The Bengal Tenancy Act of 1885 and its Influence on Legislation in other Provinces

The Politics and Economics of Tenancy Protection

Modern economists may wonder why land reforms and agrarian legislation in South Asia are primarily political and seem to neglect economic considerations like productivity.[1] These economists forget the colonial heritage of agrarian legislation which provides the foundation for all legislative efforts even after independence. The colonial rulers did not legislate in the interest of economic planning but in order to forestall political unrest. They had to keep an even balance of different interest groups so as to protect the social base of colonial rule. Of course, they usually did not reveal these motives and preferred to think in terms of social justice. They also had ambivalent feelings about legislative interference, because the doctrines of political economy which they had absorbed made them reluctant to tamper with economic forces. These doctrines, which had been evolved in the context of the economic development of England were incompatible with tenancy protection, rent control, and the like, which could only distort but not reverse the course of economic development. Those who wanted to change the course of events by legislative interference, so the economist thought, might just as well try to legislate against the law of gravity.

The Irish experience had led the representatives of political economy to second thoughts about their doctrines. But even then they found it very difficult to derive concepts from these second thoughts which could stand the test of the first principles that they defended. John Stuart Mill who did not hesitate to advocate tenancy protection and rent control in Ireland had a hard time trying to convince his contemporaries of the soundness of these propositions.[2] Faced with the Irish and the Indian challenge the British economists infused a dose of relativism into their teachings and readily agreed that what was true for England was not necessarily true for other countries, but they did not go on to reconstruct political economy on a more universal foundation. Those who had to deal with Irish and Indian problems could invoke this relativism but they did not find any guidance in a new economic theory. The result of this was a kind of political economy which was more political than economy. Administrators who were left in the lurch by the economists had to justify their political decisions with some eclectic economic thought of their own. But this was not always a case of simply finding some convenient reasons for a predetermined course of action. Very often the administrators were really at a loss as to what to do and tried to derive from their understanding

of political economy some suggestions for legislative action. No wonder that the result was a hybrid of expediency and dogmatism.

In the absence of a new theory which could have taken account of different economies such as India's and Ireland's the resort to custom became very important. If people did not behave in accordance with the laws of political economy they obviously did so because their customs were different and, therefore, all these customs should be either destroyed or respected. Political prudence recommended that they should be respected. But custom proved to be a most illusive phenomenon. For the purposes of legislation some definite features of customary relations had to be isolated from the universe of custom. The very fact of isolation, however, proved to be fatal to the customary relation. The dimension of custom when added to political expediency and economic dogmatism made confusion worse confounded.

The pattern of legislation which developed in this way following the method of trial and error showed an unusually high rate of error, because as soon as some custom was singled out as a mainstay of legislative action it broke down under the weight of this undue attention. After such frustrating experiences the legislators slowly gave up their adherence to custom; in their attempts at finding a way out of the dilemma they had basically three alternatives: they could entrust the protection of all interests to executive action, they could emphasize judicial control, or they could enact more or less arbitrary provisions which placed a check on eviction and the raising of rents. In due course, most legislative efforts showed a combination of all these three features. Custom and economic dogmatism receded and plain expediency prevailed. The ambition to settle the matter for all time to come faded away and legislators were ready to admit that their measures were only of a temporary nature.

The conflict between custom and political economy or, in the words of Henry Maine, between status and contract, intrigued the minds of British administrators but they never resolved the puzzle which this conflict posed to them. They were aware of the numerous problems which beset the relation between landlord and tenant in Ireland and India but they continued to talk in terms of competition, prices, and the market. On the other hand they were unwilling and unable to push their ideas to their logical conclusion and to upset the existing relationships. When the Indian economist, M. G. Ranade, suggested that it would be better to create substantial peasant proprietors and to compensate the landlords rather than to protect the tenants he could not hope that the official mind would respond to such suggestions.[3] The administration was bound to a policy of tenancy protection without having worked out the economics of it. Even a measure which led to a stalemate between landlords and tenants was satisfactory as far as the administration was concerned because in the last resort the administration was neither interested in the landlords nor in the tenants, nor for that matter in the economics of agricultural productivity, but only in its own political fortune.

Irish Lessons

Before the great spurt of tenancy legislation in India at the end of the 19th century there had been several experiments in Ireland and, therefore, Irish precedent had a great impact on India. The Irish question had troubled Britain for a long time and as the British parliament had to legislate for Ireland, Irish affairs were much more in the limelight than Indian problems could ever hope to be. The first valiant effort to solve the Irish tenancy problem was made by Gladstone in 1870. However, the tenancy act of that year was almost a model of mistakes which should be avoided in tenancy legislation. Its only merit was that it provided a point of departure and that it made it perfectly clear that the matter could not rest there. The act provided in addition to a compensation for improvements also a compensation for disturbance which the landlord had to pay to the tenant if he wanted to evict him. In the original draft the tenant was entitled to this compensation even if he was in arrears with the payment of his rent, but the House of Lords had deleted this clause and, therefore, the landlords could get rid of their tenants with impunity as soon as they failed to pay the rent in a bad year. The act also codified the Ulster custom according to which the tenant could not be deprived of his occupancy right as long as he paid his rent. However, as the act did not contain any restrictions on the raising of rents the provision about the Ulster custom proved to be worthless. In fact, the combination of a compensation for disturbance with the Ulster custom forced the landlords to raise the rents, because the lower the rent, the higher was the value of the tenant right and accordingly the compensation which they had to pay for it. The working of the act showed clearly that all indirect measures of tenancy protection are useless if one does not define the occupancy right and puts no restrictions on the raising of rents. When Gladstone's government placed another tenancy act on the statute book in 1881 these mistakes were amended and the tenant got the famous "Three Fs" (Fixity of Tenure, Fair Rent, and Free Transfer). These three Fs were interdependent, because fixity of tenure had no value without a fair rent and only the freedom of sale guaranteed the tenant an adequate compensation for his improvements. According to the act the tenant had three alternatives, if his landlord wanted to raise the rent: He could pay the new rent which could then not be raised for fifteen years, he could refuse and would then get a compensation for disturbance or he could apply to a commission established under the act for a judicial settlement of his rent. This third course was only conceived of as an exception but against all expectations it soon turned out to be the rule. The guiding principle for the judicial settlement of rents was to be, that an increase in the value of the soil or of the produce should not only accrue to the landlord but should be divided equitably between the landlord and the tenant. This was in fact a recognition of co-ownership which had so far been denied under English common law.[4]

The Evolution of the Bengal Tenancy Act of 1885

When the Irish act was passed in 1881, the discussions on a new Bengal Tenancy Bill were already in full swing. The Bengal Tenancy Act of 1859 had many drawbacks which were similar to those of the Irish act of 1870. The occupancy right as defined in that act in terms of a prescriptive right of the tenant after twelve years of holding the particular piece of land could be easily violated by the landlord by shifting the tenant from one plot to another. Furthermore, a High Court decision of 1862 had made this occupancy right worthless by declaring that the landlord could ask for the full market value of the rent, which in fact meant that there were no restrictions on rent enhancement. A reversal of this ruling by a High Court decision of 1865, which established that the rent could only be enhanced in proportion to the previous rent and the increased value of the produce, did not solve the problem either, because landlord and tenant would never agree on the period and on the data which should serve as a base for these proportional calculations. The actual settlement of rents was never governed by such rational considerations. It was a matter of bargaining between a landlord who often did not know how much land his tenant held and what he cultivated and who tried to collect as much rent and illegal exactions as the tenant could be made to pay, and a tenant who preferred to keep his landlord in the dark about his affairs and tried to pay as little as he could get away with. No revenue officer disturbed this rural harmony because under the permanent settlement only the foremost landlords were in contact with the revenue authorities.

This peace was rudely disturbed by Sir George Campbell who imposed a road cess on Bengal in 1872 which was to be collected by the landlords from their tenants on the basis of the existing rent rolls. The cess was a minor matter but the attention which the government now paid to the rent rolls was very disturbing. Many landlords tried to enhance and consolidate the rent charges before they would come under government scrutiny. This brought them into conflict with their tenants. In the district of Pabna the tenants refused to pay their rent and there was violent unrest. Campbell who felt that the landlords had deserved this did not interfere. He also turned a deaf ear to the demands for a revision of the existing tenancy law because he knew that they were made by the landlords who wanted a rent recovery act rather than a tenancy act.[5] His successor Sir Richard Temple was more amenable to these demands. He turned his attention first to the procedural side of the question as he had to deal with the proposal of the Government of India which wanted to entrust a judicial commission with a speedy trial of all rent cases. Temple was sceptical about judicial decisions in these matters and wanted these cases to be retransferred to the executive even more so because they had only been transferred from the revenue officers to the courts in 1869. In discussing this point with the Government of

India Temple had to deal with the substantive law of landlord and tenant, too. Here he suggested a formula according to which tenants with occupancy right should pay 25% less of rent than those tenants who did not have such a right. Finally he recommended that tenants without occupancy right should pay 20% of the value of the gross produce as rent and tenants with occupancy right accordingly only 15% of this value.[6] At this stage of the debate Temple was transferred from Bengal to Bombay, but the gross produce rule which he had sponsored was bound to come up again and again in future discussions.

After these Preliminary debates a more comprehensive proposal was made by the Rent Law Commission which submitted its report in 1880. If the landlords had hoped to have their hands strengthened by the government they were now sorely disappointed. The commission did not concentrate its attention on the problem of rent recovery, it rather tried to deal with the problem of tenancy protection. Due to the many grades of subinfeudation in Bengal it was a difficult problem to decide where tenancy protection should begin and where it should stop. The commission proposed to solve this problem by making a basic distinction between large tenants called tenure holders who had more than hundred bighas of land and normal tenants with an occupancy right which would accrue to them after only three years of holding their plot. This distinction was made so that subtenants of large tenants should also be in a position to acquire an occupancy right. However, the commission subsequently decided to protect this latter class of tenants by the provision of a compensation for disturbance rather than by an occupancy right. Subletting was to be discouraged by fixing a maximal rent rate so that a tenant would have no profit if he let his land to another. The landlord was to be deprived of the power of distraint for arrears of rent, instead of this the commission recommended a summary procedure for rent cases.[7]

The resistance of the landlords caused the government of Bengal to modify their proposals. Sir Ashley Eden, the Lieutenant Governor of Bengal, submitted a new bill which proved to be a half way house between the suggestions of the Rent Law Commission and the act which was placed on the statute book some years later. Eden dealt with the matter like a chess player who takes over someone else's game, trying to make the best out of it by boldly following up the last moves of his predecessor. He gave up the two classes of tenants as well as all prescriptive rights, proposed to make all tenants occupancy tenants and to give them the right of free sale of their holdings; this he thought would also enable the landlords to recover arrears of rent by compulsory sale. Then he staked everything on the provision for a maximal rent rate which had emerged as a main feature from the deliberations of the Rent Law Commission. These maximal rent rates were to be settled by revenue officers who would publish periodically a table of rates which would be binding for their district. This, Eden thought, would also have the advantage of flexibility because the preparation of tables of rates could first be limited to those districts where this proved to be necessary.

Eden's method would have been an equivalent of the simultaneous settlement of rent and revenue in Northern India, with the exception that in Bengal only the rents were to be settled. But this exception made a difference: In Northern India the revenue officer based his settlement on a measurement of the fields, an estimate of the crops, and a classification of the soil, but Eden did not mention how, in the absence of revenue settlements, his officers were supposed to get the data for their tables of rates.[8]

The point of departure for Eden's suggestions can be found in Justice Field's contributions to the debates of the Rent Law Commission. Field presented a revised version of Ricardo's rent theory. He eliminated all assumptions about wages and capital from Ricardo's theory as they were irrelevant to Indian peasant agriculture. He only insisted on Ricardo's basic proposition that rent does not influence prices, but prices do influence rent. On this premise he based the recommendation to link enhancement directly with the increase in prices. The way in which the two were to be linked, however, could neither be left to custom nor to competition but would have to be determined by the state. Accordingly, rent was to be the proportion of the gross produce that the government would grant to the landlord after officially ascertaining the movement of prices.[9]

Eden's suggestions, to give all tenants an occupancy right and to settle all rent questions by a table of rates, were bound to lead to an even more radical attempt at a solution of the tenancy problem. If the tenants should all have an occupancy right, why not declare that such a right should be attached to all land at present occupied by tenants? And if the revenue officers are supposed to prepare tables of rates why not authorize them to make a regular rent settlement on the North Indian pattern? This was the line of argument which was pursued by the Government of India and the Viceroy, Lord Ripon. The Government of India recommended that the land occupied by tenants should be clearly delimited and separated from the land which was under the direct management of the landlord, and the occupancy right should then not be vested in the tenant but should be attached to all the land which the landlord had let. In this way there was no need for prescriptive rights or compensation for disturbance or any other measures of tenancy protection. This proposal was rejected by the Secretary of State who held that it was not in accordance with Indian custom. Eden himself, who had now become a member of the Secretary of State's Council was also against these bold new suggestions which had been derived from his proposals. Henry Maine, also a member of the council, who was greatly in favour of prescriptive rights did not like these suggestions either. Ripon replied that the prevailing twelve years rule for the acquisition of an occupancy right had equally no basis in Indian tradition, but he preferred not to pursue his suggestions against the will of the Secretary of State.[10]

The landlords of Bengal could only welcome this defeat of the Government of India at the hands of the Secretary of State, because they would have found

it very difficult to draw a line between the land under their own management and that which they had let to the tenants. Unlike in Northern India where the land under the direct management of the landlord was demarcated for the purposes of a more favourable revenue assessment, there was no such distinction in Bengal, where due to the permanent settlement such differentiations had long since been forgotten.[11] Most landlords had let all their land to tenants, many of whom had acquired an occupancy right, and it would have been very embarassing for them if this right which was vested in the tenant were to be projected on to the land.[11] But the government did not completely withdraw this idea of the projection of the occupancy right even after the rebuff from the Secretary of State. The next draft contained a provision whereby a landlord could buy out an occupancy tenant but as soon as he let the land again, he had to concede the occupancy right to the new tenant. In this way a latent occupancy right was attached to the land which would be revived whenever the landlord let the land. The new tenant would thus enjoy the prescriptive rights which had accrued to his predecessor.

The bill which was introduced into the legislative council by Courteney Ilbert in 1883 showed the traces of many previous proposals and debates. The prescriptive rights of twelve years occupation remained a major feature of the bill, they had been strengthened by the provision that they would accrue to a tenant not only due to the holding of one particular plot but even after holding several plots under the same landlord. The idea of a latent occupancy right had also found its way into the bill. The maximal rent rate and the table of rates as suggested by Eden had been included. Here the Government of India had added a paragraph which empowered a revenue officer to prepare a complete rent settlement for the estate of a landlord. This addition which fitted in very well with Eden's suggestions was to be of great consequence, because it was the point of departure for a major revision of the bill which finally found its expression in the famous Chapter X of the Bengal Tenancy Act.[12]

A few months after the introduction of the bill the Government of Bengal was shocked to find out that the mainstay of their proposals, the table of rates, would prove to be utterly useless. After years of deliberation about the table of rates the government had finally decided to conduct some experiments which had shown that in many villages rent rates for the same type of land differed widely, so that there was no basis for any reasonable table of rates. There was also evidence that in many instance prices had risen so fast that a proportional rent enhancement would be impossible.[13] After these findings had knocked out one pillar of the Government of Bengal's edifice, the Secretary of State knocked out another by objecting to the latent occupancy right.[14] The committee of the legislative council which revised the bill accordingly gave up the latent occupancy right and separated all the provisions about the table of rates from the main body of the bill, relegating them to a special chapter which was soon to be dropped in the next stage of deliberations. As the table of rates receded into the background

the provisions about a maximal rent rate lost their importance and the committee struck them off. But now the problem of subletting had to be faced once more. This the committee tried to solve by framing a new provision whereby any tenant who sublet more than half of his holding would become a tenure holder so that his subtenant could also acquire an occupancy right. Then the committee went one step further and protected even those tenants who had no occupancy right. They could apply to a court in order to obtain a judicial lease and a judicial settlement of their rent. The provisions about the settlement of rents by a revenue officer and a preparation of a record of rights were now amplified and put together in Chapter X against which the table of rates in Chapter XI paled into insignificance.

It would have been in keeping with previous developments if the committee had now re-introduced a provision which would have defined rent in terms of a proportion of the gross produce, because ever since the High Court decision of 1865 and the plans of Sir Richard Temple such rules had figured prominently in the different proposals for tenancy protection until the more comprehensive project of table of rates had displaced them. With the fading away of the table of rates a resurrection of these rules was to be expected, but the committee did not take this step. Perhaps this would have happened if the committee had decided at that time to drop the table of rates entirely. However, the table of rates still had a place in the bill, and the committee explicitly rejected the idea of a gross produce rule.

Finally, two methods of dealing with the rent question, both of which circumvented the crucial problem of finding a common denominator for diverse rent rates, emerged as the most prominent features of the bill: The first method was that of a simple and arbitrary restriction on rent enhancement whereby the same percentage would apply to high and low rents and the second method was that of a specific rent settlement by a revenue officer under the provisions of Chapter X.[15] All questions of custom or economics were excluded thereby, the interference had dropped all pretensions. However, this was not the result of a predetermined course of action, it was rather due to a process of elimination. All those who tried their hand at the various bills were in this respect more or less innocent participants in a very complicated game. This was amply demonstrated by the Lieutenant Governor of Bengal, Rivers Thompson, who greatly deplored the arbitrary nature of the bill and set out at this late stage of the development to infuse some new lifeblood into the bill which had been drained out of it so thoroughly in the course of its long career.

Rivers Thompson quoted the latest writings of the British economists, criticized Ricardo's rent theory and even went so far as to assert that under the conditions prevailing in Bengal rent did affect the cost of production. He recommended a revival of the gross produce rule and thought the tenant should get at least half of the increase in the price of the produce. He wanted to combine the gross

produce rule with the table of rates, he was also unhappy about the neglect of the tenants without an occupancy right and wanted to restore the compensation for disturbance.[16] However, none of these suggestions were accepted and thus the Government of India had to pass an act which had matured under four successive Lieutenant Governors of Bengal in the teeth of opposition of the Lieutenant Governor of Bengal. The committee which prepared the final draft eliminated the table of rates but also rejected the proposal of a gross produce rule. It fixed the percentage of permissible rent enhancement at 12½% (Two annas in the rupee) for 15 years, a provision which was very similar to that of the Irish act.[17]

The years which followed the passing of the act were good years for Indian agriculture. There was no flood of litigation and general unrest as predicted by the critics of the act.[18] The act soon acquired the reputation of a model of statesmanship and moderation and was therefore warmly recommended to other provinces where similar problems had to be solved.

A Study in Contrasts: Tenancy legislation in the Central Provinces.

It so happened that Anthony Macdonell, who as Chief Secretary to the Government of Bengal was one of the main architects of the Bengal Tenancy Act, was sometime later appointed Chief Commissioner of the Central Provinces, and immediately set out to criticise the tenancy law of that province in the light of his experience in Bengal. For this he had good reasons, because even at the time of the passing of the Central Provinces' Tenancy Act of 1883 the Secretary of State was astounded by the fact that the Government of India had obviously no concern for the patent contradictions which were embodied in the principles of this act and in those of the Bengal Tenancy Bill which was sent to him at the same time.[19] This was even more remarkable as both bills had the same point of departure, the Tenancy Act of 1859, which had been introduced in the Central Provinces in 1864. But as it often happened, the provincial governments had proceeded along their different ways undaunted by the criticism of the Government of India or of the Secretary of State.

The Central Provinces as the youngest province of British India had had a very peculiar fate. Bordering on provinces with revenue settlements as different as those of Bengal and Bombay and settled originally under the influence of the pro-landlord tendency which prevailed in the years after the mutiny of 1857, this province was really at the crossroads of different trends in British Indian policy. The government soon regretted that it had bestowed so many privileges on landlords in the course of the first settlement of the province and began after 1875 to work on a new revenue act as well as on tenancy legislation. In looking for some guiding principles of tenancy protection the provincial government decided to adopt the Irish precedent of compensation for improvements and compensation for disturbance. There was also a provision in the government's bill

that the tenants could buy the occupancy right from their landlords, but the twelve years rule of the old Act of 1859 was given up. In this way prescriptive rights were eliminated from the new act. However, those tenants who had acquired an occupancy right under the twelve years rule as long as it was in operation were confirmed in their rights by the act.

On account of these different provisions there were now four classes of tenants in the Central Provinces: the so-called absolute occupancy tenants who had had an occupancy right even before the introduction of the twelve years rule, secondly those tenants who had acquired their occupancy right under the twelve years rule, thirdly normal tenants who could now no longer acquire the right of occupancy but were protected by the provisions about compensation for disturbance and, finally, the tenants at will who were unprotected. The compensation for disturbance was fixed at seven times the enhanced rent demanded by the landlord. The officials in the India Office in London were not very happy with these proposals and regretted especially the abolition of prescriptive rights. The provincial government, however, were very proud of adopting the device of compensation for disturbance and considered it to be a most universal means of tenancy protection. They pointed out that it would almost completely eliminate competition and thus protect the tenants more effectively than any occupancy right. Compensation for disturbance would also be independent of judicial decisions as it could be clearly defined once and for all.[20]

Some time after the act had been placed on the statute book the provincial government found some flaws in their legislation. They regretted that they had given up prescriptive rights altogether. They also noted that there was no provision in the act which prevented landlords from buying out occupancy tenants. On the other hand they realized that their provisions about compensation for disturbance were a bar even to reasonable rent enhancements and this was not intended as the right of the landlord to enhance the rent had been explicitly confirmed in the act. Seen from this point of view the Bengal Tenancy Act had much to recommend itself to the Government of the Central Provinces and when Macdonell appeared on the scene his message was well received. He pointed out that the compensation for disturbance was an exotic provision and made no sense in an Indian context. He recommended a judicial decision of rent cases and a re-introduction of prescriptive rights. The new Central Provinces Tenancy Act of 1895 showed the impact of these suggestions.[21]

A Tangled Skein : The Bengal Precedent in Madras.

There was hardly a province in British India which was so different from Bengal and its administrative traditions as Madras. It was here that the *ryotwari* settlement was first set up against the permanent settlement of Bengal. The official mind in Madras was conditioned by the *ryotwari* approach and, therefore,

tenancy legislation was a very strange subject to Madras administrators. However, there were large remnants of permanently settled areas in the Madras Presidency and the Madras Government could not avoid dealing with their problems. In doing so this government had to take into account the Bengal precedent, but this precedent was destined to play a rather unfortunate role in the history of tenancy legislation in Madras. It thoroughly confused the official mind, set different parties in the government against each other and delayed legislation for decades.

The first impact of the Bengal precedent, however, was short, decisive and abortive. This was the impact it had on the proposed tenancy legislation for the district of Malabar. In Malabar under British rule all agrarian relations had become utterly perverse. The land was held by landlords, called jenmis, who according to the British revenue settlement were *ryots* as Malabar happened to be a *ryotwari* area. These *jenmis* had tenants called *kanamkars* who usually paid their rent in advance and, therefore, were looked upon as mortgagees by the British courts. These tenants had again subtenants, called *verumpattamdars* who actually cultivated the land. The pattern of landholding and the superimposed system of revenue settlement produced the strange paradox that the landlord could be thought of as an indebted *ryot* who had mortgaged his land to a moneylender, the kanamkar, who got it cultivated by his labourers. However, if one looked at it differently, the kanamkar could be considered as a tenant who should enjoy the benefits of tenancy protection. And this is just how the *kanamkars* preferred to look at themselves. Seeing the signs of the time they were quick in mobilizing official opinion in their favour and lengthy reports were prepared in order to introduce a tenancy bill for Malabar.[22]

Unfortunately for the kanamkars, Sir Charles Turner, the Chief Justice of Madras, took the side of the *jenmis* and defended their rights as landlords. But the most unkind turn that he did to the kanamkars was that he finally suggested the Bengal Tenancy Act as an appropriate model for Malabar. In doing so, he conceived of the kanamkars as tenureholders and recommended that the *verumpattamdars* should enjoy the protection which the Bengal Act granted to the occupancy tenants. No wonder that the *kanamkars* soon lost their interest in tenancy legislation.[23]

The Bengal Tenancy Act had a more lasting impact on the legislative efforts which finally led to the Madras Landed Estates Act of 1908. This piece of legislation was on the anvil for more than thirty years. The first cause had been, as it happened so often with British-Indian Legislation, an inconvenient decision of the High Court. In 1870 the High Court of Madras had declared that the landlord had an absolute right to terminate all tenancies at the end of the revenue year unless the tenant could show a written proof that he had the customary right of occupancy. The High Court held that the Madras Rent Recovery Act of 1865 did not contain adequate provisions about the termination of a tenancy. The

Board of Revenue was very much perturbed by this decision as it extinguished the occupancy right which the legislators had intended to confer upon the tenants. But in spite of this the Government of Madras did not do anything in this matter for more than a decade.

It was only when the Government of India communicated the recommendations of the Famine Comission to the Government of Madras in which it was stated that subletting should be stopped and the occupancy right strengthened that a new impetus was given to legislative action in Madras. But it was not until the Bengal Tenancy Act of 1885 stimulated the imagination of the Madras administration that any serious legislative efforts were made. Thus in 1887, a draft bill was prepared which combined the main features of the Rent Recovery Act of 1865 with those of the Bengal Tenancy Act. However, it became soon evident that the imitation of the Bengal precedent did more harm than good to the course of tenancy legislation in Madras. Many officers pointed that the Bengal pattern was irrelevent to the Madras situation. Finally the Board of Revenue suggested a delimitation of the land let to tenants as distinct from the land managed by the landlord and thereby repeated the proposal made by Lord Ripon for Bengal which was rejected by the Secretary of State. As far as rent restrictions were concerned, the Board of Revenue recommended the elimination of the freedom of contract from the existing law and the establishment of a record of rent rates and a record of tenancy rights. The Board also recommended that arrears of rent for more than three years should be written off, because Irish experience had shown that it was useless to guarantee the tenant a better future if he was still groaning under the debts of the past.

When this proposal of the Board of Revenue of 1892 was submitttd to the Government of Madras it became soon apparent that there were three parties in this government, those who would rather retain the old Rent Recovery Act of 1865 with minor amendments, those who wanted to follow the Bengal precedent and finally those who agreed with the Board of Revenue that neither the old law nor the Bengal pattern were suitable for Madras and that a new way ought to be found. It so happened that at the time when the draft of the Board of Revenue was placed before the Government of Madras the majority of the members belonged to that school of thought which preferred the Bengal precedent. Therefore, they rejected the draft of the Board and submitted to the Government of India a slightly revised version of the draft which followed the Bengal model. When this draft was returned by the Government of India to the Government of Madras for revision, the composition of that government had changed and some of the officers who had previously been on the Board of Revenue were now members of the government. They gladly accepted the criticism of the Government of India and thus a new round of legislative efforts could begin.[24]

The Government of Madras could not immediately go back to the original draft of the Board of Revenue, because the basis of discussions with the Government of India was now for better or worse the draft based on the Bengal

precedent. The new draft which was sent from Madras to the Government of India in 1898 presented, therefore, a hybrid mixture of all previous proposals and was bound to provoke fresh criticism.

In fact, the Government of India had criticized the earlier draft not so much because it followed the Bengal precedent but because in following it, it had missed the point in many respects. It so happened that Anthony Macdonell was the member of the Government of India who had to deal with this draft. He found that the Madras provisions did not adequately protect the occupancy right of the tenant, that there was no protection for subtenants and that the essential provisions of Chapter X of the Bengal Tenancy Act were missing in the Madras draft. The revised draft which the Government of Madras sent to the Government of India in 1898 reflected to a certain extent Macdonell's suggestions. But as far as the protection of subtenants was concerned the Madras government had to reject Macdonell's recommendations because they were afraid that they would create a dangerous precedent for the *ryotwari* areas. The draft of 1898 had another serious flaw which those who had the experience of Bengal in mind quickly detected. The Madras government wanted to empower revenue officers to settle rent disputes but in doing so these officers were to act under the provisions of the Civil Procedure Code. The same mistake had been made in the Bengal Tenancy Act and had to be corrected by later amendments. The Government of India wanted to prevent the repetition of this mistake in Madras. There were many other features of the Madras proposals with which the officers of the central government were dissatisfied but they were constrained to limit their criticism because the previous draft had been considered by their predecessors and, therefore, they could not start the whole matter all over again but had to stick to the specific points of disagreement between their predecessors' proposal and the revised draft of the Government of Madras.[25]

And yet, the whole case was thrown wide open again when the bill was finally introduced into the legislative council of the Governor of Madras. The cause was not the criticism of the Government of India, but the ideas of the member of the Government of Madras who was in charge of the bill, when it was submitted to the council. The new draft which emerged from these deliberations looked very much like the one prepared by the Board of Revenue in 1892. It embodied the views of those who thought that it would be best to extend as far as possible the principles of the *ryotwari* settlement to the permanently settled tracts. But as it was impossible to revoke the permanent settlement with the landlords, the best solution of the problem seemed to be to introduce a permanent settlement for their tenants, too. This settlement was to be based either on customary rates of rent or, where these could not be ascertained, on the rates paid in 1801. This amazing bill shocked the Government of India when it was submitted to them in 1903. They were very much surprised to see that the Government of Madras which had so far most strongly insisted on the principle

of freedom of contract now recommended customary rates or harking back to 1801.[26]

When the Madras legislators were faced with the rejection of their Permanent settlement for tenants they finally adopted the arbitrary restrictions on rent enhancement which were the main feature of the Bengal Tenancy Act.[27] In the end the Bengal precedent had prevailed. Much work on five major draft bills and numerous preliminary proposals could have been saved if the Government of Madras had at an earlier stage simply adopted the Bengal Tenancy Act of 1885 for the permanently settled tracts of the Madras Presidency. The Tenancy Act of 1859 had been freely exported from Bengal to other provinces, though not to Madras, but in the mean time tenancy legislation had become highly complicated and had to be geared to the specific problems of the province concerned. Nevertheless, the precedent of the Bengal Tenancy Act which was perhaps the most elaborate Tenancy Act ever placed on the statute book had to be taken into account by everybody who set out to draft tenancy legislation after 1885.

Protection for whom?

The instruments of tenancy protection with which the government had armed itself were of a limited scope and they did not reach much beyond the first tier of tenants. This restraint was deemed to be reasonable, because there should be tenants-at-will as pawns in the game of competition in which the official mind sincerely believed. There was the additional reason that the *ryotwari*-system should not be upset. Of course, according to the text-book of the economists the ryot as government-tenant was not supposed to have sub-tenants and the whole system of revenue-settlements was based on this assumption. If the theory did no longer fit the facts, it was in the interest of sound administration not to reveal this inadvertently by hasty legislative efforts.

Politically this limited protection suited the government very well. The colonial rulers had come to realize that the landlords provided an insufficient social base for their government, but in their quest for a broader base they were quite satisfied when they reached the level of substantial tenants on whom they could confer the boon of statutory or occupancy rights thus stabilizing the position of an important social group. In this way the social conditions of Indian politics in the twentieth century were pre-determined to a great extent by British-Indian tenancy legislation in the last decades of the nineteenth century.

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Dietmar Rothermund