TRIBAL LAND LAWS IN ANDHRA PRADESH

Hari Priya, NALSAR University of Law
TRIBAL LAND LAWS IN ANDHRA PRADESH

HARI PRIYA
# TABLE OF CONTENTS

WHO ARE TRIBALS? ................................................................. 5
WHAT ARE SCHEDULED AREAS? ........................................... 12
THE LAW OF TRANSFER OF LAND ...................................... 18
   Land/Immovable Property: .................................................. 18
   Transfer: ............................................................................. 20
   Transfer of Property: ........................................................... 21
   Modes of Transfer of property: ............................................. 23
RATIONALE BEHIND HAVING SEPARATE LAWS ................. 28
CONSTITUTIONAL PROVISIONS REGARDING TRIBALS AND TRIBAL
   LANDS .................................................................................. 31
CHRONOLOGY OF THE IMPORTANT TRIBAL LAND LAWS IN
   ANDHRA PRADESH ............................................................ 44
LAND-LAWS PERTAINING TO SCHEDULED AREAS IN ANDHRA
   PRADESH ........................................................................... 46
   1. Ganjam and Vizagapatnam Act, 1939 (Act No. XXIV) of 1839 46
   2. Scheduled Districts Act 1874 (Act XIV of 1874) ................... 46
   3. Agency Tracts Interest and Land Transfer Act, 1917 .......... 47
   4. The Andhra Pradesh Agency Rules, 1924 ......................... 48
      Excluded Areas ............................................................... 48
   6. The Andhra Pradesh Scheduled Areas Land Transfer Regulation,
      1959 ............................................................................. 49
7. A P Scheduled area Land Transfer Regulation (A P S A L T) Rules .......................................................... 53
8. Andhra Pradesh (Andhra Scheduled Areas) Validation Of Succession Certificates Regulation, 1951 ...................... 55
10. Andhra Pradesh Mahals (Abolition and Conversation into Ryotwari) Regulation, 1969 ..................................................... 55
11. Andhra Pradesh Muttas (Abolition and Conversation into Ryotwari) Regulation, 1969 ..................................................... 56
13. Andhra Pradesh Scheduled Area Land Transfer (Amendment) Regulation, 1970 .......................................................... 58
15. The Andhra Pradesh Scheduled Areas Laws (Extension and Amendment) Regulation, 1963 .................................................. 60
16. Money lending regulation for the relief of the tribals from indebtedness: .......................................................... 61
17. The Andhra (Telangana Tribal Areas) Regulation, 1359-F ...... 64
18. The Hyderabad Tribal Areas Regulation, (Regulation No. III of 1359F) .......................................................... 67
19. Notified Tribal Areas Rules, 1359-F ........................................... 70

CONTENTIONS ............................................................................. 72
ISSUES IN RELATION TO TRIBAL LANDS AND THE CAUSES OF TRIBAL LAND ALIENATION .......................................................... 73

RESPITE UNDER THE ANDHRA PRADESH (SCHEDULED AREAS) LAND TRANSFER REGULATION ACT, 1959 ........................................ 89

   LAW IN BRIEF: .................................................................................. 89
   DEFINITIONS UNDER THIS LAW: ..................................................... 89
   LAW IN DETAIL: ............................................................................... 92
   PROCESS FOR SOLUTIONS UNDER THIS LAW: ......................... 96
   PENALTY: ....................................................................................... 100
   SAVINGS: ....................................................................................... 101

SUGGESTIVE MEASURES FOR BETTER IMPLEMENTATION OF LEGISLATIVE PROVISIONS IN RESPECT OF TRIBAL LANDS ...... 105
WHO ARE TRIBALS?

India’s population includes nearly one hundred million tribal people. Tribes are usually composed of a number of local communities, e.g., bands, villages or neighbourhoods, and are often aggregated in clusters of a higher order called nations. The term is seldom applied to societies that have achieved a strictly territorial organization in large States but is usually confined to groups whose unity is based primarily upon a sense of extended kinship ties. It is no longer used for kin groups in the strict sense, such as clans.

Tribals or ‘Adivasis’ is term used for a heterogeneous set of ethnic and tribal groups believed to be the aboriginal or the indigenous population of India. These Adivasis are mostly found in North Eastern regions of India, Orissa, Madhya Pradesh, Chhattisgarh, Rajasthan, Gujarat, Maharashtra, Andhra Pradesh, Bihar, Jharkhand, West Bengal, Mizoram and parts of Andaman and Nicobar islands. Andhra Pradesh constitutes about 6.63% of the tribal population of India.

They have been authoritatively recognized by the government of India as the “Scheduled Tribes”, as stated in the fifth schedule of the constitution of India.

---

1 The 2001 Government of India Census recorded 8.2 per cent of India’s population as tribal.
2 http://www.khadc.nic.in/News%20update/Ruling%20of%20Supreme%20Court.pdf
3 Kartic Oraon v. David AIR 1964 Pat 201
4 http://en.wikipedia.org/wiki/Adivasi
5 http://tribal.gov.in/index2.asp?sublinkid=545&langid=1
The Constitution does not define the term in a concrete fashion. However the Constitution of India, Article 366 (25) defines Scheduled Tribes as "such tribes or tribal communities or part of or groups within such tribes or tribal communities as are deemed under Article 342 to the scheduled Tribes (STs) for the purposes of this Constitution". Article 342 lays down the procedure to specify a group as scheduled tribe. It does not, however, contain the criterion for the specification of any community as scheduled tribe. Article 342 reads as follows:

“342. (1) The President [may with respect to any State] 6[or Union territory]7, and where it is a State***8, after consultation with the Governor ***9 thereof,] by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State [or Union territory, as the case may be]10.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

6 Subs. by the Constitution (First Amendment) Act, 1951, s. 11, for “may, after consultation
7 Ins. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.
8 The words and letters “Specified in Part A or Part B of the First Schedule” omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.
9 The words “or Rajpramukhi” omitted by s. 29 and Sch., by the Constitution (Seventh Amendment) Act, 1956
10 Supra note 3
Thus to know the status of enumeration of Scheduled Tribes, we have to refer the Orders of the President made under Article. 342. The essential characteristics of these communities that are considered while making such enlistments are11:-

1. Primitive Traits
2. Geographical isolation
3. Distinct culture
4. Shy of contact with community at large
5. Economically backward

These criteria are not spelt out in the constitution but, have become well established. It takes into account the definitions in the 1931 census the reports of the first Backward Class Commission (Kelkar), 1955, the Advisory Committee on Revision of SC/ST lists (Lokur Committee), 1965 and the Joint Committee of Parliament on the Schedule Castes and Schedule Tribes Orders (Amendment) Bill 1967 (Chanda Committee), 196912.

The provisions for the administration and control of Scheduled Tribes have been defined under the fifth schedule of the constitution of India.

The constitution also speaks about the Scheduled Castes, as under article 341. The article reads as follows:

---

11 “Basic Statistics on Schedule Tribes of Andhra Pradesh”, Tribal Cultural Research and Training Institute, Tribal Welfare Department, Government of Andhra Pradesh, Hyderabad, January 2008, p. 11

12 “Basic Statistics on Schedule Tribes of Andhra Pradesh”, Tribal Cultural Research and Training Institute, Tribal Welfare Department, Government of Andhra Pradesh, Hyderabad, January 2008, p. 11-12
“341. (1) The President [may with respect to any State] \(^{13}\) [or Union territory] \(^{14}\), and where it is a State ***\(^{15}\), after consultation with the Governor ***\(^{16}\) thereof,] by public notification1, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State [or Union territory, as the case may be] \(^{17}\).

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

The State wise tribal population in India can be understood from the representation given in the next page.

An illustration of state wise tribal population percentage in India is given in the next page.

The following page has a table with all the tribes of Andhra Pradesh listed.

---

\(^{13}\) Subs. by the Constitution (First Amendment) Act, 1951, s. 10, for “may, after consultation with the Governor or Rajpramukh of a State”

\(^{14}\) Ins. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

\(^{15}\) The words and letters “specified in Part A or Part B of the First Schedule” omitted by s. 29 and Sch., ibid.

\(^{16}\) The words “or Rajpramukhi” omitted by s. 29 and Sch., ibid.

\(^{17}\) Supra note 7
STATE WISE TRIBAL POPULATION PERCENTAGE IN INDIA

\[ \text{http://tribal.gov.in/index2.asp?sublinkid=545&langid=1} \]
LIST OF THE TRIBAL COMMUNITIES OF ANDHRA PRADESH

<table>
<thead>
<tr>
<th>S.NO.</th>
<th>Name of Tribe</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Andh, Sadhu Andh</td>
</tr>
<tr>
<td>2.</td>
<td>Bagata</td>
</tr>
<tr>
<td>3.</td>
<td>Bhil</td>
</tr>
<tr>
<td>4.</td>
<td>Chenchu</td>
</tr>
<tr>
<td>5.</td>
<td>Gadabas, Bodo Gadaba, Gutob Gadaba, Kallayi Gadaba, Parangi Gadaba, Kathera Gadaba, Kapu Gadaba</td>
</tr>
<tr>
<td>6.</td>
<td>Gond, Nikpod, Rajgond, Koitur</td>
</tr>
<tr>
<td>7.</td>
<td>Goudu (in Agency Tracts)</td>
</tr>
<tr>
<td>8.</td>
<td>Hill Reddies</td>
</tr>
<tr>
<td>9.</td>
<td>Jatapus</td>
</tr>
<tr>
<td>10.</td>
<td>Kammara</td>
</tr>
<tr>
<td>11.</td>
<td>Kattunayakan</td>
</tr>
<tr>
<td>12.</td>
<td>Kolam, Kolawar</td>
</tr>
<tr>
<td>13.</td>
<td>Konda Doras, Kubi</td>
</tr>
<tr>
<td>14.</td>
<td>Konda Kapus</td>
</tr>
<tr>
<td>15.</td>
<td>Konda Reddis</td>
</tr>
<tr>
<td>16.</td>
<td>Kondhs, Kodi, Kodhu, Desaya Kondhs, Dongria Kondhs, Kuttiya Kondhs, Tikiria Kondhs, Yenity Kondhs, Kuvinga</td>
</tr>
<tr>
<td>17.</td>
<td>Kotia, Benthoo Oriya, Bartika, Dulia, Holba, Sanrona</td>
</tr>
</tbody>
</table>

19 Annual Report, 2006-2007, Ministry of Tribal Affairs, Govt. of India.
Sidhopaika
Koya, Doli Koya, Gutta Koya, Kammara Koya, Musara Koya,
18. Oddi Koya, Pattidi Koya, Rajah Rasha Koya, Bhine Koya Raj
   Koya
19. Kulia
Malis (excluding Adilabad, Hyderabad, Karimnagar, Khamam,
20. Mahabub Nagar, Medak Nalgonda, Nizamabad And Warangal
    Districts)
21. Manna Dhora
22. Mukha Dora, Nooka Dhora
23. Nayaks (in agency tracts)
24. Pardhan
25. Porja, Parangiperja
26. Redid Dhoras
27. Rona, Rena
28. Savaras, Kapu Savaras, Maliya Savaras, Khutto Savaras
29. Sugalis, Lambadis, Banjara
Thoti (in Adilabad, Hyderabad, Karimnagar, Khamam,
30. Mahabub Nagar, Medak Nalgonda, Nizamabad And Warangal
    Districts)
31. Valmiki (in Scheduled Areas of Vishakapatnam, Srikakulam,
    Vizianaganaram, East Godavari And West Godavari Districts)
32. Yenadis, Chella Yenadi, Kappala Yenadi, Manch Yenadi,
    Reddi Yenadi
Yerukulas, Koracha, Dabba Yerukula, Kunchapuri Yerukula,
33. Uppu Yerukula
34. Nakkal, Kurvikaran
Dhulia, Paiko, Putia (in the districts of Vishakapatnam and
35. Vizianaganaram)
WHAT ARE SCHEDULED AREAS?

Yet again the constitution provides no fixed or rigid definition to Scheduled Areas. The Scheduled Tribes live in contiguous areas unlike other communities\(^\text{20}\), known as the Scheduled Areas.

Under the British, the north coastal districts of Madras Presidency were called "Agency tracts", as an Agent of the Governor was in charge of their administration. The tribal communities resisted the British, especially their forest laws, and they were compelled to re-enact a set of laws to meet the communities' needs. These special laws protected the tribal people from usurious moneylenders and their lands from non-tribal people from the plains. After Independence, these areas were brought under the Fifth Schedule of the Constitution and the special laws continued to remain in force, though with some changes\(^\text{21}\).

Part C of the Fifth Schedule of the Constitution, under Article 244 (1), defines Scheduled Areas as “such areas as the President may by order declare to be Scheduled Areas.” The scheduled areas are determined by the President from time to time except that he cannot alter an Order made under sub-paragraph 1 of Para 6 except as laid down in clauses (a), (b) and (c) if the second sub-paragraph. The Sixth Schedule under Article 244 (2) of the Constitution relates to those areas in the north eastern which are declared as “tribal areas” and provides for a District or Regional Autonomous Council for such areas.


\(^{21}\) http://www.hinduonnet.com/fline/fl2119/stories/20040924005601100.htm
the councils have wide ranging legislative, judicial and executive powers.22

Article 244 (1) and 244 (2) of the constitution of India enables the government to enact separate laws for the governance and administration of the tribal areas. The 73rd constitutional amendment that led to the introduction of Article 243 in the constitution, for decentralized governance in rural areas followed.

Article 244 (1) and 244 (2) of the constitution of India enables the government to enact separate laws for the governance and administration of the tribal areas.

The Indian tribals were thus exposed to the concept of self-governance through the implementation of Indian Parliament legislated the Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA). It granted to the tribals ‘‗radical’ powers to preserve their traditions and entrusting them with the authority to manage their community resources. As a result, any habitation or hamlet “comprising a community and managing its affairs in accordance with traditions and customs could now exercise limited self-government.”

Powers given to the Panchayats vis-à-vis governance in scheduled area include:

- Power to manage natural resources
- Power to conserve and protect customs and traditions
- Power to manage community resources
- Power to resolve dispute through customary method

---

22 http://ncst.nic.in/writereaddata/mainlinkFile/File415.pdf
Control over the business related to money lending
Control and management of Non-timber Forest Produce\textsuperscript{23}

The National Tribal Policy, and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, passed in December 2006, grant the tribals some measure of ownership in forest lands and produce for the first time emphasize that tribal rights are increasingly figuring as a prominent national concern.

The scheduled areas in Andhra Pradesh include Visakhapatnam, East Godavari, West Godavari, Adilabad, Srikakulam, Vizianagaram, Mahboobnagar, Prakasam (only some Mandals are scheduled Mandals)\textsuperscript{24}.

The following Orders are in operation at present in their original or amended form, in Andhra Pradesh:-

**TABLE 2\textsuperscript{25}**:  

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of the Order</th>
<th>Date of Notification</th>
</tr>
</thead>
</table>

\textsuperscript{23} https://tspace.library.utoronto.ca/bitstream/1807/17375/1/ILJ-7.1-Kurup.pdf  
\textsuperscript{24} The exhaustive list of Scheduled Areas in Andhra Pradesh is provided as an Annexure.  
\textsuperscript{25} “Basic Statistics on Schedule Tribes of Andhra Pradesh”, Tribal Cultural Research and Training Institute, Tribal Welfare Department, Government of Andhra Pradesh, Hyderabad, January 2008, p. 13

Paragraph 6 of the Fifth Schedule of the Constitution prescribes following procedure for scheduling, rescheduling and alteration of Scheduled Areas:

“(2) The President may at any time by order—

(a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area;

(aa) increase the area of any Scheduled Area in a State after consultation with the Governor of that State;

(b) alter, but only by way of rectification of boundaries, any Scheduled Area;

(c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area;

(d) rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are to be Scheduled Areas; and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as

http://tribal.gov.in/index3.asp?subsublinkid=305&langid=1
aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.”

The above mentioned scheduled areas administered as per the provisions under the fifth Schedule of the Indian Constitution, and the Sixth Schedule of the Indian Constitution (this schedule deals with the Tribal areas in Assam, Meghalaya, Tripura and Mizoram)

The system of administration for such areas is summarised as follows27:

1. The executive power of the Union shall extend to giving directions to the State regarding the administration of the Scheduled Areas. Tribal Advisory Councils are set up to advice on such matters as welfare and the advancement of the Scheduled Tribes in the States as referred to by the Governor.

2. The governor is authorised to direct that a particular Act of the parliament or Legislation shall not or shall apply to a Scheduled Areas. He is also allowed to make regulations to prohibit or restrict the transfer of land by, or among members of, the Scheduled Tribes, regulate the allotment of land and regulate the business of money lending. All such regulations by the Governor must be after consulting the Tribes Advisory Council and must have the assent of the President. Such tribal advisory council must have not more than twenty members of whom, three-

27 See: http://www.uohyd.ernet.in/academic/specialized_centres/integrated_studies/scis/Isem_ind_con_2_tribal.pdf
fourths shall be representatives of the Scheduled Tribes in the Legislative Assembly of the State\textsuperscript{28}.

**TABLE 3:**

In Andhra Pradesh the Schedule Areas falling in fifth Scheduled areas extend to an area of 31485.34 Sq. Kms in 9 districts comprising of 5936 villages as follows\textsuperscript{29}:

<table>
<thead>
<tr>
<th>S.No.</th>
<th>District</th>
<th>Scheduled Area (Sq. Km.)</th>
<th>Scheduled Villages (No.)</th>
<th>Non-Scheduled Villages (No.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Srikakulam/Seethampeta</td>
<td>1289.32</td>
<td>108</td>
<td>240</td>
</tr>
<tr>
<td>2.</td>
<td>Parvathipuram/Vizianagaram</td>
<td>1740.98</td>
<td>302</td>
<td>181</td>
</tr>
<tr>
<td>3.</td>
<td>Paderu/Visakhapatnam</td>
<td>5904.51</td>
<td>3373</td>
<td>91</td>
</tr>
<tr>
<td>4.</td>
<td>Rampachodavaram/East Godavari</td>
<td>4191.65</td>
<td>559</td>
<td>40</td>
</tr>
<tr>
<td>5.</td>
<td>Kotaramachandrapuram/West Godavari</td>
<td>1006.10</td>
<td>102</td>
<td>1</td>
</tr>
<tr>
<td>6.</td>
<td>Khammam/Bhadrachalam</td>
<td>6899.82</td>
<td>891</td>
<td>3</td>
</tr>
<tr>
<td>7.</td>
<td>Eturnagaram/Warangal</td>
<td>3122.46</td>
<td>178</td>
<td>76</td>
</tr>
<tr>
<td>8.</td>
<td>Utnoor/Adilabad</td>
<td>6138.50</td>
<td>412</td>
<td>164</td>
</tr>
<tr>
<td>9.</td>
<td>Mahaboobnagar District</td>
<td>1191.90</td>
<td>23</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td><strong>TOTAL</strong></td>
<td><strong>31485.34</strong></td>
<td><strong>5948</strong></td>
<td><strong>800</strong></td>
</tr>
</tbody>
</table>

\textsuperscript{28} Schedule V, 4(1)

\textsuperscript{29} TCR & TI, Hyderabad

haripriya91@gmail.com
THE LAW OF TRANSFER OF LAND

Land/Immovable Property:

Firstly we need to understand the concept of what is land. The Registration Act of 1908, defines the term “Immovable Property”, and land can be taken up under this ambit.

According to this Act “Immovable Property” is that which “--- includes land, buildings, hereditary allowances, right to ways, lights, ferries, fisheries or any other benefits to arise out of land, and things attached to the earth permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass.”

The phrase “attached to the earth”, as used in this definition given under Section 2(6) of the above stated Act, has been elaborately defined in the Transfer of Property Act of 1882, under the interpretation clause. According to this Act

“Attached to the earth means—

a) Rooted in earth, as in case of trees and shrubs;
b) Imbedded in the earth, as in case of walls or buildings;

---

30 As under Section 2(6)
31 Registration Act of 1908
32 Registration Act of 1908
33 Section 3
34 Transfer of Property Act of 1882
c) Attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached”

Similarly, Section 3 (25) of the General Clauses Act, 1897 defines the term ‘Immovable Property’ as follows:

“Immovable Property shall include land, benefit to arise out of land and other things attached to the earth or permanently fastened to anything attached to the earth”

Land includes the following elements when it is considered in its legal aspects35:-

a) A determinate portion of the earth’s surface
b) Column of space above the surface
c) The ground beneath the surface
d) All objects either on or under the surface of land in their natural state for example, minerals. Land also includes lakes, rivers and ponds are land covered by water
e) All objects placed by human agency either on or under the surface of land with the intention of permanent annexation. With permanent annexation these objects become part of the land and lose their separate identity. Example may be taken of buildings, fencing and walls etc36.

    Dr. S.N. Shukla, “Transfer of Property Act”, p. 12
Thus, land “includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth\(^{37}\)”.

Land also “includes the bed of the sea or river below high-water mark, and also things attached to the earth or permanently fastened to anything attached to the earth\(^{38}\)”.

Land in addition “includes any ground, soil or earth, such as meadows pastures, woods, moors, waters, marshes and health; houses and other buildings built upon it; the air space above it and all mines and minerals beneath it. It includes anything fixed to the land; and growing trees and crops, except those which, broadly speaking, are produced in the year by the labour of the year\(^{39}\)”.

Land “includes land covered with water\(^{40}\)”.

The word ‘land’ in the Constitution of India, Schedule 7, List 2, Entry 49, is wide enough to include all lands, whether agricultural or not\(^{41}\).

**Transfer:**

‘Transfer’, with its grammatical variations and cognate expressions includes letting on hire, lending giving and parting with possession\(^{42}\).

---

\(^{37}\) Land Acquisition Act, 1894, Sec. 3 (a)

\(^{38}\) Major Port Trust Act, 1963, Sec. 2 (k)


\(^{41}\) Jaganmath Bakish v. State of Uttar Pradesh (1963) 1 SCR 220; AIR 1962 SC 1563

\(^{42}\) Arms Act, 1959, Sec. 2 (k)
‘Transfer’, in relation to a capital asset, includes the sale, exchange or relinquishment of the assets or the extinguishment of any rights therein or the compulsory acquisition thereof under any law\(^{43}\). In S. 16 (a) (iii) of the Income Tax Act 1981, the word ‘transfer’ has been used in the strict sense and not in the sense of every means by which property may be passed from one person to another\(^{44}\).

‘Transfer’, must necessarily be accompanied by the hand from which and the hand to which something is to be transferred, that is to say, ‘transfer’ must carry with it a ‘from’ and ‘to’. If either of them is wanting, there can be no transfer\(^{45}\).

‘Transfer’, is a word of wider import than sale. A transfer may be by means of a lease or mortgage or sale or by any other mode\(^{46}\).

**Transfer of Property:**

‘Transfer of property’ defined as under Section 5 of the Transfer of Property Act of 1882 is as follows:-

“In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons ; and "to transfer property" is to perform such act.

\(^{43}\) Income Tax Act, 1961, Sec. 2 (47)

\(^{44}\) Commissioner of Income-tax v. Keshavlal Lallubhai AIR 1965 SC 866

\(^{45}\) Deepchand v. M.P.S.R.T.C. AIR 1977 MP 42

\(^{46}\) Union of India v. Maqsood Ahmed AIR 1963 Bom 110
In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."

Any disposition, conveyance, assignment settlement, delivery, payment or other alienation of property and, without limiting the generality of the forgoing includes:-

a) The creation of a trust in property;

b) The grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property;

c) The exercise of a power of appointment of property vested in any person, not the owner of property to determine its disposition in favour of any person other than the donee of the power; and

d) Any transaction entered into by any person with the intent thereby to diminish directly to indirectly the value of his own property and to increase the value of the property of any other persons.

‘Transfer of property’ includes a transfer of any interest thereon and any charge created thereon.48

47 Gift Tax Act, 1958, Sec 2 (xxiv)
48 Provincial Insolvency Act, 1920, Sec. (2) (f)
'Transfer of property' connotes the passing of rights in the property from one person to another. In one other case there may be a passing of the entire bundle of rights from the transferor to the transferee. In another case, the transfer may consist of one of the estates only out of all the estates comprising the totality of rights in the property. In the third case, there may be a reduction of the exclusive interest in the totality of rights of the original owner into a joint or shared interest with other persons. An exclusive interest in property is a larger interest is reduced to a shared interest it would seem that there is a transfer of interest. Thus, when a partner brings in his personal asset into a partnership firm as is contribution to its capital, an asset which originally was subject to the entire ownership of the partner becomes now subject to the rights of other partners in it, it is ‘transfer of property’\textsuperscript{49}.

**Modes of Transfer of property:**

The various modes of transfer of property are as follows:

**a) Sale:**

"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made:- Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and

---

\textsuperscript{49} Siddharatbhai v. Commissioner of IT., AIR 1986 SC 368
upwards, or in the case of a reversion or other intangible things, can be made only by a registered instrument. 50

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property, takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale:- A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property51.

‘Sale’ means any transfer of property in goods for cash or deferred payment or other valuable consideration including a transfer of property in goods involved in the execution of a contract, but does not include a mortgage, hypothecation, charge or pledge52.

b) Mortagage:

[A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money

---

50 Section 54, the Transfer of Property Act, 1882.
51 Transfer of Property Act, 1882, Chapter III, Sec. 54
52 Vishnu Agencies b. Commercial Tax Officer 77 CWN 141
advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) which the transfer is effected is called a mortgage-deed\[^{53}\].

As provided under the Transfer of Property Act, 1882\[^{54}\], there are 6 types of mortgages in India –

1) Simple mortgage
2) Mortgage by conditional sale
3)Usufructuary mortgage
4) English mortgage
5) Mortgage by deposit of title deeds
6) Anomalous mortgage

c) **Lease:**

A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the

\[53\] Transfer of Property Act, 1882, Chapter IV, Sec. 58 (a)

\[54\] Transfer of Property Act, 1882, Chapter IV, Sec. 58 (b) – Sec 58 (g)
transferor by the transferee, who accepts the transfer on such terms\textsuperscript{55}.

\textbf{d) Exchange}

When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange".

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale\textsuperscript{56}.

\textbf{e) Gift}

"Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person called the donor, to another, called the donee, and accepted by or on behalf of the donee.

\textit{Acceptance when to be made} :- Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void\textsuperscript{57}.

\textsuperscript{55} Transfer of Property Act, 1882, Chapter V, Sec. 105
\textsuperscript{56} Transfer of Property Act, 1882, Chapter VI, Sec. 118
\textsuperscript{57} Transfer of Property Act, 1882, Chapter VII, Sec. 122
f) **Transfer by means of Succession/ Will/ Testamentary Succession:**

Property may also be by virtue of succession or will. The property is transferred from the deceased to his heirs by one of these methods. *Succession* is a process by which a person or persons become entitled to the interest of a deceased person. Succession is regulated by the personal law of the deceased. *Testamentary Succession* process is governed by the Indian Succession Act of 1925. It deals with the transfer of the property of a person, who writes a Will according to his Wishes, and how his property shall be divided to the legatees according to the rules and provisions laid down in the Act from Section 57 to 390, which are distributed from Part VI to X.
RATIONALE BEHIND HAVING SEPARATE LAWS

Despite some regional variations, the tribes share many traits, including living in relative geographical isolation, and being relatively more homogeneous and more self-contained than the non-tribal social groups\(^{58}\). Consequently, several tensions (both perceivable and obscure) pervade relations between tribals and non-tribals, on the one hand, and the tribes and the State, on the other\(^{59}\). The conventional, and largely accepted, solution is to balance the dichotomy between assimilation of tribal peoples and their independent identity, and delineate the contours of a national policy that would allow them to preserve their way of life without compromising development\(^{60}\).

The tribals are proven to be culturally backward and that their social and other customs are different from the rest of India\(^ {61}\). Thus one must realize that tribes that they have a right to seek justice within their own traditional or customary laws\(^ {62}\), and they must have an inalienable right to exploit the natural resources of their areas, in their very own habitats. The separate systems were approved by the Constituent Assembly formed at the time of independence after


\(^{59}\) https://tspace.library.utoronto.ca/bitstream/1807/17375/1/ILJ-7.1-Kurup.pdf

\(^{60}\) Known as the “development-deference dichotomy”: Shubhankar Dam, “Legal Systems As Cultural Rights: A Rights Based Approach To Traditional Legal Systems Under The Indian Constitution” (2006), Ind. Intl & Comp. L., Rev. 295

\(^{61}\) Constitutional Assembly Debates (CAD), Vol. VII. Apps. C & D, p.157

receiving recommendations that the distinct community structures and attitudes of the tribes in the two regions could not be treated in a common law\textsuperscript{63}.

The Scheduled Tribes live in contiguous areas unlike other communities. It is, therefore, much simple to have area approach for development activities and also regulatory provisions to protect their interests\textsuperscript{64}.

With the silent and gradual invasion of immigrants into scheduled areas, their ethnic identity is also subjected to cultural invasion. Their food habits, dressing and dwellings, customs and traditional institutions are being replaced. Gradually they are alienated from their own land and forest. Their nativity, language, their environment, natural resources, life styles, culture and their very existence are under the threat of extinction\textsuperscript{65}.

The distinction in the extant law is based on the two criteria that had guided the colonial British Indian government in determining the degree of self-government that the tribes would exercise: (a) Whether the tribe had the ability to manage its own affairs\textsuperscript{66}, and (b) Whether the tribal region in question had a significant non-tribal population.


\textsuperscript{64} “Basic Statistics on Schedule Tribes of Andhra Pradesh”, Tribal Cultural Research and Training Institute, Tribal Welfare Department, Government of Andhra Pradesh, Hyderabad, January 2008, p. 12

\textsuperscript{65} http://www.arsap.org/

\textsuperscript{66} Amit Prakash, ”Decolonisation and Tribal Policy in Jharkhand: Continuities with Colonial Discourse”, (1999)
Later The Constituent Assembly debates, too, recognized that a section of people in Indian Society had been denied certain basic rights since ancient times and had therefore remained economically, socially and educationally backward. The resultant disparities between them and the rest of the society could be dealt only by implementing certain mechanisms to uplift their social status. Comprehension of this situation by the makers of the constitution led to the formation of Part-XVI, a chapter under the title “Special provisions relating to certain classes”, and the Special provisions have also been made for the Scheduled Castes and Scheduled Tribes in Part-X of the Constitution.
CONSTITUTIONAL PROVISIONS REGARDING TRIBALS AND TRIBAL LANDS

The term “Scheduled Tribes” first appeared in the Constitution of India. The framers of the Constitution were anxious to ensure the betterment of the Scheduled Tribes. Article 46 epitomizing this policy calls upon the state (Central & State government) to promote with special care the educational and economic interests of Scheduled castes and Scheduled tribes and protect them from social injustice and all forms of exploitation. It is comprehensive article comprising both the development & regulatory functions.

The term ‘Scheduled Tribes’ is defined under Article 366(25) whilst Article 342 identifies the process through which such groups shall be identified.

Article 366 (25) reads as follows:

“‘Scheduled Tribes’ means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution.”

68 Article 14: “The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”
69 http://india.gov.in/sectors/education/edu_scheduled_castes.php
Article 342 reads as follows:

“The President \(^{70}\) may with respect to any State \(^{71}\) or Union territory, and where it is a State \(^{72}\), after consultation with the Governor \(^{73}\), by public notification\(^{74}\), specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State \(^{75}\) or Union territory, as the case may be].

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

Empowered by clause (1) of Article 342, the President may, with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof notify tribes to tribal communities or parts of these as scheduled tribes. This confers on the

\(^{70}\) Subs. by the Constitution (First Amendment) Act, 1951, s. 11, for “may, after consultation with the Governor or Rajpramukh of a State,”

\(^{71}\) Ins. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch

\(^{72}\) The words and letters “Specified in Part A or Part B of the First Schedule” omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch

\(^{73}\) The words “or Rajpramukh” omitted by s. 29 and Sch., ibid.

\(^{74}\) See the Constitution (Scheduled Tribes) Order, 1950 (C.O. 22), the Constitution (Scheduled Tribes) (Union Territories) Order, 1951 (C.O. 33), the Constitution (Andaman and Nicobar Islands) Scheduled Tribes Order, 1959 (C.O. 58), the Constitution (Dadra and Nagar Haveli) Scheduled Tribes Order, 1962 (C.O. 65), the Constitution (Scheduled Tribes) (Uttar Pradesh) Order, 1967 (C.O. 78), the Constitution (Goa, Daman and Diu) Scheduled Tribes Order, 1968 (C.O. 82), the Constitution (Nagaland) Scheduled Tribes Order, 1970 (C.O. 88) and the Constitution (Sikkim) Scheduled Tribes Order, 1978 (C.O. 111).

\(^{75}\) Supra Note 56
tribe or part of it a constitution status invoking the safeguard provided for in the constitution, to these communities in their respective States/UT\textsuperscript{76}.

Clause (2) of Article 342 empowers the Parliament to pass a law to include in or exclude from the list of Scheduled Tribes, any tribe or tribal community or parts of these.

The Constitution provides various safeguards to implement objectives enshrined in the preamble to the Constitution. These safeguards include social, economic, educational, cultural, political and service.\textsuperscript{77}

As discussed earlier, the Constitution provides for protection and promotion of their social, economic, educational, cultural and political interests to remove the disparities and to bring them on par with other sections of the society. Parts XVI, X, III, IV, IX, IX-A, Fifth and Sixth Schedule of the Constitution reinforce these arrangements.

It is noteworthy that even provisions relating to fundamental rights have been qualified with 'reasonable restrictions' in favour of Scheduled tribes. While Article 15 talks about “prohibition of discrimination on grounds of religion, race, caste, sex or place of birth”, but clause (4)\textsuperscript{78} thereof enables a State government to make

\textsuperscript{76}“Basic Statistics on Schedule Tribes of Andhra Pradesh”, Tribal Cultural Research and Training Institute, Tribal Welfare Department, Government of Andhra Pradesh, Hyderabad, January 2008.

\textsuperscript{77}http://www.ambedkar.org/NHRCReport/3.pdf

\textsuperscript{78}Article 15 (4): “Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.”-- Added by the Constitution (First Amendment) Act, 1951
special provisions for advancement of members of Scheduled castes and Scheduled tribes. Article 16 provides for opportunities for all citizens in matters relating to employment or appointment or post in favour of Scheduled castes and Schedules tribes.

The Duties of the States are enshrined in the Part IV\textsuperscript{79} of the Constitution of India. Article 46 under this part reads as follows:

“The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”

\textbf{Weaker Sections}\textsuperscript{80}: 

It was held in \textit{Shantistar Builders v. Narayan}, (1990) 1SCC 520: AIR 1990 SC 630, that the definition of the expression “weaker sections” has not been defined. A proper guideline, could, however, be indicated but no attention has been devoted to this aspect.

In \textit{State of Kerala v. N.M. Thomas}\textsuperscript{81} it was viewed that ‘weaker sections’, means not every ‘backward class’ but those dissimilarly depressed categories in comparison to economically and educationally sound Scheduled Castes and Scheduled Tribes.

\textsuperscript{79} Part IV: Directive Principles of State Policy
\textsuperscript{80} See: http://www.elaw.org/node/1373
\textsuperscript{81} AIR 1976 SC 490
In *Indira Sawhney v. Union of India*\(^{82}\) it has been viewed that the expression of ‘weaker sections’ is obviously wider than the expression ‘backward class' of citizens in Article 16 (4) which is only a part of the weaker sections. The expression used in Article 46, however, is not confined to the said classes only, but also includes other backward classes as well, whether they are socially and educationally backward or not. The expression can also take within its compass, individuals who constitute weaker sections or weaker parts of society. It connotes all sections of the society who are rendered weaker due to various causes.

Though *Indira Sawhney v. Union of India*\(^{83}\), known as *Mandal Commission* case, is a very significant pronouncement of the Supreme Court on the question of reservation of posts for backward classes and has given exclusive view, but after this case the Court has not been able to completely eliminate the caste factor in identifying the backward classes. As right to equality means equality irrespective of caste, creed, colour or sex so the Court has sought to keep the caste factor within limits. Caste can be one of the factors, but not the sole factor, to assess backwardness. Also to end up exploitation or to limitize it, there should be proper checks and balances and special care and caution should be taken to promote education and economic interests of the weaker sections, in particular, of the Scheduled Castes and Scheduled Tribes so that our country can, in true sense, be known as ‘Universally Unified’.

As directed under this article, the States are required to formulate special programmes for extending educational opportunities to

---

82 AIR 1993 SC 477

83 Ibid
Scheduled Castes and Scheduled Tribes. Institutional arrangements for their development must also be made. A specific amount out of the total budget must be set aside in order to meet the requirements of these scheduled castes and scheduled tribes. Various development activities in the form of a Special Component Plan for Scheduled Castes and Tribal Sub-plan for Scheduled Tribes have also been in operation for a long time. Thereby making tribal welfare a duty of the states that they are expected to abide by.

Tribal Welfare and the social safeguards in this regard are stipulated in Articles 17, 23, 24 and 25(2)(b) of the Constitution of India.

As per Article 17, “‘Untouchability’ is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of ‘Untouchability’ shall be an offence punishable in accordance with law” Two important legislations have been enacted to give effect to contents of this article are the Protection of Civil Rights Act, 1955 has been enacted with the objective of “providing punishment for preaching and practice of untouchability, in the enforcement of any disability arising there from and for matters connected therewith”. The other act in this context is the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 that seeks to prevent the commission of offences against the members of Scheduled Castes and Scheduled Tribes.

Article 25(2)(b) reads as follows:
“Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus”

It provides that Hindu religious Institutions of a public character shall be open to all classes and sections of Hindus. The term “Hindu” includes persons professing Sikh, Jain, and Buddhist religions. This provision strikes against the opinion held by some sects of Hindus that members belonging to Scheduled Castes / Scheduled Tribes have no right to enter the temples.

Article 23 prohibits traffic-in human beings, and is prescribed in the Indian Constitution as follows:

“23. (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.”

This Article prohibits 'Begar' and other forms of forced labour: this has special relevance for Scheduled tribes. In pursuance of this Article, Bonded Labour System (Abolition) Act, 1976 has been enacted and a special programme for identification of bonded labourers, their liberation and rehabilitation has been in existence to operationalise its provisions. While this Act does not specifically mention Scheduled Castes and Scheduled Tribes, it is of special significance for them
because majority of the bonded labour belongs to Scheduled Castes and Scheduled Tribes community.

Article 15(4) states that “Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.” Reservation of seats for promotion of participation of the scheduled tribes and scheduled castes in various fields, be it academic institutes or elections or jobs, draws its authority from this very Article 15 (4) of the Constitution of India.

The interests of the Scheduled Tribes have also been taken care of by enacting the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 that aimed at preventing atrocities against Scheduled castes and scheduled tribes and to help the social inclusion of Dalits into Indian society, but the Act has failed to live up to its expectations. The framers of this legislation provided for the setting up of a Special Court for speedy trial of offences committed under this Act. They failed, however, to give any real powers to Special Courts for the admission of complaints, and also these courts cannot take cognizance of any complaint directly.

The statement of object and reason of the SC/ST Act clearly reveals that the Act, in its letter and spirit, desires that Dalits lead a dignified life. Even though the statutory supports to the social enactment, the

---

84 Added by the Constitution (First Amendment) Act, 1951, s. 2.
law has not been able to produce the desired effect however this act along with its provisions like the Section 3 (iv)\textsuperscript{85}, Section 3 (v)\textsuperscript{86} and Section 8 (b)\textsuperscript{87} could compliment the Andhra Pradesh (Scheduled Areas) Land Transfer Regulation, 1959, and give it the required extra teething.

Governance of the Scheduled Areas and the administration of Scheduled Castes and the Scheduled Tribes have been stipulated under Article 164 (1) that reads as follows:

“164. (1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor:

Provided that in the States of 1[Chhattisgarh, Jharkhand], Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal

\textsuperscript{85} Section 3: Punishments for offences of atrocities- (iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

\textsuperscript{86} Section 3: Punishments for offences of atrocities- (v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;

\textsuperscript{87} Section 8: Presumption as to offences- (b) a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object.
welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.”

Articles 330, 332, 335, 243 (D) and 243 – T provide for various reservations for the Scheduled Castes and the Scheduled Tribes. Article 16 (4) (a), that was Inserted by the Constitution (Seventy-seventh Amendment) Act, 1995, upholds that benefit of reservation in the matter of promotion has been extended to Scheduled Castes and Scheduled Tribes to overrule the judgment of the Supreme Court. Article 16(4)(b) has further made provisions to permit backlog vacancies as a separate category in any year for determining the ceiling of 50% reservation on total number of vacancies that year.

The procedures for administration of Scheduled Areas and Tribal Areas are given a form in Articles 244 and 244 A of the Constitution of India. The two Articles read as follows:

“244. (1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State 88*** other than 89[the States of Assam 90][91][Meghalaya, Tripura and Mizoram]].

---

88 The words and letters “specified in Part A or Part B of the First Schedule” omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch

89 Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71, for “the State of Assam” (w.e.f. 21-1-1972)

90 Subs. by the Constitution (Forty-ninth Amendment) Act, 1984, s. 2, for “and Meghalaya” (w.e.f. 1-4-1985).

91 Subs. by the State of Mizoram Act, 1986 (34 of 1986), s. 39, for “Meghalaya and Tripura” (w.e.f. 20-2-1987).
(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram.

244A. (1) Notwithstanding anything in this Constitution, Parliament may, by law, form within the State of Assam an autonomous State comprising (whether wholly or in part) all or any of the tribal areas specified in Part I of the table appended to paragraph 20 of the Sixth Schedule and create therefore—

(a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the autonomous State, or
(b) a Council of Ministers, or both with such constitution, powers and functions, in each case, as may be specified in the law.

(2) Any such law as is referred to in clause (1) may, in particular,—

(a) specify the matters enumerated in the State List or the Concurrent List with respect to which the Legislature of the autonomous State shall have power to make laws for the whole or any part thereof, whether to the exclusion of the Legislature of the State of Assam or otherwise;
(b) define the matters with respect to which the executive power of the autonomous State shall extend;

---

92 Supra Note 66
93 Subs. by s. 39, State of Mizoram Act, 1986, for “Meghalaya and Tripura and the Union Territory of Mizoram” (w.e.f. 20-2-1987).
94 Ins. by the Constitution (Twenty-second Amendment) Act, 1969, s. 2.
95 Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71, for “Part A” (w.e.f. 21-1-1972).
(c) provide that any tax levied by the State of Assam shall be assigned to the autonomous State in so far as the proceeds thereof are attributable to the autonomous State;
(d) provide that any reference to a State in any article of this Constitution shall be construed as including a reference to the autonomous State; and
(e) make such supplemental, incidental and consequential provisions as may be deemed necessary.

(3) An amendment of any such law as aforesaid in so far as such amendment relates to any of the matters specified in sub-clause (a) or sub-clause (b) of clause (2) shall have no effect unless the amendment is passed in each House of Parliament by not less than two-thirds of the members present and voting.

(4) Any such law as is referred to in this article shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution.["

The provisions of the Fifth and the Sixth Schedule, provides a self contained code for governance of the Tribal Areas[^96]. Under the fifth schedule, the Governor of a state is empowered to make regulations for the peace and good government of any area in a state which is for the time being a schedule area. Para 5 of the schedule in clause (2) specifically provides that such regulations may:

[^96]: Edwingson v. State of Assam, AIR 1966 SC 1224
“(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;  
(b) regulate the allotment of land to members of the Scheduled Tribes in such area;  
(c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.”

The predominant object of Para 5 (2) of the Fifth Schedule of the Constitution and the regulation is to impose total prohibition of transfer of immovable property to any person other than tribal for peace and proven good management of tribal areas. The Regulation as to any other person and even Benami purchaser in the name of a tribal for the benefit of a non-tribal is null and void97.

The Constitution of District Councils and Regional Councils, their power to make laws and more importantly the power to make regulations for the control of money lending and trading by non-tribals within the districts, has been provided for in Para 10 of the schedule.

CHRONOLOGY OF THE IMPORTANT TRIBAL LAND LAWS IN

ANDHRA PRADESH

1. Ganjam and Vizagapatnam Act, 1939 (Act No. XXIV) of 1839
2. Scheduled Districts Act 1874 (Act XIV of 1874)
3. Agency Tracts Interest and Land Transfer Act, 1917
4. The Andhra Pradesh Agency Rules, 1924
6. Andhra Pradesh (Andhra Scheduled Areas) Village Courts Regulation, 1940
7. Andhra Pradesh (Andhra Scheduled Areas) (Estates Land Repealing) Regulation, 1943
8. The Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959
9. A P Scheduled area Land Transfer Regulation (A P S A L T) Rules
10. Andhra Pradesh (Andhra Scheduled Areas) Estates (Abolition And Conversion Into Ryotwari) Regulation, 1951
11. Andhra Pradesh Mahals (Abolition and Conversation into Ryotwari) Regulation, 1969
12. Andhra Pradesh Schedule Areas Ryotwari Settlement Regulation, 1969
13. Andhra Pradesh Scheduled Area Land Transfer (Amendment) Regulation, 1970
15. The Andhra Pradesh Scheduled Areas Laws (Extension and Amendment) Regulation, 1963
16. Nugur and Bhadrachalam Scheduled Areas (Validation Of Transfer To Khammam District) Regulation, 1963
17. Andhra Pradesh (Scheduled Areas Ryotwari Settlement) Regulation, 1970
18. Andhra Pradesh Scheduled Area Land Transfer (Amendment) Regulation, 1971
19. Money lending regulation for the relief of the tribals from indebtedness:
   a) Andhra Pradesh (Scheduled Area) Money Lender Regulation, 1960
   b) Andhra Pradesh (Scheduled Area) Money Lender Rules
   c) Andhra Pradesh (Scheduled Tribes) Debt Relief Regulation, 1960
   d) Andhra Pradesh (Scheduled Tribes) Debt Relief Rules, 1960
   e) Andhra Pradesh (Scheduled Tribes) Debt Relief Regulation, 1970
20. The Andhra (Telangana Tribal Areas) Regulation, 1359-F
21. The Hyderabad Tribal Areas Regulation, (Regulation No. III of 1359F)
22. Notified Tribal Areas Rules, 1359-F
LAND-LAWS PERTAINING TO SCHEDULED AREAS IN ANDHRA PRADESH

1. Ganjam and Vizagapatnam Act, 1939 (Act No. XXIV) of 1839

- Owing to the rebellious movements by the tribals against the oppression by the money lenders and landlords from the late 19th century, this enactment was passed in the then Madras Presidency.
- Zamindaries and Hill Zamindaries (Tracts) of Ganjam and Vizagapatnam District covered by this Act were mentioned in the Act.
- Administration of Civil and Criminal justice (Superintendence of Police), Collection and the Superintendence of revenue vested with the District Collector as Agent for the State Government.
- State Government is competent to prescribe Rules for Agents and has powers to alter limits of tracts.
- Consequently tribal areas in those districts were deleted from the purview of general laws and the Collector was vested with the extraordinary powers by designating him as Agent to the State Government.
- Then the Indian Councils Act, 1861 and the Government of India Act, 1873 were enacted to validate the Laws of Tribal Areas.

2. Scheduled Districts Act 1874 (Act XIV of 1874)

---

• Extended to Scheduled Districts mentioned in the first Schedule
• Local Government may from time to time may declare what enactments are actually in force or not actually in force may correct any mistake of fact in any notification issued under this section.
• Local Governments may from time to time appoint officers to administer Civil and Criminal justice...to conduct the administration within Scheduled Districts.
• Under Agency Rules issued, Agent to state government vested with same powers as are vested in distinct and revenue courts and Agency Divisional officers with the same powers as are vested in the subordinate and revenue courts.
• Agent empowered to appoint any of his subordinates as Agency Munsif.

3. **Agency Tracts Interest and Land Transfer Act, 1917**
• This was the first ever comprehensive protective legislation that was brought out to check and regulate the rates of interest and also the transfer of land in the Agency Tracts of Ganjam, Visakhapatnam, and Godavari districts.
• H.E.SULLIVAN, First member Board of Revenue enquired in to disturbances in Rampa Country in 1880.
• Manasabdari of tenure of Rampa held by Rampa Bhupathi Devu was cancelled absolutely and forever.
• Muttas were settled for hill Zamindars
• Act I of 1917 Regulated the Rate of Interest and Transfer of Land in the Ganjam, Vizagapatnam and Godavari Agency tracts promulgated.
• Agency tracts, Agent, Hill tribe, Immovable Property, Prescribed and Transfer were defined.

• Under this Act, any transfer of immovable property situated in the Agency Area, by a member of a Hill Tribe shall be absolutely null and void unless made in favour of another member of a Hill Tribe or with the previous consent in writing of the Agent or of any other prescribed officer.

• The Act was used more to enable the Non-tribals to acquire lands in the tribal areas with the consent of the Agent than to prevent exploitation of the Tribals^99.

• Thereafter, the Agency Rules, 1934 were made under the Scheduled Districts Act, 1874 to provide mainly for judicial administration of Civil Justice in the Agency tracts besides Revenue Administration.

4. The Andhra Pradesh Agency Rules, 1924

• Present day Fifth Schedule Areas broadly correspond to Partially Excluded Areas.

• No Act of the federal legislature or of the provincial legislature shall apply to excluded or partially excluded areas unless

5. Government of India Act, 1935 – Excluded and Partially Excluded Areas

• Present day Fifth Schedule Areas broadly correspond to Partially Excluded Areas as devised by the British under this Act.

No Act of the federal legislature or of the provincial legislature shall apply to excluded or partially excluded areas unless Governor by public notification, so directs for its application totally or to any specified part. This concept has been continued till date by the provisions under Schedule V of the Constitution of India.

Governor may make Regulations for the peace and good Government in excluded or partially excluded area.

6. **The Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959**

By exercising the powers conferred under Schedule 5 (2) of the constitution, the Government of Andhra Pradesh has made this enactment.

This Regulation was enacted to regulate the transfers of land in the Scheduled Areas in the Districts of East Godavari, West Godavari, Visakhapatnam, Srikakulam, Adilabad, Warangal, Khammam and Mehaboobnagar in Andhra Pradesh.

The transfer of lands in the Scheduled Areas prior to the enactment of A.P.S.L.T.R 1959 were governed by:

1. The Agency Tract Interest and Land Transfer Act 1917 in respect of Andhra Area and

---

100 W.E.F. 4-3-1959

2. The Tribal Areas Regulation III of Fasli 1359 in Telangana Region.

The Act was extended to Telangana Region on 1-12-1963.

According to Section 3(1) A of the Regulation, any transfer of immovable property situated in the Agency Tracts by a person, whether or not such person is a member of Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of ST or a society registered or deemed to be registered under the AP Cooperative Societies Act 1964 which is composed solely of members of Scheduled Tribes. The ‘immovable property’ shall include according to this statute, standing crops, timber, and trees but does not include growing grass.\textsuperscript{102}

The term "Transfer" as defined in sub section G of Section 2 of Regulation 1959 means a Mortgage with or without possession, lease, sale, gift, exchange or any other dealing with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such; Mortgage lease, sale, gift exchange or other dealing. Further as per sub section (4) of Section 3 of the A.P.S.A.L.T.R, the expression transfer includes a sale in execution of Decree and also a Transfer made by a member of a ST in favour of any other members of ST, Benami for the benefit of a person who is not a member of ST: but does not include a partition or a devolution by succession. Hence even Benami transfers are prohibited under the Regulation.

\textsuperscript{102} Under Section 2 (d)
Section 3 of the regulation declares that any transfer of immovable property situated in the Agency tracts by a person, whether ST or not, would become absolutely null and void. However such a transfer of immovable property would be valid, if it is transferred to either a scheduled tribe or a society registered or deemed to be registered under Andhra Pradesh Co-operative Societies Act, 1964, which is composed solely of member of the scheduled tribes.

Prohibition of transfer of immovable property by a non-tribal to another non-tribal, is not an unreasonable restriction103. And if any transfer is made in contravention of section 3 of the regulation, the competent officer appointed under the regulation viz the agent of the agency divisional officer or prescribed officer, may restore the transferred land, back to the transferee or his legal heirs.

Under Section 3 (v) of the regulation is willing to sell his land, but is unable to do so, due to the fact that no ST wants to purchase the land, then he apply to the agent or other competent officer, for acquisition of such land by the state government and is such event, the competent officer may take over such land, but by determined in accordance with the principle specified in Section 10 of the Andhra Pradesh ceiling on Agricultural Holdings Act, as if the surplus land is surrendered to the government. It should be disposed of in favour of members

103 AIR 1988 SCC 1626
of ST or SC or a cooperative society consisting solely of the ST members.

Section 3-A of the regulation, specially provides that any person holding immovable property in agency tracts may mortgage without possession such property to any

i. Co-operative society
ii. Land mortgage bank
iii. Bank
iv. Other financial institution approved by the government for the purpose of raising loans.

No immovable property owned by a S.T to be attached and sold in execution of a money decree except to the extent prescribed under rule 12 in accordance with Agency Rules. (Refer Section 5 and Rule 12). However, in case of default of payment of the loan, the mortgaged property may be sold/ auctioned it, but it can be sold only to a scheduled tribe or a society composed solely of members of the scheduled tribes.

According to Section 3-B\textsuperscript{104} of the Act, no document relating to the transfer of immovable property, situated in the Agency tract, should be registered by any registering officer, unless the person presenting the document furnishes declaration by the transferee in the prescribe form that the transferee is a ST of a scheduled tribe or a society registered composed solely of member of the scheduled tribes.

\textsuperscript{104} Inserted by Amendment Regulation I of 1978
Thereby to summarize the process of transfer of immovable property by a tribal in the tribal areas, the following points have been formulated:

The Act also prohibits transfer of property from ‘non-tribals’ to other ‘non-tribals’. The rationale behind such clause is that although transfer of property from ‘non-tribals’ to other ‘non-tribals’ would not diminish the pool, it would maintain status quo. But it is not sufficient or fair enough to freeze the exploitative deprivation of the tribals and thereby legalize and perpetuate the past-wrong instead of affecting the same. As a matter of fact, it would be unjust, unfair and highly unreasonable merely to refreeze the situation instead of reversing the injustice and restoring the status quo ante.\textsuperscript{105}

The regulation has a prospective and not a retrospective effect.

\textbf{7. A P Scheduled area Land Transfer Regulation (A P S A L T) Rules}

Rule 18 of A.P.S.A.L.T Rules framed in 1969 envisages the procedure by which land can be transferred to a tribal or to a society solely composed of Scheduled Tribes (STs). The Agent to Government i.e., the Collector of the District has to permit the sale in Form "L" appended to the Rules.

According to Section 3 sub section 2(a) of A.P.S.A.L.T where a transfer of immovable property is made in contravention of sub

section 3(1) a of the Regulation, the Agent to Govt./Collector, the Agency Divisional Officer i.e., the Special Deputy Collector Tribal Welfare appointed for the purpose, and any other prescribed officer may, on application by anyone interested, or on information given in writing by a public servant, or suo moto, decree ejectment against any person in possession of the property claiming under the Transfer, after due notice to him in the manner prescribed and may restore it to the transferor or his heirs.

The procedure for notice (Form-E), enquiry and passing of order for ejection or otherwise (Form-F) is envisaged in Rule 7 (1,2,3 and 4) of A.P.S.L.T.RULES 1969.

The appeal provisions on the orders of the Special Deputy Collector, Tribal Welfare (SDC TW) and Agent to Govt. are envisaged in Section 3 of the Regulation as shown below:

1. If the Decree or order was passed by the Agent the Appeal shall lie to the State Government.
2. If the Decree or Order was passed by the Agency Divisional Officer the appeal shall lie to the Agent to Govt.
3. If the Decree or order was passed by any other Officer the appeal shall lie to the Agency Divisional Officer or to the Agent as may be prescribed.

According to Section 6 of the A.P.S.A.L.T.R 1959, the State Govt. holds revision powers and it may revise any decree or order passed by the Agent to Govt. the Agency Divisional Officer and Special Deputy Collector, Tribal Welfare (SDC TW) or any other prescribed Officer under the Regulation.
8. Andhra Pradesh (Andhra Scheduled Areas) Validation Of Succession Certificates Regulation, 1951

Aim:- A Regulation to validate the succession certificates granted by the courts of the Special Assistant Agents in the Scheduled Areas in the East Godavari, West Godavari, Visakhapatnam and Srikakulam districts.\textsuperscript{106}

9. Andhra Pradesh (Andhra Scheduled Areas) Estates (Abolition And Conversion Into Ryotwari) Regulation, 1951\textsuperscript{107}

The Regulation 1 of 1969 provides for the abolition of Mahals in the Scheduled areas of Nugur, Alabaka and Cherla in Khammam district and for conversion of them into Ryotwari system. The Regulation provides for:

10. Andhra Pradesh Mahals (Abolition and Conversion into Ryotwari) Regulation, 1969

The Regulation 1 of 1969 provides for the abolition of Mahals in the scheduled areas of Nugur, Alabaka and Cherla in Khammam district and for conversion of them into ryotwari system. Every tribal Ryot in possession of land continuously for a period of one year before the notified date shall be entitled to Ryotwari Patta

\textsuperscript{106} Regulation No. I of 1951
\textsuperscript{107} Regulation No. IV of 1951
only if he is in occupation for a continuous period of eight years and such occupation is not violative of the APSALTR.

The Regulation also provides for:

- Appointment of settlement officers to conduct settlement operations in the erstwhile Mahals.
- Every tribal ryot in lawful possession of the land continuously for a period of not less than 1 year immediately before the notified date shall be entitled for ryotwari patta only if he is in occupation of land for a continuous period of not less than eight years immediately before the notified date and such occupation is not violative of provisions of Land Transfer Regulation 1959.

The regulation came into force w.e.f. 26-12-1970

11. Andhra Pradesh Muttas (Abolition and Conversation into Ryotwari) Regulation, 1969

Apart from delineating the same provision as the above with regard to tribal cultivator, this regulation states that no on-tribal ryot is entitled to ryotwari patta unless he is in a lawful possession of the said land for a continuous period of eight years.

The Regulation 2 of 1969 provides for abolition of Muttas in certain scheduled area of the State and conversion thereof into Ryotwari system. This applies to lands other than those comprised within Muttas and Mahals. Regarding the non-tribals,
this enactment also incorporates the same provision as the above. The Settlement officer appointed under this regulation has to carry out survey and settlement operations to facilitate introduction of ryotwari settlement.

Under the regulation the tribal ryots in occupation of lands for a continuous period of not less than one year before the notified date shall be entitled to ryotwari patta. No non tribal ryot is entitled to ryotwari patta in respect of agricultural land unless he is in lawful possession of the said land for a continuous period of 8 years before the notified date and such possession was not hit by the provisions of A. P. Schedule Area Land Transfer Regulation 1959.

The Regulation came into force w.e.f. 26-12-1970

12. Andhra Pradesh Schedule Areas Ryotwari Settlement Regulation, 1970

The Regulation 2 of 1970 provides for Ryotwari settlement of certain lands in the schedule area in respect of which no Ryotwari settlement was effected. The regulation applies to the land other than those comprise within Muttas and Mahals governed by the Regulations providing for the abolition thereof. After the survey every Ryot is entitled to Ryotwari Patta in respect of all cultivable lands which were properly included in his holding. If the land is situated in an estate taken over by the Government under Estates abolition act a person who would be entitled to a Ryotwari Patta under that act shall be granted a
Patta if he is in continuous occupation of that land from the notified date. For the lands not falling under the said category a non tribal Ryot is not entitled to a Ryotwari Patta unless he is in occupation of the said land for a continuous period of 8 years from the commencement of the said Regulation and the same is not void or illegal under A. P. Scheduled Area Land Transfer Regulation 1959.

This regulation came into force w.e.f. 1-7-1971.

13. Andhra Pradesh Scheduled Area Land Transfer (Amendment) Regulation, 1970

The important feature of the A.P.S.L.T.R was the presumption clause brought in by an amendment in 1970. Section 3(b) stipulates that until the contrary is proved, any immovable property situated in the Agency Tracts and in the possession of a person who is not a member of ST shall be presumed to have been acquired by such person or his predecessor in possession through a transfer made to him by a member of ST and the burden of proof lies with the non tribal.

The Courts have held that the amendment brought in 1970 shall not have retrospective effect, but it will have prospective effect only.

The Govt. in G.O.Ms.No. 68 Social Welfare (LTR.1) Department dated 9-7-2002 have ordered that the provisions of Andhra Pradesh Scheduled Areas Land Transfer Regulation 1959 as amended by Regulation 1 of 1970 shall have overriding effect of
any other law for the time being in force in the Tribal areas in the State in respect of the land transfers and any contrary determination under any other Regulation including Andhra Pradesh Scheduled Areas Settlement Regulation 2 of 1970 in the Agency Areas of the State is null and void. The Commissioner and Director of Settlements and all the Agency Collectors were requested to take necessary further action in the matter in the settlement of issues in this regard.

---

Under A. P. Mahals (Abolition and conversion into Ryotwari Regulation 1969) A. P. Muttas (Abolition and Conversion into Ryotwari Settlement Regulation 1970, thousands of non tribals were granted ryotwari pattas. Though the possession of non tribals for a continuous period of 8 years under the above three regulations is subject to tests of land Transfer Regulation 1959 this proviso is not understood in proper spirit by the implementing authorities. Further non tribal land lords and sowcars managed to produce records as if the lands were under there occupation for more than 8 years at the time of survey and settlement operations. Once the non tribals secured ryotwari patta under the laws from the competent authority they employed all dubious methods to prevent the concerned from preferring appeals against the orders of the Settlement Officers most of the controversial pattas become final. Once the orders of the settlement officer become final, the same cannot be reopened under Land Transfer Regulation. Thus several thousands of acres of land in the Scheduled Areas escaped from the purview of provisions of Land Transfer Regulation.

♦ A Regulation to amend the Madras Scheduled Areas Estates (Abolition and Conversion into Ryotwari) Regulation 1951. shall be deemed to have come into force on the 19th April, 1949.

♦ After sub section (4) of Section 22, the following sub section shall be inserted, namely:-

♦ "(5) the provisions of this section shall not apply to an estate or portion of an estate situated exclusively in any of the Scheduled Areas specified in the Schedule to the Madras Scheduled Areas Estates (Abolition and Conversion into Ryotwari) Regulation, 1951 (Madras Regulation IV of 1951)"

♦ (iii) After sub section (i) of Section 28, and sub section (i) of Section 32, the following proviso shall be inserted, namely:

♦ Provided that in the case of any such estates or portion of an estate as is referred to in sub section (5) of Section 22, such gross annual ryotwari demand shall be the land revenue payable under Section 23.

15. The Andhra Pradesh Scheduled Areas Laws (Extension and Amendment) Regulation, 1963
It extends to the whole of the Scheduled Areas of the State of Andhra Pradesh

The following of the laws extend to the whole of AP in Scheduled Areas in the whole of the State and the following laws have also been amended accordingly

2. The Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Andhra Pradesh Regulation 1 of 1959),
4. The Andhra Pradesh (Andhra Areas Scheduled Tribes) Debt Relief Regulation, 1960 (Andhra Pradesh Regulation II of 1960),

-- By virtue of Sections 4, 5 and 6

16. Money lending regulation for the relief of the tribals from indebtedness:

Andhra Pradesh (Scheduled Area) Money Lender Regulation, 1960

Apart from Land Transfer Regulation, 1959, the Government made “the Andhra Pradesh Scheduled Areas Money Lenders Regulation, 1960. This Act restricts and regulates the non-tribals from lending money to a tribal at a higher rate of interest and taking the land belonging to them as security. This Act regulates and prohibits the non-
tribals from settling down in the scheduled areas by purchasing properties either from a tribal or from a non-tribal\textsuperscript{108}.

✓ A regulation to control the business of Money lending in the Scheduled Area in the State of Andhra Pradesh

✓ All Money lenders were required to obtain licence annually\textsuperscript{109}, in writing and shall be made to the prescribed authority licensing authority\textsuperscript{110}.

✓ Under the Act no money lender shall advance any loan to a debtor otherwise than under an agreement in writing, attested by two witnesses one of whom shall be a village officer or a Sarpanch of a Gram Panchayat within whose jurisdiction the debtor resides and no court shall entertain any suit for the recovery of any loan advanced in contravention of such provisions\textsuperscript{111}.

✓ The 1960 Act also regulated and fixed limits on the interests and charges to be allowed to the money lenders\textsuperscript{112}.

✓ The Act, under Section 8, also necessitates a pawn ticket to be issued to the pawn broker, and requires the regular maintenance of books and

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{108} http://www.ejustice.org.in/logindetails.do?IDetails=010101&lawAreaName=LAND&sectionAreaName=LAND\%20DISPUTES&subSectAreaName=AGENCY\%20AREAS
  \item \textsuperscript{109} Andhra Pradesh (Scheduled Area) Money Lender Regulation, 1960, Sec. 3
  \item \textsuperscript{110} Andhra Pradesh (Scheduled Area) Money Lender Regulation, 1960, Sec. 4 (1) (a)
  \item \textsuperscript{111} Andhra Pradesh (Scheduled Area) Money Lender Regulation, 1960, Sec. 4-A
  \item \textsuperscript{112} Andhra Pradesh (Scheduled Area) Money Lender Regulation, 1960, Sec. 7
\end{itemize}
\end{footnotesize}
issuance of receipts by the money lenders, as under Section 10 of the Act.

✓ Later the Andhra Pradesh (Scheduled Area) Money Lender Rules was passed.

**Andhra Pradesh (Scheduled Tribes) Debt Relief Regulation, 1960**

▲ Aim:- A Regulation to provide for the relief of indebtedness among the members of the Scheduled Tribes in the Scheduled areas of the State of Andhra Pradesh\(^{113}\), and ‘Scaling Down of Debts’\(^{114}\).

▲ Extent:- extends to the whole of the Scheduled areas of the State of Andhra Pradesh

▲ Repealed:- The Madras Agriculturists Relief Act, 1938 (Madras Act IV of 1938)\(^{115}\). Under the Madras Agriculturists' Relief Act, 1938, a mortgage decree can be sealed down in favour of some of the judgment debtors alone, while as regards the others it is kept intact\(^{116}\). Also Section 4(e) of the Act\(^{117}\) kept certain debts and liabilities of agriculturists out of the reach of the Act\(^{118}\).

▲ Followed by the Andhra Pradesh (Scheduled Tribes) Debt Relief Rules, 1960 (G.O.Ms.No. 3532, Education, 15th November, 1960)

\(^{113}\) Regulation II of 1960

\(^{114}\) Andhra Pradesh (Scheduled Area) Money Lender Regulation, 1960, Sec. 4.

\(^{115}\) Andhra Pradesh (Scheduled Area) Money Lender Regulation, 1960, Sec. 19.

\(^{116}\) http://vlex.in/vid/ramaswami-ayyanger-others-kailasa-thevar-29699035

\(^{117}\) The Madras Agriculturists Relief Act, 1938

\(^{118}\) http://vlex.in/vid/life-insurance-corporation-kota-ramabrahmam-29687257
Andhra Pradesh (Scheduled Tribes) Debt Relief Regulation, 1970

A Regulation to provide for the Relief of indebtedness among the members of the Scheduled Tribes in the Scheduled Areas in the State of Andhra Pradesh.

Keeping in mind the economic and educational backwardness of the members of the Scheduled Tribes in the Scheduled Areas in the State, that has led to wide scale exploitation of these people by money lenders, including unlawful practice of obtaining promissory notes for amounts greater than those actually advanced to the Tribes by them, is resulting in high incidence of indebtedness among those Tribes.

The Act also rendered all loans granted by unlicensed money lenders null and void, and unenforceable in any Court of law.

The said Act also carried out necessary amendments in regulation 1 of 1960.

17. The Andhra (Telangana Tribal Areas) Regulation, 1359-F

1. **Aim and objectives:** to provide for better administration of the tribal areas in the Telangana region of the state of Andhra Pradesh. It provided for special administration in the Tribal areas, prohibition on grant of pattas to non-tribals, vesting

---

119 Andhra Pradesh (Scheduled Tribes) Debt Relief Regulation, 1970
in the Agent all powers under Civil, Criminal and Revenue Administration etc.\textsuperscript{120}

2. **Definitions:-** In accordance with the Section 2 of the Act:

In this Regulation unless there is anything repugnant in the subject or context

(a) "Agent" means the person appointed by Government to be the Agent for a notified tribal area or where no person is so appointed the Collector of the district in which such area is situate;

(b) "Assistant Agent" means the person appointed by Government to be the Assistant Agent for a notified tribal area or any part thereof or where no person is so appointed the Deputy or Assistant Collector of the division in which such area or part is situate.

(c) "Notified Tribal Area" means an area in which this Regulation is for the time being in force;

(d) "Prescribed" means prescribed by or under rules made under this Regulation;

(e) "Tribal" when used as a noun mean a member of a tribe in a notified tribal area, and "non-tribal" means a person who is not a tribal;

\textsuperscript{120} Koneru Ranga Rao, “Land Committee Report”, Submitted to the Government of Andhra Pradesh in 2006, Pg. 57
(f) "Tribe" means a tribe notified to be a Scheduled Tribe under Article 342 of the Constitution of India;

(g) An expression defined in Section 2 of the Land Revenue Act (VIII of 1317 F.), shall have the meaning assigned to it in the said section.

3. Important points:-

S. 4(2) (a): barring the jurisdiction of courts of law or revenue authorities in any dispute relating to lands, houses or house sites occupied, claimed, rented or possessed by any tribal, or from which any tribal may have been evicted, whether by process of law or otherwise within such period preceding the notification bringing this Regulation into force in the area concerned as may be specified in the rules;

S. 4(2) (b): the transfer to the Agent of all suits or proceedings pending before any court of law or revenue authority for the eviction of any tribal from lands cultivated by him or from a house or house site occupied by him in any notified tribal area and manner in which the Agent shall deal with such suits or proceedings;

S. 4(2) (d): the vesting in the Agent or Assistant Agent of all Civil and Revenue jurisdiction in cases involving the rights of any tribal in any land, house or houses site situate in any notified tribal area, the powers to be exercised by the Agent and Assistant Agent for this purpose (which may include the powers of any revenue or Forest Officer in revenue and forest matters) and of any court subordinate to the High Court in civil matters.
and the summary or other procedure in accordance with which such powers be exercised;

S. 4(2) (e): authorising the Agent or Assistant Agent of a notified tribal area to try any criminal offence in which a tribal is involved as a Party not being an offence punishable with death or imprisonment for life or for a period extending to 10 years, and prohibiting legal practitioners from appearing in any such trial without the permission of the Agent or Assistant Agent.

S. 4(2) (f): prohibiting the grant of patta right over any land in any notified tribal area to a non-tribal and empowering the Agent to cancel or revise any title in land granted to a non-tribal in any notified tribal area during a specified period preceding the coming into force of this Regulation therein, or to order exchange of lands by way of compensation or settlement, and to eject any person from any land or to place any person in possession of any land in accordance with his decision

S. 4(2) (l): controlling money-lending in a notified tribal area

4. Repealed:- The Tribal Areas Regulation, 1356-Fasli

18. The Hyderabad Tribal Areas Regulation, (Regulation No. III of 1359F)

- Agent and Assistant Agent appointed by Government.
- Government may by notification in the official gazette direct that any Act, Regulation or Rule for the time being in force shall not apply to any notified tribal areas or shall apply with omissions and modifications as may be so specified.
Government may, by notification in the official gazette make such rules as appear to them to be necessary or expedient for the better administration of any notified tribal area in respect of tribals and of their relations with non tribals.

- Barring jurisdiction of courts of law. To transfer to Agent of all suits or proceedings pending before any court of law or revenue authority for the eviction of any tribal from lands or house site in notified area. Vesting in the Agent or Assistant Agent of all Civil and Revenue Jurisdiction in all cases involving the rights of any tribal in any land, house or house site situated in any notified tribal area.

- To try any criminal offence in which a tribal is involved as a Party Prohibiting the grant of patta right over any land in any notified tribal area to a non tribal and empowering the Agent to cancel or revise any title.

- Authorizing the Agent to recommend to government for revision or cancellation of any forest settlement made under Hyderabad Forest Act 1355F.

- To exclude land from a reserve forest, up to limited extent with concurrence of DFO.

- To dismiss official of any government department who is guilty of abusing his position.

- To extern from a notified tribal area any non tribal who is presence in notified area is likely to be detrimental to the interests of tribals.

- To abolish Patel and Patwari Watans

- To control money-lending
After Independence, The Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, with amendments from time to time, was enacted with the following important features.

a. Transfer means mortgage with or without possession lease, sale, gift, exchange or any other dealing with immovable property not being testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such mortgage, lease, sale, gift, exchange or other dealing.

b. Notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of a Scheduled Tribe of a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes.

c. Until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a person who is not a member of Scheduled Tribes, shall be presumed to have been acquired by such person or his predecessor in possession through a transfer made to him by a member of a Scheduled Tribe. (Amendment, 1 of 1970)

d. Transfer of land between non tribal and non tribal is prohibited.
(Amendment of 1970)
e. Mortgage without possession to any co-operative society or to a bank permitted (Amendment of 1971)

f. Offences under this Regulation to be cognizable (Amendment of 1978).

19. Notified Tribal Areas Rules, 1359-F

1. Consists of 4 parts as follows:

   Part I: General

   Part II: Criminal Justice

   Part III: Civil Justice

   Part IV: Revenue Jurisdiction

2. Barring of jurisdiction of other courts for all revenue related issues in relation to areas marked as tribal areas. Repeated emphasis on the fact of “No court of law or revenue authority shall have any jurisdiction in any Notified Tribal Area in any dispute relating to land, house or house site occupied, claimed, rented or possessed by any tribal or from which any tribal may have been evicted whether by process of law or otherwise during a period of one year preceding the notification of such area as a Notified Tribal Area” (Rule 5, Part I)

3. Criminal justice in respect of the offences as enlisted in the Rule 13, wherein a Tribal is involved as a party shall be administered by the Agent and the Assistant Agent. (Rule 13, Part II)
4. Or, any Panchayat as formed under provisions as under rule 4 shall take care of the same. (Rule 16, Part II)

5. Revenue jurisdiction in cases involving the rights of any tribal shall vest in the Agent, the Assistant Agent and the Panchayat if any authorised under these rules subject to the condition that the Agent shall be competent to exercise powers not higher than those of the Board of Revenue. (Rule 42, Part IV)

6. If the Agent is of the opinion that it is desirable to cancel or revise any title in land granted to a non-tribal in any notified tribal area during a period of one year preceding the coming into force of the said Regulation, he may recommend its cancellation to Government who may pass such orders thereon as they may deem fit. If Government order cancellation of such patta, the Agent may execute such order by evicting any person from such land and granting the right of occupancy to any other person in accordance with the orders of Government. (Rule 52, Part IV)
CONTENSIONS

In spite of existence of such Laws over decades, 48% of land in scheduled areas has gone in to the hands of non-tribals. Even where cases have been booked by Special Deputy Collectors (Tribal Welfare) under LTR, 1.62 lakhs of acres of land was decided in favour of non-tribals in SDC’s courts and there are apprehensions among tribals that the law was misinterpreted or ignored to favour the non-tribals. Further, out of 1.25 lakh acres of land decided in favour of tribals, only 1.06 acres was physically restored to tribals leaving about 25,000 acres not restored to tribals as per SDC court orders. How much of the land reported to have been restored to tribals is under actual enjoyment of tribals is another question. Non tribals are also cultivating sizeable extents of land in Scheduled Areas by taking them on lease from tribals even though such transfer is also prohibited under Law. This kind of situation is continuing because of ignorance of law on the part of tribals, passive response from officials designated to implement the Law and non-availability of legal support from outside to tribals.
ISSUES IN RELATION TO TRIBAL LANDS AND THE CAUSES OF TRIBAL LAND ALIENATION

Generally four methods are being adopted by non-tribals in acquiring lands from tribals Viz. Sale, Mortgage, Lease and encroachment. The total extent of land alienated to non-tribals is 1244.98 acres (92.0%) and 42.57 acres (8.06%) to tribals. The tribals sold 506.54 acres of land to non-tribals and 13.00 acres to tribals. Under the category mortgaged lands to extent of 140.85 acres has been mortgaged to non-tribals under extent of 20.85 acres to tribals. Due to ignorance and helplessness of tribals non-tribals have encroached major part of tribal land (547.52 acres) in the sample which constitutes 40.78% to the total land alienated. Only 54.68 acres was taken over by Government under land ceiling Act from tribals and distributed to landless tribals. Only limited extent of land (57.79 acres) has been given for lease of this 50.07 acres of land was taken by non-tribals and 7.92 acres by tribals\textsuperscript{121}.

This major part of land was transferred to non-tribals in the form of sale and encroachment which is about 78.5% of their total land transferred.

An assessment of the cases disposed of by the Land Transfer Regulation Authorities in the agency areas shows that more than 50% of the case have gone in favour of the non-tribals as shown in details by way of a table below:

\textsuperscript{121} http://www.aptribes.gov.in/html/tcr-studies-anti-sta.htm
TABLE 4:

Detection and disposal of cases under Land Transfer Regulation Act of 1959, till 30-09-2005

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>District</th>
<th>Total Cases booked</th>
<th>Total Disposed</th>
<th>Decided in favour of STs</th>
<th>Decided in favour of Non-STs</th>
<th>Restored to Tribals</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Srika Sainam</td>
<td>1303</td>
<td>7427</td>
<td>1249</td>
<td>7233</td>
<td>891</td>
</tr>
<tr>
<td>2</td>
<td>Vizianagaram</td>
<td>5307</td>
<td>21616</td>
<td>5240</td>
<td>21290</td>
<td>4127</td>
</tr>
<tr>
<td>3</td>
<td>Visakhapatnam</td>
<td>8260</td>
<td>48494</td>
<td>7993</td>
<td>47487</td>
<td>3548</td>
</tr>
<tr>
<td>4</td>
<td>East Godavari</td>
<td>11079</td>
<td>56401</td>
<td>10953</td>
<td>56184</td>
<td>2429</td>
</tr>
<tr>
<td>5</td>
<td>West Godavari</td>
<td>31364</td>
<td>119986</td>
<td>30590</td>
<td>116576</td>
<td>13647</td>
</tr>
<tr>
<td>6</td>
<td>Khammam</td>
<td>6674</td>
<td>14533</td>
<td>6695</td>
<td>14349</td>
<td>4411</td>
</tr>
<tr>
<td>7</td>
<td>Warangal</td>
<td>7528</td>
<td>52056</td>
<td>7015</td>
<td>50984</td>
<td>3718</td>
</tr>
<tr>
<td>8</td>
<td>Adilabad</td>
<td>29</td>
<td>89</td>
<td>16</td>
<td>51</td>
<td>16</td>
</tr>
<tr>
<td>9</td>
<td>Mahaboob Nagar</td>
<td>72001</td>
<td>321683</td>
<td>70183</td>
<td>315132</td>
<td>33078</td>
</tr>
</tbody>
</table>

The utility of LTR as a legally powerful protective measure for land rights of tribals has been reduced to naught. The fact that out of 70,183 cases (3,15,132 acres) booked under LTR, 33,078 (1,33,636 acres) have gone in favour of tribals and 33,319 (1,62,989 acres) have gone in favour of non-tribals shows as to how despite specific provisions how non-tribals are increasingly gaining control over tribal lands.

The reasons for such erroneous results of the legislation are discussed below:

---

LACK OF ACCESS TO THE RECORD OF RIGHTS

Tribals have no access to the Record of Rights, and in cases when they are given the Pattas for the land, the land is not in their hands. This is causing increased exploitation of the tribals in hands of the non tribals. The innocent and oblivious tribals are also subject to exploitation in hands of the local officials posted in those areas, which do not dispose off their duties as required and do not provide the tribals with the necessary documents or information.

The unsatisfactory state of land records contributed a lot to the problem of land alienation. The tribals were never legally recognized as owners of the lands which they cultivated. This worsened the problem of land alienation.

The revenue authorities (SDCs) are not restoring lands back to tribals even after High Court issued orders. The implementation of the LTR Act seems to be restricted to small non-tribal land holdings, while the big landlords with huge tracts of tribal land remain unaffected.

The extent of land alienation and restoration in 1975 (district-wise) is shown in the table below:

---

124 http://www.dhdli.free.fr/recherches/environnement/articles/rout.htm
125 http://www.arsap.org/land.html
TABLE 5:

<table>
<thead>
<tr>
<th>District</th>
<th>No of Cases Detected</th>
<th>Area in Acres</th>
<th>No of Cases Ordered to be Restored</th>
<th>Area in Acres</th>
<th>Actual Extent of Land Restored to Tribals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Srikakulam</td>
<td>1369</td>
<td>7872</td>
<td>860</td>
<td>1870</td>
<td>1610</td>
</tr>
<tr>
<td>Visakhapatnam</td>
<td>3605</td>
<td>9808</td>
<td>2784</td>
<td>5508</td>
<td>5348</td>
</tr>
<tr>
<td>East Godavari</td>
<td>1019</td>
<td>3523</td>
<td>442</td>
<td>1119</td>
<td>1119</td>
</tr>
<tr>
<td>West Godavari</td>
<td>894</td>
<td>NA</td>
<td>190</td>
<td>1004</td>
<td>858</td>
</tr>
<tr>
<td>Adilabad</td>
<td>1159</td>
<td>9731</td>
<td>985</td>
<td>8282</td>
<td>7869</td>
</tr>
<tr>
<td>Mahabubnagar</td>
<td>120</td>
<td>902</td>
<td>18</td>
<td>127</td>
<td>127</td>
</tr>
<tr>
<td>Warangal</td>
<td>5094</td>
<td>3591</td>
<td>1462</td>
<td>2677</td>
<td>1368</td>
</tr>
<tr>
<td>Khammam</td>
<td>5944</td>
<td>18837</td>
<td>2474</td>
<td>6680</td>
<td>2465</td>
</tr>
<tr>
<td>Total</td>
<td>19204</td>
<td>54264</td>
<td>19203</td>
<td>25767</td>
<td>20764</td>
</tr>
</tbody>
</table>

The extent of land alienation and restoration in 1997 (district-wise) is illustrated below:\[127\]:

TABLE 6:

<table>
<thead>
<tr>
<th>District</th>
<th>No of Cases Detected</th>
<th>Extent in Acres</th>
<th>No of Cases Disposed of</th>
<th>Extent in Acres</th>
<th>Cases Decided in Tribals' Favour</th>
<th>Extent in Acres</th>
<th>Cases in Which Land Restored to Tribals</th>
<th>Extent in Acres</th>
<th>Cases Pending Disposal</th>
<th>Extent in Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Srikakulam</td>
<td>384</td>
<td>987</td>
<td>376</td>
<td>936</td>
<td>251</td>
<td>532</td>
<td>215</td>
<td>178</td>
<td>0</td>
<td>51</td>
</tr>
<tr>
<td>Vizianagaram</td>
<td>1195</td>
<td>7176</td>
<td>1142</td>
<td>6973</td>
<td>836</td>
<td>5469</td>
<td>836</td>
<td>53</td>
<td>204</td>
<td></td>
</tr>
<tr>
<td>Visakhapatnam</td>
<td>6582</td>
<td>22400</td>
<td>5518</td>
<td>14071</td>
<td>4661</td>
<td>13310</td>
<td>4475</td>
<td>1064</td>
<td>8419</td>
<td></td>
</tr>
<tr>
<td>East Godavari</td>
<td>6448</td>
<td>39959</td>
<td>6175</td>
<td>38831</td>
<td>2507</td>
<td>13165</td>
<td>2495</td>
<td>173</td>
<td>1128</td>
<td></td>
</tr>
<tr>
<td>West Godavari</td>
<td>7077</td>
<td>37216</td>
<td>6002</td>
<td>33194</td>
<td>1389</td>
<td>6828</td>
<td>414</td>
<td>414</td>
<td>1073</td>
<td>4021</td>
</tr>
<tr>
<td>Khammam</td>
<td>26199</td>
<td>98282</td>
<td>23190</td>
<td>88154</td>
<td>10292</td>
<td>32034</td>
<td>10223</td>
<td>1023</td>
<td>3009</td>
<td>10129</td>
</tr>
<tr>
<td>Warangal</td>
<td>12403</td>
<td>28133</td>
<td>5552</td>
<td>13074</td>
<td>3328</td>
<td>6813</td>
<td>2484</td>
<td>2484</td>
<td>6851</td>
<td>15058</td>
</tr>
<tr>
<td>Adilabad</td>
<td>5763</td>
<td>43299</td>
<td>5174</td>
<td>40600</td>
<td>3068</td>
<td>23717</td>
<td>2857</td>
<td>2857</td>
<td>589</td>
<td>2695</td>
</tr>
<tr>
<td>Mahabubnagar</td>
<td>287</td>
<td>1878</td>
<td>273</td>
<td>1106</td>
<td>178</td>
<td>1185</td>
<td>168</td>
<td>168</td>
<td>14</td>
<td>693</td>
</tr>
<tr>
<td>Total</td>
<td>66338</td>
<td>279419</td>
<td>53402</td>
<td>237020</td>
<td>26551</td>
<td>106315</td>
<td>24203</td>
<td>97688</td>
<td>12836</td>
<td>42400</td>
</tr>
</tbody>
</table>

There are many villages with almost 50-100% tribal population, but these areas have not been declared as the Scheduled Areas, e.g., in case of Srikakulam, there is a predominant tribal population in 1250 villages, but only 108 villages are included in the Scheduled Area\(^1\).

As Shri Jadubans Sahay from Bihar, General representation said in the Constituent Assembly Debates\(^2\), “Tribals living outside the proposed Scheduled land areas are more backward, less organised and there are very few people to take care of them” – in the reply of acceptance to Jaipal Singh’s suggestion that tribals—both, living in Scheduled Areas as well as those living in other provinces have to be taken into consideration, for provision of benefits for them; Tribals must be thus be represented in all regards. The problem of securing to all tribals rights in relation to land must be unconditional, and shall take into account all the tribals.

### INCOMPETENCE AND INEXPERIENCE OF THE REVENUE OFFICERS

The revenue officer authorities are generally not well equipped with the provisions of law relevant in such areas, and are generally posted in such areas as a “Punishment Duty.” Lack of knowledge and a feeling of castigation, makes these officers

---

\(^1\) http://www.samataindia.org/documents/triballandproblems.PDF

\(^2\) Constitutional Assembly Debates (CAD), Vol. IX, 5\(^{th}\) of September, 1949- Part II:

See http://parliamentofindia.nic.in/ls/debates/vol9p26m.htm.
incompetent to handle matters of tribal land alienation, and other land-related problems of the tribals, and thus they are of no help to the tribals. In fact some sample studies in Andhra Pradesh, Orissa and some other States have shown that transfers have taken place on large scale without the permission of the collector or other competent authorities as required by law\textsuperscript{130}.

The extent of land under the occupation of non-tribals in the Scheduled Areas, in 1966 is shown below with the help of a table. The same shows the failure of the system of governance and administration in these tribal areas.

**TABLE 7\textsuperscript{131}:**

<table>
<thead>
<tr>
<th>Name of the District</th>
<th>Total Land in Scheduled Areas (Acres)</th>
<th>Land under Occupation of Non-Tribals (Acres)</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Srikakulam</td>
<td>14,949</td>
<td>359</td>
<td>2.20</td>
</tr>
<tr>
<td>2 Vizianagaram</td>
<td>42,333</td>
<td>91</td>
<td>0.21</td>
</tr>
<tr>
<td>3 Visakhapatnam</td>
<td>288,107</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>4 East Godavari</td>
<td>173,417</td>
<td>33,740</td>
<td>19.46</td>
</tr>
<tr>
<td>5 West Godavari</td>
<td>75,702</td>
<td>27,979</td>
<td>36.96</td>
</tr>
<tr>
<td>6 Khammam</td>
<td>771,605</td>
<td>407,368</td>
<td>52.79</td>
</tr>
<tr>
<td>7 Warangal</td>
<td>142,533</td>
<td>102,105</td>
<td>71.64</td>
</tr>
<tr>
<td>8 Adilabad</td>
<td>297,171</td>
<td>180,349</td>
<td>60.69</td>
</tr>
<tr>
<td>9 Mahabubnagar</td>
<td>42,392</td>
<td>1,444</td>
<td>3.41</td>
</tr>
<tr>
<td>Total</td>
<td>18,482,120</td>
<td>7,534,355</td>
<td>48.29</td>
</tr>
</tbody>
</table>

Also the Agency Revenue Divisional Officers serve as judicial magistrates, and conduct agency courts in the Scheduled Areas.

\textsuperscript{130} http://www.dhdi.free.fr/recherches/environnement/articles/rout.htm

\textsuperscript{131} Dr. K Mohan Rao, ‘Land laws Obtaining In Scheduled Areas Of Andhra Pradesh With Special Reference To Implementation Of A.P. Scheduled Areas Land Transfer Regulation, 1959’
They are not knowledgeable of judicial matters and LTR, as they are posted from the Revenue Department. Because of their inexperience, numerous land alienation cases are pending in such courts. Some such SDCs are given charge of more than one district, or have to deal with both plain areas and scheduled areas, causing all sorts of logistical and experiential problems. They should be given training to their LTR and judicial roles effectively\textsuperscript{132}.

This malfunctioning of the department can be highlighted by the table below which shows the incidences of tribal land alienation and the extent of restoration under APSALTR.

**TABLE 8\textsuperscript{133}:**

<table>
<thead>
<tr>
<th>Description</th>
<th>1975</th>
<th>1995</th>
<th>1997</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Number of non-tribal occupations/cases filed in courts</td>
<td>19204</td>
<td>63004</td>
<td>66338</td>
<td>69119</td>
</tr>
<tr>
<td>2 Area under above</td>
<td>54264</td>
<td>260523</td>
<td>279419</td>
<td>340491</td>
</tr>
<tr>
<td>3 Number of cases in which enquiries were initiated</td>
<td>56344</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Area under above</td>
<td>246003</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 Number of cases disposed of</td>
<td>19203</td>
<td>47803</td>
<td>59849</td>
<td></td>
</tr>
<tr>
<td>6 Area under above</td>
<td>25764</td>
<td>215435</td>
<td>256432</td>
<td></td>
</tr>
<tr>
<td>7 Cases rejected</td>
<td>23531</td>
<td>31737</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8 Area under cases rejected</td>
<td>129845</td>
<td>150227</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9 No of cases decided in favour of tribals</td>
<td></td>
<td>27461</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 Area under above</td>
<td></td>
<td>106225</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11 Number of cases in which land was restored to tribals</td>
<td>22614</td>
<td>26551</td>
<td>23383</td>
<td></td>
</tr>
<tr>
<td>12 Extent of land restored to tribals</td>
<td>20764</td>
<td>91937</td>
<td>106315</td>
<td>94312</td>
</tr>
<tr>
<td>13 Number of cases pending disposal</td>
<td>11842</td>
<td>12836</td>
<td>7663</td>
<td></td>
</tr>
<tr>
<td>14 Area under above</td>
<td>33430</td>
<td>42400</td>
<td>31324</td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{132}http://www.samataindia.org/documents/triballandproblems.PDF

\textsuperscript{133}Compiled from Dr. K Mohan Rao, ‘Land laws Obtaining In Scheduled Areas Of Andhra Pradesh With Special Reference To Implementation Of A.P. Scheduled Areas Land Transfer Regulation, 1959’, Gaps indicate non availability of data

haripriya91@gmail.com
MONEY LENDING

Money lending is among the earliest routes through which tribal land has been alienated in Andhra Pradesh. Many of the tribal land alienation are caused due to indebtedness of the tribals who would take small amounts of loans from the money lenders who would take the tribal property as security, and most of the times such mortgages were not in black and white, i.e., they were mere verbal promises taken from the gullible and credulous tribals. The rates of interests charged on such sums of money were exorbitant and ridiculous ranging between 25-50%, and sometimes the interest charged on the sums advanced were a whopping 100%134. Owing to the acute poverty of the tribals and the unscrupulous trade habits of the money lender, the tribals could not pay back such loans, and the money lenders in turn would take possession of the mortgaged property. Thus non-tribal settlers advancing petty cash to tribals taking tribal land as collateral would take possession of the land till the borrower repays the money completely. The *soucars* or the money lender would cultivate the lands till the repayment of the loans, and through Benami transfers would take custody of such lands135.

The report of the study team of the Union Home Ministry (May 1975) pointed out that large scale transfers of ownership of the Adivasis' lands are being allowed to go out of hands through illegal and Benami transactions, collusive civil proceedings etc.,

---

135 See: http://www.jstor.org/pss/4395073
in which land remains to be in the names of the original owners who are reduced to the level of share croppers\textsuperscript{136}.

This process of land occupation occurred on a larger scale in tribal tracts of coastal Andhra Pradesh. A study conducted in Saluru agency area of Srikakulam district found that the first outside trader entered this area about 45 years ago and began lending money at high interest rates\textsuperscript{137}. This process gained momentum as more and more outsiders followed suit.

Among the sample families surveyed, an amount of Rs.6,68,046 was realized through the process of land alienation. Of this, 73.94\% is through sale, followed by mortgage (12.95\%) and encroachment (10.08\%) with regard to the purpose of alienation, maximum amount 143.82\% realized through alienation of land was utilized for performance of marriages, death ceremonies and other rituals and included in others column 25.56\% of amount was utilized for consumption and 15.02\% was utilized for debt redemption\textsuperscript{138}.

This, Tribals are alienating their land mainly to tide over the crises situation like marriage, death etc., which call for heavy expenditure. For this purpose they either sell or mortgage their lands to the money lenders or are cheated by the money lenders who register the sale documents falsely.

\begin{thebibliography}{9}
\bibitem{136} http://www.dhdi.free.fr/recherches/environnement/articles/rout.htm
\bibitem{137} http://www.arsap.org/
\bibitem{138} http://www.aptribes.gov.in/html/tcr-studies-anti-sta.htm
\end{thebibliography}
 ➢ **FAILURE OF SETTLEMENT REGULATIONS**\(^{139}\):

    The settlement regulations formulated under the 5th Schedule of the Constitution of India had given scope to the non-tribals to obtain Pattas in the scheduled areas in violation of the Land Transfer Regulation. For example, during the survey and settlement period i.e. 1970 – 76 in the agency areas, most of the land belonged to tribals was surveyed in the name of non-tribals who managed to get settlement Pattas over the land of tribals. Authorities under Ryotwari Settlement Regulations did not conduct proper enquiry in pursuance of the Land Transfer Regulations, at the time of granting settlement Pattas. Despite the instructions issued by the Social Welfare Department in Memo.No.21549/F/90-3, dated 25.7.1991 to prefer appeals through the tribals against the erroneous Pattas granted in favour of the non-tribals, no action worth the name has been taken. Also the survey of these areas has not taken place form a very long time.

 ➢ **LACK OF INVESTIGATION**\(^{140}\)

    Lack of investigation into the occupation of non tribals without verification of the bases of such occupation and assuming that these are all on valid Pattas before 1970 or 1959 or 1950, normally subsumed under an all-pervasive phrase “Old Pattas”.

 ➢ **MARRIAGES**


In many tribal areas, the non-tribal men entered into marital relationships with the tribal women and purchased land in the names of tribal wives. Land alienation through polygyny has been found in Visakhapatnam (Koyyuru Panchayat Area), East Godavari and West Godavari districts. In some cases these tribal women were kept as second wives or as concubines, and lands were bought in their name, to avoid any legal barrier, as the LTR did not prohibit land transfer from one tribe to another tribe.

➢ “NESTAM”

In many tribal areas, especially those of Srikakulam, Vishakapatnam, East Godavari, and the tribals of north coastal Andhra Pradesh have inherited a sacred social institution called ‘Nestam’, i.e, the bond of friendship. It is known as ‘Mithaprasadam’ or ‘Sangato’ or ‘Nelava’ in Srikakulam and Vizianagaram and ‘Tonagotta’ in Jatapus and Khonds. The idea of this bond is to promote the well-being of the members. The system involved the exchange of gifts among people of different groups or castes. The non-tribals entered into these bonds of friendship and purchased land in the names of their tribal friends. As members of these associations, tribals are supposed to protect the interests of their friends.

➢ THOUGH TRIBAL SERVANTS:

In tribal tracts of East and West Godavari districts, many non-tribal farmers purchased land in the names of their tribal servants or attached labourers. Although the lands were purchased in the names of their tribal servants or attached labourers. Although the lands were

---

141 Dr. K Mohan Rao, ‘Land laws Obtaining In Scheduled Areas Of Andhra Pradesh With Special Reference To Implementation Of A.P. Scheduled Areas Land Transfer Regulation, 1959’
registered on the name of these labourers, the de facto rights on the property were vested in the masters, and sooner or later they would assume the title of the land by virtue of Benami transactions.

➢ FABRICATION OF TIBAL CERTIFICATES
Another means employed by non-tribal communities to occupy tribal land was to procure false scheduled tribe certificates. Such cases included Plain Kapus being regarded as Konda Kapus, Plain Kammaras as Konda Kammaras, and Plain Reedys as Konda Reddys. Armed with this status, by obtaining false Scheduled Tribe Certificates, the non-tribal migrants purchased tribal lands, which are generally large chunks of fertile lands.

➢ INDUSTRIALIZATION AND PRIVATIZATION
In the recent developing times in India, the territories of the tribal people have been subject to incursions due to privatization and industrialization of their areas. Their lands are taken away in the name of economic advancement of the country. But in return they receive landlessness, impoverishment and long term degradation of the environment on which they totally depend. Due to poor economic conditions and illiteracy the tribes have not been able to understand the vicious circle thrown by their non-tribal exploiters.

142 http://www.dhdifree.fr/recherches/environnement/articles/rout.htm
143 Shyam Prasad Rout, ‘Land Alienation And Tribal People's Rights : A Case Study Of Mayurbhanj District In Orissa’, a research proposal for Ph.D., 1999
A large number of tribals being agriculturists, their life and livelihood depended wholly on two major means of production: land and forests, and the increasing privatization of tribal land, in a tribal economy wherein land plays a critical and predominant role, has been a major cause of concern for the tribals. Especially because land is the only source of their livelihood, as their other assets are extremely meagre. In a number of areas new industrial and mining complexes, many major irrigation projects were located in the tribal areas resulting in the submergence of extensive lands belonging to the tribals.\textsuperscript{144} Tribal lands in many areas passed into the hands of non-tribals despite the legal regulations that had been enforced in such areas. Sample studies in Andhra Pradesh, Orissa and some other States have shown that transfers have taken place on large scale without the permission of the collector or other competent authorities as required by law. This failure on the part of the implementation of the concerned laws, gave way to circumvent the legal provisions by means of Benami transactions, and other clandestine transactions with the native tribals.\textsuperscript{145} Consumerism is driving the tribals beyond sustainability.\textsuperscript{146} The tribal land invasion on the basis of economic development is one such example.

\textsuperscript{144} A report formulated by the National Commission on Backward-Areas Development (1980)

\textsuperscript{145} A report by the Committee on Plan Projects, Planning Commission, titled ‘Tribal Development Programmes’, 1969

\textsuperscript{146} http://in.christiantoday.com/articles/industrialization-dangers-tribal-communities-warns-church-group/4673.htm
POWER PROJECTS

There is pressure from private industries to set up power projects, especially mini-hydel projects in the Scheduled Areas by harnessing the hill-streams. The state government is considering these proposals and one such project which was in the pipeline was the Jolaput Mini-Power project proposed in Peddabayalu Mandal of Visakhapatnam district. By sanctioning such projects the government is allowing for intrusion of private industries which can easily alienate tribal lands once provided an entry point. Such projects can be easily given to the local tribal communities themselves which can manage these projects with basic skills and training imparted to them. One such project successfully implemented by Samata and a few other NGOs is in Putsil village of Koraput district in Orissa. Such programmes provide the required development amenities to the tribal villages as there is no electricity in most of the villages, and can also make the tribals self sufficient while allowing them to retain control over their lands and resources\textsuperscript{147}.

Building of dams for the purpose of electricity project is also a major issue and cause of concern in relation to tribal land alienation. Dam building has required the submergence or destruction of Adivasis villages and the forced displacement of many. It has been estimated that 33 million people were displaced by big dams alone in the last 50 years\textsuperscript{148}. The majority of the displaced are Adivasis. For instance, in the building of the

\textsuperscript{147} http://www.arsap.org/industry.html

\textsuperscript{148} http://www.narmada.org/gcg/gcg.html
Sardar Sarovar dam, 57.6% of the displaced were adivasi. The results of such Adivasi’s land alienation are usually highly traumatic. Those citizens that are displaced by development projects are termed project-affected persons or PAPs. Most PAPs are traditionally dependent for their livelihoods on common property resources, they face an enormous problem. This is basically because they have no formal ownership rights over the common pool lands, and those are the spaces from which they derive their livelihoods. Therefore, they neither get the land, nor do they receive any compensation for loss of habitat, and livelihood. After all, only land owners are entitled to be given any financial form of reimbursement or refund. In cases where the some of the tribals do own the land, and have a valid ownership right over such lands, they are almost never compensated adequately.

RIGHT TO PROPERTY BEING A MERE LEGAL RIGHT

The tribes in India are regularly deprived of their property rights predicated on the low (and ambiguous) thresholds of consultation and recommendation. While some states have the non transferability of schedules areas’ lands to non-tribals regulation in place, there is no legislation restricting the acquisition of such areas by the states in “public interest”. The root of the problem is that the tribes cannot exercise a fundamental right to property under Indian law. Fundamental

---

151 The term “public interest”, means the same as “public purpose” as defined in Section 3 (f) of the Land Acquisition Act
rights are given much greater deference and have a special status in the Constitution. Instead the tribals can only invoke a legal right as conferred upon them under Article 300\textsuperscript{152} of the Indian Constitution. Since the tribals’ Right to Property is merely a legal right, and not a fundamental right, the State can acquire their property with just compensation if it can establish that such appropriations are by authority of law.

\begin{itemize}
  \item \textbf{ADOPTION OF NON-TRIBAL CHILDREN}
  Fictitious adoption of the non-tribals by the tribal families is also another method to snatch the lands of the tribals\textsuperscript{153}. The non-tribals would persuade the tribals to adopt their children and to buy lands and register them on these children’s names.

  \item \textbf{ENDOWMENT DEPARTMENT’S INTERVENTION}
  Some lands in the Scheduled Areas are under the Endowments department, like in Bhadrachalam. These lands are being taken over by non-tribals; while the tribals have no access to their ancestral lands. In fact, The Endowments department has plans to auction such lands to private bidders. These developments are in contravention of the Fifth Schedule and the LTR Act and therefore such moves should be withdrawn forthwith\textsuperscript{154}.
\end{itemize}

\begin{flushleft}
\textsuperscript{152} Right to Property- ‘Persons not to be deprived of property save by authority of law.’
\textsuperscript{153} http://www.dhdi.free.fr/recherches/environnement/articles/rout.htm
\textsuperscript{154} http://www.arsap.org/land.html
\end{flushleft}
RESPITE UNDER THE ANDHRA PRADESH (SCHEDULED AREAS) LAND TRANSFER REGULATION ACT, 1959

LAW IN BRIEF:

The government of Andhra Pradesh had made this regulation in order “to regulate the transfers of land in the Scheduled Areas of the East Godavari, West Godavari, Visakhapatnam Srikakulam Adilabad, Warangal, Khammam and Mahaboobnagar districts of Andhra Pradesh.”155 It basically intends to protect the tribals from the exploitation in hands of the non-tribals.

According to the provisions in the said Act, the transfer of any immovable property situated in the Agency Tracts i.e., the Scheduled Areas of the State, by a person, whether a Scheduled Tribe or not, shall be assumed to be void-ab-initio, unless such transfer is made in favour of a person, who is a member of Scheduled Tribes or is a society registered under the Andhra Pradesh Cooperative Societies Act 1964 and which is composed solely of members of Scheduled Tribes.

DEFINITIONS UNDER THIS LAW:

“Agency Tracts” means the areas in East Godavari, West Godavari, Visakhapatnam, Srikakulam, Adilabad,

155 Short Title: the Andhra Pradesh Scheduled Areas Land Transfer Regulation Act, 1959
Warangal, Khammam and Mahboobnagar Districts declared as Scheduled Areas.

"Agency tracts" means the Areas in the districts of East Godavari, West Godavari, Visakhapatnam, Srikakulam, Adilabad, Warangal, Khammam and Mahaboobnagar declared from time to time as Scheduled Areas by the President under sub paragraph (1) of Paragraph 6 of the Fifth Schedule to the Constitution;” ¹⁵⁶

"Agent" means the person designated by the State Government as an “Agent to the Government” in the above Districts.

"Agent" means the person designated by the State Government as an "Agent to the Government" in the districts of East Godavari, West Godavari, Visakhapatnam, Srikakulam, Adilabad, Warangal, Khammam or Mahaboobnagar as the case may be;” ¹⁵⁷

"Agency Divisional Officer" means the person designated by the State Government as “Agency Divisional Officer”.

"Agency Divisional Officer" means the person designated by the State Government as "Agency Divisional Officer" for the purposes of this Regulation;” ¹⁵⁸

“Scheduled Tribe” means any tribe or tribal community or part, specified as such by a Public Notification by the

¹⁵⁶ Section 2(a)
¹⁵⁷ Section 2(b)
¹⁵⁸ Section 2(c)
President under clause (1) of Article 342 of the Constitution.

“‘Scheduled Tribe’ means any tribe or tribal community or part of or group within any tribe or tribal community and specified as such in relation to the State of Andhra Pradesh by a Public notification by the President under Clause (1) of Article 342 of the Constitution.” 159

“Immovable Property” includes standing crops, timber and trees, but does not include growing grass. 160

“Immovable Property” includes land and house property – lease of Building in a Scheduled Area to a non-tribal is void. 161

“Transfer’ means mortgage with or without possession lease, sale, gift, exchange or any other dealing with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such mortgage, lease, sale, gift, exchange or other dealing.” 162

---

159 Section 2(b) – Substituted as per Regulation I of 1978.
160 Section 2(d) – Substituted as per Regulation I of 1978).
161 Refer 1989(3) ALT 319 (D.B)]
162 Section 2(g)
“Transfer” includes acts of forcible dispossessio

Expression “Transfer” includes a sale in execution of a decree and transfer by a S.T to another S.T Benami for the benefit of a non-S.T.  

**LAW IN DETAIL:**

1. Any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Scheduled Tribe shall be absolutely null and void, unless such transfer is made in favour of a person, who is a member of a Scheduled Tribe or a Cooperative Society composed solely of members of Scheduled Tribes.

2. Until the opposing is corroborated, any immovable property in the said Scheduled Areas, in the possession of a person who is not a member of Scheduled Tribe shall be presumed to have been acquired by such person or his predecessor through a transfer made to him by a member of a

---

163 Refer 1989(2) ALT 516.
164 Section 3(4) inserted by Regulation I of 1970
165 Section 3(1)(a) – substituted by Regulation I of 1970: “Notwithstanding anything in any enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person. Whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co operative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes.”
Scheduled Tribes. This clause of the legislation is known as the ‘Presumption Clause’.

3. When no member of a Scheduled Tribe is willing to purchase the land, the person intending to sell his land may apply to the Agent or any other prescribed officer for acquisition of such land by the State Government.

4. Then, the Agent or the prescribed officer i.e., Deputy Collector (Tribal Welfare) etc., may by order, take over such land on payment of compensation in accordance with Section 10 of the A.P. Ceiling on Agricultural Holdings Act, 1961.

166 Section 3(1)(b) – Substituted by Regulation I of 1970: “Until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a person who is not a member of Scheduled Tribe, shall be presumed to have been acquired by person or his predecessor in possession through a transfer made to him by a member of a Scheduled Tribe”

167 Section 3(1)(c) – Substituted by Regulation I of 1970: “Where a person intending to sell his land is not able to effect such sale, by reason of the fact that no member of a Scheduled Tribe is willing to purchase the land or is willing to purchase the land on the terms offered by such person, then such person may apply to the Agent, the Agency Divisional Officer or any other prescribed officer for the acquisition of such land by the State Government, and the Agent, Agency Divisional Officer or any other prescribed officer, as the case may be, may by order, take over such land on payment of compensation in accordance with the principles specified in Section 10 of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Act X of 1961), and such land shall thereupon vest in the State Government free from all encumbrances and shall be disposed of in favour of members of the Scheduled Tribes or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) composed solely of members of the Scheduled Tribes or in such other manner and subject to such conditions as may be prescribed”
5. Application for taking over land to be in Form “G”\textsuperscript{168}

6. Notice to be issued in Form “H” inviting objections.\textsuperscript{169}

7. Thereafter, Agent etc., to make enquiry after issuing notice in Form “I” giving at least fifteen days time.\textsuperscript{170}

8. Certificate of taking over land to be in Form “J”.\textsuperscript{171}

9. Such land shall vest in the State Government free from all encumbrances and shall be disposed off to members of S.Ts or a Cooperative Society composed solely of S.Ts @ five acres of wet or ten acres of dry.\textsuperscript{172}

\textsuperscript{168} Rule 15, the Andhra Pradesh Scheduled Areas Land Transfer Rules, 1969: “Every application under clause (c) of sub section (1) of Section 3 for acquisition of land by the State Government, shall be made in writing Form G to the Agent, the Agency Divisional Officer or the Officer referred to in Rule 14, as the case may be”

\textsuperscript{169} Rule 16 (1), the Andhra Pradesh Scheduled Areas Land Transfer Rules, 1969: “On receipt of an application under Rule 15, the Agent the Agency Divisional Officer or the Officer referred to in Rule 14 as the case may be, shall cause a notice to be published in Form H requiring any person objecting to the proposed acquisition, to file his objections thereto before him within the period specified in the notice, not being less than 15 days from the date of publication thereof;”

\textsuperscript{170} Rule 16(4), the Andhra Pradesh Scheduled Areas Land Transfer Rules, 1969: “The notice referred to in sub rule (3) shall be in Form 1 and shall be served on the person concerned in the manner specified in Rule 10.”

\textsuperscript{171} Rule 16(7), the Andhra Pradesh Scheduled Areas Land Transfer Rules, 1969: “On the determination of the amount of compensation under sub rule (6), the Agent, the Agency Divisional Officer or the Officer referred to in Rule 14, as the case may be shall take over the land on payment of such compensation and issue a certificate to the owner in Form J”

\textsuperscript{172} Section 3(1) (c) – Substituted by Regulation I of 1970) Rule 17: “Where a person intending to sell his land is not able to effect such sale, by reason of the fact that no member of a Scheduled Tribe is willing to purchase the land or is willing to purchase the land on the terms offered by such person, then such person may apply to the Agent, the Agency Divisional Officer or any other prescribed officer for the acquisition of such land by the State
10. Where transfer made in contravention of above provision, Agent or Prescribed Officer i.e., Deputy Collector (Tribal Welfare) etc., on application by interested persons or on information by a public servant or suo-motu decree ejectment of any person in possession of land after due notice and restore land to transferor or his heirs.\textsuperscript{173}

11. Notice to be in Form “E” giving at least fifteen days time.\textsuperscript{174}

12. Ejection decree to be in Form “F”.\textsuperscript{175}

Government, and the Agent, Agency Divisional Officer or any other prescribed officer, as the case may be, may by order, take over such land on payment of compensation in accordance with the principles specified in Section 10 of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Act X of 1961), and such land shall thereupon vest in the State Government free from all encumbrances and shall be disposed of in favour of members of the Scheduled Tribes or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) composed solely of members of the Scheduled Tribes or in such other manner and subject to such conditions as may be prescribed”

\textsuperscript{173} Section 3(2) (a) and Rule 3, the Andhra Pradesh Scheduled Areas Land Transfer Rules, 1969: “

\textsuperscript{174} Rule 7(1) and (2) , the Andhra Pradesh Scheduled Areas Land Transfer Rules, 1969: “(1) Where the Agent, the Agency Divisional Officer, or the Officer referred to in sub rule 3 receives an application from any one interested, or information in writing by a public servant or has otherwise reason to believe that a transfer of immovable property has been made in contravention of sub section 3, he shall give notice to any person in possession of the property claiming under the transfer, to show cause within the period specified in the notice, not being less than fifteen days from the date of its service why he should not be ejected, and property restored to the transfers or his heirs. (2) The notice referred to in sub rule (1) shall be in Form E and shall be served in the manner specified in Rule 10.”

\textsuperscript{175} Rule 7(4) , the Andhra Pradesh Scheduled Areas Land Transfer Rules, 1969: “Where the Agent or the Agency Divisional Officer or the Officer referred to in sub rule (2) of Rule 3 has decided that a person in possession should be ejected under sub section (2) of Section 3 he shall pass a decree and order in Form F and such decree and order shall be executed by the officer specified therein in the manner in which any decree of ejectment by a competent Civil Court is executed”
13. If transferor not willing to take back property, the Agent or Prescribed Officer may assign or sell the property to any other member of S.Ts or Cooperative Society, composed solely of S.Ts or otherwise dispose it off.\(^{176}\)

**PROCESS FOR SOLUTIONS UNDER THIS LAW\(^{177}\):**

**COMPLAINT FILED UNDER WHICH SECTION?**

If there occurs a transfer of any immovable property from the tribals or the non-tribals in favour of non-tribals, the complaint can be filled under Section 3 (1)(a) of the Act, that prohibits any such transactions.

Para 3 (1)(a) of Andhra Pradesh Scheduled Areas Land Transfer Regulation: “Notwithstanding anything in any enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person. Whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is

---

\(^{176}\) Section 3(2)(b): “If the transferer or his heirs are not willing to take back the property or where their whereabouts are not known, the Agent, the Agency Divisional Officer or prescribed officer, as case may be, may order the assignment or sale of the property to any other member of a Scheduled Tribe or a society registered or deemed to be registered under any law relating to Co operative Societies for the time being in force in the State composed solely of members of the Scheduled Tribes, or otherwise dispose of it, as if it was a property at the disposal of State Government.”

\(^{177}\) Format followed by “ejustice” website, see: http://www.ejustice.org.in/home.do
made in favour of person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co operative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes”

WHOM TO COMPLAIN OR WHERE TO COMPLAIN?

1. Application to the Agent or Agency Divisional Officer when the immovable property of a scheduled tribe in agency area is unlawfully encroached by a non tribal.
2. There is no prescribed format for such application and there is no time limit

HOW TO FILE THE CASE?

After receiving the application the Agent or Agency Divisional Officer issues notices to the illegal occupant of such agency lands and conducts an inquiry into the matter. He conducts a survey and makes the assessment of immovable properties in agency tracts.

If the Agent is not convinced and satisfied with the argument of the non-tribal who is in possession of the land which belongs to the tribal, he is empowered to evict the non tribal from that land.
ARE THERE CHANCES OF APPEAL, IF SO WHATS THE PROCEDURE?

Yes, there can be an appeal filed by the aggrieved party. The process of the same is as follows:

1. According to Section 3 (3) (a) of the Act, the appeal lies to –

   i) State Government, if decree passed by Agent.
   ii) Agent, if decree passed by Agency Divisional Officer.
   iii) Agency Divisional Officer or Agent if decree passed by any other Officer.

The above mentioned section reads as follows:

“Subject to such conditions as may be prescribed, an appeal against any decree or order under sub section (2), shall lie within such times as may be prescribed

   (i) if the decree or order was passed by the Agent, to the State Government;

   (ii) if the decree or order was passed by the Agency Divisional Officer, to the Agent; and

   (iii) if the decree or order was passed by any other officer, to the Agency Divisional Officer or Agent, as may be prescribed.
(b) The appellate authority may entertain an appeal on sufficient cause being shown after the expiry of the time limit prescribed therefor.”

2. Every appeal shall be preferred within two months. **178**

3. Registration of Documents:
   a) No document of transfer of immovable property to be registered without a declaration by transferee that he is a member of a S.T or a Cooperative Society consisting of S.Ts only. **179**

   b) “Suits against a member of a Scheduled Tribe to be instituted in the Agency Courts:– Notwithstanding anything contained in any enactment, rule or law inforce in the Agency tracts, every suit against a member of a Scheduled Tribe instituted after the commencement of this Regulation shall be

---

**178** Rule 8(2): “All rules made under this section shall be published in the Andhra Pradesh Gazette and on such publication shall have the same effect as if enacted in this Regulation.”

**179** Section 3-B inserted by Amendment Regulation I of 1978: “Restriction on registration of documents:-Notwithstanding anything contained in the Registration Act, 1908, no document relating to transfer of immovable property situated in the agency tracts shall be registered by any registering officer appointed under the said Act, unless the person presenting the document furnishes a declaration by the transferee in the prescribed form which shall be subject to verification in the prescribed manner that the transferee is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co operative Societies Act, 1964 which is composed solely of members of the Scheduled Tribes”
instituted only in the Court having jurisdiction over the Agency tracts.”\textsuperscript{180}
c) No immovable property owned by a S.T to be attached and sold in execution of a money decree except to the extent prescribed\textsuperscript{181} under rule 12 in accordance with Agency Rules.

4. Revision:

“The State Government may revise any decree of order passed by the Agent, the Agency Divisional Officer or any other prescribed officer under this Regulation;

Provided that this power shall be exercised only after due notice to the parties affected by the decree of order and after giving them a reasonable opportunity of being heard.”\textsuperscript{182}

\textbf{PENALTY:}

a) Any person, after commencement of the Amendment Regulation 1978, who acquires immovable property in contravention of the Regulation or continues in possession of such property after a decree is passed, punishable

\textsuperscript{180} Section 4, A.P.S.A.L.T.R, 1959
\textsuperscript{181} Section 5, A.P.S.A.L.T.R, 1959
\textsuperscript{182} Section 6, A.P.S.A.L.T.R, 1959
with rigorous imprisonment up to one year or a fine up to Rs.2000/- or with both.\textsuperscript{183}

b) All offences under the Regulation to be cognizable.\textsuperscript{184}

**SAVINGS:**

As prescribed in Section 10 of the Act, the exceptions to the law read as follows:

“(1) The provisions contained in this Regulation shall not affect

(a) any transfer made or sale effected in execution of a decree before the commencement of the Agency Tracts Interest and Land Transfer Act, 1917 (Madras Act 1 of 1917); or

(b) any transfer made or sale effected in execution of a decree after the commencement of the said Act and before the commencement of this Regulation, if such transfer or sale was valid under the provisions of the said Act.

\textsuperscript{183} Section 6-A inserted by Amendment Regulation 1978: “(1) Any person who, on or after the commencement of the Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1978. (a) acquires any immovable property in convention of the provisions of this Regulation; or (b) continues in possession of such property after a decree for ejectment is passed; shall on conviction be punished with rigorous imprisonment for a term which may extend to one year of with fine which may extend to two thousand rupees or with both.”

\textsuperscript{184} Section 6-A inserted by Amendment Regulation 1978: “Offences under Regulation to be cognizable:- Notwithstanding anything in the Code of Criminal Procedure, 1898, all offences under this Regulation shall be cognizable.”
(2) Nothing in this Regulation shall affect a landholder’s right to proceed against a ryot in accordance with the provisions of the Andhra Pradesh (Andhra Area) Estates Land Act, 1908 (Act 1 of 1908) or the first charge declared by Section 5 of the Act or the provisions of that Act regarding relinquishment of the holding by a ryot or the provisions of the Central Provincial Tenancy Act, 1898 (Central Act IX of 1898):-

Provided that no relinquishment of a holding by a ryot who is a member of a Scheduled Tribe shall be valid unless the previous sanction of the State Government, or subject to the rules made in this behalf the previous consent in writing of the Agent or the prescribed Officer, has been obtained thereto.”

And this provision seeks to explain the following things:

a) Any transfer effected in execution of a decree after commencement of the above Act and before commencement of this Regulation, if such transfer is valid under the said Act. [Refer Section 10(1)]

b) Regulation not to affect a landholders’ right to proceed against a Ryot in accordance with A.P. (Andhra Area) Estate Land Act, 1908.

c) No relinquishment of a holding by a Tribal Ryot to be valid unless with the previous sanction of State Government or previous consent of Agent or the Agency Divisional Officer. [Refer Section 10(2)]
PROCESS OF FILING A CASE, AND INITIATION OF PROCEEDINGS UNDER THE ANDHRA PRADESH (SCHEDULED AREAS) LAND TRANSFER REGULATION ACT, 1959:

1. Has the land owned by a tribal or a non-tribal or government, in a scheduled area been transferred in favour of a non-tribal or any society not solely composed by tribals?

2. Complaint to be filled under section 3(1) (A) of the Andhra Pradesh (Scheduled Areas) Land Transfer Regulation Act, 1959

3. An application to the agent or agency divisional officer has to be given when the immovable property of a scheduled tribe in agency area is unlawfully encroached by a non-tribal. (No prescribed format or time limits are there for initiation of action).

4. After receiving the application, the agent or agency divisional officer issues notices to the illegal occupant of such agency lands and conducts an inquiry into the matter.

5. The officer conducts a survey and makes the assessment of immovable properties in agency tracts.

6. Punishment: Any person, after commencement of the amendment regulation 1978, who acquires immovable property in contravention of the regulation or continues in possession of such property after a decree is passed, punishable with rigorous imprisonment up to one year or a fine up to Rs 2000/- or with both.
PROCESS OF APPEAL FOR THE AGGRIEVED PARTY UNDER THE ANDHRA PRADESH (SCHEDULED AREAS) LAND TRANSFER REGULATION ACT, 1959:

ACCORDING TO SECTION 3 (3) (A) OF THE ACT, THE APPEAL LIES TO:
1) STATE GOVERNMENT, IF DECREE PASSED BY AGENT.
2) AGENT, IF DECREE PASSED BY AGENCY DIVISIONAL OFFICER.
3) AGENCY DIVISIONAL OFFICER OR AGENT IF DECREE PASSED BY ANY OTHER OFFICER

EVERY APPEAL SHALL BE PREFERRED WITHIN TWO MONTHS.

“THE STATE GOVERNMENT MAY REVISE ANY DECREE OF ORDER PASSED BY THE AGENT, THE AGENCY DIVISIONAL OFFICER OR ANY OTHER PRESCRIBED OFFICER UNDER THIS REGULATION,

PROVIDED THAT THIS POWER SHALL BE EXERCISED ONLY AFTER DUE NOTICE TO THE PARTIES AFFECTED BY THE DECREE OF ORDER AND AFTER GIVING THEM A REASONABLE OPPORTUNITY OF BEING HEARD”
SUGGESTIVE MEASURES FOR BETTER IMPLEMENTATION OF LEGISLATIVE PROVISIONS IN RESPECT OF TRIBAL LANDS

The laws in relation to the Scheduled Tribals, in the Scheduled Areas, are of irrelevance in the lives of the tribals, who are not even aware of their rights under these laws, and are gullible to cheats in the form of money lenders, and for those who are aware of their privileges guaranteed under the law is just available in print, and has no practicality or application to these laws. The fate of the ‘specially created’ separate legal framework in India for the empowerment of the tribal people would not really contest the finding that people live under the shadow of an overcrowded regime of paper laws.185

The Suggestions

1. DATE OF BRINGING INTO EFFECT THE LAND TRANSFER REGULATION, 1959 ENACTMENT:
   ✓ The state law has made the restoration of alienated tribal lands in respect of certain cut off date which is very recent. This invariably makes the restoration of tribal land a meaningless as most of tribal land had been alienated before such dates. So the cut date should be waived off totally or at least from the date since independence, that is all those transfer of land from Scheduled Tribes to non-ST that had come up after 1947 should be made illegally alienated and

185 http://www.hinduonnet.com/fline/fl2121/stories/20041022008112600.htm
restore all those lands of Scheduled Tribes that had been alienated after independence.\textsuperscript{186}

✓ Or Retrospective effect is to be given to all the Land Transfer Regulation laws from 1917 onwards in Andhra Area and from 1356-Fasli in Telangana Areas.\textsuperscript{187}

2. \textbf{PENALISING DISOBEDIENCE OF PROVISIONS UNDER THE STATUTE:}

Section 6-A\textsuperscript{188} i.e., the Penal Clause of the Land Transfer Regulation should be extended to officers who are disobeying the order issued by courts or government and are negligent in implementing the Act.

According this Section any person who acquires any immovable property in contravention of the provisions of the Regulation or continues to be in possession of such property after a decree for ejectment is passed, shall on conviction be punished with rigorous imprisonment or fine or both.\textsuperscript{189}

\begin{flushleft}
\textsuperscript{186} See: http://www.dhdi.free.fr/recherches/environnement/articles/rout.htm
\end{flushleft}

\begin{flushleft}
\end{flushleft}

\begin{flushleft}
\textsuperscript{188} Section 6-A of the Land Transfer Act of 1959:

“(1) Any person who, on or after the commencement of the Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1978.

(a) acquires any immovable property in contravention of the provisions of this Regulation; or

(b) continues in possession of such property after a decree for ejectment is passed; shall on conviction be punished with rigorous imprisonment for a term which may extend to one year of with fine which may extend to two thousand rupees or with both.

(2) When a Court imposes a sentence of fine or a sentence of which fine forms a part, the Court may, when passing a judgment, order any part of the fine recovered to be paid to the member of a Scheduled Tribe who is a transferor, as compensation.”
\end{flushleft}

\begin{flushleft}
\textsuperscript{189} Ibid
\end{flushleft}
Any registration or transfer of land from a Scheduled Tribe to non-Tribal in the tribal area should made null and void thereby.

3. **REGULATION OF BENAMI TRANSACTIONS**
   There are ample of cases in where the lands has been alienated from the Scheduled Tribes to non-ST (Benami Transactions), but the registration of such land are in the name of some other ST, that is de facto owner is non-ST who is deriving all the benefits of the lands. Quick survey of such land must be done and necessary time bound and targets oriented steps must be taken to restore such lands also to the original ST.

4. **OBSERVATION MEMBERS TO BE FROM THE SAME COMMUNITY**
   The members of the monitoring committee to overlook the progress of land restoration should be from the Scheduled Tribes community, otherwise the purpose will not serve.\(^{190}\)

5. **A QUORUM OF MEMBERS OF THE SCHEDULED TRIBE COMMUNITY IN THE SPECIAL COURTS SET UP FOR THE PURPOSE OF HANDLING MATTERS OF TRIBAL LAND ALIENATION**
   The Special Courts and a required quorum of it has to be constituted from Scheduled Tribes community, apart from the other judges, and the oral evidence of tribals in matters of tribal land alienation shall be given an over-riding effect on any.

\(^{190}\) See: http://www.dhdi.free.fr/recherches/environnement/articles/rout.htm
contrary documentary evidence provided by the non-tribal parties.\textsuperscript{191}

6. **KNOWLEDGEABLE LEGAL AID PERSONS TO BE APPOINTED**

The government aided legal aids are either not so competent or do not pursue such cases sincerely, therefore in most instances the Scheduled Tribes litigants lost in the cases. So instead of providing legal aids to the ST, it should be preferred that NGO constituted with advocates with dedicated teams should be allowed to conduct the basics and there should be best guided through proper para legal trainings. The subject content and the material for such training should be rationalized who should be assigned or entrusted with the work. The courts must also follow a system of free and fair trial along with that speedy-trial. They may do away with the procedurals and rather should stick to the ambit of law and its strict principles. So disposal such cases should have a time-limit, but it must also be taken care that hurry does not bury the justice!\textsuperscript{192}

7. **APPOINTMENT GOVERNMENT PROSECUTORS TO HANDLE PENDING CASES IN THE HIGH COURT**

Special concerted action should be taken for disposal of cases in the High Court and other courts. Special Government Prosecutors (G.P.) shall be appointed to handle all the cases pending in the High Court. The Government may also direct the High Court for cration of a Special Bench for this purpose and

\begin{itemize}
  \item \textsuperscript{191} Koneru Ranga Rao, “Land Committee Report”, Submitted to the Government of Andhra Pradesh in 2006, Pg. 63
  \item \textsuperscript{192} http://www.dhdi.free.fr/recherches/environnement/articles/rout.htm
\end{itemize}
may if necessary also issue instructions to the district and other lower courts not to admit cases of Schedule V areas and not to issue any stay orders.

With a view to help the tribals it is necessary that a special bench is constituted in the Hon’ble High Court for expeditious disposal of the cases relating to the tribals. A special G.P may also be appointed in the Hon’ble High Court to deal with the cases relating to the tribals. From the administrative side the Hon’ble High Court may also be requested to issue instructions to the lower courts not to admit the cases relating to the tribals in the Scheduled Areas and not to grant stay in such cases. 193

8. **LOCALIZATION OF SPECIAL COURTS**

The localization of the special courts should be with the same village in the case of matters relating to the territorial jurisdiction & pecuniary jurisdiction, accordingly at the Mandal levels as the Sub Court and at the District Head Quarters the District Forums and ultimately at the State Capital they should constitute State Courts and National Courts at the National Capital.194

9. **REMOVAL OF LIMITATION PERIOD FOR FILING OF APPEALS**

The limitation period prescribed for filing appeals under both LTR and Settlement regulations shall be removed in order to take up appeals now to protect the

---

194 [http://www.dhdi.free.fr/recherches/environnement/articles/rout.htm](http://www.dhdi.free.fr/recherches/environnement/articles/rout.htm)
interests of the tribals. The limitation period prescribed for filing appeals under both LTR and Settlement regulations shall be removed in order to take up appeals now to protect the interests of the tribals.\footnote{Konuru Ranga Rao, “Land Committee Report”, Submitted to the Government of Andhra Pradesh in 2006, Pg. 65}

10. **JUSTICE MUST NOT ONLY BE DELIVERED, BUT ALSO IMPLEMENTED**

There are cases where the land had been restored to the Scheduled Tribes remained as un-executable decrees the same requires to be strengthened and requires to be implemented with due teething of law.

Restoration Orders passed under LTR in favour of tribals should be implemented proactively by the Revenue machinery within a fixed time frame. The progress of restoration of lands shall be monitored by a high level empowered committee. There are several cases where ejectment of the non-tribals has been ordered, but possession is to be restored to the tribes. All such cases may be culled out and restoration done in order to achieve the objective of the LTR duly observing the provisions contained in Section 3 (2) (a).

The restoration orders in most of the cases are pending for decades. The restoration is negligible and tardy, to say the least, because of the resistance or apprehension of resistance from the non-tribals. For example, as pointed out in Sri Girglani’s report,
in Warangal district in Mulugu Mandal orders were issued for restoration of 350 acres but the land could not be restored due to resistance from the non-tribal occupants since 1980. In Tadvai Mandal also the restoration orders have not been implemented for the same reasons. 196

11. VERIFICATION OF THE OLD PATTAS ISSUED IN FAVOUR OF NON-TRIBALS
The old Pattas issued to the non-tribals prior to 1950 shall being Toto and enquiries shall be made about their genuineness. It is to be verified whether proper permission of the collector was obtained to make these Pattas primarily valid.

The questions whether is there any record of the present owner being an inheritor from the original Patta hold, is there any record of mutation through the last two generations, are the successions reflected in the supplementary Sethwars, Khasra Pahanis and finally in the Record of Rights, if the present holder is not connected as inheritor to the original Pattadar by any evidence, how can the present holder claim succession and right to hold land in the tribal area as a Pattadar are to be examined. 197

12. MAKING SADA BAINAMAS INADMISSIBLE IN THE COURT OF LAW

Sada Bainamas, the unregistered documents which date back to a crucial period when LTR had not come into effect, shall be made inadmissible in evidence for establishing the non-tribal’s right to patta. The Sada Bainamas are unregistered plain paper documents of leases taken by non-tribals from tribals. Booking LTR cases in respect of such land is being found difficult because tribals are honest and will not go back on their lease commitments. They even come forward to say that they are themselves cultivating the lands though in fact their non-tribal lessees are doing so. The Sada Bainamas are mostly antedated to a date when they will not attract LTR. On this basis the non-tribals are claiming to be legitimate pattadars. Actually, in view of the presumption in LTR, the burden of proof lies on the non-tribal to prove the credibility of these Sada Bainamas. Mere admission by the tribal lessor need not be given credence by the officer assessing the evidence.\textsuperscript{198}

13. \textbf{RENEWAL OF SETTLEMENT RECORDS}
Delineation of Scheduled area had been a bone of contention between the state government and the settlement records under the settlement enactments should properly resolve the scheduled area issues thus the tendency to declare the scheduled area as non scheduled area, and delineate the tribal area as and when required for the non-tribal could be thwarted or judicially used under authority.

14. **EXECUTE THE NATIONAL LAND RECORDS MODERNIZATION PROGRAMME**

[Faster and efficient implementation of the National Land Records Modernization Programme, which is a merger of the Computerisation of Land Records (CLR) and the Strengthening of Revenue Administration and Updating of Land Records (SRA&ULR) schemes in order to:

- usher in a system of updated land records
- automated and automatic mutation
- integration between textual and spatial records
- inter-connectivity between revenue and registration
- to replace the present deeds registration and presumptive title system with that of conclusive titling with title guarantee.

The proposed scheme has 3 major mechanisms, which are as follows:

(a) Computerization of land records

(b) Survey/re-survey

(c) Computerization of Registration]^{199}

---

199 http://www.nic.in/nicportal/landrecordsproject.html