The Permanent Settlement of Bengal
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IT is now just a century ago that the permanent settlement of the land revenue of Bengal was completed. Financially this settlement involved the bold step (it would have been thought madness in any other department of the revenue) of stereotyping for all time the figures of the land revenue account which is the chief item of state income; it was carried out in apparent unconsciousness alike of the probable embarrassment of future governments, and of the incalculable changes in the value of money as well as of land and its produce that time was bound to bring about. Socially it gave rise to what was virtually a new class of (legal) landlords; and, albeit indirectly, it revolutionised the land tenures generally, by crystallising into legal rigidity relations which were gradually developing themselves with oriental laxness under the varying impulse of local circumstances.

Such a settlement has naturally left a heavy legacy of legal and administrative trouble not yet wholly disposed of. The history of the settlement is, therefore, something more than a mere matter of curiosity; it contains not a few lessons for modern times, and furnishes some parallels with agrarian troubles nearer home. Many accounts of it have been written, but the facts have not always been stated fairly; various and sometimes inaccurate presentations have been made, in the eagerness of advocates of this or that policy to establish their case.

In order to derive practical benefit from the history, there is still room to welcome additional information, especially when that addition comes in the shape of a more direct means of verifying conclusions and establishing disputed points. The four handy volumes which Sir William Hunter has recently issued [1] contain a classified abstract of the more important official letters received by and issued from the chief revenue office in Calcutta during the first twenty-five years of its existence. This marks a new departure; for the records throw a direct and original light on the working of the administration under Lord Cornwallis's system, a light different from that

[1] *Bengal MS. Records: a Selected List of* 14,136 *Letters in the Board of Revenue, Calcutta* (1782–1807), by Sir W. W. Hunter, K.C.S.I. 4 vols. London: Allen & Co. 1894.

given by the bare text of regulations, minutes, and parliamentary reports. The letters furnish us with concrete instances—with so many 'leading cases' showing the specific application and the real intention and effect of the rules. The abstracts will, it is true, find their fullest use in India, where further reference can be made to the entire document; but in general Sir W. Hunter's abstracts are so good, in spite of their necessary brevity, that they contain in themselves the essential information required. Naturally, in order to make good use of such material, the reader must have a certain familiarity with the facts and the law of the settlement, but this is now easily attainable. Moreover, in view of such a need, the list of letters is preceded (in vol. i.) by an illustrative dissertation on the settlement proceedings which in itself would entitle the work to take high rank among our authorities on the administrative history of Bengal.

The land revenue administration is so important that every large Indian province has found it indispensable to have a special department for its chief control. In Bengal, practically since 1782, there has been a 'board of revenue,' with whatever variety of official title or difference of internal constitution. Before this board every serious question of land revenue policy ultimately comes.

The period from 1782 to 1812 forms a distinct epoch in the history of the administration. It begins with the year in which it may fairly be said that the machinery of revenue control, local and central, had acquired its modern form, and had begun to work on defined lines of regulated procedure.[2] The capabilities of this machinery were first seriously tested in the making of the decennial settlement, which was declared permanent; and the details of this settlement, and the questions that arose out of it, naturally form the most important topic of the correspondence during the earlier years of the period. The latter part includes the years during which the difficulties created by the settlement began to be acutely felt, especially in connexion with the law of tenancy and rent recovery. Sir W. Hunter's volumes do not embrace the entire epoch; they end with 1807—taking the round term of a quarter of a century.

Never, perhaps, was an administrative experiment tried with such excellent intentions as the Bengal settlement, never was one which had results so different from those expected. In truth, the experiment was made under almost every possible disadvantage. If Bengal had been a well-managed native province, we might have

[2] From 1765 (the date of the grant of Bengal, Bihar, and Orissa) to 1771, the attempt was made to maintain the old native official system intact, but subject to a certain supervision. The years 1772–1781 may be regarded as a second stage, during which the essential features of modern organisation—the 'district,' with its collector and his assistants, the revenue 'division,' with its 'commissioner' (to supervise a group of districts), and the board of revenue (in direct communication with the provincial government)—were gradually, and with many retrogressions, evolved.

succeeded to a revenue system which would not indeed have conformed to English notions of precision or legality, but would have been practically workable in a paternally despotic fashion, and might have been gradually adapted to western requirements. As it was, the province came to us in the last stage of administrative decay. It had never been more than an outlying and imperfectly connected member of the Moghal empire, and not only soonest fell a prey to the disease that was infecting the whole system, but had never shared the fuller circulation of vitality which maintained prosperity in the provinces nearer the heart of the empire. Though nominally added to the dominions of the early Pathan emperors of Delhi, Bengal had become an independent kingdom in the fourteenth century; and it maintained its position largely by the countenance given to the old Hindu princes and chiefs who ruled a series of states, which, according to the usual Hindu model, were—regarded as kingdoms—always of small size. They were left in practical independence on condition of accepting a *sanad* or grant implying political subjection, and of passing on to the treasury of the Muslim king a considerable share of the land revenue locally collected.

The genius of Akbar enabled him once more to annex Bengal and make it a *sūba* or province of the Moghal empire. Sir W. Hunter is perhaps inclined somewhat to undervalue the extent to which Akbar's revenue settlement (*circa* 1582 A.D.) affected the province. It is true that the districts were not actually measured—that process was only carried out in Bihar—but a fair list was made out of the *parganas* or local fiscal subdivisions and of their assessments based on the rental of the village groups in each.[3] And there were subsequent formal settlements between 1658 and 1728.

The system of farming the revenues became general during the latter part of the reign of Aurangzīb; and in the last settlement (1728) we find the system fully established, as the accounts proceed solely according to the series of *ihtimām* or farmers' charges which had virtually superseded the official fiscal divisions established in the days of direct control. After this settlement, we only know of the continually increasing levy of 'cesses' (*abwāb*), imposed, on all sorts of pretences, in addition to the nominal land revenue. In the end we find a kind of *annual* settlement (or rather bargain) made with the farmers; and this had continued for some time before British rule began.[4]

[3] The second volume of the *Ayin-i-Akbari* shows this clearly. John Shore (minute of June 1789, par. 11, *Fifth Report*, vol. i. p. 103, Madras reprint) wrote that the settlement comprehended not only the quota (total rents) payable by the villages, but, 'as is generally believed, by the individual ryots.' This assessment could hardly have been accepted and appealed to as it was, if it had been summary or incomplete.

[4] Warren Hastings wrote: 'For the last twenty years' (*i.e.* since 1756) 'the revenue has been collected on a conjectural valuation' with reference to past collections and the opinion of officials; and 'it was altered almost every year.'

No wonder then that for some years the British authorities feared to touch the tottering edifice of native management lest it should crumble to pieces under their hands, and contented themselves with trying to prop it up and remedy its worst abuses. When at last, in 1772, direct administration was forced upon the Governor-general, he had to begin the heavy task with a staff of officers numerically insufficient and, as a rule, without experience of land management. As if to add to our difficulties, a terrible famine had recently desolated the province; and what its effects were may be judged from the touching description in the 'Annals of Rural Bengal,' a book which was the first of that valuable series in which Sir W. Hunter has, with rare success, made the dry facts of Indian history to live and move, as it were, before our eyes.

The land revenue of Bengal had long been levied in money. This, however, was, comparatively speaking, an innovation. In a simple stage of society, it is convenient to levy the contribution in its original form, viz. by taking a share of the actual grain produce of each holding as it lay on the threshing floor. When this is done, no question arises about the tenure of the cultivator or the value of his land. The share belonging to the king is fixed by immemorial custom. But, in the course of time, circumstances both economic and political (which cannot here be discussed) are gradually found to necessitate the substitution of cash rates for each holding or for a certain unit area of land; and then it is that the more modern difficulties of revenue management begin. Attention is, in fact, diverted from the *land*, the produce of which is to be divided, to the *person*, who is to be responsible for the cash payment; and it is soon found (as the revenue-payer is not always the immediate holder or cultivator of the land) that the administration cannot long ignore the relations of that person to the soil cultivators as well as to the state.

All native governments adopted one or other of two methods. (1) They dealt direct with each separate village, sometimes collecting the individual payments of the cultivators, sometimes holding a headman, or other person, responsible for the village total.[5] Under this system—which marks the best days of native rule—there is a regular graduated control, from the accountant in each village, to the *kānūngo* in each small subdivision, and from him to the district officer, and finally to the *sadr-kānūngo*, or financial controller, who advised the *dīwān*, or chief civil officer of the

[5] In some parts of India, where the villages were held in shares by a joint body, the village revenue was in one sum, for which the body was jointly responsible, distributing the burden, according to their own custom. This was not the case in Bengal proper. The barbarous Bengal custom called *nājāi*, whereby the farmers made the solvent cultivators pay the arrears of a defaulter, was a pure act of tyranny and was soon abolished under British rule.

whole province. (2) A larger 'estate' was taken, the particulars of the component revenue divisions, villages, &c., being stated in a *sanad* or warrant of appointment, and a farmer was made responsible for the total sum, subject to certain specified allowances for charges and remuneration. Such an 'estate' might be only a single *pargana*, or might cover an extensive district. Under this system the local revenue control above spoken of, soon becomes atrophied and useless.

In Bengal the first of these methods had originally been adopted, at least over a considerable part of the country; but (as already stated) since the reign of Aurangzīb it had given way more and more completely to the second. The cause of the change was partly the weakness of the local government, and partly the fact that the surviving Hindu rājās had all along been allowed to administer (and farm the revenues of) their former territories. Wherever there was no rājā, or other local chief of sufficient importance, official farmers and speculators were appointed to manage the revenue. All that was really looked to was that the *total* sum specified in the warrant should be paid into the treasury.

In process of time all 'zamīndārs,' as these revenue farmers were officially called, became fused into one class, and their various origin was more or less forgotten. One of the most valuable parts of Sir W. Hunter's dissertation (vol. i. pp. 31 ff.) is that which places before the reader the different elements thus fused together. The fact that some of the 'zamindars' had old territorial claims dating back before the Moghal conquest, though, legally speaking, their only title was the imperial *sanad*, had no doubt much to do with the rapid growth of the power and pretensions of the whole class, of which we shall presently speak.

It may at first sight appear strange that the British revenue administration, after 1772, soon came to distrust the zamindars; but in fact the evils of the system as a whole were more obvious than the merits and claims of a certain class. Probably all zamindars were found to oppress the people a good deal, and certainly they intercepted a large proportion of the state revenue. Attempts were therefore made to set them aside and to substitute contractors, bound by short leases—for five years, or for one year—who would have no pretensions beyond the terms of their engagement. But the zamindars had by this time been too long and too firmly established to enable such a plan to work, or to make their own wholesale supersession other (in many cases) than extremely unjust. Consequently Pitt's act of 1784 (24 Geo. III. cap. 25) clearly pointed to the restoration of the zamindars (under due restriction) and to the making of a settlement with them. Lord Cornwallis was sent out in 1786 to carry the act into effect, and the instructions

of the directors of the East India Company hardly left him any option in the matter.

Any definitive arrangement of the land system must necessarily have in view three objects—(1) to determine the assessment of each 'estate,' and for what period it should hold good; (2) to give the persons responsible for the payment [6] a secure position which could be legally described and enacted; (3) to determine what was to be done to protect the village cultivators over whom the zamindar (whether as the once hereditary local ruler or as the officially appointed farmer) had grown up.

(1) As to the *amount* of the assessment, the only practicable plan (seeing that a land survey and valuation were deemed impossible or were never contemplated as possible) was to take an average of past collections, and so arrive at a round sum which could be further adjusted with reference to the various special arrangements of the settlement—a matter of detail which it is not necessary here to consider. As to the period for which the assessment was to be maintained there was a marked division of official opinion. Sir W. Hunter urges that Lord Cornwallis was not responsible for its being at once made perpetual, because his instructions were to make it so. This can, however, hardly be conceded. The act of 1784 provided nothing which required, or even implied, that the assessment should be fixed for ever.[7] Reliance is, however, placed on the terms of the directors' despatch of 12 April 1786 (par. 52), which said, 'The assessment now to be formed shall, as soon as it can have received our approval and satisfaction, be considered as the permanent and unalterable revenue,' &c. But this phrase should not be taken apart from the other instructions given; for these further distinctly declared that *at present* the settlement was to be made for *ten years*; and it was added that the directors felt 'that the frequency of change had created such distrust in the minds of the people as to render the idea of some definite term more pleasing to them than a dubious perpetuity.' There was no reason, then, why the ten years should not have been allowed to run out, so as to see how the new settlement worked; and it was in opposition to the best local advice that Lord Cornwallis urged the directors, when the gradual process of settling district by district was complete, at once to declare the assessment perpetual. The directors evidently had doubts also, and it was only after two years' deliberation that they (in the end of 1792) sanctioned the

[6] Or 'holding the settlement,' as the revenue phrase is.

[7] In reading the documents of this period it should be borne in mind that the term 'permanent,' *now* used only to indicate that the assessment is unalterable, was then just as often employed to indicate fixity of system—with reference to the former changing methods of working. This use of terms is well illustrated by the sentence in the *Fifth Report* (vol. i. p. 14), where the writer speaks of 'the introduction of a *permanent* settlement, afterwards made *perpetual*.'

governor-general's proposal, not without some apparent reluctance.[8]

(2) As to the second of the objects above stated, Sir W. Hunter urges that the settlement orders consolidating the position of the zamindars were 'neither consciously nor unconsciously an imitation of the English system of landed property' (vol. i. p. 45). If this is said in refutation of such crude objections as those of Mr. Mill, that the settlement was the result of Lord Cornwallis's 'aristocratic prejudices,' it may at once be admitted. But Sir W. Hunter seems at any rate to imply that the conferment of a landlord title was solely or chiefly the result of inquiries and conclusions as to the Indian law and constitution. It is not easy to see how the historical and local information obtained in Bengal could have led to the landlord law of the Regulations of 1793 without the strong influence of English legal ideas.

Allusion has already been made to the different origin which the 'zamindars' really had. Sir W. Hunter has, in his usual felicitous manner, sketched for us the position held by one of the old aristocratic territorial zamindars, and has been perhaps too kindly silent as to the position of some of the other class whose origin was purely official, and who had built up estates—adding village to village and field to field, often by fraud, violence, and other questionable means.[9] But while it is perfectly just to say of some of them that they had, on grounds of long possession and hereditary right, 'a good title to the zamindari estate' (p. 37), and that they were 'ancient hereditary lords of certain tracts, a status which enabled them to levy great incomes' from the land (p. 41), that admission does not suffice to determine the nature of the interest which time and circumstances had established. The question for the Bengal authorities was not so much whether there was a good title of some kind, but how they were to define the interest which it was desired to secure. And the mode in which they answered the question shows manifestly the influence of English ideas of landed property.

No doubt elaborate inquiries were made, with the object of throwing light on the local history of the zamindar's position. But waiving the objection that 'the law and constitution of India' is a mere phrase, and that no such thing practically existed, at any rate in the eighteenth century, it must be admitted that neither the old text of the Hindu or Muhammadan law books, nor the local

[8] Sir J. Kaye has stated Lord Cornwallis's position in this matter with much fairness (*Administration of the E.I. Company*, 1853, p. 182).

[9] Compare, for example, Dr. Buchanan (Hamilton's) account of the Dinājpur district (printed in 1833), in which the author describes how the great zamindari of Dinājpur attained its mushroom growth. The first founders were nobodies who grew rich and then sought for, and obtained, the title of raja, and ultimately mahāraja. The account was written within ten or twelve years of the permanent settlement.

custom (which mostly related to the village and its agricultural occupation) gave the slightest hint as to how the zamindar's gradually altered position should be classed or defined.

The original condition of right in land, broadly speaking, was this: The whole area of the cultivated districts (we may confine ourselves to the central populous parts) was, as usual, divided into groups which we call 'villages.' These were of the type in which no co-sharing body or single family is found claiming the whole; but the holders of land are separate units kept together by the authority of the headman and other village officers and formed into a 'community' by the local ties which result from residence together, from common interests, and from having all the simple wants of life provided for within the circle of the village, by a resident staff of artisans and menials.[10] In Bihar there is evidence of co-sharing families having obtained the chief position in the villages; but not in Bengal. Now under the Hindu, and equally under the (much later) Muhammadan law, the village landholders—descendants, or at any rate direct representatives, of the first settlers, were certainly owners of the land in some sense, though oriental texts could not be expected to formulate the nature or the legal elements of ownership. A right in the soil was, however, acknowledged as resulting from the first occupation and laborious clearing of the land; and that this was a substantial right is indicated by the many texts which refer to the maintenance of boundaries and fences, to repressing trespass, and to the succession to the land by inheritance as well as by gift and sale, the right of transfer being restricted only in much later times. Coincident with this direct soil right was, however, the right of the king to a share in the produce, and to the waste lands, and to certain transit and other dues and tolls leviable. When for any reason the rājā made a grant of a village, however exhaustive the formal terms of the document, all that was meant was that the grantee was to take all the royal rights, including the whole or a part (according to terms) of the revenue share, and the right to cultivate the waste. The rights of the original holders were not touched.

The more the old texts and the grants are examined, the more clearly it will appear that the 'law and constitution' contemplated two concurrent rights—(i.) a direct soil ownership in virtue of occupation and clearing; (ii.) an overlord right, which consisted in

[10] Each village had in those days an indefinite area of waste around it: this was in no sense the joint property of the village landholders, though they had the customary use of it for grazing and wood-cutting. When cultivation was to be extended, permission, express or tacit, was required to occupy the new fields. The waste remained the property of the state: and this is evident from the fact that when a *grantee* of the village appeared, he always took the waste as lawfully his own under the grant, subject, of course, to the customary provision for grazing, &c., which was necessary to the welfare of the original holders.

the revenue share and the other rights incidentally above alluded to.[11] The text-writers do not suppose that the first right is destroyed, or even diminished, by the existence of the second.

So long as the overlord right was exercised directly by the *ruler* himself, seated at his capital, in practice it was not found to interfere with the cultivator's right. But it contained in itself elements that might produce a change; for the rājā's share could be increased;[12] and if it was not paid, coercive measures might be employed. When, therefore, in later times not only did a conquering dynasty raise the revenue share, but grantees, or pushing families, or adventurers (in the local raids of unsettled times) got hold of villages, they exercised the overlordship at close quarters, so to speak, in a much more direct and self-assertive fashion. And especially when the state overlordship and revenue rights were farmed out, the farmers (of whatever class or origin) were brought into a close managing connexion, such as the dignified ruler at his capital, with his well-controlled officials, would never have thought of. Still, in theory, it is only the state rights that are the subject of the grant or farm.

But the more the local revenue became (virtually) the subject of a bargain with middlemen, the more the latter regarded it as a matter of course that they should make as much profit as they could; and accordingly they (without check from the now powerless officials) treated the *raiyats* as liable to anything they thought proper to impose.[13] They would eject insolvent cultivators, would buy up some lands under pressure, and, by standing security themselves for the payment due from others, would soon have opportunity to foreclose on the owner. Apart, however, from his private (family) lands and actual purchases, &c., the zamindar was never, on any possible theory, the actual owner of all the village lands; the hereditary rājā accepting a *sanad* from the Muhammadan ruler, was not, and *a fortiori* the official farmer was not. But the fact remains that when once the overlordship is transferred to the hands of some person, other than the territorial ruler for the

[11] Colonel Tod quotes a maxim of the Rajputāna illage landholders, which expresses correctly the facts in all the ancient Hindu kingdoms—

'Bhogrā dhani Rājhu
Bhūmrā dhani mājhu'—

i.e. 'the king's wealth' (or right) 'is his revenue share; the soil is my wealth' (or right).

[12] The share was one-sixth; but even in the *Institutes of Manu* we find it stated that in times of emergency the rājā might raise it to one-fourth. There is nothing about ejection for non-payment (and in practice such a thing was unknown), but the rājā is directed to *fine* a cultivator who neglects to till his field.

[13] The old aristocratic zamindar was not much better in this respect than the speculator. The former, under pressure from the imperial treasury, forgot too often the *noblesse oblige* that would have actuated him in the days of independence; and, besides, he left the direct management to a host of greedy underlings.

time being, it always tends to become a virtual but undefined proprietorship, and that in great measure by a series of steps the reverse of equitable. The difficulty is to attempt, at a later time, to question acts which, in some cases, have the prescription of several generations.

While grantees and farmers were gradually making good their pretensions, the old state right itself underwent a change. No trace of an assertion that the *ruler*, as such, is owner of all land can be found in the genuine Hindu or Muhammadan law.[14] But later princes—and especially the viceroys who assumed independence—all set up the claim, as conquerors, to be the sole owners of land. By the close of the eighteenth century this was certainly established *de facto*. Lord Cornwallis was thus confronted with a double complication. The state right to which his government succeeded, was *de facto* though not *de jure*: the zamindar's claim was not formulated, but it was long existent in practice. Both the one and the other had very little to do with the 'law and constitution;' not even with 'custom,' unless the results of unchecked aggression during a century can be called 'custom.'

It was, then, as a matter of deliberate policy that the governor-general renounced the state right to the land and conferred it, in a new form, on the zamindars.[15] The first part of this decision calls for no remark in this place; the second was largely prompted by the necessity for cutting the knot that could not (so it was felt) be untied. The terms in which this right was actually conferred on the zamindars by law are really more important than the expressions made use of in the governor-general's preliminary minutes. But it is impossible to read either minutes or regulations without perceiving that the idea of the English landlord of the eighteenth century (of course assuming a *good* landlord as the type) was present to the minds of the writers; indeed what other idea of legal property in land could they have had but that of a landlord, the owner of the estate, with all subordinate holders his tenants—to be cherished and protected, no doubt, but still 'tenants,' holding by agreement with him? And so we are not surprised to find in sect. 52 of Regulation VIII. of 1793 (this with Reg. I. constitutes the charter of the settlement) the provision 'that' (saving certain privileged holders whose title was obvious) 'the zamindar or other actual proprietor

[14] The celebrated modern digest of *Jaganātha* (written in Sir W. Jones's time and translated by Colebrooke), however valuable in many respects, shows the most pitiable confusion on this subject, in the hopeless endeavour to reconcile the older law with the then established doctrine that 'conquerors' had a 'protective property' (whatever that may be) 'in the soil of their territory.'

[15] In the preamble to the second regulation of 1793 it is expressly stated that of two measures taken by government to restore agricultural prosperity, one was that 'the property in the soil has been declared to be vested in the landholders (meaning the zamindars);' and this, it is added, 'had never before been formally declared.'

is to let the remaining lands of his zamindary, or estate, under the prescribed conditions, in whatever manner he may think proper.' The 'conditions' were that a written document was to be given, specifying one definite sum of 'rent,' and that no 'extras' were to be exacted. Moreover it was speedily enacted that the landlord was not to give his *pottah* for more than ten years, lest he should injure himself and his means of paying the state revenue. All this implies that the raiyat was a 'tenant' under contract; and it soon became accepted that rents could be raised.

(3) But this question of 'raising the raiyats' rents' invites a brief separate notice in connexion with the third object of the settlement above noted (p. 281). It never occurred to any one to restore the resident or permanent village cultivator to the position of owner of his holding; that would have been inconsistent with the declaration regarding the zamindar's rights. Still it would not much matter to the (resident) raiyat what he was called, provided it had been recognised that his tenancy was by custom, not by contract, and that his rent payment was, therefore, to be certain, and to be raised only at such intervals and on such terms as it could have been, under state authority, in olden time. It is undeniable that the official minutes contain directly conflicting pronouncements on this subject. On the one hand it was not forgotten that what now became the 'rent' payable to the 'landlord or other actual proprietor' (of the regulations) was merely the revenue payment that would, if there was no farmer, have been paid direct to the state collector. And Lord Cornwallis sometimes wrote as if these payments were fixed absolutely, at rates supposed to be ascertainable from local records.[16] It would have been possible, no doubt, to include in the proclamation to zamindars a reminder that they had originally no right to raise the raiyats' payments unless the state itself raised them; and it would then have been logical enough to declare that as the state had limited for ever its demand on the zamindars, and had presented them freely with the unoccupied waste adjoining their estates, and had given other advantages, they must forego any increase on all such raiyats as were not directly located by themselves on newly cultivated land.[17]

But, on the other hand, there was no obligation to make such a condition. There is no doubt that, if there had been no farmers or other grantees at all, the revenue demand from the original soil owners could have been revised from time to time. A good government would have made such a revision only at long intervals, and on such principles as are allowed to operate at the present day

[16] This idea of the intended fixity of 'rents' is the basis of the argument in the anonymous work called *The Zamindari Settlement of Bengal* (Calcutta, 1879, 2 vols.), quoted by Sir W. Hunter.

[17] Rents on this would, of course, be purely matter of contract with the owner.

in other provinces.[18] The grant of a certain legal status and other privileges to one party did not necessitate any grant or free gift to the other, unless, indeed, the grant to the first caused some direct injury to the second; and that it was neither intended nor supposed to do.

The question of raising rents was discussed in 1789, as appears from Harington's 'Analysis.'[19] It was at this time that John Shore put forward his 'Plan for the Ease and Security of the Raiyats.' He had already recognised (in his minute of 18 June 1789) that the position of the raiyat was anomalous, and he contemplated its gradual adaptation to the 'simple relation of landlord and tenant.' He proposed that every landlord should be compelled to agree to make a systematic inquiry, over the whole of his estate, for the purpose of fixing (and entering in a written note) the rent of every resident village cultivator.[20] This was to be done within a given number of years; the number Shore left blank in his minute, as a detail for subsequent determination. It was then believed that, what with the information from the local lists of rates (to be mentioned presently) and the necessity that the parties would feel themselves under to find some *modus vivendi*, terms would be settled.

Lord Cornwallis would not consent to defer the ratification of the settlement till such an inquiry was complete; nor did he do more than pass a regulation making the issue of *pottahs* compulsory on the landlords. There was, moreover, no means of enforcing the law; and it was soon found that 'tenants' objected to take the *pottahs*; some, because they feared that, unlettered as they were, terms which they could not read or understand might be imposed thereby; others, because they felt that accepting such a document meant admitting that they held of the zamindar and not by an independent, customary, or legal right. It is true that the *pottah* was not exactly what we should call a lease, but it certainly had this effect. The *pottah* regulation, in fact, failed altogether.[21]

[18] It should be borne in mind that in theory, the land revenue represents a certain proportion of the income or benefit derivable from cultivated land. Even in modern temporarily settled provinces (*i.e.* where the assessment is liable to periodical revision) an increase is taken, *not* to raise the proportion spoken of, but because, under existing conditions as to value of money, increased produce, or increased value of land, and higher market prices of grain, the sum paid under the last assessment no longer represents the proper proportion.

[19] Vol. iii. p. 461 ff.

[20] Other, it may be presumed, than those directly located by himself on new lands, and who were indisputably contract tenants.

[21] Its failure was owing largely to its own terms: it might naturally be thought that if the raiyat would not accept, or could not get, a fair *pottah*, the remedy would have been to allow (as the Madras zamindari law allows) either party to apply to the collector to fix a proper rate. The only provision, however, was that the landlord should post up a list of the rates he demanded; and if the raiyat did not contest them (by the to him impossible process of a costly suit at distant head-quarters) he could be made to pay at such rates.

Even if these difficulties could have been evaded, and present rates fairly ascertained in most cases, it was still necessary to decide whether the raiyats' rents were liable to any future increase or not. Obviously, if the intention was positively entertained to make the rates fixed, this was one of the very first terms to be set forth with all plainness in the regulations. As it was—and here we must perceive the influence of the English idea of landlord and tenant—not only was it directly enacted that (subject to the conditions indicated) the landlord 'was to *let his lands*' in any manner he chose, but it was specifically said that such raiyats as could prove a special grant or a prescriptive right were entitled to fixed rents. The inference, therefore, was inevitable (at least in English courts) that *otherwise* rents could be raised.[22]

The matter was further settled by the influence of two measures, which, though enacted with the best intentions, were productive of unforeseen results. One was the 'sale law,' which provided the remedy for revenue default. Within a short time after the settlement, the earlier practices of imprisoning defaulting landlords and distraining their personal property were abolished, as trenching on the dignity and freedom of the position. But it had been ruled from the first that the fixed revenue (which would gradually become lighter and lighter as land and its produce rose in value and as new land was profitably cultivated) must be punctually paid; and therefore the estate, or part of it, would be sold at once if default was allowed to occur. Now, as a careless or dishonest manager might burden his estate recklessly, and so destroy its sale value before defaulting, it was necessarily provided that contracts and charges imposed by the defaulter were, with certain exceptions, void or voidable as regards the purchaser. When a sale occurred—and, as Sir W. Hunter has explained, this at first very frequently happened—most rents had to be fixed afresh, practically at the pleasure of the new owner. The second measure was passed in 1799. The landlords complained that while the state demanded its revenue with strict punctuality, they had no correspondingly speedy means of recovering the rents, on which their ability to pay depended.[23] A power of summary distraint was accordingly given, and terms of the regulation (VII. of 1799) were found so to operate

[22] In 1806 Colonel Munro, whose authority on revenue matters will not be questioned, wrote: 'I make this conclusion upon the supposition that they' (the zamindars) 'are to be at liberty to raise their rents, like landowners in other countries: otherwise if they are restricted from raising the assessment . . . and are at the same time liable for all losses, they have not the free management of their estates and hardly deserve the name of owners.' The whole subject (including the various minutes written and the provisions of the regulations) is fairly summed up in Dr. Field's *Landholding in various Countries* (Calcutta, 1885, 2nd ed.), pp. 535 ff.

[23] The only remedy was the slow and costly process of a regular civil suit at the district head-quarters. See, for instance, the letters Nos. 3348–9 (Jan. 1794), in vol. ii.

that the landlord could realise very much what he chose to declare to be the correct rent.

These provisions, worked as they were under the influence of the idea that a rise of rents was only a natural feature of landed property, would nevertheless have been much shorn of their ill effect if there had been any standard by which to ascertain the proper rent rates, but this was almost wholly wanting. The real fact of the matter is, that no plan like Shore's, nor indeed any other plan for the comprehensive adjustment of the surviving privileges of the (now subordinate) landholders, nor any rule of fair rent assessment, could have been effective without a survey of holdings and a new record of rights; and both were impossible, or beyond the realm of practical contemplation, at the time.[24] It is not really a tenable view, that 'records of right' or satisfactory lists of customary rates prevalent in *parganas* existed—certainly not of such a kind as would have enabled protection to be given by written rules or regulations on the sole basis of their contents. Still less is it possible to conclude that the non-retention (*as government servants*) of the accountants of villages, and the abolition of the *kānūngos* of fiscal subdivisions, were the causes of the failure of the settlement to provide due protection for the raiyats.

The lists of village and *pargana* revenue rates (now become the middlemen's rents) were never records of right or title, as modern settlement records are; and the rates themselves had become so various and so unequal, that no just conclusion could be drawn from them in the case of a dispute.[25] And the settlement did not abolish the village control or its accounts. On the contrary Regulation VIII. expressly provided that if in any village a *patwāri* (accountant) did not exist, one was to be forthwith appointed. The government persisted in the effort to restore these officers for some years.[26]

But the whole ideal of the new position conceded to the landlords was, to leave them in as much independence as possible, and to refuse to pry into the internal affairs of their estates. As

[24] It was not till 1822 that Holt Mackenzie succeeded, in the N.W. Provinces, in enforcing (against considerable opposition) the necessity of a survey and record of rights. Even then for twenty years the authorities had gone on (in those provinces) trying to do without either. But by 1822 the necessary establishments were much more easily attainable.

[25] How much this was the case may be seen from the proofs collected by Dr. Field (*Landholding*, &c., pp. 606–7). Mr. Colebrooke's able minute of 1812 put in the clearest light how worthless these records were, when they existed at all. It is true that this minute was written some twenty years after the settlement; but long before that the zamindari management (hardly controlled at all by the state) had upset all regularity in the rates or in the lists of them.

[26] We find records in the volumes up to 1801, still asking if the orders had been carried into effect. See, for instance, No. 5831 (*Circular*), in June 1796; No. 6601, July 1797; No. 8730, January 1800.

the revenue payable was now fixed for ever, and (under such circumstances) was to be paid without regard to temporary profits and losses, the control of the *kānūngo* of each local subdivision ceased to be of any use.[27] The only thing such an officer could do would be to watch against oppressive acts of the landlord, and maintain the rights of his subordinate landholders; this was an impossible position, even if he had the moral courage to attempt it. And very much the same was true of the village accountants. How could they be maintained as servants of government—that is, in a position (as the lawyers say) 'adverse' to the landlord? Of course their accounts were kept, and had been increasingly so kept, long before the settlement, not so as to be a check upon the landlords, or to maintain the rates really due from the raiyats according to the last authorised adjustment of them, but so as to facilitate the collections of the landlords, at rates which the government had (in fact) long allowed them to dictate. Both *kānūngos* and *patwāris*, therefore, became useless as checks, and the government found it a useless expense to pay them.

The fact is that the old system of graduated local control was effective only on the supposition that direct dealings with the original village proprietors were continued. At the present day the system only works to advantage in provinces where government deals directly with the villages, whether with the individual holders, as in the great western and southern provinces, or with co-sharing village proprietary bodies regarded as jointly responsible units, as in North-West India. The ultimate abolition of government-paid local agents was the necessary outcome of the system of acknowledging great local landlords.[28]

It is not too much to say that the root of all the early tenant difficulties in Bengal was, just as in Ireland, the inability of the authorities to contemplate a relation which they might call a 'tenancy' if they pleased, but which was founded on *status*, not on *contract*. It is worthy of remark that at the time of the permanent settlement, the modern capitalist theory of rent was not invented; nor did it appear till some twenty-five years later. Still it was thought that rent was the result of a mutual agreement based on the intuitive feeling of either party as to what one was able to ask and the other would find it possible to pay. And under

[27] As early as February 1786 (vol. i. No. 1162) report was made that the *kānūngos* were of no use. In July 1793 (vol. i. Nos. 2916, 2928, 2970, and 3014) the orders were given for abolition. Attempts at restoration were made in 1816–9.

[28] In later times there has been an immense correspondence about the revival of village accountants; but the very fact illustrates what is said above: for the proposals only arose when the old zamindaris had been largely broken up (see Sir W. Hunter's remarks, i. 110–4) and a greatly increased number of much smaller estates had to be looked after; and above all when a great number of fixed subordinate 'tenures' and tenant rights were acknowledged by law.

the influence of such an idea, as the necessary concomitant of a landlord and tenant tenure, the framers of the regulations omitted to declare that permanent (or resident) raiyats' rents could not be raised, and left the perfectly natural inference[29] that they could. The worst feature in the uncertainty thus created was not so much that rack-renting became very prevalent, for that may be doubted;[30] but that year by year the means of distinguishing between tenants who were really the original landholders or their direct representatives, and those who owed their position to a subsequent personal contract with the landlord, became more and more difficult to find. Ignorant peasants do not know how to preserve proof of material facts; and in the end some arbitrary rule has to be resorted to, when the legislature desires to classify tenants into those who have rights of status and those who have not.

But the after history of the tenant question belongs to a period long subsequent to the records in Sir W. Hunter's four volumes. A few words may, however, be added to complete the story, at least as far as the first tenant law. An official inquiry was instituted in 1811, which produced (among others) a minute by Mr. H. Colebrooke, that attracted great attention and resulted in the passing of Regulation V. of 1812. This law endeavoured to limit the alteration of rents on the occurrence of a sale, and to find an equitable rule for fixing rents by comparison with those paid on similar adjacent lands. The law was unquestionably designed to be in redress of tenants' grievances; but unfortunately, being defective in itself, and also nullified by other legislation, it only added to the troubles it was meant to relieve. Next, Lord Moira wrote a notable minute in 1815, which indicates the change that had come over official opinion; but matters were not then ripe for a comprehensive tenant law. It needed the experience of another great settlement—that of North-West India—before a practical mode of dealing with tenant rights suggested itself. At last, in 1859, the first idea of a tenant law found expression. In the meantime some of the difficulties were obviated, or at least lessened, by the increased number of the courts, and their being more accessible and more speedy in deciding; the sale law was improved, especially as to the extension of the list of existing leases and tenures which were not voidable on a sale; there was also a gradual improvement in the mode of registering

[29] See Colonel Munro's remarks, quoted above, p. 288, n. 22.

[30] In spite of all the occasional or frequent harshness of landlords, custom, if only recent custom, and the fact that neighbouring lands of the same quality must naturally pay alike, gradually established a kind of standard which was not generally ignored. In his study of the Dinājpur zamindaris, Dr. Buchanan noticed that the landlords had an idea that resident raiyats could not have their rent (*eo nomine*) raised (without state sanction); but they made out an increase in other ways. The prohibition against 'extras' never was really effective as long as the tenants would submit to the demand.

subordinate interests and so protecting them. These interests are now numerous and afford a rather curious study. One large class, the modern *patnī* tenure, has been made the subject of some very interesting remarks by Sir W. Hunter. These tenures cannot, however, here be further noticed. The latest Bengal law (revision of 1885) has found it desirable to use the word 'tenure' in a special sense, to indicate these intermediate interests, which lie halfway, as it were, between soil ownership and contract tenancy.

One possibility of final solution for tenant troubles still remains unapplied. Alone among the provinces of India, Bengal has no cadastral survey, and consequently no agricultural statistics. Topographical maps, and to some extent surveys of the outer boundaries of estates and even villages, exist, but that is all. This is a subject which would require a separate article to explain. If Bengal has prospered under the permanent settlement, it is not because of the principles of the settlement or its law. It is because a firm, and on the whole good, administration, profound peace, a free and ever expanding market, and a naturally fertile soil, have produced their own ameliorating results. Education, too, is slowly filtering down to the tenant class, and has done something to make them more self-reliant and able to maintain their rights.

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