

Land reforms legislation in Goa: A commentary on controversial sunset clause proposed under the agricultural tenancy amendment act, 2014

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Abstract

The present paper makes a modest analysis of the development and practice of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 which was enacted to protect the rights of tenants. It was intended to regulate the period of tenure, to fix the reasonable rent, to give the tenant the right to Compensation in case of eviction and also restricted the right of the landlord to evict the tenant. This Act provided for the creation of protected rights of tenants.

According to this act, the interest of the tenants to be conferred ownership rights are protected and had to pay reasonable price for the land. It also act provides heritable rights to the tenants with depending upon the extent of land owned by the tenants and landowners. The implementation of tenancy legislation is a function of the degree of consciousness among the peasantry.

The present paper makes efforts to bring out the historical background of land system in Goa. At present, the state made an amendment of Goa, Daman and Diu Agricultural Tenancy Act, 2014 which has several loopholes and major disadvantage of tenants in Goa. For the said purpose, secondary data comprising of books, articles, journal, newspaper etc. have been scrutinized.

Keywords: land reform, legislation, constitutional mandates, amendments

1. Introduction

Social justice vis-a-vis social transformation remains the lofty objective of any state which claims it to be the welfare state. In a country, where agriculture is the main occupation traditionally the people concerning the agricultural activities and dependent on the said occupation will always be waiting for the land reforms as a part of such social transformation, which mainly relates to relatively equal distribution of land to the landless people.

The redistributing of land to landless people, it is only through revolutionary policies that the government can achieve the agricultural production. It is therefore, the main concern of the socio-political and economic programmers that the state may have to which the government of the indigenously agrarian economy cannot be an exception. Accordingly these cannot be any sound public policy rather than the re-distribution of land for the welfare of the landless serfs, farm workers and tenants etc., which is the significance of land reforms.

In historically background the ancient village communities of Goa where self-sufficient economy units founded by the early settler of Goa. "Gudas tribes"^[1] are supposed to be aboriginal or the first settler of Goa, who belongs to Munda Section of the proto-Austroloid Race. The Gaudas tribes who were founder of village of Goa and they also called as Gauncaria (Gaunkar) in Goa.

It said that the Gaudas may have migrated from the North eastern India around 400 B.C. The Gaudes tribes progress from a hunting and food gather stage to agricultural. This shifting from hunting to agricultural that is too settled life make them the founder of village and hence was known as "Gauncar"^[2]. The Gauds tribes initiated and practice Kumeri (burn and shift) cultivation which marked the beginning of agricultural operation in Goa. Kumeri cultivation is shifting cultivation was practiced in Goa for thousand years. The Bushy growth on hill slopes in forest area was burned and the cleared was used for cultivation Ragi. The Gauds Communities by way of life and close cultivation to land had profound influence over subsequent settler.

2. Antecedents of land reforms policy and redistribution of land in the state of Goa.

The wave of land reforms in the country was crashing on the thresh hold of the state which was liberated fourteen years the Independence of India. So the land reforms in Goa which was inevitable was bound to happen as slowly the common people were getting aware of it.

As a result on February 28, 1963, the Goa Government formed a committee of experts headed by shree. A.L. Dias and draft bill which from the bases of Goa Agricultural "tenancy"^[3] Act was prepared as the bases of the report submitted by Mr. Dias Committee.

¹ Explanation Note: Gauda Tribes of Goa has notified as Scheduled tribes under the Scheduled castes and Scheduled Tribes order (Amendment) Act, 2002 (central Act 10 of 2003 which has been passed by the parliament and assented to by the president of India on 7-1-2003 and published in the Gazette of India, Extraordinary, part II, Section 1, dated 8-1-2003 published official Gazette, Government of Goa under Notification No.10/3/2003-LA.

² Explanation Note: A member of a village community by birth being descendent of the original founder of first settler in the village concerned, or it also called as village headman..

³ Explanation Note: - It means the relationship of landlord and tenant

The first bill was introduced in the year 1964, in the Goa Legislative Assembly (bill No.7 of 1964)^[4] important body of land reform Legislation namely, Goa, Daman and Diu Agricultural Tenancy Act 1964 was brought into force in 1965 by the Union territory the Goa, Daman and Diu. The objective of the bill was to providing Security to the Tillers those who were cultivating the land for food grains for survival and whose lands were originally owned by their ancestors.

During colonial period the land was under control of affluent class now so called as landlord, who turns force to the tillers to pay them the maximum produced. By way of fixing 1/6th of the total produce as a rent to the landlords. This Act was made applicable to the tillers except for Cashew, Coconut and orchards.

By the amendment in 1976 the protection was extended to all the tillers. Further the Act made all Tillers of 1964 as deemed purchasers. "Under Section 18 K deemed purchasers had no right to transfer the land even by way of lease"^[5]. Through the "Mamlatdar"^[6], the land could be taken and given to the persons willing to cultivate.

After 1975, "Landlords and Builders filed several litigations based on Survey Records and Land Revenue Code claiming the ownership right"^[7]. But litigations between Tenants and Landlords became more cumbersome due to non-preparation of Record of Rights, having no receipt of payment of rent to the Landlord with the Tenant and contract of lease. Under the "Goa Agricultural Tenancy Act 1964 to claim tenancy right, the Tenant had to prove (a) possession of the land (b) Personal cultivation (c) Existence of lease (d) Payment of rent"^[8].

Under the Goa Agricultural Tenancy Act 1964, the definition of the term Agriculture was very narrow restricting to paddy cultivation and Arecanut only. But after V amendment to the Goa Agricultural Tenancy Act, the definition of the term Agriculture has been widened which includes allied pursuits such as Horticulture, Cashew cultivation and Coconut garden also.

The Land to be tiller was a very popular slogan to them under which the V Amendment to the Agricultural Tenancy Act, 1976 was carried out. This amendment abolished the payment of rent by the tiller to the landlord. Unfortunately the said dream did not realized as the court of judicial commissioner declared the said amendment as unconstitutional. But upholding an appeal preferred by the Goa Government to the Supreme Court in the year 1990 upheld the constitutional validity.

Thus the dream of V amendment of 1970's was realized as the cultivators and the tillers of the land because the deemed owners of the land. Allowing under the said Amendment for cultivators and the tillers move application to purchase the land under section 18C of the Act"^[9]. The quantum of value

the price of the land is determined under section 18 D of the Act by the Mamlatdar"^[10]. Which "as per section maximum 40 paisa per sq. meter of land, depending on the type of the land such as "Kher"^[11], "Khazan"^[12], "Morad"^[13] Coconut, garden or cashew and sugarcane etc is allowed to be fixed"^[14]. Thus the most significant document the sand issued to the tenants once the price fixed by the Mamlatdar is paid by the tenants in order to become the owner of the land.

However property so owned cannot be said, lease out or mortgaged nor can be converted to other non-agricultural use without prior permission of the Mamlatdar. Along with the Agricultural tenancy Act of 1964 another important Act of 1975 namely Mundkar Act, was also enacted. This act ensure the right of Dwelling house once occupied by the "Mundkars"^[15] or the serfs i.e. laborers working in the respective agricultural farming land or to the village artisans providing concern allied services to the land lord.

Along with the said Act, the Goa Damn and Diu Agricultural tenancy (discharge of joint responsibility of tenant) Rule 1975 was adopted for the purpose of practice of the said law in Goa in order to grant the benefits of the said beneficial legislation for whom it is mainly credited. This makes the tenants to apply and get the certificate of purchases after paying the necessary price in lump sum or partly in instalments as may be decided between the parties before the Mamlatdar.

After almost four decades of practice of the Agricultural tenancy Act, it becomes difficult to ably reply the objection to the tenancy right if raised. Under these Act, there are certain joint responsibilities so far as the repair and maintenance of agricultural binds, water ways, sluice gates etc. Section 42 lays down detailed procedure for the discharge of the said joint responsibilities"^[16].

As a result of the entitlement of the ownership of the land under the said act, the provisions of the tenancy Act are no more applicable to the tenants or deemed purchasers as their states has charged to the owner. Thus such person can no more continue to be members of tenant Association.

While making the Association of tenants impossible to fix the joint responsibility of erstwhile tenants upon the new tenants' purchasers by the virtue of charge in his status as a tenant to the owner. By the provision of section 18A deemed purchasers after the wards shall include it is treated the eligible tenant subject to the provision as discussed hereinbefore have paid the price of the land and his name should have been deleted from tenants entry by including the same in occupants columns in place of the original owners name"^[17].

⁴ Dr.Nagesh Colvalkar, (2017), Land Reforms in the state of Goa –An Assessment, Published by pune Research Discovery an international journal of Advance studies, volume -2, issue-2, ISSN 2455-9202.pp.2

⁵ Ibid pp.3

⁶ Explanation Note: - It means any person appointed by the Government to perform the duties of a Mamlatdar under this Act.

⁷ Ibid (n4).pp.3

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

¹¹ Explanation Note: The term of Kher means land having adequate irrigation or drainage facilities.

¹² Explanation Note: The term of Khazan low land situated near creeks or riversides.

¹³ Explanation Note: The term of Morad means any other land: Provided that in case of doubt as to the category of any particular land.

¹⁴ Ibid (n 10).

¹⁵ Explanation Note: The term of Mundakar means a person who resides lawfully in the dwelling house with the consent of the landlord or without obligation to render any service to the landlord.

¹⁶ See, www.goa agricultural tenancy act, 1964.com, dated 12th June 2017.

¹⁷ Ibid (n12).

3. Constitutional Mandates

The second state list of the constitution of India makes at Entry number 18 includes land reform relating to the land and right over it. It is therefore under the power of the state legislature to legislate upon the aspect of land. Similarly powers are assigned even under the Directive principle of the state policy to the state government. Further the Entry 20 of the concurrent list also allows the Union legislation a scope to have a role in the direction of socio-economic planning.

According to the planning commission of India a may suggest on measures for land reforms in the country. The important provision of articles of the Indian constitution such as Article 23 under fundamental rights to prohibition to Beggar or forced unpaid Labour, article 38(2) under directive principle of state policy directed the state shall to strive to minimum the inequalities in income and Endeavour to eliminate inequalities in status”^[18], article 39(b) under directive principle of state Policy directed the state to work for equitable distribution of the material resources of the community for common good, Article 48 directed the state “Endeavour to organize agricultural and animal husbandry on modern and scientific lines”^[19].

All facilitates redistribution of national resources as best to sub serve the common good. The decentralized development of every eligible citizen by means of narrowing down gulf of reach and the poor is ensured.

The Constitutional mandate was redistribution of national resources as best to subserve the common goods and to ensure “that the operation of the economic system does not result in the concentration of wealth. It means of predication to the common detriment in its application to agrarian economy has been implemented by enacting appropriate agrarian reform law”^[20].

In point of view to protecting the agrarian reform legislations against any legal challenge, and the Constitution made adequate provision by inserting articles 31A, 31B, 31C and adding the Ninth Schedule which protects laws included therein from such challenge. When the Constitutional validity of these amendments was questioned, the Supreme Court appreciating the true philosophy inspiring these measures upheld the validity thereof”^[21].

The guiding principle inspiring the programme of agrarian reform was stated by the founding fathers of the Constitution in article 38(1) thus: “The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may Social order in which justice, Social, economic and political shall inform all the institution of the national life”^[22]. The principle was more explicitly spelt out by the Constitution (forty-fourth Amendment) Act, 1978 which was added in article 38(2) containing the following words: “The state shall, in particular, strive to minimize the inequalities in income and endeavour to eliminate in status, facilities and opportunities not only amongst groups of peoples residing in different areas

or engaged in different vocations”^[23].

These principles were further reinforced by an express mandate contained in article 37 that “these principles are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws”^[24]. The state accordingly enacted the legislation abolishing or extinguishing the rights in the estate of erstwhile landlords who were not cultivating the land personally and vesting their rights in the state. The state in turn enacted legislation on tenancy reform conferring ownership rights on the erstwhile tenants, and it ensuring security of tenure and abolishing private lease”^[25].

These two measures aimed at twin objectives; “firstly it was abolishing absentee landlordism which was an instrument of exploitation of the actual tiller of the land. The secondly, one was to confer permanent heritable ownership rights on the actual tiller of the land and to make him the real and full owner of the land under his occupation”^[26]. Similarly, the measures aim at completely abolishing ownership the institution of private lease.

The idea was that in future a farmer would own land directly under the state as tenure holder and pay a fixed sum as annual land revenue to the state. There would be no intermediary between a peasant and the state. In other words, a tenure holder holding land under the state will have to cultivate the land personally. He could not let it out to tenants under him.

Only a widow, a person employed in the defense services and a person subject to physical disability was allowed, in certain cases, to lease it out for short term”^[27].

The law was to be enforced so strictly that a person leasing it out in contravention of the law was likely to lose the holding in favour of the tenant who would in course of time become eligible to acquire ownership rights”^[28]. The most states also contained provision into land law to prohibition that land owned by a person belonging to Scheduled castes and Scheduled tribes cannot be transferred to any person not belonging to Scheduled castes or tribes. The Progress of implementation of consolidation legislation has not been very satisfactory and the protection afforded to the tribal’s against transfers of land in distress has not been of much avail”^[29].

4. Commentary on Controversial Sunset Clause Proposed under the Agricultural Tenancy Amendment Act, 2014.

The Goa, Daman and Diu Agricultural Tenancy Act, 1964 gave tiller the right of owner of the land. This act was being amended time to time through various governments in Goa but it failed to complete the purpose of said act. The land reform is major factor and the basic principal of agrarian land reforms in Goa, because it makes the cultivators as the owner of such land.

When the law of Goa, Daman and Diu Agricultural Tenancy Act, 1964 was passed in 1965 by the state and the security of the tenant was protected from the eviction and rent was fixed

¹⁸ Dr.J.N.Pandey,(44th Edition 2007),Constitutional Law of India, Published by Central Law Agency,30-D/1 MotiLal Nehru Road, Allahabad-2pp.386

¹⁹ Ibid

²⁰ M.L.Upadhyaya, (1990), Law on Agrarian Reforms, published by the Indian law Institute in New Delhi. Vol.XXVI.(www.ili.ac.in). pp65

²¹ Ibid

²²Ibid (n18)pp.386

²³ Ibid

²⁴ Ibid

²⁵ Ibid (n21)pp. 66

²⁶ Ibid

²⁷ Ibid

²⁸ Ibid

²⁹Ibid

at 1/6 of the produce. The 5th amendment the Agricultural tenancy act which are even included in the IXth Schedule of the Indian constitution and has given special protection.

By way of 5th Amendment to the Agricultural tenancy Act has been introduced also section 18A which act says that Tenants deemed to have purchased lands on “tillers day”^[30] it means that years 1976 the 5th Amendment to the Agricultural tenancy act came into force. But till days most of the genuine tenants who are still tilling the land and they are not become the owner of land.

Even after, the 5th amendment act 1976 in Goa, under this act, the tenant became the full owner of the land and only with one condition that he was to pay the price to the landlord. In 1990, the state Government was supposed to fix the price after including the 5th amendment in the Ninth Schedule of the Indian constitution. It is the duty of the state Government through its revenue mechanism to provide “sanads”^[31] to the tenants. Similarly, 18-C cases some of the tenant have paid their purchase price but their sanad have not been issued to them.

“As the Goa Agricultural Tenancy Amendment Act 2014 of 25th sept. 2014 provided for the transfer of tenancy cases from the Mamlatdar Court to Civil court under the pretext of reducing the burden of more than 4000 cases pending before the Mamlatdar court”^[32]. It opened the pendency case which brought the state Government under scathing criticism mainly from the common masses.

In the year 2014, the government brings a new law that every cultivator /tenant has to go to the court with the period of three years and obtain the declaration from the court that to prove as the tenant and thereafter to be deemed as owner. According to the bill No.20 of 2014 was introduced in the Goa Legislative Assembly and passed the Amendment to the Goa Agricultural Tenancy Act 1964. In present amendment the Goa Government has introduced three major changes to the Agricultural Tenancy Act. “Firstly, the amendment tries to introduce is to take away the authority of the Mamlatdar court in deciding the tenancy cases. Secondly, it introduces contract farming and finally it puts a time limitation to file tenancy cases”^[33].

The recent Amendment to the agricultural Tenancy Act, it shows that the amendment is introduced without taking into confidence of all the stakeholder particularly the tenant and the institution which are working for the benefit of the tenants like the Mamlatdar and Agricultural department etc..

However, the point of view that it appears before introducing the present amendment that has taken into consideration only affluent class. Even before introducing such an amendment, the state government failed to understand the ground realities of all tenants regard to keep the agricultural land fallow.

According to this amendment the agricultural tenancy act

2014, the government of Goa has introduced section 60C by which three years’ time limit has been set to file tenancy cases under section 7: Question of tenancy, section 7A: Question as to nature of land, section 8: Bare to eviction and restoration of possession, section 8A: Relief in certain cases of threatened wrongful dispossession, section 10: Surrender by Tenant, Section 11: Termination of tenancy by landlord, section 12: Special Provisions regarding termination for Non-payment of rent, section 12: Special provision regarding termination for non-payment of rent, section 14: Right of tenant are heritable, section 18A: Tenants deemed to have purchased lands on tillers day, section 18B: Right of tenant to purchase land where he is a minor etc., section 18C: Mamlatdar to issue notices and determine price of land to be paid by tenants, section 18D: Purchase price payable to the landlords, section 18E: Mode of payment of purchase price by tenant, section 18F: Amount of purchase price to be applied towards satisfaction of debts, section 18G: Recovery of purchase price as arrears of land revenue, section 18H: Purchase to be ineffective on tenant-purchaser’s failure to pay purchase price, section 18I: Right of tenant whose tenancy has been created after tillers day, section 18J: Power of Mamlatdar to resume and dispose of land not purchased by the tenant, section 18K: Restriction on transfers of land purchased under this chapter, section 18L: Power to make rules.

The inserted section stated as under “No court of Senior Civil Judge shall entertain any application under section 7, 7A, 8, 8A, 10, 11, 12, 14, 18A, 18B, 18C, 18E, 18F, 18G, 18H, 18J, and 18K of this act unless it is filed within a period of three years from the date of commencement of the Goa Agricultural Tenancy (Amendment) Act, 2014”^[34]. It means that no tenant will be in a position to file tenancy cases after three years from the date when the amendment receives the assent of the Governor”. After new Amendment of agricultural tenancy Act 2014, and propose to change the jurisdiction of tenancy cases from the Mamlatdar court to civil Senior Court. Similarly, the litigation in civil court will be more costly than Mamlatdar court.

Similarly, the amendment has also introduced section 4A which talks about the contract of farming. In fact; there was no original provision for the purpose of contract farming under Goa, Daman and Diu Agricultural Tenancy Act, 1964”^[35].

Goa, Daman and Diu Agricultural Tenancy Amendment Act, 2014 that is re-enforced hugely going to affect the people specially scheduled tribes, scheduled castes, other backward class and Minority peoples. While adopting the policy of contract farming the landlord more powerful and tenant is made powerless with nil entitlement of creation of tenancy in contract farming. So the landlord can enter into agreement of contract farming except in cases of disputed lands.

The mechanism and the system of contract farming allows the production of Agricultural produce on the bases of advance agreement between the buyer company and farm producers. It also includes the buyer company or the contractor specifying the types quality and required species along with the price offered to the producer farmer which he agrees to deliver as a future date. Leaving the contractor company a scope to control

³⁰Explanation Note: The term of “tillers day” means the date of introduction of the Goa, Daman and Diu Agricultural Tenancy (Fifth Amendment) Bill, 1976, in the Legislative Assembly;

³¹ Explanation Note: The term of sanads is title document of a property which issued by government authority basis on registration record of the sale of land.

³² See supra note 10

³³ www.call to repeal of the Goa Agricultural Tenancy (Amendment) Act, 2014.com dated 21 July 2017 or www. bharatmukti.blogspot.com

³⁴Ibid (n33)

³⁵ Ibid

getting agreed quantities of a crop or livestock product based on his preferred quality standards and requirement.

With a further scope to buy the products at a price that is offered in for advance. In return the contactor company support the producer in terms of providing assistance in the preparation of land, supplying inputs, providing scientific advice and transportation of fish produced to the required sanitation etc. Each contract farm takes over the green field. Even contact farming provision permits land sharks in connivance with both tenant and landlord to take over green field.

By amending under section 4(a) of agricultural Tenancy Act 2014, the government has granted ownership rights to landlords. It means that to cheat against the interest of the “tenants”^[36] and within one section has destroyed under act 1964 and 1975 of tenancy law. Though the new pro-landlord law section 46(b) has fixed that the tenancy cases will be filed in session court, and via section 46(b) Tenants are directed to approach civil court to claim their ownership rights. It means the tenants will not get justice in the session court because the majority of tenants does not possess their receipt or their name are not enter into From I & XIV and survey plan”^[37].

Similarly, under section 60(c) of agricultural Tenancy Act 2014, “all tenants are directed to file application in the court within three years because after that the tenant s will have no right to knock the door of the court. It is very difficult to all tenant to produce the witness in the court. The court will not able to inspect the paddy fields and make investigation of field site. After expiry of three year the land lord will automatically take over the land”^[38].

“As per section of 58 (2) of Goa, Daman and Diu Agricultural Tenancy Act, 1964 no court Shall have jurisdiction to settle, decide or deal with any question which is by or under this act required to be settled, decided or dealt with by Mamlatdar, Tribunal, collector or Government and no order passed by these authorities under this Act shall be questioned in any Civil or criminal court”^[39].

The security which cultivator enjoyed for the last more than 50 years and there was no threatened from landlord and government.

According to this old law if the tenant doesn’t want to buy a land than government use to take over the land and provide to the needy people from the lowest cast or landless peoples. But under this amendment the Land may be taken over by the landlords.

5. Conclusions and Suggestions.

On minutes Scrutiny of the Policy of state Government it is seen that the Successive Governments in Goa are indirectly opposed to the land reforms, the jealousy which is manufactured time and again as the government with a

covered eye on land has encroached on “comunidades”^[40]. Sometimes grabs the khazan land and recently had introduced the sun-set clauses to the advantage of capitalists.

The cultivators seems to be loser as a result the beneficial land laws does not spill much benefit on the deemed purchasers of land. Similarly, it seems true as the cultivators too misuse and abuse the right as they sell the same directly or indirectly others for Non-agricultural purpose mainly for real estate and tourism related business which is opposed to the objective of the land legislation. Consequently, the said cultivators are unable to avail the benefits of various schemes and subsidies made available to them. There is ambiguity about the rights of tenancy as their names are not found to be registered in form I and IV.

The lofty objective of the land reform is ultimately to ensure to give social justice to the farmers and farm workers who by being solely dependent on the agricultural land also feed the society by their land toil. This reform basically was to modify the proprietary pattern and the trend of land by securing tenure, fixing rents, and finally grant of ownership on them by way of beneficial legislation. Social justice is proposed by means of equitable distribution of income by way of sharing land to landless cultivators who developed the same, by limiting the holdings of land by single individual family by imposing ceiling on land.

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³⁶ Explanation Note: The term of tenants means a person who on or after the date of commencement of this Act holds land on lease and cultivates it personally and includes a person who is 8 [or was] deemed to be a tenant under this Act.

³⁷ See supra Note 35

³⁸ Ibid(n37)

³⁹ Ibid

⁴⁰ Explanation Note: In ancient time many tribal people specially belong to Gauda communities were form a small institution and after Portuguese colonial this institution was codified into code of comunidades. In other word the Comunidades is the Portuguese word for communities.

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