

**LEGISLATION FOR SOCIAL CHANGE?
TWO CASE STUDIES OF KERALA .**

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Chapter I

INTRODUCTION:

Redistribution of income in favour of the poor was said to be the objective of the First Five Year Plan in India. "Removal of poverty and attainment of economic self-reliance"^{1/} is the goal set for the Fifth Plan. But studies on the performance of Indian economy, especially after Independence, indicate that no considerable change has been effected towards achieving the goals set in the various plans.^{2/} On the other hand, it is pointed out by such studies that the concentration of wealth has increased during this period giving birth to monopolists on the one hand and on the other pushing down a considerable percent of the population below the level of absolute poverty.^{3/}

Legislative enactments is one of the major instruments relied on in achieving the goals set in the plans. Accordingly the various enactments on property and labour were made aiming at realising these objects. Both the Centre and the States made laws for this purpose from time to time. The legislations for land reforms and for taxations may be looked at as attempts in this direction. To take away the excess beyond a certain limit from the existing wealth and to fix a limit for future accumulation are the two purported aims of such legislations.

In an economy like India's, the ownership and distribution of land is one of the crucial factors affecting agricultural production which in turn influences the economy as a whole. Legislations purporting to alter agrarian relations, therefore, assumed high priority in India after Independence. It was felt while drawing up

the National Plan in 1950-51 that the agrarian system should be so organised that the fruits of labour were enjoyed by those who toiled and that the land was worked as a source of wealth for the community. It was also felt that in the interests of social justice and increased agricultural production the land should belong to those who tilled it. However, the Draft of the Fifth Five Year Plan pointed out that "a broad assessment of the programme of land reform adopted since Independence is that the laws for the abolition of intermediary tenures have been implemented fairly efficiently whilst in the fields of tenancy and ceiling on holding, legislation has fallen short of the desired objectives, and implementation of the enacted laws has been inadequate. With the abolition of intermediary interests, the ownership of land became more broad-based and erstwhile superior tenants acquired a higher social status."

Thus it is commonly accepted that there is a wide discrepancy between the objects of the enactments and the achievements thereby. This dichotomy can be explained only in terms of the interventions of the interest-groups at different stages from the enactment to the implementation of the laws. The intervention may be to make the laws ineffective by obstructing the implementations. The half-hearted implementation of the ceiling laws is a known case. The non-implementation of the Raj Committee Report proposing taxation of agricultural holdings is another example. On the other hand, there are instances where legislations are made use of by powerful interest-groups to serve their motives, to maintain high and stable prices of foodgrains.

The question, therefore, that comes up is whether surplus can be extracted from the 'haves' and distributed to the 'have-nots' through legislative measures, in a situation where there is a wide gap between the two in respect of economic resources and political power. In other words, it may be asked if law can be an instrument of social change or if it is only a means to reinforce the status quo and to carry out the will of the powerful group. However, the scope of this study is restricted to finding out the ways in which legislations are evaded by interest groups. Though the fact of evasions is commonly known, the exact nature of evasion of each law is different. Such evasions vary widely from case to case; even in the case of a single law. It is not possible, therefore, to make generalised formulations regarding evasions of law.

However, certain broad characteristics regarding the evasion of certain specific enactments may be established by empirical studies. The evasions of ceiling law on land holdings in Kerala was examined for this purpose. Though it can be learnt that the law is evaded considerably it is difficult to establish the same from records. Therefore this investigation is with regard to two specific cases relating to Kerala (i) procurement law, and (ii) agricultural workers' law.

NOTES

1. Planning Commission, Government of India, "Draft Fifth Five Year Plan", 1974-79, Vol.I, Chapter I. p.1.
2. For a critical review of the issues involved, see:
 - i) Charles Bettelheim, India Independent, Monthly Review, London, 1968, Ch. 11.
 - ii) E.M.S.Namboothiripad, Indian Planning in Crisis, Chintha Publishers, Trivandrum, 1974.
3. V.M.Bandekar and N.Rath, "Poverty in India", Economic and Political Weekly, Bombay, Vol.VI, Nos.1 and 2, January 2 and 9, 1971;
also, K.R.Paradive, "New Agricultural Technology and Green Revolution" (mimeo), paper presented at the Seminar in Calcutta, on "The Political Economy of Indian Agriculture" March, 1973.
4. Planning Commission, Government of India, Draft Fifth Five Year Plan, Vol.II, p.3.
5. See Wolf Ladejinsky: "A Study of Tenurial Conditions in Package Districts", The Economic Times, 11th September, 1975.
6. and also, P.C.Joshi, Land Reforms in India, Allied Publishers, 1975.
6. K.N.Raj, "Economic Situation in India Today", Economic and Political Weekly, Vol.XI, Nos.27, July 3, 1976.
7. N.Krishnaji, "State Interventions and Foodgrain Prices in India", Social Scientist, Vol.III, Nos.6-7, January-February 1975.
8. P.S.Appu "Tenancy Reforms in India", Economic and Political Weekly, Vol.X, Nos.33, 34 and 35, Special Number 1975.

Chapter XIPROCUREMENT LAW

In the 20-point economic programme announced by the Prime Minister following the declaration of national emergency in June 1975, first place was given to the distribution of essential commodities at reasonable prices. The question is whether and what instruments exist for the successful implementation of the underlying policy. It is possible to approach this question by analyzing the public distribution system as it actually worked during the last few years. Kerala's experience is valuable for such an exercise for two reasons. First, it is the only state where the public distribution of foodgrains extends practically to the whole population. Secondly, a graded producer levy for the procurement of paddy (the only cereal produced in the state) has been in force for a decade. The importance of producer levy lies in the fact that the alternative of relying on open-market purchases based on a system of procurement prices has resulted in disastrous failures, particularly in poor crop years, all over the country. This *chapter* ~~article~~ examines the working of the system of producer levy in Kerala and the inadequacy of legislative measures for the successful implementation of policy.

The Kerala Rice and Paddy (Procurement by Levy) Order¹ 1966 (referred hereinafter as the RPO) was issued by the state government in exercise of the powers conferred by section 3 of the Essential Commodities Act 1955. The RPO has been in operation throughout

Kerala since July 1966 for "maintaining and increasing the supplies of rice and paddy and for securing their equitable distribution and availability at fair prices." Accordingly every cultivator^{2/} shall sell to the government "paddy derived from lands cultivated by him in accordance with such scale as the government may proscribe from time to time." As the RPO has been in force for the last 10 years it is time to assess its scope and performance.

Table I

Production and Procurement of Paddy

Year	Production of rice ('000 tonnes)	Procurement of paddy ('000 tonnes)	% of production
1965	1121	76	4.52
1966	697	84	5.64
1967	1084	115	7.10
1968	1124	117	6.97
1969	1251	141	7.55
1970	1226	125	6.83
1971	1296	106	5.48
1972	1376	91	4.43
1973	1257	93	4.53
1974	1334	63	3.16

Note: For calculating the proportion the conversion factor used is:
1 lb paddy = 0.67 lb rice.

Sources: Upto 1970 - Statistics for Planning, I Agriculture,
The State Planning Board, 1972; from 1971 - Economic Review,
Kerala, various issues.

It can be seen from table I that the quantity of procurement has declined continuously not only as a proportion of the production but also in absolute terms since 1969. This decline has to be

explained mainly in terms of the changes in (a) the structure of levy rates applicable from time to time to holdings belonging to different size groups, (b) the distribution of land as between these groups and (c) magnitude of evasion. It may be noted that all these three factors are interrelated: for example, a steep progression in the rates of levy can cause evasion through subdivision of land which in turn will show changes in the distribution of land.

STRUCTURE OF LEVY RATES

Levy rates prescribed from time to time depend not only on the size of the holding but also on productivity of land. For this purpose all the taluks in the state are classified according to levels of production into three broad categories, A, B and C; this is done for each of the three seasons, namely Viripou, Haridolan, Punja (autumn, winter and summer) crops separately. The classification is presumably on the basis of available information on the yield per hectare of paddy land in the different taluks and seasons. "Approximate calculations show that the levy rates imply that proportion of production to be surrendered as levy increase from 10 per cent in the lowest size group to 80 per cent in the highest".^{3/}

A comparison of the rates given in table II with those of 1960-69 shows that the rates have been increased since 1969, in respect of all categories of taluke for all seasons and size groups of land. For example, the rate applicable in category A taluke for holdings between 2 to 5 acres is increased from 2.5 quintals per acre in 1968-69 to 3 quintals in 1973. Similarly for the higher size groups the rates are increased (for the same

Table II

Rates of Producer Levy, Kerala 1974

Quantity of Paddy to be Sold to the Procuring Authority

Class of holding	In category A taluks	In category B taluks	In category C taluks
1 Persons who have cultivated paddy in an area upto and including 2 acres	Nil	Nil	Nil
2 Persons who have cultivated paddy in an area of more than 2 acres and upto and including 5 acres in the aggregate	At the rate of 3 quintals per acre for every acre in excess of 1 acre	At the rate of 2.5 quintals per acre for every acre in excess of 1 acre	At the rate of 2 quintals per acre for every acre in excess of 1 acre.
3 Persons who have cultivated an area of more than 5 acres and including and upto 10 acres in the aggregate	At the rate of 3 quintals per acre for the first 5 acres and at the rate of 7 quintals per acre for every acre in excess of 5 acres.	At the rate of 2.5 quintals per acre for the first 5 acres and at the rate of 5 quintals per acre for every acre in excess of 5 acres	At the rate of 2 quintals per acre for the first 5 acres and at the rate of 3.5 quintals per acre for every acre in excess of 5 acres.
4 Persons who have cultivated paddy in an area of more than 10 acres in the aggregate	At the rates specified in item 3 above for the first 10 acres and at the rate of 9 quintals for every acre in excess of 10 acres	At the rates specified in item 3 above for the first 10 acres and at the rate of 7 quintals for every acre in excess of 10 acres.	At the rates specified in item 3 above for the first 10 acres and at the rate of 5.5 quintals for every acre in excess of 10 acres.

- Notes: 1 The same rates apply for each of the three paddy crops grown in the year.
 2 The categorization of the taluk changes according to the crop.
 3 For Irattal and Punja crops there is a sub-classification of holdings of the size 2 to 3 acres whose exemption limit is 2 acres.
 4 These rates came into force with effect from 4 September 1973.

Source: Handbook of Control Orders, Civil Supplies Department, Government of Kerala, 1974, pp 200-211.

leviable area) from 6 to 7 quintals to 8 to 9 quintals and so on. Moreover, exemption limit for the leviable holdings below 5 acres is reduced from 2 acres to 1 acre and the exemption for holdings of above 5 acres is completely withdrawn by 1974.

The average yield of rice per hectare has increased from 1308 kg in 1968 to 1575 kg in 1973. As a consequence, the distribution of the different taluks according to average productivity has changed considerably. It can be seen from table III that the distribution has, on the whole, changed in favour of the higher productivity categories A and B. This change is particularly sharp in respect of the Handakan and Punja crops.

Table III

Distribution of Taluks According to Levels of Productivity, 1968-74.

Season	Year	Number of Taluks Belonging to Categories			
		A	B	C	Total
Virappa	1968-69	4	11	38	53
	1974	3	16½	37½	57
Handakan	1968-69	8	19	26	53
	1974	13	20½	21½	55
Punja	1968-69	6	24	27	57
	1974	16	8	15	39

Note: The total number of taluks in 1968 was 53. It has increased to 57 in 1974.

Source: Administrative Report, 1968-69, Civil Supplies Department; Handbook of Control Orders, 1974, Civil Supplies Department.

Thus it can be seen that, during 1968-1974, not only have rates of levy and the area covered by levy ~~increased~~ increased but more taluks have been classified under the higher productivity categories of A and B. It may also be noted that

during this period the total area under paddy cultivation, the total area under high-yielding varieties, the total production and the per acre productivity have increased fairly. For these reasons, if no significant changes have taken place in the distribution of land and the magnitude of evasion, the quantity (and the proportion of production) procured should have increased. Hence the decline in the quantum of procurement must be clearly attributed to changes in the reported (for the purpose of levy) size of holdings irrespective of whether actual changes in conformity with the law have taken place.

SCOPE OF LAW

The RFO operates as per Order 4, Issue of Notice to the Cultivator which reads:

Immediately before the invest of each crop, or as soon as may be after the harvest of each crop, the District Supply Officer, the Taluk Supply Officer, the Village Officer or the Village Assistant shall issue a notice to each cultivator specifying.

- a) the extent of paddy cultivation of the cultivator;
- b) the quantity of paddy to be sold by the cultivator;
- c) the period (which shall not be less than 7 days from the date of service of the notice) within which and the officer, agent or person to whom the paddy shall be sold.

This would mean that the village office should have the accurate information regarding the area of land cultivated by every farmer. There are lists according to survey number and patta number in the village office. The same person can own lands under different

survey numbers; also one person can have more than one patta number. Therefore, it is not easy to operate the law on the basis of the village records. This inability of the law was taken care of on 4 September 1967 when Order 3C was inserted as follows:

Cultivator to furnish information regarding harvest

1) Every cultivator holding more than two acres of land shall, before seven days of the harvest of each crop, inform the Village Officer of the village in which the paddy lands are situated, in writing, about his intention to harvest the crop, the proposed date for harvest, the extent of lands cultivated by him with paddy and anticipated production. The cultivator shall harvest the crop only after obtaining the written permission of the Village Officer.

2) On receipt of the information as specified in subclause (1) above, the Village Officer shall grant permission in writing to the cultivator to harvest the crop.

Provided that if permission is not granted within seven days after information is furnished by the cultivator, it shall be deemed that permission has been granted by the Village Officer. ^{6/}

This amendment can be effectively evaded by cultivators with holdings ~~in~~ in different villages. Holdings in each village can be reported in the respective village without mentioning anything about holdings in the other village. A further Order 3D was inserted on 7 August 1968.

Declaration of land under paddy cultivation in different places:

1) Every cultivator having paddy cultivation in more than one Revenue Village shall, before one month of the harvest of each crop, make a declaration in Form A appended to this Order showing the extent of paddy land under his cultivation in the different villages to the Taluk Supply Officer in whose local jurisdiction he has the largest area under paddy cultivation with copy to all the other Taluk Supply Officers under whose local jurisdiction he has paddy cultivation, specifying also the village and the taluk in which he would like to get the exemption to which he is entitled under any notification issued from time to time under Clause 3:

Provided that no cultivator whose area of total cultivation of paddy does not exceed the area to which he is entitled to such exemption need make such a declaration. ✓

This continues to be the law since then.

EVASION: BY UNDER-REPORTING AND SUBDIVISIONS

However, on a careful analysis it is clear that even now the law can be evaded in a number of ways. While it took about four years from 1964 to reach the present form, interested parties discovered all the loopholes to evade the provisions. Written law is not precisely what is implemented. The fact that open-market price is always higher than the procurement prices is sufficient economic incentive in the present situation to attempt at evading any law that is likely to affect the cultivator adversely.

Order 3 C and 3 D do not demand the cultivator to report the total area under his cultivation. Therefore it is not illegal

if he does not report the whole area. The law requires the cultivator to report only the area of land cultivated by him. Therefore, he need not report the whole land owned by him. The land owned by one person can be reported as cultivated by different persons, who can be members of the same household, even a servant. Also as it is stipulated that only the land under paddy is to be reported, the confusion gets more confounded. For example, the boundaries or parts of a plot can be planted with coconut saplings and the whole plot can be reported as a coconut garden, while in reality it may still be a paddy-cultivation area. Or, if a piece of land is put to tapioca or prawn-culture that may be reported as the main use while paddy is cultivated during other seasons. The village records give no clue to the veracity of such reports.

"The liability on account of procurement of foodgrains by the state through a progressively graded producers' Levy has created a tendency to under-report."⁸

Neither the RPO nor any existing law prohibits subdivision of cultivator's land. By subdividing the cultivator can, in fact, evade both the RPO and the land-ceiling legislation. The expenses of legalising the transactions can be minimized. If the alienation is in the nature of a gift or a partition the stamp fee is nominal. When it is in the nature of a sale, the stamp fee can be brought down by understating the price of the land. Such subdivisions can be made in the name of members of the same household or other individuals like a servant or a relative. Property rights can be vested on others without their knowledge. The buyer of a land need neither be identified nor made to sign any document. To cap it all, legal persons need not be human beings!

False transactions are facilitated by the land reform laws. Suits can be filed by fictitious tenants and the landowner can absent himself during the proceedings of the case. By an ex parte decision the right to property passes to the fictitious tenants while the property itself remains with the landowner. This method is helpful in evading the RFO, the ceiling law and certain provisions of the land reforms. In fact from the evader's point of view this is one of the safest and least expensive dodges.

There are not enough legal instruments to check and trace such transactions. Even if there were stringent laws, it is doubtful whether they would not be ultra vires of the constitution, since the right to property is one of the fundamental rights in the Constitution of India (except in times of national emergency). However, even if such a law survives it will be able to restrict transactions only prospectively. Transfer deeds bearing past dates can be made to defeat the purpose of the law, because blanks stamp papers can be kept for future use. In fact this is one of the ways to evade the law restricting the sale of surplus land: registration of deeds showing prior possession with a buyer or gift of the land helps the landowner to circumvent the law.

BY CONVERSION OF PADDY LAND

The RFO can be evaded by converting paddy land into garden land or dairy farm though the Kerala Land Utilization Order 1967 (and also the similar order of 1957 repealed since) are aimed at preventing such conversions. According to section 6(i) of this order,

Ho holder of any land which has been under cultivation with any food crop for a continuous period of three years immediately before the commencement of this Order, shall convert or attempt to convert or utilise such land for the cultivation of any other food crop or for any other purpose except under and in accordance with the terms of a written permission given by the Collector.

This order can be evaded by claiming either that the land was converted prior to the time implied in the order or that it was not under any food crop. Moreover the permission of the Collector can be obtained. However this order is not strictly enforced and conversion of paddy land into garden land is officially accepted and exemptions granted from the RFO. There exists no machinery to verify reports of conversion into garden land. Coconut saplings may be planted in the paddy land and soon after inspection be removed.

As a result,

while according to 1966-67 Land Reforms Survey 37 per cent of paddy land was held in operational holdings of 2 acres and above it appears from the levy records that only 27 per cent of the land under paddy was reported as held in operational holdings of this size in 1972-73. Much more significantly, while in 1966-67 operational paddy holdings of 10 acres and above accounted for over 9 per cent of paddy (area) in the state, they accounted for only 2 per cent of the paddy land in 1972-73.⁹

OTHER LOOPHOLES

Order 6 allows a cultivator to file objections and appeal "if he is not in a position to sell the quantity of paddy, on account of failure of crops, drought, flood, damage by insects or any other circumstances beyond his control." Thus procurement can be obstructed by filing objections and appeal. As a result of such obstructions, a proviso was inserted on 2 September 1967 to the effect that the cultivator shall sell to the government "the quantity of paddy, admitted by him to be liable to such sale."¹⁰ In the absence of any instrument to collect levy from an earlier date this can be effectively made use of by obtaining an interim stay or injunction from a court of law. Moreover the local executive official can be pressurized in several ways to uphold the objection. This provision has in fact been so arbitrarily used that the High Court of Kerala ordered the state government to frame clear directions to the executive officials.¹¹ According to Order 13,

if the Government having regard to the conditions prevailing in any area, consider it necessary or expedient to do so, in the public interest they may, by notification in the gazette, exempt, subject to such conditions as they think fit to impose, such class or classes of cultivators in that area as they may specify in the notification from the operation of the provision.

This can be made use of by cultivators who can exert political pressure. In fact the government can exempt any one without even revealing the reasons for doing so.

The IFO applies to the area under paddy for each crop. The gross area under cultivation over the year is not taken together in fixing the limit. Therefore cultivators of single-crop paddy are subjected to an unequal burden of the IFO. For instance, a cultivator who owns 2.05 acres in a single-crop area pays levy for 0.05 acres. But another cultivator of a triple-crop area having 1.95 acres cultivates a gross area of 5.85 acres, but pays no levy at all. This defect of the law is magnified in the case of bigger holdings.

The IFO takes into account only the holdings of individual cultivators. Land in the name of other members of the same household is not included in the classification of the holdings by size. Moreover the rates of levy applicable to such holdings do not bear any relation to the total area cultivated by the household.

The levy rates are fixed on the basis of productivity of a taluk, not of the holdings. A taluk is too wide an area to have any uniform productivity. In fact, a taluk is about 1/57 of the whole state.

The IFO is not prospectively operative. If any instance of evasion is found out there is no provision to realize the correct dues and fines.

The IFO does not have the power to award punishments to those who evade or violate it. In fact there is only one provision of any punishment according to the IFO order 3D(3): "If any cultivator who cultivates paddy in more than one revenue village, does not make any declaration or makes a false declaration, or ^{no} exemption

sanctioned in sub-clause (1) shall be given to him from Levy in respect of any area.¹² However, those who do not cultivate paddy in more than one revenue village will not be liable for such a punishment, even if they fail to make any declaration, or make a false one.

If only the village offices have accurate details regarding the classification and the ownership of the land the law can operate successfully. This is not available in a useful form in any village office. In fact the very classification of the land into wet, garden, government, barren or reclaimed is based on the Imperial Land Survey of the early 1920s. The changes that have taken place since then are overlooked both by the RFO and by the various estimates for procurement.¹³

CHERUVAIKKAL VILLAGE

It can be seen from the above that there is considerable scope for the evasion of the RFO. Many of the methods of evasion cannot however be established on the basis of published statistics. Even using the methods of field study it is not possible to determine accurately the method adopted for evasion in each case. The results of one field study in the village of Cheruvaikkal in Kerala state is presented below. It is based on the village records in respect of all paddy cultivators within the boundaries of this village. However, the difficulties in tracing out accurately the exact details of evasion may not be overlooked.

The village of Cheruvaikkal is on the outskirts of Trivandrum, the state capital. According to the village records an area

of 479 acres of land is under paddy cultivation. There are only Viripou and Urdakan crops in this village. Trivandrum taluk to which this village belongs is in B category for Viripou and Urdakan and in C for Ruzia.

As is clear from table IV, on 9 January 1966 there were 27 persons holding more than 2 acres of paddy land and the area leviable was 39.29 acres. But by 9 January 1976 the number of persons holding more than 2 acres of paddy land came down to 4 and the area leviable to 2.49 acres. Of these 27 persons, 21 held more than 2 acres under a single patta each. By 5 October 1966, 15 persons out of these 21 got exemption from the RPO and by 2 September 1969, ⁴ 4 more got exemption. The remaining two persons continue to pay levy. However their leviable area has come down.

There are 18 ~~cases~~ cases of conversion of paddy land into garden land. The fact that this village has no Ruzia crop may be an added reason for so high a number of conversions. The area under paddy is brought down in the case of i) small holdings to just below 2 acres and ii) other holdings to below 5 acres. Small holders evade the RPO completely through evasion while larger holders bring down the rates of levy by conversion.

It may be noted that larger holdings evade the RPO through subdivisions while small holdings do not subdivide. In case A, the RPO is evaded completely and in case B partially through subdivision. However both cases under B later got exemption from the RPO through other methods of evasion.

Table IV

PADDY LAND SUBJECT TO THE RPO IN 1966 AND 1976

Size Class (in acres)	No. of culti- vators	9.1.1966		No. of multi- vators	9.1.1976		Total area le- viable (1966 law)	Total area leviable (1976 law*)
		Total area in acres	Total area le- viable		Total area in acres	Total area in acres		
2 to 3	16	38.74	6.74	3	7.31	1.31	1.31	
3 to 5	6	22.97	10.97	1	3.18	1.18	2.18	
5 to 10	5	31.58	21.58	0	0.00	0.00	0.00	
Above 10	0	00.00	00.00	0	0.00	0.00	0.00	
Total	27	93.29	39.29	4	10.49	2.49	3.49	

- Notes: 1. The magnitude of evasion prior to 1966 is not known.
2. Paddy land owned in this village alone is considered.

* This is for the Mundakani crop.

TABLE VSELECTED CASES OF CONVERSION OF PADDY LAND INTO GARDEN LAND,
1966-69

Cases	Total area Under paddy as on 1.1966	Total area converted to garden land during 1966-1969	Balance area under paddy as on 22.9.1969.
A	3.19 acres	1.45 acres	1.74 acres
B	2.56 "	0.68 "	1.68 "
C	2.43 "	0.50 "	1.93 "
D	2.13 "	0.29 "	1.89 "
E	2.11 "	0.12 "	1.99 "
F	6.70 "	2.63 "	4.07 "
G	5.21 "	2.11 "	3.80 "

- Notes: 1. All cases are not shown here, only specimens.
2. Only land under paddy cultivation is considered.
3. The conversions are noted in the village records; exemptions are granted from the RPO.

Table VI

SUBDIVISION OF PADDY LANDS

Case	Total acreage as on 9.1.66	Number of sub-divisions as on 4.10.1966	Acreage for each sub-division as on 5.10.1966
A	6.98	4	1.73, 1.77, 1.32, 1.27
B	5.26	2	3.21, 2.05

- Notes: 1. The addresses of the 4 'new' holders in case A are the same; and so they presumably belong to the same household.
 2. In case B also both the addresses are the same.

Small holders evade the RPO through the conversion of paddy land, may be because of i) the expenses of subdivisions, ii) ignorance of law 'properly', iii) lesser area of total land and iv) other uses of garden land. The large holders evade through subdivision may be due to the i) increase in the total "standard" acres of land while calculating for the purpose of ceiling law, ii) accessibility to legal procedures, iii) the economy in the expenses of transaction compared to surplus land, and iv) the diseconomy of conversion into garden land. The reason of small farmers evading the RPO may be due to a situation in which the amount of levy exceeds their marketable surplus. This high marginal rate of levy may be the reason for the large holders trying to evade the RPO or at least to bring the area under smaller holdings. It is significant to note that in this village the only holding with more than 3 acres has only 3.18 acres of land under paddy cultivation. However, the available details regarding the four persons who are subjected to the RPO are presented in table VII.

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Table VII

DETAILS REGARDING CULTIVATORS LEVIABLE FOR THE 1975-76

MUDAIAN CROP

Cases	Area under paddy cultivation in acres	Area leviable in acres	Total land (including garden land) in acres*
A	2.38	0.38	4.32
B	2.10	0.10	4.60
C	2.83	0.83	6.63
D	3.18	1.18	18.09
Total	10.49	2.49	41.67

- Notes
1. Among these property-owners in the village there are past and present officials of government departments, like police and revenue.
 2. The details relate to property in this village alone; about property in other villages details are not known.
 3. A and B are husband and wife. Their son (a doctor) holds 4.04 acres. The dairy farm covers another 3 acres. Total 16.96 acres.

* Taken from the counterfoils of the receipts for land tax for 1974-75.

The study of the ~~same~~ published data as well as the detailed investigation of records in the village office conclusively show that the RFO has failed to achieve its objects; that it is full of loopholes and that evasion is rampant. It is doubtful if the RFO could be made more effective through more stringent legislation and enforcement. 14

Notes

1. Local procurement of paddy under Levy Scheme was first introduced in the state by the promulgation of the Rice and Paddy (Procurement by Levy) Order 1964, which was issued on 28 September 1964, when it was introduced in Palghat district alone. Subsequently the scheme was extended to the remaining districts with effect from 7 December 1964, and a revised order was issued on 1 July 1966 which remains in force today.
2. "Cultivator" means a person who actually cultivates any land with paddy. Order 2(b) of the RPO.
3. Poverty, Unemployment and Development Policy, The Centre for Development Studies, March 1975 (unpublished) p.V-12.
4. Data collected from sources listed under table I.
5. By the formation of the two new districts Malappuram and Iddicki in 1970 and 1972 respectively.
6. Kerala Gazette Extraordinary No.172, dated 4 September 1967.
7. Kerala Gazette Extraordinary No. 176, dated 7 August 1968.
8. Report of the 1970-71 World Census of Agriculture, Kerala Vol.I.
9. Poverty, Unemployment and Development Policy, op.cit. pV-13.
10. Kerala Gazette Extraordinary No.173, dated 2 September 1967.
11. OP No. 1344/1967 I L R 1968 (1) Kerala 457.
12. Order 3D (3) of the RPO.
13. As an example, the village of Cheruvakkal has as per records an area of 619.60 acres of land as government's land (barren land) while the total area of the village is 2361.42 acres.
14. There is a suggestion that by making "household" as the unit (instead of "cultivator") evasion can be overcome. This would require a thorough amendment of the RPO. Complications would arise to define "household" and to determine who should be held liable in the event of violation of the law.

Chapter III

AGRICULTURAL WORKERS' LAW:

Since Independence, land and labour became part of the State list. Therefore legislations in these two areas vary considerably from State to State. Though attempts are being made in all the States to bring about land reforms, there is very little attempt towards improving the lots of the agricultural workers. More than seventy-five per cent of the Indian labour force is accounted for by the agricultural sector. Legislations regarding industrial and plantations workers came into force from 1920 onwards. However, as regards the agricultural labourers, Kerala is the only State that has enforced a comprehensive enactment. Except for attempts to implement minimum wages law, no legislative measure has been taken with regard to agricultural workers in other States.

The Kerala Agricultural Workers Act,¹ (referred hereinafter as the act) seeks

- i) to enforce a uniform minimum wage rate to agricultural workers under all land owners in the State; and
- ii) to ensure security of employment to those who work under owners of more than one hectare of agricultural land.

The act also seeks to establish Provident Fund for the permanent agricultural workers and to maintain a register of all the agricultural workers in the respective local authorities.

The Kerala Agricultural Workers' Bill was introduced on 17 November 1972 in the State Assembly which enacted it on 14 March 1974.

after considering the report of the Select Committee.

The act came into force with effect from 2 October 1975.

Accordingly 26 conciliation officers and 11 Labour Tribunals are appointed for the implementation of the act. However, the provisions relating to Provident Fund are not yet come into force.

According to the scheme for the working of the act, where an agricultural dispute exists, the Conciliation Officer may hold conciliation proceedings as he thinks fit for the purpose of inducing a settlement of the dispute. If a settlement is arrived at, a report to that effect needs to be sent to the District Collector. Otherwise, the Conciliation Officer has to send to the District Collector, a report of the dispute along with the reasons on account of which, in his opinion a settlement could not be arrived at. If the District Collector is satisfied that there is a case, he may refer the dispute to an Agricultural Tribunal, who submits the award after the proceedings. The award becomes enforceable on the expiry of 10 days from the date of its publication. However the Tribunal has no power to stay the operation of any order of the Conciliation Officer. (all italics added)²

The act defines an agricultural worker as 'a person who, in consideration of the wages payable to him by a landowner, works on, or does any other agricultural operation in relation to, the agricultural land of such land owner'³ An agricultural dispute is defined as 'any dispute or difference between land owners and

landowners or between landowners and agricultural workers or between agricultural workers and agricultural workers which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons.⁴ It is also added to this definition that "where any landowner discharges, dismisses, retrenches or denies employment to, an individual agricultural worker, any dispute or difference between that agricultural worker and his employer, connected with or arising out of such discharge, dismissal, retrenchment, termination or denial of employment shall be deemed to be an agricultural dispute notwithstanding that no other agricultural worker nor any union of agricultural workers is a party to the dispute"⁵

A) Minimum Wage for Agricultural Workers:

Enforcement of uniform minimum wage rate for all agricultural workers is one of the objects of the act. Accordingly "every landowner shall pay to agricultural worker employed by him the prescribed wage for each day of work done"⁶ and "no adult agricultural worker shall be required to work more than eight hours in a day and no adolescent or child for more than six hours in a day"⁷ Moreover, "the period of work on each day shall be so fixed that no period shall exceed four hours and that no agricultural worker shall work for more than four hours before he has had an interval for rest for at least half an hour"⁸ The prescribed minimum wage rate for agricultural workers in the State with effect from 2 September 1975 is notified

as Rs. 8/- for men and Rs. 6.50 for women. The table below presents the daily wage rates of agricultural workers at 20 centres in Kerala from January 1975 to June 1976 at monthly intervals.

It may be noted from the table that ~~that~~

- i) the wage rates continue to vary considerably from centre to centre even after the enforcement of the act and the minimum wages;
- ii) the wages rates are not influenced by the notified minimum wage rates; in most centres the wage rates for women are less than the notified minimum wage rates; and
- iii) the minimum wage rates notified for men are lower than the actual wage rates of men prior to the notification.

It needs, however, to be pointed out that the cost-of-living of agricultural workers in the State vary from place to place. Under such circumstances a uniform minimum wage rate for the whole state would mean a considerable disparity in real wages; particularly to the ^{vi}determent of workers from high cost-of-living areas. Therefore, the minimum wage rate needs to be ^{ed}varying in relation to the cost-of-living.

B) Security of Employment for Agricultural Workers:

A second object of the act is to ensure security of employment for those who work under owners of more than one hectare of agricultural land. Accordingly "the landowners shall not employ any agricultural worker other than an agricultural worker

Table I: Wage rates of agricultural workers at selected centres in Kerala

From January 1975 to June 1976

in paise per day

	TRIVANDRUM				QUILON				ALLEPPEY				KOTTAYAM				ERNAKULAM			
	Kozhharur		Chencheril		Perunkulam		Elanthur		Paravatta		Kodukulanji		Poozhikol		Ithrayur		Choranallur		Kozhakkambalan	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
1975 JAN	600	500	800	700	700	550	800	600	825	450	700	500	750	550	800	550	950	550	750	575
" FEB	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	800	700
" MAR	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	500	"	"	"	"
" APR	650	"	"	"	"	"	"	"	"	"	800	600	"	"	"	"	1200	"	"	"
" MAY	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
" JUN	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
" JUL	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	650	"	"
" AUG	"	"	900	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
" SEP	"	550	"	"	"	"	"	"	"	"	"	"	850	"	"	"	"	550	"	"

minimum wages for agricultural workers comes into force with effect from September 15, 1975. Accordingly notified minimum wage per day for men is Rs.8.00 and for women Rs.6.50

" OCT	"	"	"	"	"	"	"	"	"	"	"	"	950	500	"	"	1100	"	"	"
" NOV	"	500	"	"	"	"	"	"	850	525	"	650	"	"	"	"	"	"	"	"
" DEC	"	"	"	"	"	"	"	"	800	583	"	"	"	"	"	"	"	"	"	"
1976 JAN	"	"	"	"	"	"	"	"	"	600	"	"	"	"	"	"	"	"	"	"
" FEB	"	"	"	"	"	"	"	"	850	"	"	"	"	"	750	"	"	"	"	"
" MAR	600	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
" APR	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
" MAY	"	"	"	"	"	"	"	"	"	"	"	"	900	"	"	"	"	"	"	600
" JUN	"	"	"	750	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	600

Contd.....

(Contd..Table I)

Table I: Wage Rates of agricultural workers at selected centres in Kerala from January 1975 to June 1976

in paise per day

	TRICHUR		PALGHAT				MALAPPURAM				KOZHIKODE				CANNANORE				STATE average				
	Aloor		Puthoor		Elappilly		Koduvayur		Othallur		Malamur		Koduvally		Palissery		Panur		Thirukaripur				
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	
1975	JAN	800	575	800	450	700	400	785	740	700	450	700	500	800	550	750	500	1100	500	1150	600	798	540
"	FEB	"	"	"	"	"	"	1000	"	750	525	"	500	"	"	"	"	"	"	"	"	809	550
"	MAR	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	547
"	APR	"	"	"	"	"	"	984	820	"	563	"	"	"	600	"	"	"	"	"	"	830	560
"	MAY	"	"	900	400	"	"	1000	800	"	600	"	"	"	"	"	"	"	"	"	"	834	552
"	JUN	"	"	"	450	600	"	"	"	"	"	800	"	900	700	900	600	"	"	"	500	851	564
"	JUL	"	"	"	"	"	"	910	656	"	"	"	"	"	"	"	700	"	"	"	"	847	567
"	AUG	"	2	"	"	"	"	855	"	"	"	"	"	"	"	"	"	"	"	"	"	849	567
"	SEP	"	"	"	"	"	"	800	"	"	"	"	"	"	"	"	"	"	"	"	"	851	565
<p>minimum wages for agricultural workers comes into force with effect from September 15, 1975. Accordingly notified minimum wage per day for men is Rs.8.00 and for women Rs.6.50</p>																							
"	OCT	"	"	"	600	"	"	"	700	800	"	"	"	"	"	"	"	1150	"	"	"	856	571
"	NOV	"	"	"	500	"	"	"	684	"	"	"	"	"	"	"	"	"	"	1250	538	863	571
"	DEC	"	"	"	"	"	"	"	"	"	900	550	"	"	950	"	1100	"	1350	600	870	577	
1976	JAN	"	"	"	"	"	"	700	600	"	"	"	"	"	"	"	"	"	"	"	"	865	574
"	FEB	"	"	"	"	"	"	780	"	"	"	"	"	"	"	"	"	"	550	1200	"	862	572
"	MAR	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	1150	"	860	572
"	APR	"	"	"	"	"	"	"	"	"	"	600	"	"	"	"	"	"	"	"	"	860	575
"	MAY	"	"	"	"	"	"	686	572	"	"	"	"	"	"	"	"	"	"	"	"	859	569
"	JUN	"	"	"	"	"	"	774	645	"	"	"	"	"	"	"	"	"	"	"	"	859	563

Source: Unpublished data available at the Bureau of Economics and Statistics, Trivandrum used with their kind permission.

Note: For the sake of easier perusal, figures are shown only when there is any change in the existing wage. Therefore any dito mark indicates the same wage and no column is blank.

who has worked in the same land during the previous agricultural season:

Provided that preference shall be given to agricultural workers employed for the previous agricultural operation in the same agricultural land during the same agricultural season.

Provided further that where there are permanent workers of the landowners, such workers shall be given preference over other agricultural workers⁹

'Permanent Worker' in relation to a landowner is explained as 'an agricultural worker who is bound by custom or contract or other wise to work in the agricultural land of the landowner'¹⁰

The act also says that where an agricultural worker has worked in the land of a landowner, during three consecutive agricultural seasons, prior to the previous agricultural season, he shall not be denied employment merely on the ground that he has not worked during the previous agricultural season, provided his absence during that season was due to reasons beyond his control¹¹

Table II

AGRICULTURAL WORKERS IN KERALA AS IN 1971

<u>Total population</u>	<u>Total Workers</u>	<u>Cultivators</u>	<u>Agricultural Workers</u>	<u>Non-Workers</u>
21347375	6216459	1106663	1908114	15130916

Source: Census of India 1971, Kerala.

There are not enough data available to look into the exact nature of operation of this part of the act. However, the reports from the rural areas do not seem to suggest that this part is being successfully implemented. In fact such reports show that all the agricultural workers who are eligible to get security of work are not likely to get their rights established. It is, therefore, needed to examine the scope of the law from the point of view of

- a) the land owner to evade the law; and
- b) the worker to establish his rights.

a) Scope for evasion of the law:

The law relating to the security of work applied only for workers under owners of more than one hectare of land.¹² Therefore by bringing down the size of the land holding to less than one hectare the law can be evaded. It is noted that "where the landowner is a member of a family, the extent of land held individually by any member of his family or jointly by some or all the members of such family shall.....be deemed to be held by the landowner"¹³ However, "family" is defined as "husband, wife and their unmarried minor children or such of them as exist"¹⁴ Therefore by subdividing the land and holding it in the name of major child, married minor children or any relative the size of the holding can be legally brought down 1 hectare.

The law demands only preference for employment for the permanent workers. It does not warrant either the employment of the permanent workers for a particular number of days or the non-employment of any worker other than a permanent one. Therefore if as many casual workers as needed are employed along with

the permanent workers to finish the entire agricultural operation in a day it is quite legal. By doing so, the permanent workers can be denied employment and thereby the law can be evaded. In fact the law also clearly spells this out. When enough of permanent workers "are not available or the number of such workers available is less than the number required by the landowner, for the agricultural operation, in his land, nothing.....shall prevent him from employing other agricultural workers".¹⁵

The provisions relating to both minimum wage and security of employment become enforceable only in a situation where a landowner hires the labour ^{power} of a workers for prescribed time. In other words these provisions exist only where there is an employer-employee relationship. Therefore by shifting over to piece-rate system which is contract work the questions of both minimum wages and of security of employment can be evaded. In fact, in an agrarian scene with a high degree of underemployment, piece-rate system is a necessary result.

The act does not bar mechanization of any kind. By mechanization the employment opportunity of the permanent workers can be reduced considerably. Such mechanizations ^{combined} ~~combined~~ with self-management can be used to evade the law relating to security of employment.

However, the law itself offers enough of grounds for the landowner to deny employment for a worker whom he does not want. "The landowner shall be under an obligation to employ any agricultural worker.

- a) who does not offer himself for employment; or
- b) who is more than sixty five years of age in the case of a male worker or sixty years of age in the case of a female worker; or
- c) who is incapacitated and is unable to do work; or
- d) who has intentionally caused damage of crops belonging to the landowner or caused any other loss to the landowner.¹⁶

In the absence of documents and official procedures, any of these grounds may be conveniently invoked by the landowner to refuse employment for an eligible agricultural worker.

b) Problems of the agricultural worker to establish his rights:

The agricultural workers are mostly illiterate, culturally backward and cut off from the ordinary stream of social life. Therefore the chances for their being informed of the laws relating to the conditions of their work and the notified minimum wage is limited.

There is a high rate of unemployment in the agricultural sector. The rural areas are still very much influenced by the landowning class. Therefore the chances of any worker who attempts at ascertaining his rights, to be deprived of his work is not low.

There is absolutely no official records relating to the agricultural workers. Under such a circumstances it is beyond the possibilities of an agricultural worker to prove before a tribunal that he is an agricultural worker under a particular landowner¹⁷ who refuses to accept him as a worker.

The records relating to land are complex and not really representing the actual position of ownership and possession. Moreover, lots of fictitious arrangements exist with regard to land holding. Therefore, it becomes extremely difficult for an agricultural worker to prove that he was working as an agricultural worker and that the one under whom he worked permanently owned more than a hectare of agricultural land.

The operational scheme of the Act is very complex and involves a number of procedural formalities. The conciliation Officer plays a very crucial role in the Act. In fact the law makes it very clear that it is meant to be implemented through the government machinery. Wide discretionary powers are given to the Conciliation Officer and the other officials. Such discretions are more exerciseable in favour of the landowners than the agricultural workers. How far can it be advisable and possible for an agricultural worker to avail the Constitutional relief of a writ of mandamus if the District Collector refuses to refer his case of an Agricultural Tribunal? However, this is beyond what an agricultural worker can perform.

Any attempt to enforce a legal right through litigation is both risky and expensive. An agricultural worker who is given a lower wage rate than the notified minimum wage is economically unable to litigate with his employer; the expenses involved at all stages including that of engaging a Counsel are beyond what an agricultural worker can afford to.

(As an example the question of court fee may be considered. Every application before the Conciliation Officer should bear stamp for 75 paise and before the Agricultural Tribunal Rs. 2/-. However, it is to be noted that the agricultural workers have to affix stamp only for the same amount as the landowners.)¹⁷

It may be seen from the above analysis that the benefits the act can give to the agricultural workers are not much. Moreover, all the workers are not entitled to such benefits. However, the possibilities for the landowners to evade the law is high while that for the agricultural workers to realise the benefits of the law is not so. It will, therefore, be unrealistic to imagine that the act may make any substantial change in the conditions of the agricultural workers and thereby in the agrarian sector as a prelude to "land to the tiller".

Notes

1. The Kerala Agricultural Workers' Act 1974 (Act 18 of 1974).
2. See sections²², Ibid.
3. Section 2 (f), Ibid.
4. Section 2 (c), Ibid.
5. Explanation to section 2 (c), Ibid.
6. section 18, Ibid.
7. section 16, Ibid.
8. section 16, Ibid.
9. section 7(1), Ibid.
10. explanation to section 7(1), Ibid.
11. section # 7 (2), Ibid
12. see section 42, Ibid.
13. explanation to section 42, Ibid.
14. section 2 (f), Ibid.
15. section 7 (4), Ibid.
16. section 7 (5), Ibid.
17. see rules 12 (1) and 12 (2) under section 47 (2) (a) and (b) read with sections 20 and 23; Ibid.

Chapter IV

CONCLUSION

The above two investigations give little support to any argument that law can be an instrument for achieving an equitable distribution of resources, in a society where right to property is also law, and where unequal distribution of resources exists already. On the other hand, it may be seen that apart from being an instrument of coercion and ideological domination for the propertied class, law helps the reinforcement of the status-quo and the carrying out of the will of that class.

Law is not a being in itself (that is, a closed universe of norms) but a function within a whole. As Marx and Engels point out: "Right, law etc. are merely the symptom, the expression of other relations upon which state power rests..... These actual relations are in no way created by the State power; on the contrary they are the power creating it. The individuals who rule in these conditions, besides having to constitute their power in the form of the State, have to give their will, which is determined by these definite conditions, a universal expression as will of the State, as law"¹. Thus law cannot be thought in independence of that which first gives it meaning, and so cannot be cut loose from the relationships in the world. It is not, therefore, right to see private property as a relationship between an individual and thing opposed to seeing it, properly, as a social relation between several individuals which essentially rests on

inequality. It is a delusion to seek to derive law exclusively from ideas such as the nature of man and justice. On the other hand, law is part of the history of economics, since economics is evolving and law follows that development. Just as the natures of man or human society are not fixed once and for all, so law is ~~by~~ nature equally mutable or temporal in character. "Since in each particular case the economic facts must assume the form of juristic motives in order to receive legal sanction; and since in so doing, consideration of course has to be given to the whole legal system already in operation, the juristic form is, in consequence, made everything and the economic content nothing."² The distinctive feature of law is the fact that they embody the material interests of the ruling class in a universal form, and thus present the law as the embodiment of the interests of the community as a whole. This claim finds its classic expression in Dicey. "When we speak of the 'rule of law' as a characteristic of our country we mean, not only that with us no man is above the law, but (what is a different thing) that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm.....!With us every official, from Prime Minister down to a constable.....is under the same responsibility for every act done without legal justification as any other citizen"³ However, it needs to be pointed out that the economic and social dominance of an exploiting class in a society does not sustain itself automatically. The exploiting class always strives to turn itself into the ruling class by means of an institutional structure, the state, which operates to sustain and reproduce that position. Thus law serves as an

instrument to carry out the will of the ruling class, giving legitimacy and universality to such a will. Engels says that "In a modern state, law must not only correspond to the general economic condition and be its expression, but must also be an internally coherent expression which does not owing to inner contradictions, reduce itself to naught. And in order to achieve this, the faithful reflection of economic conditions suffers increasingly. All the more so the more rarely it happens that a code of law is the blunt, unmitigated, unadulterated expression of the domination of a class - this in itself would offend the 'conception of right' "4

The rules of law not only define social relations but confer rights and powers upon certain categories of individuals. It not only reinforces existing - social and economic relations, but in addition it confers authority upon dominant social interests. Thus the law of property is not only based up on the inequality of property ownership but its reinforces it by allowing and facilitating the owners of property to make use of that property as capital. Similarly, labour law facilitates the capitalist form of relationship between labour and capital; it gives effect to the economic fact of the dependence of the majority upon the sale of their labour power. It embodies the economic power of capital over labour by granting to the employer rights regarding not only the control of labour but also over the hiring and firing of labour.

Notes

1. Marx and Engels, The German Ideology, Progress Publishers, Moscow, 1968, pp.365-366, 1968.
2. Engels, Ludwig Feuerbach and the End of Classical German Philosophy, Progress Publishers, Moscow, p.49, 1965.
3. A.V. Dicey, Introduction to the Study of Law of the Constitution, English Language Book Society, and Macmillan and Co. Ltd., London, 1968, p.193.
4. Engels, "Letter to C.Schmidt in Berlin, Oct. 27, 1890, in Marx/Engels Selected Works, Vol.3, Progress Publishers, Moscow, 1970.