

Research Paper

# Land Rights: Peasants' Economic Justice



**SOUTH ASIA PARTNERSHIP-PAKISTAN**



# **Land Rights: Peasants' Economic Justice**

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## **Preface**

Land rights are linked with the right to livelihood and right to food. Land is not only the sign of prestige but also the base of the social status in this region particularly. It is the symbol of the specific cultural and historical collectivity as well. Majority of the Pakistan's population is tied with the agriculture directly or indirectly. It is the means of subsistence of majority of the people. If we say that it is their life style, it will not be out of place. Peasants and rural workers are the people who actually serve the inhabitants of this mother land.

The British government gave great importance to land ownership and got political support from land owning class. On the other hand, peasants and rural workers became vulnerable and weaker than before. Although through tenancy act, their rights were given legal protection to some extent yet it was desperately violated later.

In Sindh, *haris* are not let registered as tenants in the documents of Revenue Department. In this way, they have no legal rights as tenants have. Tenants of government lands in Okara and Khanewal are being deprived of their rights. Women are deprived of land entitlements. State institutions like army are involved in land grabbing. Huge fertile pieces of land have been granted to the retired military officers. In these circumstances, there is a dire need of new debates regarding the land rights of these weaker sections of our society.

In this policy dossier, problems of peasants concerning land have been discussed in detail. Struggles/movements of

peasants against usurpers have also been presented in this dossier. It means much for development experts, agriculturists, policy makers and people of this country as well. I hope it will support the movement of the poor concerning their rights.

Mohammad Tahseen  
Executive Director

## **1. Introduction**

Land rights, particularly in the context of developing countries, are inextricably linked with the right to food, the right to work and a host of other human rights. In many instances, the right to land is bound up with a community's identity, its livelihood and thus its very survival.

For farmers, peasants and fisherfolk, land is a vital component of a particular way of life. For this reason, peasants and poor farmers are generally opposed to the conversion of vast tracts of land for commercial monocropping, and other commercial and developmental purposes. Fisherfolk are usually opposed to large infrastructure and commercial projects along rivers, lakes and coasts because of pollution, dispossession of land, limitations on access to traditional livelihood and other disruptive changes that threaten their survival.

For the urban poor on the other hand, land is more than simply living space. In most instances, the urban poor live in communities that have been settled for a substantial period of time. It is not difficult to see why historically land rights have been a flash point and landlessness invariably a cause of social unrest.

Feudal exploitation, the process of colonization and the passing of natural resources to state control, encroachments by private commercial interests and now globalization—these are the main historical factors that have defined contemporary conflicts involving land and land rights. It is perhaps the historical importance of land that has made the

question of the rights to land a very broad and complex subject matter.

The Palestinians' struggle for the return of their homeland, the Zapatista movement in Mexico and many other conflicts that are very much part of today's news, involve land. Indeed, issues of access to land and land security continue to have an impact on a very significant part of the world's population who still depend on land access and security for their subsistence and livelihood.

According to Anup Shah, one important aspect about the causes of hunger is often ignored; that is, land ownership and who controls the land. (1) The following passage summarizes it very well, asking "Is It Overpopulation or Who Controls the Land?"

"The often heard comment (I once accepted as fact) that "there are too many people in the world, and overpopulation is the cause of hunger", can be compared to the same myth that expounded sixteenth-century England and revived continuously since.

Through repeated acts of enclosure the peasants were pushed off the land so that the gentry could make money raising wool for the new and highly productive power looms. They could not do this if the peasants were to retain their historic *entitlement* to a share of production from the land. Massive starvation was the inevitable result of this expropriation.

There were serious discussions in learned circles about overpopulation as the cause of this poverty. This was the accepted reason because social and intellectual elite were doing the rationalizing. It was they who controlled the educational institutions which studied the problem. Naturally



the final conclusions (at least those published) absolved the wealthy of any responsibility for the plight of the poor. The absurdity of suggesting that England was then overpopulated is clear when we realize that “the total population of England in the sixteenth century was less than in any one of several present-day English cities.” (2)

The hunger in underdeveloped countries today is equally tragic and absurd. Their European colonizers understood well that ownership of land gave the owner control over what society produced. The most powerful simply redistributed the valuable land titles to themselves, eradicating millennia-old traditions of common use. Since custom is a form of ownership, the shared use of land could not be permitted. If ever re-established, this ancient practice would reduce the rights of these new owners. For this reason, much of the land went unused or under-used until the owners could do so profitably. This is the pattern of land use that characterizes most Third World countries today, and it is this that generates hunger in the world. (3)

The ongoing role of Third World countries is to be the supplier of cheap and plentiful raw materials and agricultural products to the developed world. Nature’s wealth was, and is, being controlled to fulfill the needs of the world’s affluent people. The donor agencies (World Bank, Asian Development Bank etc.) search diligently for “the answer” to the problem of poverty and hunger. They invariably find it in “lack of motivation, inadequate or no education,” or some other self-serving excuse. They look at everything except the cause – the powerful own the world’s social wealth.

### **Ancestral Domain, Customary and Statutory Rights to the Land**

In a large number of countries there are conflicts between private land ownership and tenure provisions allowed for under the customary law of the indigenous peoples and

those provided for by statutory laws. In Africa, this conflict was first generated through colonial models that tended to provide for dual systems of ownership, with settlers having private rights to land and indigenous Africans enjoying communal rights. This distinction has been maintained to greater or lesser degrees in various countries. In South-East Asia, the growth of the logging industry in recent years has led to pressure on forest dwellers who until recently had exclusive occupation of the land under customary law. (4)

Issues of land tenure and titling have a particular importance for indigenous peoples. The indigenous rights movement worldwide has accepted that indigenous peoples have the basic right to manage their lives, development and resources in a distinct manner within the framework of a multicultural state. This is a “special rights” approach that links the recognition and enjoyment of these rights to a particular ethnic or cultural identity.

Such “special rights” have been approached conceptually in different ways. One way is to argue that indigenous peoples have “original” or “immemorial” rights to their lands and resources, in that they never sacrificed these rights after conquest and colonization. It is these concepts of original and native title to land that are now driving the indigenous rights movement in such places as Australia and Canada. A second way is to place the emphasis on the historical land rights of indigenous communities, namely the ancient land titles that were issued during the colonial period or after independence. This approach has been important in countries including Colombia, Guatemala and Mexico, where ancient land titles can be jealously guarded.

A third way is to place the emphasis on discrimination and on the need to combat the injustices of the past (and present in Pakistan's context) by adopting special measures to favor indigenous access to the land. This third dimension of a rights-based approach focuses not so much on the concept of special historically derived rights as on the need to promote genuine equality of opportunity for indigenous peoples in economic and social development. Thus indigenous peoples should be specially favored in land access, distribution and purchase programs. (5)

## **2. Peasants' Charter**

United Nations declarations more specific to land include the Declaration on Social Progress, adopted by the General Assembly in 1969, which recognizes the social function of property, including land, and calls for forms of land ownership that ensure equal rights to property for all. Of the UN specialized agencies, the Food and Agriculture Organization (FAO) and the International Labour Organization (ILO) have given most attention to land rights concerns, in either binding conventions or non-binding declarations.

At its World Conference on Agrarian Reform and Rural Development in 1979, the FAO adopted a Declaration of Principles and Programme of Action, referred to as "The Peasants Charter," a major section of which is concerned with the reorganization of land tenure. It advocates the imposition of land ceilings in countries where substantial re-organization of land tenure and land redistribution to landless peasants and small holders is needed as part of a rural development strategy and as a means to redistribution of power. Other sections of the charter are concerned with tenancy reform, regulation of changes in customary tenure and with community control over natural resources. (6)

ILO Convention No. 117, The Social Policy (Basic Aims and Standards) Convention of 1962, covers measures to improve the standard of living for agricultural producers. They are to include control of the alienation of land to non-agriculturalists, regard for customary land rights and the supervision of tenancy arrangements. The ILO's Indigenous and Tribal Peoples Convention No. 169 of 1989

is a key instrument in the evolution of concepts of land rights in international law which:

- recognizes the special relationship between indigenous people and their lands;
- requires states to adopt special measures of protection on their behalf;
- provides safeguards against the arbitrary removal of indigenous people from their traditional land, with procedural guarantees; and
- includes other provisions related to the transmission of land rights and respect for customary procedures.

### **Constitution of Pakistan**

The Article 38 (a) of the Constitution of Pakistan, which is about promotion of social and economic well-being of the people, says “The State shall secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants.”

### **3. Violation of Land Rights**

Despite the international conventions and domestic laws, the violations peasants face the world over are numerous, complex and profound. Since peasants are the majority of people in the world, the systematic violations of their human rights have historically been neglected in the human rights system. According to Via Campesina, an international non-governmental organization fighting for peasants' rights, with the increasing recognition of economic, social and cultural rights it becomes easier to discuss and document peasant rights violations:

- Millions of peasants have been victims of forced evictions. Peasants have been forced to leave their farmland because of different forms of land grabbing: dam constructions, the development of plantations planted exclusively with increase of cash crops for export and industry, the development of hotels, golf courses, supermarkets, housing societies etc. It can be both, national or international, investors or companies behind these policies that lead to forced evictions.
- Peasants are also often deprived from the access to other productive resources, such as local seeds, biodiversity and water. Biodiversity is destroyed by many modern agricultural techniques.
- As a result of these trends, today millions of peasants live in hunger and suffer malnutrition. This is not because there is not enough food in the world, but because of that the peasants are forced to move into marginal areas, they get no support from their government and the input sector to agriculture as

well as the processing of food stuffs is highly concentrated in the hand of few transnational corporations.

- Under these problematic circumstances also other rights of the peasants are violated. The health of the peasants and their families and their access to education is deteriorating.
- At the same time peasants face severe violations of civil and political rights. Their ability to protect and fight for their life and their political role in societies is diminishing. They often have very limited access to justice.
- Many peasant leaders face harassments and political persecution. Killings, death threats etc. are parts of a daily reality in many countries including Pakistan for peasant organizations struggling for their rights.
- Increasingly, the situation of peasants is also influenced by international developments. Subsidies in developed countries, transfers to transnational corporations, and trade monopolies are responsible for dumping practices. These mean that peasants in many rural areas receive an inadequate income from their agricultural product.
- Framework conditions set by international agreements such as the WTO or by structural adjustment policies of the World Bank and the IMF can severely limit state capacities to implement their human rights obligations and to protect their peasants adequately. (7)

Via Campesina is thinking about the development of a specific instrument – an “International Convention on the Rights of Peasants”. While the UN-human rights system is

familiar with several instruments for the particular protection of certain groups, no instrument is available for peasants. The two central human rights treaties do cover all relevant rights for peasants. Nevertheless a specific and more detailed new instrument could be extremely useful in addressing the core problems and violations faced by peasant and by peasant communities.

As a first step towards a better recognition of the problems and violations faced by peasants, Via Campesina and FIAN are demanding that the Human Rights Commission should in the future deal with the problem of peasants regularly within a resolution aimed specifically at them. The yearly analyses and attention linked to such a resolution will help to increase the attention to the magnitude and gravity of the human rights problems faced by peasants.



#### **4. Violations in Pakistan**

There is continuing repression and violation of land rights of tenants in all provinces of Pakistan but worst type of violations of international conventions and charters, and the Constitution of Pakistan, are found in Punjab and Sindh provinces. Via Compensina included the case of Okara tenants in its 12 case studies conducted the world over in November 2003.

According to Via Compensina's study, peasants' organizations struggling for tenants' right to land continued to face brutal repression in Pakistan's Punjab province. This land has been tilled for a century by the tenants and is their major source of income and food security, but they still have no land.

Most of them live below the poverty line. While the land is owned by the provincial government, the farms are actually managed by different government agencies including the military, the livestock department, and the Punjab Seed Corporation. Even though these agencies have no legal title to the land they have been collecting harvest shares from the tenants for decades. (8)

The Pakistan Army's Repression of the Punjab Farmers' Movement, Human Rights Watch, Asia Division, July, 2004.

## **5. Struggle for Land Rights in Punjab**

The struggle for land rights in Punjab has a historical background. At the beginning of the twentieth century, the British introduction of canal-irrigated agriculture brought with it the complementary creation of landed elite. The migration associated with the development of the so-called “canal colonies” was an important part of the process. Thousands of the inhabitants of eastern Punjab were encouraged by the British to move across to the western part of the province, including what are now Okara, Sahiwal, Khanewal, and Sargodha districts. These areas were largely uninhabited forest, and the migrants were brought in to clear the land and develop the canal colonies.

This radical social upheaval brought about unprecedented demographic and economic shifts in the Punjab. Ironically referred to by the British as “colonists,” the migrants were promised proprietary rights to the land once it was made arable. The land turned out to be the richest in the Punjab, and therefore, it was not surprising that the British retained their control over it, rather than giving it up, as promised, to the “colonists.” (9)

A century later, this land remains the most fertile in the Punjab and at least part of it now the most disputed. In Punjab and Sindh provinces, the “colonists” ended up with most of the irrigated land. Some portions however, were retained by the state.

The Punjab Tenancy Act of 1887 governs the legal relationship between the landlords who own and the tenant farmers who occupy rural land in the Punjab. The Tenancy Act divides farmers into two categories: “occupancy tenants,” who have a statutory right to occupy the land, and “simple tenants,” who occupy it on the basis of a contract with their landlord. Most crucially, a simple tenant can be evicted from land when his contract with his landlord expires or for other reasons set out in the Act. Occupancy tenants—and farmers must meet stringent criteria spelt out in the Act to qualify as such—can only be evicted by court decree. Central to the dispute between the army and tenants in Punjab is the ability of the farmers to retain their rights as occupancy tenants under the Act.

Tenant farmers, as sharecroppers, have been surrendering harvest shares to the state since they settled in the area a century ago. In the spring of 2000, Pakistan’s defense ministry unilaterally imposed a cash payment contract system for the tenants occupying the 17,000-acre Okara Military Farms. This cash contract system was intended to replace the harvest shares, known as the *battai* system, the outlines of which are set forth in the Tenancy Act. Under the *battai* system, individual farmers do not have contracts with landowners. The new contracts require cash payments of rent (“cash rents”) at fixed intervals throughout the year.

#### **Defense by peasant women**

In the latest attack on a growing struggle by peasants for land rights in Punjab, police raided seven villages in the Khanewal district on June 8, 2002. Eight people were arrested. Many more would have been

detained had it not been for the militant defense offered by hundreds of peasant women, who held a senior police officer captive for hours.

The authorities' attacks increased after a June 2 gathering of 6000 peasants defied a government crackdown that resulted in three deaths and hundreds of arrests. A similar gathering in November last attracted 10,000 participants with an impressive representation of more than 1000 women.

Women played a leading role in the struggle, aggressively repelling police with *thapas*, a wooden stick traditionally used by women to clean clothes at river or canal banks. (From: International News, *Green Left Weekly* issue #497 26 June 2002.)

The Ministry of Defense decision directly led to the farmers' movement in Punjab. For the farmers, the new system meant that they would have to pay cash rents to the authorities instead of a share of their harvests. The farmers refused, well aware that under existing tenancy laws they were occupancy tenants protected from eviction, but would not be if they became contract workers. Many believed they would be unable to pay their rent if it was in cash instead of produce and that, as simple tenants, they could be evicted from their land when their contracts expired.

As pressure increased on tenant farmers to accede to the military farm administration's demand, the tenants started to organize large-scale public meetings. A consensus among the farmers soon emerged to reject the new contracts.

The Okara Military Farms are administered by and for the Pakistan Army and, by their refusal; the tenants were in effect seeking confrontation with the might of the Pakistan Army. The farmers' reaction appeared to have seriously shaken the Pakistani military establishment. Apart from the political implications of the farmers' decision, the latter's challenge to the military brought to the fore legal ambiguities that the military had conveniently ignored up to that point. The Pakistani military does not actually have legal title to land at the heart of the dispute—the Okara Military Farms. Although the military has had long-term leases to the land in the past and has exerted effective control over it, in some cases for decades, formal title to the land continues to rest with the government of Punjab province. Repeated attempts by the military to effect a permanent transfer of the land to the federal ministry of defense have been rebuffed by the Punjab provincial body that holds title to the land. (10)

Initially, the farmers restricted their opposition to refusing to sign the new contracts and demanding retention of the sharecropping system. However, the draconian response of the state transformed the situation rapidly.

#### **“*Malki Ya Maut*” (Ownership or Death) Movement**

The regularity with which thousands of men and women tenants began to engage in public action under the banner of Anjuman Mazarain Punjab (AMP) was quite unusual given the prevailing, tightly controlled political environment in Pakistan. The slogan “*Malki Ya Maut*” (“ownership or death”) was adopted by the farmers.

On August 20, 2000, inaugurating his government's land distribution scheme as part of a poverty alleviation program, General Musharraf announced that, in fact, "all state land would be allotted to landless farmers" and he had directed "all four provinces to give ownership rights to all such people who had been living on state land for a long time." (12) The AMP's argument was simple: if the government was giving state land away, then tenants already working on state lands should be the first to receive it. The AMP gained further support among the farmers when it became widely known that none of the agencies controlling the land that the tenants were tilling, including the military, actually had any legal right to it. At one time or the other, the military, Punjab Seeds Corporation and other agencies leased the land from the provincial government, but these leases expired several decades ago.

**Land or Death: The Peasant Struggle in Peru**

A book by Hugo Blanco

After the Spanish conquest of Peru 'noblemen' responsible for administering the land were granted the labor of an (indigenous) Indian community. Minor judicial officials were supposed to defend Indian rights. In practice, the 'noblemen' and judicial officials, and later the mestizos (of mixed racial ancestry) seized the lands. They indentured the Indians as tenant farmers, sold them into slave labor, or drove them out of the fertile river valleys into the mountains. By 1964, 200 years of Spanish rule had cut the Quechua population in half and the large landholders that constituted only one percent of

Peruvian farmers held 62% of the land.

Peasant land invasions in the sierra began in 1952; the first peasant union (sindicato) was formed in 1957. The formation of sindicatos, peasant strikes, and land invasions in the sierra continued through the 1960s and marginally improved the peasant condition.

In 1958, the charismatic Hugo Blanco, a Quechua educated in Argentina, began organizing peasant strikes in Cuzco. About four years later Blanco and a small group of Indians formed a militia and engaged in guerrilla warfare in La Convención and Lares provinces near Cuzco. On Christmas day 1962, thirty peasants and five policemen died in a clash. The government formally charged Hugo Blanco for the deaths. The government held Blanco for three years before judging and sentencing him to twenty-years in prison. The Velasco government exiled Blanco in 1971. He wrote a book “Land or Death” and published it the following year.

The dispute reached its peak between May 5, 2003 and June 12, 2003, when Okara Military Farms—and the 150,000 people who live in eighteen villages there—were besieged for over a month by police and the Pakistan Rangers. The siege, which involved the imposition of a curfew, severe restrictions on movement within and into the district, and the disconnection of water, electricity and telephone lines, ended only when farmers were forced to sign contracts.

Reflecting the military's entrenched power and continuing impunity, senior military and civil officials have either participated in or allowed violations to occur. The determination of the Pakistani Army and some local civilian political leaders (themselves members of the landed elite) to subdue the farmers' rebellion, and to set an example for other tenant farmers in Punjab and the rest of Pakistan, has ensured that the tenants of Okara and other Punjabi districts live in fear for their lives and personal security.



## 6. Bonded *Haris* in Sindh

Bonded labour is one of the worst forms of exploitation. It implies employment of indigent workers at nominal wages, or without any fixed wages, and using their dependence on employers for sustenance to deny them and their families not only a fair wage but also freedom of movement and choice of other means of earning their living. It dehumanises the worker, devalues the life of each member of his family, especially of the children, brings the employers under the mischief of laws, and undermines the economy.

Bonded labour was first noticed in Pakistan in the brick-kiln industry and the matter acquired prominence in public discourse in the 1960s. It was found that agricultural workers who had been pushed off the land and other workers squeezed out of the shrinking rural economy, and unable to find suitable employment, were recruited by brick-kiln owners at grossly low wages. Whole families of poor workers began working at brick-kilns and living around them. The wages being inadequate to meet their needs of living they were obliged to borrow from their employers as no other sources of credit were available.

Meanwhile, bonded labour system on a large-scale was discovered in agriculture and some of its worst forms were found in Sindh. It was noticed that lack of water forced poor cultivators and farm labour, both called *haris*, to move into canal-irrigated areas in search of work. The landowners engaged them to work on their lands on extremely low wages and trapped whole families in the *peshgi* (advance) system. These bonded *haris* and members

of their families were not allowed to move outside the limits prescribed by the landlords. The means adopted to restrict their movement included the putting of men in chains or confining them and their families to enclosures which were locked and guarded by sentries. Such places began to be denounced as private jails. At some places a system of purchase and sale of bonded *haris* also was reported. A landlord short of hands would go to another landlord who had labour to spare and negotiate their acquisition by paying the amount of loan said to be outstanding against them. A *hari* would thus become bonded to a new landlord to the extent of the liability assessed by his erstwhile master.

## **7. Slavery Conventions**

The international community's efforts to eliminate bonded as well as forced or compulsory labour formed part of its drive against slavery. A convention against slavery was drawn up by the League of Nations in 1926 and it was adopted by the United Nations in 1953. Besides accepting an obligation to suppress slave trade and completely abolish slavery in all its forms, states-parties to the Slavery Convention undertook to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery. Pakistan acceded to this Convention on September 30, 1957.

Greater attention was paid to bonded labour in the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, which was adopted in 1956. This convention covers slavery-like practices in greater detail and is applicable to bonded labour. This convention was signed by Pakistan on September 7, 1956 and ratified on March 20, 1958.

### **ILO Conventions**

The International Labour Organisation (ILO) also has been trying for over 70 years to eliminate forced or compulsory labour. The Forced Labour Convention, No 29, adopted in 1930 obliges each member of ILO to suppress the use of forced or compulsory labour in all its forms.

The Convention defines forced or compulsory labour' as all work or service which is exacted from any person under the

menace of penalty and for which the said person has not offered himself voluntarily. The Convention requires that the illegal exaction of forced or compulsory labour shall be punishable as a penal offence and that the penalties imposed by law must be really adequate and strictly enforced.

Another convention, titled Convention on Abolition of Forced Labour (No 105), adopted in 1957, specifically prohibits recourse to forced or compulsory labour.

### **Constitutional Guarantees**

The subjects of slavery and forced labour have been dealt with in the Fundamental Rights chapter of the Constitution of Pakistan. Article 11 declares that slavery is non-existent and forbidden and no law can be made to permit or facilitate its introduction in Pakistan in any form. All forms of forced labour are prohibited. The only exceptions are forced labour as part of punishment ordered by a court of law or works required by a law for public purpose but this too is subject to the condition that no compulsory service shall be of a cruel nature or incompatible with human dignity.

Bonded labour is also covered by Article 3 of the Constitution which says: The State shall ensure the elimination of all forms of exploitation and the gradual fulfilment of the fundamental principle, from each according to his ability to each according to his work. Since bonded labour admittedly amounts to exploitation and a bonded labourer has neither opportunities of working to his ability nor does he receive according to his work, its

eradication has been placed higher than a legal requirement or a moral compulsion. It is the State's constitutional obligation.

Further, bonded labour is barred under Article 14 of the Constitution (which prohibits violation of the dignity of man and torture, against which almost all bonded *haris* /labourers have complained), Article 15 (freedom of movement and residence, both denied to bonded labourers), and Article 37 (e) (the State's obligation to make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for material benefits for women in employment).

However, constitutional guarantees against bonded labour could not materialise without enacting laws and establishing an effective enforcement machinery.

## **8. Bonded Labour Abolition Act**

The Bonded Labour System (Abolition) Act was adopted by parliament in 1992 and came into force on March 11 of that year. On that day the bonded labour system stood abolished throughout Pakistan, every bonded labourer stood freed and discharged from any obligation to render bonded labour.

### **Vigilance Committees**

The Act also makes it mandatory for the district authorities to set up Vigilance Committees, consisting of elected authorities and representatives of the district administration, Bar association, Press, social services and labour departments. The functions of Vigilance Committees are:

- To advise the district administration on effective implementation of the law and to ensure its implementation in a proper manner;
- To help in the rehabilitation of the freed bonded labourers;
- To monitor the working of the law; and
- To extend the bonded labourers the assistance they may need to realise the objectives of the law.

### **The tenancy law**

Where bonded labourers cultivated lands belonging to landlords and performed the functions of tenants the relationship between the two parties could have been

regulated under the Sindh Tenancy Act of 1950. However, this was not easy.

The bonded *haris* could not seek protection of the Tenancy Act because they were not treated as tenants. Some of the landlords contended that the Bonded Labour System Abolition Act did not apply to *haris*, and that the advance payments made to them were in the nature of *taqqavi* loans which were not affected by the Bonded Labour Abolition Act.

While this debate was going on at public forums and in courts, the Sindh government made two amendments in the Tenancy Act in 2002 with a view to prohibiting bonded labour under this law also.

The first amendment (September 2002) abolished the easily ejectable class of tenants-at-will and now the law envisages only one class of tenants -- permanent tenants. The period required to qualify as a permanent tenant has been reduced. Unpaid labour ( *begar* ) cannot be extracted from any member of a tenant's family.

The second amendment (October 2002) makes some general provisions regarding a tenant's debt to the landowner. The law as amended now says that a landlord will recover from a tenant's share of produce only a loan advanced under an attested agreement as prescribed in the Sindh Tenancy Rules and disputes will be settled by the tribunal.

The law also attacks the bonded labour system by prohibiting a landowner from forcing a tenant or any

member of his family to provide free labour or labour against their will for the landlord's benefit, or denying a tenant or any member of his family freedom of movement beyond the limits fixed by him, or preventing a tenant or any member of his family from seeking work elsewhere, or transferring a tenant or any member of his family to another person / landlord against any consideration (in cash or otherwise).

An important development towards establishing mechanisms for the eradication of bonded labour was made in 2001 when a National Policy and Plan of Action for the Abolition of Bonded Labour and Rehabilitation of Freed Bonded Labourers were adopted.



## 9. Violation of Laws in Sindh

In Sindh province, the tenancy laws that exist are easily dodged by the landlords who exercise great influence over the revenue and other local officials. The laws are violated as follows:

(1) When a landlord takes a tenant (or hires a farm hand) he makes sure that the arrangement is not entered in the official record. Thus he can deny with impunity all the tenancy rights and protection that legally become the tenant's due after three years of tenancy.

(2) According to law, provision of seeds, use of tractor, etc. is the responsibility of the landlord. But, in practice, he charges these to the tenant, and thus the latter's debt begins. The price amount and the interest on it are fixed by the landlord himself. All incidental expenses, such as for medicine, are also added to the debt, and the accounts are kept by the landlord's own managers. The debt thus soon mounts to a level to become unrepayable by the tenant. The increase continues, so that he becomes bonded for ever, and for one generation after another.

(3) According to law, the tenant's share of the crop should range from one-third to one-half of the produce. But, in practice, the tenant and his family are allowed no more than a daily subsistence - in the form of a fixed quantity of flour per head. Their meal thus usually consists of bread soaked in water.

(4) It is not just the tenant but his whole family which becomes bonded. Every member has to contribute to the defraying of the accumulating debt, and to remain a hostage because of that outstanding obligation. Child labour too thus becomes an integral part of agricultural bonded labour.

(5) In some cases, the tenant and his family are heavily guarded round the clock and in the most extreme cases, they are kept in "private jails". Such "jails" are mostly found in lower Sindh districts i.e. Sanghar, Umerkot, Thatta, Badin, Mirpurkhas, Hyderabad and Tharparkar. Such jails are used to punish workers who challenge authority or ask to leave the land, or ask for their remuneration. When working in the fields they are even sometimes chained.

(6) The victims of bondage are mostly people of the Scheduled Castes - those belonging to such tribes as *Bhil*, *Kohli* and *Meghwar*. (11)

## 10. Amending Sindh Tenancy Act

THERE is an urgent need to make necessary amendments to the Sindh Tenancy Act 1950, last time amended in 2002 under pressure of the Asian Development Bank. The Act was passed in 1950 by the Sindh Assembly after a protest by peasants, workers, students and political activists. The protest included the sit-ins and demos in front of the assembly.

*Hari* movements, political groups, Human Rights Commission of Pakistan and other civil society organisations have been demanding since the late 80s to update the Act in the interest of the *haris*; especially after reports confirming bonded *haris* in the agriculture sector.

In 1999-2000 the Asian Development Bank (ADB) studied the bonded labour situation in the agriculture sector and confirmed the reports of bonded *haris*, especially in the four districts of Thatta, Badin, Mirpurkhas and Sanghar. The ADB suggested certain amendments to the Sindh Tenancy Act 2002 and offered loans to eradicate bonded labour in the agriculture sector from the reported four districts.

Interestingly, the Sindh government for the first time officially recognized the existence of bonded labour and accepted the loan worth \$50 million for the Sindh Rural Development Project (SRDP) to eradicate bonded labour in Sindh.

## **Sindh High Court's Recommendations**

In early 2002, while deciding a large number of petitions regarding *hari-zamindar* conflict, a division bench of the Sindh High Court, Hyderabad Circuit, gave a judgment of great significance in which it proposed certain amendments in the Sindh Tenancy Act, to reform the age-old relationship between the *haris* and the landlords.

The case before the division bench comprising Justice Zahid Kurban Alavi and Justice Musheer Alam of the SHC reflected the traditional conflict between tillers of the soil and owners of the land, the zamindar or *waderas*, who are generally accused of using coercive means for perpetuating these strangleholds over the impoverished *haris*. The judgment assumed great importance in view of the discovery of private jails and recovery of some of the people who were kept in chains. Justice Zahid Kurban ALavi, who authored the judgment, held that the provision of the Sindh Tenancy Act 1950 needs to be amended so as to bring it in conformity with the requirement of the ground realities:

--- Since the entire controversy stems from the loans taken by the *haris* and given by the *zamindars* it was, therefore, recommended that borrowing and any dispute, resulting therefrom, be regulated strictly under the Sindh Tenancy Act 1950 till such time a limit of such lending / borrowing is fixed, and lending in excess of the amount so fixed, may be prohibited by bringing appropriate changes in the existing law.

--- In the Sindh Tenancy Act *Mukhtiarkar* is required to maintain the record of tenants and tenancies but it is observed no proper record is maintained which also gives rise to much controversy. Therefore the bench held that it is obligatory on the part of the *Mukhtiarkar* to make such entries periodically and update the record regularly. Remedy against inaction on the part of the *Mukhtiarkar* may be provided in the change enactments.

--- It was also proposed that disputes arising out of the relationship of *haris* and *zamindar* and matters incidental an ancillary thereto are to be adjudicated decided and determined by a judicial forum more appropriately by conferring powers of Tenancy Tribunal on the Civil Judge and/or Judicial Magistrate as the case may be, instead of *Mukhtiarkar*. Appeal against the order of such Tribunal may be provided before the District Judge. Revisional jurisdiction may be conferred with the High Court. (12)

### **Sindh Assembly's initiative**

The speaker of the outgoing Sindh Assembly referred the matter to a 13-member select committee to suggest necessary amendments to the Act. The draft amendment addresses the following issues:

— Instead of introduction of the Act as a law harmonising the relationship between *haris* (peasants / tenants) and *zamindars* (landlords), it should be for protection of *hari* rights based on experiences of 57 years.

— A significant and basic change in the mode of production through the use of mechanised cultivation.

— Definition of *zamindar* (landlord) and *hari* (peasant/tenant), including recognising the rights of women *haris*. It also includes the shifting of tenancy right to legal heirs of the *haris* according to heirship law as the ownership rights shift.

— In case the landlord uses the land for any other purpose as stated in the Act, such as fruit farm, then the *hari* must be adequately compensated according to the increased value of land.

— Based on experiences of the past, participants were of the view that the Act should provide an implementing mechanism and vigilance system.

— *Hari* courts on the pattern of labour courts should be established.

— Legal aid should be arranged for *haris*.

— The issues of agriculture labour should also be addressed and necessary legislation should be done.

— The decision to sell the produce (identifying the purchaser) compulsorily be made jointly by *zamindar* and *haris*

— There should be a transparent and clear documentation system for financial transaction between a *hari* (peasant) and a *zamindar* (landlord).

— ‘*Haq shufa*’ that gives priority right to a *hari* to buy the

land under his/her cultivation should be made mandatory.

— Social security for *haris* and crop insurance should be introduced.

— Further to request the Sindh Assembly speaker to give maximum time to the select committee for comprehensive work on this important issue as the committee can take on board all stakeholders, especially the *haris* and their advocates. (13)

The committee's chairperson Anwar Maher acknowledged, "So far we have given a full reading, clause-by-clause, to the Sindh Tenancy Act and identified various anomalies and grey areas where proper amendments could cause a huge positive impact and help minimize conflicts between the two sides." (14)

### **Bhitt Shah *Hari* Conference**

Thousands of male and female peasants and agriculture workers participated in the *Hari* Conference on April 8, 2007 at Bhitt Shah organized by South Asia Partnership-Pakistan, Sindh Office and Bhitt Shah Deceleration Coordination Council, Sindh. Following recommendations were made by the participants of conference:

- In case of death of a tenant, the tenancy rights should be transferred to his heir, irrespectively of his religion.
- The nomination of family member by Tribunal for managing the tenancy in case of mental incapacity of the tenant should be valid even after the lifetime of the tenant

as laid down in Chapter 2, Para 10 (1) and (2) of the act. Besides, the nomination of family member for managing the tenancy due to mental incapacity of the tenant should be made first of all by the family of the tenant. In case of dispute on nomination among the family members, then the matter should be taken to the Tribunal.

- In case of tenant's absence from cultivation for over one year under appropriate arrangement, his right to cultivation shall remain effective. The consent of landlord for selecting any person to work in place of the tenant during his absence should not be necessary.

- If the government acquires or requisites such land for the said reason, then the affected tenant should be compensated with alternate land for cultivation, employment or cash amount.

- In case of landlord taking his land back for the reason of personal mechanized cultivation or for orchards, he shall give the compensation to tenant in form of alternate land cultivation or cash amount.

- The *hari* should be represented for hearing of the case either by himself or by some other *hari* of the same *deh* (village) or by some *hari* rights worker or activist. If a lawyer is necessary for the case, the government should arrange it free of cost for the *hari*.

- The fine money as punishment should be abolished; however, the court must grant the affected party with compensation in kind of cash or redress the loss.

- Some clauses of existing Tenancy Act [Chapter II, Para 13 – f, g, i, and Section II 1-d] should be repealed.

- The role and responsibilities of *Kamdar / Munshi* should also be defined keeping in view his influence as a representative of landlord.



- Tenant should be provided social security, old age benefits, education and health facilities as they are provided to industrial / urban labor. Zakat fund and land tax should be utilized, if necessary, to implement the provision of said facilities to tenants.
- In areas of Kacho, Kohistan and Thar, the situation of tenants is different from other parts of Sindh province. Therefore, many clauses should particularly be explained also in accordance with these areas.
- Millions of acres of land in Kacho area are un-surveyed. These lands should be surveyed and distributed among *haris* of the area.

## 11. Land Rights of Women

Special attention should be paid to the right of women to land. In many cultures and societies, women are excluded from owning property, including land, or they do not enjoy the same rights as the men. In marriage and family relations, women's right to property is often subject to the authority of the husband or father. Ensuring equal rights to property translates into economic empowerment and has a direct bearing on the status of women. Denial of and/or limitations on rights to land and discrimination against women can be seen, for instance, in laws that exclude women from inheriting land.

Even though women play a very substantial role in agriculture in most countries around the world, land ownership and/or land tenure systems, whether customary or statutory, have historically very often discriminated against women. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) recognizes women's land rights. Article 14 of CEDAW obliges states parties to take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on the basis of equality of men and women, that they participate in and benefit from rural development and, in particular ensure to such women the right:

. . . (d) to obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as the benefit of all community and extension services, *inter alia*, in order to increase their technical proficiency;

. . . (g) to have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes. (15)

## **Women's Land Rights in Pakistan**

Command over property is the most severe form of inequality between men and women today. In face of overwhelming evidence of the power of land in agrarian countries like Pakistan, the right to and control of land by women has not merited attention. Despite the investments made for 'gender balancing' and women's 'empowerment', employment is taken as 'the' principle measure of women's economic status, ignoring that economic status of men and households is measured through property ownership and control.

Development focus for women seems to have been primarily on employment, education and health. It's obviously not enough. Because of divorce, widowhood etc., insecurity of tenure for women is separate and in addition to what they experience as members of families whose housing lacks secure tenure and who are therefore subject to eviction.

There are convincing arguments to build a case to strengthen women's access and control of land:

- it provides them a security they cannot derive from elsewhere and allows independence;
- it will empower women by increasing bargaining and market power and enhancing status;

- it will challenge political expediency that allows women's marginalization;
- it will increase children's and familial welfare as a plethora of research indicates that women work more for collective gain than men and their work is more far sighted and oriented to family's well being;
- and that the kind of work they engage land in is crucial for ecological balance, for example, resisting cash cropping. Beyond all, it is their fundamental human right – the right to liberty, independence and property.
- Benefits of land are direct such as control of produce, indirect like access to credit and structural like change in gender relations within families.

Agarwal, in her seminal work on land rights for women in South Asia posits that supporting women's legitimate share in landed property can prove to be the single most critical entry point for women's empowerment in South Asia.

Women need to be accorded this basic right to own and control land – the value is intrinsic. Article 17 of the Universal Declaration of Human Rights states, "Everyone has the right to own property alone, as well as in association with others. No one shall arbitrarily be deprived of property."

Article 16 of CEDAW provides that State Parties must take all appropriate measures to eliminate discrimination and ensure same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property. Article 14 of

CEDAW protects the rights of rural women to equal treatment in land and agrarian reform as well as in land resettlement schemes.

The International Covenant on Social, Economic and Cultural Rights, in Article 11 guarantees to all persons an adequate standard of living, including housing. Notably, in its General Comment on the right to adequate food, the Committee has called on States to ensure women have guarantees of full and equal access to economic resources, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology.

There should be a deep understanding of the importance of safeguarding rural women's land rights and related economic rights and interests. Properly solving problems, doing away with sexual discrimination against women and safeguarding women's and their families' right to life and development are required by the Constitution's provisions on respecting and safeguarding women's human rights. Efforts should be made to publicize the basic state policy of equality of men and women and laws and policies on the safeguarding of rural women's land rights and interests. Supervision and law enforcement in this field should also be strengthened.

Effective judicial relief should be provided to rural women whose rights have been encroached upon. When rural women's land rights and interests are encroached upon, often they fail to get effective legal relief. It is suggested that courts accept and timely try, in accordance with law,

rural women's land rights and interests infringement cases that meet acceptance conditions.

## **12. Peasants need External Support**

In order to secure access to land and improve its productivity, peasant groups need external support. Their ability to establish solid alliances with NGOs, trade unions, political parties, development agencies and others is key to ensuring that their land and related livelihood demands are heard by landlords and authorities. External organizations can provide peasant groups with key information and resources that they would otherwise lack access to, as well as broaden the space in which they can operate to mobilize support for their causes.

In this configuration of potential external allies are lawyers and other legal representatives. In fact, one of the most tenuous and overlooked alliances in the process of land reform is that between peasant organizations and their legal representatives. Land reform is clearly a political issue, but it is also a legal one. The formulation and, more importantly, the implementation of effective land reform legislation is a vital step in improving the livelihoods of the rural poor.

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