

TRIBAL REVOLTS AND EVOLUTION OF LAND TRANSFER REGULATIONS : A CRITICAL APPRAISAL

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I. INTRODUCTION

Constant efforts by the British and independent Indian governments to frustrate protective legislations are the main reasons for the uprising of tribals against non-tribal intrusions in the Godavari belt of Andhra Pradesh.

Bows and arrows are parts of tribal life, used only for hunting. Political forces, driven by vested interests, and bureaucracy influenced by political bosses have forced tribals to aim them at the migrant intruder. Astonishingly, both imperial rulers and those of independent India made wonderful laws to protect the life, property, land and culture of tribals. But tardy and, at times, wilful non-enforcement engendered resentment. In fact, every new protective legislation is the immediate consequential product of a tribal uprising. Governments, however mighty, have had to yield to innocent but revolutionary, truthful but terrific, poor but powerful tribal struggles.

II. HISTORICAL BACKGROUND OF TRIBAL REVOLTS AND EVOLUTION OF LAW

Tribal tensions in the Godavari belt are not new. The history of tribal areas is replete with revolts spread over two centuries. According to V.N.V.K. Shastry,¹ an officer who made an in-depth study of the life of tribals of Andhra Pradesh, the earliest recorded revolt of tribals against oppression, and undue interference from outsiders, was in 1724.² It is attributed to socio-economic and political factors. Shastry refers, in his research paper, to the greed of the British administration to plunder natural wealth in the tribal belt of Godavari, and then their response to several revolts of exploited classes. He states :

The period from 1800 to 1813 saw the then Mansabdar of Rampa in his worst form when he plundered some of the plains villages. In order to make friendship with this landlord, the British in 1813 gave these villages to mokhasas (free gift of villages to maintain law and order). People of those days must have been shocked over this decision of the British in which the maintenance of law and order was entrusted to the plunderer himself.³

There were disturbances in other parts of tribal areas and their influence over British administration was remarkable. Disturbances were taking place in other parts of tribal areas in the state like Golugonda in 1832-34 and in tribal areas of other states, like the Kol insurrection (1831-32) after which the British brought about the Regulation XIII of 1833 by which Chotanagpur was declared as a non-regulated area to separate these areas for purposes of administration (mostly law and order).⁴ Even though these disturbances were not related to each other, they have one thing in common; the tribals did not accept undue domination by outsiders. Later on, the Santhal rebellion in 1855, Sardari agitation in 1887, Munda revolt in 1895 etc., rocked the tribal areas of those regions for similar reasons.

K. Mazumdar stated that in case of highland of Ganjam, the tribals resisted the practice of free labour and free gifts around 1832 as the tribal chiefs have a strong spirit of independence.⁵ The Madras Government deputed George Russel, first member of the Board of Revenue, to investigate the causes of tribal unrest during the 1830s. After a study of Godavari district, Russel recommended exclusion of tribal areas from the purview of the general laws as the tribals were fond of autonomy and non-interference and advised that those areas be placed under the district collector who would be vested with powers of administration of civil and criminal justice.⁶

Tribals questioned the exploitation by non-tribals, which assumed serious proportions in 1836, compelling the then Government of Madras to enact Ganjam and Visakhapatnam District Act, 1839, the first piece of legislation exclusively for tribals.⁷

An inquiry by Madras Government in 1879 revealed that a head constable Shaik Tanny extorted a bribe of Rs. 60/- for which he was kidnapped and beheaded by rebel tribals. Later, the inquiry report also quoted an incident in which a police station at Krishna Deva Peta was attacked, five constables were killed and arms and ammunition looted in 1891.⁸ This was in retaliation for the killing of Thagi Virayya Dora, a Kondadora fighting exploitation by a police constable. Rebels looted the house of that constable and emptied the police station before it was set ablaze. It means the tribals had rebelled three decades even before the uprising under the dynamic leadership of Alluri Seetharamaju in 1921.

The Godavari district saw several such revolts. Korukonda Subbareddy, a leader from Kondareddy tribe, fought the British regime. An armed force comprising 60 police personnel was despatched from Rajahmundry to arrest him. They met with stiff resistance in the hill areas of Koruturu and Ennagudem in 1865. The British Government responded, for the first time, with protective legislation called the "Scheduled District Act, 1874." This was meant to

provide for separate administration for tribal areas under an officer called "Agent". Areas under his control were described as "Agency Areas." The word "district" in this enactment corresponded to a specified area and not to the present revenue division. Interestingly, the exclusion of tribal areas from the purview of ordinary laws, begun under the Act of 1839, and continued till the country adopted the Constitution.

In response to the Rampa rebellion, the British Government enacted Agency Tracts Interest and Land Transfer Act 1917. As the tribals considered land as their livelihood and did not value it in terms of money or bother to acquire a patta, which is just a piece of paper for them, the government felt the need to protect their livelihood, *i.e.*, land. Their innocence and instant need for some money made them prone to exploitation by moneylenders, sahumars and petty traders.⁹ The Act was meant to prevent land alienation and saving tribals from moneylenders. It decreed that any transfer of immovable property situation in the Agency Tract by a member of a tribe shall be absolutely null and void, unless it is in favour of another member of the Scheduled Tribe and it empowers the Agent to restore the possession of the property to the transferor or his heir. The Regulation of 1917 had further evolved into the Government of India Act 1919, which provided the Governor-General in Council with powers to declare any territory in British India to be a backward tract and that no Indian legislation should apply to such backward tract until the Governor-General so directed.

The legislation of 1919 was a forerunner of the Government of India Act, 1935, and the Government of India Order, 1936, which provided for declaration of backward regions inhabited by the tribal population as "excluded areas." The statement of objects and reasons for the 1917 Act said that it was expedient to limit rate of interest and to check transfer of land in the Agency Tracts of Ganjam, Visakhapatnam and Godavari districts.

This Act also remained on paper while the ignorant tribal continued to be exploited by outsiders. But in 1920, the tribal belt of Godavari and Visakhapatnam district started responding to the calls of freedom movement. Tribal groups rebelled under the leadership of Alluri Seetamaraju against free labour; *vetti*, between 1922 and 1924, which was suppressed after the killing of Raju in 1924.¹⁰

The Government of India Act, 1935, did not take a positive look at tribal areas as the Secretary of State of India dealt with political necessity for limiting the number of partially or wholly excluded areas rather than with the criteria on which they should be constituted. However, one important aspect of this Act was that no Act of the federal legislature or the provincial legislature could apply to the excluded or partially excluded areas unless directed by the

Governor. This imposed an absolute ban on automatic extension of any general law to the scheduled areas and the burden of examining any law before applying it to the scheduled areas was kept on Governor.

This compulsion is not built into the Fifth Schedule of the Constitution which left it to the Governor to enact new laws for examining the relevance of the existing laws to a scheduled area as and when the need arose, which was possible only when this was specially brought to the notice of the Governor by the government. However, the Constitution provided for a protective and promotive policy regarding the tribals. The concept of tribal development projects and tribal sub-plan were introduced. But the problems relating to land, moneylending, land alienation and forest conservation regulations continue to bother tribal life.

The Constitution enjoins upon the state to protect the Scheduled Tribes from all forms of exploitation and promote their economic and educational interests. In exercise of the powers conferred under para 5(2) of the Fifth Schedule, the Governor of the Andhra Pradesh made regulations to protect the land of the tribals in scheduled areas. The Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, was regarded as the best piece of legislation which could protect the land-related interests of tribals, and there was a demand for similar laws all over the country. The Regulation 1 of 1959 was originally made applicable to the scheduled areas of Srikakulam, Vizianagaram, Visakhapatnam, East Godavari and West Godavari districts, and later extended to the scheduled areas of Adilabad, Warangal, Khammam and Mahabubnagar districts, by Regulation II of 1963 to bring uniformity of the law throughout the scheduled areas of state.

The statement of objects and reasons for the Regulation 1 of 1959 mentions that the Act of 1917, which intended to safeguard the interests of tribals from unlawful transfers of lands belonging to the scheduled tribes to the plainsmen and to regulate the rate of interest collected from the tribals, was being circumvented in various ways and hidden transfers effected, rendering the Act of no practical use to tribals. It was suggested at the Agency conference, held at Madras in December, 1949, that if the hill men were to be given effective protection against exploitation by moneylenders of the plains areas, this Act should be suitably amended.

In pursuance of this recommendation, it was proposed to revise the provisions in a self-contained regulation to be made under paragraph 5(2) of the Fifth Schedule of the Constitution. This Act provides that in the scheduled areas transfer of immovable property by a member of a scheduled tribe to anybody other than a member of a scheduled tribe, without permission in writing from the competent authority, shall be null and void. Section 3(1) (a)

protects this Act from any other Act or general law, including Indian Limitation Act, and that point was specifically mentioned under section 7.

This means that no one can claim any adverse possession by lapse of time or prescription which are available under general laws. Section 3B, which was inserted by Regulation 1 of 1978, restricts registration of documents pertaining to land alienation between a tribal and a non-tribal. Section 3 allows the transfer of land to a member of a scheduled tribe or a co-operative society totally made up of members of the scheduled tribes. In case a scheduled tribe member wanted to sell his land but no other scheduled tribe member was ready to purchase it on reasonable terms, he had to apply to the 'Agent' who was the competent authority, or the Agency divisional officer or any other prescribed officer for the acquisition of such land by the state government, and the Agent could take over such land on payment of compensation in accordance with the principles specified in section 10 of the Andhra Pradesh Ceiling on Agricultural Holding Act, 1961, and such land shall thereupon vest in the state government and shall be disposed of only in favour of STs. [Section 3(1)(C)].

In case of any transfer in contravention of these provisions, the Agent may, on application by any one interested or on information given in writing by a public servant or *suo motu* decree the eviction of any person in possession of the property claimed under the transfer, after due notice to him, and might restore it to the transferor or his heirs. If it is not possible to hand over the possession back to the transferor or his heirs, either because they are not willing or their whereabouts are not known, the Agent may order assignment of that land to any other member of ST. [Section 3(2)]. Besides restoration of land to the original transferor, section 6A (inserted in 1978) provides for imposition of rigorous punishment upto one year and/or fine upto Rs. 2,000/-. Section 6B made these offences cognisable.

In spite of this Regulation, exploitation could not be checked as land alienation continued unabated. As there is no proper record available to establish ownership of the land, and because the Act of 1917 provides for transfers with the permission of the Agent, non-tribals put forward the fictitious claims over tribal lands, defeating the purpose of the legislation. Even the reports submitted by the government at different times on this issue tried to project the case of non-tribals under the cover of Agent's permission. The latest report suggests that most of the non-tribals occupied tribals' lands with the permission of the Agent. An officer of the social welfare department, who pleaded anonymity, said it was wrong, and not borne by record that no non-tribal obtained permission from Agent under the Act of 1917 to be the transferee of a tribal land.¹¹

To remove the persisting lacunae in the Land Transfer Regulation 1 of 1959 and to check unabated alienation of tribal land, it was amended by Regulation 1 of 1970 which is now popularly known as 'Act 1 of '70'. It substituted sub-section (1) of section 3 of Regulation 1 of 1959 by placing absolute prohibition on transfer of immovable property in the scheduled areas by a person, whether or not such a person is a member of a scheduled tribe to any person who is not a member of a scheduled tribe.

Another important aspect of the change brought about by Act 1 of '70 is drawing of a statutory presumption that, until the contrary is proved, any immovable property situated in the scheduled areas and in possession of a non-tribal shall be presumed to have been acquired by such a person or his predecessor in possession through a transfer made to him by a member of the scheduled tribe. This amendment also imposes an obligation on a non-tribal holding lands in a scheduled area, either by partition or devolution, to transfer, in case he wanted to sell, only to a tribal. This means an absolute ban on transfer of land among non-tribals also. Where a tribal or non-tribal is unable to sell his land to a tribal on reasonable terms, it shall be open to him to surrender the land to the government which shall thereupon be obliged to acquire it on payment of appropriate compensation for its allotment only to a tribal. Act 1 of '70 wholly prohibited the transfers of land in favour of non-tribals.

The presumption that any non-tribal holding land must have acquired it from tribal makes him a violator of the provisions of the Act of 1959 and he can be evicted from the land by the government at any time as it is not possible to prove the contrary. The burden of proof that is vested on a non-tribal by the amendment means, in practical terms, that he has to prove the ownership of the land from the period prior to 1917. The dissatisfaction among the non-tribals is due to this fool proof protection of tribal land interest, leaving only one way — nonenforcement to circumvent the cumulative effect of the Act of 1959 and 'Act 1 of '70'.

Lack of political will in the government, and usual lethargy, coupled with heavy pressures from vested interest, rendered the enforcement of the Regulation impossible. Whenever there was a dynamic officer who could gear up the machinery to restore the tribal lands by evicting non-tribals, he was shifted under political pressure. Examples of sudden shifting are those of D. Subbarao, Collector of Khammam district in 1979, and Phani Kumar, Special Deputy Collector, Eturnagaram of Warangal district in 1986, etc. The enforcement machinery created under the Act remained inactive in many districts.

III. CONSTITUTIONAL VALIDITY OF LAND TRANSFER REGULATION ACT, 1959

Constitutional validity of the Land Transfer Regulation Act of 1959, and its Amendment in 1970, was challenged by P. Rami Reddy and others in 1988.¹²

The non-tribals pleaded that they had immovable properties in the scheduled areas of Andhra Pradesh and had been cultivating their lands for the past many years. Some of them acquired these lands in the remote past and some in recent past by purchase, some from the non-tribals. As the amending regulation impugned all acquisitions of immovable property by transfer from tribals and non-tribals alike and declared them null and void, the appellants were affected by it. They expressed a grievance that the regulation cut at the root of their right to immovable properties, which had been in their possession for the past many years. The principal plea of the appellants before the Supreme Court was that in so far as the impugned provision sought to control or restrict the right to transfer of immovable properties by a non-tribal person, it was void. They challenged the regulation as violative of Article 19(1) of the Constitution as the restrictions imposed under it were unreasonable and not essential for the protection of the interests of the scheduled tribes.

In its counter, the state sketched the socio-economic landscape against the backdrop of which the compulsion to legislate was occasioned. The non-tribals who arrived in tribal areas late in the 19th century and in early 20th century found the tribals, who were in occupation of vast lands, an easy prey for the schemes of exploitation. The non-tribals lent money to tribals and took the land belonging to them as security, though nothing was taken in writing from a tribal. The rates of interest charged ranged between 25 to 50 per cent and in certain cases it was as high as 100 per cent.¹³

Tribals, who were traditionally honest and simple in their thought and habits, fell an easy prey to the exploiting schemes of non-tribals. None of these money lenders ever credited any amount paid by the tribals towards their debt, and whatever entries were made in the books of the money lenders were implicitly believed by tribals. They were not aware that when produce was sold to non-tribals, they used a larger weight and that a smaller weight was applied for selling outside goods to tribals.

The indebtedness of the tribal has taken the form of bonded labour in many cases. The debt could never be repaid by the tribals. Money lenders continued to be in occupation of most of the lands and tribals became their serfs. Non-tribals have also forcibly occupied some of the lands. Tribals were ignorant and were not aware that they could go and report to the concerned authorities about the contravention of the regulations protecting their rights. Non-tribals had been taking full advantage of their ignorance and exploited them and were continuing to exploit them. The government of Andhra Pradesh, in its counter before the Supreme Court, said that the above circumstances resulted in tribal communities joining hands with the so-called revolutionaries, and again there was an uprising in the tribal area against non-tribals which had started spreading to the plains also.

In total contrast, the report signed by Chief Secretary M.S. Rajaji, submitted to the meeting in the Chief Minister's chambers on February 17, 1977, attributes the occupation of tribal lands by non-tribals to the "permission of Agent" under the Act of 1917. If what was submitted to the Supreme Court on behalf of the government is believed to be true, there was absolutely no effective enforcement of regulations, and the exploitation went on unabated. And the tribals did not even know about the laws protecting their interests. The counter-affidavit of the Andhra Pradesh government stated:

The tribal communities, which went into the grip of revolutionaries were not able to extricate themselves from the grip. It was only after the tribals were promised by the government that the land would be restored to them and exploitation by non-tribals would be checked, and after arresting several revolutionaries peace had prevailed in several parts of the scheduled areas.

The government also agreed that if the tribals were not put back in possession of the land and measures were not taken to prevent exploitation by non-tribals, peace would not prevail in the scheduled areas.

It was observed by several committees that non-tribals were able to find ways and means to circumvent the provisions of Regulation 1 of 1959 by entering into benami transactions and other clandestine transactions with unsophisticated tribals. It is absolutely necessary to create conditions for peace and maintain peace and prevent the new non-tribals from settling down in the scheduled areas. Quoting a sample survey, the government stated that in Chintapalli and Bhadrachalam it was found that the average size of holding per family was only three to four acres. But even this extent of land was either mortgaged or otherwise transferred in favour of non-tribals and they are in possession of the lands. The Government reiterated its stand by saying that without restricting or prohibiting the alienation of lands in the possession of non-tribals the objectives cannot be achieved.

An additional counter filed by the state in the high court is buttressed by the contents of a treatise authored by a well known research scholar Christoph Von Furer Haimendorf.¹⁴ The treatise is the culmination of laborious research carried out in respect of the very areas which form a part of the scheduled areas of Andhra Pradesh in respect of which the impugned legislation has been enacted. It has been stated therein that more than 40 million Indians belong to tribal communities, distinct from the great mass of society. They are aboriginal races from the Dravidian architects of ancient south Indian civilisations. The dramatic change in the peaceful co-existence between tribals, on the one hand, and the more dynamic section of society, occurred when improved communications opened up previously inaccessible tribal areas, and rapid growth of the Indian population led to pressure on the land's resources.

According to Haimendorf :

In the past 40 years, most of the tribal societies have come under attack by economically more advanced and politically more powerful ethnic groups who infiltrated into tribal regions in search of land and new economic possibilities. These population movement triggered a struggle for land in which aboriginal tribesmen were usually the losers and were deprived of their ancestral land, turned into impoverished landless labourers.

Haimendorf also quoted the distressing forecast made by Nirad C. Chaudhari in his book "The Continent of Circe", (1965) wherein he has lamented :

In an industrialised India the destruction of the aboriginal's life is as inevitable as the submergence of the Egyptian temples caused by the dams of the Nile It is to be feared that the aboriginal's last act will be squalid, instead of being tragic¹⁵

It cannot, therefore, be gainsaid, stated the state, that the tribals not only require to be protected in respect of their economic and educational interest but they also require to be immunised from social injustice and exploitation. The framers of the Constitution have, in their wisdom and foresight, taken cognisance of this vital aspect as is evidenced by the provisions embodied in Articles 15(4) and 46.

The Supreme Court, upholding the constitutional validity of Regulation Acts of 1959 and 1970, refused to accept the contention of the appellants that there was no rational basis for restraining transfer of properties from tribals to non-tribals which does not change the party to the transfer and diminish the extent of the properties, and hence such restriction was unreasonable rendering that aspect unconstitutional. Because originally all lands in these tracts were owned by the tribals and the change of ownership was a result of exploitation, the Supreme Court held :

A legislation which, in essence and substance, aims at restoration to the tribals of the lands which originally belonged to the tribals but which passed into the hands of non-tribals in an unreasonable manner The scanning must be done through the tinged lens of appellants whose economic interests may be prejudicially affected by the impugned provisions.¹⁶

Finally, the Supreme Court held :

As a matter of fact, it would be unreasonable and unfair to hold that the impugned provisions are unreasonable on this account. Surely, it is not unreasonable to restore unto the tribals what originally belonged to them but of which they were deprived as a result of exploitative invasion on the part of non-tribals. In the first place, should lessons not be drawn from past experience to plug the loopholes and prevent future recourse to devices to flout the law? The community cannot shut its eyes to the fact that the competition between the tribals and the non-tribals partakes of the character of a race between a handicapped one-legged person and an able-bodied, two-legged person.

The government won the case, but it is yet to heed the advice to draw lessons from past experiences to plug the loopholes. Instead, it issued a G.O.Ms. No. 129 (Social Welfare Department) dated 13.8.1979 permitting all non-tribal landless poor in occupation of lands in the scheduled areas upto five acres of wet lands or 10 acres of dry land to continue to have it in their possession. The attempt by the government was to override the Regulation Acts by a G.O., which rendered them not to be evicted. But this G.O. was quashed by the Andhra Pradesh High Court in 1980.

Then the non-tribals approached the High Court devising a new ground to stall the enforcement of the Act of 1959. They stated that if the population of scheduled tribes was either minimal or less than half, it could not be treated as part of the scheduled area and the Act of 1959 was not applicable to that village. The High Court granted a stay on implementation of the Act based on this point in 1992. There are nearly 32 cases pending on this point.

IV. TRIBALS AND NON-TRIBALS : UNEQUAL RELATIONSHIP

The life, friendship or fight, between tribals and non-tribals was always unequal. While laws supported the tribal cause, successive governments tried to secure the interests of those who exploited tribals. The law, which could not be struck down on any ground by the judiciary, was rendered useless by its tardy implementation or non-enforcement.

Moneylenders, petty traders and sahuikars used to enter into "friendship" with the tribals. That was nothing but a promise to continue as friends from that moment, calling each other *nestham* and *nestham* before they consumed a little toddy together. From that moment onwards, the tribals used to believe that his *nestham* would never ditch him, and accepted all terms, dues and claims made by the exploiters only to become their servant, finally losing his property to *nestham* (a friend).

Many non-tribals started keeping tribal women as concubines. Some of them married them as second wives only to circumvent the land transfer regulations. They acquired large plots of lands in scheduled areas from tribals and get the sale deeds executed in the names of their tribal concubines or wives. They also grabbed benefits from various schemes for the development of tribals in the names of their concubines. They hold some of the lands in the names of tribal farm servants and under pseudo tribal certificates.

Much of the land in the scheduled area of Andhra Pradesh was covered under the feudal systems of land tenure like Zamindari, Jagirdari, Muthadari and Mahaldari systems under which land holders had the right to evict a tenant if someone offered a higher rent. These estates were abolished, by extension of Madras Scheduled Areas Estates (Abolition and Conversion into Ryotwari) Regulation, 1951 to the scheduled areas in Srikakulam, Vizianagaram, Visakhapatnam, East Godavari and West Godavari agencies, except Nugur taluk in the present Khammam district and the muttas, sub-muttas and mokhasas in the Rampachodavaram and Yellavaram taluks of East Godavari district. Mahaldara and Muttalas became oppressive. They were also abolished in 1969.

The survey operation, which began in 1970, was full of deficiencies and large areas were left unsurveyed and unaccounted for. Hence, a comprehensive survey operation and updating of land records was taken up in the scheduled areas of the state in 1986. Dr. P.V. Ramesh, Director, Tribal Welfare, during 1995, stated in a report:

The doctors of the land, *i.e.*, the revenue authorities, had administered fatal medicine down the ages and had created chronic and intractable pathologies pertaining to land. Manipulation and tampering had been the order of the day. Lands had been assigned, illegal transactions had been sanctified, titles had been transferred and regularised in favour of rich non-tribals in blatant violation of the Agency Regulation Several admirable and progressive legislations that were enacted to protect and promote the interests of tenants, marginal farmers, landless agricultural labourers, in general, and tribals, in particular, had not yielded the desired results because of certain gross distortions created by the instruments of *status quo*. This fact has eroded the confidence of the tribal in the fairness of the administration and seriously undermined the credibility of the government institutions as instruments of progressive transformation.

One of the main distortions referred above was legalisation of the occupation by non-tribals of vast lands in 1976-88 violating the Land Transfer

Regulation of 1959 and Regulation 1 of 1970. Eligible tribal tenants were also not conferred ownership rights.¹⁷

Ramesh quoted a case study from Uttoor division (Adilabad) to illustrate the serious distortions in the implementation of Andhra Pradesh Land Reforms (Ceiling on Agricultural Land Holdings) Act, 1973.

A tribal who was in actual possession of only five acres of land was decreed as a surplus holder and was ordered to surrender his entire holding and was reduced to absolute penury only because he was recorded as Pattedar for 148 acres in the pahani. On the contrary, makthadars and izardars owning several villages had not only managed to surrender government lands, the lands of the tenants and the lands that have been sold long ago but continued to collect cess from the cultivators till as late as 1987. The land records continued to record these persons as "Pattedar Cultivator" for thousands of acres of land, and one of them even claimed 'compensation' under Land Acquisition Act for 742 acres, and not an inch of this land either belonged to him or was under his cultivation. His only claim was that he was recorded as pattedar-occupant-cultivator in the land record.

According to Ramesh, less than 30 per cent of the land held by non-tribals in scheduled areas is subjected to the operation of the Land Transfer Regulation and the remaining land can be tackled through effective implementation of land reforms which, again, is rendered impossible. He says:

No legislation or regulation, however progressive, could make even a marginal difference to land reforms in the prevailing atmosphere of feudal socio-economic relations, archaic and chaotic land records, low literacy and consciousness among tribals and insensitive, apathetic administration.

Though the settlement operations were completed long back, the government which was silent for several years over the woes of tribals suddenly woke up to help non-tribals and appointed a settlement officer under G.O.Ms. No. 661, Revenue, dated 9.8.1996. The constitution of the Settlement Court helped non-tribals through early disposal of their fresh claims in 1995 and these measures helped them drag on for some more time with illegal occupations. Velamas from Buttayagudem side and Kammas from Polavaram to Koyyalagudem side and Rajus held their sway over the lands and lives of tribals, with the support of ministers belonging to their caste in every government, including the present.

According to performance budget¹⁸ of the tribal welfare department, submitted recently to the Legislative Assembly, the tribal land under the occupation of non-tribals is 2.80 lakh acres, and 1.06 lakh acres of land was restored to tribals, while non-tribals were favoured by permitting them to retain 1.30 lakh acres. These figures amply prove how objectives of the protective legislation were being achieved. A report submitted by Dr. Ramesh during 1995 said that atleast 7.51 lakh acres of tribal land were in possession of non-tribals in the scheduled areas of the state. The report says:

It is significant that in 57,150 cases covering the extent of only 2.44 lakh acres, there was *prima facie* evidence that provisions of the Act of 1959 have been violated and, hence, proceedings were initiated under the Regulation. Percentage of disposal in favour of non-tribals is 49.63 while it is 50.08 in favour of tribals.

If non-tribals occupy the tribal lands by dubious means, the government and its bureaucratic machinery assumes the position of the first culprit by acting in gross violation of the law and orders. According to a writ petition filed by SAKTI¹⁹, a voluntary organisation at Rampachodavaram, out of thousands of acres of land assessed as Assessed Waste Dry in 1932, the government machinery allowed non-tribals to continue in occupation though they have to be evicted and lands have to be transferred to tribals. A full Bench of the High Court in 1993 ordered in a dispute between non-tribal parties that none would be eligible to get lands returned or retained except the original tribals. No action has been taken so far. SAKTI made a specific mention of Swarnavarigudem village where the Special Deputy Collector passed the orders of eviction of non-tribals in 1980 in 14 cases but no action was taken till 1993. Appeals were filed in 1993 and even when no stays were granted non-tribals are not evicted till today.

V. SUGGESTIONS AND CONCLUSION

The Director, Tribal Welfare, in his report during 1995 suggested several amendments to solve the tribal land problem. To overcome the legal hurdle imposed by High Court in 1977, an amendment is necessary to give retrospective effect to the provisions of Land Transfer Regulation with effect from August 14, 1917, in Andhra region, and October 1, 1949, in Telangana. The definition of "transfer" in Land Transfer Regulation of 1959 should be amended to expressly include all methods of moneylending, mortgage and hypothecations through which non-tribals were trapping tribals in an unending cycle of indebtedness, resulting in loss of land. A new clause should be introduced to restrict transfer of land to a female member of a scheduled tribe, who is married to or kept as a concubine by a non-tribal. In most of the cases where tribals institute cases against non-tribal transferors, the onus of provid-

ing that the transfer of immovable property is in violation of Land Transfer Regulation be cast on the tribal transferor. It is, therefore, necessary to incorporate a section casting the entire burden of proof on the non-tribals transferee. The report suggested restrictions on transfer of land from tribal to tribal, ban on assignment of lands to non-tribals in scheduled areas and imposition of a time limit for restoration of land after the orders were granted.

Centuries of practical experience suggest that no amount of legislation will help bring freedom from exploitation or for development in the absence of strong political will and a comprehensive understanding of social, psychological and traditional life of tribals. Prevention of exploitation by non-tribals is important but not the only goal. An awakening among tribals to acquire knowledge and skill to face this deceptive society and to assertively mix with others is very important.

A tribal member of the Constituent Assembly of India said on December 11, 1946 :

So far as I have been able to count, only five of use are here. But we are millions and millions and we are the real owners of India. It has recently become a fashion to talk of Quit India. I do hope that this is only a stage for the real rehabilitation and resettlement of the original people of India. Let the British quit. Then, after that, all the later-comers quit.

NOTES & REFERENCES

- * Lecturer, Pendekanti Law College, Himayathnagar, Hyderabad.
- 1. Dr. V.N.V.K. Sastry, Deputy Director, Tribal Welfare Department, Government of A.P., Hyderabad, who had varied experience in administration and execution of Tribal Welfare schemes, studied the life, culture, economy and administrative styles of primitive tribes in A.P., and wrote several books.
- 2. V.N.V.K. Sastry, *Two Hundred years of Tensions in Tribal Areas of Andhra Pradesh* in K.P. Kumaran, ed., *RURAL TENSIONS IN INDIA, DIMENSIONS & IMPLICATIONS*, (Jaipur) at 109.
- 3. *Id.* at 113.
- 4. Venkata Rangaiah, M., 1965, *The Freedom Struggle in Andhra Pradesh (Andhra)*, Vol. I (1800-1905 AD), Govt of A.P., Hyderabad.
- 5. Mozumdar K., *The Ganjam Agency 1839-1900 - Some Problems of Tribal Administration* in Misra P.K. ed., *CULTURE, TRIBAL HISTORY & FREEDOM MOVEMENT*, (London : Trubner and Co., Ludgate Hells, 1989).
- 6. Russel George, 1834; *Full Report of George Russel Commission, 1832* in Selection from records of Madras Government, Madras Vol. I, No. XXIV.
- 7. THE GANJAM AND VISAKHAPATNAM DISTRICT ACT, 1839 was later extended to entire British India by SCHEDULED DISTRICTS ACT, 1874.

8. The Madras Governmnet has deputed Mr. Sullivan, first Member of the Board of Revenue, to inquire into the causes of Rampa Rebellion.
9. Haimendorf C.V.F., *Aboriginal Rebellions in the Deccan*. Man in India, Vol. XXV, No. 4, 1945.
10. Sumit Sarkar, *Primitive Rebellian and Modern Nationalism in Pannikar*, K.N. ed., NATIONAL & LEFT MOVEMENT IN INDIA, (New Delhi : Vikas Publishing House, 1980).
11. The latest report was submitted by the Social Welfare Department at a meeting held in the Chambers of the Chief Minister on Feb. 17, 1997.
12. AIR 1988 SC 1626.
13. The details are available in the counter filed by state as quoted in the judgement in AIR 1988 SC 1026.
14. Haimendorf, Christoph Von Furer, TRIBES OF INDIA: THE STRUGGLE FOR SURVIVAL, 1982-83.
15. One of the conclusions of Nirad C. Chaudhari in his book THE CONTINENT OF CIRCE (1965) as quoted by Haimendorf.
16. AIR 1988 SC 1626.
17. Dr. P.V. Ramesh, I.A.S., Director, Department of Tribal Welfare, Government of A.P., Hyderabad, *Land Reforms and Land Transfer in Scheduled Areas of Andhra Pradesh, Adequacy and Effectiveness*, A paper submitted in NATIONAL SEMINAR ON SCHEDULED TRIBES AND SOCIAL JUSTICE, 29th & 30 July, 1995.
18. *Performance Budget*, 1997-98, Tribal Welfare Department, G. Nagesh, Minister for Tribal Welfare, Government of Andhar Pradesh (A Report submitted to Legislative Assembly of Andhra Pradesh).
19. WPMP No. 9649, 19650 and 12049 of 1997 in WP No. 7916 of 1997 between SAKTI, a voluntary organisation, and State of Andhra Pradesh.

ADDITIONAL REFERENCES

Following news reports are required to be referred as they indicate serious Tribal unrest in Andhra Pradesh.

1. THE INDIAN EXPRESS, March 23, 1997
ASP warns of cases against those inciting Girijans.
2. THE INDIAN EXPRESS, March 25, 1997
Jeelugumilli Mandal tribals accuse policy of looting their houses.
3. DECCAN CHRONICLE, March 22, 1997
Red Alert, flag march in Agency villages. 40 Tribals remanded for defying prohibitory orders.
4. THE INDIAN EXPRESS, March 23, 1997
39 Tribals remanded till April 1.
5. THE INDIAN EXPRESS, March 7, 1997
20 Tribals arrested.
6. THE HINDU, August 3, 1995
Awakening among tribals in agency tracts.

7. NEWSTIME, October 19, 1995
Tribals for eviction of encroachers
8. THE HINDU, October 21, 1995
Row over tribal lands hotting up.
9. DECCAN CHRONICLE, July 11, 1996
Tribals surround Police Station.
10. THE INDIAN EXPRESS, July 17, 1996
Land disputes in agency areas deepen.
11. THE HINDU, August 8, 1996
115 Tribals arrested.
12. NEWSTIME, August 8, 1996
Tribal, non-tribal ties worsen
Tribal, non-tribal feu turns bitter.
13. DECCAN CHRONICLE, August 9, 1996
73 suspects nabbed in land dispute case.
14. THE HINDU, August 13, 1996
Disputes that remain unresolved.
15. THE HINDU, September 19, 1996
Government grilled over arrest of tribals.
16. THE HINDU, December 13, 1996
Tribals snatching crop.
17. THE INDIAN EXPRESS, December 16, 1996
Crop snatching in rural West Godavari.
18. THE HINDU, 20, 1996
65 Policemen being held captive by tribals.
19. THE HINDU, December 21, 1996
Show of solidarity by tribals.
20. THE INDIAN EXPRESS, December 29, 1996
Parties instigating tribal youth
Ominous signs from agency areas in West Godavari.
21. THE INDIAN EXPRESS, January 9, 1997
Clashes between tribals, non-tribals farmers feared.
22. THE INDIAN EXPRESS, January 11, 1997
Disputed lands in agency villages to be surveyed.
23. THE INDIAN EXPRESS, January 16, 1997
Tribals abstain from peace talks.
24. THE INDIAN EXPRESS, January 31, 1997
Tribals take possession of lands.
25. THE INDIAN EXPRESS, February 12, 1997
Allow surveyors to assess agency land, tribal told.

26. THE HINDU, February 13, 1997
Stage set for distribution of land to tribals.
27. DECCAN CHRONICLE, February 26, 1997
Vested interests behind unrest in scheduled area : Minister.
28. THE INDIAN EXPRESS, March 1, 1997
Ban orders in 2 agency mandals.
29. DECCAN CHRONICLE, March 2, 1997
Tribals, non-tribals sign MOU.
30. THE HINDU, March 4, 1997
Prohibitory orders in tribal areas flayed.