

LANDED PROPERTY AND CREDIT IN COLONIAL INDIA



ANAND SWAMY
Professor of Economics
William College

In collaboration with

TIRTHANKAR ROY
Professor
London School of Economics and Political Science

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We cannot draw an indictment against half the people of India; and we may be quite sure whether we can see it or not, that we and our institutions are in the wrong, and not they.

Denzil Ibbetson¹

1. Introduction

We began the previous chapter by identifying three dimensions of land rights – the type of ownership, tenants’ rights, and the right to transfer – to categorise the diversity of land tenures in colonial India.² Chapter 3 focused on the first two dimensions, the type of ownership (raiyyatwari and zamindari) and the rights of tenants. This chapter introduces the third dimension, transferability. This leads us to discuss credit, for two related reasons. In a largely agricultural economy once population has grown sufficiently and land becomes the scarce factor, it is potentially the most important form of collateral. And to the extent land is actually used as collateral or seized in lieu of repayment, credit transactions can become a cause of land transfer.

The discussion of credit raises the issue of contract enforcement. Credit involves two transactions, borrowing and repayment, which are separated in time, leaving room for opportunistic behaviour by both parties. The lender is, of course, worried about repayment. The borrower, especially if illiterate or financially unsophisticated, may be concerned about fraud. These issues need to be addressed if credit markets are to function smoothly. So we study the regulation of credit contracts, not only via legislation, but also in the functioning of the courts and the implementation of their decisions. Finally, putting together our discussion of land and credit markets, we will venture some hypotheses regarding how the structure of property rights and contract enforcement might have affected the incentive to invest and the availability of funds for investment.

Rural credit was not a central concern of the Company at the beginning of its rule. Its stance changed by the second half of the nineteenth century, with the growth of population, the expansion of cultivated area, and increasing cultivation of crops for sale. The demand for credit grew and, in parallel, there was an increase in the value of the most important form of collateral, land. It was inevitable that some peasants would borrow against their land and lose it after defaulting, or would sell it to pay off loans. One might have expected that the state, especially given the influence of laissez-faire views in Britain, would view this phenomenon with some equanimity as part of the normal functioning of a market economy, in which there are winners and losers. However, this was not to be. When land loss by peasants led to protests and even “riots” the Raj reacted with great anxiety, second-guessing the legal and institutional changes it had introduced, and legislating extensively (in some regions) to prevent or discourage land transfers in relation to repayment or default on debt. Why did the Raj react so strongly?

1. Letter to local governments and administrations from Denzil Ibbetson, officiating secretary to the Government of India, 26th October, 1895, in India, Selection of Papers on Agricultural Indebtedness and the Restriction of the Power to Alienate Interests in Land, vol. 1 (Simla: Government Press, 1898): 450. Ibbetson was quoting another official who he identifies only as “a former Chief Commissioner of the Central Provinces.”

2. This work is chapter 4 of Law and the Economy in Colonial India, by Tirthankar Roy and Anand V. Swamy, forthcoming, University of Chicago, 2016.

The Mutiny of 1857 was one reason. This made the Raj fearful of rapid social change, which they believed to be its cause. But there was also a prior and subsequent history of agrarian rebellion and protest. Taken together, they led the Raj to be cautious, to not introduce policies that might undermine the agrarian social structure. This required an understanding of the key elements of this structure. The notion of the “Village Community” provided an organising idea. From the early nineteenth century at least, British officials in various regions had embraced to different degrees a view of the Indian village as a largely self-contained entity. It had internal systems of governance. It was somewhat disconnected from the larger polity – regimes could come and go without affecting it significantly. The ownership of land and responsibility for paying taxes was shared within the community. The village itself contained providers of various services, from priests to carpenters.³ The “Village Community” formulation received particularly strong support from officials in the North-Western Provinces, with Charles Metcalfe’s observations regarding villages near Delhi being especially influential.⁴ And following the final annexation of Punjab (1849), observation of social organisation in its “tribal” northwestern region (discussed below) provided further impetus to the notions of “jointness” of ownership of property and village political cohesion. In 1889 Henry Maine wrote: “It was not till the English conquest was extending far to the north-west, and till warlike populations were subjugated whose tastes and peculiarities it was urgently necessary to study, that the true proprietary unit of India [our italics] was discovered.”⁵

Given this understanding, the Raj concluded that political stability required the maintenance of the economic and political cohesion of the village, which would be undermined if “immigrant” and or “non-agriculturist” lenders took possession of land. Legislation was passed in several regions in the late nineteenth and early twentieth centuries to discourage such transfer, seeking to undermine the use of land as collateral in credit transactions, or disallow its seizure after default. The spirit of these laws was to protect the reckless and naïve borrower both from the lender and from himself.

After late nineteenth and early twentieth century discussion and legislation pertaining to land transfer, the next (potentially) important legislation was the Usurious Loans Act of 1918. And after the Depression, legislation to protect borrowers from predatory lenders and reduce their debt burdens was driven by a new set of factors -- the growth of nationalist and peasant movements, and the participation of Indians in provincial governance. By this point, the shortcomings of the judicial system, which made it hard to enforce credit contracts, had also been exposed in some regions.

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3. See L. Dumont, “The ‘Village Community’ from Munro to Maine,” *Contributions to Indian Sociology*, 9 (1966): 67-89.

4. In some of the most quoted lines in Indian history, Charles Metcalfe wrote: “The village communities are little republics, having nearly everything they can want within themselves, and almost independent of any foreign relations. They seem to last where nothing else lasts.” These lines are quoted in M. Elphinstone, *History of India*, Volume 1, second edition (London: John Murray, 1842): 123.

5. H. Maine, *Village-Communities in the East and West* (New York: Henry Holt and Company, 1889): 106.

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The remainder of this chapter describes and analyses this history, linking it to our discussion of landownership and tenant rights. We first discuss law pertaining to the transferability of land in the raiyatwari regions, where there was little or no legislation to protect tenants. We then consider zamindari regions where, as we have seen in chapter 3, tenants were protected to varying extents. Punjab, a late and major conquest, is often considered *sui generis*, so we devote a separate section to it. A discussion of issues of enforcement of credit contracts, especially as pertaining to land transfer following court decrees, follows. The last two sections of this chapter discuss developments in the late colonial period, when aggressive policies to reduce debt burdens and regulate lenders were introduced, and the strain on the judicial system became more visible in some regions. In the conclusion we will argue that because law and institutions were so variable across regions and time, it is difficult to generalise regarding their implications for economic growth. We can identify locations in which at specific times law likely constrained growth. But there are also instances where, if growth did not occur, the causes will have to be found elsewhere, not in property rights or contract enforcement.

2. Raiyatwari regions: Bombay and Madras

The region known as the Bombay Presidency was conquered piece-by-piece, but a key date was 1818, the defeat of the Maratha Peshwa based in Poona (Pune), in the Bombay Deccan. Subsequent Company rule introduced several changes that affected credit markets. The evolution of debtor-lender relations over the next several decades led to the passing of the Deccan Agriculturists' Relief Act (DARA hereafter), an important and influential legislation.

There were two critical innovations introduced by British rule. Under the raiyatwari system there were now clear titles to land which could be sold, pledged as collateral, or seized in lieu of debt repayment.⁶ Second, the adjudication of disputes moved out of the village, where methods were informal, to the district courts established by the Company where procedures were more formal and documentary evidence more important. The net effect of these changes, and increases in the value of land, was to encourage inflow of lenders, including immigrants who did not have strong local connections. This had one clear potential benefit: there was more credit available. But, as official reports and some historians tell the story, it changed borrower-lender relations in ways that hurt the peasants.

6. Land had been transferable earlier as well, but less easily. The buyer was getting a share of collectively owned property, not necessarily a discrete piece of land. See S. Guha, *The Agrarian Economy of the Bombay Deccan 1818-1941*. (Delhi: Oxford University Press, 1985): 9.

It appears that, in the pre-colonial setting, a rural lender-borrower dispute was usually adjudicated by a Panchayat or village council (see also chapter 2).⁷ Since the Bombay Deccan was a poor and dry region, immigrant lenders were an important source of credit.⁸ They were at a disadvantage when disputes were adjudicated, because they were appealing to members of village councils to rule against their peers. The Panchayats also seem to have practiced what we would today call limited liability, in the sense that they would not take the shirt off the borrower's back.⁹ There was, furthermore, a ceiling on the amount the Panchayat would award the creditor - twice the outstanding principal, irrespective of how much interest had accumulated. This rule, known as Damdupat, has a long history.¹⁰ There are many references to it in treatises on Hindu Law dating back almost two thousand years.¹¹ There was also a rule favouring the creditor, called the Pious Obligation, which made the sons and even grandsons liable for their ancestor's debts, even beyond the extent of their inheritance. Like Damdupat, the Pious Obligation could be found in ancient texts, but perhaps more to the point, it was honoured in practice.¹² The Panchayat did not necessarily enforce its decrees. The lender and his employees were allowed to use coercive methods up to a point. This likely limited the geographic scope of any lender's activity.

Mountstuart Elphinstone, the Governor of Bombay and a "conservative" in the sense of favouring gradual institutional change, wanted the Panchayat to remain an important judicial institution. Accordingly, the Regulations of 1827, which underpinned the legal structure that was to develop, allowed a role for it. However, the institutions of the new political order were the ones that commanded more respect. Panchayats, therefore, were hardly used.¹³ Dispute resolution moved to the hierarchical system of courts, modelled on the Bengal/Mughal judicial administration set up by the Company.

The new judicial system differed from the Panchayat-based adjudication in several ways. The courts placed more weight on documentary evidence. Dispute resolution did not occur in the village. In fact, the district court was often several days of travel away for the borrower. The state itself would enforce contracts. And though the Regulation of 1827 placed limits on what assets could be

7. See T.W. Coats, "An Account of the Present State of the Township of Lony: An Illustration of the Institutions, Resources and c. of the Marrata Cultivators," in *Transactions of the Literary Society of Bombay*, 3 (1823):183-220; R. Kumar, *Western India in the Nineteenth Century* (London: Routledge and Kegan Paul, 1968); A. Steele, *Law and Custom of Hindoo Castes within the Dekhun Provinces Subject to the Presidency of Bombay* (London: W.H. Allen, 1868).

8. As we will see below, richer regions relied more heavily on indigenous lenders.

9. Steele, *Law and Custom*, in his compilation of "Customary Law", reports on page 265 that village councils would require repayment "according to the debtor's circumstances."

10. For an analysis of damdupat, see M. Oak and A.V. Swamy, "Only Twice as Much: A Rule for Regulating Lenders," *Economic Development and Cultural Change*, 58, 4 (2010): 775-803.

11. See P.V. Kane, *History of Dharmasastra (Ancient and Medieval Religious and Civil Law)* (Poona: Bhandarkar Oriental Research Institute, 1962).

12. D. Hardiman, *Feeding the Baniya: Peasants and Usurers in Western India* (Delhi: Oxford University Press, 1996): 108. Family lore has it that the grandfather of one of the authors of the present work, who hailed from this region, upheld his Pious Obligation after his father's death in the influenza epidemic of 1919, even though this was no longer required by law.

13. W.H. Sykes, "Administration of Civil Justice in British India for a period of Four Years, chiefly from 1845 to 1848, both years inclusive," *Journal of the Statistical Society of London*, 16 (1853): 103-36, see p. 123. Sykes noted that in the period 1845 to 1848, only 0.07% of 336, 968 cases decided were adjudicated by Panchayats, and describes them as "scarcely operative."

seized in lieu of debt repayment, imposed an interest-rate ceiling (12%), and retained *damdupat*, imprisonment was one possible punishment, which diluted the impact of borrower protections.

The impact of these changes depended on who the borrowers and lenders were. But much of the discussion and legislation in the Bombay Deccan was driven by the relationship between the professional trader-lenders, especially immigrants, and the peasants. As the nineteenth century unfolded, several British officials made a plausible case that institutional innovations had favoured the lender. The latter was more at home with new legal procedures, more adept at book-keeping, literate, and could better bear the costs and time associated with litigation. The adjudication was now not being done by a group of the borrower's peers. There was now a judge, driven by the letter of the law, relying heavily on the written word. Finally, the lender could rely on the state to help enforce its judgment, including seizure of land. After an early period of heavy taxation, taxes were lowered significantly by 1850. Population, cultivated area, and commercial agriculture expanded. As the demand for credit increased, more immigrant lenders moved in, relying on the new British-Indian legal apparatus for loan recovery.

From quite early on, British officials were concerned about two related outcomes of this process: first, they worried that unsophisticated peasants were being defrauded by lenders and second, that land was passing from the hands of traditional cultivators to the immigrants who had no connection with land. The following comments in 1852 by Captain George Wingate, an important land revenue official, are illustrative:

The facilities which the law affords for the realisation of debt have expanded credit to a most hurtful extent. In addition to ordinary village bankers, a class of low usurers is fast springing up... All grades of people are thus falling under the curse of debt, and should the present course of affairs continue, it must arrive that the greater part of the realised property of the community will be transferred to a small monied class...¹⁴

As we noted in the introduction, the Mutiny exacerbated concerns regarding the political implications of land transfer.¹⁵ In parallel with the political fears there was, at the ideological level, what Thomas Metcalf has called “the creation of difference” – the notion that Indian (at least agrarian) society was not prepared for British institutions.¹⁶ In our context, Raymond West, a judge in the Bombay High Court, provided a clear statement of this perspective. West wrote a highly influential monograph in 1873 entitled *The Land and the Law in India*, arguing that it was a mistake to allow land to be transferable. It gave the peasant too much access to credit (the full value of land), but s/he was not capable of handling it appropriately. This sentiment was echoed by officials in other regions, and the right to borrow against land was often described as a “fatal

14. Bombay, Report of the Committee on the Riots in Poona and Ahmednagar 1875 (Bombay: Government Press, 1876): 31. The “facility” that seems to have most troubled Wingate was the lender's right to seize land in lieu of repayment. The threat of imprisonment of the debtor was not a source of controversy.

15. See Washbrook, “Law, State, and Agrarian Society,” 686.

16. T. Metcalf, *Ideologies of the Raj* (Cambridge: Cambridge University Press, 1995): 66. The Raj was happy to borrow from British precedent when it came to the factory or the corporation, as we discuss in later chapters.

boon.”¹⁷

The 1860’s saw a boom in cotton cultivation in the Bombay Deccan, suitable due to its black soil, because the American Civil War disrupted supply of cotton. Debt expanded considerably in this period. Prices fell after the Civil War ended, and in the late 1860’s and early 1870’s there were other “shocks” to the system such as increases in land taxes and adverse weather conditions. Peasants defaulted on loans and lost their lands to moneylenders. As resentments grew, moneylenders were sporadically attacked, but the crisis finally came in 1875, when peasants in four districts (Poona, Ahmednagar, Sholapur, and Satara) “rioted.” The riots occasionally took the form of violence against moneylenders, but more often the rioters simply wanted to destroy the “bonds” that were proof of their debts. Some historians have questioned the magnitude of the Deccan Riots, and Neil Charlesworth once provocatively described them as a “minor grain riot.”¹⁸ But for many of the Raj’s officials this was confirmation of their fear that British innovations in land rights and law were destabilising Indian society in a politically threatening way.

What was to be done? The Deccan Riots Commission was set up to address this question. After it produced a voluminous report, the Deccan Agriculturists’ Relief Act (DARA) was passed in 1879, applying to the four districts where the riots had occurred. The Act did not accept Raymond West’s radical suggestion – a ban on land transfer – and focused instead on the legal process. The Act had numerous provisions. Village-level “conciliators” were appointed to facilitate arbitration, and nearby courts with munsifs (judges, usually Indian, in lower courts) were set up to adjudicate disputes involving small sums. Mortgages had to be registered, and ex-parte judgments (absent the defendant) were discouraged. The interest rate ceiling, which had been abolished in 1855 after the abolition of usury laws in Britain, was re-instated. But the most important change was that judges were empowered to “go behind the bond,” that is, investigate the entire history of transactions, and use their discretion to reduce payments, or order payment in instalments.

Meanwhile, what of the two measures in Hindu law, the Pious Obligation and Damdupat? The Pious Obligation had lost its bite after the passing of the Bombay Hindu Heirs’ Relief Act of 1866 which declared that a son was liable for his father’s debts only to the extent he inherited his property. Damdupat was part of the 1827 regulation, as mentioned above. It was included in DARA. It remains on the books in Maharashtra and a few other places in India.

The impact of the DARA, which was extended to Sindh in 1901 and the rest of the Bombay Presidency in 1905, was controversial. While the officials associated with its formulation and implementation praised it, critics also alleged that it was driving out the lenders and credit was drying up.¹⁹ Borrowers and lenders colluded to side-step DARA by disguising loans as sales. The

17. W.B. Oldham, referring to his tenure as Deputy Commissioner of the Santhal Parganas, lamented that the tribals had been given “this new and fatal boon of transferability”. India, Selections of Papers on Agricultural Indebtedness, Vol. 3, 303.

18. I.J. Catanach, *Rural Credit in Western India 1875-1930: Rural Credit and the Co-operative Movement in the Bombay Presidency* (Berkeley: University of California Press, 1970). N. Charlesworth, “The Myth of the Deccan Riots of 1875,” *Modern Asian Studies*, 6, No. 4 (1972): 401-421, see page 416. Charlesworth moderated his position in a later work, *Peasants and Imperial Rule: Agriculture and Agrarian Society in the Bombay Presidency, 1850-1935* (Cambridge: Cambridge University Press, 1985).

19. Bombay, *Report of the Deccan Agriculturists’ Relief Commission* (Bombay, Government Press, 1912): 6, argued that “a

borrower would “sell” the land at a certain price, and buy it back later at a higher price, with the interest embedded in the price differential. DARA had to be modified so that even land sales could be scrutinised.

Recent research shows that DARA achieved some of its procedural goals: for instance, the incidence of ex-parte decrees declined dramatically.²⁰ Judges used their discretion to reduce repayments to creditors. However, while credit did contract, this does not seem to have hurt “real” outcomes such as cropped area and yield. This finding is consistent with work on present-day India which suggests that greater access to credit does not necessarily promote agricultural growth.²¹ It appears that DARA was, overall, a moderately successful intervention, giving the borrower some protection without materially undermining the supply of credit. It can be interpreted as an exercise in moderation, moving away from an extreme in which the lender had too much power vis-à-vis the usually illiterate borrower, to one where they were more evenly matched.

Meanwhile, what of the other major raiyatwari region, Madras? The Madras administration’s attitude to land transfer was in complete contrast to that of Bombay. It argued that in Madras most lenders were local “agriculturists”, not immigrant trader-lenders (see Table 4.1). So, even if land did change hands, it would not cause political unrest. Moreover, the Inspector-General of Registration of Madras argued that the new owners “in addition to capital have sufficient education and intelligence to adopt improved methods of cultivation when they are found to be profitable.”²² His understanding of the credit market was directly at odds with the spirit of DARA. DARA had worried that loan recovery was too easy for the lender. The Madras Inspector-General thought interest rates were high because loan recovery via the courts was too costly.

large number of saokars [professional moneylenders], including of course the best, have wound up, or are winding up their business with agriculturists...”

20. L. Chaudhary and A. Swamy, “Protecting the Borrower: An Experiment in Colonial India” (Mimeo, Williams College, MA, 2014). This section of the paper draws on this joint work, and we thank Latika Chaudhary for her help. We have also drawn on R. Kranton and A. Swamy, “The Hazards of Piecemeal Reform: British Civil Courts and the Credit Market in Colonial India”, *Journal of Development Economics*, 58 (1999): 1-24.

21. S. Cole, “Fixing Market Failures or Fixing Elections? Agricultural Credit in India,” *American Economic Journal: Applied Economics*, 1, 1 (2009): 219-50.

22. Quoted in India, *Note on Land Transfer and Agricultural Indebtedness in India* (Simla: Government Press, 1895): 65.

Table 4.1: Registered loans in Madras Presidency, 1889-91

Profession of Lender	Percentage mortgages greater than 100 rupees	Percentage mortgages less than 100 rupees	Percentage Simple Bonds
Agriculturists	61	65	64
Non-Agriculturists	34	31	32
Farmers combining other professions with agriculture	5	4	4

Source: India, Note on Land Transfer and Agricultural Indebtedness in India (Simla: Government Press, 1895): 65. The data are from sale/transfer registration figures and pertain to 10 districts.

The Madras Inspector-General’s view of the credit market (among many other subjects) is fleshed out in a famous report he published in 1893.²³ He provides estimates of the legal costs incurred by a creditor making a claim of fifty rupees or less. This is based on the experience of a judicial officer who had experience in Tanjore, Tinnevely, and Trichinopoly districts (currently spelt as Thanjavur, Tirunelveli and Tiruchirappalli respectively). The Inspector-General concluded that to recover 50 rupees, a successful litigant would have to spend 34 rupees. Even if he won and was awarded court costs, he would fail to recover 11.5 rupees.²⁴ Thus, the lender would lose 23% of the principal in legal costs. The recovery cost estimate was conservative in that it assumed the lender lived close to the court. The percentage lost by the lender would fall as the size of the loan increased – 12%, 5% and 3% respectively, for loans of rupees 100, 500 and 1000. The Inspector-General argued that if the loan were 10 or 20 rupees, the cost of recovery might exceed the value of the loan. This was why it was “impossible for the poor peasantry to obtain small loans at anything like reasonable rates of interest” even when they offered good security.²⁵

Given this discussion and that of the previous chapter on security of ownership and tenancy legislation, what can we conjecture regarding the incentives for investment in raiyatwari Bombay and Madras in, say, 1900? Stressing the word “conjecture”, our sense is that the legal/institutional structure per se was not a major obstacle to investment. Raiyatwari ownership was generally secure. Even when land was leased out, owners’ incentives to invest were not undermined because tenancy was at-will, and landlords could raise rents (though, as we have seen, there could be disputes when tenants claimed occupancy rights). Land could be used as collateral to raise funds for investment (with some scrutiny in Bombay). Legal costs of enforcing contracts could be high, as proportion of loan size. But this is not unusual for a developing economy, when loan sizes are small and there

23. S.S. Raghavaiyengar, Memorandum on the Progress of the Madras Presidency during the last forty years of British Administration (Madras: Government Press, 1883): 309. Raghavaiyengar has been viewed very negatively by critics of British rule, who view him as biased in its favour. This does not worry us in this context; if anything, this makes his criticism of the high costs associated with the British-introduced judicial system more persuasive.

24. Ibid., Appendix VI. E, pp. cccxvi-cccxvii.

25. Ibid., p. 309.

are fixed administrative costs.²⁶ Overall, we do not see the structure of property rights or formal contract enforcement as being major obstacles to economic growth. And, we have noted, in the case of DARA statistical analysis has not yielded evidence of any adverse effect on economic growth.

3. The Zamindari regions: Bengal and Madras presidencies

We have argued in the previous chapter that, before the Tenancy Acts, zamindars in Bengal and Madras (under the Permanent Settlement) had good incentives to invest, since they would reap the benefits, with no additional taxes to pay.²⁷ And, of course, there were no restrictions on their right to transfer some or all of the zamindari, so they did not, in principle, lack access to funds.²⁸ However, after tenancy legislation was passed, incentives for landlords weakened because it was more difficult to raise rents, or evict tenants. But the strengthening of tenants' rights meant that they could now have greater confidence in profiting from their investments. Where would the funds come from? The obvious option was to mortgage the occupancy right. Was this permitted? Depending on the zamindari region and the period in question, the answer was "Yes", "Maybe", or "No." We discuss these cases sequentially.

The "yes" case, in the Madras Presidency, is easy to explain. We have seen above that in the late nineteenth century the Madras Administration had rejected out-of-hand the idea of restrictions on the transfer of raiyatwari rights. When the Madras Estates Land Act was passed in 1908, the intention was to give the zamindari occupancy tenant a status similar to that of raiyatwari owner. So there were no restrictions on transfer of the occupancy right, or on borrowing against it. In principle, the Madras zamindari occupancy tenant had both the incentive to invest (because of protection from arbitrary rent increases and eviction) and the capacity to invest, because of the ability to collateralise the occupancy right.

The "maybe" case is more complex. The framers of the Bengal Tenancy Act of 1885 had left the issue of whether the occupancy right was transferable to "custom" or "usage." In 1894 the Government of India, driven by the political concerns we have discussed, communicated with various local governments including Bengal on the subject of restrictions on land transfer. The

26. See, for instance, the high costs of screening of borrowers and administration for informal lenders, as described by I. Aleem, "Imperfect Information, Screening, and the Costs of Informal Lending: A Study of a Rural Credit Market in Pakistan," *World Bank Economic Review* 4, No. 3 (1990): 329-349. Microfinance lenders today typically charge in excess of 20% per annum, see A. Banerjee, E. Duflo, R. Glennerster, and C. Kinnon, "The Miracle of Microfinance? Evidence from A Randomized Evaluation," *American Economic Journal: Applied Economics*, 7, 1 (2015): 22-53.

27. This is subject to the caveats regarding the power of the tenant, and tenants paying fixed rents, as discussed in the previous chapter.

28. In the early years land may not have had much value because of high land taxes. See A. Bhaduri, "The Evolution of Land Relations in Eastern India Under British Rule," *Indian Economic and Social History Review*, 13 (1976): 45-53. But over the nineteenth century, the burden of land taxes fell dramatically. Such restrictions as there were on transfer of zamindari lands came when the state stepped in to preserve a zamindari when it was disintegrating due to mismanagement or until a minor came of age.

Government of India suggested to the Bengal government that “the effect of the Bengal Tenancy Act has been in many instances to place the raiyats at the mercy of the moneylenders.” The Government of Bengal responded that since the passage of the Bengal Tenancy Act there had indeed been a substantial increase in the number of transfers of occupancy right registered, though some of this may have been simply better reporting. But most of this was not to moneylenders. Moreover moneylenders in Bengal were not “the grasping and foreign moneylenders of other parts, but persons who are agriculturists themselves, and who have a little capital which they lend out at usury.”²⁹ Supporting this view, the Government of Bengal enclosed a long letter from M. Finucane, who was a strong supporter of tenant rights. Using data on more than 47,000 transactions, Finucane argued that land was mainly going to other peasants and only 1 in 7 transfers was to Mahajans (moneylenders). And, he argued, “of these so-called Mahajans, however, but a small portion were probably other than substantial raiyats themselves, for these are the chief moneylenders in rural Bengal.”³⁰ Far from being concerned about land transfer, the Government of Bengal worried that though “custom” usually allowed free land transfer by occupancy tenants, courts might not endorse this view. The 1894 letter quoted above (note 27) worried that “it is possible that the technical and narrow views which the Civil Courts may take of the evidence required to prove “custom”...may cause an ever-widening breach between the law as administered by the Courts and the general practice, so that it may eventually be necessary to interpose by legislation to set the Courts right.”³¹

This concern was well-founded, as illustrated by *Palakdhari Rai versus Manners and Others*.³² In 1895, Palakdhari Rai, a zamindar, brought fourteen suits against Manners and Others regarding their purchase of occupancy rights in his estate. The central issue was whether or not transfer without the consent of the landlord was consistent with “custom.” The munsif’s court had ruled for the plaintiff (the zamindar), but this decision had been reversed by the Subordinate Judge. The zamindar appealed to the High Court which, citing a prior judgment of the Privy Council, held that for the transfer to be valid “it would be necessary in these cases either to prove the existence of the usage on the landlord’s estate, or that it is so prevalent in the neighbourhood that it can be reasonably presumed to exist on that estate.”³³ Criticising the Subordinate Judge the court noted that the documents he had cited showing transfers “all relate to other villages” and it was not clear what bearing this had “upon the question of the existence of usage in the two villages in which the holdings have been purchased by Manners and which are the subject matters of this suit.”³⁴ The High Court required the case to be retried. This ambiguity in law was resolved only when the

29. This and the previous quote are from Letter 3565 L.R. dated July 16, 1894, from C.E. Buckland, Secretary to the Government of Bengal to Secretary of the Government of India, Revenue and Agricultural Department, in India, Selections of Papers on Agricultural Indebtedness, vol. 1, p. 284.

30. India, Selection of Papers, vol. 1: 290. Ironically, the agriculturist-moneylender of Bengal was later, in independent India, identified as the central to a “semi-feudal” structure that was inhibiting growth. A. Bhaduri, “A Study in Agricultural Backwardness under Semi-Feudalism,” *Economic Journal*, 83 (1973): 120-137, argued that the rich peasant lender was also a landlord, who earned rents as well as interest from his sharecroppers. Increases in his sharecropper’s output could be harmful to the rich peasant because they might reduce his interest receipts.

31. India, Selection of Papers, Vol. 1, p. 285.

32. Bengal, Indian Law Reports, Calcutta Series Vol. 23 (Calcutta, 1896): 179-86.

33. *Ibid*, 180.

34. *Ibid*. Both quotes are from page 186.

Bengal Tenancy Act was amended in 1928, explicitly allowing the occupancy tenant to transfer his/her right upon payment of 20% of the sale price to the zamindar. This requirement of 20% payment was removed in 1937.

The transferability of the occupancy right thus remained in legal limbo for a considerable length of time, left to the best judgment of the court regarding “custom”. It is likely that this undermined the tenant’s ability to borrow against this right. Land law in Bengal in (say) 1900 thus seems to have undermined the zamindar’s incentive to invest (because the Tenancy Act made it harder to raise rents or evict tenants), and the tenant’s capacity to invest (since the occupancy right could not necessarily be used as collateral). It is likely that some investment did occur, in part because, as we have seen in the last chapter, the provisions of the Tenancy Act were evaded, with zamindars illegally raising rents. And tenants could borrow from their zamindars, with their occupancy right as de facto collateral: the surrender of occupancy right could then be described as being due to default in rent. Still, even if the Bengal Tenancy Act was beneficial on grounds of equity, the uncertainties created by it may have undermined economic growth. Later legislation (see below) aggravated the problem.

The “No” case pertains to strong “protective” legislation in colonial India, which was passed in the adivasi areas. Adivasi translates roughly as “original inhabitant.” Adivasis’ cultural and economic practices could differ significantly from those of the more numerous Hindu peasant communities. In the colonial period they were called “tribes” and in today’s official parlance “Scheduled Tribes.” We will use the term adivasi because it is more respectful. It will also help avoid confusion with a different use of the word “tribe” in the section on Punjab, below. As we noted in the last chapter, conflict between adivasis and the colonial state/zamindar/moneylender had begun as early as 1832 in the Permanently Settled portions of eastern India. Our focus here is on the Santals, adivasis who were proficient at forest-clearing. By the mid-1850’s they had a substantial presence in an area within the present-day Indian state of Jharkhand, where, depending on location, they were raiyatwari-type owners or zamindari tenants. After protracted tensions with zamindars (over evictions and rent-increases) and moneylenders (over land transfers) the Santals rebelled in 1855. This was a large-scale insurrection which the colonial state eventually dealt with harshly, militarily, with perhaps as many as 10,000 Santals killed.

After the rebellion was crushed, the administration attempted to address its causes. A new district called the Santal Parganas was created, which was designated a “Non-Regulation” area, in that the rules and laws passed for the rest of British India would not automatically apply. According to Act XXXVI of 1855, “No law which shall hereafter be passed by the Governor-General of India in Council shall be deemed to extend to any part of the said districts, unless the same shall be specially named therein.” There would be a more paternalistic form of administration, with a strong role for the executive, especially revenue officials. However, in 1863, the Advocate-General declared the formulation quoted above ultra vires, so the “non-regulation” status became invalid. Following this, under the provisions of the weak Bengal Rent Act of 1859 (discussed in the previous chapter), zamindars increased rents. A rule imposing an interest rate ceiling of 25% was now declared void, and “the district was fast relapsing into the position from which it had been rescued by Act XXXVII of 1855.” Renewed political unrest in 1871 led to fresh legislation in 1872. The Advocate-General’s decision was declared erroneous, and Santal Parganas were declared “non-

regulation” again.³⁵ Santals in the zamindari areas were given occupancy rights and protection from eviction and rent increases.³⁶ Officials would conduct village-level investigations to “settle” rents and rights.

A valuable occupancy right had been created and, predictably, some of this was lost to moneylenders. Again, to forestall political trouble, regulations were passed in 1887 forbidding the transfer of the occupancy right, unless the “custom” of transfer was found to prevail when officials entered the villages to “settle” rents. This custom was sometimes found in villages inhabited by Bengalis, but never in the Santal villages. So, de facto, land transfer was banned. Officials even rescinded illegal transfers that had already occurred.

What were the implications for investment? Zamindars would not invest because they could not raise rents. The occupancy tenants would not be able to raise the funds for investment, because the land could not be used as collateral. Our confidence in this assessment is strengthened by the commentary of H. McPherson, whose famous Settlement Report we have quoted extensively above. McPherson was proud of the protective legislation passed. He estimated that in the previous thirty years the population had grown only 44%, whereas cultivation had increased 66% and the standard of living had increased by 30%. He writes:

A 30% improvement in the standard of comfort spread over 30 years must be admitted to be a striking testimony to the value of Sonthal Parganas legislation. To that legislation is due the unhampered extension of cultivation, the controlled enhancement of rent, and the general protection of weak and ignorant cultivators who would otherwise have become the prey of their wiler and stronger neighbours...³⁷

However, if we read McPherson’s analysis closely, it suggests that legislation could have reduced growth. Regarding the zamindars he notes that the “system militates against enterprise on the part of the proprietor” because “he can get no appreciable return to expenditure till settlement revision, and then his return is dependent on the will of Government and is liable to be limited by rules of settlement regarding classification and rates.”³⁸ On the tenants his observation was that they had “every inducement” to “extend and improve cultivation”, but also that they took very few loans (from the government) under the Land Improvement Act because “raiya cannot offer their holdings as security, their rights not being transferable.”³⁹ Thus the combination of tenant protection and restrictions on land transfer may have promoted equity at the expense of growth.⁴⁰

35. This paragraph is based on H. McPherson, Final Report on the Survey and Settlement Operations in the District of the Sonthal Parganas, 1898-1907 (Calcutta: Secretariat Book Depot, 1909), and all the quotations are from page 40.

36. Also, an interest rate ceiling of 24% was imposed, damdupat was put in place, and compound interest was banned, Ibid. p. 40.

37. Ibid., p. 135.

38. Ibid., p. 138.

39. Ibid., p. 139.

40. Also see M.C. McAlpin, Report on the Condition of the Sonthals in the Districts of Birbhum, Bankura, Midnapore and North Balasore (Calcutta: Firma K.L. Mukhopadhyay, first published 1909); H.M.L. Allanson, Final Report on the Survey and Settlement Operations in the District of Sonthal Parganas (Third Programme) 1898-1910 (Calcutta: Bengal Secretariat

Thus far in this chapter we have mainly discussed regions that were conquered in the early phase of British rule in India. We now turn to a major and late acquisition, Punjab.

4. Punjab

The vast area of Punjab warrants some introduction before we turn to issues of land and credit. The year 1849 is usually identified as the date of Punjab's annexation, though some portions were seized earlier, and some areas were later added or removed from the province.

Punjab can be thought of as three regions: Western Punjab (now in Pakistan), Central Punjab (roughly present-day Indian Punjab) and the South-east (roughly Haryana in India).⁴¹ Western Punjab was largely Muslim, the South-east largely Hindu, and central Punjab had substantial Hindu and Sikh populations.

Western and South-eastern Punjab were dry, and but rainfall was more abundant in central Punjab. But there were five major rivers which provided opportunities for irrigation. After 1885 the Raj constructed a network of canals that eventually made more than 10 million acres of formerly barren land in western Punjab cultivable.⁴² The land was settled with migrants, many from densely populated central Punjab, who were given land grants by the state. The Canal Colonies' history is quite different from that of the rest of Punjab in the extent to which policies of land settlement were connected with the Raj's military goals, so we do not discuss it further in this section.⁴³

As we noted in the introduction to this chapter, the notion of a largely self-contained "Village Community" had been developed in the North-western Provinces and early administrators in (the contiguous) eastern Punjab believed that they had found this community in perfected form in Punjab. Punjab was, therefore, largely given the land tenure system developed in the Northwestern Provinces. The presumption was that the village belonged jointly to a set of proprietors. A lump sum tax was imposed on the village which was then divided among owners. It is not entirely clear how meaningful this "jointness" was in practice. Because the property rights and tax obligations of individuals were clearly identified within the village, this was de facto not necessarily very different from raiyatwari. George Campbell, who had worked in the Punjab, noted: "Practically, the settlement made with a community is very nearly ryotwar, with the difference that Government deals with the united body, and not directly with each individual separately."⁴⁴ It was also inevitable

Press, 1912).

41. We adapt this classification from R. Fox, *Lions of the Punjab: Culture in the Making* (Berkeley: University of California Press, 1985): 28. Any such categorisation is somewhat arbitrary. This one does not include hill districts like Kangra.

42. The first of these projects was begun in 1886, and all but one was completed by 1921, I. Ali, *The Punjab Under Imperialism, 1885-1947* (Princeton, NJ: Princeton University Press, 1988): 9 and I. Ali, "Malign Growth? Agricultural Colonization and the Roots of Backwardness in the Punjab," *Past and Present*, 114 (1987): 114.

43. Grants of land in the Canal Colonies were a rich resource of patronage for the Raj, and they were used to consolidate its power in Punjab, which was disproportionately represented in the British-Indian army. See Ali, *Punjab under Imperialism* for a good discussion.

44. G. Campbell, "Tenure of Land in India," in *Cobden Club, Systems of Land Tenure in Various Countries* (London: Macmillan and Co., 1870): 195. As in the raiyatwari areas, theory could deviate from practice, and, in concessions to facts

that in such a huge region there would be places where there was no tradition of joint ownership or joint liability for taxes. How was the Raj able to impose these unfamiliar practices? B.H. Baden-Powell provided the example of Kangra, a hill-state, and argued that though joint responsibility for taxes was novel, it was “rarely enforced” and was a “very shadowy” thing.⁴⁵ This reinforces the point that land tenure in Punjab was in practice close to raiyatwari.

The view of the village as a cohesive and self-contained entity received further impetus from western Punjab, especially the Northwest frontier, where “tribes” were identified in Peshawar, Hazara, Dera Ghazi Khan, Dera Ismail Khan, and Bannu.⁴⁶ The dominant “tribe” in these areas is usually referred to as Pathan or Pashtun. The theory was that following conquest of a contiguous area by a tribe, the land was divided into smaller regions sometimes known as ilaqas and then into villages. The joint nature of land ownership and the sense of political unity came from this shared tribal heritage. The Raj extended the notion of tribe to other parts of Punjab as well. For instance, in central Punjab, Jats constituted the most numerous cultivating tribes.⁴⁷ For our purposes British theories regarding how Indian “tribes” originated are not of great consequence. What is noteworthy is that a new and influential category, not of religious origin, was in play.⁴⁸ The state’s goal was now to understand and uphold what it understood to be the “Customary Law”, which would preserve village cohesion.⁴⁹ The way to ensure this was to put decisions, revenue-related and judicial, in the hands of the executive, rather than rule-bound courts. Therefore, like the Santal Parganas, Punjab was declared “Non-Regulation”.

Consistent with their views regarding village social organisation, British officials found that when land was sold, by “custom” other owners in the village had the right of first refusal, or the right of pre-emption. The Punjab Land Administration Manual explains how this custom was translated into law.⁵⁰ An 1852 circular required that a landowner who wished to sell his share of land had to offer it first to the village community or to another owner in the village at a price upon which they agreed, failing which a revenue official and three assessors would arrive at a price. This rule was then brought into the Punjab Civil Code in 1854, and was extended to sales in execution of a court decree and to foreclosures on mortgages. In 1856 the Chief Commissioner extended the right of pre-emption to usufructuary mortgages (in which the lender got possession of the land). Efforts were also made to limit land transfer via the exercise of executive discretion. According to an 1866

on the ground, ownership rights were conferred on some holders of large areas of land, especially in South-Western Punjab.

45. B.H. Baden-Powell, *A Manual of the Land Revenue Systems and Land Tenures of British India* (Calcutta: Government Press, 1882): 413.

46. *Ibid.*, p. 404.

47. Fox, *Lions of the Punjab*, 120.

48. See D. Gilmartin, *Empire and Islam: Punjab and the Making of Pakistan* (Berkeley: University of California Press, 1988), chapter 1, for a discussion of the notion of “tribes” in Punjab.

49. Customary Law in the context of shared property rights was especially relevant for common land and “waste” in the Punjab. See M. Chakravarty-Kaul, *Common Lands and Customary Law: Institutional Change in North India over the Past Two Centuries*. (Delhi: Oxford University Press, 1996).

50. Compiled by J.M. Douie, *Punjab Land Administration Manual* (revised in 1931) (Lahore: Government Press, 1931): 6. Also see H.C. Calvert, *Wealth and Welfare of the Punjab: Being Some Studies in Punjab Rural Economics* (Lahore: Civil and Military Gazette Press, 1922): 123-124.

regulation no land sold could be sold to satisfy debt without official sanction.⁵¹

However, the broader processes at work in the rest of British India were not to be denied. The long process of codification of law, begun in the 1830's, was coming to fruition. The Code of Civil Procedure of 1859 was extended to Punjab in 1866 (with some restrictions). A Chief Court was set up in Lahore in the same year, and a formal court system slowly emerged. In 1874-75 regular civil courts were established which now adjudicated suits for debt, replacing District Officers and other officials, who could now focus on their primary tasks. The judges were mostly of urban origin, with little awareness of rural customary law.

The right to pre-emption ran into trouble in court. Suppose a bania (trader-lender and not a member of the village "brotherhood" of owners) acquired a foothold in the village. The Chief Civil Court found that he would have the right of pre-emption. With this interpretation, an officer complained, "a proprietor by purchase, though a stranger to, and at bitter strife with, the original village brotherhood, had as good a title to claim pre-emption as any member of it."⁵² We will see below that the government addressed this issue in 1905. Pre-emption remained a significant contributor to litigation until the end of the colonial period.⁵³ In 1938, of 135,912 suits before all courts, 5,203 were for pre-emption.⁵⁴

By the 1870s, a Bombay-Deccan-like process emerged in the Punjab. Land values rose during British rule because land taxes were lower, communication and trade improved, and cultivation expanded. Land titles were now clearer, and could be transferred. The volume of debt, the number of suits in court for loan recovery, and transfers to land titles, all increased.⁵⁵ As we have seen, by the mid 1890's the Government of India itself was concerned about land transfer and sought the views of various local governments on the need for a law to restrict land transfers. It is interesting to see its Note on Land Transfer struggle to make the case (see Table 4.2) that there had been large-scale transfer of land to "non-agriculturists."

51. Calvert, *Wealth and Welfare*, p. 123.

52. Douie, *Punjab Land Administration*, p. 7.

53. In *Nadir Ali Shah v. Wali* (1924) the High Court in Lahore considered the following dispute. Nadir Ali Shah had received a small amount of land, 8 kanals [an eighth of an acre] as "gift" from Khanun in 1918. He then bought a much larger amount, 200 kanals, from Amir in 1919. Wali later claimed the right to pre-empt and buy both properties, and filed two suits. Regarding the 8 kanals, judgments were passed in Wali's favor. But what about the second purchase? Nadir Ali Shah's argument was that at the time he made the second purchase he was in possession of land in the village, and as such, could not be pre-empted. Wali's argument was that since the Nadir Ali Shah's first purchase only gave him a "defeasible right" that was subsequently declared invalid, he really had no right at all. The High Court argued that there was nothing in the Punjab Pre-Emption Act to "qualify the term "owner" so as to mean a person who was not in danger of losing his right at the suit of a pre-emptor." So Nadir Ali Shah's ploy worked and his purchase of the 200 kanals was declared valid. The Punjab Pre-Emption Act of 1913 was amended in 1928 with the explicit intention of preventing such ruses.

54. Punjab, High Court, *Note on the Administration of Civil Justice in the Punjab* (Lahore: Superintendent of Government Printing, 1939): 1.

55. See Calvert, *Wealth and Welfare*, Chapter VIII. An official named S.S. Thorburn explicitly compared Punjab in 1872 with the Bombay Deccan in 1852 in *Musalmans and Money-Lenders in the Punjab* (Edinburgh and London: William Blackwood and sons, 1886): 62.

Table 4.2: Transfers to non-agriculturists or new agriculturists (NNA), Punjab

Year	% of total area sold to NNA during the period	Percentage transferred to NNA of total area sold during the period	% of total area mortgaged to NNA during the period	% transferred to NNA of total area mortgaged during the period
1875-78	0.3	38.2	0.9	60.4
1879-83	0.5	31.5	1.2	42.9
1884-88	0.6	30.6	1.7	39.0
1889-93	0.6	20.5	1.6	32.3

Source: India, Note on Land Transfers, p. 48.

Table 4.3: Transfers to non-agriculturists, 1868-91 in Gujranwala District, Punjab

Tahsil	Percentage cultivated area sold	Percentage of sold area going to non-agriculturists	Percentage of cultivated area mortgaged	Percentage of mortgaged cultivated area going to non-agriculturists
Gujranwala	14	60	13	75
Wazirabad	12	53	15	75
Hafizabad	10.5	50	6.5	60

Source: India, Note on Land Transfers, p. 50.

These figures do not make a compelling case for a social transformation, in which the traditional peasantry was being expropriated. Arguing that “statistics regarding so large an area are of less importance than information of a more localised character”⁵⁶ the Note had to cherry-pick areas where its case could be made, in particular, Ambala in eastern Punjab (in present-day India) and Gujranwala in western Punjab (now in Pakistan). The statistics for Gujranwala, pertaining to tahsils (sub-districts) are provided in Table 4.3.

Still, the Punjab government responded enthusiastically to the proposal to restrict land transfer. The Lieutenant-Governor warned that in the districts where the “alienations are most extensive there may be a great probability that, unless some check is at once applied, we may in the near future reach a point where the amount of land alienated and the number of proprietors reduced

56. India, Note on Land Transfers, p. 48.

to the condition of tenants or even of labourers would constitute a political danger of formidable dimensions.”⁵⁷ These fears should be understood in the context of Punjab bordering Afghanistan, and the large Sikh presence in the British-Indian army. If something had to be done, the Lieutenant-Governor continued, it had to be much more than legislations along the lines of the Deccan Agriculturists’ Relief Act, which he characterised as “*placebos*”.⁵⁸ Eventually, in 1900, the Punjab Land Alienation Act was passed with the goal of limiting transfer of land from “agricultural tribes” to others.

A key provision of the Land Alienation Act was that a member of an agricultural tribe could not “permanently alienate” (e.g. sell, will, or gift) land to someone who was not a member of an agricultural tribe without the permission of the Deputy Commissioner. Such permission would be granted only under special circumstances.⁵⁹

The Punjab Land Alienation Act and the laws regarding pre-emption were in contradiction: the Alienation Act sought to prevent transfer to “non-agriculturists” but according to prevailing law, as discussed above, a non-agriculturist owner of land in the village had the right to pre-empt. The Punjab Pre-emption Act was revised in 1905 so that a person who was not of agricultural tribe could not pre-empt unless he was of the same tribe as the seller, and he or a male ancestor had held land in the same village for twenty years.⁶⁰

The Punjab Land Alienation Act had to contend with two problems. The first was defining who belonged to an agricultural tribe. The definition was district-specific. Thus, for instance, the agricultural tribes in Hissar district were defined as: Jats, Rajputs, Pathans, Syads, Gujars, Ahirs, Mughals, Dogars, Malis, and Arains.⁶¹ The second was that its goals had to be achieved without undermining access to credit so much that it hurt productive activity. Therefore, mortgage of land had to be permitted without allowing it to become a permanent transfer.

Usufructuary mortgages were permitted from a member of an agricultural tribe to a non-member in two forms.⁶² Under the first, there was automatic redemption. For a maximum period of twenty years the mortgagee could use the land; at the end of the period the land went back to the original owner and the loan was automatically extinguished. Under the second the mortgagor retained the rights of an occupancy tenant, and the rent (which would serve as interest) had to be limited to twice the land tax plus other cesses. Conventional mortgages in which the land of a member of an agricultural tribe was used as collateral for a loan from a non-member were permitted, but if the borrower defaulted the lender could only apply to the Deputy Commissioner. The Deputy Commissioner would convert the transaction into a usufructuary mortgage for a term not exceeding twenty years, using his discretion to decide on principal and interest. The Act also

57. India, Selection of Papers, vol. 2, p. 2.

58. Ibid, p 2. Italics and quotation marks are in the original.

59. For instance, permission might be given if the buyer was planning to open a factory. A death-bed gift to Brahmin might be permitted, subject to a ceiling on the amount (Douie, Punjab Land Administration, 13, 14).

60. Douie, Punjab Land Administration, 8.

61. See the 1900 version of the Act and commentary in S.G. Singh, The Punjab Land Alienation Act (XIII of 1900) (Lahore: Albion Press, 1901): 20.

62. This paragraph is based on Douie, Punjab Land Administration, 15-16.

banned (for all parties, agricultural tribes or not) the so-called “conditional sale” in which the land would automatically go a lender (without court intervention) if the debtor did not repay by a certain date.

The Punjab Land Alienation Act had three perverse effects: lobbying to be included in the list of agricultural tribes; misrepresenting one’s tribe to engage in a land transaction; and doing a benami transactions, i.e getting someone else to buy the land on one’s behalf.⁶³ Still, various types of evasion notwithstanding, it appears the Act favored the rich-peasant lender over the professional trader-lender, strengthening the former in the credit market. The weakened position of the professional moneylender can be seen in the number of cases brought by them against “agriculturists”, which fell from 105,598 in 1901 to 86, 646 in 1904 to 62,769 in 1905 to 59, 895 in 1906.⁶⁴ A district judge in Ambala (south-eastern Punjab) noted “Every year brings it home more forcibly to the money-lender that he must seek new investment for his capital, and in this district there appears to be some advance towards industrial enterprise on the part of the capitalists.”⁶⁵ A later small-scale study conducted by the Board of Economic Inquiry, Punjab pertaining to 26 villages in Ferozepur district, confirmed that in fact lending and mortgage were primarily done by “agriculturist” lenders.⁶⁶ The Punjab Banking Enquiry Committee (1930), reported that the non-agriculturist rural moneylender considered the Land Alienation Act the “most serious obstacle to his business.”⁶⁷ Still, obstacles notwithstanding, non-agriculturist trader-lenders continued to come into the Punjab because of growing business opportunities. H.C. Calvert reported that the number of moneylenders paying taxes on incomes above Rupees 1,000 increased from 8,400 in 1902-03 to 15,035 in 1917-18.⁶⁸

As in previous sections, we end with some speculations regarding how law relating to land and credit might have affected economic growth in Punjab. Tenancy legislation was not particularly relevant. Though there was a category of occupancy tenants, they occupied only a small fraction of the area and had very secure rights, and were de facto owners. Most tenancy was at-will. As a first approximation, we can think of Punjab (especially central Punjab) as a raiyatwari-type region, with additional frictions in the credit market due to the Land Alienation Act and to lesser extent due to

63. G. Casson, “Identity based Policies and Identity Manipulation: Evidence from Colonial Punjab”, *American Economic Journal: Economic Policy* (forthcoming); M.M. Islam, “The Punjab Land Alienation Act and the Professional Moneylenders,” *Modern Asian Studies*, 29, No. 2 (1995): 271-91.

64. See Report on the Administration of Civil Justice in the Punjab and its Dependencies During the Year 1905 (Lahore: Civil and Military Gazette Press, 1906): 5. The figure rose slightly for the next two years to 61,072 and 70, 289. The report for 1908 attributes this change in trend partly to a change in classification, and partly to a rumour that the extension on limitation passed in the Punjab Act of 1904 had been eliminated by the Indian Limitation Act of 1908. See Report on the Administration of Civil Justice in the Punjab and its Dependencies During the Year 1908 (Lahore: Civil and Military Gazette Press, 1909): 2.

65. *Ibid*, p. 2. The report also notes, on the same page, that in Gujranwala as well, “the old moneylender is gradually being replaced by the agriculturist.”

66. B. Singh and H.C. Calvert, *An Inquiry into Mortgages of Agricultural Land in the Kot Kapura Utar Assessment Circle of the Ferozepur District in the Punjab* (Lahore: Civil and Military Gazette Press, 1925).

67. Punjab, Report of the Punjab Provincial Banking Enquiry Committee (Lahore: Government Press, 1930): 117.

68. Calvert, *Wealth and Welfare*, p. 128. Some of the increase in numbers must reflect inflation. The real value of a thousand rupees was falling.

the laws on pre-emption. How important were these frictions?

It is possible that in the poor and dry regions with many large landlords (e.g. south-west Punjab), the weakening of the “non-agriculturist” lender did some damage. It may have strengthened the position of the large landlord who was now powerful in both land and credit markets, with some market power to use to his advantage. However, in regions with more even distribution of irrigated land, there would have been many “agriculturist” lenders with surplus capital to lend, and the weakening of the non-agriculturist lender may have been of less consequence. The extensive presence of Punjabi “agriculturists” in the army also meant that their savings and remittances were available.

It is difficult to estimate the actual volume of agricultural debt, but a valiant effort was made by a colonial-era official, Malcolm Darling, using figures reported by various Provincial Banking Enquiry Committees whose reports were published around 1930 (see below).⁶⁹ As a multiple of the value of annual agricultural output, agricultural debt in the Punjab, at 1.48, was relatively high.⁷⁰ Even the percentage of mortgage debt to total agricultural debt was not particularly low in the Punjab compared to other provinces.⁷¹ There is no doubt these figures have to be used cautiously. Still, at the least, there is nothing to suggest that the Land Alienation Act greatly undermined the availability of credit in Punjab.

In sum, then, Punjab had approximately raiyatwari land tenure, limited tenancy legislation, and credit markets were active. So, we cautiously come to the same conclusion that we did for raiyatwari regions of Madras and Bombay Presidencies: land law and institutions in themselves were likely not a major obstacle to growth. This conclusion is reinforced when we show below that the judicial system in Punjab worked faster than in some other major regions. Of course it is possible that in Punjab and Bombay policies that weakened the position of lenders had a long-run detrimental impact on the development of the financial system, and hence an adverse impact on growth. This is a subject for future research.

Earlier in this chapter we told the story of the Bombay Deccan in the period when the British-Indian judicial system was being introduced in the nineteenth century. By (say) 1925 it had been in place more than a century in some regions. How effectively did this system adjudicate disputes between lenders and borrowers? Apart from court costs, there was also the problem of execution of court decrees, especially when they involved the seizure of land. We discuss these issues in our next section. We obtain evidence from scattered sources, but this is sufficient to show considerable variability across space, and deterioration over time in some major regions.

69. M. Darling, *Punjab Peasant in Prosperity and Debt* (Columbia, Missouri: South Asia Books, 1978, first published 1947). The ratios reported in the text are computed from the table on page 18.

70. The figures for other regions were: Madras (0.91), Bengal (0.41), Bombay (0.53), Bihar and Orissa (1.29), North-West Frontier (1.69), Delhi and Ajmer-Merwara (2.25), and Central Provinces and Berar (0.46).

71. The percentage of mortgage debt to total agricultural debt was 43% in Punjab, which was in no way exceptional compared to other regions (Berar 61.5%, United Provinces 56%, Madras 50%, Bengal 45%, Bihar and Orissa 40%, Bombay Presidency 28% to 36%, Sind 27.5%, and Central Provinces including Berar 27.5%). Also, the Punjab figure pertains only to usufructuary mortgages. Malcolm Darling urges caution in using these figures and merely provides them to suggest that Punjab was not “abnormal”. *Ibid.*, p. 8.

5. Enforcement of law

In 1923 the Civil Justice Committee was appointed to study the performance of the judicial system. The committee found the problem of delay in courts “serious” in several major provinces, and not so in others.⁷² The figures in the table 4.4 below pertain to suits in the courts of the subordinate judges and the munsifs. Munsifs were usually the lowest tier in the legal system, where the bulk of the work was done. Between 20% and 28% of contested cases were pending for more than a year in Assam, Bengal, Madras, and Bombay. The corresponding figures for Agra, and Bihar and Orissa were much lower (2.67% and 3.91%).⁷³ The Madras Provincial Banking Enquiry Committee reported that the average contested suit in the munsifs’ courts took ten months. In District Judges’ courts the average duration had risen to 560 days.⁷⁴ Even in the Punjab, which the Civil Justice Committee identified as not having a “serious” problem, our examination of Civil Justice Reports reveals a trend towards increasing duration, which seems to taper off after the mid-1920s (see figure 4.1).

Table 4.4. Delays in adjudication of suits in lower courts, 1922 (Subordinate Judges and Munsifs)

Province	Number of Decisions (1)	Number of Contested Decisions (2)	Number of Suits Pending Over a Year (3)	Percentage of (3) to (2)
Bengal	464,184	56,373	16,052	28.45
Assam	22,099	3,587	903	25.17
Madras	122,007	64,745	14,069	21.88
Bombay	59,574	28,833	5,682	19.70
Bihar and Orissa	136,066	25,207	986	3.91
Agra	86,466	26,232	703	2.67

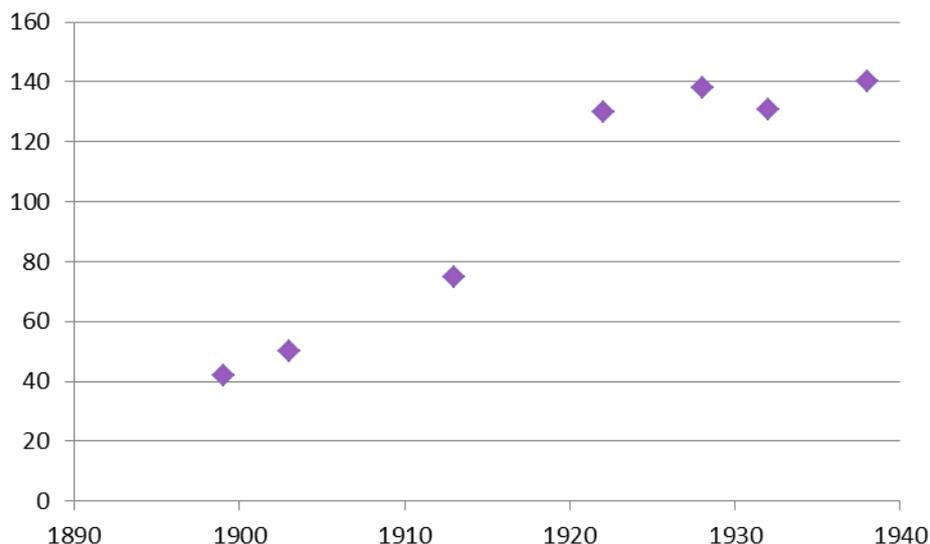
Source: India, Civil Justice (Rankin) Committee, Report (Calcutta: Government of India Central Publication Branch, 1925): 17-18.

72. Civil Justice (Rankin) Committee 1924-25, Report (Calcutta: Government of India Central Publication Branch, 1925): 16.

73. These figures pertain to cases where Small Cause procedures, which could expedite the process, were not used. See Civil Justice (Rankin) Committee, Report, p. 16-17.

74. Madras, Report of the Madras Provincial Banking Enquiry Committee (Madras: Government Press, 1930): 181.

Figure 4.1 Duration of contested civil suits in subordinate courts in Punjab, in days



Source: The figures from before 1922 are from Report on the Administration of Civil Justice in the Punjab and its Dependencies (Lahore: The Civil and Military Gazette Press) for the respective years. From 1922 onwards they are from Note on the Administration of Civil Justice in the Punjab (Lahore: Superintendent of Government Printing).

Even after the court had reached a decision, it had to be executed. A judge of the Privy Council complained in 1872 that “the difficulties of a litigant in India begin when he has obtained a decree.” In several regions a large percentage of decrees were “totally infructuous”. For instance, the figure was as high as 63% -71% in mofussil courts in several Bengal districts.⁷⁵

We need to be cautious in interpreting these figures. First, it is possible that the two parties simply settled the transaction informally, avoiding the transaction costs of dealing with courts. Second, the winner might not want to execute the decree, and could simply use it as a device to “sweat” the borrower – for instance, a moneylender may not have any use for land, and might prefer to let the original owner nominally own the land, while paying a heavy “rent.”⁷⁶ The Civil Justice Committee

75. In the Madras Presidency, in mofussil courts outside of village courts, decrees were fully executed in only 16.56% of cases. In another 7% they were partly executed, and in the remaining cases they were totally infructuous. The percentage of totally infructuous decrees was also high in subordinate courts in Lahore (48%), Allahabad (41%) and Central Provinces and Berar (47%). See Civil Justice (Rankin Committee): 376.

76. This was common practice for professional trader-lenders, who were usually reluctant to get involved in agricultural production. For an exception see D. Cheesman, Landlord Power and Rural Indebtedness in Colonial Sind, 1865-1901,

also points out that some lenders might just have taken their chances. They would charge a high rate of interest upfront, allowing for the fact they might not recover their money. But these caveats notwithstanding, the various provincial Banking Enquiry Committees which produced reports around 1930 acknowledged that execution of court decrees, especially seizure of land, was difficult. Even the Bengal Banking Enquiry Committee, which was quite unsympathetic to the lender (see below) acknowledged that “the delay in execution proceedings is often very great, particularly in mortgage suits.”⁷⁷ The Bombay Banking Enquiry Committee also commented that delays in disposal of suits and execution of decrees were “bound to have an adverse effect on credit facilities, especially the rate of interest charged.”⁷⁸

Why was it difficult to execute decrees? In part this was because of numerous procedures the creditor had to follow, as well as appeals available to the debtor.⁷⁹ It is also true that foreclosure is costly the world over, especially in rural areas, where an urban or “non-agriculturist” banker will not be popular with the neighbours of the original landowner. And in India, as elsewhere, efforts to protect the debtor were misused. For instance, the Madras Banking Enquiry Committee complained that debtors were exploiting the provisions of the Insolvency Act of 1920 to evade repayment.⁸⁰ The Central Provinces Banking Enquiry Committee noted, in a similar vein, that the cultivators had realised that “two can play at the law court game.”⁸¹

Creditors also faced the risks posed by *benami*. This was the practice of one person holding the title to property on behalf of another who was the real owner. *Benami* was legal. It could be done with good intentions, for instance when an adult would hold the title for a minor. But it was also used as a method of protecting property from creditors. Anticipating a court decision favouring a creditor, A might transfer property to property to B. Of course this exposed A to risk, since B might then appropriate the property. But courts could be quite indulgent in protecting A. In *Jadunath Poddar versus Rup Lal Poddar* (1906), the plaintiff openly admitted that he had relinquished property to the defendants in anticipation of losing a court case. But he won the case, and did not need to perpetrate the fraud he had planned. He now wanted his property back. Ruling for the plaintiff, Justice Rampini concluded that “when the intention to commit fraud has not been carried into effect, a beneficial owner is entitled to sue for a declaration that a deed of transfer executed by him is *benami*.”⁸²

Benami reinforced the weaknesses of the system of registering property ownership. There were two ways one might determine who owned a piece of land. One was via the records of the revenue (tax) department. But that merely reported who owed the tax on the land. As the Madras Provincial

(Richmond, Surrey: Curzon Press, 1997): 64.

77. Bengal, Report of the Bengal Provincial Banking Enquiry: 174.

78. Bombay, Report of the Bombay Provincial Banking Enquiry Committee (Bombay: Government Press, 1930): 188.

79. Elizabeth Whitcombe has a fascinating discussion of how zamindars in the United Provinces used legal or other means to obstruct the new owner of their property. *Agrarian Conditions in Northern India, Vol. 1: The United Provinces Under British Rule, 1860-1900*. (Berkeley: University of California Press, 1972): 227-231.

80. Madras, Report of the Madras Provincial Banking Enquiry, p. 177.

81. Central Provinces, Report of the Central Provinces Provincial Banking Enquiry Committee 1929-30 (Nagpur: Government Press, 1930): 88.

82. Calcutta High Court, *The Calcutta Law Journal*, Vol. 4, (1906): 22-37. Quoted text is on page 24.

Banking Enquiry Committee put it, “[a] patta [revenue department record] is not a title to land; it is merely a statement of account and is in the name of the person believed to be responsible for the payment of the sum but there is no guarantee the persons whose names are in the patta, or any other such record, are the rightful owners of the land, nor does it prove that they have any title to the land.”⁸³ The Registration department had its own records of transactions such as sales and mortgages, but the Committee tells us:

Although the statement is authoritative with regard to every transaction so registered, it does not follow who is the rightful owner of the land, except in cases where an outright sale has been registered, assuming no benami transactions can be recognised. It must be admitted that if benami transactions are to be recognised a record of rights loses very much its value.

Thus, by the late colonial period a creditor would likely have a difficult time in court, both in obtaining a decree and in executing it. These issues needed to be addressed if private lending was to work smoothly. Especially after the Depression, India went in a quite different direction.

6. Protecting the borrower, again

Even after legislation had been passed to restrict land transfer (in some regions) the need to protect the borrower had remained on the policy agenda. The judge’s right to go “behind the bond” was introduced in an important India-wide legislation, the Usurious Loans Act of 1918. Judges could reduce interest payments they considered excessive. The Usurious Loans Act was viewed as necessary because judges were taking a narrow view of provision in the Indian Contract Act pertaining to unconscionable bargains and undue influence. The Usurious Loans Act was preceded by the usual consultation with local governments, and was modelled on the provisions in section 1 of the Moneylenders’ Act passed in England in 1900.⁸⁴

The Usurious Loans Act was fairly well-received by the Madras Provincial Banking Enquiry Committee, though it noted that the law had loopholes: the principal on the loan could be overstated, and the law would not help if the defendant did not show up in court. The Madras Banking Enquiry Committee noted, approvingly, that the Usurious Loans Act had not specified a particular rate of interest because the cost of capital could vary. And despite the loopholes the Act was not a “dead letter.”⁸⁵ Of 24,807 cases it had examined, courts had reduced the interest rate in 1,958.⁸⁶

The Bengal Banking Enquiry Committee reported, however, that “the consensus of informed opinion is that it [the Usurious Loans Act] is inoperative and has failed to give the relief that it was intended to afford.”⁸⁷ The judges complained about several rulings of the High Court and the

83. Madras, Report of the Madras Provincial Banking Enquiry, p. 179.

84. Bengal, Report of Bengal Provincial Banking Enquiry, p. 165.

85. Madras, Report of Madras Provincial Banking Enquiry, p. 173.

86. Ibid, 174.

87. Bengal, Report of Bengal Provincial Banking Enquiry, p. 165.

Privy Council which made them reluctant to act to protect debtors. One had concluded that a 12% interest rate could not necessarily be considered excessive, even with good security.⁸⁸ According to another, compound interest at 12% could not necessarily be considered excessive. The Bengal Committee recommended fixing a maximum rate of interest and banning compound interest. It was not sympathetic to the lenders, arguing that while they “have a tendency to condemn many provisions of civil law as obstacles against realisation of their claims” relaxing these provisions would provide them “a handle for oppression.”⁸⁹

After the Great Depression tensions between lenders and borrowers increased. With the growth of peasant and nationalist movements and Indian participation in governance of provinces, a slew of Acts was passed in the 1930's to regulate moneylenders and to provide relief to debtors.⁹⁰ In Bengal this took the form of the Bengal Moneylenders' Acts of 1933 and 1940, and the Bengal Agricultural Debtors' Act of 1935. The Moneylenders' Acts had familiar elements, concerned with documentation, keeping accounts, providing receipts, limits on interest rates, and damdupat. The Debtors' Act was a far more radical measure. The local government could set up a Debt Settlement Board, which a debtor could approach. The Board would then try to bring a debtor and his/her creditor(s) to an “amicable settlement” (section 19, (1).)⁹¹ The reader will recall that the Deccan Agriculturists' Relief Act (DARA) had tried to reduce the incidence of the resolution of cases ex-parte i.e. absent the borrower-defendant. Reversing roles, The Bengal Debtors' Act now made it possible for the creditor to have an ex-parte judgment passed against him, if he did not respond to a notice within a month. The debt could then be “deemed to be the amount stated in the statement of debt submitted by the debtor.”⁹² Once the case proceeded the Board would examine the documentation provided by both parties and decide what the correct amounts of debt and arrears of interest were. If the lender refused to accept a “fair” offer, the Board would give the debtor a certificate after which, if the lender went to Civil Court, he could not receive more than 6% per annum as interest.⁹³

Civil Justice Reports from Bengal show that the creation of the Debt Settlement Boards led to further delays in an already slow legal system. Figure 4.2 below first shows a declining trend in the number of cases pending for more than a year in the early 1930's. This was because of a decline in the number of suits, a change in reporting requirements (a suit could now be declared disposed once a preliminary decree was passed), and quicker disposals. The Act began to be implemented in 1937. We see that starting in 1937, there is a dramatic reversal of trend and an increase in the number of pending cases.

88. Ibid., p. 166.

89. Ibid., p. 176.

90. These included: The Punjab Regulation of Accounts Act of 1930, Madras Debtors' Protection Act of 1934, the Bihar Moneylenders' Act of 1938, the U.P. Usurious Loans Act of 1934, the Punjab Relief of Indebtedness Act of 1934, The C.P. [Central Provinces] and Berar Relief of Indebtedness Act of 1939, the Madras Agriculturists' Relief Act of 1938, the Assam Debt Conciliation Act of 1936, and the U.P. Agriculturists' Relief Act of 1934 (Reserve Bank of India, All-India Rural Credit Survey, p. 122; K.G. Sivaswamy, Legislative Protection and Relief of Agriculturist Debtors in India (Poona: Gokhale Institute of Politics and Economics, 1939): 202, 217, 260.

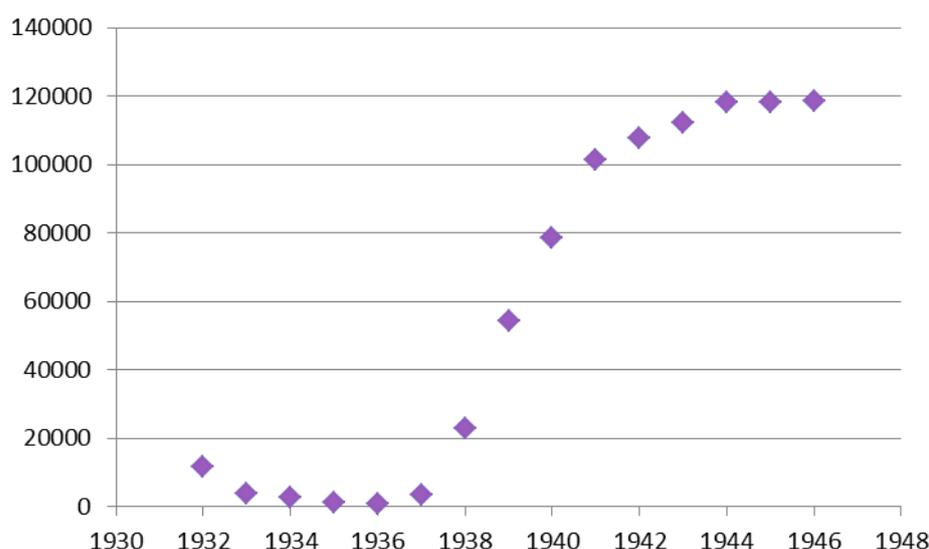
91. Bengal, Legislative Department, The Bengal Agricultural Debtors Act, 1935 (Calcutta, Government Press, 1936), 10.

92. Ibid, p. 7.

93. Ibid, p. 11.

The Bengal Civil Justice reports are very clear about why this happened. For every year from 1937 until 1944, the annual report, after listing the districts with the largest number of suits pending for over a year, includes the following sentence: “As compared with the figures of the previous year, the number of year-old suits shows a very considerable increase in all these districts, which is due mainly to the suits being stayed by the Debt Settlement Boards.”⁹⁴

Figure 4.2: Number of suits pending for more than one year in Bengal Subordinate Courts



Source: Bengal, High Court, Report on the Administration of Civil Justice in the Presidency of Bengal from 1932 to 1936; Report on the Administration of Civil Justice in the Province of Bengal, from 1937 to 1946 (Calcutta: Government Press)

The details of acts to regulate moneylenders and provide debt relief varied across regions, but they all seem to have led a contraction of credit. In a landmark report in 1954 the Reserve Bank of India commented on the impact of these legislations, drawing on reports from the colonial period as well as its own findings. The Punjab Civil Justice Report of 1936 had reported that (in contrast with Bengal) the act to provide debt relief had led a decline in litigation, but also “lowered rural credit.”⁹⁵ A 1946 report from Madras said that credit had contracted and the laws had been evaded. In the Central Provinces, according to a report in 1937, conciliation of debts had made it harder for farmers to get loans.⁹⁶

94. See, for instance, Bengal, High Court, Report on the Administration of Civil Justice in the Province of Bengal in 1938 (Calcutta: Government Press, 1939): 6.

95. Reserve Bank of India, All-India Rural Credit Survey: Report of the Committee of Direction: Vol. II: The General Report (Bombay: Reserve Bank of India, 1954): 123.

96. Ibid, p. 123.

The Reserve Bank of India also reported that the contraction of credit could be particularly severe for the debtor who had received relief from the court; “for him it was not so much a case of contraction as elimination of private credit.” This was because “[t]he very process of adjustment involved so many restrictions on alienability of property that no lending agencies could be expected to be favourably disposed towards him.”⁹⁷ In response to the “plight” of the borrower the Bombay government had begun providing loans. Thus, it is abundantly clear that post-Depression legislation to help the borrower discouraged private lending.

7. Conclusion

In this and the previous chapter we have discussed three dimensions of land rights: the type of ownership, tenancy legislation (or lack thereof), and the transferability of rights. We found that studying transferability of land rights led to a discussion of credit. We then described legislation aiming to “protect” borrowers. We also addressed various dimensions of implementation of legislation: interpretation by courts, the speed and costs of adjudication, and difficulties in implementing court decisions. What have we learned about the origins of British-Indian law and its efficacy in dispute resolution? And did the structure of property rights and contract enforcement favour or inhibit economic growth?

Our conjectures depend on time and place. British-Indian land law and institutions, at one extreme, kept the state’s role very limited: it outsourced tax collection and legislated on little else (Permanent Settlement in Bengal, c. 1800). At the other extreme, it gave the tenant a permanent occupancy right, regulated the rent, and forbade the tenant to mortgage or sell the right (say, Santal Parganas c. 1900). The functioning of courts varied. In the mid-nineteenth century Bombay Deccan before the passing of the Deccan Agriculturists’ Relief Act, courts perfunctorily passed ex-parte decrees against borrowers, as many as sixty an hour according to the reminiscences of one judge.⁹⁸ In the mid-twentieth century in Bengal court decisions on landlord-tenant disputes could take years. The attitude to credit market regulation varied enormously as well. In the 1855 usury laws in the Deccan were repealed in imitation of British precedent, but by the 1930s, across British India, not only were usury laws in place, debt relief boards were using their discretion to reduce the amounts owed by debtors. In all of this there was indeed borrowing of doctrines from Britain, but elements of Hindu Law were retained, and the practical exigencies of administration, the limits of knowledge and, above all, the political fears of the Raj played important roles. By the 1930’s administrators had a far more interventionist mind-set, influenced by nationalist and peasant movements, more than by British legal precedent.

Given this diversity of influences and administrative/legal choices, it is difficult to generalise regarding the impact of British-Indian law on the potential for agricultural growth. If we were to consider a Bengal zamindar in 1850, there might be nothing in law and institutional structure to inhibit investment. The tenants might hold at their land at the zamindar’s will, and his/her stronger position in court and even coercive power would permit rent increases. Like Jaykrishna Mukherjee

97. Ibid., p. 124.

98. This instance is described in Chaudhary and Swamy, “Protecting the Borrower.”

(chapter 3), the zamindar might bring more land under cultivation and even introduce new varieties of crops. Given that this zamindari right was freely transferable it was easy to borrow. By 1935, the same zamindari was occupied by tenants who were protected by law from eviction and rent increases. Zamindar-tenant conflict and courts' inability to resolve disputes quickly undermined investment incentives for all parties. And with debt relief boards looming large, a potential investor who did want to borrow would have found it difficult to obtain credit. In contrast, in Central Punjab in 1915, a large landowner was able to lease land to a tenant-at-will, and have the support of a relatively quick judicial system in the case of disputes. Credit was readily available from other "agriculturist" lenders, whose transactions, including seizure of land following default, were supported by law. If investment did not occur, the causes for this would have to be sought elsewhere, not in the structure of property rights or contract enforcement.

In this chapter, and the one preceding, we have discussed land rights at length. But whose rights were these? Were they the rights of individuals or the rights of families? What were the rules governing succession, inheritance, and alienation of family land and other forms of property? How different were the rights of men and women? We address this large class of questions in the next chapter.