the Act and Rules made thereunder providing for periodical review of the annuity granted to such institutions.

Pronami.

4.23 In evolving a detailed procedure for the purpose of reviewing the amount of annuity granted to such Institutions, it shall be necessary to collect information from each of these Institutions regarding the actual amount of annuity and other income such as "Pronami", donations, subscriptions etc. as received by the Institutions during the year together with the details of expenditure incurred for maintaining the Institutions.

Review of annuity

4.24 Since the Commission is not in possession of the materials necessary to examine the issue in its entirety for making comprehensive suggestions, it recommends that the Government may evolve a formula on the basis of which the amount of annuity now fixed perpetually may be reviewed wherever necessary. And such revision of the amount of annuity on the basis of the formula to be chalked out, should be made after the lapse of a certain period, say decennially.

CHAPTER V.

THE ASSAM CONSOLIDATION OF HOLDINGS ACT, 1960.

Why Consolidation ?

5·1 In the programme of land reforms and development of rural economy, consolidation of land holdings occupies an important niche. In our State, lands owned by cultivator are scattered all over the village, and as a result he has to move from one field of his own to another, and then another, during the cultivating seasons expending substantial amount of labour and other resources. In course of this process, a great deal of time which is a very valuable factor for raising of crops, is lost. To remove the major impediments to successful cultivation resulting in larger yield at lesser cost, the concept of consolidation of holdings engaged the attention of the Government before and after the Independence. The various Commissions and Committees set up by the Government emphasised the great need for enacting legal measures for consolidation of holdings and prevention of fragmentations, as "dwarf holdings" in all the states of our country were telling heavily on the agricultural production. Land consolidation has all long been considered as an important part in any programme for increasing agricultural production. The work connected with consolidation of land holdings has not been an easy task as the cultivators resent shifting to new areas leaving those which they have been cultivating from generation to generation. Sentimental attachment to their scattered lands, howsoever small they may be, is so deeply ingrained in their minds that the loath any attempt to shift them to some other places for the purpose of effecting compactness of their holdings. This attachment is so deep rooted that unless and until the advantages and benefits accruing from consolidation can be demonstrated to them in bold relief by undertaking pilot projects, we cannot have a willing and eager cultivating class as partners in giving a concrete shape to the ideas behind this scheme. Even in the the developed countries, measures for consolidation of holdings at the initial stage met with great oppositions. In our country where the agriculturists are mostly ignorant, such oppositions are bound to be greater. Although the Assam Consolidation of Holdings Act was enacted in the year 1960, it is not known whether any action had been taken by the Government for arranging programme for motivating the agriculturists for inculcating upon them the great advantage and the substantial benefits they stand to gain if they voluntarily agree to have their holdings consolidated.

Consolidation of Holdings Act, 1960.

5.2 Such pilot programmes are prerequisites for implementation of consolidation of Holdings. When the Act was first passed in the year 1960, consolidation of holdings could be effected under the Act only if and when the owners voluntarily agreed. Since the response from the persons holding lands in different areas within the village was not forthcoming, the implementation of the Act was stalled. Government therefore, had to amend the Act in the year 1966 to enable the Government to impose consolidation, where necessary, under compulsion.

Earlier work in the Rani Anchalic Panchayat area.

5.3 41 villages in the district of Kamrup were selected for consolidation of holdings under the Act. Work of consolidation was started in these villages but it was given up in the year 1969. The Commission wrote to the Government for ascertaining the reasons for suspension of the work of consolidation of holdings in these villages. The Government in the Revenue (Reforms) Department in their letter No. RRT.87/79/2 dated 1.8.79 replied that the experimental scheme covering the 41 villages in the Rani Anchalik Panchayat of Palasbari Circle in the Kamrup District flourdered primarily for want of peoples' willingness for consolidation of holdings. Government also thought

that consolidation of holdings would not be meaningful without conferring the right of ownership to the cultivating tenants as otherwise the programme would have been a programme merely for consolidation of lands belonging to non-cultivating landlords. It is further stated that in order to remove this difficulty, the Assam (Temporarily Settled Areas) Tenancy Act was enancted in the year 1971 with provisions for conferring ownership rights to the cultivating tenants. They also stated that the objectives of consolidation could be achieved and the peoples acceptance and and attraction towards the programme could be acquired when adequate arrangements for irrigation are made. It is stated that a decision was taken in the year of 1969 to keep the operation for consolidation of holdings in abeyance until considerable progress was made in conferring ownership rights or the cultivating tenants and providing facilities for irrigation.

Acquisition of tenants rights pre-requisite.

5.4 Since the preparation of record-of-rights of tenants have almost been completed in all the districts of the State, Government can now make an earnest effort for fulfilling the objectives of the Act. The Assam (Temporarily Settled Areas) Tenancy Act, 1971 contains provisions for acquisition of ownership rights of the holdings by Government on behalf of the tenants on payment of compensation fixed under theprovisions of that Act. The compensation as may be paid by the Government for acquiring the ownership rights of the lands for the tenants is recoverable on easy instlalments from the tenants on being given settlement to them. Since the acquisition of ownership rights by tenants was considered by the Government as a condition precedent for implementing the Act, Government should now come forward suo-moto to acqure the rights of ownership of the holdings for the tenants taking recourse to the relevant provisions of the Assam (Temporarily Settled Areas) Tenancy Act, 1971.

Up-dating of record-of-rights.

5.5 But before taking up the programme of consolidation of holdings it will also be necessary to undertake a time bound programme for up-dating the record-of-rights in respect of the landowners and also to record all the changes in tenants' record-of-rights as well, which may be necessary with the passage of time owning to succession, transfer, etc.

5.6 It has been experienced by different States which undertaook consolidation of holdings that the records, and maps, corrected and made up-to-date, were essential for consolidation of holdings. It has already been discussed that the small and very small holdings actually pose the problem in implementing the programme. When an individual land owner has no other holdings except his small one, the small holding may be left out of consolidations but the area should be rectangulurised. The fields with perennial crops, fruit trees etc shoud be left out of the scheme. Besides the fields with perennial crops like coconut, arecanut, citrus and other fruit trees present impediments in the way of making valuation in comparision with the fields cultivated with paddy. But in our State most of the large fields (Pathar) are cultivated with crops of uniform pattern. Hence consolidation of holdings is very much possible in the large tracts of land where mostly paddy and similar crops are grown conforming to a uniform pattern of cultivation.

5.7 Although some major and minor irrigation projects have been undertaken still there are many areas where the cultivators have to depend on rainfall. In the areas where irrigation projects have been undertaken, consolidation of holdings will present no difficulty at all within the irrigated area as productivity in different plots will be more or less same. In the rainfed areas, the cultivators of small holdings are successfully raising crops without having the benefit of irrigation facilities. Here too, particularly in the case of rice fields classification of plots according to productivity will not be very different. Hence absence of irrigation facilities should not be a bugbear for undertaking consolidation of small and scattered holdings owned by the same individuals. The topographical feature of the State precludes a whole sale consolidation. Therefore, the selected areas which present ideal conditions for consolidation with a view to increasing agricultural production should be identified for implementation of the scheme, which shall demonstrate vividly the immeasurable utility of consolidation.

Consolidation of Holdings progress in Punjub and Hariyana.

5.8 The concept of consolidation of holdings has been given a perceptible shape in the States of Punjab and Hariyana. It is claimed that consolidation of hoidings had laid the stage for the termendous achievement mad by the two Governments in the development of agriculture. In order to know for ourselves how the difficult task of consolidation of land holdings has been made a reality, we undertook tours in both the States. In course of our tours in the two States, we held sittings with Officials at the top and also at the grass-root levels. The Officials of both the States in course of our discussions with them gave us a clear insight into the working of the procedure for giving a concrete shape to an intricate scheme like consolidation of land holdings. We were also taken to some villages where consolidation of land holdings had been completed. They also provided us with all facilities to examine the basic records on which the final Jamabandis of consolidated holdings had been prepared. The implication of the basic records and their relationship with the final Jamabandis were explained to usfully. We also had the opportunity of studying the preliminary records prepared in course of conducting operations for consolidation of land holdings. From what we had seen and learn, the work calls for a great deal of technical skill and a firm determination on the part of the Government to carry the work to a finish.

Benefits from consolidation of Holdings.

5.9 Consolidation of land holdings has three major facets first, it benefits the farmers, secondly it helps augment national agricultural productivity, and thirdly, it makes collection of agricultural statistics and supervision of crop recording a very easy task for the workers in the field. Owing to con-solidation of the holdings along with making every agricultural plot into uniform rectilinear shape, a recorder by merely walking through the fields with the map in hand, can arrive at a near accurate figure of the different crops grown in the area. Moreover as the boundries of all the plots are common straight lines, land disputes will be minimised. Secondly, even an owner of a landlocked plot also will have easy access to his plot as all the land holders acquire easements rights over the "ali" running along the common boundaries.

Personal.

5.10 It is needless to emphasise that successful implementation of programme for consolidation of holdings largely depends on a set of skilled., honest, and hard working officials. The scheme involves besides technical knowledge, a full understanding of the psychological aspect of the problem. We are firmly convinced that consolidation of holdings should be given the foremost place for agricultural development and land reforms.

5.11 A scheme was undertaken several years back by our State Government to train some Officers and recorders in the work of consiolidation of holdings in Uttar Pradesh. These Officers and field staff by now must have forgotten what they had learnt about the work. Since there has been a big time lag, these Officers and the field workers will hardly be able to contribute in applying the "know-how" acquired by them more than a decade ago.

Training of personnel.

5.12 We however, feel that instead of revenue personnel of our State going to States like Hariyana or Punjab, it would be far more better and fruitful if a set of personnel including an Officer from Hariyana or Punjab is brought to our State for giving training to our Officers and men, for the simple reason tha a watch over the training can be constantly kept by our State Government itself to ensure that the personnel under training have acquired a full knowledge into the details of consolidation work in its different phases. This supervision will not be there, if they are sent for training to other States like Punjab and Hariyana. We would, therefore, strongly recommend that the Government of Assam should request the Government of Hariyana or Punjab to lend the services of an Officer with some field workers to our State for the purpose of imparting training to our Officers and men. The Officers and men coming from States like Hariyana and Punjab will be in a better position to solve the local difficulties and problems and evolve solutions to surmount them, they having already gained sufficient experience and knowledge in the works of consolidation of holdings in their States. Moreove, initially we should start consolidation of holding by taking up a pilot project so that the various problems and difficulties cropping up in this project can be rectified before launching the operation in a major way.

Payment of compensation.

5.13 In the Assam Consolidation of Holdings Act, 1960 provision has been made u/s 18 for payment of compensation where an owner in course of consolidation of his scattered holdings is given lands which have a lesser market value than the lands which were owned by him before but could not be made to form part and parcel of his con-consolidated holding.

Compensation.

5.14 The compensation is paid by the State Government to such an individual in one or more instalments as prescribed. Where an individual in the process of con solidation received lands the market value of which is higher than those of his roiginal holdings, then the amount in excess of the market value is realised from him by the State Government in one or more instalemtnts as prescribed.

Equitable settlement in the basis of productivity.

5.15 In course of our tours in the States of Punjab and Hariyana we had an opportunity to examine the provisions made by the two Governments in their enactments to meet such exigencies. The Punjab and Hariyana Acts do not provide for payment of compensation and realisation of excess market value in such cases in cash. The Acts of these two States provide, to put it simply that where the yield of crop on the land held by an owner earlier is higher than that of the land settled with him in course of consolidation, he is given so much of such land in exchange as would make the total yield of crop from the land equivalent to the good land he had to part with. Conversely the holding of an owner getting better land will proportionately be less than his original holdings. In the redistribution of lard for the purpose of consolidation emphasis is given on the wightage carried by the lands on the basis of productivity. We feel the provisions contained in the Punjab and Hariyana Acts for the purpose of compensating the loss resulting from the exchange of land with a higher factor, for land with a lower one which in any scheme for consolidation is unavoidable, by allowing proportionately larger area of lard with relatively less productivity, is more commendable. As no monetary transaction is involved in distribution of land on this basis, lot of untoward complications and malpractices will considerably be eliminated. The procedure laid down in our Act for payment of compensation in cash gives a lever to the unscrupulus at the lower levels of land revenue administration for manipulation of market value while assessing compensation.

Certain provisions in consolidation of Holdings Act.

5.16 It should, however, be remembered athat consolidation of holdings and prevention of their fragmentation go together. The two ideas cannot be divorced from each other. One without the other has little significance. If fragmentation of holdings are allowed to go unrestricted, the entire good work done by consolidating the holdings will come to a naught. Sub-section (1) of section 21 of the Assam Consolication of Holdings Act, 1960 allows partition provided that the new plot created is not less than five bighas in size. Sub-section (2) of the same section prohibits transferring, leasing or mortgaging of holdings resulting in creation of a new plot of less than five bighas in size unless it is in favour of the owner of contiguous plot or of the State Government, Land Mortgage Bank or any financial institution as security for any loan advanced to him. The above provision of law is applicable in keeping the size of the transferred holding to a minimum of five bighas. The law does not put any curb on the size of the holding left with the owner after partition or transfer. We feel that the law should look into both these aspects. The provisions of section 21 should be redrafted to make it clear that partition or transfer effected should not split original holdings into parcels of land of less than five bighas each. Under the present provisions of law, if an owner has a holding of six bighas, he can transfer five bighas leaving with him only a dwarf holding of a bigha only, which oviously runs counter to the idea behind consolidation of holdings. In our view in sub-sections (1) and (2) of section 21 instead of the words 'a new plot', the words "the resultant plot of five bighas each" should be substituted.

Transfer of tenants rights

5.17 As a result of consolidation a plot cultivated by a tenant may be transferred to a new landlord. If it is stipulated that he should not be disturbed, law must contain necessary provisions that the tenant would suo-moto become the tenant of the landlord.

5.18 An alternative arrangement may be to direct the tenant to follow his foriginal landlord to the plot newly consolidated. In that case also his rights vis-a-vis the landlord in respect of the old holding must subsist in respect of the new plot.

5.19 The relevant provisions in the Assam Act is section 16(b) which envisages transfer of a tenant's rights in his own holding to the new holding.In other words the tenant will follow his landlord to his new holding. This will involve movement of the actual cultivator. We have our doubts whether such course or arrangement would further the cause of consolidation.

5.20 On the other hand the principle of a tenant following his landlord has one district advantage in that in the process of consolidation the landlord who had no tenant would have a new tenant free holding.

5.21 These problems will be minimised considerably if the process of acquisition of ownership right by the tenants or the Government on their behalf under section 21 or section 22 respectively of the Assam (Te porarily Settled Ar as) Tenancy Act, 1971 is completed prior to undertaking the work of consolidation.

ANNEXURE : A

GOVERNMENT OF ASSAM
REVENUE (REFORMS) DEPARTMENT TENANCY BRANCH.

"ORDERS BY THE GOVERNOR"
N O T I F I C A T I O N .

Dated Dispur, the 27th May, 1978.

No. RRT. 184/78/19-The Goveror of Assam is pleased to constitute a land Reforms Commission with the following members :-

1. Shri K.N. Saikia, Advocate Gauhati. — Chairman.
2. Shri Manik Chandra Das, M.L.A. — Member.
3. Shri B. Dowerah, Retd., I.A.S. Gauhati. — Member.
4. Shri Jainal Abedin, Advocate, Dhubri. — Member.
5. Shri Anil Kumar Biswas, Advocate, Silchar. — Member.

The terms of reference of the Land Reforms Commission shall be as under :-

1. To study the objectives of the Land Reforms Policy so far followed in the State and the particular measures in carrying out the policy into effect and to make recommendation to the State Government regarding the adequacy or otherwise of the measures and modifications necessary.

2. study critically the land laws (including land reforms enactments) of the State and to recommend revision, consolidation with suitable recommenddation for amendments and measures for their effective implementation.

3. To study and review the present land settlement policy of the State Govern ment in particular and make recommendations for any revision or modifications in the present context.

4. To examine and submit recommendations on any other relevant matter that may be referred to the Commission or consider relevant by the Commission in the above context.

The Head Quarter of the Commission shall be at Gauhati.

The Director of Land Requisition, Acquisition and Reforms, Assam shall act as non-member Secretary for the Commission.

The Commission shall submit their report to Government within six months.

Sd/- **A. ALI,**

Secretary to the Govt. of Assam,
Revenue Department.

Memo. No. RRT. 184/78/19-A Dated Dispur, the 27th May, 1978.

Copy to:-

1. The Superintendent, Assam Government Press, Gauhati-21 for publication of the Notification in the next issue of the Gazette.
2. The Director of Land Requisition, Acquisition and Reforms, Assam, Gauhati-1.
3. Shri K.N. Saikia, Advocate, Gauhati.
4. Shri Jainal Abedin, Advocate, Dhubri.
5. Shri B. Dowerah, Retd. I.A.S., Gauhati.
6. Shri Manik Das, M.L.A., Assembly Hostel, Dispur.
7. Shri Anil Kumar Biswas, Advocate, Silchar.

By order etc.,

Sd/-G. C. **RAJKONWAR,**
27.5.78

Under Secretary to the Govt. of Assam,
Revenue (Reforms) Department.

ANNEXURE 'B'.

GOVERNMENT OF ASSAM
REVENUE (REFORMS) DEPARTMENT TENANCY BRANCH

ORDERS BY THE GOVERNOR

N O T I F I C A T I O N

Dt. Dispur, the 28th April, 1979.

No. RRT. 184/78/64 : The Governor of Assam is pleased to appoint Shri B. Dowerah, I.AS., (Retd), Member, Land Reforms Commission constituted under Government Notification No. RRT. 184/78/19 dated 27th May, 1978 as Chairman of the Land Reforms Commission with immediate effect vice Shri K.N. Saikia, appointed as Judge of the Gauhati High Court.

This cancels this Deptt. Notification No. RRT. 184/78/62 dated 19.4.79.

Sd/-S. D. Ahmed,

Deputy Secretary to the Govt. of Assam,
Revenue (R) Deptt.

Memo. No. RRT. 184/78/64-A, dt. Dispur, the 28th April, 1979.
Copy to :-

1. The Suprintendent, Assam Govt. Press, Gauhati-21 for publication of the Notification in the next issue of the Gazettee.
2. The Director of Land Requisition, Acquisition & Reforms, Assam, Gauhati-1.
3. Shri B. Dowerah, I.A.S. (Retd) Member, Land Reforms Commission.
4. Shri Jainal Abedin, Advocate, Dhubri.
5. Shri Manik Das, M.L.A., Assembly Hostel, Dispur.
6. Shri Anil Kumar Biswas, Advocate, Silchar.
7. The Secretry to the Chief Minister, Assam, Dispur with reference to his Memo. No. CMS. 400/76 dt. 30th March, 1979.
8. The Chairman, Land Reforms Commission.

By order etc.,

Sd/-S. D. Ahmed,

Deputy Scretary to the Govt. of Assam,
Revenue (R) Deptt.

ANNEXURE 'C'.

GOVERNMENT OF ASSAM
REVENUE (REFORMS) DEPARTMENT TENANCY BRANCH

ORDER BY THE GOVERNOR

N O T I F I C A T I O N

NO.RRT.184/78/65- The Governor of Assam is pleased to appoint Shri S. Goswami, I.A.S. (Retd) as Member of the Land Reforms Commission constituted under this Department Notification No.RRT. 184/78/19 dated 27.5.78 with immediate effect.

Sd/-S. D. Ahmed,

Deputy Secretary to the Govt. of Assam,
Revenue(R) Deptt.

Memo. No. RRT.184/78/65-A, Dt. Dispur, the 4th June, 1979.

Copy to :-

1. Supt., Assam Govt. Press for immediate publication in the Gazettee.
2. Shri S. Goswami, I.A.S. (Retd), Gauhati.
3. Chairman, Land Reforms Commission, Gauhati, Near Bal Bhavan.
4. Director of Land Acquisition, Requisition and Reforms, Assam, Gauhati.

By order etc.,

Sd/- S. D. Ahmed,

Deputy Secretary to the Govt. of Assam,
Revenue (R) Deptt.

ANNEXURE 'D'

GOVERNMENT OF ASSAM
REVENUE (REFORMS) DEPARTMENT TENANCY BRANCH.

ORDERS BY THE GOVERNOR.

NOTIFICATION

NO.RRT. 184/78/Pt/1 Dated Dispur, the 26th Oct. 1979.

The Governor of Assam is pleased to appoint Shri R. Baruah, I.A.S., Managing Director, Assam Co-operative Apex Bank Ltd., as member of the Land Reforms Commission constituted under this Department Notification No. RRT. 184/78/19 dated 27.5.78 read with Notification No. RRT. 184/78/81 dated 6-8-79 until further order in addition to his won duties with effect from the date he joined as Member, Land Reforms Commission.

Sd/- **S. D. Ahmed,**

Deputy Secretary to the Govt. of Assam,
Revenue (Reforms) Deptt.

Memo. No. RRT. 184/78/Pt/1 Dated Dispur, the 26th Oct./79
Copy to :-

1. Superintendent, Govt. Press, Bamunimaidan, Gauhati-21 for publication.
2. Secretry to the Govt. of Assam, Department of Personnel (A) with reference to the discussion held by the Secretry, Revenue with him on 15-9-79 and Memo. No. AAI. 31/78/72-A dated 26-9-79.
3. Secretary to the Govt. of Assam, Co-operation Department with reference to the discussion held by the secretary Revenue with him on 15.9.79.
4. Chairman, Land Reforms Commission, with reference to his D.O. No. LRC. 26/78/79/8 dated 10-9-79.
5. Shri R. Baruah, I.A.S. Managing Director, Assam Co-operative Apex Bank Ltd.
6. Secretary, Land Reforms Commission, Near Bal Bhawan, Gauhati.
7. All Members.

By order etc.

Sd/- **S. D. Ahmed,**

Deputy Secretary to the Govt. of Assam,
Revenue (Reforms) Deptt.

ANNEXURE 'E'

CHAIRMAN AND MEMBERS OF LAND REFORMS COMMISSION : ASSAM

	Name	From	To
Chairman			
1.	Shri K.N. Saikia, Advocate :	10-6-78	11-2-79
2.	Shri B. Dowerah, I.A.S. (Retd)	28-5-79	Till date.
Members			
1.	Shri B. Dowerah, I.A S (Retd)	10-6-78	27-5-79
2	Shri J Abedin, Advocate	10-6-78	Till date
3	Shri M.C. Das, M.L.A.	10-6-78	Till date.
4.	Shri A.K. Biswas, Advocate	10-6-78	Till date.
5.	Shri S. Goswami, I.A.S. (Retd)	12-6-79	7-8-79
6.	Shri R. Baruah, I.A.S., Managing Director, Assam Co-operative Apex Bank Ltd.	26-10-79	Till date.
Secretary			
1.	Shri T.K. Bora, A.C.S., Director of Land Requisition, Acquisition and Reforms, Assam.	10-6-78	Till date.

ANNEXURE 'F'.

The Governor of Assam was pleased to constitute a Land Reforms Commission vide Revenue (Reforms) Department Notification No. RRT. 184/78/19, dated 27th May 1978 with the folloling terms of reference :-

1. To study the objectives of the Land Reforms Policy so far followed in the State and the particular measures in carrying out the policy into effect and to make recommendation to the State Government regarding the adequacy or otherwise of the measures and modifications necessary.

2. To study critically the land laws (including land reforms enanctments) of the State and to recommend revision, consolidation with suitable recommendation for amendments and measures for their effective implementation.

3. To study and review the present land settlement policy of the State Government in particular and make recommendations for any revision or modifications in the present context.

4. To examine and submit recommendations on any other relevant matter that may be referred to the Commission or considered relevant by the Commission in the above context.

The Land Reforms Commission issues the following questionnaire to elicit information and invite suggestions from all concerned :-

QUESTIONNAIRE

PART I

GENERAL

1.(a) What, according to you, is the Land Reforms Policy so far followed by the State of Assam ?

(b) What, according to you, are the objectives of the Land Reforms Policy so far followed in Assam ?

(c) What, according to you, should be the Land Reforms Policy in Assam ?

2.(a) What, according to you, are the important features of the land tenure system prevailing in Assam ?

(b) In what ways those features prove to be obstacles to agricultural development ?

(c) What will be the measures necessary for removal of the obstacles ?

3. What are the different measures adopted by the State of Assam in carrying out the Land Reforms Policy into effect :

(i) Legislative ;
(ii) Administrative ;
(iii) Others ;

Do you suggest any other measures in this respect ?

4. What, according to you, should be the measures for removal of the institutional and natural obstacles to agricultural development, to be applied simultaneously with Land Reforms measures ?

5. Do you favour any classification of land as well as landowners into certain broad categories for the purpose of Land Reforms measures ?

6. Do you think that the existing land laws in any way contribute towards migration of people from the villages to the towns ?

If so, what Land Reform measures do you suggest to discourage such migration and to encourage migration back from towns to villages ?

7. The Government of Assam has exempted the owner of agricultural land not exceeding ten bighas from payment of land revenue.

What, do you think, will be its effects on the Mauzadari/Tahsildari system ?

8. Do you suggest a system of collection of land revenue directly by the Government rather than through the Mauzadars ?

9. Are there farmers' organizations for purchase of agricultural equipments and sale of agricultural products ?

If so, how far are these organizations successful ?

10.(a) What is the verified number of agricultural labourers in your area ? What is the proportion between the numbers of landlords, tenants, and agricultural labourers ?

(b) Do you find any trade union organizations among agricultural labourers ?

11. Do you suggest any legislation to regulate the conditions of employment of agricultural labourers ?

If so, in what lines ?

12. Have measures been taken to promote the organization of farms of economic size, by dividing too large holdings or by combining too small holdings, in your area ?

If so, describe the measures adopted.

13. (a) What, according to you, are the obstacles to formation of economic units, such as legal, technical, or general ?

(b) What, according to you, should be the size of minimum economic holding in in your area ?

On what factors the size of a minimum economic holding depends ?

(c) Do you think that the minimum size of economic holdings vary from place to place ?

If so, for what reasons ?

14. Do you believe that personal laws or customs result in excessive fragmentation and sub-division of holdings ?

Do you suggest any measures of reform in this regard to encourage consolidation and discourage excessive fragmentation ?

15. Indicate the nature of availability of agricultural credit and the extent of rural indebtedness in your area. Have agricultural credit organizations been set up in your area in recent years ?

If so, are they functioning successfully and effectively ?

16. Do you find individual money lenders, both nationals and foreigners, lending money to agriculturists taking lands or crops or mortgage ?

In how many cases such transactions have resulted in foreclosure of land or forfeiture of crops ? Give an idea of the rates of interest charged and types of loans granted by such money lenders.

17. Do you find unemployed educated youths taking to agriculture in recent years ?

Can you suggest any measure to encourage the educated unemployed youths taking to agriculture ?

18. In view of the importance of the tea industry and its potentialities in the economy of the State, and also in view of the statutory controls as provided in the Plantation Labour Act and the Assam Plantation Labour Rules, do you suggest that an independent Land Reforms Policy corducive to the growth of the tea industry should be followed ?

If so, what should be the policy ?

19. Do you want to make a uniform law applicable to all lands used for special cultivation irrespective of their original grants and terms and conditions attached thereto ?

20. Do you find any necessity of restricting the transfer or conversion of agricultural land to non-agricutural uses ?

Do you support the idea of formation of agricultural Belts/Blocks for restriction of such transfer or conversion ?

PART II

CEILING ON LAND HOLDINGS.

21. Do you suggest any modification of any of the definitions of the terms given in section 3 of the Assam Fixation of Ceiling on Land Holdings Act ?

If so, what are those terms and why ?

2. Do you find any loop-holes in the provisions of the Ceiling Act ?

If so, explain them and suggest measures for their removal.

23. Do you suggest reconsideration of the ceiling limits under the Ceiling Act ?

24. Do you suggest any variation in the present ceiling limit on the basis of varying productivity of lands, and personnel in a family ?

25. What, according to you, has been the effect of implementation of the Ceiling Act on agricultural production in the State ?

What are the causes of such effect ?

26. Do you think that the size of the family should be taken into consideration in fixing the ceiling limit on land holdings and if so how it should be done ?

27. Do you suggest that there should be exemption under the Ceiling Act in favour of old and infirm persons living alone, orphan, invalids and helpless widows and army personnel ?

If so, in what ways ?

28. Do you think that the land directly used by the owners for operation of commercial agricultural, and industrial enterprises should be exempted from acquisition in the measures of land reform ?

29. Do you suggest any amendment of the provisions of the Assam Fixation of Ceiling on Land Holdihgs Act relating to requirements of Tea Companies of Land for ancillary purposes on the basis of number, size and location of tea gardens owned by a company ?

30. Do you suggest that the statutory requirements under the Tea Act, the Plantation Labour Act and the Assam Plantation Labour Rules should be taken into consideration in determining tea gardens' requirements of land for ancillary purposes ?

31. What further penal measure do you suggest for preventing the evasion of Ceiling Law and refusal to handover excess land on the part of the tea garders ?

32. Do you agree that after taking the excess land from one tea estate under the Ceiling Act it will be improper to allow another to open another tea estate on that land ?

33. (a) How many cases have been disposed of on appeal or review by the state Government ?

(b) How many are tea garden cases ?

(c) How many of them were rejected ?

(d) How many of them allowed ?

34. What is the effect of those decisions on the total surplus land ?

PART III

TENANCY REFORMS

35. (a) Have all the lands belonging to the Religious and Charistable Institutions been acquired by now ?

(b) What difficulties, if any, you are facing in acquisition of lands belonging to Religious and Charitable Institutions of Public Nature ?

(c) What is the total area of land acquired and settled under the Religious and Charistable Institutions of Public Nature Act ?

36. (a) Have the record-of-rights of tenants been finalised in your district ?

(b) If so, what is the total number of Khatians issued ? What is the total area of land involved ?

37. How many Khatian appeals and revision cases resulted from the issue of Khatians ?

38. How many Khatians have been upheld and how many set aside ?

39. How many cases of restoration of possession under section 54-A of the Tenancy Act occurred in your district ?

40. How many untoward incidents have taken place due to tenancy disputes ?

41. What are the main difficulties you are facing in implementing the provisions of the Tenancy Act ?

42. What is the effect of implementation of the Tenancy Act on total agricultural production of the district ?

43. In view of the fact that an 'Adhiar' has been included within the definition of 'Tenant', do you suggest that the rent payble by an Adhir and a non-Adhiar tenant should be the same and be made payable either in cash or crop ?

If so, what do you think will be the reasonable rent ?

44. Do you think that the rights conferred on the tenants under the Assam (Temporarily Settled Areas) Tenancy Act, 1971 are adequate ? If not, what more rights should be conferred on them ?

45. The law regarding tenancy in respect of tea garden lands unused and used for ancillary purposes, as provided in the Assam (Temporarily Settled Areas) Tenancy Act, 1971 and the Assam Fixation of Ceiling on Land Holdings Act, 1956 is not uniform.

Do you suggest that there should be uniform provisions relating to tenancy in respect of such tea garden lands ?

46. Do you suggest a better apportionment of compensation between the Landlords and tenants under different Acts in cases of acquisition of land in future ?

47. Do you suggest the maintenance of a common set of record-of-rights both for the purpose of Land Revenue and for the purpose of Tenancy ?

48. Do you suggest any change in the period for attaining the status of occupancy Tenant ?

49. Would you like to prescribe a period of occupancy tenancy for being entitled to the acquisition of ownership right ?

50. Under the existing law a tenant may acquire ownership of tenanted lands belonging to different landlords to the extent of 50 bighas, which may be far more than the held by each of the landlords under whom he holds.

Do you like to prescribe a different ceiling limit for total acquisition of tenanted lands by a tenant in such cases ?

If so, what, according to you, should be the ceiling limit ?

51. Whether the provisions of the Assam (Temporarily Settled Areas) Tenancy Act, 1971 relating to ejectment of tenants by landlords and forefeiture of tenancy require any modification ?

52. Do you find any loop-holes in the provisions of the Assam (Temporarily Settled Areas) Tenancy Act, 1971 ?

If so, explain them and suggest measures for their removal.

53. How many tenants in your district have acquired ownerships of the tenanted lands since the coming into force of the Tenancy Act, 1971 ?

If so, give particulars :-

(a) Number of tenants ;

(b) Area acquired yearwise.

54. Is the progress of Land Reform measures satisfactory in your district ?

If not, why not ?

PART IV

SETTLEMENT

55. What, according to you, will be the size of the minimum economic holding in your area

On what factors the size of a minimum economic holding depends ?

56. Do you think that the minimum size of an economic holding varies from place to place ?

If so, for what reasons ?

57. Have the records-of-rights of settlement holders been kept up--to-date ?

58. What further measures do you suggest to prevent encroachments upon Government lands ?

59. (a) Have you introduced any new scheme for reclamation and settlement of land ?

(b) If so, what are the main features of such a scheme ?

(c) What is the total area of land reclaimed or developed under new schemes ?

(d) What is the total area of land settled after reclamation and development ?

(e) What is the total number of persons or families receiving lands under the new scheme ?

60. Indicate the progress of conversion of annual into periodic pattas in your district ?

How is it that in large number of cases annual pattas have not been converted into periodic pattas ?

61. Do you agree that settlement of land exceeding a certain limit should be made subject to prior approval of the State Government by resolution ?

62. Are there village Grazing Reserves and Professional Grazing Reserves in your collectorate ?

If so, give details :-

(a) Name
(b) Area, original and present
(c) Condition of the Reserves considered in light of their purposes.

63. Are there Lakheraj Lands in your collectorate ?

If so, give particulars :-

(a) Description
(b) Area
(c) Original owners
(d) Present owners
(e) How present owner acquired ownership ?

64. Are there Niskheraj Lands in your Collectorate ?

If so, give details :-

(a) Description
(b) Area
(c) Category
(d) Original owners
(e) Present owners
(f) How present owners acquired ownership ?

65. Are there Waste Lands available for settlement in your Collectorate ?

If so, give details :-

(a) Class
(b) Area classwise
(c) Whether there are proposal for settlement.

66. (a) Are there any Tribal Belts or Blocks in your Collectorate ?

If so, give the names and areas.

(b) What is the effect of Land Reform measures on the Tribal population in the Belts or Blocks ?

(c) Have lands been transferred by tribal agriculturists to non-tribals in the Belts or Blocks ?

If so, give the number of transfers and the total area of land transferred ?

67. Are there cases of allotted tea garden ceiling surplus lands being encroached upon by the tea gardens themselves ?

If so, give details.

68. Are there cases of encroachment by tea gardens on Governmentws lands ?

If so, give details.

PART V

LAND LAWS AND PROCEDURE

69. Do you suggest constitution of a specialised Land Tribunal to deal with land matters ?

If so, what should be its functions ?

70. Do you suggest that all the Land Laws of Assam be consolidated into one comprehensive selfcontained Code ?

71. Do you suggest a simplification in the present law and procedure in the matter of settlement of land disputes and appeals ?

72. Do you suggest any other improvement in the law of tenancy for furtherance of the interests of the tenants ?

73. Do you agree that the special cultivation grant lands should revert to the State as soon as they are converted by transfer or otherwise to uses other than those for which the grants were made ?

74. Do you suggest that all Rules concerning special cultivation grants require suitable amendments in this behalf ?

75. Do you suggest constitution of a Land Reforms Board at the State level for evaluating and guiding all Land Reforms Programmes in the State ?

Do you also suggest constitution of Land Reforms Committees at Collector's level for the same purposes ?

76. Do you suggest any change in the procedure for appeals and revisions under the Ceiling Act ?

PART VI

ADMINISTRATIVE REFORMS

77. What are the main difficulties you are facing in implementing the Land Reform measures in your Collectorate ?

78. Do you think that there is need for re-organisation of the Land and Revenue administration ?

If so, on what pattern ?

79. What do you think are the causes of inordinate delay in effecting mutations ?

How can mutations be updated and thereafter promptly maintained ?

80. Do you suggest any modifications in the Forms of the Chitha and the Jama-bandi ?

If so, in what lines ?

81. Do you suggest any improvement in the system of reconciliation of the record-of-rights maintained in the field, the Deputy Commissioner's Office and the Mauzadar's Office ?

82. What, in your opinion, has been the impact of the Land Reform measures on the peasantry of Assam ?

Notes :-Answers may be in English, Assamese or Bengali and should be precise but not laconic.

The Commission will welcome relevant opinions and suggestions even outside the question aire.

The answers, opinions and suggestions received by the Commission will be treated as confidential and will not be used for any purpose other than that of the Commission.

One may answer as many questions as one intends to, however Revenue Officers and Officials connected with Land and Revenue administrations are required to answer all the questions.

The answers to the questiononnaire are to be sent to the Secretary of the Commission, Uzanbazar (Riverside), Gauhati-1.

Individuals including Officials and organisations desiricus of appearing before the Commission may intimate their desire of doing so to the Secretary of the Commission.

The answers, opinions and suggestions sholuld be sent within 30th December, 1978 at the latest.

T. K. BORA,

Secretary, Land Reforms Commission,
Assam, Gauhati.

ANNEXURE 'G'.

The Land Reforms Commission, Assam publishes the following supplementary questions of question No. 66 of the Questionnaire published on 21.12.78 in the Assam Tribune inviting views, opinions etc., from interested individuals, institutions etc.

Views, opinions, suggestions should be sent within 20-7-79 at the latest on the following address :-

Secretary, Land Reforms Commission, Assam,
Uzanbazar (Riverside), Gauhati-781001.

Supplementary questions are :-

66 (d) Do you feel there should be any addition to, alteration and modification of the existing provisions in Chapter X of the Assam Land and Revenue Regulation, 1886 to give better protection to the protected classes ?

If so, please give your considered views.

(e) Do you consider that the inapplicability of the provisions of Chapter X to land for special cultivation is in violation of the interest of the protected classes for the very purpose of which Chapter has been specifically incorporated ?

(f) should any land in future be settled for special cultivation in a tribal Belt or Block ?

(g) Do you consider the present provisions of Chapter X of the Assam Land and Revenue Regulation and the Rules framed thereunder to be adequate for the purpose of getting unauthorised occupations vacated ?

If not, what are your suggestions ?

(h) According to the provisions of the Chapter X of the Regulation any permanent resident in a Belt or Block can legally acquire land from another such resident within the Belt or Block.

(i) Would you suggest any restriction on transfer of land in such Belts or Blocks by a Tribal or a person belonging to the Scheduled Caste Community to a person not belonging to any of such Communities ?

(ii) Would you also suggest any restriction on transfer by a person not belonging to the Scheduled Caste or Scheduled Tribe Community to any person permanently residing within Belts or Blocks ?

(I) Do you feel any necessity of amending the list of Classes of persons who are entitled to protection under Chapter X of the Assam Land and Revenue Regulation, 1886 ?

Sd/- **T. K. BORA,**

Secretary, Land Reforms Commission,
Assam, Gauhati-781001.

PART-(II)

PART-(II)

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Part II

CHAPTER VI

RIGHTS OVER LAND

6.1 Before the Assam Land and Revenue Regulation of 1886 came into force, the primary rights over land were governed and regulated by different Acts, Regulations and Rules in Assam. In order to make the administration of land smoother, all the different Laws, Regulations and Rules with suitable modifications were consolidated into one enactment, namely, the Assam Land and Revenue Regulation.

Primary rights.

6.2 The principal primary rights over land recognised under the Assam Land and Revenue Regulation can be divided into two broad categories, namely, (1) Rights of proprietors and (2) Rights of settlement holders.

Proprietors

6.3 Proprietors include the following categories of persons :

(a) Owners (Lakhirajdars) of land dedicated or appropriated to Idols or Temples by the Ahom Kings during their reign and held free of revenue.

(b) Persons who were granted settlement of estates under the provisions of the Bengal Decennial Settlement Regulation of 1793.

(c) Persons owing grants of land, free of revenue, for the purpose of special cultivation under the 45 years' Lease Rules of 1838 (also known as Waste Land Grant Rules), 99 years' Lease Rules of 1854 commonly called the Old Assam Rules, Fee Simple Grant Rules of 1862 and the Revised Fee Simple Rules of 1874.

Settlement holders.

6.4 Settlement holders hold their lands or estates under leases granted by the Government on payment of the revenue fixed thereon. The term "settlement holder" has a generic connotation and it includes within its ambit two classes of persons holding Land under leases issued by the Government. They are-(a) the land holders, and (b) the settlement holders, other than land holders.

Land holder.

6.5 A land holder is the owner of a temporarily settle estate who has obtained settlement thereof from the Government under a lease, the terms of which is not less than ten years.

Settlement holder othe than land holder.

6.6 Settlement holders other than land holders are those persons who have been settlement of land under a lease the term of which is less than ten years. In the rural areas of Assam the leases granted to settlement holders other than land holders are generally issued on annual basis.

Lakhirajdars.

6.7 The highest proprietory rights over lands are enjoyed by the Lakhirajdars and the owners of Fee Simple Grants for special cultivation. Next came the proprietors of the permanently settled estates, who had now ceased to exist with the acquisition of their estates under the Assam State Acquisition of Zamindaries Act, 1951.

6.8 The estates held by the Lakhirajdars on behalf of Idols and Temples free of revenue, have also been acquired under the relevant provisions of the Assam State Acquisition of Lands Belonging to Religious or Charitable Institution of Public Nature Act, 1959. The Assam State Acquisition of Land Belonging to Religious or Charitable Institu-

tion Act did not touch the Lakhiraj estates which are not of public nature. As a result, only a few Lakhiraj estates privately owned by individuals remained outside the purview of the above Act.

6.9 An estate in Fee Simple is the highest proprietory interest which a person may have in land. It is almost equivalent to absolute ownership.

6.10 A land holder as defined in the Regulation has permanent, heritable and transferable rights of use and occupancy in his land subject to the payment of all revenue, taxes, cesses and rates from time to time legally assessed thereon and the reservation in favour of the Government of all quarries and of all mines, minerals and mineral oils, and of all buried treasure with full liberty to search for and work the same paying to him only compensation for the surface damage as estimated by the Deputy Commissioner and the special conditions of any engagement into which the land holder may have entered with the Government.

6.11 A settlement holder other than a land-holder does not have a transferable and heritable right over his land. He only has a right of user.

6.12 As regards the proprietors of the Fee Simple Grants it appears that unlike in the case of land-holders, Government did not reserve their rights to buried treasure, mineral and mineral oils, etc. although they reserved the right to impose royalty for working them. But the legal position as regards their rights over mines and minerals, has undergone substantial change with the 44th Amendment to the Constitution of India (44th Amendment, Act 1978). Under Article 31A, as amended, the State has been empowered to make laws providing for the extinguishment or modifications of any rights accruing by virtue of any agreement, lease, or licence for the purpose of searching for or winning any mineral or mineral oil or the premature termination or cancellation of any such agreement, lease or licence. The State can, thus, take away or abridge any of the rights conferred by Article 14 or Article 19 of the Constitution.

Nisf-Khirajdars.

6.13 There is also another class of tenure holders who are called Nisf-Khirajdars. The emergence of Nisf-Khirajdars has a peculiar background. When the Britishers first made assessment of revenue on land, there was a plethora of claims from a large number of persons that the lands held by them were not liable to any assessment. The claimants in those cases, which were found to be genuine, were granted the land already held by them free of revenue, and these claimants came to be known as Lakhirajdars. Where the claims could neither be proved nor disproved, the claimants were allowed to retain possession of their lands on payment of half the revenue assessed on similar lands, and the owners of such estates were called Nisf-Khirajdars. Excepting the fact that they pay half of the revenue, basically their rights and obligations are similar to those of the land-holders.

Rationalisation of tenures.

6.14 The Commission feels that the existence of different kinds of tenures is neither conducive to better management of land and revenue administration nor is it in the interest of the public. The Commission is of the view that the number of tenures may be reduced and there should be only one kind of tenure, namely, that of a land-holder. We see no hindrance in doing away with Nisf-Khiraj tenures. Most of the Nisf-Khiraj lands have been alienated and they can be very well assessed at full revenue rates. They enjoyed the right of holding their lands at half the revenue rate as a matter of grace only.

Individual Lakhirajdars.

6.15 There is no reason why the few individual Lakhirajdars should be allowed to enjoy the land without payment of revenue. The Commission, therefore, recommends that step should be taken by Government to impose revenue at full rate on such lands, if necessary, by enacting a statute in the line of the Assam Assessment of Revenue Free Waste Lands Grants Act, 1948.

6.16 The Revenue Free Grants made under the different grant Rules have already been assessed to revenue with the enforcement of the Assam Assessment of Revenue Free Waste Land Grants Act, 1948. The definition of 'Proprietor' as given in the Regulation has lost much of its significance so far as these classes of persons are concerned. Persons, who have acquired rights over lands under the different grant rules, therefore, can very well be included in the definition of "Land Holders" instead of keeping them as a separate entity with a superior status which is, in fact, no longer there. In view of the above position, for all practical purposes, there are now only two classes of tenures namely those of land-holders and settlement-holders other than land-holders leaving the few cases of individuals who are still holding land free of revenue as Lakhirajdars. We have already suggested that the few Lakhiraj estates should be assessed to full revenue rate as has been done in the case of grantees of land held free of revenue.

6.17 Settlement-holders other than land-holders are given the status of a land-holder by giving them a periodic lease under Settlement Rule 13 on fulfilment of certain conditions. Since, by convention, succession to an estate under an annual lease has always received the tacit approval of Government, and the person succeeding to such an estate is given a fresh patta, we see no reason why settlement of land under annual leases should continue. The Government, vide their resolution on Land Settlement Policy of 1968, took a decision that all annual leases in the rural areas should be converted forthwith into periodic leases on payment of a premium provided that the land was fit to be made periodic. Subsequently, Government Land Settlement Policy Resolution of 1972 directed automatic conversion of annual patta lands beyond two miles of Municipal Towns. Henceforth premium could be realised afterwards as arrears of land revenue.

6.18 Separate cells were set up in all the Revenue Circles to complete the conversion of annual pattas into periodic. This policy of the Government gives a clear indication that settlement of land on annual leases was not favoured with.

Settlement-holder's right Reconciliation between the provisions of the Assam Land and Revenue Regulation and the Assam (Temporarily settled Areas) Tenancy Act.

6.19 Under the provisions of the Assam Land and Revenue Regulation a settlement holder under annual lease has no right to transfer or sublet his holding. On the contrary the Assam (Temporarily Settled Areas) Tenancy Act, 1971 gives legal recognition to tenancies creatd by the holder of an annual lease on his land. There is, thus, a contradiction between the provisions of the Assam Land and Revenue Regulation and the Assam (Temporarily Settled Areas) Tenancy Act, 1971 in respect of the right of transfer of a settlement-holder other than a land-holder. Furthermore, Government have, as a matter of policy, permitted the holders of annual leases to transfer their estates by way of mortgage in vavour of financial institutions for the purpose of securing loans. Therefor, the Land and Revenue Regulation should be amended suitably to bring conformity with the provisions of the tenancy law.

Abolition of annual lease

6.20 At this stage one important question arises for consideration, namely, the advantage or disadvantage of settling lands on annual lease. Experience shows that once land is settled by way of annual lease, such land is rarely taken over by the State by cancellation of the lease. On the other hand, the annual lease holders of land having very limited rights over the land do not feel secured and take proper care and interest over the land. As a result of inadequate utilisation of the land covered by annual leases agricultural production from such lands is hampered to a large extent, thereby affecting the agricultural economy of the State. The only advantage from the side of State Government is that such land can be taken back without payment of compensation for the land. However, such action will not be conducive to a progressive agricultural land policy. It is, therefore, recommended that the present procedure of settlement of land by annual lease should be discontinued as a general measure and that land should be settled on periodic basis. The same policy however, may not be applicable in case of settlement of land in Char areas, as such lands are not of established character and are often cultivated during the winter season only. Settlement in such areas may be made on annual lease and the lease should not contain any provision for renewal. Fresh settlement will have to be obtained for each succeeding year by way of annual lease. However, persons properly utilising such Char lands held by them under annual leases, should

be given preference in the matter of settlement of land for the succeeding year. In case of such lands, assessment of revenue should be done at a reasonably flat rate.

6.21 There are certain other lands held under peculiar terms and conditions :- namely, (1) Auniati Khat, (2) Bahi Khowa Phookon's Khats and (3) 'ten-twenty' estates, etc. The land of Auniati Khat was assessed on the cultivated portion only and measured annually. But these lands had since been acquired under the provisions of the Assam State Acquisition of Lands Belonging to Religious for Charitable Institution of Public Nature Act, 1959. The new allotees of the acquired land have acquired the rights of settlement-holders.

Other tenures withdrawal of concessions.

6.22 In case of the Bahi-Khowa Phookan's Khat (in the district of Nowgong) land must have been acquired under the relavant Act. In this case assessment was made on the cultivated portion of land only. Since the exemption of the Waste portions of the land was an act of grace shown to the original grantees for their personal services, there is no Justification for such concession in assessment to the transferes/successors. These should, therefore, be assessed to full revenue. All such Khats should be assessed to full revenue rates obtaining in the locality for similar class or classes of land.

6.23 Similarly, concession given to 'Ten-twenty' estates in the Sibsagar district should also be withdrawn and the estates converted into ordinary Khiraj lands.

CHAPTER VII

LAND SETTLEMENT POLICY.

Settlment of small plots wite individuals.

7.1 The Commission had the opportunity of going through the Land Settlement policies of the Government of Assam adopted from time to time, the last being in the year 1972 vide Resolution on Land Settlement Policy No. 223/72/Pt-1/1 dated 21.7.72. From this Resolution on Land Settlement Policy to be pursued by the Government, it appears that Government have taken a decision to stop settlement of agricultural land for ordinary cultivation on individual and co-operative basis. Instead, Government favoured formation of Agricultural Farming Corporations formed by eligible landless agriculturists, and for this purpose decided to make allotment of lands to such Corporations varying from 160 bighas to 800 bighas depending on the size of membership. While appreciating the idea of allotment of land to Farming Corporation, the Commission is of the view that the Resolution is wanting in making use of the smaller scattered plots of agricultural lands which, because of their situation, cannot be amalgamated to from either a compact block of the minimum size or conveniently tagged to a larger block. Such unsettled scattered lands are generally encroached upon by adjoining settlement holders who may have sufficient land already. These unsettled plots of land can very well be settled with the landless peasants of the locality by bringing suitable modification in the resolution.

Settlement with Co-operative societies.

7.2 Further, we have reasons to believe that due to various causes all the agricultural Farming Corporations are not working satisfactorily. We, therefore, feel that the riority earlier given for settlement of land with registered Co-operative Societies of actual landless cultivators should also be retained side by side with Farming Corporations.

Size of holding and productivity.

7.3 The policy adopted by the Government in the aforesaid Resolution leaves ont the creation of peasants proprietorship and small scale farming. While we are not unmindful to the advantage of large scale farming, settlement of land with individuals and Co-operative Societies in appropriate circumstances may not be done away with. It is seen hat the superiority of large scale farming over small scale farming is not universal. In some fields of Agriculture, a small scale farmer can successfully compete with a large scale farmer, for example, in vegetable growing, growing of cash crops etc., etc. The small scale farmer has the advantage of greater diligence and greater personal care, unlike a hired agricultural worker. In fact, the peasant proprietor always over works in his field and his consumption is more economical than that of a large scale farmer. Shri Amartya Sen, the noted economist, in his extensive studies of "Farm size and labour use" came to the conclusion about the inverse relationship between size of holding and productivity.

7.4 "In the average size-class data presented by the Studies in Economics of Farm Management it appears that by and large productivity per acre decreases with the size of the holding".*

This, he attributes to the fact that the "total amount of family labour applied per acre goes up remarkably as the size falls so that in spite of the fact that in some

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*"*Farm size and Labour use*". *Analysis and policy-Shri Amartya Sen and Shri Ashok Rudra published in the "Economic and political weekly"-Annual No.* 1980.

areas the amount of wage labour applied falls as the size gets smaller, the total amount of labour per acre is inversely correlated with the size of the farm. This is what one would expect due to the relative cheapness of family labour compared with wages labour, in the absence of alternative employment opportunity".*. A part from the economic and technical advantage, peasant proprietorship has one great advantge, namely, that of social peace, and stability. Every peasant proprietor with a parcelised economy, clings to the family, and his holding represents the only sphere in which the family is not subject to the dominion and exploitation by anybody. In fact, the members of the family devotes themselves to the development of the small holding, as on their efforts depends the future of their offsprings. In this state of affairs, the society composed of small peasant families will be stable and peaceful provided, of course, they are not deceived into abject poverty and destitution. However, for the purpose of conferring upon the peasant proprietors the advantages of scientific farming, efforts have to be made to encourage co-operative farming amongst them. The co-operative farming system will maintain the peasant proprietors in their holding till such time as they appreciate the benefit of closer co-operation and more scientific and improved methods of cultivation. Co-operation in agriculture has not so far succeeded but it has to succeed, otherwise the benefit of scientfiic and technical development cannot be fully derived by the peasant proprietors. Besides, "if a large co-operative farm operates on a non-wage family labour basis there is nothing in our observation to indicate that it will have a lower output per acre in fact, in Indian private-enterprise agriculture, a whole lot of subsidiary operations are wage-based, e.g. building canals, dams, etc. A co-operative farm might be able to include some of these activities within the non-wage sphere, at least up to a point, with a corresponding gain in efficiency".*

Rehabilitations, not settlemnt alone.

7.5 It is found that the peasant himself does not know the cause of his distress, hunger and destitution or how to rid himself from destitution. Peasants abandon their holdings because they possess no livestock, no money to purchase improved seeds, manure and other necessary articles. Under such circumstances, land given to him through land reform measures will be of no avail unless they can be provided with cheap ploughs and other inputs, cattle and credit. In other words, we suggest that the very concept of land settlement should be changed to one of rehabilitating landless persons either individually or, where possible, on co-operative basis.

LAND SETTLEMENT AND DEVELOPMENT.

7.6 As stated earlier, our Land Settlement Policy did not succeed in removing poverty from among the rural masses as landless people could not effectively be rehabilitated. No doubt, Government have given land to a large number of landless persons, but since no follow up assistance was made available to them for starting cultivation in the new areas and also for maintaining their families till the new harvest was made, a good number of them left the allotted area and again became landless. Thus, settlement of landless persons remained in paper. In this context we would like to refer to a very successful land settlement and development programme, known as the FELDA (Federal Land Development Authority) programme taken up by Government of Malaysia.

FELDA PROGRAMME.

Initially FELDA Programme was for accelarated land development and settlement. Later on, 'there was a greater awarness that land development and settlement involved more than just bringing in settlers and providing them with a piece of land. These settlers needed to be trained and motivated so that they could better utilise the opportunity afforded to them. Furthermore, FELDA itself had a role to play in safeguarding the fairest return to the settlers. This gave birth to the concept of giving the setters a "package deal". To-day FELDA is involved in, amongst other things, processing, marketing, retailing, transportation and security services'.*

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* *Farm size and Labour use". Analysis & Policy-Shri Amartya Sen & Shri Ashok Rudra published in the "Economic & Poitical Weekly"-Annual No.* 1980.

* *Macro view of R.M. ALIAS.*

7.7 In that scheme land is developed by the FELDA itself and the selected landless farmers and their families are put to the developed land and provided with necessary inputs so that the landless farmers encounter no difficulty in starting cultivation and maintaining themselves in the new areas. The settlers are brought into the FELDA Schemes and allotted economically viable farming units. Thus, "the settlers are transformed from the poverty group to non-poverty group". In these areas according to suitability of land, FELDA also developed plantation crops like rubber, palm oil, cocoa, coffee, besides usual crops like rice.

7.8 Government should seriously consider such schemes whether through departmental or other agencies and land settlement should not end on passing of the settlement orders by Revenue Officers. We think, the agency of Farming Corporations, with necessary modifications, can be geared up to push through such a programme of land settlement, development and rehabilitation.

7.9 We feel that settlement Rule 9 envisaging settlement of land with the applicant who has made the application first should be discontinued as he may not be one be one in the list of priorities.

Local Advisory Committee at Circle level.

7.10 Since land has become scarce, settlement of land should be made in consultation with a local Advisory Committee at the circle level and for this purpose there should be some provisions in the Settlement Rules.

Priorities for settlement in urban areas.

7.11 At present there are no detailed provisions indicating priorities for settlement of town land. As in the case of agricultural land, there should be a separate set of priorities for settlement of town land.

7.12 The following priorities are cited by way of illustration :-

(1) Applicant who has no land in the town or within two miles of it.

(2) Persons belonging to lower income group. For this purpose a definition of 'lower income group' would be necessary.

(3) Persons who are normally required to reside in the town because of service, profession and business.

Settlement of surplus land acquired under different Land Reform enactments.

7.13 The Land Settlement Policy of the Government adopted in the year 1972 under the Resolution referred to hereinbefore, which debars individual persons from obtaining settlement of land, is contradictory to the provisions of the ceiling law, and the Land for acquisition of land belonging to Religious or Charitable Institution of Public Nature under which settlement of land with individual persons is given high priority. The Commission, therefore, feels that the Land Settlement Policy pursued by the Government is not in harmony with the provisions of the laws mentioned hereinabove, and as such, the policy needs recasting so as to make it permissible to grant settlement of land to deserving persons and persons eligible under the different land reform laws.

Survey of waste lands.

7.14 In the present context of the uncertain position concerning the availability of waste land as defined under Rule 1(2)(b) of the Settlement Rules for the purpose of agriculture in its wider context, it has become imperative to ascertain the extent of such land still available for the purpose. The Commission, therefore, recommends that measures should be taken to find out such land available at the disposal of the State in each Circle. Immediate steps should be taken to prepare records with full details indicating the broad classifications made on the basis of prospective use of such land at the Revenue Circle level throughout the plains districts of State for drawing up a land-use programme.

7.15 The Records of waste lands having been prepared in the manner state above, an agro-based land settlement policy should be chalked out. The policy should clearly

spell out the size of the economic holding according to the nature of use of the land, first broadly dividing it into rainfed and irrigated areas. The size of the holding would naturally vary for ordinarily cultivation and for cash-crops.

7.16 A land settlement policy isolated from agriculture cannot yield the desired results for augmenting the entire spectrum of agricultural development, making fruitful use of all arable lands and the marshy lands available for pisciculture.

Focal points.

7.17 To make any land settlement policy successful, all kinds of facilities for agricultural development should be made available to the farmers by establishing "Focal Points", each five kilometers apart, which will be responsible for catering to the needs, both financial and material, of the agriculturists. The establishment and location of "Focal Points" in the State of Punjab has brought about remarkable progress in agriculture bettering the economic condition of the peasantry. The Commission has, therefore, no hesitation in recommending the creation of "Focal Points" in this State also. This measure would considerably cut down the distance, a cultivator has to traverse for obtaining financial assistance and his other needs like improved implements, fertilisers and pesticides and for solving problems he may be facing in his pursuits.

7.18 As per present land Settlement Policy of the Government nine bighas of land, one bigha for homestead and eight bighas for ordinary cultivation, in other than "Char" areas are generally considered to constitute an economic holding. In the "Char" areas, an economic holding may extend to twelve bighas.

Economic holding.

7.19 The Commission made an attempt to find out on what basis the size of the economic holding was fixed by the Government. From the replies received from the Government in the Revenue Department and Directorate of Economics and Statistics, it appears to the Commission that nine bighas of land, flat, in all the plains districts of Assam as an economic holding has been taken without any scientific consideration. The Commission feels that nine bighas of land as an economic holding throughout the State for all classes of land is not a correct proposition. The Commission feels that the Government policy determining the size of an economic holding at nine bighas may be reviewed and a decision may be taken after considering the relevent factors.

7.20 In the course of acquisition of ceiling surplus land, Government have acquired large areas which are not fit for ordinary cultivation. This situation appears to have caused a sense of frustration. The Commission, however, sees no reasons for disappointment. A sense of disappointment comes in when we think of agriculture as consisting of cultivation paddy only. These lands can very well be profitably utilised for other agricultural pursuits, namely, growing of cash and fodder crops as well as plantation crops. While making this observation the Commission has not lost sight of the fact that the cultivation of the crops other than wheat and paddy involves more outlay than what is necessary for ordinary cultivation. Obviously, therefore, the poorer section of the peasantry will be hesitant in taking settlement of such land. Here the Government must come forward to infuse a sense of keenness and security by adoptnig an aggressive co-ordinated programme for motivating them. Such a programme could only be organised by dovetailing the roles to be played by the Agriculture, Co-operation and Revenue Departments. Growing of cash crops will need a larger area of land to make it economically viable. The Commission would, therefore, reiterate its suggestion that the size of economic holdings should not be rigid. It should depend on the nature of the land and the type of crops to be grown making allowance for rotation of plantation.

Settlement for pisciculture.

7.21 Plots of marshy lands at the disposal of Government which are small enough to be declared as Government Fisheries, may be settled for undertaking pisciculture by intending applicants in consultation with the Fishery Department.

7.22 Agricultural development in the State, it is opined by some, has been stunted because of scarcity of land. The slow growth in agricultural development can, per-

haps, be attributed also to non-utilisation of land to its optimum capacity. Our aim is to ensure the best use of land. Even to-day as per statistics of the Agriculture Department, the intensity of agriculture is about 120. This shows we have not been able to do double cropping to the desired extent.

Maximum use of land.

7.23 In view of this fact, suitable provisions should be incorporated in the Settlement Rules making it incumbent upon the settlement-holders that minimum use of the land is made by them. The rules should further provide that if minimum use of the land is not made by a settlement-holder for a continuous period of three years, or he allows it to remain fallow for the same span of time, the patta may be cancelled by the Government except in times of natural calamities resulting in failure of crops, and settle such lands with other eligible persons. The Commission feels that this bit of legal compulsion will go a long way for contributing to optimum utilisation of land for the growth of agricultural production in the State.

Village Grazing Reserves & Professional Grazing Reserves.

7.24 Village and Professional grazing reserves were constituted under the provisions of the Assam Land and Revenue Regulation for the welfare of the cattle population in the State and to alleviate their distress in times of flood to which the state is very much prone. Cattle population in the rural areas are the dumb friends of the cultivators. In their role as such, they render mute but perceptible services to the cultivators. The importance of harnessing the services of the cattle population in a country like ours, where mechanisation of agriculture is still lagging far behind for economic upliftment of the rural populace, can hardly be ignored.

7.25 Since a long time past there has been dereservation of Village Grazing Reserves and Professional Grazing Reserves or parts thereof for one purpose or another. According to the Land Settlement Resolution of the Government of Assam adopted in the year of 1958, the total area of Professional Grazing Reserves and Village Grazing Reserves at that point of time, was 5,53,600 acres. From the Land Settlement Resolution adopted in the year 1972, it appears that the total area of Professional Grazing Reserves and Village Grazing Reserves at that time was 4,56,900 acres. From the Statistical Hand Book of Assam, 1978 it appears that in the year 1975-76, the total area of Professional Grazing Reserves and village Grazing Reserves stood at 4,51,890 acres. From the above, it appears that during the period of 17 years from 1958 to 1975, total area of Professional Grazing Reserves and Village Grazing Reserves in the State was reduced by as much as 1,01,710 acres. The reduction comes to 19% of the total area of the Professional Grazing Reserves and Village Grazing Reserves as existed in the year 1958. The rate of reduction in the area of such lands will, indeed, be very much more, if the de-reservation made prior to 1958 and after 1975 are taken into account In our State where no fodder crops are grown and stall-feeding of cattle has not yet become popular, the maintenance of Professional Grazing Reserves and Village Grazing Reserves in the best interest of the cattle population, is a must. We cannot keep our eyes shut to the far reaching adverse consequences, if the Professional Grazing Reserves and Village Grazing Reserves dwindle in area under official edicts.

7.26 The Commission is very much pained by the lackadaisical policy adopted by the Government in respect of the Professional Grazing Reserves and Village Grazing Reserves. The Commission feels that the dereservation of the existing Professional Grazing Reserves and Village Grazing Reserves should be severely restricted in future.

7.27 Under the resolution on land settlement policy adopted in the year 1968, it was decided by the Government that the existing areas under Village Grazing Reserves and Professional Grazing Reserves will not be reduced save in exceptional circumstances Government, however, felt that serious attempts should be made to encourage cultivation of fodder crops in the Village Grazing Reserves under schemes to be implemented through village panchayats. Furthermore, Government also decided that small committees should be constituted for protection and maintenance of the Village Grazing Reserves and to advise ways and means to prevent encroachments. Government also decided that all encroachments in forests, grazings and other reserves should be dealt with firmly and

expeditiously. This resolution was in the right direction but unfortunately, it appears to the Commission that the resolution was not properly implemented.

7.28 From the report received by the Commission from the Director of Veterinary and Animal Husbandry, Assam (vide letter No. VET/ STAT/8/6, 2796 dt. 26.12.78) the Commission has come to know that whatever of the Professional Grazing Reserves and Village Grazing Reserves is left in the State is not well maintained. Things have come to such a pass that one acre of land of the existing Professional Grazing Reserves and Village Grazing Reserves is not sufficient to feed even 3 adult cattle, in a State where the total number of cattle is 56,33,434. It, therefore, appears that the total grass production in the Professional Grazing Reserves and Village Grazing Reserves is quite insufficent to feed the total cattle population in the State.

No more dereservation of Professional Grazing Reserves & Village Grazing Reserves

7.29 The Commission would, therefore, recommend that Government should cry halt to the process of dereservation of Professional Grazing Reserves and Village Grazing Reserves and come forward to maintain these Reserves by formulating schemes for intensive growing of high yielding varieties of grass or other fodder crops.

Quick eviction in Village Grazing Reserves & Professional Grazing Reserves.

7.30 In this connection the Commission notes with regret that owing to lack of vigilance on the part of the land records staff, the Professional Grazing Reserves and the Village Grazing Reserves have become a merry ground for encroachments which have resulted in further curtailment of their areas. It is time that the Government took firm measures to evict the encroachers from the Village Grazing Reserves and Professional Grazing Reserves. Else, encroachements will continue unabated and snow-balling, it will make the already difficult problem assume such a big proportion that the Government will be hard put to tackle it without involving itself in a law and order situation.

7.31 There are large tracts of land in the areas acquired under the ceiling law, where ordinary cultivation is not possible. The Commission would recommend that Government may examine the possibilities of constitution of new grazing reserves in such areas.

Alienation of land to the foreigners.

7.32 The Commission finds that the Government of Assam, of late, have enacted the Assam Alienation of Land (Regulation) Act, 1980. Under this Act restriction has been imposed on alienation of land to foreigners.

7.33 The definition of "alienation" in section 2 of the Act means 'transfer of land by sale, mortagage, lease, exchange, gift, will or otherwise'. Normally "lease" means a lease, the execution of which, is governed and regulated by the provisions of the Transfer of Property Act. The intention of this piece of legislation, the Commission feels, is also to preclude the leasing out of agricultural land by proprietors and settlement holders to foreigners. Since the provisions of the Transfer of Property Act do not apply to agricultural leases, which are governed by the provisions of the Assam (Temporarily Settled Areas) Tenancy Act, 1971, the definition of the word 'alienation' as defined in the Act of 1980 could be incorrectly interpreted to mean only the leases other than those issued under the Tenancy Law. In order to provide a safeguard against such misleading interpretation resulting in making the provisions of this Act ineffective in respect of agricultural leases, the Commission would suggest that the definition of the word 'alienation' occurring in section 2 of the Act may be re-defined to include leases creating agricultural tenancies.

Definition of land.

7.34 The definition of "land" given in section 2(b) is an inclusive definition. As such the Commission feels that the definition of the word 'land' may be elaborated so as to include land which is used for agriculture, horticulture, pisciculture, and arboriculture.

Complete Restriction on alienation of agricultural land to foreigners.

7.35 The Commission also feels that the restriction on alienation to foreigners of agricultural land should be made absolute in the greater interest of rural people.

7.36 The Commission would also suggest that in case of according previous sanction to alienation of non-agricultural land under section 4, the collector should record his reasons for doing so.. A clause to this effect may be introduced as sub-clause (c) to section 4.

7.37 The Assam Alienation of Land (Regulation) Act, 1980 applies to alienation made by persons who are holding land as proprietors and land-holders. There are no provisions in the Assam Land and Revenue Regulation prohibiting the settlement of land by the Government to foreigners. The Commission feels that no settlement of Government land should be offered to foreigners. This, in our view, is quite fair as the foreigners are not entitled to State patronage.

7.38 Some vagueness in the Assam Alienation of Land (Regulation) Act, 1980 exists as to whether the provisions of the Act extend to cover cases of transfer of tenancies by tenants to foreigners. Although it has not been stated in the Act in so many words, by implication, tenanted land cannot be transferred by the tenants to foreigners. Instead of leaving the matter to be judged by implication, the Commission feels it would be wiser and safer, if some specific provision is made in the Act itself prohibiting transfer of tenancy rights by tenants in favour of foreign nationals.

No alienation of tenant's right to foreigners.

7.39 In view of the existence of a large number of landless agriculturists in the State, provisions should be incorporated in the Tenancy Act also debarring land owners from creating tenancies in favour of foreign nationals. The needs for such a provision has become imperative as under the provisions of the Tenancy Act, tenants can now acquire the permanent rights of landowners.

CHAPTER VIII

DEFINITIONS OF SOME IMPORTANT TERMS.

8.1 The Assam Land and Revenue Regulation, 1886 is a primary land legislation. It is, therefore, desirable that all the definitions contained in the different land legislations but not included in Chapter I of the Regulation should now be included. This will bring in uniformity amongst the different land laws, and remove possibilities of confusion and misinterpretation. The Commission, in particular, would like to have the definitions of the following terms given in the Regulation :-

(i) 'Land', (ii) 'Landless person', (iii) 'Tenant', (iv) 'Agriculture', (v) 'Agriculturist', (vi) 'Joint family', (vii) 'To hold land', (viii) 'Owner', (ix) 'Orchard', (x) 'Personal cultivation' and (xi) 'Town land'.

'Land'

8.2 The definition of 'land' has not been given in the Assam Land and Revenue Regulation. A definition of 'land' is necessary to avoid any confusion particularly on the eon stion whether land covered with a sheet of water fallswithin the meaning of the definition of 'land' or not. We, therefore, suggest that 'land' may be defined as below :-

> " Land' means a portion of the earth's surface whether or not under water and includes standing trees".

Landless person.

8.3 The Commisition recommended in Part I of its Report (Chapter II) that 'landless person' should be defined in the Assam Fixation of Ceiling on Land Holdings Act, 1956 itself instead of including it under Explanation to section 17(2) of the Act. The explanation of 'landless person' given under section 17(2) of the Act, does not take into consideration land held by other members of a joint family. With a view to plugging this loop-hole, we suggest a definition of 'landless person'.

The proposed definition would also keep the prescribed area flexible instead of three bighas as firmly mentioned in the definition of 'Landless cultivator' under the Assam Fixation Ceiling on Land Holdings Act, 1956.

> " 'Landless person' for the purpose of settlement of agricultural land, means a person who is a bonafide agriculturist and who, whether individually or jointly, with other members of his family, holds no land or land less than the area which may be prescribed by the Government in this behalf, whether as owner or tenant.
>
> 'Landless person', for the purpose of settlement of homestead land, means a person, who, whether individually or jointly, with other members of his family holds no homestead land".

'Tenant'

8.4 The term 'tenant' has been differently defined in the Assam Fixation of Ceiling on Land Holdings Act, 1956 and the Assam (Temporarily Settled Areas) Tenancy Act, 1971. We feel that the two definitions of the term in these two Acts should be resolved and it may be defined as follows :-

> " 'Tenant' means a person who cultivates or holds land of another person under an agreement, expressed or implied, and is, or but for a special contract, would be liable to pay rent for that land to the other person and

includes a person who cultivates the land of another person on condition of delivering a share or quantity of the produce of such land to that person. It also includes his heirs, and legal representatives, and person or persons deriving rights from such persons".

8.5 The Commission has suggested the definitions of the remaining terms in different Chapters of Part I of its Report. The Commission feels that codification of different land Acts will have to be brought under one Land Revenue Code sooner or later. It will, then, be necessary to collate the different definitions under one chapter of the contemplated code. This will involve sorting out of minor differences in the definitions of the same terms appearing in different Acts. Furthermore, absence of the definitions of some of the terms in the Assam Land and Revenue Regulation has left room for various interpretations. It will, thus, be expedient to adumbrate all the definitions of the important terms together in the contemplated code only. In order to enable one to make reference to these definitions appearing in different parts of its Ist Report easier, they are stated below :-

'Agriculture' –" 'Agriculture' includes horticulture, raising of crops, fodder or thatching grass, or garden produce, dairy farming and cattle breeding and grazing, pisciculture but does not include cutting of wood only".

'Agriculturist' –" 'Agriculturist' means a person who earns his livelihood wholly or mainly from agriculture and includes an agricultural labourer or a village artisan".

'Joint Family' –" 'Joint Family' means a family of which the members are descendants from a common ancestor and have a common mess, and shall include wife and/or husband, as the case may be, but shall exclude married daughters, married sons and their children and also unmarried adult sons and unmarried adult daughters if they are living separately or have separate messess".

'To hold land' –" 'To hold land' with its grammatical variations and cognate expressions, means to own land as owner or to possess or enjoy land as possessory mortgagee or as tenant or as intermediary or in one or more of these capacities".

'owner' –" 'Owner' means proprietor, land-holder or settlement-holder as defined in section 3 of the Assam Land and Revenue Regulation, 1886 (Regulation 1 of 1886) and any person who has legally derived any right from them, but does not include the Government".

'Orchard land' –" 'Orchard land' means specific piece of land in any part of the State having citrus or other fruit bearing trees planted thereon in such numbers that they preclude, or, when full grown, will preclude, such land or any considerable portion thereof from being used primarily for any other agricultural purpose; and the trees so planted shall constitute an orchard; and the holder of such land shall be an orchard holder".

'Personal cultivation' – " 'Persnnal Cultivation' means cultivation by a person of his own land on his own account, (a) by his own labour, or (b) by the labour of any member of his family, or (c) by servants or labourers on wages payable in cash or in kind or both".

'Town land' –" 'Town land' means any land within an area declared or deemed to be a Municipality or notified area under the Assam Municipal Act, 1956 or within the Gauhati Municipal Corporation constitued under the Gauhati Municipal Corporation Act, 1969 or any other land which the State Government may declare under the Assam Land and Revenue Regulation 1886 (Regulation I of 1886) or under provisions of the Assam Land Revenue Reassessment Act 1936, to be town land".

CHAPTER IX

SETTLEMENT, REGISTRATION AND PARTITION.

A. SETTLEMENT

Declaration of State's right over all lands.

9.1 It has been noticed that although all lands belong to the State Government, it has not been clearly spelt out anywhere in the Regulation. However, barring the case of Lakheraj estates, in all other cases, mines, quarries minerals and forests, reserved or not, and all rights in the sub-soil in any land are the property of the State Government.

9.2 We, therefore, suggest that there should be a provision in Chapter II of the Regulation to this effect. It may be provided before the existing section 4 of the Regulation as follows :-

(1) All lands belong to State Government and it is hereby declared that all such lands, including standing and flowing water, mines, quarries minerals and forests, reseved or not, and all rights in the sub-soil in any land are the property of the State Government.

Provided that nothing in this section shall be deemed to affect any right of any person subsisting at the coming into force of this Regulation in any such property.

(2) Where dispute arises between State Government and any person in respect of any right under sub-section (1), such dispute shall be decided by the Deputy Commissioner.

(3) Any person aggrieved by any order passed under sub-section (2), may institute a Civil Suit to contest the validity of the order within a period of one year from the date of such order.

(4) Where Civil Suit has been instituted under sub-section (3) against any order, such order shall not be subject to appeal or revision. Where no Civil Suit has been instituted, the person aggrieved may prefer an appeal or revision, as generally prescribed in the Regulation'.

9.3 As regards rights and tenures, the Commission has already suggested rationalisation of different tenures in details in Chapter VI.

Integration of provisions of the different assessment Acts.

9.4 It appears that in the Assam Land and Revenue Regulation only the broad features of settlement operation are given in Chapter III. We think that the provisions of the Assam Re-Assessment Act, 1936 and those of the Assam Assessment of Revenue Free Waste Land Grants Act, 1948 may be integrated to cover assessment of land revenue on all kinds of estates. In fact, the Commission finds that the procedure of assessment for Revenue Free Waste Land Grants under the Assam Assessment of Revenue Free Waste Land Grants Aet, 1948 is slightly different from the normal procedure laid down in connection with district re-settlement operation. In case of Waste Land Grants, the grantees are required to submit returns of the assessable area together with a map of each grant prepared by an approved surveyor. Thus, the basis of assessment would be the assessable area and maps submitted by the grantees to the Assessment Officer. Whatever justification there may have been in the case of first assessment, operation, it no longer holds good for subsequent re-assessment of land revenue done along with district re-settlement operation.

9.5 In our view in all subsequent operations the maps of the grants should be prepared by the Survey Officers appointed by the Government as in the case of other areas. If this is accepted, both the operations will be integrated; and can be done under the authority of one Notification under section 18(1) of the Assam Land and Revenue Regulation.

9.6 Similarly, we also feel that there should be a Chapter on Land Records so that important provisions of the Assam Land Records Manual, which do not appear to have the force of law, can be given statutory authority. This should particularly include the rules regarding maintenance of land records at the Circle level, and statutory duties of the staff in that context.

B. REGISTRATION

9.7 Chapter IV of the Assam Land and Revenue Regulation is an important chapter in the matter of land revenue administration. The provisions of this chapter and the Rules framed thereunder read with the relevant instructions contained in the Assam Land Records Manual provide an exhaustive procedure for the maintenance of record-of-rights up-to-date.

Delay in mutation-effect thereof.

9.8 During our tours and discussions in course thereof with non-officials and officials, it came to our notice that a large number of mutation cases are pending in in different circles. This is, indeed, very unfortunate. Owing to inordinate delay and slow progress made in maintaining the record-of-rights up-to-date, lot of complications have arisen. This has particularly affected the poor farmers when they approach different financial institutions for obtaining loans, but fail to do so, because the record-of-rights have not been corrected up-to-date. Failure to maintain the record-of-rights up-to-date leads to litigation which the farmers can ill afford. Besides, non-updating of the re-record-of-rights results in lot of complications and confusions in the matter of collection of land revenue.

9.9 Government of India was very much alarmed at this state of affairs and evolved schemes for updating the record-of-rights throughout the State. One of such schemes was to reduce the size of the existing recorders' lots in order to enable a recorder to cope with the volume of work connected with the maintenance of record-of-rights. As a result of this scheme, the strength of recorders in each revenue circle has been doubled where found necessary, and the number of circles has also been increased as a part of the same scheme for efficient and, smooth management of land and revenue administration The Commission painfully observes that in spite of the measures taken with a view to bringing about improvement in the entire sphere of land revenue administration, the vital work of maintenance and updating of the record of rights still remains neglected. The Circle Officials met by the Commission attributed this to their overwhelming preoccupations with matters not connected with land revenue administration and as a result they could not give undivided attention to land records work.

9.10 The Commission does not feel inclined to agree with the reasons given by the Circle Officers. The Commission had the opportunity of examining the tour diaries of some Circle Officers . In most of the cases, as revealed by the tour diaries, the Circle Officers were assigned duties of maintaining law and order for not more than four to five days, in the average in a month. There is a noticeable disinclination among the Officers and land records staff to visit the fields for summary mutation as enjoined upon them by the provisions of the Assam Land Records Manual.

9.11 The law directs the land-holders to apply to the Deputy Commissioner for registration of their names in the event of transfer or succession within six months from the date of taking over possession or assumption charge.

Enforcement of the penal provision section 58.

9.12 There is a penal provision in section 58 against the land-holders who fail to apply for registration of their names within the specified time. They are not only liable to pay a fine, but also to a daily fine, which may be imposed by the Deputy Commissioner. This provision of law has rarely been enforced. The Revenue Officers should strictly enforce the penal provisions so that the transferee landholders become more alert. Things could reach such a dismal state of affairs only because supervisory revenue authorities at District and Sub-Divisional levels do not appear to have performed their statutory duties.

9.13 In order to give relief to the common people in the rural areas, many of whom are illiterate, the Assam Land and Revenue Regulation has provided a simple mode of mutation under section 53A, which is popularly known as Chitha Mutation. Chitha Mutation can be done by the Deputy Commissioner on his own motion on the basis of information received regarding any transfer/succession taking place in respect of any estate or part therof. Government may prescribe disposal of a minimum number of such cases.

Provision for giving information of transfer by Sub-Registar.

9.14 The Commission further feels that if provision is made in the Registration Act for giving information by the Sub-Registrar to the Deputy Commissioner, of any transfer at the time of registration, it will be easier for the Deputy Commissioner to proceed with field mutation cases on the basis of such information.

Government may therefore examine introduction of necessary provisions in the Indian Registration Act.

C. PARTITION

Partition of grants.

9.15 The existing definition of 'partition' shows that it is applicable only to revenue paying estates. The Assam Assessment of Revenue Free Waste Land Grants Act 1948 has brought Revenue Free Grants under assessment. Still then, lot of confusions exist as to whether partition can now be effected in these cases also. The problem has become acute in Gauhati where erstwhile revenue free estates/grants have been divided into thousands of small parcels of holdings owning to frequent transfers. The use for which the grant was originally favoured, is no longer there, and the plots are used for ordinary homesteads or commercial purposes. Restriction of partition has created a piquant situation in a smuch as the small proprietors are not in a position to pay land revenue separately for their own holdings. This has resulted in an unhappy position regarding payment of land revenue. It is, therefore, expedient to redefine partition by allowing partition of erstwhile revenue free estates/grants which, as pointed out earlier, are no longer revenue free estates by virtue of the effect of 1948 Act.

Modification of restriction condition.

9.16 The Commission also suggests that the restriction to partition should be in terms of a minimum area, rather than a minimum amount of revenue as provided under the existing law. This will be in consonance with the spirit of the provisions of the Assam Consolidation of Holdings Act. Secondly, in case of urban lands, the minimum area may be the area prescribed for the minimum holding under the provisions of the Bye-laws framed under the Assam Municipal Act, 1956 or the Gauhati Municipal Corporation Act 1969.

Delegation of power to effect partition.

9.17 While discussing with some of the district officials, it had come to the notice of the Commission that inordinate delay occures in effecting partition of estates mainly because records are to be sent to the circles not only for estimating the cost of survey and partition and preparation of allotment papers but also for enquirey into any point raised regarding possession of particular plots etc. etc. After every enquiry on such matter, the papers again have to come back to the Deputy Commissioner for disposal. The Commission considered how the entire process could be expedited, if necessary, by suitable delegation of powers of the Deputy Commissioner, In this context, Commission finds that Executive Instruction No. 29 issued by the Government of Assam under the Assam Land Revenue Re-assessment Act, 1936 and embodied in the Assam Resettlement

Manual, (2nd Edition, 1948) enables the recorder during re-settlement operations to effect partitions amicably where co-sharers do not object, or where there is no dispute about possession. Such recording of partition in course of attestation comes under the scrutiny of the Assistant Settlement Officer. Thus the power of partition has already been delegated, by implication, to the Assistant Settlement Officer during re-settlement operation No doubt this provision has helped in effecting partition quickly in large number of cases where there is no dispute or objection. The Commission feels that even in normal times when the district is not under re-settlement operation, the Act or Rules may provide delegation of powers of the Deputy Commissioner to effect partition to the Sub-Deputy Collectors. The public will be greatly benefitted as with the amendment suggested, application for partition can be filed before the Sub-Deputy Collectors for disposal. At present, even though under section 126 of the Regulation, the power of Deputy Commissioner to effect partition has been given to the Sub-Divisional Officer yet it requires the confirmation of the Deputy Commissioner before it becomes final. Here, too, we think, delegation of power to Sub-Divisional Officer should be absolute without any requirement of confirmation; but our suggestion goes further.It is suggested that the power to effect partition should be delegated to the Circle Sub-Deputy Collector. In that case, Regulation should clearly provide a forum for appeal.

CHAPTER X

RECOVERY OF ARREARS OF LAND REVENUE AND MODE OF RECOVERING THEM.

10.1 Chapter V of the Assam Land and Revenue Regulation 1886 deals with arrears of land revenue and the manner of recovering them. While considering the provisions of this Chapter, a question arose before the Commission whether the provisions of this Chapter should be amended so as to give adequate relief to the defaulters in the matter of retaining their land and providing a much easier procedure for moving the authorities for cancellation of sale of their estates for realisation of arrears of land revenue. The Commission applied its mind to this question in view of the fact that most of the cultivators owing land belong to the economically backward classes of the society.

10.2 Under section 78A of the Assam Land and Revenue Regulation , a defaulter may apply to the Deputy Commissioner on or before the sixtieth day from the date of sale, observing the conditions laid down therein for setting aside the sale of a defaulting estate. There is a widespread general complaint that malpractices are very often resorted to by unscrupulous persons, by various ways, to suppress or conceal the fact of institution of land sale cases in order to grab other's land at a nominal price. Besides, due to improper maintenance of records and sometimes delay in disposal of mutation cases, records do not reveal up-to-date position, and notices of sale are issued to old pattadars as a result of which actual owners remain in dark about such proceedings and fail to take proper steps. Thus, even when proper procedure is followed, hardship may be caused unwittingly to the actual owners.

10.3 From the information gathered from the Board of Revenue, the Commission found that land sale cases formed the major portion of the total number of cases instituted in the Board of Revenue. The Commission further found that in 90% of the land sale cases, sales were set aside by the Board of Revenue on ground of hardship.

Minimum reserved price for auction sale.

10.4 It was also brought to the notice of the Commission that the present Rule 141 for recovering arrears, which enables the Government to purchase the defaulting estate for want of bidders at a token sum of Re. 1/- is inherently harsh. Considering the increasing value of agricultural land, it is desirable to have a minimum reserved valuation of the defaulting estate below which sale should not be resorted to. Even when there is no bidder and Government decide to purchase the defaulting estate, the defaulter should be entitled to the reserved price less the arrear of land revenue and the cost of the proceedings. The reserved price should normally be at least 25% of the market value, The principle of keeping a reserved price should be made applicable generally in all land sale cases and no bid below the reserved price should be accepted.

10.5 This suggestion has been made with a view to minimise the sale of agricultural land for arrears of land revenue through collusive action of land grabbers.

Section 78A and section 79

10.6 The Commission also feels that the period of limitation of sixty days mentioned in section 78A and section 79 of the Regulation is rather short. Now-a-days, a large number of people move to other places in pursuit of their means of livelihood. In fact, constant shifting of population takes place within the country in connection with business, profession, industry, etc. Quite often, they may not be aware of the institution of cases for sale of their estates for default as they may not be available in the address

given in the record-of-rights. Given better opportunity many of them would be very eager to clear the arrear under section 78A. If the period of limitation of sixty days is increased to say one hundred and twenty days, many of them will be able to tak steps under either of the provisions of sections 78A or 79 before the Deputy Commissioners themselves.

This will reduce the volume of applications for annulment of sale before the Board of Revenue under section 81 of the Regulation and may also reduce litigation in the Civil Court under section 82.

10.7 Sometimes opinion is aired that since the note below section 79 makes it mandatory on the part of the applicant to deposit a sum of money sufficient to cover the arrears of revenue for which the estate is sold, the cost of sale and the claim for interest etc., there is virtually no difference between provisions of section 78A and section 79. The Commission had gone through the provisions of these two sections. In its view, the nature and purpose of these sections are not identical. Under section 78A not only the person interested but any friend of his can make necessary deposit, and as soon as the deposit is made the Deputy Cojmissoner has no option but to set aside the sale. Under section 79, the applicant must question the order on the grounds of some material irregularity or mistake in publishing or conducting the sale. Only when the Deputy Commissioner is satisfied of the grounds mentioned by the applicant, he may set aside the sale. The Commission feels that when the sale is set aside, there is no justification for taking the cost of the land sale case or claim for interest from the defaulting land-holder. In fact, motivations of the applicant under the two sections are not the same as in the latter case the regularity or bonafide of the order is questioned. We, therefore, think that notes (i) below section 79 directing the applicant to deposit interest, cost of sale etc. amounts to unnecessary restraint or burden on the applicant and should, therefore, be deleted.

10.8 The Commission finds that the origiral Assam Land and Revenue Regulation contained the following in section 68 :-

"68. Notice of demand :-

When an arrear has accrued not being an arrear in respect of a permanently settled estate, a notice of demand shall be issued by the prescribed Officer calling on the defaulter to pay the amount within a time specified therein ; and none of the processes for enforcing payment in this chapter shall be issued against him unless he fails to pay the amount within the time so specified".

10.9 This provision was substituted by the Amendment Act of 1905. The present section provides as follows :

"68. (1) When an arrear has accrued, an additional charge by way of penalty not exceeding one rupee may be levied,

(2) If the arrear is not in respect of a permanently settle estate, the prescribed officer may in his discretion, before employing any of the processes for enforcing payment prescribed by this chapter, issue a notice of demand, calling on the defaulter to pay the amount within a time specified ;

Provided that, in such classes of cases, not being cases in which an arrear has accrued in respect of a permanently settle estate, as the (State) Government may direct in this behalf, the prescribed Officer shall not employ any such process for enforcing payment as aforesaid, until he has issued a notice of demand and the defaulter has failed to pay the arrear within the time specified in such notice".

Restoration of provision for issue of notice of demand.

10.10 The Commission finds that the provisions of the old section 68 directed that prior to resorting to co-ercive measures a notice was required to be served on the defaulter. This give the defaulter an opportunity to clear his arrears within the stipulated time. The existing law made the issue of notice discretionary and thus may deprive

the defaulter of an opportunity to satisfy his dues before commencement of co-ercive measures. The Commission feels that the old provision, where service notice of demand was mandatory, was fair and equitable and should be restored.

The application of section 69 should be made mandatory.

10.11 Since some years past, estates are straightway sold for arrears of land revenue under section 70 without resorting to the provisions of section 69 regarding attachment and sale of moveables. Even at a time when collection of land revenue was an important function of the Collector to augment the State's Coffer, a defaulting estate was hardly ever put to sale under section 70 of the Regulation without taking recourse to section 69. The framers of the Regulation knew fully well, then, that direct application of the provisions of section 70 would be like putting the last straw in breaking the camel's back. At present, when we are very much concerned with the welfare of the peasantry knowing that most of them find it difficult to make both ends meet, direct application of the provisions of section 70 strike a discordant note. The Commission, therefore, feels that the application of the provisions of section 69 should be made a condition precedent to sale of any defaulting estate for arrears of land revenue.

10.12 Under second proviso to section 79 of the Regulation, non-delivery or misdelivery of a notice despatched under sub-section 5 of section 72 is not to be construed as an irregularity or a mistake as a result of which defaulter has sustained substantial injury. The Commission fails to understand the logic behind this proviso. It can hardly be denied that if a sale takes place without the knowledge of the defaulter or without having any notice issued against him, great hardship or injustice is caused to him. The deletion of this proviso is also warranted by the fact that no honest effort is sometimes made to effect personal service of such notice on the defaulter.

CHAPTER XI

POWERS OF OFFICERS.

11.1 The Land Revenue Regulation does not give an exhaustive list of Revenue Officers. Section 123 mentions only the Commissioner of a Division, Deputy Commissioner, Assistant Commissioner and Extra Assistant Commissioner.

11.2 In our view thissection should contain an exhaustive list of Revenue Officers. Accordingly we suggest that section 123 be amended as follows :-

List of Revenue Officers.

There shall be the following classes of Revenue Officers, namely :-

(1) Commissioners.
(2) Collectors (including Additional Collectors).
(3) Deputy Commissioners (including Additional Deputy Commissioners),
(4) Settlement Officers.
(5) Sub-Divisional Officers (including Sadar Sub-Divisional Officers)
(6) Assistant Commissioners.
(7) Extra Assistant Commissioners,
(8) Senior Assistant Settlement Officers.
(9) Assistant Settlement Officers.
(10) Sub-Deputy Collectors.
(11) Tahsildars.
(12) Mauzadars.
(13) Revenue Nazirs (including Naib Nazirs).'

11.3 Under section 125 the State Government is given power to divide any district into sub-divisions and also to alter the limits of a sub-division. Nowhere in the Regulation or any other Act could we find provisions empowering the State Government to Commissioners Divisions and Districts, In the recent Notification of the State Government creating new districts, the power exercised was not mentioned in the Notification. Obviously such a power must be given to the State Government under a statute preferably under the Assam Land and Revenue Regulation 1886. To fill up this deficiency, the Commission recommends amendment of the existing section 125 as under :-

Power to create new Divisions and Districts.

125 "125 (1) The State Government may, for the purposes of this Regulation

(a) create Divisions comprising of such districts as it may deem fit and may abolish or alter the limits of such divisions;

(b) create new or abolish existing districts and may alter the limits of any district;

(c) divide any district into sub-division or make any portiion of a district a sub-dividion, and may alter the limits of a sub-division ;

(d) divide any sub-division into circles and tahsils, create a new circle and and Tahsil or abolish existing ones or may alter the limits of any circle or Tahsil".

11.4 There should also be a provision in section 125 for eliciting public opinion before finalising any proposal for creation/alteration/abolition of any Division/District/Sub-Division/Circle/Tahsil. At present there is no provision for publishing any such proposal for inviting objections from public,

11.5 There should also be a clear provision for appointment of a Commissioner, Additional Commissioner, Deputy Commissioner and Additional peputy Commissioner.

Provision for appointment of Commissioner Divisions, Deputy Commissioners etc.

Following provisions may be made in this context in place of the existing section 125(1)(b) and (2) :-

"(1) The State Government shall appoint in eaeh Divisions, a Commissioner, who shall exercise therein the powers and discharge the duties conferred and imposed on a Commissioner by or under the Regulation, or by or under any other of enactment for the time being in force.

(2) The state Government may, subject to such conditions, as it may deem fit to impose, by Notification, confer upon the Commissioner any of the powers or functions assigned to the State Government by or under any enactment for the time being in force.

(3) (a) State Government may appoint an Additional Commissioner in a Division or in two or more Divisions ;

(b) Additional Commissioner shall exercise such powers and discharge such duties conferred and imposed on a Commissioner by or under the Regulation, or by or under any other enactment for the time being in force in such cases or class of cases as the State Government may, by general order, notify or as the Commissioner or a Division may, subject to any general or special restrictions imposed by the State Government by an order in writing direct.

(4) The State Government shall appoint in each district a Deputy Commissioner or a Collector who shall exercise therein the powers, and discharge the duties conferred and imposed on a Deputy Commissioner or Collector by or under the Regulation or any other enactment for the time being in force.

(5) (a) The State Government may appoint one or more Additional Deputy Commissioners or Additional Collectors in a district;

(b) an Additional Deputy Commissioner or an Additional Collector shall exercise such powers and discharge such duties conferred and imposed on a Deputy Commissioner or a Collector by or under this Regulation or by or under any other enactment for the time being in force, in such cases or class of cases as the State Government may, by a general order, notify or as the Deputy Commissioner or Collector of the district may, subject to any general or special restrictions imposed by the State Government by an order in writing direct.

(6) The State Government may appoint for each sub-division, a sub-divisional Officer who shall exercise therein such powers and discharge such duties conferred or imposed on a Deputy Commissioner or a Collector by or under the Regulation or any other enactment for the time being in force, in such cases or class of cases as the State Goverment may, by a general order, notify or as the Deputy Commissioner or Collector of the district may, subject to any general or special restrictions imposed by the State Government, by an order in writing direct.

(7) The State Government may appoint as many Assistant Commissioners and Extra Assistant Commissioners as it thinks fit in a sub-dividion who shall exercise such powers as the State Government may, by notification direct or as the Deputy Commissioner or Collector of the district may, subject to any general or special restrictions imposed by the State Government by an order in)writing direct.

(8) The State Government may appoint in each circle a Revenue Officer not below the rank of a Sub-Deputy Collector, to be incharge of circle and may appoint as many Sub-Deputy Collectors as it thinks fit as Officers attached to the Circle. They shall exercise such powers and diseh such duties con-

ferred or imposed on a Circle Officer or Sub-Deputy Collector by or under the Regulation for under any other enactment for the time being in force or as the Deputy Commissioner of the District may by an order in writing direct".

Delegation of powers

11.6 While discussing about delegation of power either under the Regulation or under the Settlement Rules, the Commission found that in case of ejectment under Rule 18, the Deputy Commissioner is authorised to delegate powers only upto the level of a Sub-Divisional Officer vide Settlement Rules 3(ii). There are complaints of large scale encroachements in Government land, reserves and road side lands. Ejectment of encroachers is, therefore, a burning problem and it is necessary to expedite the process of ejctment. The Commission feels that the process will be very much expedited if powers of Deputy Commissioner for ejecting encroachers, in appropriate cases like encroachement in Government Reserved land, Village Grazing reserves and road side reserved land, can be made to the Circle Sub-Deputy Collector. Sub-Deputy Collectors have the advantage, being the persons on the spot, who with his land records staff are supposed to keep vigilance against encroachments. This will involve deletion of the restrictive clause (ii) of Rule 3.

CHAPTER XII

APPEAL REVISION AND REVIEW:.

Appeal in Mutation Cases.

12.1 In the Assam Land and Revenue Regulation most of the powers are in the name of Deputy Commissioner. For example, the power of disposal of mutation cases rests with the Deputy Commissioner, which is usually delegated to the Sub--Deputy Collector. There is room for confusion regarding the appellate authority over the original orders of the Sub-Deputy Collector. According to one view the appeal against the orders of the Sub-Deputy Collector (invested with the powers of the Deputy Commissioner) does not lie with the Deputy Commissioner as Sub-Deputy Collector exercises the same powers delegated to him. This is supported by the fact that in section 147, which contains the provisions for appeals, clause (b) states that appeal shall lie to the Deputy Commissioner from the order passed by a Sub-Divisional Officer, an Assistant Commissioner or Extra Assistant Commissioner. Again there is no provision in section 147 for hearing of appeal by Sub-Divisional Officer against the orders of Sub-Deputy Collector.

12.2 According to another view Sub-Deputy Collectors are also given the powers of Assistant Settlement Officers and they dispose of the mutation cases as Assistant Settlement Officers. under Section 138(2) of the Regulation if no Settlement Officer or Survey Officer is appointed, the Deputy Commissioner and the Sub-Divisional Officer (if any) shall have all the powers conferred by the Land and Revenue Regulation on a Settlement Officer or Survey Officer as the case may be. Presumably, the Deputy Commissioner and the Sub-Divisional Officer hear appeals against the orders of the Sub--Deputy Collector as ex-officio Settlement Officers, when the district is not under Settlement Operation.

12.3 Even this argument suffers from the basic infirmity as sections 52 and 53 of the Regulation under which mutation cases are heard, there is no mention about Assistant Settlement Officer or Sub-Deputy Collector. The powers exercised under sections 52 and 53 are those of the Deputy Commissioner only.

12.4 The power of granting mutation rests on the Deputy Commissioner only, and the Sub-Deputy Collector gets necessary jurisdiction on the powers of the Deputy Commissioner being delegated to him.

Proposed different appellate jurisdictions.

12.5 Therefore, the second view, in our opinion, cannot be accepted. To remove all confusions regarding forum of appeal against the orders of the Sub-Deputy Collector, it is recommended that there should be a separate section spelling out clearly the different appellate authorities. This may be done in the following manner :-

"(1) Save where it has been otherwise provided, an appeal shall lie from every original order under the Regulation or the Rules made there under :-

(a) if such order is passed by any revenue Officer subordinate to the Sub-Divisional Officer, whether or not the Officer passing the order is invested with the powers of Deputy Commissioner, to the Sub-Divisional Officer ;

(b) if such order is passed by the Sub-Divisional Officer, whether or not invested with the powers of the Deputy Commissioner, to the Deputy Commissioner ;

(c) if such order is passed by any Revenue Officer subordinate to the Settlement Officer, to the Settlement Officer ;

(d) if such order is passed by the Deputy Commissioner or the Settlement Officer, unless otherwise provided, to the Board of Revenue ;

(2) A second appeal shall lie against any order passed in the first appeal by the Settlement Officer/Sub-Divisional Officer or Deputy Commissioner, to the Board of Revenue. **Second appeal.**

12.6 The second appeal shall lie only on the following grounds :- **Grounds for Second Appeal.**

(i) if the original order in the first appeal is varied or reversed; or

(ii) that the order is contrary to law; or

(iii) that the order has failed to determine some material issue of law ; or

(iv) that there has been a substantial error or defect in the procedure as prescribed by the Regulation, which may have produced error or defect in the decision of the case on merit".

12.7 The revisionery powers of the Board, Deputy Commissioner, Settlement Officer and the Durvey Officer given in section 151 of the Regulation do not mention any period of limitation, nor do they spell out the grounds under which such proceedings should be taken as distinct from normal appeal. The Commission would like to give the following suggestions in respect of exercise of revisionary powers by the Board/the Deputy Commissioner/Settlement Officer :- **Revision.**

(1) The power of revision may be exercised either on its/his own motion or on the application by any party;

(2) for this purpose the court must satisfy itself as to the legality or propriety of any order passed by, or as to the regularity of the proceedings of, any Revenue Officer Subordinate to it ;

(3) on such satisfaction the court will call for and examine the records of any case whether pending before or disposed of by such Officer ;

(4) the court shall not vary or reverse any order unless notice has been served on the interested parties and opportunity of being heard is given ;

(5) no application for revision shall be entertained against an order appealable under the Regulation;

(6) application must be presented within 90 days from the date of the order.

12.8 The power of review has not been mentioned in the Assam Land and Revenue Regulation. Note below section 151 directs that an order once passed in any case cannot be revised either by the Officer who passed it or by his successor in office. But this order does not apply to summary registration orders. It is open to doubt how a review can be made by the Board of Revenue in any revenue appeal when no such power of review has been given to it by the Assam Land and Revenue Regulation, It cannot be denied that in appropriate cases, the power of review may be exercised to meet the ends of justice. This power of review may be given to all the Revenue Officers. At present the power of review can be exercised only by the Board of of Revenue by virtue of section 7(1) of the Assam Board of Revenue Act, 1962, which as stated earlier cannot be applied to orders in revenue appeal. It is suggested that Deputy Commissioner and Sub-Divisional Officer may also be given the power of review. In some States, the law gives the power of review to every Revenue Officer. **Review.**

12.9 We, however, recommend confining this power to the Board of Revenue, Deputy Commissioner and Sub-Divisional Officer the following manner :- **Grounds for review.**

The Board, Deputy Commissioner, Settlement Officer and Sub-Divisional Officer may either on its/his own motion or on the application of any party interested, review

any order passed by itself/himself or any its/his predecessor in Office and pass such order as it/he thinks fit provided that :-

(i) no order shall be varied or reversed unless notice has been given to the parties interested to appear and heard in support of such order;

(ii) no order, against which an appeal or revision proceeding is pending, be reviewed;

(iii) no order, affecting any question of right between private persons, shall be reviewed except on the application of party to the proceeding;

(iv) no application for review shall be entertained unless it is made within 90 days from the d te of passing of the order;

(v) no order shall be reviewed except on the grounds provided for in the Civil Procedure Code, 1908.

The proposed new provision to the above effect may be added after section 151 of the Assam Land and Revenue Regulation.

CHAPTER XIII

ALLUVION AND DILUVION.

13.1 The Assam Land and Revenue Regulation contains no clear provision for regulating cases of alluvion, diluvion, dereliction and analogous matters. Only a passing reference has been made under explanation to section 3(b) of the Assam Land and Revenue Regulation, which reads as follows :-

> "Any land gained by alluvion or by dereliction of a river to any estate as defined, which under the laws in force is considered an increment to the tenure to which the land has accreted, shall be deemed to be part of that state",

Provisions on Alluvion & Diluvion under the Bengal Alluvion & Diluvion Regulation 1825.

13.2 The problem, however, arises due to the fact that the Assam Land Revenue Regulation does not have any specific provision by which it can be determined to which estate or tenure such accretion by alluvion may be added or in the case of dereliction of a river to whom the new area may be settled. We have not also come across any other law in force governing ownership to such lands. The question of ownership, assessment and settlement of 'Char' or island is dealt with in Bengal by the Bengal Alluvion and Diluvion Regulation, 1825 (Bengal Regulation II of 1825). The preamble to that Regulation is as follows :-

> "In consequence of the frequent changes, which take place in the channels of the principal rivers which interesect Bengal and of the shifting of the sands which lie in the beds of those rivers, chars or small islands are often thrown up by alluvion in the midst of stream or near one of the banks and large portions of land are carried away by an encroachment of the river on one side, whilst portion of lands are at the same time or in subsequent years gained by dereliction of the water on the opposite side; similar instances of alluvion, encroachment and dereliction also sometimes occur in the sea-coast which borders the southern and south-eastern limits of Bengal. The lands gained from the rivers or sea by means above mentioned are a frequent source of contention and affray and although the law and custom of the country have established rules applicable to such cases, these rules not being generally known, the courts of justice have often found it difficult to determine the rights of litigant parties claiming chars or other lands gained in the manner above-described. With a view to remove this difficulty, following rules have been enacted for the general information of the public as well as for the guidance of the Courts of Justice determining claims to lands gained by alluvion or by dereliction of river or the sea".

Ownership over Char.

13.3 Section 3 of the Bengal Alluvion and Diluvion Regulation lays down that "when a 'Char' or island, may be thrown up in a large navigable river, the bed of which is not the property of one individual, or in the sea, and the channel of the river or sea between such island and the shore may not be fordable, it shall, according to established usage be at the disposal of the Government". This Regulation, though not directly in operation in our State, is generally followed as a matter of justice, equity and good conscience.

13.4 The Bengal Alluvion (Amendment) Act, 1868 amended the provisions of Act IX of 1847 (The Bengal Alluvion and Diluvion Act, 1847). The amendment was in regards to the assessment of land gained from the sea or from rivers by alluvion or dereliction within the provinces of Bengal, Bihar and Orissa.

13.5 Section 2 of the (Amendment) Act, 1868savs :-

"It is hereby declared that when any island shall, under the provisions of clause 3, section 4 of Regulation II of 1825 (The Bengal Alluvion and Diluvion Regulation, 1825) of the Bengal Code, be at the disposal of Government, all lands gained by gradual accession to such island, whether from a recess of the river or of the sea, shall be equally at the disposal of the Government".

13.6 Thus an accession to an island was considered as an increment thereto. Section 3 of the Act lays down that newly thrown up islands were to be assessed. it says:-

"3. Whenever it shall appear to the local revenue authorities that an island has been thrown up in a large and navigable river liable to be taken possession of by Government under clause 3, section 3. of the Regulation II of 1825, of the Bengal Code, the local revenue authorities shall take immediate possession of the same for the Government and shall assess and settle the land according to the rules in force in that behalf, reporting their proceedings forthwith for the approval of the Board of Reveune (later Board of Revenue of Eastern Bengal and Assam) whose order thereupon, in regard to the assessment, shall be final :

Provided, however, that any party aggrieved by the act of the Revenue authorities in taking possession of any island as aforesaid, shall be at liberty to contest the same bv a regular suit in the Civil Court".

13.7 Section 4 of the Act provides that subsequent junction of the island so taken to main-land was not to affect the Government's right over such island,. Section 4 runs thus:-

"Any island of which possession may have been taken by the local revenue authorities on behalf of the Government under section 3 of this Act, shall not be deemed to have become an accession to the property of any person by reason to such channel becoming fordable after possession of such island shall have been so taken".

Boroji Manipuri Vs. The State of Assam.

13.8 In this connection the Commission went through various views of the Hon'ble High Courts cited in The Assam Land and Revenue Regulation by Shri K.N. Saikia. Particular reference may be made to Boroji Manipuri Vs. the State of Assam where Mehrotra J. held : "It is an universal law recognised by all that a land which has gradually and imperceptebly come out of the river bed and added to the land of a riparian owner becomes part of the land belonging to him and is to be considered as his property. Under explanation to section 3 of the Assam Land and Revenue Regulation, the disputed land which has been a gain to the estate shall be deemed to be a part of that estate if under the law in force it is considered an increment to the tenure of the land to which it has accreted. The law in force has not been defined anywhere in the Regulation and there is no reason to confine it to the statutory law".

13.9 Thus though there is no specific provision in the Assam Land and Revenue Regulation or any other land laws of Assam covering the question of alluvion or diluvion, the courts have accepted the universal principle on whieh the provisions of alluvion or diluvion have been based.

Syam Charan Nath Vs. Rupmohan Nath Laskar.

13.10 A similar ruling is also found in Syam Charan Nath Vs. Rupmohan Nath Laskar (AIR 1963 Assam 188). The Commission, therefore, suggests that specific provisions may be incorporated under section 3 of the Assam Land and Revenue Regulation governing alluvion, avulsio or avulsion, insula nata alneus relictus. Such provisions will do away with various disputes which arise in this context.

Char or Chapori in the Brahmaputra river.

13.11 The Commission discussed the question of right over char land and of assessment and settlement of such lands. In the Brahmaputra river, large number of chars or char islands are thrown up every year and these chars or char islands often continue for several years and some even remain more permanently. It is reported that

In most cases there is no regular assessment or settlement of such chars or char islands, and, as a result, not only there are disputes and affray in these chars or char islands, the Government also loses a substantial income every year. It is learnt that the chars or char islands provide some scope for people from outside to sneak into the State and settle there initially and later on get themselves mixed up with the local people so that they cannot be repatriated according to law. The Assam Land and Revenue Regulation does not contain separate law and procedure governing the settlement and assessment of such chars or char islands; but it seen that the chars or char islands are included within the definition of "Estate" under section 3(b)(4) which says :-

> "Estate includes any char or island thrown up in a navigable river which under the law in force is at the disposal of the Government".

13.12 Since the river Brahmaputra is a navigable river, the problem of settlement and assessment of Char/Chapori thrown up in between different channels should be specifically mentioned in law leaving no room for dispute or misinterpretation. We think that in the explanation to section 3 itself a para may be added to the effect that all Chars/chaporis or islands in Brahmaputra river belong to the Government.

13.13 As regards the assessment of Char land, Commission have already given their views in the Chapter on "Rights over land.'

CHAPTER XIV

PROBLEMS OF CHAR LAND.

Char lands & section 83 of Goalpara Tenancy Act,

14.1 During the visit of the Commission to Goalpara district many delegations including one from the Dhubri Bar Association put before the Commission various problems of administrative and legal matter over settlement of Char land. By their very nature 'chars' in the Brahmaputra river appear, and then disappear, and again reappear in the Course of a number of years. So long the Goalpara Tenancy Act was in operation in the agricultural areas in the permanently settle estates of Goalpara district, disputes over char lands was a regular feature, as there used to be claims and counter claims from the Zamindars and tenants over the right to such newly formed chars. While Zamindar would claim it as new accretion to his tenure, the tenant would, with equal vehecemen assert his claim over it as reappearance of his land previously eroded. The Bengal Alluvion and Diluv ion Act or the Assam Land and Revenue Regulation did not contain exhaustive provisions in this respect. Some of the delegates pointed out that even after a period of 15/16 years of their lands being eroded, they may reappear. Section 83 of the Goalpara Tenancy Act contained provisions regard ng the right of the erstwhile tenure-holders on their eroded lands which had reappeared. Section 83 reads as follows :-

> "83. (1) If the entire land of a tenure or holding or a portion of such lands are lost by diluvion, the rent of the tenure or holding shall be abated by an amount which bears the same proportion to the rent of the whole tenancy, as the area lost bears to that of the whole tenancy.
>
> (2)(a) Notwithstanding anythings contained in this Act or in any other law or in any contract to the contrary, the right, title and interest of the tenant or his successors-in-interest shall subsist in such lands or portion thereof during the period of loss by diluvion not exceeding twenty years or till three years after their re-appearance, whichever period is less. The tenant or his successors-in-interest shall claim immediate possession of the lands or portions thereof by serving on the landlord a notice in the prescribed form and manner within two years of the re-appearance of such lands. The landlord shall have a right to the arrears of rent without interest in respect of the land which has re-appeared for the period during which it was lost or for three years, whichever is less.
>
> (b) The rent of the lands which have re-appeared shall, for the purposes of the payment both of the arrears of rent under this subsection and of the rent due thereafter (until such rent is modified in accordance with the provisions of this Act), be calculated on the basis of the rent of the remainder of the tenancy existing when possession of the lost land is resumed, and shall bear the proportion, to that rent which the area of the lands which have re-appeared bears to that of the remainder of the tenancy :
>
> Provided that in cases where the entire tenure or holding has been lost by diluvion, the rent of the portion thereof which re-appears shall be calculated in like manner on the basis of the rent existing when the entire tenacy was lost.;
>
> (3) Nothing shall prevent the accrual of rights under the operation of any other enactment in any portion of the lands of a tenure or holding which have been lost by diluvion, if such lands thereafter reappear as an accretion thereto".

14'2 Thus section 83 of the Goalpara Tenancy Act not only gave the tenant who had suffered, the right to his own land (on reappearance) but also provided the procedure of assessment of rent. The Goalpara Tenancy Act had been repealed in 1974 following acquisition of the permanently Settled Estates under the Assam State Acquisition of Zamindaries Act, 1951. At present the Assam (Temporarily Settled Areas) Tenancy Act is in operation in these areas.

Right of erstwhile tenure holder over reappeared char lands.

It does not clearly give such rights to the tenants. As a matter of fact, as explained earlier in a separate Chapter even the provisions of Assam Land and Revenue Regulation are not exhaustive to regulate all aspects of cases of alluvion and diluvion. The Commission has already recommended for incorporating exhaustive provisions on lands affected by alluvion and diluvion. Even then we feel that tenure holders who had secured certain rights under the Goalpara Tenancy Act cannot be deprived of the same now simply because of the fact that the Act has been repealed and substituted by another Act. Even though the rights of tenure holders in the reappeared char land subsists under the provision of the Goalpara Tenancy Act since repealed it is expedient to have comprehensive provisions in the Assam Land and Revenue Regulation wherein the above right also may be spelt out.

Creation of new circles for administration of char land.

14.3 The basic difference between char and other lands is that char lands are not of established nature. Hence they require constant survey and demarcation for identification as well as assessment. Unless immediate steps are taken by the local land revenue authorities for survey of newly formed char lands it may lead to disputes and riots amongst people claiming the same. It is, therefore, advisable to have a separate circle exclusively for the administration of char lands with adequate survey staff; otherwise Government may also be deprived of land revenue. Without going into details it may be mentioned that the method of assessment should also be simple and initial settlement should be of a temporary nature.

14.4 At present the staff of the general circle offices are not very inclined to visit the chars as a result of which the local influential leaders and "Dewanis" virtually become the arbitrators of such land and in the long run they become the virtual owners of the land. We feel, a revenue circle purely for the char will do away with such malpractices and bring them to the main stream of land revenue adminstration.

CHAPTER XV

LAND MANAGEMENT

Optimum use of land.

15.1 One of the aims of the Land Reform measures is to strengthen the foundation of agrarian structure so that the basic institutional constraints to agricultural production are reduced. Settlement of land with landless cultivators and securing the rights of the tenants, no doubt, go a long way towards that goal. The question, then, arises how to secure the maximum utilisation of land. The problem may be acute in the case of land settled with landless people or other small and marginal farmers, many of whom are illiterate and do not possess necessary improved know how of the methods of cultivation and of planning the pattern of their crops so as to get the optimum economic results. In such cases, technical guidance is necessary. This can be made available by the State. But in many cases the cropping pattern or rather cultivation of a particular crop may be useful in the larger interest of the State although the farmer may not be inclined to cultivate the crop or use the land in such a manner in his immeddiate interest. Thus, a conflict may arise, and important technical guidance by the State may be refused. Therefore, in the larger interest of the community, some legal authority must be given to the State to intervene, where necessary, for giving direction for utilisation of certain land in a particular manner. The Rajasthan Revenue Laws Commisison recommended retention of such a power by the State.

Recommendations of Rajasthan Revenue Laws Commission.

15.2 Their recommendations are as follows :-

"112. Production programme-(1) A tenant shall be bound to carry out any programme which may be set up in any area by such authority as may be prescribed for the efficient management, utilisation and cultivation of land, for production of any specified crop or crops and for any other similar purpose, and all tenancies shall always be deemed to be made and granted with this condition incorporated in the terms of tenancy.

(2) In case any tenant does not carry out the programme as aforesaid, his land shall be liable under the order of the Collector to be placed under the management of the State Government or village Panchayat or any other authority prescribed in this behalf for a limited period not exceeding three years.

(3) If at any time during this period the tenant satisfies the State Government, the village Panchayat or the prescribed authority, as the case may be, that he will carry out the production programme, the management shall be withdrawn".*

Prescription of standards of cultivation and management under the Madhya Predesh Land Revenue Code.

15.3 The Madhya Pradesh Land Revenue Code also contains a similar provision which is quoted below :-

"Section 225. (1) With a view to bring agricultural economy to a level of efficiency, the Government may, by rules, regaulate standards of efficient cultivation and management.

(2) Such rules may provide for the issue of directions as regards the methods of agriculture to be adopted, the use of improved seeds, conservation and proper utilisation of manure, sale of surplus foodgrains,

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**Report of the Rajasthan Revenue Laws Commission. Para* 135 *Pages* 381-382

and for ensuring proper wages and terms of employment of agricultural workers, and such other directions as may be necessary or desirable for the efficient utilisation of lands.

(3) Such rules shall apply to agriculturists who cultivate perscannally land in excess of such limits as may be prescribed.

(4) If an agriculturist to whom such rules apply under sub-section (3) fails to carry out the directions issued under sub-section (2), the State Government may have the directions carried out by any other agency in such manner as it deems fit and recover from him all such cost as may be incurred '.*

Recomendations.

15.4 The Commission feels that legislation relating to maximum utilisation of agricultural land on the basis of a State Production Programme is a recentdevelopment. The Assam Land and Revenue Regulation, which is of a regulatory nature, does not contain any such provision. The Commission, therefore, recommends that suitable provisions may be added to the Regulation empowering the State to give necessary advice and direction to the farmers for taking up a particular agriculture production programme in line with the State's Plan and Programme for agricultural production. The Commission prefers provision in the Madhya Pradesh Code by which State Government may make provision in the Settlement Rules to regulate standard of efficient cultivation and management.

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* *Section 255 of the Madhya Pradesh Land Revenue Code, Pages 92-93.*

CHAPTER XVI

RESTRICTION ON TRANSFER OF AGRICULTURAL LAND.

Exective instruction No. 6 under settlement Rules.

16.1 Executive Instruction No. 6 under Settlement Rules states that the periodic kheraj leases issued after 27th September, 1919 contained a clause forbidding transfer of land by a professional cultivator to a person who is not a professional cultivator without prior sanction of a Deputy Commissioner.

16.2 There are contradictory views regarding the legality of this instruction. According to one view, the right of transfer is an important right over land. Any rule restricting such a right must be provided by the Act itself. Since the Assam Land and Revenue Regulation or for that matter, the Settlement Rules, do not contain any provision restricting the right of transfer of one class of land-holders, Executive Instruction No. 6 is, therefore, ultra vires.

wo views on the matter.

16.3 The second view is that since this restriction is mentioned in the lease, which forms the basis of contract between the Government and the land-holder and which is accepted by the land-holders, it cannot be questioned by him. Further, clasue (c) of section 9 states that the land-holder's right shall be subject to the special conditions of any engagement into which, the land-holder may have entered with Government. The Executive Instruction No. 6 has been issued under the power of this clause and hence, the restriction is perfectly legal.

Commission's view.

16.4 The Commission feels that even though such a conditions is included in the lease, it cannot be said to be based on law, as the right of the land-holder as given and regulated by the law does not permit such a major restriction nor is the State Government empowered to tinker with an important provison of land right by narrowing it down in respect of one class of professional cultivators.

Definition of professional Cultivator.

16.5 Secondly, the term 'professional cultivator' has not been defined in the Act or in the Settlement Rules. Even the term "Cultivator' has not been defined in the Act. The Commission feels that the restriction put in the Executive Instruction is in the larger interest of the agriculturists, and should, therefore, be retained.

Recommendation,

16.6 Hence, the Commission, with a view to removing all confusions, recommends that this restriction should be directly brought in the Regulation itself by a suitable proviso under section 9 which describes the rights over land. Further, the terms 'Cultivator' and 'Professional Cultivator' should be defined in the Regulation. In fact, the Commission has already proposed a definition of the term "agriculturist" under para 2.7 of Volume I of the Commissions' report.

16.7 We feel that the definition of the term 'agriculturist' as suggested, will satisfy the concept of professional cultivator and may, the refore, be included in the Regulation also.

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CHAPTER XVII

RESTRICTION ON RIGHT OF TRANSFER OF LAND COVERED BY LEASES FOR SPECIAL CULTIVATION TO OTHER PURPOSES.

17.1 Of late, there appears to have been tendency on the part of the persons holding land for special cultivation (for tea) to indiscriminately convert such lands to residential purpose and other purposes not connected with tea, and to dispose of the land at high prices. This has particularly become evident in case of tea land situated in the vicinity of a town. or urban areas.

17.2 This, the Commission feels, is detrimental to the tea industry and also against the land policy of the State. The Commission thought it necessary to examine whether land held for cultivation of tea should revert to the State as soon as it is converted to other purposes by transfer or otherwise. The Commission, therefore, included a question in the questionnaire calling for views regarding inclusion of some provisions in the Regulation for resumption of such land by the State after their conversion to other purposes. In most cases the views were expressed in favour of restricting transfers.

Views of the Consultative Committee of Plantation Associations.

17.3 The Consultative Committee of Plantation Associations submitted that "Blanket reversion of land for special cultivation on the ground that such land has been converted by transfer or otherwise to uses other than those for which grants were made would be unwise. It is to be pointed out that the transfer of such land under the existing law is not possible without prior permission of the collector. If the use of such land is made for economic and productive purposes not inimical to public interest, reversion to the State is uncalled for, At the most the matter can be regularised by realisation of a premium. In the context of the foregoing views, the rules concerning special cultivation grants may be suitably amended to cater for such use".

Recommendations.

17.4 We have carefully examined the views expressed by the Consultative Committee of Plantation Associations. The amendment suggested by the Committee is open to elaborate interpretation to cover cases under the garb of "economic and productive purposes not inimical to public interest". There is clamour for land in the vicinities of the Municipal towns and urban areas for residential and commercial purposes. Transfer of land meant for special cultivation of tea in such areas even for residential purposes, may be stretched to explain that such transfers are for the best interest of the public. Grants for special cultivation of tea were made under the Fee Simple Rules of 1862, the Revised Fee Simple Grant Rules of 1874,99 years Lease Rules of 1854 and the Settlement Rules 29 to 47. Before the Assam Assessment of Revenue Fee Waste Land Grants Act, 1948 came into force, the grantees under the different Revenue Fee Waste Lands Grant Rules for special cultivation, enjoyed the land partly or wholly free of revenue. This concession was apparently given to encourage the cultivation of tea in Assam. It is obvious that the intention of the different rules granting land free of revenue, wholly or partly, for special cultivation of tea was that such grant lands were not to be converted to any purposes other than those connected with the cultivation of tea. There are special provisions relating to settlement of land for special cultivation in Section II of the Settlement Rules of the Regulation. Rule 45 gives the grantee a permanent, heritable and transferable right subject to special conditions laid down in the lease. The Commission, therefore, feels that the right of transfer is not absolute and reasonable restriction, like restriction on transfer to purposes other than cultivation of tea, can very well be incorporated in the lease. The Commission recalls similar restrictions imposed in the leases for ordinary cultivation restricting transfer from professional cultivators to non-cultivators. This new condition, therefore, be included in all the leases for special cultivation of tea. In addition, the restriction suggested may also be spelt out by adding a proviso under Rule 45.

CHAPTER XVIII

BELTS AND BLOCKS FOR PROTECTION OF BACKWARD CLASSES (CHAPTER X OF THE ASSAM LAND AND REVENUE REGULATION).

18.1 Chapter X of the Assam Land and Revenue Regulation was especially enacted in the year 1947 incorporating certain provisions particularly in respect of agricultural land for the protection of the Backward Classes who are incapable of looking after their own welfare so far as it depends upon their having sufficient lands for their livelihood and subsistence. The concept of giveing protection to Backeward Classes in the matter of owning land emanated from the Directive Principles of State Policy enshrined in the Constitution of India. Legal form to this concept was given by the sp cial provisions contained in this Chapter.

18.2 The stringent provisions of Chapter X are not applicable in the entire area of the State. The operation of the provisions of the Chapter is confined to regions predominantly inhabited by the classes of Backward People specified by the Government by a Notification under section 160(2) of the Assam Land and Revenue Regulation. The areas predominantly inhabited by these classes of people were identified, and thirtyseven Belts and Blocks were constituted in the State. The areas so identified are popularly called Tribal Belts and Blocks. Legally, these Belts and Blocks should come under the nomenclature of Belts and Blocks of Backward Classess. The present terminology is legally misleading as it conveys the sense that the Belts and Blocks constituted under Chapter X of the Assam Land and Revenue Regulation are meant for the benefit of Scheduled Tribes only. Under the provisions of law, it is not so. If an area contains a population of one or more of the notified Backward Classes constituting the prediominant element of the population, that area may be declared a Belt or a Block under this Chapter.

18.3 It is, indeed, very unfortunate that in spite of the stringent restrictions con tained in Chapter X (Protection of Backward Classes)., large scale transfers of land from the tribals and other protected classes have taken place undermining the idea which pro mpted the formulation of Chapter X. For this state of affairs, the protected classes, as well as the Government have to take a share of the blame. Lured by lucre offered by unscrupulous persons belonging to non protected classes, these people, who live below the poverty line, part with their lands.

18.4 Government have also indirectly contributed in diluting the strict provisions of this chapter by giving settlement to displaced persons in the Belts and Blocks in Goalpara District. Even knowledgeable persons belonging to Backward Classes had also aggravated the problem by making alienation to non eligible persons in the Belts and Blocks. Such illegal alienation or settlement with ineligible persons could not have taken place, if the officials had not, either kept their eyes shut or lent a helping hand.

18.5 The provisions of Chapter X, even as they are, could have been made very much effective, if there had not been a loosening of the reins by the administrative machinery on whom strict implementation of this Chapter rests.

18.6 From what we have said above, it is apparent that in the absence of a strong will and determination to translate the provisions of the chapter into concrete action, no amount of modifications in the law will help to solve the problem. The Backward

Classes in the Belts and Blocks need financial assistance to tide over monetary difficulties Unless these difficulties are solved timely, a family may be reduced to utter poverty. In times of need, the poor protected classes part with their lands to whom so ever it may be. Many schemes in the co-operative and other sectors have been undertaken to meet the financial and other requirements of these people. These schemes are operating by fits and starts without any thought being given for their methodical operation. The Commission feels that revamping of the Co operatives with their many developmental facets, with a dynamic outlook, is the only way out.

18.7 It was brought to the notice of the Commission in course of its tours in the district of Kamrup by some leaders of the Backward Classes, that many proceedings for eviction of unauthorised occupants initiated by the Deputy Commissioner and Sub Divisional Officers had been stayed by Government. The Commission would request the Government to examine all such cases where stay orders had been issued to ascertain whether the stay orders in these cases were warranted. The Commission is of the opinion that Government have no such powers under the law. As such, these stay orders have no force in law. Government should, in the interest of the protected classes, cause an enquiry as to how such illegal orders could be passed, and take a decision so that no such orders are passed in future.

18.8 The Commission would like to cite a few intances swhere eviction of ineligible persons and encroachers had been stayed by the Government. Government in the, Revenue Department in their W.T. Message No. RSS 58277187 dated 5th January, 1979, stayed the eviction of Kalicharan Das and others in Golagaon, The barmur, Dawdhara and Bhalmanuharbhitha falling within Chapaguri Tribal Belt of Bajali Circle. The eviction of Sankar Dev and others of village Salbari and Sarania was stayed by the Government of Assam in the Revenue Department vide their W.T. Message No. RSS-775 dated 16.12.78. It appears from letter No. SC/935 dated 30.7.79 from the Sub-Deputy Collector of Sarupeta Circle addressed to the Secretary of the Commission that these encroachment cases are within Salbari Tribal Belt area. Till the visit of the Commission to Barpeta on 24.7.79, no decision appears to have been taken by the Government in these two instances. There may be many more cases where encroachment proceedings have been stayed by the Government in other Belts and Blocks also.

18.9 The extent of illegal alienation and encroachment in Tribal Belts and Blocks can be assessed from the facts and figures given below :-

1.	No of Tribal Belts & Blocks	37
2.	Total No. of villages covered by Tribal Belts & Blocks.	2795
3.	Total area covered by Belts and Blocks.	1,10,95,135 Bighas.
4.	Total area of patta lands under illegal occupation	39,116 Bighas.
5.	No. of families in illegal occupation of patta land. ..	6,917
6.	Total area of Sarkari lands under encroachment. ..	72,046 Bighas.
7.	No. of families who have encroached upon Sarkari land.	14809
8.	Total area of patta land under illegal occupation and encroachments on Sarkari lands.	1,11,162 Bighas.**

**Source : *Additional Assistant Director of Land Records, Assam, Vide his letter No. Nil dated* 8.8.80

18.10 We compared the above figures supplied by the Additional Assistant Director of Land Records, Assam with those incorporated in Annexure II of the Report of the Sub Committee of Advisory Council for Welfare of Scheduled Tribes (Plains), on Settlement of land in Tribal Belts and Blocks and of Forest Land, 1976.

18.11 According to Annexure II appended to the above report, it would appear that the total areas under unauthorised occupation of ineligible persons patta land and encroachment on Sarkari land at the time of submission of the above report were 12,850 bighas and 61,514 bighas respectively. The figure in respect of ineligible persons occupying patta lands would have been much more but for the fact that a large number of unauthorised occupants of the Tribals' patta land have managed to get their names mutated in violation of the law. If steps are taken even now by Government for detection of illegal mutations granted in favour of ineligible persons, the area under unauthorised occupation of ineligible persons in tribals' patta lands would not, perhaps, be less than the area of Sarkari land under encroachment.

18.12 From a comparative study of the statistics given in the Report of the Sub-Committee in 1976 referred to above, and those submitted by the Additional Assistant Director of Land Records, Assam, in 1980, it appears that the area of Sarkari land under encroachment has increased from 61,000 bighas to 72,000 bighas, and the area under unauthorised occupation of ineligible persons on lands belonging to the protected classes has also increased from 13,000 bighas to 39,000 bighas. This leads to the irresistible conclusion that the revenue authorities have totally failed to enforce the provisions of Chepter X by removing the encroachments on Sarkari land and ejecting the unauthorised occupants from patta lands under section 165 by terminating the leases at the same time. This has lead to frustration in the minds of the tribals and persons belonging to the other Backward Classes.

18.13 Visits to some of these areas gave us the impression that a correct survey honestly undertaken to ascertain the extent of the problem of encroachement and unauthorised occupations of patta lands in the Belts and Blocks may reveal that much more land than what has been reported are under illegal occupation.

18.14 Soon after the inclusion of Chapter X in the Assam Land and Revenue Regulation, the initial notification issued by the Government in pursuance of the provisions of sub-section (2) of section 160 specifying the protected classes covered the following Backward Communities :-

(i) Plains Tribals.
(ii) Hills Tribals.
(iii) Tea Garden Tribals.
(iv) Santhals.
(v) Nepalsese cultivators-Graziers, and
(vi) Scheduled Castes.

18.15 It would have been much easier to administer the provisions of the Chapter X had the coverage of protected classes been restricted to Scheduled Tribes and Scheduled Castes only. The inclusion of Nepalese cultivators-Grazers was unwarranted as they do not belong either to the Scheduled Castes or Scheduled Tribes Communities of the State. This has led to continuous flow of Nepalese from else where outside the country into these virgin areas. The Nepalese cultivators had been excluded from the list in the year 1969, but by that time, much harm had already been done to the detriment of the interest of the indigenous Scheduled Tribes and Scheduled Castes people. Even now, it would not be very easy to indentify the persons of Nepalese origin entering the protected Belts and Blocks after the issue of the above notification.

18.16 Tea garden Tribes should also be specified so that any tea garden or ex-tea garden labourer, simply by the virtue of his being so, does not become eligible to obtain lands either by transfer or by way of settlement in the Belts and Blocks.

18.17 In our view, there should be separate lists of the protected classes with reference to each of the Belts and Blocks based upon the local population mosaic. For example, Santhals may be a protected class only in respect of those Belts and Blocks where they are living in a sizable number from before the constitution of Blocks and Belts. The Commission, therefore, recommends that for every Belt or Block there should be a seperate order describing the list of backward communities for which the Belt or Block was constituted.

18.18 We have carefully examinded the provisions of section 163 of the Assam Land and Revenue Regulation under Chapter X laying down different categories of persons who would be eligible to get settlement of land for ordinary cultivation and purposes ancillary thereto, within Belts and Blocks. Clause (b) should be deleted as it has outlived its utility.

18.19 In our view, clause (d) under sub-section (2) of the section has been mischieviously taken advantage of by unscrupulous ineligible persons, wearing cloaks of religion, mode of life, agricultural custom and habits akin to those of the classes for whose protection the Belts and Blocks were constituted. Clause (d) also makes it permissible to grant settlement to meet the bonafide needs of other classes of persons residing in the peripheral areas of the Belts and Blocks, if there are sufficient cultivable lands available.

18.20 We feel, that clause (d) is in fact a vent in the wall through which ineligible persons with the help of unscrupulous officials and other interested persons can easily obtain settlement of land in the Belts and Blocks. As there is already a heavy pressure on land in the Belts and Blocks, clause (d) should be deleted forthwith.

18.21 Under the provisions of Chapter X any Settlement-holder can legally acquire land from another Settlement-holder within the Belts and Blocks. We feel that there should be some restrictions on transfer of land amongst the elgible persons living in the Belts and Blocks. For example, a permanent resident not belonging to any of the protected classes, should be debarred either from transferring his land to another such person or from acquiring land from such a person or a person belonging to any of the protected classes. His right of transfer shall be only in favour of members of the protected classes.

18.22 In other words, subject to the ceiling limit, the protected classes will have unrestricted rights to purchase lands within the Belts and Blocks, but their right to transfer their lands is restricted to the extent that they can do it only to a member of the protected classes resident within the Belt or Block. Thus, in either case a member of the protected classes resident within Belt or Block will have to be given the first preference. These suggestions have been made keeping in view the best interest of the protected classes, particularly the tribals.

18.23 We have also seen that some of the tribals transfer their lands illegally to unauthorised persons and migrate to other areas to get lands as landless persons. In order to discourage such malpractices, a list of such persons should be forwarded to all Circles in the State with clear directions not to settle any land with them.

18.24 We also think that it would be easier to give them better protection if large blocks of Sarkari land available for settlement are brought under FELDA type of land development agency which was very successful in Malayasia in rehabilitating the landless people.

18.25 Under the present law the power of the Deputy Commissioner to evict unauthorised occupants from lands within Belts and Blocks has been delegated by the Government to the Sub-Divisional Officers and Sadar Sub-Divisional Officers vide Government Notification No. Rss. 308/76/6 dated 24.9.76. The Commission is of the view that in order to expedite eviction, this power may be delegated to the Circle Sub-Deputy Collectors. Such delegation of power will enable the Sub-Deputy Collectors to take immediate action as soon as encroachment is detected.

18.26 From the visits made by the Commission to some of the Belts and Blocks and discussions made, it appears that large number of illegal transfers have taken place even in the case of perodic patta lands but only a few proceedings under Rule 9 of the Rules framed under section 171 of Chapter X of the Assam Land and Revenue Regulation had been drawn up for cancellation of the pattas. In order to make the law more stringent and the disposal of such proceedings quicker, it is suggested that the requirement of approval of the Government prior to the cancellation of the periodic lease should be dispensed with.

We, therefore, suggest that there should be a Task Force to enquire into the encroachments on Government land, unauthorised occupation of patta lands and unauthorised creation of tenancies and thereafter to enforce the provisions of the Chapter X.

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CHAPTER XIX

THE ASSAM BOARD OF REVENUE

High power Committe for selection of member of the Board of Revenue.

19.1 The Assam Board of Revenue is constituted under section 3 of the Assam Board of Revenue Act, 1962. The power of constitution and appointment of the members of the Board entirely rests with the Government. The Board of Revenue is the highest court for hearing of appeals and revisions in land matters. It is, therefore, necessary that the selection of the Chairman and the members should be such as to inspire public confidence. The Rajasthan Revenue Laws Commission,* therefore, recommended constitution of a High Power Committee consisting of the Chief Justice of the High Court, the Chairman of the State Public Service Commission and the Chief Secretary of the State for selection of the members of the Board of Revenue.

Norms of selection.

19.2 The function of the Board as the highest appellate court in land revenue and other taxation matters requires that Members should have sufficient judicial or administrative experience. Sub-Section (3) of section 3 of the Board of Revenue Act leaves the matter of qualification of Members to the opinion of the State Government. As regards judicial experience, a norm is given to the effect that a person must be qualified to be appointed as a Judge of a High Court. However, as regards the selection of a member from the administrative service, the law is rather vague as it speaks of only "wide administrative" experience. The Commission finds that there should be a rigid norm in this respect also. He is expected to be well conversant in land revenue matters. The experience of an administrative Officer as Deputy Commissioner of a district gives him a good foundation in Land Laws.

19.3 It has come to the notice of the Commission that because of absence of any prescribed norm, Government have very often appointed Officers, who have had no experience as Deputy Commissioners.

Recommendations.

19.4 The Commission, therefore, recommends the following norms for appointment of a member of the Board of Revenue :-

(1) A person shall not be qualified for appointment as a Member of the Board unless he

(a) has worked as an Officer in the Indian Administrative Service for at least ten years including at least three years as a Deputy Commissioner in the State;

or

(b) has, for at least ten years, held a judicial Office in the State including at least three years as a District Judge in the State ;

or

(c) has for at least ten years been an advocate of a High Court in the State.

19.5 The above norms suggested by us will bring in persons having acquaintance with the local conditions prevalent in Assam and more than adequate knowledge of the revenue laws of the State.

Terms and Conditions of the service of the members.

19.6 As regards the terms and conditions of service of the members, there should not be any discrimination in total emolument for persons brought in from different sources We do not find any justification of the difference in emoluments mentioned in Rule 3(1)(a) and (b) of the Rules framed under the Assam Board of Revenue Act. The maximum limit to be fixed may be left to the State Government so as to attract suitable

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*The Report of the Rajasthan Revenue Laws Commission PP-295-296.

talents particularly from the High Court Bar. In case of members recruited under clause (b) award of a suitable special pay may also help. Besides, the appointment of Chairman should not necessarily be confined to members appointed under clause (a) of Rule 3 and the experience in the Board and merit should be duly taken into consideration, otherwise it may be difficult to obtain he services of learsned enicr advocates or senior judicial Officers of outstanding merits.

19.7 The Board should always be so constituted that the number of members possessing qualifications in para 19.4 (a) above shall not, at any time, exceed the number of members possessing the qualifications mentioned in para 19.4(b) and (c) above. The Revenue Board established in such manner, will be an independent judicial body. The Members from the services should not be transferred before three years unless he is promoted or there are strong reasons for the State Government to do so. This will induce a sense of stability and continuity in the functioning of the Board and command respect and inspire confidence amongst the litigant public.

Enlargement of the appellate jurisdiction.

19,8 The Commission has given sufficient thought to make the Board of Revenue the highest appellate authority in all matters connected with land revenue, settlement and land reform measures. In volume I of our report we have accordingly recommended enlargement of the appellate powers of the Assam Board of Revenue by proposing amendments in the relevant sections of the land ceiling and Tenancy Acts, sometimes by withdrawing the existing revisionary powers of the State Government, which as seen from records, was not being discharged regularly and effectively. Besides, the present practice of hearing appeals by a Minister of the State Government, who is a member of a Political party, is not sound. Further the appellate powers in question do not in-volve any policy matters but routine orders of settlement and acquisition, passed by the Deputy Commissioners and Settlement Officers. With these additional appellate powers, the Assam Board of Revenue will have jurisdiction in all the important land laws, restoring in this process, uniformity in the appellate forum. For easy reference the relevant provisions are stated below :-

(i) appeal against collectors' orders unders section 7 of the Assam Fixation of Ceiling on Land Holdings Act, 1956 ;

(ii) appeal against the collectors' orders passed under sections 16 and 17 of the Assam Fixation of Ceiling on Land Holdings Act, 1956 ;

(iii) second appeal against orders of the Deputy Commissioner or Settlement Officer passed in appeal under section 67 of the Assam (Temporarily Settle Areas) Tenancy Act, 1971 ;

(iv) appeal under section 59 of the Assam (Temporarily Settled Areas) Tenancy Act, 1971 against the order of the Settlement Officer to the Board of Revenue instead of Director of Land Records ;

(v) an appeal against the order of the Settlement Officer under section 11(1) of the Assam Consolidation of Holdings Act, 1960 to the Board of Revenue instead of the State Government as per existing provision.

Powers of Superintendence of the Board.

19.9 Under section 5 of the Assam Board of Revenue Act, 1962, the State Government is empowered to assign to the Board any other duties and functions. At present the Board is functioning purely as an appellate authority. Opinion is sometimes voiced as to whether the Board should be given powers of superintendence and inspection over all revenue courts so as to tone up their general functioning.

19.10 The Commission feels that if the Board is constituted as suggested by us with sufficiently senior, experienced and meritorious officers, its inspection and superintendence will have a salutary effect on the revenue courts.

CHAPTER XX

RE-ORGANISATION OF ADMINISTRATIVE MACHINERY.

Slow implementation of land reform measures.

20.1 The Land Reforms Commission, in accordance with the terms of reference, has gone through various land reform laws and measures taken to implement them It is needless to state that one of the primary aims of land reforms is to bring such changes in the agrarian structure, which would result in equitable re-distribution of agricultural wealth. Legislation forms only the first step towards achieving that goal. The real test of success of State's Land Reforms policy will, however, be borne out by the actual impact it has made in the rural economy. Unfortunately there had always been undesirable lag in the implementation of the measures in the field. Even the Task Force Report of the Planning Commission (1973) admitted that "In no sphere of public activity in our coutry since Independece has the hiatus between precept and practice, between policy pronouncement and its actual execution, been as great as in the domain of land reform".*

20.2 The Commission, therefore, examined the progress of implementation of each land reform measure and has found that almost in every scheme, the achievement was far below the target. In the matter of tenancy reform, State Government have made a very comprehensive law by enacting the Assam (Temporarily Settled Areas) Tenancy Act, 1971. This piece of legislation appears to us to be one of the most progressive legislations in India in that sphere.

20.3 This Act has a provision for acquiring ownership right by the tenants. As far as we could find no headway has been made although eight years have elapsed since the coming into force of the Act. Even the preparation of tenants.' record-of-rights has not yet been completed in all the plains districts of Assam.

20.4 In case of ceiling on land holdings, the Assam Fixation of Ceiling on Land Holdings Act was enacted in 1956. Here, too, although fairly good progress has been made in the acquisition of surplus land, the progress of settlemtent of such land with the landless cultivators and the standing tenants has been very tardy, The delay in giving settlement has already created a lot of administrative complications besides belying the hopes of the poor people. Compensation for the acquired surplus lands has also not been given for years together. As a result of which Government will be burdened with additional financial involvement in payment of interest. The financial assistance in the shape of grants to be given to the assignees of the ceiling surplus land under the Government of India's scheme could not be fully utilised owing to delay in granting settlement to the deserving people.

20.5 Large areas have been acquired under the Assam State Acquisition of Land Belonging to Religious or Charitable institutions of Public Nature Act, 1959, but here also virtually no settlement has been given to the tenants and landless people, This has resulted in loss of Government revenue as assessment of revenue coudld be made only after formal settlement.Again these persons have to face various difficulties for not hvaing been able to acquire any right after the acquisitions.

20.6 Preparation of primary record-of-rights is of utmost importance to land-holders and tenants. District re-settlement operations were started with the twin objectives fo making the records up-to-date and of re-assessing land revenue. Such an operation should

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* *Report of the Task Force on Agrarian Relation, New Delhi Planning Commission, Government of India,* 1973.

normally be completed within a span of five years. The Commission, however, found that due to faulty implementation and administrative weakness., these operations have been continuing for ten years or more. Such inordinate delay has caused immense loss of land revenue to the Government. These facts lead to the irresistible conclusion that there is inherent weakness in the organisation of the administrative machinery.

Exclusive machinery for land reforms.

20.7 The Commission has found that there is no exclusive machinery in this State for implementation of various land reforms legislations enacted since 1951. No doubt, some posts of Revenue Officers were created at the time of acquiring the Zamindaries in Goalpara District and Karimganj Sub-Division of Cachar District. Excepting this, the normal Revenue staff was saddled with additional responsibilities of implementing the provisions of the Ceiling Act, the Tenancy Act and other land reform measures. These Officers were implementing the provisions for various enactments in addition to their normal duties as Sub-Deputy Collectors, Extra Assistant Commissioners, Sub-Divisional Officers Additional Deputy Commissioners and Deputy Commissioner. There are two Directorates viz. the Director of Land Records and the Director of Land Requisition, Acauisition and Reforms. Here again, the Director of Land Records also holds the offices of Superintendent of Stamps, Inspector General of Registration and Director of Survey, etc. The Director of Land Requisition, Acquisition and Reforms collects the facts and figures of implementation of land reform measures, keeps watch on the problems faced by the field Officers for the purpose of identifying the bottlenecks. The Directorate of Land Requisition, Acquisition and Reforms has not been very effective in enforcing the implementation of these Acts as it has not direct control over the District Collectors and Settlement Officers.

20.8 The Commission is of the view that implementation of land reforms can succeed only when the schemes are pushed through under time bound programmes by a band of officers with a sense of commitment towards the objectives of land reforms backed by determined political will of the State.

20.9 The Commission intended to elicit information for administrative reforms and for that purpose some questions were put into the questionnaire. Unfortunately, the Commission received only a few replies from the district officials and the public. No replies from any of the Bar-Associations were received. The Commission, however, attempted to study the weaknesses in the different levels of revenue administration.

Reorganisation of revenue administration.

20.10 The Commission has no hesitation in holding the view that the implementation of land reforms could succeed only if a thorough re-organisation of the revenue administration is undertaken, so that there will be a set of officials who can give undivided attention to land reforms work . They will not be saddled with other administrative duties. With this end in view, the following administrative set up in the revenue administration is suggested :-

Land Reforms Commissioner.

20.11 **A. State level :-** At the State level, land reforms and land records works are done by the Secretary, Revenue. He remains pre-occupied with the Secretrial work and does not normally have the time to keep close contact with the field work. Land records and land reforms works are of extensive nature and require constant guidance and supervision. These functions can be taken up by a very senior Officer of the rank and status of a Senior Divisional Commissioner. This is particularly necessary for giving guidance to the District Land Reforms Officers (Proposed) and Settlement Officers

20 12 The Commission is of the view that the Office of the Director of Land Records and that of the Director of Land Requisition, Acquisition and Reforms could not be very effective as these posts have been manned by Officers much juniour to most of the Deputy Commissioners Besides, the very nature of their duties requires long experience in district administration as Deputy Commissioners These posts can be abolished and duties assigned to the Land Reforms Commissioner If necessary, the Commissioner may be assisted by two Officers of the status of a Collector, The Commission does not think that the present Divisional Commissioners, burdened as they are with

multifarious duties, have hardly the time or motivation to give undivided attention to land reforms and land records works. The Commission has found that even routine duties like inspection of revenue Circles could not be undertaken by the Commissioners and Deputy Commissioners for years together. It is, therefore, felt that the entire Revenue Administration should be bifurcated, one wing should be for normal Revenue works like Collection of Revenue, Mouza, Tahsil, Grazing etc and the other wing should be en trusted with the works of Land Records Administration and Land Reform Measures.

District Land Reforms Officers.

20.13 Further we are proposing appointment of full time District Land Reforms Officers to whom some of the routine duties of Director of Land Records and Director of Land Requisition, Acquisition and Reforms may be distributed Mere creation of a post of District Land Reforms Officer will not help, unless a parallel land reforms organisation from the circle level to the district level under the direct control of the Land Reforms Commissioner, is built up.

Proposed new pattern of revenue administrative.

20.14 The new organisation as envisaged by us will divide the entire revenue workd into three broad categories viz , : (A) Land Revenue
(B) Land Records
(C) Land Reforms,

(A) **Land Revenue** : Under this head the following functions will be covered :-

(i) Collection of revenue,
(ii) Establishment of Mauzadars, Tahsildars and Gaonburas,
(iii) Bakijai Proceedings,
(iv) Eviction/ejectment of encroachers,
(v) Administration of Village Grazing Reserves and Professional Grazing Reserves,
(vi) Acquisition and Requisition of Land,
(vii) Other Misc matters,
(viii) Relief matters (Famine relief).

(B) **Land Records** :-

(i) Maintenance of record-of-rights including mutation,
(ii) Updating of land records including tenants records,
(iii) Re-settlement operation
(iv) Decennial revision of survey work.
(v) Midterm assessment of revenue.
(vi) Revenue appeals.
(vii) Collection of crop and area statistics.

(C) **Land Reforms** :- Implementation of Land Reform measures under,

(i) The Assam Fixation of Ceiling on Land Holdings Act, 1956.

(ii) The Assam State Acquisition of Land Belonging to Religious or Charitable Institutions of Public Nature Act, 1959.

(iii) The Assam State Acquisition of Zamindaris Act, 1951.

(iv) The Assam Consolidation of Holdings Act, 1960.

(v) The Assam Gramdan Act, 1961.

(vi) The Assam Bhoodan Act, 1965.

(vii) Appeals.

(viii) Different land reform schemes of Government of India/State Government taken up from time to time.

(ix) Minimum needs programmes and

(x) Financial Assistance to farmers.

20.15 The works coming under the head "Land Revenue" will be administered by the Deputy Commissioner and the Sub-Divisional Officer. At the circle level the Circle Sub-Deputy Collector will remain incharge of this work. The Divisional Commissioner will have supervisory responsibility over these officers.

20.16 All works coming under the heads "Land Records" and "Land Reforms" will be administered by a parallel organisation headed by Land Reforms Commissioner.

20.17 At the District Level, there will be District Land Reforms Officer and at the Sub-Divisional level, the Sub--Divisional Land Reforms Officer. At the circle level, one Sub-Deputy Collector will remain incharge of these works who will be designated as Circle Land Reforms Officer-Cum-Assistant Settlement Officer and Revenue Officer.

20.18 We have earlier suggested the abolition of the two posts of Director of Land Records, Assam and Director of Land Requisition, Acquisition and Reforms, Assam. If necessary, the Commissioner of Land Reforms who will also be ex-offico Director of Land Records, will be assisted by two Officers of Collector's level, one in-charge of each wing-Land Records and Land Reforms.

Inspector of Land Records.

20.19 While considering various constraints to the successful working of land revenue administration, the Commission felt that lack of sufficient promotional avenue for the land records staff had contributed to the tardy implementation of the various land reforms measure. It is seen that owing to limited posts of Supervisory Kanungos, only a few recorders can expect promotion. Such stagnation is not seen in other admininstrative spheres where at least two promotions are normally assured. The Commission, therefore, suggests that there should be posts of Inspectors of Land Records in between the Sub-Deputy Collectors and the Kanungos. This will also enable Government to have more intensive supervision over maintenance of land records.

20.20 In this context, it has also come to the notice of the Commission that considerable delay occurs in correction of Jamabandi at R.Kg's branch after mutation records are despatched by the Sub-Deputy Collectors. It is necessary to tone up the working of this branch so that the original records remain up-to-date. Government may also consider whether an Officer should be put in immediate charge of the branch for co-ordinating the programmes of correction works among the recorders of different Circles in a Sub-Divison.

Placing of a Sub-Deputy Collector as incharge of R. Kg's branch.

20.21 Under the present practice, the changes made in the record-of-rights by correction on the basis of orders passed in mutation cases, partition cases etc. are attested by the R.Kg borne on ministerial service. The record-of-rights kept at Deputy Commissioner's Office are the original sets of records to be maintained permanently. The Commission, therefore, considers it desirable that such changes are attested by an officer to ensure correctness. Necessary changes in the Land Records Manual may be made for putting a Sub-Deputy Collector in-charge of the R. Kg's branch.

20.22 As regards the difficulties faced by the Settlement Officers in obtaining the blue prints and polygons according to their requisitions, it will not be out of place to mention that the Assam Survey Department is inadequately equipped with the necessary machinery to timely cope with the work.

Moderni-sation of the Survey Depart-ment.

20.23 The Commission feels that the entire Assam Survey Department should be modernised with modern map printing machinery so that the Directorate is in a position to meet the requirements of the Settlement Officers much ahead of commencement of the actual work of the resettlement operaions.

20.24 Besides equipping the Directorate of Assam Survey with adequate modern machinery, steps should be taken by Government to have under it, a band of highly quilified survey personnel.

Training programe for Officers.

20.25 On the eve of each Settlement operation, an intensive training programme should be chalked out for Land Record staff and Assistant Settlement Officers to train them up in Survey, Classifications of land and other matters relating to preparation of record writing . The Settlement Officers and Assistant Settlement Officers should also be given a refresher's course in various land laws so that they become conversant with the latest position of land laws.

20.26 In order to minimise the delay in Government level while approving the rate reports, a special cell should be established in the Secretariat to process the matter within the time bound programme of operation

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CHAPTER XXI

IMPLEMENTATION.

Co-ordination among different departments and financial institutions.

21.1 Land Reforms do not end with legislative measures. Land reform involves varied functions, which have to be discharged by the Departments of Land and Revenue administration, Agriculture, Irrigation, Co-operation and also by financial institutions The entire concept of successful land management for improving the economy of the State as a whole and that of the tiller of the soil in particular, therefore, calls for a very close co-ordination amongst these Departments. It has been the experience that land reform measures, for want of co-ordination at one point or another, suffer serious set back. There is a popular feeling not only amongst the Officers but also the leaders of the society that once land reforms enactments are passed by the legislature, the machinery for implementation of land reform measures would move on. Nothing could be further from the truth.

Organisational link with potential beneficiaries.

21.2 Although there is some amount of co-ordination amongst the connected Departments of Agriculture, Co-operation and Irrigation, yet the Commission feels that the necessary link with land reforms measure is almost absent. If growth with justice is to be aimed at, much more closer co-operation with land reforms programmes is called for For example, once certain surplus lands are acquired under the ceiling Act, other organisations must step in to explore the full utilisation of such lands. Similar is the case with the settlement of land with landless agriculturists who need technical guidance, and financial assistance for effective utilisation of their lands. Further, the Commission feels that to make land reform programmes effective, there should be some close organisational link with the potential beneficiaries. The National Commission on Agriculture (1976)* in their report has observed-

> "The implementation of land reforms is, in a large measure, a function of the degree of consciousness and organisation of the potential beneficiaries. This factor has been weak in India. The great bulk of the poor peasants and agricultural labourers are still unorganised and not powerfully vocal. Thus, there has not been much Pressure eitherfrom above or from below, for an all round speedy and effective implementation of land reforms. Specific issue have, from time to time, attracted the attention of the Government or have become the subject matter of mass agitation. But the process of land reform as a whole, which aims at bringing about institutional changes in rural society, has been allowed to stagnate. There has been a colossal drift on this issue causing in practice a great deal of perversion of even the beneficient aspects of agrarian legislation. The absence of links, between the State and the potential beneficiaries through such organs as joint implementation committees, has perpetuated the drift. Bureaucratic lack of will, complacency and inefficiency coupled with the non-existence of local popular organs, capable of effectively intervening in the situation, has brought about the present state of affairs".

Formation of peasants' organisations.

21.3 In line with the above observation made by the National Commission on Agriculture, the Commission strongly advocates the formation of peasants, organisations in the circles with the Government as the sponsoring agency. The formation of peasant organisations on non-political basis would definitely put some curb on the influential

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* *Report of the National Cnmmission Part XV P.* 81 1976.

land owners who are always in the look out to protect their own interests at the expense of those of the poor peasantry and this will also on the other hand increase the collective strength of the poor section of the people.

21.4 Government have constituted circle level land reforms advisory committees, which because of the varied interest of the members, have not been able to impart the necessary momentum which a peasants' organisation could. Pending formation of peasants' organisations, steps may be taken to include a good number of representations from the tenants, agricultural labourers and small and marginal farmers, in all the Land Advisory Committees.

CHAPTER XXII

ISSUE OF LEASES IN BOOKLET FORM.

22.1 We have gone through para 2 of the copy of letter No. 12020/1/79-TD dated 25·11.79 from the Joint Secretary to the Government of India in the Ministry of Home Affairs sent to the Commission by Government of Assam in the Revenue Reforms Department vide their letter No. RRG. 204/78/36 dated 22.3.80 for its views, in the matter of issuing booklets to land-holders as has been done in the State of Maharastra. We have also gone through the scheme of distribution of **Khathe Pustika** enclosed with the letter.

22.2 Under section 41 of the Assam Land and Revenue Regulation, every entry in the record-of-rights is presumed to be correct until the contrary is proved. This presumptive evidentiary value is not present in the **Khathe Pustika** referred to above. periodic patta issued under the Regulation contains the particulars of the land-holders, area, field number, class of land, and amount of revenue payable. It also contains the conditions of the lease. This was so long sufficient for the purpose of payment of land revenue. However, the land-holders faced certain difficulties in the present context which may be summed up as below:-

22.3 Unlike the Jamabandi the patta often does not contain the names of all the pattadars. It has been the practice of the Land Records Staff to mention the first name or at best two names of the pattadars, and then close it up by writing "and others". Further, patta is not issued to all the pattadars and they had to remain content with the copy of the Jamabandi which is to be obtained on payment. The pattadars who do not have the patta are unable to execute equitable mortgage for securing loans from financial institutions.

22.4 Unlike the Jamabandi, the patta does not show the respective share or shares of the pattadars in the particular dags. As a result it is not possible for a financial institution or even Government Officers to ascertain the extent of interest of a co-sharer in the patta or in particular dags .

22.5 The patta is also not used for recording the particulars of agricultural loan taken by the pattadar. It is the general view of the Banks and other financial institutions that disposal of a loan application could be expedited if the patta showed different loan transactions entered into by the pattadars and the recovery thereof.

22.6 The patta does not contain the particulars of tenancy created by the pattadar. The mention of the fact of existence of tenancy or reference to tenancy khatians for land held under the patta will be convenient for the financial institutions.

22.7 Unlike the Jamabandi, the patta is not corrected up-to-date in the wake of successions/transfers made from time to time. As a result, the name of the pattadar appearing in the patta may not show the correct position as to the fact of present ownership.

22.8 The Commission, therefore, likes to make the following recommendations:-

1. All the co-sharers in the patta should be entitled to a copy of the patta. It may be necessary to indicate the number of the particular copy of the patta on the body, which will agree with the serial number of the pattadar by a bi-number, the first part of which would show the patta number and the second part indicate the se-

rial number of the pattadar. For example, if X's name is in serial 3 of the patta number, say 20, then the copy of patta issued to X will bear the number 20/3.

2. The names of all the pattadars should be recorded in the patta.

3. The patta should clearly indicate the extent of respective interests of the co-sharers or co-pattadars.

4. Although agricultural loan does not strictly come within the ambit of rights over land, yet in view of the Governments' commitment to boost up the agricultural loan programme in the rural areas, the patta should also reflect the transactions of loan (including recovery) made by the pattadar.

5. The particulars of Khatian number of existing tenancy on land covered by a patta should be mentioned.

6. Some new provisions may be introduced in the Land Records Manual for arranging correction of the entries in the patta soon after the correction of the Sadar Jamabandi by the R. Kg.

7. Patta is issued by the Settlement Officer at the end of the Settlement Operation under rule 60 of the Settlement Rules. According to this rule the patta shall correspond in all particulars with the entries in the record-of-rights. The proposed inclusion of additional column in the patta will involved modification of this rule. The rule may have to be amended to enable the Settlement Officer to include particulars or entries in the patta in addition to the entries of the record-of-rights. In our view, no further amendment will be necessary in the Settlement Rules for issuing patta in the proposed issue of Booklet form.

The proposed booklet itself will not solve difficulties of the pattadars or of the financiers unless it is updated from time to time in the wake of each succession or transfer. For this purpose, the Commission feels, two ways are left open for us :-

1. By means of necessary adaptation of the Indian Registration Act, the State Government may empower the Sub-Registars to record the fact of transfer on the body of the patta at the time of registration.

2. In the same way there may be provision in the Indian Registration Act directing the Sub-Registrars to give an extra copy of the Registration deed involving transfer of land to the Deputy Commissioners so that as soon as any transfer is made he can automatically have the information to enable him to effect mutation. In this way also records could be easily updated.

22.9 If these recommendations are accepted, the prescribed patta form will have to be modified as follows :-

(i) Additional Column is to be provided for recording subsequent corrections in the names of the pattadars.

(ii) Additional column is to be provided for recording the extent of the interest of each pattadar.

(iii) Additional column is to be provided to show the loan transactions.

(iv) Additional column to show the tenancy/tenancies on the land covered by the patta.

(v) Additional column for recording the fact of transfer, by Sub-Registrar.

CHAPTER XXIII

MAUZADARY SYSTEM VIS-A-VIS TAHSILDARY SYSTEM OF REVENUE COLLECTION.

23.1 In this State, collection of revenue is done under mauzadary system in all the districts except Cachar and Goalpara districts where the Tahildary system is in vogue. The Commission examined the mauzadary system and also met the President of All Assam Mauzadars' Association and some Mauzadars to ascertain their views particularly with regard to collection of revenue, The President of All Assam Mauzadars' Association also submitted a written memorandum depicting various grievances and impediments affecting collection of revenue.

An economic system of collection.

23.2 The Mauzadary system, it was pointed out, was comparatively more economic than the Tahsildary system. The average rate of commission given to the Mauzadars comes to 25%. From the view point of the State Government, the expenditure including contingency advances, will not exceed 20 paise for each rupee of revenue collected through them. The Mauzadars, however, submitted that the expenditure on salaries of the Muharrirs and other staff has increased manifold. On the average, the Mauzadar is required to maintain 2 Muharrirs and 2 process servers for the purpose of collection. In view of the increase in expenditure they pray for enhancement of average rate of commission to 30%.

Delay in handing over 'daul'.

23.3 It is averred that efficiency in collection is often adversely affected due to delay in receipt of 'dauls'. Normally the 'dauls' should reach them during August/ September so that after writing the Jamawasils, the actual collection could be started by November/December. It was stated that in Nowgong district sometimes 'dauls' are received as late as March so that only three months are left to complete the collection of revenue within the current revenue year. No doubt, the shortening of the collection period affects the collection of revenue. It is, therefore, necessary to remove all constraints so that copies of 'dauls' could be sent to the Mauzadars in time. The Commission, however, feels that as demands do not vary significantly in case of settled land from year to year, the same Jamawasils can very well be utilised to start collection of revenue. In fact there should be no difficulty in using the same Jamawasil for a number of years, say five years, as in the case touzis used in the Tahsil system. If this procedure is adopted, the delay in submission of 'daul' will not affect the commencement of collection of revenue

Coercive measures.

23.4 As regards the use of coercive measures, particularly against the habitual defaulters, it was found that the Mauzadars now-a-days seldom take recourse to attachment and sale of moveables. Things have come to such a pass that their staff are apprehensive of phyiscal assult from the defaulters in case of attachment of moveables. This, no doubt, has led to the more dilatory process of land sale cases under section 70 of the Regulation. It was also submitted that annulment of lease has become an infructuous step as even after annulment of the lease, the defaulter is not evicted from the estate.

23.5 In case of 'sale of lands' even service of notice very often takes about 2 to 3 years. They think that if the Deputy Commissioner gives a standing direction to Nazir for contacting the Mauzadars while proceeding to serve notice of sale, the service will be quicker and the misuse of process will be reduced.

Eroded lands.

23.6 In case of land eroded by a river, the patta very often continues for years together. With the pattadar no longer available, the revenue on such estates just adds to

the unnecessary arrear burden of the Mauzadar. There is good justification for annuling such estates after due enquiries by a Revenue Officer.

T. B. Revenue.

23.7 In many cases, particularly in immature areas, the encroacher comes during cold season and leaves the area by the time the Mauzadar's staff appears for collection of rvenue. The T.B. revenue in these cases becomes a dreadful burden on the Mauzadars.

23.8 In many cases T.B. revenue of a village is much more than the regular revenue demand obviously due to the failure of the Revenue officers to regularise the occupation in deserving cases.

23.9 Another problem connected with T.B. revenue is the inordinate delay in sending T.B. daul. Quite often the 'daul' is sent after one year of the 'current period' of collection, as a result of which, collection becomes difficult, In many cases the so called touzi patta contains particulars of one or two encroachers only out of a group of 50/ 60 people, In such cases, the collection of T.B. revenue from each person in the group becomes difficult.

Remission of revenue upto 10 bighas.

23.10 The Government with a view to giving relief to the poorer section of peasants, passed orders for remission of revenue upto 10 bighas Unfortunately certain problems and malpractices have cropped up, according to the Mauzadars, in the implementation stage. No thorough and systematic efforts have been made by land records staff to find the total lands held by a person in different lots within a circle and in different circles within a district not to speak of lands held in another district. The perfunctory and incomplete enquiries have, it is widely believed, led to remission of revenue in many undeserving cases. In our view total land held by a person at least in each mauza should be enquired into before giving effect to remission of revenue.

23.11 Secondly, the persons coming within the purview of remission, are required to pay local rate as it has not been remitted, They do not feel inclined to come to to the Mauzadars' office to pay the small sum for local rate. As a result, the progress of the collection of local rate in such cases, has become unsatisfactory. According to them, strangely enough, many sections of people, particularly belonging to schedule tribes and other backward classes, insist on payment of land revenue even where the cases come under the order of "remission of revenue". Apparently with the revenue rceipt in hand, they feel more confident about continuance of their pattas

anent-
tled

23.12 Considering the fact that in Assam, the incidence of revenue is very light compared to rental value or income derived from crops over land, the order of remission of revenue, seems to many people a mere political gimmick without any appreciable effect. In the present market even the produce of a chilli-plant would fetch more than the revenue demand for a bigha of land, The Government may, therefore, give a serious thought over the matter in the context of the circumstances prevailing here.

Commission.

23.13 The Mauzadars have acknowledged gratefully about the more liberal rates of commission recently granted by Government. They have, however, represented that the average rate should not be less than 30% and contingency charges of Rs. 500.00 allowed at present, should be enhanced to Rs. 1,000.00 to Rs. 2,000.00 according to the volume of demand.

23.14 The Commission has gone through the recent circular of the Government (letter No. RLR. 22/66/Part/129 dated 12.3.81) revising the commission to the Mauzadars. It appears that in order to give incentive to the Mauzadars for better collection of revenue, the government have revised the rates of commission to a considrable extent. As a matter of fact for Mauzas with demand upto Rs. 50,000.00 the rate of commission will be 30% of the total demand. The Commission, however, feels that the formula devised by Government in respect of different categories of mauzas as per demand, is not equitable. For example, the commission for category 'B' should have been Rs. 15,000.00 plus 25% on the amount exceeding Rs. 50,000.00 as in the lower slab total commission comes to Rs. 15,000.00. In the same process for category 'C', the

minimum should be Rs. 27,500.00 which will be earned in aggregate by the Mauzadars coming within the category 'B'. The Mauzadars are the agents of Government for collection of revenue. Therefore, commission should be oriented to the burden of the work involved. In the formula proposed by us, there will be no discrimination in the quantum of commission offerred for the same burden of collection, even though the rate may progressively come down. As a large number of mauzas come under the lowest category, the average rate of commission will be about 30%. We feel that this liberal revision of commission will give necessary incentive to the Mauzadars.

Running commission.

23.15 It was further put forward by the Mauzadars that 'running' commission should be allowed to about 75% of the collection which will reduce misuttilisation of collected revenue by Mauzadars for payment of staff salary. On persusal of the Government circular referred to earlier, the Commission finds that the procedure laid down by Government should enable the Mauzadars to get their running commission regularly on submission of their bills.

Size of a mauza.

23.16 Considering all aspects, the Mauzadars feel that the size of a mauza should not be less than Rs. 75,000.00 or more than Rs. 1.50 Lakhs in terms of demand. The Commission, however, found that Government have recently issued a circular (vide Memo. No. RLR 22/60/Part/134 dated 1.4.81) for reorganisation of mauzas so that the minimum demand of a mauza should be Rs. 50,000.00 and the maximum should be Rs. 1,00.,000.00 in rural areas.

Court fee for attachment.

23.17 At present a court fee of Re. 1,00 is levied on attachment notice which is too nominal a sum to prick the defaulters. They recommend the raising of the fee to Rs. 10.00 so that the defaulters would be forced to give due importance to the attachment notice, There should also be a late fine for paying revenue after the last day of the revenue year.

Control of Gaonburas.

23.18 Earlier the Mauzadars had good control over the Gaonburas. It is alledged that now-a-days they have little control over them, and as a result, the Gaonbura do not offer any assistance to the Mauzadars in the collection of revenue. Revenue Department may take necessary steps to bestow some controlling influence on the Mauzadars over the working of the Gaonburas.

Restoration of powers for chithmutation.

23.19 Since the Mauzadars are declared revenue officers, Government will stand to gain on the collection of revenue by restoring to them the powers to grant chitha-mutations. Appointment of their representatives in circle level land advisory committees will also serve as a useful link between the Sub-Deputy Collectors and the people.

23.20 The Mauzadars referred to certain factors which had stood in the way of satisfactory collection of revenue. First, in a large number of cases initial allotment of Government land to landless and other deserving persons have not been regularised by issue of pattas for years together. As a result, Touzi Bahira revenue was realised from the allotees. This restricted their efforts to sale of moveables only as no land sale cases could be taken up. Secondly, the records are not updated due to which the actual owners remain unknown. Thirdly, owing to higher cost of establishment and insufficient commission, they were unable to appoint sufficient staff for collection of revenue. The Mauzadars had all along held an important status in the society. It is necesrary, in the interest of better collection of revenue, to increase the rate of commission which will give them sufficient incentive to do their work. The Commission also considered the question of minimum and maximum amounts of demand for a mauza. A minimum amount of demand could be determined from the expected commission to be earned by the Mauzadar from the mauza. The commission should, in our view, yield a net annual income of about fifteen thousand repees. Considered from this angle, a mauza should be so constituted that the total demand is not less than sixty thousand rupees. On the other hand, a mauza should not be too big so that the work of collection becomes unwieldy. Considering all aspects, we think that the maximum demand for a mauza should not exceed eighty thousand rupees. If the above suggestion is accepted, a Mauzadar will earn a

reasonable annual income. We also agree with the Mauzadars' grievances stated earlier. If the Revenue Department takes effective steps, even by way of an operation, to regularise all allotments by issue of pattas, it will go a long way towards better collection of land revenue. Similarly, the Sub-Deputy Collectors should be impressed upon to take up more field mutation cases for updating the records. There should be directives from the Government to the District authorities to issue patas regularly. An intensive sub-divisionwise programme for regularisation of allotment by issue of pattas may be taken up early. Similarly, Deputy Commissioners and Sub-Divisional Officers can also keep watch on the progress of record correction works in the R. Kg's branch. The Commissioners of Divisions may also, perhaps, go into this problem and issue necessary, instructions for pushing up the work of updating the records.

23.21 The Commission made a comparative study of the Mauzadary system and the Tahsildary system as prevalent in Assam. In this connection the Commission received the following information on revenue demand, collection and expenditure in respect of Mauzas and Tahsils separately for the last three years from the Revenue Department vide Government letter No. RLR. 78/79/29 dated 9.7.81.

TABLE A : MAUZADARY SYSTEM : DEMAND/COLLECTION/EXPENDITURE.

Six Districts in Assam.	Year	Demand (in rupees)	Collection (in rupees)	Expenditure '@ 17½% commission & Rs. 500/- for each Mauza as contingency. (in rupees)
1	2	3	4	5
314 Mauzas	1977-78	2,74,64,554	78,78,295	15,35,701
	1978-79	2,58,97,599	49,95,679	10,31,243
	1979-80	2,36,92,036	40,42,395	8,64,406

TABLE B : TAHSILDARY SYSTEM.

Two Districts in Assam.	Year	Demand (in rupees)	Collection (in rupees)	Total expenditure. (in rupees)
1	2	3	4	5
28 Tahsils.	1977-78	48,14,336	9,29,804	26,72,750
	1978-79	37,60,952	10,17,375	25,71,165
	1979-80	35,63,181	7,67,386	27,79,346

TABLE C : PERCENTAGE OF COLLECTION TO DEMAND ON THE BASIS OF INFORMATION GIVEN IN TABLE A & TABLE B.

System	Percentage of collection to demand on the basis of information given in table A and Table B.		
	1977-78	1978-79	1979-80
1	2	3	4
A Mauzadary system.	28.7%	19.3%	17.1%
B. Tahsildary system.	19.3%	27%	21.5%

23.22 On the basis of information given by the Government as contained in the above two tables, it appears that in case of mauzas the collection varies from 17% to 28% of the total demand while in respect of Tahsils it varies from 19% to 27%. The efficiency in collection of revenue under these two systems, therefore, seems to be of the same order. Under none of these systems the collection of even 1/3rd. of the demand could be made which bespeaks of a very unsatisfactory situation. This is, in fact, the reason for mounting arrears of revenue.

23.23 In order to have a first hand study of the working of the Tahsildary system the Commission visited five Tahsils, three in Goalpara district and two in Cachar district. Detailed notes on the visit to each of the Tahsils are attached to the report as annexures I to V. The Commission intended to make a probe into two facets of the working of the Tahsildary system, (i) efficiency in collection and (ii) economics of collection, The following table gives the composition of demand, collection and expenditure in the Tahsils visited by us.

TABLE D : TAHSILS IN GOALPARA DISTRICT.

	Dudhnai			Dhubri			Golakgonj		
	78-79	79-80	80-81	78-79	79-80	80-81	78-79	79-80	80-81
1	2	3	4	5	6	7	8	9	10
1. Percentage ofcollection to demand	14.9%	15.8%	11.6%	10.8%	9.3%	9.0%	15.5%	11.7%	17.6%
.2 Percentage of current demand to arrear demand.	30%	25.6%	24.0%	17.7%	18.8%	17.2%	29.5%	27.4%	24.4%
.3 Expenditure incurred per rupee collected	61 P.	62 P.	95 P.	60 P.	71 P	67 P	71 P.	98 P.	73 P.

TAHSILS IN CACHAR DISTRICT.

Sonari			Karimganj		
78-79	79-80	80-81	78-79	79-80	80-81
11	12	13	14	15	16
16%	13%	19%	5.4%	5.5%	3%
28.4%	26.6%	24.4%	16.9%	15.3%	14.0%
Rs. 1.14	Rs. 1.47	Rs. 1.02	Rs. 1.54	Rs. 2.73	figure not available.

23.24 It will be clear from the statement that in Goalpara district only 9% to 17% of the demand could be collected in last three years. In Cachar district, on the other hand, percentage of collection to demand varies from 13% to 19% in Sonai Tahsil and 3% to 5.5% in Karimganj Tahsil. Thus, in none of the above cases collection was found to be above 20% of the demand. The major part of demand had to be collected by coercive measures. This is also reflected in the columns showing percentage of current demands to arrear demands. The current demand on the whole appears to vary from 14% to 30%. It will be evident from the detailed notes on the Tahsils visited by us that in most cases coercive measures are taken in half hearted manner and in some of these Tahsils no land sale cases were taken up although such measures would have led to better realisation of arrears of revenue.

23.25 As regards economics of collection, our study in these five Tahsils indicated that in the three Tahsils of Goalpara district, the expenditure incurred by Government for collection of each rupee varies from 60 paise to 98 paise. In the two Tahsils in Cachar district, the expenditure was on a higher level varying from one rupee two paise, to two rupees seventy three paise per rupee collected. Thus in Cachar district the expenditure on collection exceeds the amount actually collected. The whole question of collection of revenue, therefore, becomes almost meaningless. Rather, the collecting machinery has become a burden on the exchequer of the Government. Even in Goalpara district only a very small part of the collected revenue actually becomes available to the Government after meeting the expenditure on the collecting machinery. This position is in stark contrast to the one observed in mauzadary system where the expenditure per collected rupee does not exceed 20 paise as arrived at on the basis of statistics supplied by the Government. In the wake of the recent revision of commission the expenditure will rise to about 35 paise per rupee collected.

23.26 It transpires that percentage of collection to demand under the Mauzadary system ranges from 17% to 28%, which though not satisfactory, is still decidedly more efficient. Thus in efficiency and economy, the Mauzadary system is definitely superior to the Tahsildary system as prevailing now. Further the state of working of Tahsil is indeed in a very poor shape. From the limited studies made by the Commission, it can without any hesitation, be observed that there is virtually no control over collecting machinery at the Tahsil level where recourse to coercive measures is left to the lower level staff. If this position continues, the very need for the realisation of revenue under the Tahsildary system may be questioned. This is indeed a very dismal picture when one considers the fact that realisation of land revenue in respect of small holdings of ten bighas and less has been abolished. In proportion to other taxes and cesses, the incidence of land revenue even today is much less. There is, therefore, no reason for such poor collection. Further the entire collection made through the agency of the Tahsils, is eaten up and additional amounts are required to be expended by the Government to maintain the Tahsildary machinery. Thus the collection of revenue under the Tahsildary system has added an avoidable burden on the rate payers. Government should give their serious thoughts whether the Tahsilsdary system in the two districts should be replaced by the more economical and efficient Mauzadary system. To add more vigour to the Mauzadary system, the commission may be raised to 30% of the collection in a slab system, as proposed by us. This will also give more incentive to Mauzadars.

23.27 It was also pointed out by the Mauzadars that after attachment of movables under section 69 of the Assam Land and Revenue Regulation if the arrears still remain unsatisfied, two courses are left open to the Deputy Commissioner to proceed against the defaulter. He can either take reclurse to the sale of the defaulting estates under section 70 or proceed to annul the settlement of the defaulting estate under section 90 of the Regulation. The Regulation however does not spell out the circumstances under which one of the above two procedures should be adopted. As the law stands now the collector can pick and choose at his own discretion to exercise his powers in either of the two procedures. While the defaulter has ample scope to have the estate released from sale both before and after the sale becoming final., the only course open to him to seek

relief against the orders of annulment is by way of an appeal before the Board of Revenue. Thus the provisions of annulment of settlement under section 90 are harsher. Besides, in case of annulment the arrears will have to be written off by the Deputy Commissioner. The Commission, therefore, suggests that annulment of settlement of periodic land for arrears of revenue should be restricted to the following cases :-

(i) Where the estate has become Bona Vacantia ;

(ii) where the land has been eroded and the pattadar has neither relinguished the pattadar has neither relinguished the estate nor paid the land revenue due thereon; and

(iii) where due to natural calamity the land has become unusable and the pattadar had neither relinguished the estate nor paid the land revenue.

CHAPTER XXIV

PUBLICITY.

24.1 Land Reform measures are intended for improving and protecting the status of the poor farmers. However, the land reform measures take a long time to attain the period of fruition. The process in achieving the goal, compared to other development projects, is slow. Besides, most of the farmers are illiterate and live in rural areas. They are, therefore, not aware of implications of different land laws. Besides, new land laws are enacted and the existing laws are amended very frequently. As a result of which even knowledgeable persons cannot keep themselves fully informed of the changes. Revenue Department of the Government should, therefore, have a permanent machinery to arrange wide publicity about various land reform measures to enlighten our farmers. In addition to publication of booklets, pamphlets, posters etc., steps will also have to be taken to arrange documentary film shows depicting the social changes brought about by these measures in the agrarian structure. There should also be arrangements for periodic radio-talks to apprise them about the various rights given by these laws for the protection and security of the tenants, agricultural labourers and other landless persons. Further in the line of programmes for rural folks prepared by the Officers of Agriculture Department, revenue Officers may be able to prepare short news bulletins giving information on various operations and schemes connected with land reforms. This would require an expert cell either at the Government level or at the levels of the two Directorates of land Records and Land Reforms.

24.2 Successful implementation of the land reform measures will be possible only if we are able to do away with the fear complex existing in the minds of the economically weaker sections of the society. This can be done by creating conscious public opinion in support of these measures at the village level. There is, therefore, urgent need for having a machinery at the circle and gaon panchayat levels for creating a communication link between the Government and the peasantry. Besides giving documentary shows and distributing publicity materials, it can arrange seminars, talks, meetings with different shades of public opinion. This may not be possible with the general staff of the publicity department as good knowledge of revenue laws is a pre-requisite for those saddled with the responsibility of disseminating such information and for taking part in such seminars and talks. Care must be taken in the preparation of the publicity materials, so that they can be easily understood by common people. The Commission feels that the use of local dialects in the radio programmes and documentaries meant for the farmers will draw them closer to the Government machinery and create necessary enthusiasm. During the tours the Commission found to its utter disappointment that because of absence of such a publicity wing, a large number of rural people are still in dark about various schemes adopted by the revenue department for their socio-economic development. In particular, it was noticed that many tenants failed to get their names recorded in the tenants record-of-rights during the operations undertaken in the different districts either due to fear of their landlords or due to complete apathy resulting from their ignorance and ineffective publicity about these operations. Rehabilitation of landless persons under various schemes reportedly have not succeeded particularly in the district of Cachar apparently for the same reasons.

24.3 Efforts are generally made by the vested interest to thwart the land reform measures so that the big landlords can continue merrily their exploitation of the poor peasants. It is, therefore, necessary to organise the tenants, agricultural labourers and

other weaker sections of the society for their security and for availing the advantages and benefits offered to them under various schemes. This task, of organising the poor cultivators into well-knit unions or associations can succeed only through vigorous publicity.

24.4 Government have constituted different advisory Committees at circle and sub-divisional levels for proper implementation of the agrarian laws. The Commission has an impression that these committees have not been fully made use of the purposes for which they were constituted. Since there are non-official members, at the Committees, there services and co-operation can be enlisted for giving publicity regarding various schemes and operations pertaining to land reforms. Their involvement will make the task of organising the poor peasants much more easier.

CHAPTER XXV

MISCELLANEOUS

A. THE PROBLEM OF NON-AGRICULTURAL TENANTS IN RURAL AREAS.

25.1 During our visit to Silchar and Sonai Circles, a good number of public representatives drew our attention to the problem of non-agricultural tenants in rural areas. Because of great influx of the displaced persons in Cachar district, there is a large number of persons living in rural areas on tenanted land having non-agricultural pursuits. Since such tenanted homestead plots do not form parts of any agricultural holding, they are not protected by the provisions of the Assam (Temporarily Settled Areas) Tenancy Act. Further, since these plots are situated in non-urban areas they are outside the operation of the Assam Non-Agricultural Urban Areas Tenancy Act also. It is reported that they do not get any protection against arbitrary fixation and enhancement of rent, and unauthorised ejectment by the landlords. Although this problem exists in all parts of Assam, it seems to be more acute in Cachar district. The Commission feels that it is necessary to provide measures for their protection as well as for giving them certain statutory rights in the line of other tenancy laws. The Commission thinks that two alternatives are left open in this context. Government may enact a separate Act for non-agricultural tenants in rural areas or bring such tenants within the framework of the Assam (Temporarily Settled Areas Tenancy Act, by suitable modification of the definitions of the terms like 'land', 'tenant', 'rent' etc. whichever alternative is chosen, it will have to provide for separate provisions for fixing rent, creation of tenancy, ejectment and arbitration in case of disputes between the landlords and the tenants. Obviously, the principles of fixation of rent will be different from those followed in case of agricultural tenancy as the rental value of the land will come into consideration in case of the non-agricultural tenancy. Besides some elements of the Non-Agricultural Urban Areas Tenancy Act will also come in particularly in respect of ejectment.

B. TRAINING OF REVENUE OFFICERS.

25.2 During the British era, the Revenue Administration was engaged mainly in works connected with collection of revenue. In the areas where the raiyatwari settlement was prevalent, land records staff were engaged to survey and prepare record-of-rights to facilitate assessment of revenue. Although due to public pressure tenancy laws were enacted by the British rulers, sufficient attention was not given for enforcement of these acts. After independence, committed as they were, to the goal of a welfare state, the State Governments in the light of the national policy on land reforms enunciated in the Five Year Plans, enacted many laws particularly in the sphere of land reforms. The implementation of these laws was an uphill task in view of the concerted efforts made by the vested interests to defeat the very purposes of these acts. Further, the revenue administration also faced new problems and situations in the course of administering these acts. As a result, amendments had to be brought in frequently to cope with the new problems. The changes in the laws are sometimes brought in at so short intervals that it becomes very difficult for the revenue officers to keep themselves posted with the latest position of the laws. We have studied the syllabus of the Assam Administrative Staff college which trains the State Civil Service Officers, the sheet anchor of the revenue administration. We are happy to note that the subject of land reform is included in their training. The new recruits to the services get a farly good grounding on different revenue laws in this training. They, however, need an in-service training to

refresh their knowledge periodically. The Commission, therefore, recommends that provisions should be made for refreshers' course of training in the Administrative Staff College in land reforms and other land laws, for middle-level and senior-level Civil Service Officials.

TRAINING OF LAND RECORDS STAFF.

25.3 Successful implementation of land reform and land settlement laws and the connected welfare schemes depends largely on the land record staff who are responsible for the actual field work including preparation of record of-rights. It is, therefore, important that they are given a basic training in the various land reform laws. At present the land records staff undergo training in the Assam Survey School. We have found, that in the syllabus for the training of these staff the land reform acts are not included. Unless they get a good grounding in these laws, they cannot be imbued with necessary motivation and skill for discharging their duties. The lack of motivation of the land records staff to work in the interest of the weaker section of the society is well known and has affected proper implementation of the act.

25.4 The Commission, therefore, recommends that the syllabus for the training of the land records staff in the Assam Survey School should be revised by including the the subject of "land reforms." In addition, there should also be provision for a refreshers' training course for the land records staff to enable them to acquaint themselves with the latest position of the various revenue laws and also of the current schemes and programmes of the Government.

C. REVISIONARY JURISDICTION TO BOARD OF REVENUE AGAINST ORDERS PASSED BY DEPUTY COMMISSIONER UNDER SECTIONS 15/16 OF THE ASSAM STATE ACQUISITION OF LANDS BELONGING TO RELIGIOUS OR CHARITABLE INSTITUTIONS OF PUBLIC NATURE ACT, 1959.

25.5 The Assam Act V of 1975 has incorporated the provision of appeal under section 21(3) of the Assam State Acquisition of Land Belonging to Religious or Charitable Institutions of Public Nature Act, 1959 against the order of the Deputy Commissioner passed under section 15 or 16 of the Act before the Assam Board of Revenue. This has no doubt remedied a great lacuna in the Act. There is, however, no provision for giving revisionary powers against such order to the Board of Revenue as is given in section 151 of the Assam Land and Revenue Regulation. The revisionary power enables the higher court to call for the proceedings of the Subordinate Officers even when no appeal is filed. In settlement matters, new facts may come to light to the Deputy Commissioner warranting cancellation of his order. Since the Deputy Commissioner cannot appeal against his own order injustice may be perpetrated unwittingly. If Board of Revenue is given the powers of revision, the Deputy Commissioner, in such circumstances, can refer the matter to the Board for invoking revisional jurisdiction in the interest of justice. It is, therefore, recommended that provision may be made in the Act giving revisionary powers to the Board of Revenue against any order passed by the Deputy Commissioner under sections 15 and 16 of the Act.

(B. Dowerah)
Chairman.

(R. Baruah)
Member.

(A. K. Biswas)
Member.

(J. Abedin)
Member.

(M. C. Das)
Member.

ANNEXURE I

A NOTE ON DUDHNAI TAHSIL (GOALPARA DISTRICT)

The Commission visited Dudhnai Tahsil and Circle on 28.7.81. The Circle Officer is the Ex Officio Tahsildar. The Tahsil is divided into 3 dihis for the purpose of collection of revenue viz (1) Damra (2) Rangjuli and (3) Bekali. There is one Lower Division Assistant in each Dihi. He camps in the Dihi for collecting revenue. There are two Upper Division Assistants out of whom one works as Cashier and other as Head Assistant in the Tahsil Office. One Nazir is incharge of all coercive measures for which he is provided with six process servers. The headquarters of the Nazir is at Dudhnai and the moves in different Dihis as and when necessary.

The total demands for last three years are as follows :-

Year	Demand		Actual Collection of Revenue		Actual Expenditure in collection.	
	Current	Arrear	Current	Arrear		
1	2	3	4	5	6	
1978-79	1,62,238	5,41,420	52,877	51,986	0.64	Lakhs.
1979-80	1,53,521	5,98,794	61,001	57,729	0.73	"
1980-81	1,51,321	6,30,584	42,796	47,662	0.86	"

It appears that the average percentage of collection to demand is 16.2%. The realisation seems to be a shade better during 1979-80. It is clear that if collection goes on at this rate the arrear demand of about 6 lakhs will always be there.

In order to ascertain whether effective steps were taken to realise the arrears, we looked into the Register of land sale cases. During 1977-80, eighty four cases were instituted involving a meagre sum of Rs. 3,735·89 paise. On questioning, Shri Ramesh Chandra Rava, in charge Damra Dihi admitted that he had not yet submitted any D.W. to Nazir for want of forms. On scrutiny of D.W. case Register, it transpired that last year, D.W. was issued in 230 cases involving Rs, 11,481.00 and a sum of Rs. 5,209.00 was realised. From the statistics of land sale cases and D.Ws. there is no gain saying the fact that the coercive measures for realisation of arrears were taken in a very half hearted manner. Besides, it gives one the impression that institution of cases depends on the sweet will of the Dihi Assistant and there is no arrangement for checking his authorities either by the Nazir or by the Tahsildar. Even though there may not be detailed rules and procedure for making such checks, it is not understood why the Tahsildar cannot devise ways to keep constant watch on the realisation of arrear demand. Even the system of deposit of collection leaves room for retaining collected revenue for some time at the Dihi Assistants' level. Again, after receiving the Dihi collection the cashier deposits the collection in Goalpara Treasury about once a week. Thus, at the cashier's level also the collection remains for a cuple of days without duly accounting for the same. Now that Nationalised Banks are there, Government may consi-

der, if a new procedure can be formulated so that the Tahsildars can deposit the daily collection into a separate State account in a Nationalised Bank and there-after credit it into the Treasury by draft. This will reduce possibilities of unauthorised use of Government fund.

While making test checks of a revenue receipt book, Shri B.R. Majumdar, Under Secretary Revenue detected a serious irregularity. Receipt Book No. 14972 issued to Shri Nihar Ranjan Deb Roy, a Dihi Assistant, blank receipt Nos. 51 to 75 were kept signed by Shri Deb Roy in advance without any date. On interrogation he gave the plea that as sometimes there is great rush he signed the blank forms in advance. Apparently he could not realise the serious irregularity he had committed which may, in the hands of an unscrupulous person, lead to misuse.

The over all impression formed by the Commission after scrutiny of the records and discussion held with the staff is that the system is not efficient as the rate of collection is extremely poor while expenditure comes to. 0.71 paise per rupee of revenue collected. Besides, adequate checks and balances by superior Officers and staff are lacking and the entire initiative for taking coercive measures for arrear demand is left to the lowly Dihi Assistant.

ANNEXURE NO. II

A NOTE ON DHUBRI TAHSIL (GOALPARA DISTRICT.)

Dhubri Tahsil has been functioning since 1.7.63. For administrative convenience the Tahsil is divided into five Dihis viz., (1) Patamari, (2) Binnachhara, (3) Gauripur, (4) Panbari (Rangamati), (5) Silai (Parbatjoar) corresponding to six mauzas viz. (1) Patamari, (2) Dharmasala, (3) Dhubri, (4) Gauripur, (5) Alamgonj and (6) Debitola.

Six Lower Division Assistants designated as Mauza Assistants are in charge of six Mauzas for the purpose of effecting the collection of Government revenue inclusive of rent. There are 200 numbers of tenants, ledgers covering all these six mauzas. The total demand of the Tahsil in respect of the year 1980-81 and the collection thereof against each mauza are shown below :-

Name of Mauza	Total demand in rupees.	Total collection in rupees.
1	2	3
1. Patamari	34,574	3,038
2. Dharmasala	34,579	2,135
3. Dhubri	28,980	4,887
4. Gauripur	42,371	5,859
5. Alamgonja	30,242	2,009
6. Debitola	29,003	8,702
Total	1,99,749	26,630

In addition to above an amount of Rs. 95,744.00 against the accumulated arrear demand was realised during 1980-81. Thus actually an amount of Rs. 1,22,344.00 comprising both current and arrear revenue was realised during the year. As against the above collection, the expenditure to the tune of Rs. 82,703.00 was incurred on account of pay, T.A. etc. of the staff, which means an expenditure of 0.68 paise per rupee collected.

The Sub-Deputy Collector incharge of Tahsil, submitted a detailed note indicating the present position of the Tahsil in relation to demand vis-a-vis collection staffing pattern, assignments etc. A cursory study of the note submitted by the Sub Deputy Collector leads to the following observations :

(1) There is no specified rule to govern the system of collection. As a result, the standard of functioning of the Tahsil as a whole depends on the experience and efficiency of the personnel working in the Tahsil.

(2) Most of the staff working in the Tahsil are ex-employees of the Acquired Estates, who prior to their absorption in Government service were working under the erstwhile zamindars. After their absorpotion in the Tahsil, they were not imparted any training for working under a uniform system of collection of revenue. The Executive Instructions issued by the Government from time to time could hardly be considered enough to render them proper guidance.

(3) The Mauza Assistants, according to the practice in vogue, go to the fields and collect Government dues which they account for in Amdani Register generally after a lapse of 7 to 10 days and deposit the collected amount through Tahsil chalan to the Upper Division Assistant-Cum-Cashier who hands over the money to the Senior Upper Division Assistant. The Mauza Assistants, to ensure security of Government money, make temporary deposit with the Senior Upper Division Assistant who is not only in over all charge of supervision of day to day work but is also responsible for issuing counter foil receipt books to the Mauza Assistants, Nazir and Process Servers. The Assistants find scope to keep with them the collected money for a oconsiderable period.

(4) The Senior most Upper Division Assistant does not grant any receipt to the Mauza Assistants who make temporary deposits of collected money with him. The money remains unaccounted till the return of the Mauza Assistants from the fields giving ample scope to the Senior Upper Division Assistant to misuse such fund.

(5) As regards the collection of arrear dues, sufficient endeavour is not made by the Mauza Assistants to issue D. Ws, against all the defaulters. According to present practice, the concerned Mauza Assistants select some defaulters within their Mauzas and issue D.Ws. against them. There is no criterion for selecting defaulters for taking coercive measures against them. The entire mechanism virtually rests on the sweet will of the Mauza Assistants. Consequent upon such practice, the services of the Nazir, who is assisted by process servers, are not fully utilised for the purpose of effecting realisation of arrear dues through coercive measures.

(6) At the end of each revenue year, the position of the unrealised dues is worked out simply by deducting the collected amount from the demand in respect of a particular year. No attempts are made to bring into Bakijai Register, the names of all the defaulters with the amount against each of them in a particular year. Such an exercise, if taken, would enable the Mauza Assistants to know the actual arrear position and also would ensure proper steps for issuing D.Ws. against each and every defaulter. In absence of a streamlined procedure, the Mauza Assistants are not in a position to indicate outstanding Government dues in respect of a particular year and what they actually show as arrear demand is more or less and accumulated position without having any reference whatsoever to a particular revenue year. Unless the position is worked out correctly with all relevant information, it will be idle to expect improvement in the collection of Government revenue through Tahsil system.

ANNEXURE NO. III

A NOTE ON GOLAKGONJ TAHSIL.

For the purpose of collection of revenue and rent the entire Tahsil is divided into 8 mauzas viz. (1) Kachakhnoa (2) Simlabari (3) Balajan (4) Takrecherra (5) Dhepdhepi (6) Bashbari (7) Golokganj (8) Dimakuri.

Six Lower Division Assistants are in charge of these eight mauzas for the purpose of collection. Two Assistants are holding charge of two mauzas each, while the remaining four are holding one mauza each.

The duties of the mauza assistants are to collect revenue in the field and to initiate coercive measures against the defaulter. The mauza Assistants generally attend office once a week but sometimes they attend twice also. The work load among them has not been made on the basis of demand in a particular mauza. From a statement showing mauzawise collection and demand relating to the year 1980-81, it appears that while an assistant is required to deal with the annual demand of less than Rs. 14,00.00, the other one finds the annual demand exceeding Rs. 44,000.00 for realisation. Strictly speaking, there is hardly any norm of assigning duties to the Mauza Assistants.

Unlike in Dhubri Tahsil, the Mauza Assistants in Golakganj, on their return from field collection, deposit the collected amount by challan which shows amount of revenue, local rate, T.B. revenue etc yearwise, to the cashier, generally once a week This is however, not followed strictly An extract taken from the Dainik Amdani Register relating to Bashbari Mauza, in charge of Shri Nausad Ali, Mauza Assistant showed that the the collected money was not deposited with the cashier within the stipulated period.

Collected during the period.	Date of deposit with cashi r.	Amount Rs.
23.4.81 to 8.5.81	21.4.81	1,337.25
	11.5.81	2,043.39
12.5.81 to 23.5.81	25.5.81	1,444.60
2.6.81 to 12.6.81	19.6.81	1,536.46
20.6.81	22.6.81	177.87
3.7.81 to 10.7.81	13.7.81	152.35
18.7.81 to 6.8.81	10.8.81	570.62

Verified C.F.R. book No. 14864 and found no collection after 6.8.81. The above extract reveals that the collection position was not at all satisfactory during the relevant period and the amount realised would hardly make good the expenditure incurred.

The Mauza Assistants as in Dhubri Tahsil are found rather erratic in issuing D. Ws. for realisation of arrear dues.

The Cashier maintains three subsidiary cash Books, one each for P.S.A., T.S.A. and T.B. revenue. On receipt of money from the Mauza Assistants the cashier first enters the amount in subsidiary cash books with some details and then takes the consolidated amount to general cash book (maintains in manuscript form). The money is kept in iron safe placed at Golokganj Police Station with double locking arrangement. One Key remains with the cashier while the other one with the Head Assistant. The cashier stated that remittance to treasury is made once in a week or so depending upon the amount of collection. But a glance at the general cash book shows as follows :-

Date of remittance						Amount rlmitted.	
29-6-81	..	..	..	..	..	Rs.	11,732.86
30-7-81	..	..	..	..	..	Rs.	3,857.58
11-8-81	..	..	..	..	..	Rs.	2,965.19

It is, thus, seen that the Government money is kept in hand much beyond the permissible period and such unauthorised retention of Government money leaves ample opportunity for temporary utilisation by the concerned officials.

The total demand of the Tahsil for the year 1980-81 has been shown as Rs. 1,60,536.00. The arrear at the begining of the said year has been shown as Rs. 6,57,512. 00. As against the above demand, the collection of current dues came to Rs,. 37,613.00 while that against the arrear was Rs. 1,06,323.00. Thus, against the total current and arrear demand as on 1.7.80 of Rs. 8,18,047.00, the total collection and expenditure at the close of the year was Rs. 1,43,935/- and Rs. 1,05,915.00 respectively which means the cost of collection of 0.74 paise per rupee collected.

We wanted to see the Register of tenants ledgers so as to know the actual demand of Tahsil on a particular period but the Sub-Deputy Collector incharge of the Tahsil could not furnish the actual number of tenants ledgers maintained in the Tahsil. This piece of information could not be worked out even from the Circle 'Dauls'. According to the Mauza Assistants of the Tahsil, there are 137 villages while as per circle records the number stood at 147 although the Tahsil and Circle jurisdiction is co-terminous. The Sub-Deputy Collector could not properly explain the discrepancy. The total demand of the Tahsil could be ascertained only by going through the Register of Tenants ledger updating on the basis of the circle 'dauls'.

ANNEXURE NO. IV

A NOTE ON SONAI TAHSIL.

1. Sonai Tahsil has five Tahsil circles (i) Sonapur (ii) Bonraj (iii) Davidsonabad (iv) Rupairbali and (v) Bhubanhill. One circle Assistant (L.D.A.) is incharge of each Tahsil circle except Sonapur and Bhubanhill circles which are managed by one circle Assistant. Collections from Lakhipur and Banskandi Parganas are made by Sadar Tahsil for administrative convenience but the 'Daul' as usual, is prepared by Sonai Circle staff. There are sixteen process servers who work under the control of the Nazir an Upper Division Assistant. Circle Assistants maintain Registers and Touzis and also go for camp collection. The current revenue is normally paid at the main Tahsil office. In fact, camp collection of the current revenue is taken up only in the later half of the revenue year after the harvest. The Nazir is responsible for over all supervision of collection of arrear revenue and has control over the process servers. The process servers are allowed to keep a sum not exceeding Rs. 1.,000.00 which limits the number of processes to be issued on one occasion. The position of collection for three years is given below :

1	1978-79	1979-80	1980-81
	2	3	4
A. Current revenue demand.	1,97,000	1,98,027	1,98,000
B. (i) Collection of current revenue.	90,874	83,974	1,04,899
(ii) Percentage of collection	46.02%	42.40%	52%
C. Arrear demand	6.94 Lakhs	7.43 Lakhs	8.13 Lakhs
D. Arrear collection through process servers.	58,141	43,592	94,480
TOTAL DEMAND A+C	8.91 Lakhs	9.41 Lakhs	10.11 Lakhs.
TOTAL COLLECTION B+D	1·49 Lakhs	1.28 Lakhs	1.99 Lakhs
Percentage of total collection to the demand.	16%	13%	19%

2. **Expenditure on Tahsil staff (excluding Tahsildar-Cum-Circle Officer ;**

	1978-79	1979-80	1980-81
	Rs.	Rs.	Rs.
Expenditure	1,70,226	1,88,465	2,03,197
Total collections.	1.49 Lakhs	1.28 Lakhs.	1.99 Lakhs.
Expenditure per collected rupee	1.14 P.	1.47 P.	1.02 P.

3. **EFFORTS THROUGH COERCIVE MEASURES.**

	1978-79	1979-80	1980-81
1. Number of attachment cases.	134332	12360	13065
2. Total dues involved.	Rs. 1.20 Lakhs	Rs. 0.86 Lakhs	Rs. 0.22 Lakhs

It appears that every year about Rs. 90,000.00 of current demand and about Rs. 6 lakhs of arrear demands could not be realised. Considering the volume of the arrear demand, the realisation is too poor and over and above that no coercive measures are taken for about Rs. 6 lakhs on the average. According to the Sub-Deputy Collecotor Cum-Tahsilda:, he could not issue D.Ws. as a process server can be entrusted with D. Ws. only upto a limt of Rs. 1,000.00 at a time and in a year he can make about 20 trips only. If the upper limit of the process server is enhanced, by taking some security, additional number of D.Ws. may be given. A random check of the register showed that a process server takes about 25 days on each trip to mofussil areas for collection of arrear by attachment process. It was also noticed that no land sale case was actually taken up by the Sub-Deputy Collector during these years.

ANNEXURE NO. V

A NOTE ON KARIMGANJ TAHSIL.

Karimganj Tahsil comprises of both temporarily settle estates, locally known as Ilam estates, and erstwhile permanently settled estates, the proprietory rights of which have been acquired under the Assam State Acquisition of Zamindaries Act, 1951. In the case of these permanent settled estates, Government have stepped into the shoes of the proprietors and tenure-holders and collect the rents from the tenants on the basis of the touzi-rolls maintained by the ex-proprietors.

Ilam areas :- The Tahsil is divided into two Zillas for the purpose of revenue collection. There is an official called Zillader, (who is in fact a lower division assistant) who is in charge of collection for each zilla. The normal practice is to receive the revenue at Karimganj Tahsil Office. Camp collection is resorted to by the Zilladers soon after harvesting of rice, mostly in the rural markets.

The Tahsil has 8 process servers for both permanently settled and ilam areas. There is also one Nazir, a lower division assistant, and a Head assistant. The proceses are handed over to a process server in groups by the Bakijai assistant and issued by Nazir after noting the particulars in Howla register. There is no yardstick as to the number of processes to be given to a process server or number of processes to be covered by him within a year. Almost the entire arrear collections were made through the process servers. On return of the process servers, the Nazir receives their collections, verify with the entries in the howla register and then prepare duplicate challans and deposit the receipt to the poddar (cashier), who credits it in treasury.

Permanently sattled area.

The collection is done on the basis of the system given in the Hand Book of Sylhet Tahsil Rules. Each process server is to execute 61 D.Ws. The entire collections made should be deposited to Nazir in Tahsil Office on return after 21 days. An yearly target is given to a process server to execute 750 D.Ws. There is, however, no limit as regards amounts involved therein. The Nazir also goes out for arrear collections in important cases involving heavy amounts.

Staff of Karimganj Tahsil :-

Officer-S.D.C.	..	1
U.D.A.	..	1
Nazir(L.D.A.)	..	1
Zilladar(L.D.A.)	..	2
Tahsil Assistant	..	6
Poddar(Cashier)	..	1
Process server	..	12
Peon	..	1
Chowkidar	..	2

Revenue Demand & Collection (Ilam areas) :

	1978-79	1979-80	1980-81
Demand	Rs.	Rs.	Rs..
Current demand	15,322	20,202	20,384
Arrear demand	1,65,312	1,71,141	1,82,172
Total demand	1,80,634	1,91,343	2,02,556

Collection

Current	1,941	608	1,511
Arrear	7,553	3,279	13,066
Total	9,494	3,887	14,577
Percentage of collection to the demand.	5.3%	2.03%	7.1%

Rent (for ex-permanently settled areas):

	1978-79	1979-80	1980-81
	Rs.	Rs..	Rs.
Demand.			
Current demand	2,46,535	2,46,459	2,46,459
Arrear demand	14,57,197	16,11,894	17,54,691
Total demand	17,03,732	18,58,353	20,01,150
B. Collection :-			
Current collection	31,100	30,653	1,517
Arrear Collection	60,737	73,008	57,820
Total collection	91,837	1,03,661	59,337
C. Percentage of total collection to total demand.	5.4%	5.5%	3%

Expenditure (together for both permanent settled and Ilam areas).

	1978-79	1979-80	1980-81
	Rs.	Rs.	Rs.
Espenditure	1,32,508	1,60,165	1,62,227
Expenditure per rupee-collected	Rs. 1.44 P	Rs. 1.54 P	Rs. 2.73 P.