

# Bonded Labour in Pakistan

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PILER

DECLARATION/WP/01/2001

Working Paper

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# **Bonded labour in Pakistan: An overview**

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## Foreword

In June 1998 the International Labour Conference adopted a Declaration on Fundamental Principles and Rights at Work and its Follow-up that obligates member States to respect, promote and realize freedom of association and the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation.<sup>1</sup> The InFocus Programme on Promoting the Declaration is responsible for the reporting processes and technical cooperation activities associated with the Declaration; and it carries out awareness raising, advocacy and knowledge functions – of which this Working Paper is an example. Working Papers are meant to stimulate discussion of the questions covered by the Declaration. They express the views of the author, which are not necessarily those of the ILO.

This paper, based upon interviews with Government and non-governmental sources in Pakistan, as well as a survey of several thousand sharecropping tenant families in rural Sindh, was written as background material for the first ILO Global Report under the Declaration Follow-Up on the subject of Forced Labour. It is presented as a working paper in view of its pioneering nature in terms of (a) close field interaction with bonded labourers and (b) an effort to quantify this complex phenomenon. The survey methodology uses non-institutional debt and the practice of a particular form of unpaid labour (*begar*) as proxies for debt bondage. Other methodologies are possible. Irrespective of methodology, it is clear that forced labour arises whenever restrictions are placed on the mobility of the employee/tenant. The interactive method of investigation adopted by this study high-lights also how forced labour might occur, depending upon the degree of choice between work and leisure available employees and their families, pointing to the need for further work on both the formal and informal contractual relations governing such work.

This paper is published at a time when the Government of Pakistan is taking important steps to address the problems of bonded labour, through a National Action Plan focussing on the release of bonded labour and rehabilitation of freed families.

The ILO is grateful to Aly Ercelawn and Muhammad Nauman – who take turns being academic activists and activist academics in Pakistan – for this work, which helps to start building a knowledge base in this relatively barren area. Aly Ercelawn and Muhammad Nauman worked for PILER (Pakistan Institute of Labour Education and Research) on this project.

June 2001

Zafar Shaheed,  
Director, Promotion,  
DECLARATION.

<sup>1</sup> For the text of the Declaration, please visit our website at <http://www.ilo.org/public/english/standards/decl/declaration/text/index.htm>



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## Acknowledgements

This report was largely completed in July 2000. The authors are immensely indebted to the many bonded *hari* families in Sindh for *sharing* their experiences and views on relief and rehabilitation. Collaboration with Bhandar *Hari* Sangat and the Human Rights Commission of Pakistan in Hyderabad has been critical to the paper. A special debt is owed to Ramzan Memon, Aftab Ahmed and Shahina Ramzan for their generous participation, advice, and personal hospitality. In addition, Shirkat Gah, Sindh Development Society, and Aurat Foundation, were also very helpful to the camp survey, as were the many young women and men who volunteered to get a survey completed rapidly. Assistance from PILER staff is gratefully acknowledged. Comments from Zafar Shaheed, Ana-Teresa Romero, Akbar Zaidi and Karamat Ali have improved the report. The authors welcome comments at [ercelawn@awara.khi.sdnpk.org](mailto:ercelawn@awara.khi.sdnpk.org)





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## 1. Introduction

This paper responds to some queries about the situation of debt bonded labour in Pakistan. Due to limitations of time, the paper is largely based upon a small set of interviews with government and non-governmental organizations in Sindh and Punjab, and upon some secondary material. ILO support did make it feasible to undertake a rapid survey of several thousand bonded sharecroppers and their families in Sindh who have taken refuge in informal settlements. Since brick-kilns close down during the monsoons, systematic field interviews with their labour were not possible. Our findings may be summarised in relation to the main issues raised by the ILO.

- *What progress has been made in obtaining reliable statistical data concerning bonded labourers?* Government has not undertaken systematic surveys to estimate the prevalence of bonded labour. Limited information is available from human rights organizations and other activists. There is general agreement that the most widely and deeply affected bonded labour in Pakistan are landless sharecroppers (*haris*) in Sindh and brick makers (*patheras*) in Punjab. Observers worry that the bonded labour system is gaining importance in other sectors such as fisheries and carpet making. In general, the rapid growth of the informal manufacturing and service sectors, particularly in rural areas, will not reduce and may even create more bonded labour – due to low wages and piece rates, use of child labour, absence of health cover, absence of protective social or State organizations, etc – even as it helps to reduce underemployment and unemployment. Since children generally participate in various tasks as hired or family labour, progress on eradicating child labour will remain feeble.
- *What information is available concerning their composition by gender, and also by caste?* From the information available from non-governmental organizations, and the bonded sharecropper survey undertaken by us, there is no doubt that sufferings of bonded labour are imposed upon both males and females – on adults as well as children – in high proportions. Religion, ethnicity and caste differentiate the burdens of bonded labour. Among bonded labour, non-Muslims of lower castes would be worst off, probably followed by Muslims without tribal/clan links. Since entire families are regularly traded as a pool of labour among landlords and employers, the issue of trafficking cannot be ignored, including its worst forms in sexual exploitation of girls and women in bonded labour families.
- *How might statistical methodologies be improved?* In the absence of focussed rural and urban surveys, very rough estimates could be attempted from the future Census of Agriculture (most likely delayed to 2001) and from future industry surveys. Slight modifications to these surveys could yield basic information on debt bondage.
- *What are the main factors limiting the prosecution of offenders?* Elimination of bonded labour has not been accorded a priority of government at any level. The Sindh Tenancy Act explicitly empowers the landlord to detain an indebted tenant, which clearly contradicts the subsequent Bonded Labour Act that declares all debt bondage as illegal. There is a disquieting trend towards district administration and judiciary being more sympathetic to offenders rather than bonded labour, and often refusing to consider the most blatant evidence. Many local officials are not even aware of their obligations for enforcing relevant laws. Offenders are themselves powerful or protected by local and national elites. Major political parties reflect the interests of the wealthy and are hence uninterested in seriously taking up the cause of bonded labour. Except for the land reforms under Field Marshal Ayub Khan in the 60s, past military governments have not been active in the matter – perhaps because grants of State land have brought the interests of many personnel of the armed forces even closer to that

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of landlords. The continuation of separate electorates for Muslims and minorities will continue to keep minorities weak at the local level. The absence of rural worker organizations and weakness of human rights organizations are important factors in the absence of prosecutions.

- *Which rehabilitation programmes have proved most successful, and why?* Rules under national legislation call for the establishment of a fund for the welfare and rehabilitation of bonded labour. But there have been no serious rehabilitation efforts by government. Every government announces programmes for distribution of land to the landless, but there are no credible reports which establish that bonded labour has been a substantial beneficiary of such programmes. Sindh government has allowed freed bonded sharecroppers to set up temporary camps on State land. A non-governmental organization, the Human Rights Commission of Pakistan (HRCP) actively assists informal camp committees in administrative tasks and acts as a liaison with the local administration. HRCP purchased land for a camp in Sindh and plans to undertake rehabilitation tasks on adjoining land. Another activist organization, the Bonded Labour Liberation Front of Pakistan has established a chain of over 200 schools for children of brick-kiln workers, and also has some income-generating projects for freed workers. Both organizations are very active in providing legal assistance for release of bonded labour from private detention. In 2000, the current military regime announced its intentions to spend Rs 100 million on relief and rehabilitation of child and bonded labour, but specific plans are still awaited. Under the Sindh Rural Development Project, the Asian Development Bank is considering funding debt redemption, relief and rehabilitation of bonded agricultural and non-agricultural labour.
- *What are the principal cultural obstacles to the more effective elimination of bonded labour?* The fact that most deeply affected bonded labour is both minorities – religious and ethnic – and migrants is a major obstacle to receiving public support and government attention. The absence of judicial activism has strengthened employers and landlords in defying the law. Landlords in Sindh have launched a campaign to defend the *hari* system as integral to the culture of Sindh as an agrarian society. Some observers feel that attachment to rural residence and unwillingness to change occupations is a self-imposed obstacle by bonded labour. To some, it seems that decades of oppression and powerlessness have, as elsewhere, been internalised as a way of life and hence inhibit more active resistance. Our camp survey suggests that both factors should be qualified: freed bonded sharecroppers are generally anxious to obtain factory jobs, and believe that absence of strong *hari* organizations reduces farm-level resistance to abuse of agricultural labour. No doubt the cultural emulation of extravagant ceremonial expenditures of employers and society is a factor in accumulating unsustainable debt. We should be cautious, however, in ascribing too much to culture since it can be used as a self-serving veil for perpetuating extremely inequitable economic and social arrangements. Among bonded labour, religious and caste differentiation has surely been an obstacle in building organised resistance.

#### 207 *haris* set free in Khipro

The Joint Civil Judge and the First Class Magistrate, Mirpurkhas, informed the Sindh High Court that he had released 207 *haris*, including women and children, who were recovered by him from different areas in Khipro. The applicants had claimed that their relatives were being held in bondage and were not being allowed by the *waeras* to leave the agricultural lands.

Source: The Dawn, 1 July, 2000.

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### 43 bonded labourers freed

The Lahore High Court released 43 bonded labourers including women and minors, from the custody of two brick-kiln owners in Lahore and Pattoki. Those released include 11 labourers from a Lahore kiln and 32 from Pattoki. They had been working at the kilns for the last four years. They were produced in the court after their recovery by the bailiff.

Source: The Nation, 20 August, 2000.

## 2. Bonded labour population

Passed in 1992 by the federal legislature, the Bonded Labour System (Abolition) Act declares illegal all arrangements that impose restrictions on labour or services as a condition for loans and advances (*peshgi*). An earlier judgement of the Supreme Court of Pakistan also has the same Implication. The Constitution of Pakistan prohibits all forms of forced labour and traffic in human beings. Pakistan has ratified ILO Conventions No. 29 and No. 105 on the abolition of forced labour.

However, it is a rare occasion when government in Pakistan expresses concern for captive labour. Reflecting their indifference, neither the provincial nor federal governments have undertaken surveys to establish the magnitude and intensity of debt bondage in Pakistan. As an illustration of the lack of concern, or understanding, for the social implications of economic organization even among technocrats, consider the absence of information on agrarian structure in the main official economic publication, the annual Economic Survey. For that matter, the Census of Agriculture has very little data on sharecropping arrangements.

Our meetings with officials suggest that government views issues of bonded labour primarily as a law and order problem rather than one of a State obligation to actively protect and promote human rights. If some serious survey efforts are underway they have not been shared with us.

Government perhaps sees judicial action as adequate remedy. It is also quite probable that comprehensive data collection is seen as leading to an acknowledgement of widespread incidence of bonded labour – and a consequent obligation to take prompt and substantive action against some of the very elites which are part of most governments. Despite their calls for moral regeneration, Islamic groups are not vocal about the oppression of bonded labour. This lack of general concern is surely affected by the fact that bonded labour is, largely, either non-muslim or Muslims converted from lower caste Hindus. It is not an exaggeration to say that neither government nor the larger society seems to consider bonded labour as a particularly odious blight upon the country.

The widely respected Human Rights Commission of Pakistan (HRCP) reports that over 1600 *hari* and their families obtained release from private jails in 1999. During the same year, more than 700 labourers were released, mostly from brick-kilns. The Bonded Labour Liberation Front of Pakistan (BLLF) claims to have assisted in freeing 820 persons across Pakistan during 1999.

Since 1996, the HRCP reports that 5,600 *haris* and their families were freed by the court or escaped from captivity themselves in Sindh. Of this, nearly 2,000 persons saw freedom in the first three months of this year. Our survey of *hari* settlements in Sindh recorded over 6000 men, women and children as having obtained freedom during the recent past. Observers suggest that another four to five thousand persons have obtained freedom, finding refuge in remote rural settlements and urban areas. Some Sindh districts have become particularly notorious in the incidence and intensity of abuse: Sanghar,

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Umerkot and Mirpurkhas account for three-fourths of the families taking shelter in the bonded labour camps of Sindh.<sup>1</sup>

Government is prone to look at the magnitude of the problem only in terms of the number of complaints referred to local administration or to the Courts. It is as if the prevalence of a disease such as tuberculosis was to be defined only by the limited number seeking treatment. Or that poverty is inflicted only upon those seen seeking alms in public.

Regardless of the absence of firm data, most observers and activists believe that bonded labour defines life and livelihood for many hundreds of thousands of men, women, and children even when restricted to sharecropping agriculture and the brick-kiln industry.

## 2.1. Bonded population in agriculture

Observers consider agriculture to be a major location for debt bondage, particularly for sharecroppers. The situation of sharecroppers is considered to be most abject in lower Sindh, followed by southern Punjab. A very noticeable dimension in lower Sindh is the large numbers of non-Muslim *haris*, mostly as Hindu migrants from the very arid areas of Tharparkar.

In the absence of specific official or other surveys, only crude estimates of the magnitude of bonded labour can be attempted on the basis of available proxies. An upper limit to the scale of bonded labour can be defined whenever the landlord extracts unpaid or nominally paid compulsory labour for the landlord on his own farm or domestic needs. We believe that this situation is near universal in a sharecropping relationship.

A lower limit to the scale of bonded labour can be constructed by introducing stricter criteria. For example, bondedness could be considered serious only when the tenant is substantially indebted to the landlord, and specially when such debt is taken for consumption. Unpaid labour can be ignored (for various reasons including even weak reciprocity) and we could instead focus on specific (or extreme) restrictions on labour. Any approximations are necessarily dependent on available data (see table below), and underline the need for purposive surveys.

Consider the upper limit of bonded labour, when we define bondage as the compulsory delivery of unpaid or nominally paid tenant and family labour (*begar*). In the last *Census of Agriculture*, using the proxy ratio of sharecropped land to total tenant land, three fourths of almost one million landless tenants were sharecroppers. Hence the condition of *begar* could contain over 720,000 bonded sharecropper households in Pakistan in 1990.

In 1990, Hyderabad division included the districts of Hyderabad, Badin, Thatta, Dadu, Tharparkar and Sanghar. Multan division included Multan, *Vehari*, Sahiwal and Khanewal districts. Bahawalpur division extended to the districts of Bahawalpur, Bahawalnagar, Rahimyar Khan and Cholistan. Household size can be used to estimate the population of bonded men, women, and children, of whom half would be females.

Household size is assumed to be 7.5 persons. Projections to 2000 assume an annual population growth rate of 2.2 per cent.

<sup>1</sup> We cannot judge which of various factors are more important in these districts: labour shortages more pronounced; landlords more violent; tenants with more spirit; local officials more sympathetic; or activities more organized.

At a conservative average household size of 7.5 persons, bonded sharecropper households would have covered 5.4 million persons in 1990, around half of whom would be females, and about 13 per cent would be children between 10-14 years old. The conservative intercensal (1981-1998) rural population growth rate of 2.2 per cent would indicate nearly 6.8 million persons in the year 2000. This is certainly an upper limit even with the broadest definition of bondage since a continuation of past trends indicates a steady reduction of landless tenants and sharecropping.<sup>2</sup>

### Estimated sharecroppers in debt bondage, 2000

	Tenants	Tenants in debt	Share-cropping among tenants	Non-institutional debt in tenant debt	Share-croppers in bondage	Share-croppers in debt bondage	Share-croppers in bondage	Share-croppers in debt bondage
	1990	1990	1990	1990	1990	1990	2000	2000
	(households)	(households)	(proportion of area)	(proportion)	(households)	(households)	(persons)	(persons)
Pakistan	962014	291472	0.75	0.90	721510	196744	6742926	1838686
<i>Provinces</i>								
Sindh	335550	107394	0.80	0.93	268440	79901	2508726	746721
Punjab	446440	99916	0.68	0.86	303579	58431	2837120	546071
<i>Divisions</i>								
Hyderabad	191134	77857	0.76	0.94	145262	55621	1357557	519810
Multan	83184	18619	0.60	0.82	49910	9160	466438	85605
Bahawalpur	72528	21526	0.70	0.88	50770	13260	474475	123922

Source: Census of Agriculture 1990.

Note: Tenants excludes owner-tenants.

In 1990, Hyderabad division included the districts of Hyderabad, Badin, Thatta, Dadu, Tharparkar and Sanghar. Multan division included Multan, Vehari, Sahiwal and Khanewal districts. Bahawalpur division extended to the districts of Bahawalpur, Bahawalnagar, Rahimyar Khan and Cholistan. Household size is taken to be 7.5 persons per household and can be used to estimate the population of bonded men, women, and children, of whom half would be females.

Household size is assumed to be 7.5 persons. Projections to 2000 assume an annual population growth rate of 2.2 percent.

Focusing on sharecroppers in debt to landlords can specify lower bounds to the bonded tenant population. Proxies for the latter can be applied to the nearly 300,000 landless tenants in debt.<sup>3</sup> This restriction drastically reduces the estimate of bonded sharecroppers to around 200,000 households in 1990, which further implies around 1.8 million persons in bonded sharecropper families across all of Pakistan in 2000. This may be a conservative estimate because tenant perceptions of indebtedness most likely

<sup>2</sup> The Census of Agriculture provides data on trends. Between 1980 and 1990, the number of landless tenant farms declined from 1.05 to 0.95 million; and sharecropped area in tenant farms decreased from 8.5 to 5.7 million acres. These trends are sharper over the longer period between 1972 and 1990. Other analysts would disagree. For example, a recent Action Aid report believes that sharecropping has increased rapidly in lower Sindh because tenants provide a pool of assured, skilled labour for the rapid growth in labour-intensive, cash crops such as sugar cane.

<sup>3</sup> A recent rural credit survey (1995-96) undertaken by the Applied Economics Research Centre at the University of Karachi provides support to deductions from the Census. Data extracted for us show that in a national sample of 1,182 tenants, around 18 per cent had taken one or more loans from the landlord in the past five years. This proportion is close to the 20 per cent derived as an approximation from Census data on debt. It is our impression that loans are likely to have been underreported by survey tenants whenever not probed to include subsistence advances and purchases of shared inputs by the landlord.

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exclude advances for subsistence as well as shares of inputs purchased by landlord. And, as in our survey, tenants may refuse to admit to debts, which they consider to be dubious claims of landlords.

There are some districts in lower Sindh where cases of bonded labour are reported frequently. In 1990, the six districts of Hyderabad division (before it was reconstituted) would have accounted for around 55,000 debt bonded sharecropper households.<sup>4</sup> With an unchanged number of tenants by year 2000, bonded sharecropper families could have contained above 500,000 persons in just the (the now two) divisions of Hyderabad and Mirpurkhas. Some assert that extreme bondage conditions are usually associated with small tenants and large debt, and hence the number affected will be correspondingly smaller. Our survey does not, however, support any marked variations in abusive conditions of bondage due to farm size of tenant or size of debt claimed by landlord. This is not to deny the obvious that the smaller the debt the easier it is for the sharecropper to buy freedom whenever so permitted by the landlord.

Southern Punjab is considered by observers to contain large numbers of bonded sharecroppers even though the condition of most (Muslim) tenants is not considered to be as abused and as exploited as that prevailing in lower Sindh. Including just Multan and Bahawalpur divisions would add over 200,000 persons to those estimated for Hyderabad (plus Mirpurkhas) division to give a conservative total of more than 700,000 men, women, and children in bonded landless sharecropper families in the year 2000.

Tenants in Sindh are largely unregistered, and updating of records is generally infrequent in all provinces. Hence updating the above estimates will have to await the next Agricultural Census. Since there are no indications that the Census will be undertaken in 2000 as due, it can be a few years before estimates can be updated.

In any event, it would be trite to dismiss even a million persons in bonded agricultural labour families as a minor issue in a country with around 40 million persons officially counted as income-poor.

## **2.2. Bonded population in brick-kilns**

The Bonded Labour Liberation Front, which works mostly with brick-kiln workers, estimates that around 2,000 bonded labour and families were freed with its assistance between January 1999 and May 2000. These belonged to various sectors, including agriculture and brick-kilns, in all four provinces. Of those freed, nearly half were children and one-fourth were women.

Not all brick-kilns are registered with provincial labour agencies. The district administration probably does make infrequent estimates but we were unable to obtain any provincial summaries that may exist. We were given to understand that there are no recent surveys focussed on brick-kilns. Hence all estimates of bonded labour in brick-kilns remain largely illustrative.

<sup>4</sup> Our estimates are conservative in comparison to other recent analysts. Consultants to the Asian Development Bank for the Sindh Rural Development Project estimate sharecroppers to be currently around 400,000 households in just four districts, who are identified as bonded labour. In contrast, we estimate sharecroppers in all Sindh to be less than 300,000 in 1990 and do not expect the number to have increased. Similarly, an Action Aid study estimates sharecropper families to currently lie between 0.8 and 1.0 million in the province as a whole.

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A recent HRCP report cites 2,455 brick-kilns in the entire country, employing around 120,000 workers of whom around 48,000 were women. These appear to be estimates from a study conducted two decades ago by ASR (Applied Socio-Economic Research), which shows that of the 2,455 kilns three fourth were in Punjab and about one tenth in Sindh. Our information for Sindh suggests that kilns have recently declined in Sindh to less than 200.<sup>5</sup> But we have no reason to assume that the number of kilns across Pakistan, and particularly Punjab, have declined or even remained stagnant. A recent estimate of the Punjab government counts around 2,200 kilns, up from the 1,800 estimated by ASR for the early 1980s.

Our two interviews with brick-kiln owners near Lahore indicated that there could be as many as 4,000 brick-kilns in Pakistan. Both owners confirmed that all workers took advances and loans and these were to be adjusted against workers remuneration. The ASR study also found virtually all brick-kiln families to be in debt to the employer.

The kilns that we visited were obviously larger than average establishments. Halving their stated employment implies an average of 25 families of brick makers and another 10 worker families involved in subsequent tasks. Since workers are remunerated on a piece-rate basis, there is a premium on large families. An average of four adult and child workers per family would imply that as many as 400,000 brick makers including women and young children were in debt bondage. Of these workers, nearly half could be young children.

An average family size of seven persons among brick makers would indicate that 700,000 persons could be in the grip of the bonded labour system across the 4,000 brick-kilns in Pakistan. When other brick-kiln workers are included, the very rough upper estimate of bonded labour and their families in brick-kilns would be close to one million persons across Pakistan.

Brick-kilns are most numerous in Punjab and hence that is where most of the bonded workers are to be found. A recent official estimate of brick-kilns in Punjab gives 2,166 kilns at end 1999. No official estimate of workers is available. ASR data would imply over 100,000 bonded workers in Punjab. Using our very rough impressions would substantially increase this estimate, to more than 200,000 for brick-making workers alone. Including all types of brick-kiln workers and their families could yield over 500,000 men, women, and children bonded in brick-kilns of the Punjab.

The brick kilns of central Punjab employ predominantly Christian workers. The ASR study suggests that other areas in the Punjab and other provinces would have mainly Muslim workers. Across the country we would expect more than half of the brick-kiln workers to be non-Muslim, perhaps even as much as two-thirds of the workforce and their families.

### **3. Severity of bondage**

Government would no doubt acknowledge that compulsory work, unpaid or paid nominally, done for landlord or employer in business or home (*begar*) is unlawfully taken from men, women and children, as an extensive practice in sharecropping agriculture and in brick-kilns. It would probably be also acknowledged that the duration of *begar* is

<sup>5</sup> The Sindh Bureau of Statistics suggested that kilns in Sindh currently number less than 200. Among reasons for the decline are increasing demand for concrete bricks and declining availability of raw material for bricks.

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correlated with financial indebtedness of workers and other bases of exploitation such as the provision of housing. Our survey suggests that *begar* may be the least abusive of the physical dimensions of bondage.

As a result of judicial action, government would have to also agree that even today bondage both in agriculture and in brick-kilns can and does include severe forms of oppression. This ranges from physical restraints upon movement of workers and their families to beatings and sexual abuse of women workers and family members. But governments will not admit to the position of activists and labour that extreme abuses appear to be commonplace in some areas of Pakistan, and that non-Muslim labour bears the brunt of these abuses because of their being non-Muslim. In actual fact, excesses against sharecroppers (*haris*) are particularly acute in lower Sindh and in southern Punjab. The latter is also considered to be the main geographical area of severe oppression against brick-kiln workers and their families.

It is our impression that *haris* will have come under increased bondage excesses because landlords have recently been facing adverse economic pressures. Input prices have risen as subsidies were reduced. Output prices have become unstable. Interest rates have increased, and government lending agencies have tightened loan servicing.

Annual reports of the HRCP contain numerous cases of extreme oppression for bonded labour. The report for 1999 mentions that 2,300 persons were released from private jails during that year alone. With assistance from BLLF, 820 persons were released from private detention. (Some of these would also be included in the HRCP data.) HRCP reports gives examples of workers complaining of near-starvation diets, detention in private jails, shackled in chains, rape, trafficking of workers and families, torture and even murder.

Our survey of bonded *hari* settlements in Sindh has affirmed the horrifying stories familiar to human rights organizations and activists working closely with bonded labour. Even discounting for exaggeration, the statements of these men and women paint an awful picture of conditions for the poor and vulnerable.

Of the 1,000 respondent-discussants (covering more than 6,000 persons) living in *hari* camps, virtually all reported *begar* as the burden of adult men and adult women. For young children of either sex, 40 per cent reported *begar*. Even at two child workers per tenant household in the national tenant population, the implications for the magnitude of forced child labour is horrendously large when we consider the possibility that the country currently may have not many less than the nearly one million tenant households it had in 1990.

Activists told us that a “mild” method of preventing tenants from leaving is to separate *hari* men from other family members at night. Almost all camp *haris* stated that they had been subjected to such treatment. Being kept under guard or even locked up at night is often the next step in bondage. As expected in the camps, more than four-fifth of the respondents said that both men and women had been subjected to such incarceration. Nearly two-thirds also reported children as suffering from such confinement.

Of those reporting that men or women were kept in “private jails”, around 60 per cent had been incarcerated for more than 6 months, and a third had been locked up for more than 12 months before being freed. Being shackled in chains or ropes is as much cruelty as restraint. About 40 per cent of *haris* reported men subjected to this treatment; one-fourth reported women being also shackled over a period that extended to several months.

Sexual abuse of women workers and female family members is a particularly horrifying aspect of bondage. We agree with observers that sexual abuse is less a matter of lust than instilling terror and helplessness into their victims. Despite the extreme sensitivity



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of the issue, over 50 per cent of *hari* households reported women being sexually abused by landlords, their relatives, or managers. Even if only half as many were raped only once, the incidence of such fierce oppression of poor women should be intolerable to society and to the State.

#### 4. Cultural issues

When culture is held to include those social norms which legitimise violence (as a minimum through the absence of social sanctions) against some groups for certain reasons, bonded labour, and in particular women workers, will remain in a very disadvantageous position in Pakistani society. That all human rights belong to all persons, or even that labour hierarchies are not a license to abuse subordinates, is yet to be accepted by most people in our society.

Particularly oppressive conditions of bonded labour in agriculture and in brick-kilns are no doubt due to the multiple disempowerment of being poor, low caste, and non-Muslim. The majority population takes little note even of extreme abuses, and government finds no particular political advantage in actively promoting the protection of minorities.<sup>6</sup>

We can use our survey of Sindh *hari* settlements to illustrate some issues. The data clearly shows that Hindu *haris* were more frequently subjected to abuse as compared to Muslims and Christians. The only striking reversal is the higher proportion of women sexually abused among Muslims. This may well reflect the fact that only severely abused Muslim *haris* flee, and are even willing to seek shelter alongside Hindu *haris*.

We were curious whether abuse was positively correlated with size of debt. No such relationship is apparent in our survey. Similarly, no marked differences were evident in the frequency of violence between sharecroppers of varying farm size. The survey also finds no evidence that smaller landlords are less apt to inflict abusive conditions upon their *haris* as compared to larger landlords.<sup>7</sup>

Local administration and the judiciary are almost wholly from the majority population, and higher officials are frequently from the same class as landlords and brick-kiln employers. In the absence of a greater commitment from the State to eliminate bonded labour, neither officials nor judiciary should be expected to ignore their cultural links. This is probably an important explanation for the regularity with which bonded labour is held responsible for its own plight. Strong cultural links between local officials, judiciary and landlords or employers have no doubt made them more confident in flouting labour and tenancy laws.

Both at brick-kilns and in sharecropping, the worst conditions are held to occur for migrants. Being local labour appears to be advantageous in the sense of having some local relationships to draw upon, whether with the landlord/employer or with other workers in potential resistance to extreme labour bondage workers from settled populations can access sources from agencies other than the landlord or employer, and can also invest savings and loans in livestock and other assets more securely because of their own homestead.

<sup>6</sup> The stand taken by successive governments including the current military regime on blasphemy laws suggests that even a passive defence of the civil rights of minorities can be regarded by the State as hazardous action.

<sup>7</sup> This is somewhat puzzling since large landlords should need to be less explicitly violent because of their greater clout with the State, which permits more cost-effective *threats* of violence.

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There are areas from which very few complaints of extreme labour bondage have arisen. Observers believe that this is so for a number of reasons. Strong tribal traditions and tribal links serve as protection against excessive conditions of bondage, for example in upper Sindh and Balochistan. A largely tribal society, plus a historically greater degree of egalitarianism, in the North-West Frontier Province is another illustration of culture being a mitigating force in bonded labour relationships.

Some observers feel that attachment to rural areas and unwillingness to change occupations is a self-imposed obstacle by bonded labour. It would also seem that decades of oppression and powerlessness have been internalised as a way of life and hence inhibit more active resistance.<sup>8</sup> No doubt the cultural emulation of extravagant ceremonial expenditures of employers and society is a factor in accumulating unsustainable debt. We should be cautious, however, in ascribing too much to culture since it can be used as a self-serving veil for perpetuating extremely inequitable economic and social arrangements.

Religious and caste differentiation also prevails among bonded labour itself. This has surely prevented the emergence of strong labour organizations and collective resistance in general. It is a singular tragedy that formerly active support organizations for *haris* have moved away from class-based struggles towards ethnic nationalism. This tendency, however, seems to be the universal pattern of civil society organization in recent decades.

In recent years, landlords in Sindh have gone on the offensive to defend bonded *haris* as integral to the culture of Sindh as an agrarian society. Their campaign includes filing a complaint in the Sindh High Court. The text of the petition, and its defence by the Assistant Advocate General, is baffling in view of the prevailing law against debt bondage.

A word of caution is in order. The culturally superior status of landlords and brick-kiln owners and their henchmen should be seen as a tradition empowering them to promote their economic exploitation by all means, including terrorising and abusing workers and their families. Conditions of bondage are both a result and sustenance of unequal economic and political power, with culture also acting as the absence of (general) social disapproval against extreme exploitation.

While the majority population claims to define its culture by reference to Islam, there is a self-serving abeyance of Islamic values (and injunctions) in dealing with issues of bonded labour. Or perhaps there is a subconscious recall of the pre-Muslim period when the hierarchy of castes was an open license to oppression; and of earlier times when slavery was common among Muslims. We are also apprehensive of the impact of strident, and officially supported, calls to jihad as an obligatory war upon infidels, given the fact that the most acutely or widely oppressed of bonded labour in the country are non-Muslims and most oppressors and officials are Muslims.

## 5. Relief and rehabilitation

Since governments have not accepted bonded labour as an issue deserving serious attention, governments have done little of substance. In part this is because, unlike for child labour, there has not been much international pressure. There appeared to be some slight movement in a previous government but it was dismissed before anything concrete could be initiated. In 2000, Chief Executive General Musharraf declared his regime's intention to spend Rs 100 million on programmes for child and bonded labour. The federal

<sup>8</sup> Some observers refer to an apparently more liberal attitude to sexual norms among bonded *haris* as part of a strategy for survival.

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Ministry for Labour expects to prepare concrete plans, developed through national consultations and possibly facilitated by ILO. It is uncertain whether the federal government will take the risk of becoming proactive in enforcing the Bonded Labour Act and therefore alienate large sections of the rural elite, for mostly gains to very small religious minorities. The Cabinet's approval of separate electorates for local elections for Muslims and (non-Muslim) minorities is another reminder of the continuing, negative influences of religion in the Pakistani State.

## 5.1. Legal Relief

In compliance with the Constitution, and as implementation of the ILO Conventions Nos. 29 and 105, the passage of the Bonded Labour (Abolition) Act in Pakistan is only the first step in providing legal relief to bonded labour. But this initiative has not gone far because it has not been accompanied by active enforcement of the law.

### *Hari* fined for filing false application

The Sindh High Court, Hyderabad Circuit Bench, fined a *hari*, Rano Bheel, Rs 15,000 for filing a false habeas corpus application in the court pertaining to the alleged wrongful detention of 67 *haris*. Justice Leghari held that it was not a case of illegal or unlawful detention, but a dispute between the landlord and the *hari*, which was governed by the Sindh Tenancy Act.

The Court appointed a commissioner who visited the lands on June 22, found the *haris* there and released them. However, the landlord filed a counter affidavit and rejected the allegations. Three of the 67 *haris* deposed that they had not authorised Rano Bheel to file the application and that they were living happily with the landlord. The landlord's counsel said that the account register showed Rs 646, 441 dues were outstanding against the applicant and some other *haris*.

The Court observed that the Tenancy Tribunal would decide the case within two months.

Source: The Dawn, 5 August, 2000.

Thousands of bonded families have escaped detention primarily because of human rights organizations. Placing the blame on uncaring provincial governments is unacceptable because the country has been increasingly administered from Rawalpindi and Islamabad. In any case, legal experts believe that the federal government can constitutionally direct the provincial government to take specific actions in enforcing federal law and constitution. The conduct of federal government suggests that it does not consider such powers as a concurrent obligation to promote and protect labour rights.

Virtually all court orders to free workers and families in illegal detention stop at just that point. One presumes that the court awaits further action by the administration in filing a case under the Bonded Labour Act. Oddly enough, even when the landlord or employer claims large debts as the reason for preventing workers from leaving, the court does not prosecute the offender under the Act. Courts do not seem to consider illegal detention as a punishable offence under other laws. We are also puzzled that neither administration nor courts take cognisance of admitted trafficking when landlords defend their conduct by reference to purchase of tenant families from other landlords.

The Bonded Labour Act envisaged a proactive local administration through district Vigilance Committees largely consisting of officials. These were apparently set up for the first time in 1999 (despite passage of the Bonded Labour System Rules in 1995), and then only in a few districts. The HRCP rejected these committees as including the very group of persons against whom action was to be taken.

We have seen only a few committee reports in Sindh. These suggested that the committees act only after receiving specific complaints, and did not find any evidence of private jails – perhaps because they interpret “jail” in a very legalistic fashion. It was not

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evident from these reports that the committees were adequately conversant with the Bonded Labour Act or with the duties of the committees.

**Officials told to ascertain situation**

The Hyderabad Circuit Bench of the Sindh High Court issued notices to the civil judges and first class magistrates of Umerkot, Sanghar, Kunri and Khipro ordering them to raid the agricultural lands of various landlords to verify whether the peasants were under wrongful confinement as stated in the petitions that came up for hearing. The court heard 10 applications for the recovery of 470 peasants, including women and children. In case the peasants were found not to be in wrongful confinement, the applicants would be jailed for filing false petitions but if they were found to be under wrongful detention they should be set free immediately, the court directed.

Source: The Dawn, 9 September, 2000.

The Sindh High Court fined two *haris* Rs 4,000 for filing a false application in the court for having 21 alleged bonded *haris* freed from the alleged private jail of a landlord in Digri.

Source: The Dawn, 17 September, 2000.

Human rights organizations and other activist groups, most notably HRCP and BLLF, are substituting for Vigilance Committees in providing legal assistance to free bonded labour. It still seems to be a rare exception that local officials will act directly upon complaints by bonded labour.

Local police stations rarely provide sanctuary to workers fleeing from bondage. At best they will ignore landlords' and employers' requests for help to locate and return such workers. At worst, and perhaps typically, they will help landlords. However, they do seem to act promptly when ordered by the court to recover and release workers and families. Camp *haris* complain that the police and others in the local administration usually make court orders known in advance to landlords who then shift the detained *haris* around to other locations. We very much doubt that senior police officials are even conversant with the Bonded Labour Act. Even if they were, it is doubtful that police would sympathise with low-caste, migrant bonded labour in the absence of clear signals from the highest levels of government.

Were it to be serious about prosecuting offenders, government can still run up against a problem. Very often, and perhaps universally in brick-kilns, advances are given through intermediaries. Courts may then find it difficult to prosecute the real offenders.

We have no doubt that the *federal* Bonded Labour System (Abolition) Act covers all labour and workers in all occupations, and overrides any other *provincial* laws such as the Tenancy Act in case of divergence – because it is federal and also because it is more recent. However, most landlords, local officials, and at least some of the judiciary seem to disagree. In consequence, sharecropper-landlord relations are held by them to be governed solely by the Tenancy Act: in effect, those tenants are bound to their landlord.

Landlords in Sindh vehemently disagree that the tenant-landlord relations are covered by the Bonded Labour Act. For them it is a simple matter that tenants are indebted (as a favour from landlords), and that tenants must provide labour to pay off the debt in the absence of other assets to redeem the debt. If a brother or father runs away, another brother or son must assume the debt. Landlords insist that debt disputes should be handled only through Tenancy Tribunals under the Tenancy Act. However, landlords are unwilling to

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take the first step in registering tenants and sharecropping contracts including loans and advances.<sup>9</sup>

In their efforts to invoke the Sindh Tenancy Act and deny the applicability of other laws, Sindh landlords – and their allies in the bureaucracy and judiciary – appear to claim that a sharecropper is simply one who contributes labour to a partnership rather than a subordinate worker they believe is envisaged in the Bonded Labour Act. This seems odd in view of practice and law. “Duties of the tenant” prescribed by the Tenancy Act include: “he shall not cultivate the land of any other landlord; he shall be responsible for growing such crops and such acreage of crops and in such manner as may be specified by the landlord.” One cannot think of a more obvious specification of an employer-employee relationship.<sup>10</sup>

Even as they invoke favourable consideration under the Sindh Tenancy Act, landlords routinely violate the Act. *Begar* is expressly forbidden, yet commonly extracted by landlords. Unlawful divisions of input costs and of output are standard practice. Sharecroppers are forced to bear the entire cost of seed for all crops, in complete reversion of the Land Reforms Regulation (MLR 1972) which amended the Act. Irrigation expenses other than rates and taxes are wholly allocated to the tenant but the output share is not increased to two-thirds or higher as mandated by the Act. Highly indebted tenants are often “sold” by landlords to other landlords, in which case the “seller” violates the Act through unlawful ejection of tenants who meet the conditions of permanent rights to tenancy even if not so registered by the landlord. Under the Land Reforms Regulation, in fact, every tenant has a permanent right. Legal experts could surely provide many more examples of a persistent and extensive violation of the Tenancy Act and of the Land Reforms Regulation by landlords, which the State blissfully ignores.

However, landlords in Sindh are correct in pointing out an apparent contradiction between the Tenancy Act and the Bonded Labour Act. The Bonded Labour Act both forbids all advances tied to recovery through future labour, and attempts at such recovery. Being unlawfully bonded includes those who “*forfeit the right to move freely from place to place; forfeit the freedom of employment or adopting other means of livelihood for a specified period or for an unspecified period*”.

But landlords claim that the Tenancy Act allows them to forbid tenants from working elsewhere even in lean seasons. In specifying the “duties of a landlord” the Tenancy Act discusses advances of food grains for domestic needs, and another provision allows the landlord to deduct all debts from current and future harvests. Presumably, future labour is implicitly required from the tenant. Even more strongly in favour of landlords, the Sindh Tenancy Act explicitly states that “*a tenant, if he be indebted to the landlord, shall be liable to pay off his debt before leaving*”. On the other hand, the Bonded Labour Act extinguishes all bonded labour debt and bondage, and directs disputed debt claims to civil courts.

<sup>9</sup> Hyderabad division in Sindh has, apparently for the first time, begun to follow Punjab in noting the names of tenants in some of its land records.

<sup>10</sup> Since the tenant is to work under the direction of the landlord, bondage can be accentuated by wholly legal manoeuvres. For example, since the law requires the tenant to bear the entire cost of inputs, unproductive use of such purchased inputs – e.g. tractors or tube well water – can be forced upon the tenant so as to jack up debts which can only be redeemed through future labour. Since the landlord usually pays for such inputs, hefty transaction and service costs can be further imposed.

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### Move to frame policy on bonded *haris* issue

Justice S. A. Sarwana of the Sindh High Court, Hyderabad Circuit Bench, asked the Bar Councils to submit their recommendations on the issues of bonded *haris* for providing input to the government in framing a policy. These remarks were passed by the Court during the hearing of an application filed on behalf of a *hari*, Mir Mohammad Machi, against a landlord, Ali Mohammad Shar. The Court observed that “We could not enact a law as it is up to the government... We could only pass orders within the purview of law.” The court was informed that cases relating to brick-kiln workers had been decided and that similar cases, of *haris*, were pending in large numbers at the Hyderabad Circuit Bench.

Source: The Dawn, 13 August, 2000

The Sindh Tenancy Act provides for a Tribunal to adjudicate disputes between a landlord and his tenants. Reflecting the enormous power of landlords, the Tribunal consists of a single junior officer from the local administration, the Mukhtiarkar. Presumably in deference to the wisdom of such official, and perhaps protection to poor tenants, the Act warns that “no lawyer shall be allowed to represent the parties to such dispute.” It has been decades since a Tribunal was reported to be in operation, most likely because tenants have no faith in and complete fear of such a biased tribunal. Legal opinion would be necessary to examine the possibility of making Rules under the Act to provide for a fairer tribunal in support of tenant pleas for just application of the Act, including “the manner in which the financial transactions between the tenant and the landlord may be regulated.”

Compared to sharecroppers, brick-kiln workers are relatively fortunate. The judiciary either accepts them as being covered by the Bonded Labour Act or, more likely, follows the earlier Supreme Court judgement in favour of bonded brick-kiln workers. Provincial governments, at least in Sindh and Punjab, have minimum piece rates for payment to brick makers. We were also given to understand that existing labour laws cover such workers, unlike sharecroppers, if the administration were to correctly include brick-kilns among manufacturing establishments. What remains contentious, particularly with employers, is whether brick makers are to be considered employees or simply as contract workers. The piece rate system of payment is invoked by employers as a defence against some labour laws, despite the fact that such workers do their entire labour on the premises of the employer, at his direction, and also reside on the premises of the employer.

Even for brick-kiln workers enforcement of laws is another matter, particularly in remote, rural locations. Most observers believe, however, that it can be far easier for government to steadily improve conditions of brick-kiln workers than of *haris* in the near future.

## 5.2. Relief and rehabilitation

We have no evidence to suggest that government, at any level, has prepared substantive relief and rehabilitation plans for bonded labour. Relief by government appears to be limited to allowing freed *haris* to set up makeshift shelters on State land. The current military regime has publicly announced its intentions to take specific initiatives, and the federal Ministry for Labour is keen to develop comprehensive action plans.<sup>11</sup> There have been no indications yet that the country poverty strategy – being prepared at the behest of the World Bank and the Asian Development Bank – will *seriously* target bonded labour as a special category. Building roads to freedom from servitude does not seem to qualify for inclusion in the infrastructure bias of current poverty alleviation schemes.

<sup>11</sup> It is not obvious, however, that the mainstream Cabinet and the provinces share the same sense of urgency or moral commitment to deal with issues of bonded labour.

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The HRCP has purchased a small piece of land (near Husri) as a safe haven for *haris* fleeing bondage. Nearly 200 families with over 1,000 persons have taken refuge at the camp and, as elsewhere, put up their own traditional, *katcha* shelters. HRCP has helped by installing hand pumps for drinking water. A separate piece of land has been set aside for rehabilitation projects. A building has been partially constructed and is used as an informal school.

The BLLF claims to be running a chain of almost 250 primary schools with more than 12,000 children enrolled across Pakistan. We could not visit any school nor have we obtained any report on the effectiveness of the school programme. The group has also set up sewing centres, and run awareness programmes among bonded workers. BLLF also has programmes to provide urgent relief for food to freed workers.

In past years, Church-related groups in Sindh have also helped in providing land for a *hari* camp and financial assistance for immediate relief.<sup>12</sup> Most *haris* have now moved to other camps. Those who received financial assistance – of Rs 2,000 per household – are generally unable to repay even their meagre loans since the assistance was used up for food and other basic necessities. We do not have information on other efforts in Sindh or elsewhere.

## 6. Future initiatives

Much needs to be done at every level of the problem. Given our very short involvement in the issues, any suggestions from us are necessarily in the nature of directions to take. They must also be based largely upon discussions with camp *haris* and activists working with them. But we do not wish to assume that our current impressions of what needs to be done are an accurate reflection of the priorities of bonded workers and their support organizations. Having spent considerably more time with *haris* and almost no time with brick-kiln workers, the following discussion will necessarily be biased towards bonded *haris*.

### 6.1. Relief in Camps

Most *haris* arrive in camps with few resources. They are helped by other *haris* in building a shelter and in procuring food. But the very meagre resources of other *haris* naturally limit such help. These efforts need to be supplemented by external support.

Most camps need better sanitation arrangements. Some also require better access to potable water. Health facilities are non-existent in camps and those outside the camp are expensive to access. Low use of nearby facilities also reflects a predominant fear among *haris* of being taken captive by landlords. A similar reason is given for not sending children to nearby government schools, in addition to *hari* children being mocked and taunted by other students and by teachers. Unaffordability of school materials is another deterrent.

Except for the HRCP camp, all other camps have a temporary status that is dependent on the goodwill of the local administration and neighbours. The use of armed force in September 2000 to close down a camp (at Sikandarabad) has been a menacing reminder of the fragile existence of bonded *hari* camps. Interventions by the federal government,

<sup>12</sup> In providing support, the Church groups have also been the target of physical violence by landlords.

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among others, have probably given only a temporary respite. We therefore feel that security of tenure for the camps would be a positive step in allaying the fears of residents that they could be put at the mercy of marauding landlords and collaborating officials at any time. Reserved land for camps would also be helpful in installing infrastructure. In this regard we are puzzled why *haris* in the Kotri camp have not been settled in nearby Khuda ki Basti – an innovative settlement specifically developed for the poor.

Split families, with women and children still in bondage, are a special problem, which requires urgent attention by government. When *haris* are freed, family members are left behind because the landlord has shifted them elsewhere. Or family members were working in distant fields or in the landlord's homes at the time of release. In our camp survey, over 15 per cent of the households reported split families with nearly a thousand persons – of whom more than 200 were women and over 300 were children – still held captive by landlords.

## 6.2. Rehabilitation of freed workers

Most *hari* camps appear unable to provide regular employment in the vicinity of camps. In some instances, surrounding farmers refuse to hire camp *haris* even as casual labour because they are labelled as problem *haris*. Urban labour jobs are not readily available in the prevailing conditions of high unemployment. The unfamiliar discipline of urban jobs may also be a problem. Also, fear of kidnapping by landlords restrains *haris* from venturing far from their camps.<sup>13</sup> We were also told that the traditional *Thari* attire was sometimes a constraint in obtaining employment. With literacy being confined to less than 10 per cent of households, and to around 5 per cent for adult males, work options are dismal.

The serious problem of underemployment and low incomes for camp *haris* can be summarised in the following findings from the camp survey. During the past seven days, less than 10 per cent of households were unable to engage in remunerated work. But of those who did find work, 90 per cent earned Rs 500 or less per household. Even with a conservative household poverty line of Rs 500 per week, the vast majority of camp *haris* qualify as among the desperately poor. Over 40 per cent earned no more than Rs 200 during the entire past week: at this rate a *household* would earn around half the basic minimum monthly non-farm wage of Rs 1,500 per worker. An unskilled construction worker could earn at least Rs 80 per day.

The re-employment problem of freed brick-kiln workers may be less severe than that of *haris*. But they too surely need help in adjusting to other occupations rather than having to necessarily return to the occupation that imposed bondage.

Most observers believe that skill development centres are needed for both men and women of bonded labour to take up alternative occupations. Locating them near *hari* camps is probably going to be easier than finding suitable locations for re-training freed brick-kiln workers. If children are to be helped out of the trap they need to be helped with schooling initially and alternate skills subsequently.

Camps should be considered as a transitional arrangement for housing also. Sites need to be provided for permanent resettlement of freed *haris*. This would also apply to freed workers from brick-kilns and any other bonded labour.

<sup>13</sup> But this impression gained during the survey is apparently at odds with our subsequent finding in one camp that many women had left to provide casual labour for the cotton picking season.



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Since *haris* are very skilled farmers, the best economic rehabilitation for them would be to gain access to land without the burdens of bondage. Grants or leases of State land at affordable instalments should be feasible for all bonded *haris*, specially if land parcels can be kept small – say 4-6 acres per family – and cooperative farming is encouraged in a package of assistance. Credit for rehabilitated *haris* could be given specific allocations in general micro-finance programmes for the poor. At the very least, exclusion of very small farmers should be discouraged in mainstream credit programmes. To provide decent incomes, some programme of skill development, especially for women, would be needed.

Many camp *haris* were insistent that national identity cards should be supplied to them on an urgent basis. This makes sense because the card now establishes legal existence, and more practically, is necessary for all official dealings. In view of the temporary nature of camps, some special arrangements will have to be made for issuing cards. The best approach would be to send in mobile teams and invite both camp residents and other locals to take advantage of the special facility.

### 6.3. Economics of bondage

Relief in camps needs less official determination and resources as compared to broader efforts required for rehabilitation of freed bonded labour, and alleviating the conditions of bonded labour generally is even more difficult. It seems useful to take a brief detour into the economics of bondage.

We have no intention, or special competence, to survey the literature on exchange arrangements, or even on interlinked contracts (interlocked factor markets) or missing markets.<sup>14</sup> For our purposes, it is sufficient to sketch out some elementary observations. In noting that labour-tying arrangements can be quite compatible with capitalist agriculture, we caution that the frequency of physical abuse of “tied labour” is at odds with such a transition. We will not take up issues of allocative efficiency, in part because we think that such a discussion will needlessly muddle the political objective of freeing labour from the oppression of bondage, and has the danger of obscuring the power relations (sanctioned by the State) which underlie exploitative economic arrangements.

As confirmed from discussions with workers and activists and reading reports, there are strong economic compulsions to labour bondage. Employer-creditors use loans and advances as an inducement for assured supply of cheap, skilled labour. They are also aware that these advances can become tools of intimidation (or for increasing the extraction of surplus through interlocked markets). Some continue to give further loans both for this reason and to bridge the time gap between consumption needs of workers and sale of output. There are a number of reasons why the arrangement leads to unredeemable debt and severe conditions of bondage.

First, and foremost, is that the worker has very low remuneration, particularly as a *hari*. But, second, most if not all creditors fiddle the accounts in every way possible. At the minimum, *begar* is taken and workers are also not allowed to substantially supplement their earnings from work elsewhere in lean seasons. Less honest creditors will misstate output and input prices and levels. When excessive input burdens are imposed, even against the law, this further reduces remuneration of labour and increases debt.

<sup>14</sup> An overview of the early economic literature is provided by Pranab Bardhan, “Interlocking factor markets and agrarian development: A review of issues” in *Oxford Economic Papers* 32(1), elaborated in *Land, labour and rural poverty* (Oxford University Press, 1984). Edited by Bardhan, *The economic theory of agrarian institutions* (Oxford, 1989) has a broader range of contributions.

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A third factor is from the side of workers. Some must assume debts of parents or other family members. There are generally no savings to support even regular consumption until payday, and certainly none to meet emergencies. The acute bondage of *haris* working for annual crops such as sugarcane provides a bleak contrast to brick-kiln workers paid weekly or fortnightly. For migrants in particular, there may be no other sources of credit except employers. It is also quite rational to accumulate debt as a way to secure preferred employment. But it is also rational to accumulate debt through consumption when labour and social networks are the main assets in which investments appear feasible and secure. Since employment itself depends upon having a large pool of family labour, investment even in schooling or alternative skills is devalued even when permitted by creditors. Hence they can stay trapped in bonded labour occupations.

Some numbers may help. A recent small, but national, survey indicates the miserable earnings of tenants across the country.<sup>15</sup> The highest average annual crop incomes were in Punjab at Rs 37,000 (farm size of 12 acres) and dropped to Rs 10,000 in the NWFP, with Sindh in the middle at Rs 21,000 (for 8 acres). For those fortunate to have much livestock, this provided between Rs 6,000 (Sindh) and Rs 10,000 (NWFP) on the average. With these incomes we cannot see much room for paying off loans from landlords which averaged between Rs 32,000 for NWFP and Rs 16,000 for Sindh.

Our very impressionistic information on brick-kiln workers around Lahore provides equally appalling indicators. An average brick-maker family with two adults and one child worker would be fortunate to prepare 800 bricks daily, to earn around Rs 110 from those who obey the minimum piece rate law. A work season of 250 days would bring Rs 28,000 if no one fell sick - a sum that forces incurring a debt for the remaining year and which is then most likely to accumulate. The brick-kiln owner is only too happy to oblige needy workers, and the trap begins.

#### 6.4. Broader initiatives

Since economic institutions (or more broadly, arrangements) drive the problem of bonded labour, and such institutions are imbedded in the politics of the State, broader initiatives are needed. It may be helpful to think of asserting countervailing power as the solution to bonded labour. Such countervailing power to workers can be provided by their own or other organizations, the State, and the market. For a rapid extinction of bonded labour, action is necessary on all of these fronts.<sup>16</sup>

Development and strengthening of effective (read militant) organizations of workers has never been seen by the Pakistani State as necessary to democratisation. Society is too fragmented and fractured by ethnicity and sectarianism to hold out much hope for mass support to organizations of bonded workers in particular and the informal sector in general. Neither mainstream nor religious political parties have any particular interest or stake in addressing the issues of bonded labour. "Communities" are unlikely to come to the aid of

<sup>15</sup> The data comes from the Rural Financial Markets Study for 1995-96, carried out by the Applied Economics Research Centre at the University of Karachi. We are grateful to Akhtar Hai at the Centre for providing us with the data.

<sup>16</sup> Political action in support of bonded labour rights is all the more necessary to offset state action which separates the political from the economic and social through bureaucratisation (including judicial action) and market mediation.

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bonded workers any more than they have done so in the past.<sup>17</sup> The water shortages of 2000, and the storm of protests it engendered in Sindh, will probably make any concerted action in favour of bonded *haris* in Sindh even more politically difficult than otherwise.

Paradoxical it certainly is, but only government (in particular the bureaucracy-military establishment) has the organization and resources (both through itself and *via* its donors) to undertake major initiatives. Perhaps with much false optimism, we may then indicate the steps suggested in various discussions.<sup>18</sup> However attractive they are, serious land reforms are not a distant possibility and hence are excluded from further elaboration.<sup>19</sup>

Among the easier things to do for government is to intervene in the agricultural markets to ensure a floor to crop prices and a ceiling to input prices. If landlords receive better returns we can hope that sharecroppers will benefit also – both directly and indirectly that landlords will put less of a squeeze on tenants. This assumes, of course, that sharecroppers are actually able to negotiate a tangible share of the increased returns to farming.

The obvious way to reduce indebtedness to employers is to substantially increase direct remuneration of workers. Until that happens, and that is some years away, it may be possible to have alternative, specialised sources of credit for workers to meet genuine consumption and investment needs. Perhaps the new micro-credit institutions can be of help in this regard by considering as working capital the amount needed to bridge the substantial gap between work and output in agriculture. Even though obvious, it is worth repeating that landlords and employers must not be the mediators or guarantors for such credit in order to prevent the misappropriation that has occurred with previous seasonal loan schemes.

Explicitly extending the cover of labour laws and facilities – e.g. health insurance and old-age benefits – to all workers anywhere and everywhere can obviously help in reducing financial burdens on informal sector workers and hence the need for debt and consequent bondage. It would also allow such workers to have access to large, existing funds for housing, schooling etc. Negotiations with employers and landlords can take place in a more balanced setting when workers can have government on their side in insisting upon collective bargaining. A major step would be to declare as invalid all exclusions in application of the Industrial Relations Ordinance (IRO).<sup>20</sup> Government can certainly begin

<sup>17</sup> A combination of caste and religion, e.g. the Hindu Bheel, may provide an obvious way of mobilising the majority of bonded *haris* against exploitation. But the danger is obvious: opponents will get an easy handle to divert attention towards religious differentiation. This, in fact, is what the landlords and their allies are already doing – labelling those *haris* who resist and their supporters as Indian agents. Curiously, Christian brick-kiln workers and their allies are not as vehemently cast as the tools of a global Christian conspiracy.

<sup>18</sup> Policy suggestions beg for a theory of the State. We must admit that our own speculations about the Pakistani State imply terrible naïveté in proposing serious policy reforms which require *prior* structural progress within the State, of which there are no credible signs.

<sup>19</sup> It is not immaterial that the federal *Shariat* Court has mandated future land reforms to be a market transaction between government and landlords. The Sindh government is reported to be developing a policy for distribution of a million acres of government land, but so far there is nothing to indicate that bonded sharecroppers will be considered as specially deserving.

<sup>20</sup> Curiously, we can find no explicit exclusion of agricultural workers in the IRO. But in practice it is not applied to them even though “industry” is defined to include any occupation.

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with targeted schemes even before it extends the programmes to all sectors. But the goal must be to remove all exceptions in all labour legislation.<sup>21</sup>

Exploitation of workers through fake accounts kept by employers is a serious problem. But we see no real short cut until workers become literate themselves. In the interim, it would help to increase their bargaining power both individually and collectively so that the threat of quitting is a real disincentive to faking accounts.

The option of quits is credible when workers can acquire alternative skills. For industrial workers, such as brick-kiln workers, we see few problems in government programmes for skill development centres. But for sharecroppers, a large-scale exodus will harm agriculture since these are skilled workers without replacements. Hence for sharecroppers efforts must be to improve their conditions of work in agriculture itself. This will of course be much harder because of their dispersion and lack of organization, and resistance by landlords. As is usual, the State has a larger role to play in improving the lot of the weakest but correspondingly little compulsion in doing so.

Some suggest that the sharecropping system will always keep the *hari* weak, and we should aim towards converting *haris* into permanent farm workers or lease tenancy. We would not endorse the permanent labour option (even if it may help in developing class solidarity through the reduction of farm labour hierarchies) as long as government denies agricultural workers the protections of existing labour laws. Besides, landlords will hardly want to undertake the onerous supervision involved in converting sharecroppers into permanent labour, and lose their advantage in getting high-incentive sharecroppers at the low cost of low-incentive workers. Lease tenancy is a better idea but is unlikely to be acceptable to landowners, and financially infeasible for most tenants except when combined with a special government loan programme.

A major factor in abuses of bondage is the fact that workers live on land of the employer or landlord. We were told repeatedly that conditions would improve if workers had their own land for housing, preferably in colonies for protection. Sympathetic government officials agreed that there is more than enough State land for such purposes across the country.

We understand that the Asian Development Bank is considering assistance for a project of debt redemption, among other measures for relief and rehabilitation, of Sindh bonded labour. We are apprehensive about such a “buy-freedom” programme for obvious reasons. Neither government nor the Bank has initiated any public discussion on how such a scheme would equitably recognise *hari* claims of compensation for *begar*, fiddled accounts, physical abuse and the like. Ominously, the scheme also appears to reward violation of the Bonded Labour Act – since the Act forbids advances tied to labour, denies any legal claim to such advances, and specifies penalties for violation. Furthermore, the debt redemption scheme invites fraud on a large scale, by both *haris* and landlords abetted by local officials. What safeguards will ensure that the implied suspension of the Act will only be temporary and that *haris* will secure permanent rights as tenants rather than remain the labour-at-will that they presently are? Unless the debt redemption programme is part of a comprehensive agrarian reform, we cannot see *haris* getting a sustainably better deal. More details, and a public debate, are obviously needed on the proposal and its implementation arrangements.

<sup>21</sup> We wonder whether a constitutional petition against discrimination may be one strategy towards this goal.

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The most difficult task will be to improve conditions for the majority of workers at the workplace itself. Even with the above proposals in place, we see the need for a firm resolve by government to enforce the law. This will require a steady stream of high-profile prosecutions to accompany negotiations with employers and landlords.

The HRCP has, over the years, given suggestions for amendments in the Bonded Labour Act, and in the Tenancy Acts, to provide better protection to workers. It has also given proposals for better implementation of laws. These proposals must be a part of any national consultations on bonded labour. All agree that such consultations will need to be tripartite: to include representatives of bonded workers, government, and landlords/employers. We also think that there is some merit in the suggestion for strengthening the office of Provincial Ombudsman to speed up the process of eliminating bonded labour.<sup>22</sup>

In our more pessimistic moments, we think that the State will do no more than tinker with redistribution of wealth and power. Hence rapid economic growth, including jobs and wages, and bringing accelerated urbanisation with it, may be the only route to sustainably eliminating bonded labour in Pakistan

**Forced Labour Convention, 1930 (No. 29)**

Each Member of the International Labour Organization which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.

The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.

## **7. International support**

Sanctions are easy to impose but their costs are borne by the poor. Hence it may be better for international organizations to think of other methods of persuading the Pakistani government to move substantively forward on issues of bonded labour.

Obvious avenues of assistance are rehabilitation programmes. The ILO could also consider supporting government interventions for higher farm incomes, but these could clash with agendas of other, more powerful donors.

Country consultations – when broad based, transparent and accountable – at every level can also benefit from assistance that brings with it international scrutiny. Assistance would be productive only when governments were seen to be committed to develop a clearly articulated acknowledgement of the problem as well as specific, time-bound legal and policy reforms.

External assistance with focussed and national surveys can help both directly and indirectly. Government and society needs to be confronted with the scale of the problem of bonded labour as one of widespread exploitative relations rather than simple poverty. Indirectly, the very process of surveys, and promise of follow-up action, can mitigate the worst conditions of bonded labour both by reducing oppression and increasing resistance. When actions are taken across the country, no province can take the position that it is being targeted unfairly.

<sup>22</sup> Strengthening the office of Ombudsman is basically a recommendation towards redressing the historical judicial tilt in favour of law before justice, and State before community and citizen.

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Even if government wants to do little for bonded labour by way of direct actions, it can undertake to improve their lot by enabling collective bargaining. This would require recognition of the rights of all labour to organise sector-wide trade unions, and to compel employers and landlords to negotiate with such unions. At present, the State does not recognise such rights for rural labour of any kind, including sharecroppers. Neither does the State acknowledge such rights for contract and piece rate workers generally.

ILO, among other international supporters of labour rights, could therefore assist in this process by persuading Pakistan to take a number of steps. First, to enforce existing laws already made in line with Conventions previously ratified, such as the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105). Second, to amend and introduce new laws to implement more completely these ratified conventions, such as the Right of Association (Agriculture) Convention, 1921 (No. 11) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Third, to ratify and implement the remaining conventions, such as the Rural Workers' Organisations Convention, 1975 (No. 141).

**Rural Workers' Organisations Convention, 1975 (No. 141)**

All categories of rural workers, whether they are wage earners or self-employed, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations, of their own choosing without previous authorisation. The principles of freedom of association shall be fully respected; rural workers' organizations shall be independent and voluntary in character and shall remain free from all interference, coercion or repression. Steps shall be taken to promote the widest possible understanding of the need to further the development of rural workers' organizations and of the contribution they can make to improving employment opportunities and general conditions of work and life in rural areas as well as to increasing the national income and achieving a better distribution thereof.

When all is said and done, international support can only be effective as part of the democratisation of Pakistan. But perhaps serious, sustained, and strategic, international support for the rights of labour can itself accelerate the process towards a just and equitable society.

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## Annex I

### Land Reforms Regulations (MLR 115 of 1972)

#### **Part VII. Tenants**

25. *Rights of tenants.* (1) A tenant shall not be ejected from his tenancy unless it is established in a revenue Court that he has:

- (a) failed to pay the rent in accordance with the terms of his tenancy; or
- (b) used the land in the tenancy in a manner which render it unfit for the purposes for which he held it; or
- (c) any penalty, forfeiture or punishment incurred in respect of any offence under said Regulation; or
- (d) failed or cultivate or arrange for the cultivation of land comprised in the tenancy in accordance with the terms thereof, or if there are no express terms in this behalf in accordance with the customary manner of cultivation in the locality; or
- (e) sub-let his tenancy.

(2) The crop grown at any time during Rabi 1971-72 on any land comprised in a tenancy shall, on its maturing, be apportioned between the tenant and the landlord in accordance with the law for the time being in force.

(3) As from Kharif 1972:

- (a) land revenue and other taxes, cesses, surcharges and levies on, shall be payable by the owner;
- (b) the liability for payment of water rate, and providing seed for any land that shall be that of the owner or other person in possession thereof, other than the tenant;
- (c) the costs of fertilisers and pesticides required for the land comprised in a tenancy shall be shared equally between the owner and the tenant;
- (d) subject to the other provisions of this Regulation, a tenant shall have the first right of pre-emption in respect of the land comprised in his tenancy.

(4) No owner or person in possession of any land shall levy any cess or take any free labour from any of his tenants.

#### **Part VIII. Miscellaneous**

26. *Bar of jurisdiction.* (1) No provisions of this Regulation or any rules or orders made thereunder shall be called in question in any court, including the High Court and the Supreme Court, or before any authority other than an authority appointed under this Regulation, and no such court or authority shall have jurisdiction in respect of any matter which the Commissioner is empowered to determine.

(2) No such court or authority as aforesaid shall be competent to grant any injunction or other order in relation to any proceedings before the Commissioner or before any officer exercising any power or discharging any function under this Regulation or the rules or orders made thereunder, or in relation to anything done or intended to be done by or at the instance of the Commissioner or such officer.

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27. *Indemnity.* No suit or other legal proceedings shall lie against Government or against any person in respect of anything which is in good faith done or intended to be done under this Regulation.

28. *Grantees of land under the repealed Regulation not to pay instalments.* A grantee of land under the Repealed Regulation shall be discharged from all liability in respect of any instalments payable by him under paragraph 19 of the said Regulation.

## Protection of tenants under M.L.R. 115

1. *Legislative change.* Land Reforms Regulations 1972 (MLR 115) has brought a significant change in the order of preference, stipulated under section 15 of the Punjab Pre-emption Act, 1913. As originally envisaged if no person was forthcoming under clause (a) and (b) or (c) of section 15 the right of pre-emption vested in the following order:

- (a) in the superior or inferior owners;
- (b) in the owners of Patti or other sub-division;
- (c) in the owner of the estate;
- (d) in the occupancy tenant of such land or property, and
- (e) in any occupancy tenant of the estate where the land or property situate.

After the enforcement of Land Reforms Regulations 1972, the order of preference has been changed. Superior or inferior ownership having been abolished the order of preference would be under:

- (a) occupancy tenant of such land or property;
- (b) owners of the Patti or other sub-division;
- (c) owner of the estate;
- (d) occupancy tenant of the estate where the land or property situate.

2. *Extent.* Land Reforms Regulations 1972, is applicable to the provinces of Baluchistan, the North-West Frontier, Punjab, Sindh and the Islamabad capital territory, except the centrally administered tribal areas.

3. *Enforcement.* Land Reforms regulations 1972 was published in the Extraordinary Gazette of Pakistan of 11th March, 1972. As provided by sub-paragraph (3) of paragraph (2) it was to be enforced at once. Therefore it came into force from the date of its publication i.e. 11th March, 1972.

4. *From Kharif 1972. – Meaning of.* A preferential right has been given to a tenant in respect of the land comprised in this tenancy from Kharif 1972. However, the date from which Kharif crop commences has not been stipulated in the Regulation. It is, therefore, not very much clear from which date of Kharif 1972 the tenant has been given right of pre-emption, more so, when the sowing season of Kharif crops in Pakistan varies from region to region. However, if looked otherwise, agricultural year has been defined in subsection (1) of section 4 of the W.P. Land Revenue Act, 1967 as under:



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“Agricultural year” means the year commencing on the first day of July, or on such other date as the Board of Revenue, with the previous approval of Government, may by notification, appoint for any specified area.<sup>1</sup>

*Page 25.* Right or pre-emption conferred on tenants-at-will for first time. This comes into existence from Kharif, 1972. Kharif, refers to season which falls between winter of season. Held, in instant impugned sale took place in middle of summer season which could hardly be described as Kharif. Held further, at time impugned sale respondent did not possess any superior right of pre-emption. Revision accepted, decree of District Judge set aside and respondent’s pre-emption suit dismissed.<sup>2</sup>

An agricultural year is spoken of as commencing from Kharif and ending with Rabi harvest. It can, therefore, be inferred that a tenant can exercise his first right of pre-emption under the Regulation from the 1st of July 1972.

5. *Tenant.* The term has not been defined by the Land Reforms Regulations 1972. However, it has been defined in the Punjab Tenancy Act, 1887 and the W.P. Land Revenue Act, 1967, as under:

“Tenant” means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that other person and includes the predecessors and successor-in-interest of such person, but does not include:

- (a) a mortgagee of the rights of land owner; or
- (b) a person to whom a holding has been transferred, or an estate or holding has been let in farm, under the provisions of this Act, for the recovery of an arrear of land-revenue or of a sum recoverable as such an arrear; or
- (c) a person who takes from Government a lease of unoccupied land for the purpose of sub-letting it.

In order to be a tenant it is necessary, (i) that he should hold land under another person, and (ii) that he is, or but for special contract would be, liable to pay rent for that land to other person. The essential characteristics of the status of a tenant are therefore:

- (a) subordination to a landlord, and
- (b) liability to pay a rent.<sup>3</sup>

Para 25, Land Revenue Act, (XVII of 1967), S.4 (26) and N.-W.F.P. Tenancy Act. (XXV of 1950), S. 2 (v). Protection given under Para.25. Available to a lessee as tiller of soil. This protection not available to a lessee who sublets his lease to a tenant instead of cultivating land himself. Expression “or but for a special contract” occurring in S. 4 (26) (Land Revenue Act) and S. 2 (v) (Tenancy Act). Refers clearly to payment for rent. Any type of contract arrived at between parties in respect of rent. Does not amount to violation of law and would not exclude existence of landlord and tenant relationship between parties. Tenant and lessee possess same status and cannot be distinguished from one another even to extent of variation in payment of rent either in cash or in kind. Terms “tenant” and “lessee” are synonymous. PLD 1976 Lah. 328 followed.<sup>4</sup>

6. *Classes of tenants.* After the abolition of occupancy tenancy there are 3 classes of tenants viz:

<sup>1</sup> NLR 1978 Revenue 130; PLD 1976 Lah. 328.

<sup>2</sup> NLR 1978 Revenue Lah. 195.

<sup>3</sup> PLD 1952 FC 188.

<sup>4</sup> NLR 1978 Revenue B.O.R. (N.-W.F.P.) 133.

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- (1) Tenants of Government land whose tenancy has been created under the Colonization of Government Lands (Punjab) Act, 1912;
  - (2) Tenant for a fixed term exceeding one year;
  - (3) Tenants for year to year or tenants-at-will.

So far as tenants falling under class (1) above are concerned they are governed by the Colonization of Government Land (Punjab) Act, 1912. Under Notification No. 196.R, dated 28.2.1944 no right of pre-emption existed in any local area to which the Colonization of Government Land (Punjab) Act, 1912 was made applicable. But this notification has recently been rescinded by the Government of Punjab, *vide* Notification No. 662-73/447-LR-III dated the 2nd March, 1973. However, the position is the same, as the right of pre-emption cannot be exercised in respect of any sale made by or to Government under section 9 of Punjab Pre-emption Act, 1913. Therefore, the tenants of Government land are not entitled to exercise their right of pre-emption granted under Land Reforms Regulations 1972. Thus two classes of tenants, i.e. (2) and (3) above can exercise the right of pre-emption regarding the land comprising of their respective tenancy. A tenant exercising right of pre-emption under this Regulation will have the same status as of pre-emptor under the Pre-emption Act. Obviously in order to succeed he must not only possess his superior right at the time of sale but should retain the same till the date of decree. In case of joint tenancy or joint lease all the tenants shall have the right of pre-emption and may exercise jointly or severally as envisaged under section 13 of the Punjab Pre-emption Act, 1913. If there are more than one tenant exercising their right of pre-emption severally they will be considered rival pre-emptors and their suits will be governed under section 17 of Punjab Pre-emption Act, 1913.

7. *Muqarraridar*. A *muqarraridar* is a tenant,<sup>5</sup> and can therefore exercise right of pre-emption under this regulation.

8. *Possession*. The possession as contemplated here means the actual possession. A tenant may sometime arrange to get the land cultivated through his sub-tenant. In such case the possession would be of the tenant.<sup>6</sup> A sub-tenant has no independent status and cannot exercise right of pre-emption under this Regulation. Similarly a person in possession of land without a legal right to possess it, is not a tenant. But once a person enters into possession as a tenant he is presumed to continue in the same character and in the same unequivocal act of acquiescence on the part of the latter in any adverse title asserted by the former, to be clothed with the same incidence of tenure as previously existed.<sup>7</sup>

9. *Effect of the dispossession*. If a tenant is wrongfully ejected, he does not merely by reason of wrong dispossession by the landlord or by a third person cease to hold the land under the landlord and is not debarred of the character of tenant. But however, if he is dispossessed in the ordinary course of law, he would cease to be a tenant.<sup>8</sup>

10. *Adverse possession*. A person having adverse possession on a piece of land is not a tenant and, therefore, cannot exercise right of pre-emption under the Land Reforms Regulations 1972. But, however, if his adverse possession is established in the eye of law, he is legally an owner and can exercise his right of pre-emption under the provisions of Punjab Pre-emption Act, 1913, if eligible.

<sup>5</sup> AIR 1923 Lah. 195.

<sup>6</sup> 22 PR 1876.

<sup>7</sup> 44 PR 1891.

<sup>8</sup> AIR 1927 Lah. 452.

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11. *Transferee from a co-tenant.* A transferee from a co-tenant has been treated on the same footing as the original tenant.<sup>9</sup>

12. *Mortgagor or mortgagee.* A mortgagee cannot be a tenant or the mortgagor. But a mortgagor may become a tenant of the mortgagee when the proprietary possession has been made over by the former to the latter and the latter then lets it to the former.<sup>10</sup> When a mortgagee is with possession but the mortgagor in cultivating possession and makes an annual payment to the mortgagee, the relationship of landlord and tenant is created between the mortgagee and the mortgagor.<sup>11</sup>

13. *Occupancy right may be acquired by prescription.* If an occupancy tenant sells his right of occupancy to a third person without getting the consent of the landlord and the landlord allows the statutory period of six years to expire without bringing a suit for its cancellation, the person would have acquired the right of occupancy.<sup>12</sup>

14. *Land.* The term “land” has been defined in sub-paragraph (4) of paragraph (2) of the Land Reforms Regulation, 1972 as under:

“Land” means land which is not occupied as the site of a town, village, factory or industrial establishment, and is occupied or has been or can be let for agriculture purposes or for purposes allied or subservient to agriculture, and includes the sites of buildings and other structures on such land.

To constitute “land” under the above definition two factors are necessary:

- (i) that it should not be occupied as the site of a town, village, factory or industrial establishment; and
- (ii) is occupied or has been or can be let for agriculture purposes or for purposes allied or subservient to agriculture or allied purposes.

Unless both the factors are proved it cannot be held to be “land” for the purpose of this Regulation.

A building or land is considered to be subservient to agricultural purposes when it directly promotes agriculture. The land on which a well is sunk for the purpose of irrigating agricultural land is “land” because it is used for purposes subservient to agriculture. However, the fact that a plot of land is assessed to land revenue would not make it land unless it is proved that the plot is occupied or let for agricultural purposes or for purposes subservient to agriculture or allied purposes. The mere fact that the land was liable to pay land revenue would not make it agricultural land as land revenue would continue to be assessed on land even though it would have been included in a village or town.<sup>13</sup> Similarly, mere retention of *Khasra* No. is not sufficient to hold a land for agricultural purposes or purposes subservient to agriculture.<sup>14</sup> If the land is still used for agricultural purposes mere acquisition for building purposes would not change its nature.<sup>15</sup>

<sup>9</sup> PLD 1962 Dacca. 683.

<sup>10</sup> 112 PR 1893.

<sup>11</sup> PLD 1950 Pb. (Rev.) 679.

<sup>12</sup> PLD 1962 Azad J. & K. 11.

<sup>13</sup> AIR 1929 Lah. 164.

<sup>14</sup> AIR 1924 Lah. 662.

<sup>15</sup> 60 Ind. Cas. 580.

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15. *Tenancy*. The word “tenancy” has not been defined in the Land Reforms Regulations 1972. However, it has been defined in the Punjab Tenancy Act, 1887, which definition runs as under:

“Tenancy” means a parcel of land held by a tenant of a landlord under one lease or one set of conditions.

16. *Determination of Tenancy*. In order to determine a tenancy the test is whether the person having tenancy rights has entered upon and possessed the land or has or has not entered into possession. It is upon the entry and not before, the person having the right of tenancy can become tenant.<sup>16</sup> It is to be noted that to constitute tenancy it is not necessary that the rent should actually be paid. It is enough that the tenant is liable to pay rent though he may not pay the same or is exempt under some contract.<sup>17</sup>

17. *Tenancy on payment of Batai*. Where the occupancy tenant was to pay one half of the *Batai* to the landlord and the land was in occupancy of a non-occupancy tenant on payment of half *Batai*, but he was paying his *Batai* direct to the landlord and the occupancy tenant was not being given anything, because of the lack of possession. Since the landlord has been receiving the rent up to the extent of one half of the produce, which the occupancy tenant was liable to pay, therefore, it cannot be said that the occupancy tenant has abandoned the occupancy right. The occupancy tenant under section 36 of the Punjab Tenancy Act, is required to cultivate land either by himself or to make arrangement for its cultivation through another including a tenant-at-will and so long as land has been regularly cultivated and the landlord be given his due share the occupancy tenant cannot be considered to have abandoned the tenancy.<sup>18</sup>

18. *Notice of ejectment served*. If a notice of ejectment is served upon a tenant he does not cease to be so, if he decides to contest the same.<sup>19</sup> But a person after ejectment is no longer a tenant.<sup>20</sup>

19. *Tenancy for one year or less*. Registration not necessary. For the purpose of acquisition of tenancy for a year or less, it is not necessary that there should be a registered deed, even when the tenancy is governed by the Transfer of Property Act.<sup>21</sup>

20. *Tenancy-at-will*. By tenant-at-will is meant a tenant whose tenure (if tenure it can be called) is terminable at any moment at the will of the landlord. His possession is substantially that of a licensee. He can hardly be said to have an interest in the property for he is incapable of defending his possession against the landlord. A tenancy-at-will is a rare occurrence. A tenancy-at-will is really yearly or monthly tenancy. Tenants of urban immovable property are generally tenants from month to month whereas the tenants of agricultural land are, in accordance with the Tenancy Acts, tenants from year to year. They can only be ejected at the end of agricultural year.<sup>22</sup>

It is the settled law that the tenancy-at-will or a tenancy by holding over terminates with the death of the tenant and there remains nothing for his heirs to be inherited nor his heirs can be considered as tenant expressly or by implication. The principle is that there is no privity of contract between the lessor and heirs of the lessee. If the heir continues to be in possession on the expiry of

<sup>16</sup> PLD 1966 W.P. (Rev.) 174.

<sup>17</sup> 44 PR 1891; AIR 1927 Lah. 452.

<sup>18</sup> PLD 1963 Pesh. 49.

<sup>19</sup> 3 PR 1895.

<sup>20</sup> 70 PR 1893.

<sup>21</sup> PLD 1970 Dacca 718.

<sup>22</sup> PLD 1957 Lah. 1054.

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the lease, he cannot become a tenant by holding over and new tenancy must be created by the consent of both sides, otherwise the heirs are trespassers.<sup>23</sup>

21. *Lease neither stamped nor registered.* If a tenant takes possession of a premises under a document which purports to be a lease in terms of years but is not duly stamped and registered, then tenancy-at-will is created.<sup>24</sup>

22. *Abandonment of tenancy.* Under the Punjab Tenancy Act, 1887, to constitute abandonment of an occupancy tenancy things must exist in combination with each other, i.e.

- (1) that the tenant fails for more than a year to cultivate his tenancy either by himself or through some other person;
- (2) that he fails without sufficient cause to cultivate the tenancy; and
- (3) that he fails to arrange for the payment of the rent for the tenancy as it falls due.<sup>25</sup>

However, The Land Reforms Regulation 1972 does not provide any grounds to constitute abandonment.

23. *Ejectment.* Under the Punjab Tenancy Act, 1887, a tenant is liable to be ejected on the following grounds:

- (a) that he has used the land comprised in the tenancy in a manner which renders it unfit for the purposes for which he held it;
- (b) where rent is payable in kind, that he has without sufficient cause failed to cultivate that land in the manner or to the extent customary in the locality in which the land is situated;
- (c) when a decree for an arrear of rent in respect of his tenancy has been passed against him and remains unsatisfied.<sup>26</sup>

Under the Land Reforms Regulations 1972 a tenant is not to be ejected from his tenancy unless it is established in a Revenue Court that he has:

- (a) failed to pay the rent in accordance with the terms of his tenancy; or
- (b) used the land comprised in the tenancy in a manner which renders it unfit for the purposes for which he held it; or
- (c) failed to cultivate or arrange for the cultivation of the land comprised in the tenancy in accordance with the terms thereof; or if there are no express terms in this behalf, in accordance with the customary manner of cultivation in the locality; or
- (d) sub-let his tenancy.<sup>27</sup>

<sup>23</sup> PLD 1962 Dacca. 548.

<sup>24</sup> PLD 1964 Kar. 116.

<sup>25</sup> PLD 1962 Pesh. 110.

<sup>26</sup> Section 39 Punjab Tenancy Act, 1887.

<sup>27</sup> Para 25, Land Reforms Regulation 1972.

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It would be observed from the above that for the implementation of these provisions, it is not necessary that all the grounds must exist in combination with each other. Violation of any one of them may result in the ejection of the tenant.

24. *Determination of tenancy.* Question of fact cannot be attacked in revision. This finding that at the time where possession was delivered to the decree-holders certain persons were in occupation of the land as tenant is not liable to be attacked in revision.<sup>28</sup>

25. *Lis pendens.* No interest which is created during the pendency of the suit can affect any decree passed in the suit.

26. *Paragraph 3. Regulation to override other laws, etc.* The provisions of this Regulation, and any other order made thereunder, shall have effect notwithstanding anything to the contrary in any other authority, or in any rule or custom or usage, or in any contract, instrument, deed or other document.

According to the provisions of paragraph 3 above, Regulation 1972 shall have effect notwithstanding anything to the contrary in any other law, or in any order or decree of a Court or tribunal or other authority, or in any rule or custom or usage or in any contract, instrument, deed or other document. The question is what would be the effect on the notifications issued by the Provincial Government under section 8 (2) of the Punjab Pre-emption Act, 1913 or section 7 (2) of the Punjab Pre-emption Act, 1905. More particularly Notification No. 196-R dated 28-2-1944 which exempted the lands from the exercise of the right of pre-emption where Colonization of Government Lands (Punjab) Act, 1912 was applicable.

So far as Notification No. 196-R dated 28-2-1944 is concerned it has been rescinded by virtue of Notification No. 662-73/447-LR II dated 2-3-1973 with immediate effect by the Government of the Punjab as well as the Board of Revenue.<sup>29</sup> But so far as the other notifications issued from time to time under section 8 (2) of the Punjab Pre-emption Act are concerned, nothing has been said in the Regulation. Obviously the provisions of Regulation 1972 do not apply to these notifications and the area given therein continues to be exempt so far as these notifications remain enforceable.

<sup>28</sup> PLD 1957 Lah. 1057.

<sup>29</sup> PLD 1957 Lah. 1054.

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## Annex II

### The Sindh Tenancy Act, 1950 (Sindh Act No. XX of 1950).<sup>1</sup> An act to regulate the rights and liabilities of tenants and landlords in the Province of Sindh

WHEREAS it is expedient to regulate by law the rights and liabilities of agricultural tenants and their landlords in lands in the Province of Sindh, and matters connected therewith; It is hereby enacted as follows:

#### Chapter I. Preliminary

1. *Short title, extend and commencement.* (1) This Act may be called the Sindh Tenancy Act, 1950.

(2) It extends to the whole of the Province of Sindh.

(3) It shall come into force at once provided that section 18 shall not affect the Rabi Crop of 1949-50.

2. *Definitions.* In his Act, unless there is anything repugnant in the subject or context,

(1) "Land" means land which is held for agricultural purpose or for purposes subservient to agriculture or for pasture and includes *jagir* and unsurveyed land but does not include trees or buildings and other structures by the landlord.

(2) "Tenant" (*Hari*) means a person who personally cultivates the land of another person hereinafter called a "Landlord" but does not include a person who takes from the Government a lease of unoccupied land.

(3) "Landlord" (*Zamindar*) means a person under whom a tenant holds land for cultivation, or a lease of such landlord. It shall include the term "occupant" as defined by the Sindh Land Revenue Code, 1879,<sup>2</sup> and *Mukhadim* in *jagir* land and where there is no *Mukhadim* a *Jagirdar*.

*Explanation.* "Landlord and tenant" include the predecessors and successors in interest of landlord and tenant respectively.

(4) "Agriculture" includes horticulture, arboriculture and silviculture.

(5) "Tenancy Right" means the permanent right of cultivation under a landlord acquired by a tenant under the provisions of this Act.

(6) "*Jagir*" means land held free of revenue assessment under a *Sanad* issued or confirmed by Government, but it does not include land granted under Rules 32 and 35 of the Land Revenue

<sup>1</sup> Now West Pakistan Land Revenue Act, 1967. For statement of Object and Reasons, see S.G.G., 1949, Part IV, pages 68-69. For Report of The Select Committee, See 1950, Part IV, pages 13-16. For proceedings in the Assembly see S.L.A. Debates, 1949, Vol. V-Book No. 3, pages 12-36 and *ibid*, Vol. VII-Book No. 17, pages 2-8. Book No. 18, pages 14-96, Book No. 19, pages 1-22.

<sup>2</sup> Subs. By the Sindh Laws (Adaptation Revision Repeal and Declaration) Ordinance (Sindh 5 of 1935), (i) (w.e.f. 30th May, 1951) for "Bombay".

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Rules or *huri* grant sanctioned under Circular No. 14 of the Commissioner in Sindh's Special Circulars.

(7) "*Jagirdar*" means a person who holds a *jagir*.

(8) "*Mukhadim*" means an occupant in a *jagir* land.

(9) "*Batai*" means the division of the produce of land between a tenant and a landlord.

(10) "*Dharwai*" means a person who weighs or measures the produce at the time of *batai*.

(11) "*Abwabs*" means any kind of levy, perquisite or exaction deducted in kind or charged in cash from the tenant.

(12) "Improvement" means with reference to any land any work which adds materially to the value of the land and is consistent with purpose for which it is held, and includes:

- (a) the construction of wells, water-channels and other works for the supply or distribution of water for agricultural purposes;
- (b) the constitution of works for the drainage of land, or for the protection of land from floods, or from erosion or other damage from water;
- (c) the reclaiming, clearing, enclosing, levelling or terracing of land;
- (d) the erection of buildings on the land required for the convenient or profitable use of such land for agricultural purposes;
- (e) the renewal or reconstruction of any of the foregoing works, or such alterations therein, or additions thereto, as are not of the nature of ordinary repairs.

Provided that such water-channels, embankments, enclosures, temporary wells, clearances, levelling or other works as are commonly made by a tenant in the ordinary course of cultivation shall not be deemed to be improvements.

*Explanation.* (1) A work which benefits several tenancies may be deemed to be an improvement with respect to each of them.

*Explanation.* (2) A work executed by a tenant is not an improvement if it materially diminishes the value of any other part of his landlord's property.

(13) "To cultivate personally" means to cultivate on one's own account:

- (i) by one's own exertion;<sup>3</sup> or
- (ii) by the exertion of any other member of one's family;<sup>3</sup> or
- (iii) by one's own servants x x x<sup>4</sup> under one's personal supervision or the supervision of any member of one's family; or
- (iv) by mechanisation.

<sup>3</sup> Subs. By Sindh Act, 14 of 1952 S.2 (i) for "labour".

<sup>4</sup> The words "or labour employed on cash payment" omitted *ibid.* S.2 (ii).



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*Explanation.* A tenant who is a widow or a minor or is subject to any physical or mental disability shall be deemed to cultivate the land personally if it is cultivated by her or his servants or by hired labour.

(14) “Prescribed” means prescribed by rules made under this Act.

(15) “Tribunal” means a Tribunal appointed under Chapter IV of this Act.

(16) Words and expressions used but not defined in this Act shall have the meaning assigned to them in the Sindh Land Revenue Code, 1879.<sup>5</sup>

## Commentary

*Landlord. Not a person who has acquired from landlord a right to recover rent.* – A person, in order to become a landlord, has to fulfil two conditions: (1) that a tenant is holding land under him, and (2) that the tenant is liable to pay the rent for that land to that person. In a case which a landlord transfers the right to recover the areas of rent to another person, that other person does not by reason of that fact alone become a person under whom a tenant holds the land. He consequently cannot be called a landlord at all. Since he is not a landlord his suit to recover the arrears of rent will not be barred in a Civil Court by subclause (k). Third Group of Section 49 of N.-W.F.P. Tenancy Act, 1950.<sup>6</sup>

*Relationship of landlord and tenant admitted and nature of tenancy alone in dispute. Competency of suit.* – Clause 3 (e), Second Group, section 77 of Punjab Tenancy Act, 1887 is applicable only when the relationship of landlord and tenant is admitted and the nature of the tenancy alone is in dispute. A suit, however, in which the point for determination is not as to nature of the tenancy but as to whether the defendant is liable to be dispossessed on grounds other than the relationship of the parties as landlord and tenant, is cognizable by a civil Court. Doubtless, provision (1) to section 77 creates an exception to this rule and where in a suit cognizable and institutes, in a civil Court it becomes necessary to decide any matter which can be heard and determined under this section by a Revenue Court, the civil Court shall return the plaint for determination to the Revenue Court.<sup>7</sup>

*Title of landlord denied. Suit not cognizable under S. 77 (3) (d).* – Clause (d) would only apply if the defendant against whom a suit is brought is admittedly the landlord of the land in suit. If, however, his title to the land as a landlord is denied and is, therefore, disputed, the suit, even if the plaintiffs say that they are occupancy tenants but under some other persons, will clearly be cognizable by the Civil Court.

*Denial of landlord’s title. Forfeiture of occupancy rights whether justified.* – A forfeiture of the occupancy rights cannot take place on any grounds other than those specified in section 39. Therefore, the rights cannot be forfeited on the ground that the tenant had denied the title of the landlord.

*Tenant-at-will occupancy tenant cultivating land. Batai paid direct to landlord. Rights of occupancy whether affected.* – Where the occupancy tenant was to pay one half of the *batai* to the landlord and the land was in occupancy of a non-occupancy tenant on payment of half *batai*, not the paying this *batai* direct to the landlord and the occupancy tenant was not being given anything because of the lack of possession, and it was contended that the occupancy tenant should be deemed to have abandoned the tenancy, the Court held:

<sup>5</sup> Subs. By the Sindh Laws (Adaptation, Revision, Repeal and Declaration), Ordinance, 1955 (Sindh Ordinance 5 of 1955). (i) (w.e.f. 30th May, 1951) for “Bombay”.

<sup>6</sup> PLD 1953 Pesh. 43.

<sup>7</sup> PLD 1966 Lah. 1050.

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Since the landlord had been receiving the rent up to extent of one-half of the produce, which the occupancy tenant was liable to pay to him during all this time, therefore, it cannot be said that the occupancy tenant has abandoned the occupancy right as contemplated under section 38 of the Punjab Tenancy Act. The occupancy tenant under section 38 was required to cultivate, land either by himself or to make arrangement for its cultivation through another including a tenant at will and so long as the land had been regularly cultivated and the landlord had been receiving his due share the occupancy tenant could not be considered to have abandoned the tenancy.<sup>8</sup>

*Occupancy tenants. Ownership rights acquired by them on 4-2-1942.* – There cannot be any doubt that the legislature intended clause (b) of subsection (2) of section 114 to come into force at once as provided in subsection 2 of section 1 of the Punjab Tenancy Act and that the respondent have become owners of such portion of the land comprised in their tenancy without payment of the compensation as corresponds to their share of the produce because the rent payable by them was admittedly in the form of a share of the produce.<sup>9</sup>

*Occupancy tenancy changed into ownership.* – If the occupancy right existed at the commencement of the Amending Act which added section 4 and 4 A to the N.-W.F.P. Tenancy Act, it had to be changed into right of ownership.<sup>10</sup>

*Landlord cannot claim compensation.* – Section 48 of the Punjab Tenancy Act does not give the landlord a right to compensation for wrong done to him or to his land. It was enacted as a measure of relief for the tenant, who, under the law, is liable to be ejected. It is the tenant's discretion to pay or not to pay the compensation which is awarded only to remedy the actual injury and not by way of damages.<sup>11</sup>

*“Occupancies land as such”.* Includes occupation by occupancy tenant through a tenant at will. – When the occupancy tenant put the tenant at will in possession of the land in the course of making an arrangement for cultivation and payment of the rent to the landlord, then the possession of the tenant at will would be permissive and the possession of such a tenant could not, by any stretch of imagination be considered as adverse under the law.<sup>12</sup>

*Occupancy tenant. How name may be deleted from revenue record.* – The names of occupancy tenants can be deleted from revenue record by means of a mutation under the orders of a Collector or Assistant Collector.<sup>13</sup>

*Person not yet in possession of tenancy. Not a tenant.* – Before a person is put in possession of a certain property he does not become the tenant at all. The suit, therefore, between him and the person from whom he takes the property on ease, for the recovery of possession of the property leased is not a suit by a tenant against a landlord and is, therefore cognizable by a Civil Court.<sup>14</sup>

*“Occupies as such”.* Meaning of. – The words “occupies as such” occurring in subsection (2) of section 114, Punjab Tenancy Act, are a mere superfluity. If the occupancy right exists it will be

<sup>8</sup> PLD 1963 Pesh.49, PLR 1963 (1) WP 29.

<sup>9</sup> PLD 1954 Lah. 435, PLR 1954 Lah. 700.

<sup>10</sup> PLD 1961 Pesh. 110 (DB).

<sup>11</sup> PLD 1968 Lah. 31. PLR 1958 (2) WP 989.

<sup>12</sup> PLD 1963 Pesh. 46, PLR 1963 (1) WP. 29.

<sup>13</sup> PLD 1963 Pesh. 256, PLR 1961 (1) WP 412.

<sup>14</sup> PLD 1952 Pesh.

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changed into ownership irrespective of whether the occupancy tenant occupies or not such tenancy.<sup>15</sup>

*Improvements began by tenant after institution of suit for ejectment. Compensation.* – By virtue of section 66 a tenant is not entitled to any compensation for improvements began by him after the institution of a suit for a service of a notice of, ejectment even though the suit or the notice may be legally unjustified and may eventually fall while under the general law the Civil Court can, and indeed must, award damages for the same if the tenant is ejected at any time afterwards.<sup>16</sup>

*Meaning of “compensation”.* – Section 50 A describes the nature of the suit under section 50 and, therefore, the word “compensation” in it would have the same meaning as in section 59 of Punjab Tenancy Act.<sup>x</sup>

*Meaning of “threshable produce”. All divisible produce included.* – The use of the expression “threshing floor” was not to be made fetish of and the real object was apparently to provide a machinery for the division of all divisible produce. It would, therefore, be legitimate to conclude that subsection (4) of section 5 was not intended to be limited to “threshable produce” and there is force in the suggestion that the draftsman had assumed that all divisible produce would be removed for the purpose of division to threshing floor, which is undoubtedly prepared on hard level surface on which corn is threshed.<sup>17</sup>

3. *Classes of tenants.* – There shall be for the purpose of this Act, the following classes of tenants only, namely:

- (a) Permanent tenants.
- (b) Tenants-at-will.

## Commentary

*Person not yet in possession of tenancy. Not a tenant.* – Before a person is put in possession of a certain property he does not become the tenant at all. The suit, therefore, between him and the person from whom he takes the property on lease, for the recovery of possession of the property leased, is not a suit by a tenant against a landlord and is, therefore, cognizable by a Civil Court.

*Denial of landlord’s title. Forfeiture of occupancy rights whether justified.* – A forfeiture of the occupancy rights cannot take place on any grounds other than those specified in section 39, Punjab Tenancy Act. Therefore, the rights cannot be forfeited on the ground that the tenant had denied the title of the landlord.<sup>18</sup>

*Occupancy tenant. How name may be deleted from revenue record.* – The names of occupancy tenants can be deleted from revenue record by means of a mutation under the orders of a Collector or Assistant Collector.<sup>19</sup>

*Occupancy tenancy changed into ownership.* – If the occupancy right existed at the commencement of the Amending Act which added sections 4 and 4 A to the main N.- W.F.P. Tenancy Act, it had to be changed into right of ownership.<sup>20</sup>

<sup>15</sup> PLD 1957 Lah. 242.

<sup>16</sup> PLD 1958 Lah. 31 PLR 1958 (2) WP 989 (DB).

<sup>17</sup> PLD 1958 Lah. 120, PLR 1958 (1) WP Lah. 423.

<sup>18</sup> PLD 1963 Lah. 283.

<sup>19</sup> PLD 1960 Lah.256, PLR 1961 (1) WP 412.

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*Subsequent acquisition of property rights of widow inheriting occupancy rights from husband as limited owner. Cannot change nature of estate originally inherited.* – Reading the Punjab Tenancy Act, 1887 section 59 as amended by the Punjab Tenancy (N.-W.F.P. Amendment) Act, 1939, with the N.-W.F.P. Tenancy Act, 1950, section 4 (a), Ataullah Sajjad, J. expounded the following interpretation of the relevant provisions:

The widow having acquired the property as a limited owner could not arrogate to herself the status of full-fledged proprietor free from the trammels of the rules of Customary Law. The right of proprietorship acquired by her was an accretion to the limited estate inherited by her and ensured for the benefit of all persons, who under the law claimed the heritage left by last male holder. The purchase of proprietary rights by a widow would not change the nature of the estate that she originally inherited. The nature of the estate did not change with the acquisition of the rights of proprietorship.<sup>21</sup>

*Ejection of tenant on illegal grounds. Revision of Commissioner's order.* – If an order of ejection of a tenant is passed on grounds on which it could not have been passed at all the Court officer who passes that order is acting without jurisdiction or at any rate in the exercise of its or his jurisdiction illegally and with material irregularity. Such an order, therefore, would be open to revision by the Board of Revenue by virtue of subsection (5) of section 84, Punjab Tenancy Act.<sup>22</sup>

*Restoration of tenancy may be ordered in revision.* – The powers given to the Board of Revenue under subsection (5) of section 84 are very wide because it is enacted that the Board of Revenue may pass such orders as it thinks fit in the case and an order of restoration of tenancy to an ejected tenant, even in the absence of any specific provision of law for such restoration, would be perfectly legal.<sup>23</sup>

## **Chapter II.**

### **Permanent tenants**

4. *Permanent tenants.* – A tenant shall be deemed to be a permanent tenant if at the commencement of this Act:

- (i) he has annually cultivated [a survey number or]<sup>24</sup> at least four acres of land for the same landlord for a continuous period of not less than three years;<sup>25</sup> and
- (ii) he has cultivated such land personally during the aforesaid period.

Provided that the provisions of this section shall not apply in case of:

- (a) land purchased from the Government on instalment system, until all the instalments thereof have been fully paid;
- (b) land taken on lease from the Government x x<sup>26</sup> [:]

<sup>20</sup> PLD 1961 Pesh. 110 (DB).

<sup>21</sup> PLD 1961 Resh. 20; PLD 1952 Pesh. 40; PLD 1961 SC 468; PLD 1959 Lah. 551.

<sup>22</sup> PLD 1957 Lah. 950.

<sup>23</sup> PLD 1957 Lah. 950.

<sup>24</sup> Ins. By Sindh 14 Act of 1952, S.3 (i).

<sup>25</sup> The words “or Incumbered Estates of the Court of Wards” omitted *ibid.* S.3 (iii).

<sup>26</sup> Colon was subs. For full-stop *ibid.* S.3 (iii).

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[Provided further that the area under water-courses and boundary strips shall be counted as cultivated for the purpose of the four acres limit].<sup>27</sup>

5. (1) If a tenant has personally cultivated the same piece or parcel of land for the qualifying period described in section 4, he shall be deemed to be permanent tenant in respect of that land by metes and bounds; provided that such piece or parcel of land shall not exceed the area that can be efficiently cultivated with the help of one pair of bullocks; provided further that this subsection shall not apply when a land is subject to shifting cultivation.

(2) (a) If, where the system of shifting cultivation exists, a tenant has personally cultivated different pieces or parcels of land in the same or adjoining *dehs* in the same *taluka* for the same landlord during the qualifying period specified in section 4, he shall be deemed to be a tenant permanent with the cultivating right in the *deh*, but such right shall not be in respect of any particular piece or parcel of land defined by metes and bounds.

(b) If, where the system of shifting cultivation exists, a tenant has personally cultivated different pieces or parcels of land in different *dehs* for the same landlord during the qualifying period specified in section 4, he shall be deemed to be a permanent tenant with cultivating rights in such *deh* or *dehs* as may be mutually agreed upon between the landlord and the tenant.

(3) A tenant may, with the permission of his landlord:

- (a) transfer his tenancy right under subsection (1) to any other piece or parcel of land belonging to the same landlord, or
- (b) transfer his cultivating right under subsections (2) (a) and (b) to any other *deh* in which the landlord holds land.

*Explanation.* (1) "Shifting cultivation" means a system of agriculture wherein for reasons of irrigational arrangements or for purpose of efficient and better cultivation, or for any other reasons a tenant cultivates a different portion of the same landlord's holding in successive years.

*Explanation.* (2) "Cultivating right" means the right to cultivate such areas of land as may be prescribed from time to time by Government to constitute a family holding. Family holding will mean such area as can be efficiently cultivated by a tenant with the help of a pair of bullocks. The area may vary and be varied according to the nature of the soil, the extent of water facilities, the average yield of produce and the nature of the crops usually grown.

6. (1) A tenant who personally cultivated any land continuously for a period of not less than three years immediately preceding the 1st day of April, 1948 but, who was evicted from such land on or after such date, shall also be deemed to be a permanent tenant for the purpose of this Act; provided that he has not been evicted for any of the reasons specified in section 13.

(2) The provisions of this section shall not apply in cases whose the landlord is using the land for any purposes mentioned in subsection (1) of section 14 or if the tenant was evicted for any of the reasons specified in section 13.

7. Notwithstanding anything contained in section 4, [but without prejudice to the claims of any tenant]<sup>28</sup> a landlord may grant permanent rights to any of his tenants. Such tenant shall thereafter be deemed to be a permanent tenant for the purpose of this Act.

8. *Tenants-at-will.* All other tenants, except those mentioned in section 4, 5, 6 and 7 of this Act shall be tenants-at-will; provided that tenant-at-will shall acquire a permanent right if, after the

<sup>27</sup> This provision added *ibid.* S.3 (iii).

<sup>28</sup> Ins. By Sindh Act, 14 of 1952, S.4.

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commencement of this Act, he annually cultivates [a survey number or] <sup>29</sup> at least four acres of land for the same landlord for a continuous period of three years; for this purpose, the years of continuous cultivation, if any, previous to the commencement of this Act shall be taken into account.

## Commentary

*Tenant at-will under occupancy tenant cultivating land. "Batai" paid by tenant direct to landlord. Rights of occupancy whether affected.* – Where the occupancy tenant was to pay one-half of the *batai* to the landlord and the land was in occupancy of a non-occupancy tenant on payment on half *batai* but he was paying this *batai* direct to the landlord because of the lack of possession, and it was contended that the occupancy tenant should be deemed to have abandoned the tenancy, the Court held:

Since the landlord has been receiving the rent up to the extent of one-half of the produce, which the occupancy tenant was liable to pay him during this time, therefore, it cannot be said that the occupancy tenant has abandoned the occupancy rights as contemplated under section 38 of the Punjab Tenancy Act. The occupancy tenant under section 38 was required to cultivate land either by himself or to make arrangements for its cultivation through another including a tenant at-will and so long as the land had been regularly cultivated and the landlord has been receiving his due share the occupancy tenant could not be considered to have abandoned the tenancy.<sup>30</sup>

9. *Record of tenancy rights.* – The names of permanent tenants shall be entered in a Record-of-Right to be maintained in a manner to be prescribed.

## Commentary

*Alienation of tenancy rights by Muslim widow. How governed.* – Section 59 of the Punjab Tenancy Act, as amended, does not contain a clause restricting the power of alienation of a Muslim widow in regard to occupancy rights as the original section did in regard to all widows, but the rule which applies to alienations of land held under custom to the effect that the person who got land under a particular system of law would continue to hold it subject to the restrictions in that system of law in spite of the fact that the law had been changed in so far as powers to deal with the property after the new law had come into force were concerned, would be equally applicable to transfer of occupancy rights by widows.<sup>31</sup>

10. *Permanent Rights.* – (1) When a permanent tenant dies, the landlord shall continue the tenancy on the same terms and conditions on which such tenant was holding at the time of his death to such one of his lineal adult male heirs as is selected by the [members of his family]<sup>32</sup>. [In case of a dispute between the members of his family the matter shall be referred to the Tribunal whose decision shall be final].<sup>33</sup>

(2) On failure of lineal adult male heirs the tenancy shall devolve on the widow, provided that she shall cultivate personally; if the widows be more than one, the tenancy shall devolve on the senior or the senior most widow. On failure of a widow the tenancy shall devolve on the unmarried daughter; if the unmarried daughters be more than one the tenancy shall devolve on the eldest among them.

<sup>29</sup> Ins. By Sindh Act, 14 of 1952, S.5.

<sup>30</sup> PLD 1963 Pesh. 49, PLR 1963 (1) WP 29.

<sup>31</sup> PLD 1962 Lah. 931.

<sup>32</sup> Subs. by Act 14 of 1952, S.6, for "Landlord".

<sup>33</sup> Added *ibid.* S.6.

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(3) On failure of the heirs mentioned in this section the tenant right shall be extinguished.

11. *Unalienable and unattachable.* – The rights, conferred on a permanent tenant by this Act shall not be liable to seizure, attachment or sale by a process of any Court, and it shall not be lawful to mortgage, charge, alienate, assign lease or sub-let any such rights, either whole or in part.

12. *Incapacity.* – (1) If a permanent tenant becomes unfit to carry duties attached to his tenancy owing to physical or mental incapacity, the tenant shall devolve as if the permanent tenant were dead.

(2) If a permanent tenant is not able to cultivate the land personally on account of temporary illness, absence on pilgrimage or similar other reasons, it shall be binding upon him to arrange for the proper cultivation during his absence with the approval of his landlord: provided that the absence of permanent tenant on this account shall in no case exceed a continuous period of one year; and if it exceeds the said period, the permanent tenant shall be deemed to have abandoned his tenancy rights within the meaning of clause (b) of section 13.

13. *Termination of tenancy.* – Notwithstanding any agreement, usage, decree or order of a Court of law, the rights conferred on a permanent tenant by this Act shall not be terminated unless the land in respect of which tenancy rights are held is acquired or requisitioned by Government for a public purpose or unless such tenant:

- (a) voluntarily surrenders the tenancy [by executing an Instrument of Surrender] <sup>34</sup>;
- (b) abandons the tenancy;
- (c) has used such land for a purpose other than agriculture without the written permission of the landlord;
- (d) has mortgaged, charged, alienated, assigned, leased or sub-let the land [without the previous consent in writing of the landlord] <sup>35</sup>;
- (e) fails to cultivate the land personally;
- (f) fails, without sufficient cause, to cultivate the land in the manner, or to the extent customary in the locality in which the land is situated;
- (g) has done any act which is destructive or permanently injurious to the land;
- (h) fails to pay the due share of produce to the landlord in cash or kind, as the case may be;
- [(i) is after the commencement of this Act [convicted by a Court of law of the offence of theft of the crop of his landlord.] <sup>36</sup>

[A permanent tenant shall not be ejected otherwise than in execution of an order of the Tribunal.] <sup>37</sup>

<sup>34</sup> Added by Sindh Act, 14 of 1952, S.7 (i), (ii).

<sup>35</sup> Added by Act 14 of 1950.

<sup>36</sup> Subs. *ibid.* S.7 (iii), for the original clause (i).

<sup>37</sup> Subs. *ibid.* S.7 (iv), for the last para and provision of section 13.

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## Commentary

*Denial of landlord's title. Forfeiture of occupancy rights whether justified.* – A forfeiture of the occupancy rights cannot take place on any grounds other than those specified in section 39 of Punjab Tenancy Act, 1887. Therefore, the rights cannot be forfeited on the ground that the tenant denied the titles of the landlord.<sup>38</sup>

*Restoration of tenancy may be ordered in revision.* – The powers given to the Board of Revenue under subsection (5) of section 83 are very wide because it is enacted that the Board may pass such orders as it thinks fit in the case and an order of restoration of tenancy to an ejected tenant, even in the absence of any specific provision of law for such restoration, would be perfectly legal.<sup>39</sup>

*Conditions necessary for abandonment of occupancy tenancy.* – These conditions were laid down by Muhammad Gul, J. in the following words:

To constitute abandonment by an occupancy tenant of his occupancy tenure, section 38 of the Punjab Tenancy Act, 1887, requires three conditions to be satisfied, namely, that the tenant: (i) failed to cultivate for more than one year personally or through another person, (ii) fails to deposit rent; (iii) without sufficient cause. These three conditions must be co-exist for the extinction of right of occupancy of a tenant. In other words, if any of these conditions was wanting, then there will be no extinction of occupancy tenancy.<sup>40</sup>

*Several co-sharers joint tenants under one landlord. Tenancy cannot be extinguished in part.* – As against the landlord all co-sharers in tenancy constitute one tenant. The shares of the tenants inter se are not concern of the landlord and as against him each tenant, though he be the holder of 1/1000th share, is entitled to the possession of the whole of the tenancy. A tenant cannot be extinguished in part. If the rights of a co-sharer in the tenancy who holds any part whatsoever of the tenancy right had not been extinguished the tenancy subsisted as against the landlord.<sup>41</sup>

*Proof of abandonment by tenant.* – In a case where the tenant to whom the abandonment is attributed is himself the defendant (and not his heir) it is necessary that the tenant should take up a place as to what was the cause that prevented him from cultivating the land. If he fails to take up such a plea, the failure would ordinarily be presumptive proof of absence of sufficient cause. This consideration, however, will not apply in the case where the tenant to whom abandonment is attributed is dead, and the suit is being defended by his heirs who may not be in a position to know why the tenant failed to cultivate. In the case of a heir who has not yet taken possession of the tenancy section 38 should be looked at from a different angle.<sup>42</sup>

*Tenant at-will under occupancy tenant cultivating land. "Batai" paid by tenant direct to landlord. Rights to occupancy whether affected.* – Where the occupancy tenant was to pay one half of the *batai* to the landlord and the land was in occupancy of a non-occupancy tenant on payment of half *batai*, but he was paying this *batai* direct to the landlord and the occupancy tenant was not being given anything because of the lack of possession, and it was contended that the occupancy tenant should be deemed to have abandoned the tenancy, the Court held:

Since the landlord had been receiving the rent up to the extent of one-half of the produce, which the occupancy tenant was liable to pay to him during all this time

<sup>38</sup> PLD 1963 Lah. 283.

<sup>39</sup> PLD 1957 Lah. 250.

<sup>40</sup> PLD 1969 Pesh. 128; PLD 1957 Lah. 245; 2 PR 1901 (Rev.) and PR 1919.

<sup>41</sup> PLD 1958 Lah. 918; AIR 1930 Lah. 515.

<sup>42</sup> PLD 1957 Lah. 242; 2 P.R. (rev.) 1901; 170 P.R. 1919.



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therefore, it cannot be said that the occupancy tenant has abandoned the occupancy rights as contemplated under section 38 of the Punjab Tenancy Act. The occupancy tenant under section 38 was required to cultivate land either by himself or to make arrangement for its cultivation through another including a tenant at will and so long as the land had been regularly cultivated and the landlord had been receiving his due share the occupancy tenant could not be considered to have abandoned the tenancy.<sup>43</sup>

*Abandonment. How and by whom may it be proved.* – In a case where the tenant to whom abandonment is attributed is himself the defendant (and not his heir) it is necessary that the tenant should take up a plea as to what was the cause that prevented him from cultivating the land. If he fails to take up such a plea, the failure would ordinarily be presumptive proof of absence of sufficient cause. This consideration, however, will not apply in the case where the tenant to whom abandonment is attributed is dead, and the suit is being defended by his heirs who may not be in a position to know why the tenant failed to cultivate. In the case of a heir who has not yet taken possession of the tenancy section 38 should be looked at from a different angle.<sup>44</sup>

*Several co-sharers joint tenants under one landlord. Tenancy cannot be extinguished in part.* – As against the landlord all co-sharers in tenancy constitute one tenant. The shares of the tenants *inter se* are not concern of the landlord and as against him each tenant, though he be the holder of 1/1000th share, is entitled to the possession of the whole of the tenancy. A tenant cannot be extinguished in part. If the rights of a co-sharer in the tenancy who holds any part whatsoever of the tenancy right had not been extinguished the tenancy subsisted as against the landlord.<sup>45</sup>

*Abandonment of tenancy. When effective.* – In a case old *jamabandi khasra* numbers bore plaintiff's predecessor's name as owner and of defendant as occupancy tenant. The land, however, as entered is *banjar qadim*. Later entries showed land in the name of non-occupancy tenant who paid *batai* to the owner but held under the occupancy tenant. Plaintiff's predecessor never invoked section 38, N.-W.F.P. Tenancy Act, 1950 but allowed the tenant to continue in possession. It was held that occupancy tenant's possession through non-occupancy tenant could not destroy possession or rights of occupancy of defendant.<sup>46</sup>

14. *Termination by landlord for his own use.* – (1) Notwithstanding anything contained in section 13, a landlord may terminate the tenancy of a permanent tenant by giving him one year's notice in writing stating therein the reasons for such termination, if the landlord bona fide requires the land for cultivating it personally or garden, *huri*, mechanised cultivation, or for any non-agricultural purpose:

[Provided that the area to be cultivated personally for purposes other than mechanised cultivation or gardening shall not exceed 50 acres.]<sup>47</sup>

(2) A tenant on whom a notice is served under subsection (1) may make an application against the landlord to the tribunal within a period of one month from the date of the notice.

(3) If a landlord after taking possession of the land following the termination of the tenancy under subsection (1) fails to use it for any of purposes mentioned in subsection (1) within one year from the date on which he took possession the tenant whose tenancy has been terminated shall, if he gives a notice in writing to the landlord that he is willing to hold such land on the same terms and conditions on which he held it at the time when his tenancy was terminated, be entitled to recover

<sup>43</sup> PLD 1963 Pesh. 49.

<sup>44</sup> PLD 1957 Lah. 242; 2 P.R. (Rev.) 1901; 170 P.R. 1919.

<sup>45</sup> PLD 1958 Lah.918; AIR 1930 Lah. 515.

<sup>46</sup> PLD 1961 Pesh. 75; PLD 1963 Pesh. 49.

<sup>47</sup> Subs. by Sindh Act, 14 of 1952, S.8, for the original provision.

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possession of such land from the commencement of the year following that in which such notice was given.

Provided that the tenant shall give the notice under this subsection within one year from the date:

- (a) of the expiration of one year during which the landlord has failed to use the land for any of the purposes mentioned in subsection (1); or
- (b) on which the landlord has ceased to use the land for any of the said purposes, as the case may be.

Provided further that no such tenant shall be entitled to recover possession of such land if on being required in writing to do so by the landlord he has once refused to hold on such land on the same terms and conditions on which he held or it has failed to reply to such requisition within three months of the receipt thereof.

(4) After the tenant has recovered possession under subsection (3) he shall, subject to the provisions of this Act, hold such land on the same terms and conditions on which he held it at the time his tenancy was terminated.

(5) If a tenant is evicted under this section, it shall be obligatory on the landlord to provide the tenant with similar land, if available, in his holding or, failing such land, compensation equal to one year's assessment paid in the previous year in respect of the land from which the tenant is evicted.

(6) After the tenant has recovered possession under subsection (3), if he satisfies the tribunal by an application under section 29 that the land was not at the time the termination of the tenancy required bona fide the landlord for any of the purposes mentioned in subsection (1), the tenant shall be entitled to such compensation as may be awarded by the Tribunal or any loss caused to him by eviction. Nothing in this subsection shall apply to any tenant who was evicted under a decree or order of a competent court, if such court has recorded a finding at the time of passing such decree or order that the land was required bona fide by the landlord for any of the purposes mentioned in subsection (1).

*Explanation.* Any notice given for the termination of the tenancy of a permanent tenant before the commencement of this Act shall not be deemed to be a valid notice for the purposes of subsection (1).

15. *Improvements by permanent tenants.* – (1) A permanent tenant who has made an improvement with the permission of the landlord on the land held by him as such tenant before the notice to terminate the tenancy is given to him shall on eviction be entitled to compensation for such improvement.

(2) The compensation to which a permanent tenant shall be entitled under subsection (1) shall be estimated value, at the time of eviction, of such improvement. In estimating such value, regard shall be paid to:

- (a) the amount by which the value of the land is increased by the improvement;
- (b) the present condition of the improvement and the probable duration of its effects;
- (c) the labour and capital provided or spent by the tenant for the making of the improvement.

## Commentary

*Improvements began by tenant after institution of suit for ejectment. Compensation.* – By virtue of section 66, Punjab Tenancy Act, 1887 a tenant is not entitled to any compensation for improvements began by him after institution of a suit for, or service of a notice, ejectment even

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though the suit or the notice may be legally unjustified and may eventually fail while under the general law the Civil Court can, and indeed must, award damages for the same if the tenant is ejected at any time afterwards.<sup>48</sup>

### **Chapter III.** **Tenants generally**

16. *Tenants-at-will.* – A tenant-at-will shall not be liable to be evicted before the end of a cropping season, the dates for which may be prescribed.

#### Commentary

*Tenant illegally dispossessed may recover possession.* – The words “occupies land as such” necessarily do not mean physical occupation for a tenant may be in construction possession through a tenant-at-will. In the same way, he may have been thrown out of possession by some illegal process but if he has time to avail of a legal process to restore himself to possession, whether actual or constructive, he should be allowed to make use of that remedy. If, however, he has allowed time to run against him, then his claim which has been extinguished cannot be revived.<sup>49</sup>

[17. *Batai.* – Notwithstanding any agreement, usage or custom, and notwithstanding, in the case of the alienated lands, any provision in any *Sanad*, a tenant of land whether alienated or unalienated, shall be entitled to the following share of produce at the time of *Batai* after deducting from the common heap for customary payment to Dharwai and for reaping of picking charges, namely:

- (a) to one half on flow-irrigated (*moki, bosī, dubari*) lands on flood inundation (*Sailabi*) lands, and on rain-fed (*barani*) lands;
- (b) to two-thirds on these lift-irrigated (*charkhi*) lands where the cost and maintenance of the lifting equipment is borne by him;
- (c) to three-fifths on lift-cum-flow (*charkhi*) (*madad Moki*) lands where the cost and maintenance of the lifting equipment is borne by him.

Provided that if at the time of the coming into force of this Act any tenant was receiving a higher share of the produce, he shall continue to do so notwithstanding the provisions on this section].<sup>50</sup>

18. Notwithstanding any agreement, usage or custom, a tenant shall be entitled to receive [two-thirds]<sup>51</sup> of all the straw, *karbi, buh, palal* or green grass produced on his land.<sup>52</sup>

19. *Joint possession of the produce.* – (1) The produce of a land from the date of harvest up to the time of *Batai* shall be deposited in a *Khari* or *Dero* at a place fixed by that landlord where all his tenants cultivating in that *deh* shall be required to deposit the same, and the *Batai* shall be

<sup>48</sup> PLD 1958 Lah. 31; PLR 1952 WP 989 (DB).

<sup>49</sup> PLD 1962 Pesh. 110.

<sup>50</sup> Subs. by Sindh Act 14 of 1952, S.9 for the original section 17.

<sup>51</sup> Subs. by Sindh Act 14 of 1952, S. 10, for “a share”.

<sup>52</sup> The words and figures “in accordance with the shares prescribed in section 17” omitted *ibid.*, S.10.

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completed in presence of the tenant and the landlord or his agent within [fourteen]<sup>53</sup> days after the produce is ready for sale.

(2) From the date of *Batai* the produce will be in the separate possession of the tenant and the landlord to the extent of the share of each.

20. *Cash rent.* – Notwithstanding any provisions of this Chapter relating to *batai*, a landlord may, with the concurrence of the tenant, permit the tenant to pay such fixed rent to the landlord either in cash x x x x<sup>54</sup> as may be mutually agreed upon.

21. *Abolition of abwabs.* – (1) Notwithstanding any agreement, usage, custom, or law, [but subject to the provisions of section 17]<sup>55</sup>, it shall be lawful for any landlord to levy any *abwabs* from any of his tenants.

(2) x x x x x<sup>56</sup>

22. *Chher and Begar.* – (1) Notwithstanding any agreement, usage or custom, it shall not be lawful for any landlord to take any free labour commonly known as *Begar* from any of his tenants in any shape or form.

(2) Any wage in respect of labour commonly known as *Chher* given by the tenant to the landlord shall be paid to him on the same day at the termination of each day's work in accordance with the rates prevailing in the locality [x x x]<sup>57</sup>.

Provided that in the case of *Gupcher*, being the clearance of a water course in the middle of the cultivation season, the landlord shall be liable to feed the tenant at his own cost and not make any cash payment therefore; in all other cases cash payment shall be made after deducting the expenses incurred by landlord on feeding the tenant employed by him.

23. *Duties of the tenant.* – The following shall be the duties of a tenant in respect of his tenancy, namely:

- (a) He shall be responsible for the provision of requisite animal labour, manual labour and the implements of husbandry to enable the crops grown by him to be effectively cultivated;
- (b) he shall be responsible for the proper weeding of all crops grown by him and for the cost of such weeding;
- (c) he shall be responsible for the necessary construction and proper maintenance of irrigation bounds and water courses within the land allotted to him and for the cost of such construction and maintenance;
- (d) he shall not cultivate the land of any other landlord, if he had been allotted a family holding;
- [(e) he shall be responsible for the seed required for sowing; but where a landlord supplies any seed to his tenant, he shall be entitled to recover from that tenant, only the quantity of seed actually supplied and nothing in excess thereof; further when the landlord gets remission of

<sup>53</sup> Subs. by Sindh Act 14 of 1958, S.11 for “thirty”.

<sup>54</sup> The words “or in kind” omitted *ibid.* S. 12.

<sup>55</sup> INS. BY Sindh Act 14 of 1952, S.13 (i).

<sup>56</sup> Subsection (2) omitted *ibid.*, S.13 (ii).

<sup>57</sup> The comma and the words beginning from “but” and ending with “Government” omitted *ibid.*, S.14.

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land revenue assessment in respect of any survey number, the amount of seed which the tenant shall be required to return shall be proportionate to the amount of remission of land revenue assessment obtained by the *Zamindar* in respect of that survey number;]<sup>58</sup>

- (f) he shall transport the landlord's share of produce after *Batai* to the landlord's local place of storage [at the expense of the landlord;]<sup>59</sup>
- (g) he shall be responsible for growing such crops and such average of crops and in such manner as may be specified by the landlord;<sup>60</sup>

Provided that the tenant's cultivating right under this Act shall not be affected;

- (h) any other duties as may be prescribed from time to time.

24. *Duties of the landlord.* – The following shall be the duties of a landlord, namely:

- (a) he shall be responsible for the proper maintenance of the main water-courses leading from the canal-modules to the land, and for the cost of such maintenance; provided that the tenant shall be bound to give his labour for the silt-clearance of such water-course during the irrigation season and in return therefore the landlord shall be bound to feed the tenant at his own cost;
- (b) he shall be responsible for ensuring the supply of the proper share of available irrigation water to the land allotted to his tenant;
- (c) subject to clause (e) of section 23;<sup>61</sup> he shall be responsible for lending seed, for sowing to the tenant if the tenant so demands [x x x]<sup>62</sup>;
- (d) any advance of food-grains by the landlord to a tenant for domestic needs shall be re-paid in cash at the market rate at the time it was lent or in kind of equivalent value;
- (e) he shall be responsible for allotting a prescribed area on prescribed conditions to the tenant for growing cattle-fodder and vegetable cultivation for the personal use of the tenant in areas where only cotton or sugar-cane or tobacco or such other crops are grown which do not provide fodder for the cattle;
- (f) any other duties ay may be prescribed from time to time.

25. *General provisions regarding debt.* – (1) The produce of a tenant after deducting such portion thereof as is necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the tenant and his family, may be appropriate towards the debt due from the tenant to his landlord.

*Explanation.* For the purpose of evaluating in cash the produce of the tenant, the wholesale control price fixed for the locality by the Government, and if no such price is fixed, the wholesale price prevailing in the local market shall be taken as the basis.

(2) After making recoveries set forth in subsection (1), the balance of debt, if any, shall be deemed to be a floating debt recoverable from the tenant's share of other crops.

<sup>58</sup> Subs. by Sindh 14 of 1952, S.15 (i) for the original clause (e).

<sup>59</sup> Subs. *ibid.* S.15 (ii) for "on payment".

<sup>60</sup> Subs. *ibid.* S.15 (iii) for the original Cl. (g).

<sup>61</sup> Added *ibid.* S.16 (a).

<sup>62</sup> The words beginning with "and this" and ending with "value" deleted, *ibid.* S.16 (b).

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(3) In case a tenant is indebted to his landlord, it shall be his duty to deposit his share of cotton in the landlord's store. Such cotton shall remain in the joint possession on the tenant and the landlord until it is divided or until delivery is taken by the buyer.

(4) On termination of his tenancy, a tenant, if he be indebted to his landlord, shall be liable to pay his debt before leaving.

#### **Chapter IV. Settlement of disputes – Tribunals**

26. *Appointment of Tribunals.* – The Provincial Government may, for the settlement of disputes between tenants and landlords, appoint one Tribunal for each *Taluka* or *Mahal*.

27. *Constitution of Tribunal.* – The Tribunal shall consist of one member only who shall be the *Mukhtiarkar* or *Mahalkari* for the time being in office.

28. *Procedure and Powers.* – (1) A tenant or a landlord may personally or by an agent make an application to the Tribunal appointed for the area in which the land in question is situated to decide any dispute between the tenant and the landlord arising out of the application of the provisions of this Act. When applications have been made by both the parties in the same connection, the applications shall be consolidated. No court fee stamp shall be required to be affixed to such applications and no lawyer shall be allowed to represent the parties to such dispute.

*Explanation.* “Agent” shall mean:

- (a) in the case of a landlord, a relation or a *Kamdar* or a *Munshi* of the landlord;
- (b) in the case of a *hari*, a relation of the *hari*, or any other *hari* of the same *deh*.

(2) Every application under subsection (1) shall be in writing and shall give full particulars regarding the nature of the dispute, the land in question and the name and address of the party complained against.

(3) On receipt of application mentioned in subsection (1) the Tribunal shall fix a date and place for hearing such application and shall issue a notice to the opponent and the application to appear before the Tribunal.

(4) The Tribunal shall have the same powers which a Court has under the Code of Civil Procedure, 1908, to summon and enforce the attendance of parties and witnesses, and to compel the production of documents.

(5) After hearing the parties and their evidence, if any, the tribunal shall pass an award.

#### **Commentary**

*Fixation of shares of landlord and tenant. Legality.* – Where the shares of the landlord and the tenant in the produce were fixed by the Revenue Officer but, on Collector being moved, the case went to the higher authorities and ultimately the Provincial Government fixed the shares and directed the Revenue Officer to act according to them, it was held:

The interference by the Provincial Government in fixing the shares of the landlord and the tenant for the purpose of section 4-A, N.-W.F.P. Tenancy Act and giving direction to the Revenue Officer to act according to the decision was unwarranted by law.<sup>63</sup>

*Relationship of landlord and tenant admitted and nature of tenancy alone in dispute. Competency of suit.* – Clause 3(e), Second Group, section 77, Punjab Tenancy Act is applicable

<sup>63</sup> PLR 1960 (2) WP 789.

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only when the relationship of landlord and tenant is admitted and the nature of the tenancy is in dispute. A suit, however, in which the point for determination is not as to nature of the tenancy but as to whether the defendant is liable to be dispossessed on grounds other than the relationship of the parties as landlord and tenant, is cognizable by a Civil Court. Doubtless, provision (1) to section 77 Punjab Tenancy Act creates an exception to this rule and where in a suit cognizable and instituted in Civil Court it becomes necessary to decide any matter which can be heard and determined under this section by a Revenue Court, the Civil Court shall return the plaint for determination to the Revenue Court.<sup>64</sup>

*Civil Court. Jurisdiction.* – Grantee of State land alleging failure on part of tenant to give him his share of produce for relevant period. Dispute, *held*, clearly of nature contemplated under Sindh Tenancy Act, 1950 and as such outside jurisdiction of civil Court.<sup>65</sup>

*Every suit by landlord against occupier of his land triable by a Revenue Court* – The word “landlord” in this section was not used in relation to tenant. In our view a person entitled to the possession of the land is a landlord within the meaning of this section, and every suit brought by him against any person, who occupies the land against his consent, is a suit under section 7 of the N.-W.F.P. Tenancy Act, and is triable only by a Revenue Court.<sup>66</sup>

*Tenant claiming possession as owner. Decision of Revenue Court may be challenged in Civil Court.* – Where the tenancy itself is denied and possession is claimed on the basis of ownership or some right other than that of a tenant, the decision of the Revenue Court will not operate as a bar for the Civil Court to decide the question of title raised before it. A person whose suit to contest his liability to ejection has failed and who has been held by the Revenue Court to be a tenant can set up in defence his title to the land in a subsection.<sup>67</sup>

*Suit for possession by tenant decreed to payment of presumption money. Fixation of time limit.* – Occupancy rights in the land were sold by an occupancy tenant to the landlord. The sale was later on declared void and the occupancy tenant asked for the possession of land because the pre-emption decree stood automatically nullified by the avoidance of sale. The Court decreed the suit and directed that the repayment of pre-emption money should be made within specified time otherwise the decree would become in-operative. The High Court held:

There were no provision of law by which, while granting a decree for possession, the Court could order the plaintiff to deposit the amount within two months and further order that failing the deposit the decree would become in-operative. The learned trial Judge by fixing the time of two months during which the amount was to be deposited in Court had mistaken the suit as being that of redemption of pre-emption. In both these cases there is provision of law which entitles the Court to fix the period during which the amount found due by the Court has to be deposited. In suits for possession the Civil Courts are not authorized to fix such period. Once a decree of possession of a certain property is granted, Article 182 of the Limitation Act comes into play, which provides a period of three years from the date of the decree or order. No Court has got the jurisdiction to limit this period by fixing in a decree of order a shorter period than the one prescribed by that Article.<sup>68</sup>

*Remedy not made use of. Tenant may sue in Civil Court after one year.* – A suit under section 50 is only an alternative remedy given to a dispossessed or ejected tenant in a Court and, obviously, only to subserve the purposes of the Act which does not cover all the incidents of the relationship

<sup>64</sup> PLD 1965 Lah. 1050 Sham Singh v. Amarjit AIR 1931 Lah. 362.

<sup>65</sup> 1981 CLC 1303.

<sup>66</sup> PLS 1952 Pesh. 62.

<sup>67</sup> Karam Ali v. Raja. PLD 1954 FC 35. 1954 (2) FCR 126, 7 DLR (FC) 90; AIR 1941 Lah. 189; AIR 1935 Lah. 719; AIR 1938 Lah. 82.

<sup>68</sup> PLD 1952 Pesh.

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between a landlord and a tenant nor those between the wrong doer and the injured person. Even a cursory glance at the provisions of section 50 would show that the suit contemplated by this section is not co-extensive with a suit which a person in similar circumstances may file in a Civil Court.<sup>69</sup>

*Tenant claiming possession as owner. Decision of Revenue Court may be challenged in Civil Court.* – Where the tenancy itself is denied and possession is claimed on the basis of ownership or some right other than that of a tenant, the decision of the Revenue Court will not operate as a bar for the Civil Court to decide the question of title raised before it. A person whose suit to contest his liability to ejection has failed and who has been held by the Revenue Court to be a tenant can set up in defence his title to the land in a subsequent suit in a Civil Court for dispossession.<sup>70</sup>

*“Dakhilkars qism-i-awwal”.* *Whether entitled to any compensation in respect of their rights in land held by tenants.* – In the Rehabilitation Scheme *dakhilkars qism-i-awwal* are placed on a bar with the occupancy tenants under section 5 (1) (a) of the Punjab Tenancy Act, 1887, whose landlords receive nothing more than the land revenue and cesses, and such landlords are not entitled to receive any compensation under the scheme for these abandoned rights. The transfer of rights to the occupancy tenants in these cases seems to stop short of being complete by the nearest margin. It is, therefore entirely in accord with reason that the residuary rights remaining with the landlords should be treated at a par with the landlord’s rights under section 5 (1) (a) of the Punjab Tenancy Act, 1887. It is not founded upon any principle of exact compensation, *anna for anna*. Its overall purposes is to compensate, and to do so out of the available evacuee property in the most equitable and convenient manner to ensure successful rehabilitation of the lakhs of people involved. In such a Scheme it is unreasonable to expect that every splinter benefit, how near soever it might be to vanishing point, should be weighed and accounted for.<sup>71</sup>

*Suit for entry upon water-mill. Whether Civil Court has jurisdiction to entertain.* – A water mill is never occupied or let for agricultural purposes or for purposes subservient to agriculture. Grinding of corn is not agricultural purpose and as such water-mill does not fall within definition of the term “land” in section 2 (1) of the N.-W.F.P. Tenancy Act, 1950 and no suit for entry upon a water-mills is a civil suit and the Civil Courts have jurisdiction to entertain such suits.<sup>72</sup>

29. *Appeal.* – (1) Any party aggrieved by an award of the Tribunal may within thirty days from the date of award present an appeal in writing to the Assistant or Deputy Collector, as the case may be.

(2) The Assistant of the Deputy Collector shall then call for the record of the case from the Tribunal, and after pursuing such record and after making such further enquiry as he thinks fit shall decide the appeal.

## Commentary

*Appeal against decision as Assistant Collector filed before Collector. Revision against order whether lies to High Court.* – Section 84 follows section 80 of Punjab Tenancy Act, 1887 and provides for a revision to the West Pakistan Board of Revenue in cases where a party is aggrieved by an order made under section 80. Inasmuch, therefore, as the applicants have admittedly proceeded under section 80 and filed an appeal against the order of the Assistant Collector of 5th

<sup>69</sup> PLD 1958 Lah. 31; PLR 1953 (2) 989.

<sup>70</sup> PLD 1935 FC 35; 1954 (SC) 90; AIR 1941 Lah. 189; AIR 1935 Lah. 70; 1938 Lah. 82.

<sup>71</sup> PLD 1961 SC 235, 13 DLR (DC) 151.

<sup>72</sup> PLD 1967 Resh. 262; (1904) 32 P 261.



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August 1953, before the Collector of Lasbela District, it is not competent for the petitioners to file a revision petition before the High Court, and not seek remedy under section 81.<sup>73</sup>

*Decision of Civil Court. When binding on Revenue Court.* – Where the civil suit had been filed before the parties went to the Revenue Court and the Collector stayed the proceedings in the Revenue suit til that time the civil suit was decided, the Court held:

The principle of section 70 of the N.-W.F.P Tenancy Act, which is the same as section 98 of the Punjab Tenancy Act applied to this case and the Civil Court's decision about the fact of heirship was binding on the Revenue Court.<sup>74</sup>

30. *Revision.* (1) The Collector may, within thirty days of an order made by the Assistant or the Deputy Collector in appeal under section 30, call for the record of such appeal for the purpose of satisfying himself as to the regularity of the proceedings held therein.

(2) If in any case it shall appear to the Collector that any decision on such appeal should be modified, annulled or reversed, he may pass such order thereon as he deems fit.

## Commentary

*Commissioner can interfere only on judicial grounds.* – There could be inference in revision only on judicial grounds. It could not have been the intention of the Legislature that the Commissioner, who can interfere only on judicial grounds, should have powers to refuse to interfere on considerations other than judicial.<sup>75</sup>

*Ejection of tenant on illegal grounds. Revision of Commissioner's order.* – If an order of a tenant is passed on grounds on which it could not have been passed at all, the Court or officer who passes that order is acting without jurisdiction or at any rate in the exercise of its or his jurisdiction illegally and with material irregularity. Such an order, therefore, would be open to revision by the Board of Revenue by virtue of subsection (5), of section 84, Punjab Tenancy Act, 1887.<sup>76</sup>

*Revisional power of Board of Revenue. Extent.* – The power of the Board to pass orders in revision against the orders by Commissioner, though these officers may have passed orders in the exercise of the powers of revision given to them by section 84 of the Punjab Tenancy Act as amended, it is obvious that it can hardly be doubted.<sup>77</sup>

31 *Suspension of orders.* (1) An award passed by the Tribunal shall not take effect:

- (a) until the period of limitation prescribed for an appeal under section 30 has expired; or
- (b) where an appeal has been made under section, until the appeal is decided.

(2) An order made by the Assistant or Deputy Collector in appeal and section 30 shall not take effect:

- (a) until the period of limitation prescribed under section 31 has expired, or

<sup>73</sup> PLD 1963 Kar. 602.

<sup>74</sup> PLD 1958 CS 186.

<sup>75</sup> PLD 1957 SC 186.

<sup>76</sup> PLD 1957 Lah. 950.

<sup>77</sup> PLD 1957 Lah. 950.

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- (b) where the Collector has called for the record of the case, until the Collector makes an order in the matter.

32. *Orders to be final.* – An order made by the Collector under section 31 and, subject to the provisions of that section, an award of the Tribunal or the order of the Assistant or Deputy Collector shall be final and shall not be called in question in any Court.

33. An award of the tribunal, and order of the Assistant or Deputy Collector under section 30 and an order of the Collector under section 31, shall be enforceable as decree of a Civil Court.

## **Chapter V. Miscellaneous**

34. *Penalty.* (1) If any landlord or tenant contravenes any of the provisions of this Act or of the rules made thereunder, he shall on conviction be a Magistrate, not lower in rank than that on a Second Class Magistrate, be liable to a fine which may extend to Rs. 500 and in default of payment of fine to single imprisonment which may extend to one month:

Provided that the penalty under subsection (1) shall not be enforced until the period of appeal has expired, or if the appeal be actually filed until such time as the appeal is finally decided.

(2) The Court may, when passing judgment, order the whole or any part of the fine recovered to be applied in the payment to any party as compensation for any loss injury caused to him by the offence.

35.<sup>78</sup> *Rules.* (1) The Provincial Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may, among other things, provided for:

- (a) the mutual rights and obligations of tenant and landlords;
- (b) the manner in which the financial transactions between the tenant and the landlord may be regulated;
- (c) the manner in which a notice to terminate a tenancy is to be given;
- (d) the manner in which the rights of tenants shall be registered;
- (e) the manner in which compensation may be assessed and recovered;
- (f) the manner in which the processes shall be served, appearances shall be entered and proceedings shall be conducted before the Tribunal.

(3)<sup>79</sup> Rules made under this section shall come into force after they are passed by the Sindh Legislative Assembly in its first session next following:

Provided that with a view to remote difficulties in the working of the provisions of this Act the Provincial Government may make omissions from, additions to, or alterations in any of those rules, subject to the conditions that any omission, addition or alteration so made shall be laid upon the table of the Sindh Legislative Assembly at its session next following and shall be liable to be

<sup>78</sup> S. 35 re-numbered as subsection (3) of section 35 and in the said section subsections (1) and (2), were incorporated by Sindh Act 16 of 1951. S.2. The amendment came into force from 11th May, 1950.

<sup>79</sup> This subsection has since been omitted by West Pakistan Act XVI of 1957.

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modified or rescinded by a resolution of the said Assembly and the modification or rescission so made shall after publication by a notification in the official Gazette be deemed to have come into force].

36. Except in cases provided in sections 29, 30 and 31 all matters connected with this Act, the Provincial Government shall have and exercise the same authority and control over the Collectors, Assistant Collectors, Deputy Collectors and *Mukhtiarkars* as they have and exercise over them in the general and revenue administration.