CHAPTER VI
MEANING OF SELF-ACQUIRED LAND

Newly acquired land was defined as self-acquired immovable property, which was different from ancestral immovable property. This chapter examines the meaning of land acquisition and of becoming an owner of self-acquired immovable property under the Punjab Customary Law.

SECTION I
DEFINITION OF SELF-ACQUIRED IMMOVABLE PROPERTY

Through the period of British rule self-acquired immovable property was being continuously defined and redefined in legal terms. The distinction between self-acquired property and ancestral property was foreign to the agriculturists in the Punjab, according to Boulnois and Rattigan. The concept was introduced by the British.¹

Rattigan simply wrote about self-acquired property in his Digest: “Acquired property, whether moveable or immoveable, is ordinarily alienable according to the will and pleasure of the last owner.”² In theory, self-acquired immovable property was alienable because it could not be controlled by any reversioners, which was supposed to be the major difference between the two kinds of immovable property,

¹ Charles Boulnois and W. H. Rattigan, Notes on Customary Law as Administered in the Courts of the Punjab. Albert Press, Lahore, 1876. p.66
since the property had no connection with the agnatic theory as No. 50 P. R. 1902 argued:

The distinction between ancestral and self-acquired property has always been recognized by the courts, .... It is self-evident that the theory of agnatic succession lying at the root of the Punjab Customary Law can have no application when the property has not descended from an ancestor common to the parties who are taking part in litigation.

The idea that a proprietor had full power to alienate his self-acquired land could be also a theoretical product in the British mind since the distinction between the two kinds of immovable property was introduced by the British rule. The British needed the concept of self-acquired property in the situation where the market value of land was increasing under their rule.

Since self-acquired property was supposed to be unrelated to agnatic theory and free from 'customary' control, descriptions about self-acquired property were limited in manuals on the Punjab Customary Law. Self-acquired property was supposed to lie outside the realm ruled by the Punjab Customary Law.

Ellis's arguments about when immovable property was out of reach of the 'customary' power in 1917 help us to partially understand the relation between ancestral property and self-acquired property. Firstly, ancestral property ceased to be 'ancestral' when a proprietor acquired the land right not through inheritance or some act similar to inheritance. Secondly, land acquired with the income of ancestral

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3 50 Punjab Record 1902

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property was not itself ancestral. Thirdly, land not acquired by a common ancestor and his collaterals is not ancestral for the latter. Fourthly, land taken by a sister from her brother, which he had inherited from her father, is not ancestral in the hands of her sons. Fifthly, land acquired by a person from his maternal uncle by gift is self-acquired in hands of donee. Sixthly, where land is partly ancestral and partly not, that is when ancestral and non-ancestral cannot be marked off, the whole must be regarded as non-ancestral. In sum, the definition of non-ancestral property can be expressed by denying the definition of ancestral property, that is, property inherited from a direct male ancestor as regards sons, and property inherited from a common ancestor as regards collaterals. In the other situations, property was supposed to be free from 'customary' control.

In reality, however, it was not rare for agriculturists to define self-acquired property under the control of 'custom' and refuse to acknowledge the distinction between the two kinds of property. As Rattigan stated in the fifth edition (1896) of his Digest, two law cases were included as exceptional cases in which sons had restrictive power on the alienation of the father's self-acquired property; the older one was from 1877. The refusal of the agriculturists to recognize the difference between ancestral immovable property and self-acquired immovable property was already known in the 1870s.

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5 Rattigan, op.cit., p.94.
6 Ibid., 5th edition, p.58. [No.2 PR, 1877]
SECTION – II

CONTROLLING SELF-ACQUIRED LAND

One of the reasons why agriculturists to some extent managed to define self-acquired property as being within the purview of custom is that there were grey areas in the definition of self-acquired immovable property, one of which was the proprietor’s power of disposition and another of which was the right of the daughters to succeed to the father’s self-acquired property.

As to the first problem, it derived in part from the contradiction in the way the two kinds of immovable property were defined. A proprietor’s power of disposition in self-acquired property could be questioned because for his sons this property became ‘ancestral’; it was ‘reasonable’ for sons to challenge their father’s land alienation from their point of view in theory. Agriculturists were probably unsure about whether they should respect a proprietor’s power of disposition of self-acquired property, or the sons’ reversionary power in their father’s self-acquired property. However, as Rattigan wrote in his Digest, there was a general desire to restrict the father’s control over self-acquired property. Settlement officers regularly recorded that various agricultural tribes refused to differentiate between ancestral and self-acquired immovable property, and did not wish to give the father a power to make an unequal distribution among sons.

In Doaba, too, agriculturists seemed unsure about the issue at the Second Revised Settlement. In Jullundur District, while the Jats in the Phillour and Nakodar tahsils declared that a father had a power to make an unequal distribution of his
self-acquired property, the Jats in Jullundur tahsil denied his right. In Hoshiarpur, Humphreys cited two cases in which Jat fathers made unequal distribution of their self-acquired property among their sons; however, agricultural tribes including Jats declared that unequal distribution of ancestral and self-acquired property was effective during the father’s lifetime only. It was possible that an unequal distribution of self-acquired property by a father in Doaba could be challenged after his death in those districts.

On the other hand, it may be possible to suppose that sons’ reversionary right over the father’s self-acquired property could be only their desire and/or if they had the customary power, it might not have been as strong in reality as they hoped. In Ludhiana District, while agriculturists declared that a father had no power to make an unequal distribution of any immovable property which could be effective after his death, it seemed common for him to purchase land for his favourite son(s) in the name of his chosen son(s). Dunnet cited the following cases of such acquisition amongst Hindu Jats:

Mauza Hathur, Tahsil Jagraon.—Thumman, Jat Dhaliwal, took land on mortgage for Rs. 500 in the names of three of his four sons. On Thumman’s death the land continues with the three sons. The 4th (Harnaman) has raised no objection.

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9 Ibid., pp.85-86.

Mauza Hathur, Tahsil Jagraon.—Mahan Singh, Jat Dhaliwal, bought 10 ghumaos of land for Rs.900. On Mahan Singh’s death the three sons who lived with their father got it. The 4th, Jaimal, compromised by getting three bighas of it.

Mauza Hathur, Tahsil Jagraon.—Kalu, Jat Gill, took land on mortgage for Rs.200 in the names of the two sons who lived with him. On his death the third son, Shada, has raised no claim and the land continues with the two sons.

Mauza Boparai, Tahsil Jagraon.—Deva Singh, son of Faujdara, gave to the eldest son, Bhajan Singh, land bought by him for Rs.500. The other two sons raised no objection.

Mauza Abbowal, Tahsil Jagraon.—Hushiara gifted 200 bighas of self-acquired land to two sons (Sohba and Mehtaba). The 3rd (Rullia) got only a share of the ancestral property and did not claim a share of the self-acquired land.

In these cases, the fathers managed to distribute their self-acquired property, and this distribution remained effective after their death.

In terms of a proprietor’s power to gift his self-acquired land in general, too, there was a desire to control his power with ‘customary’ restriction. In Doaba, all the agriculturists in the Phillour and Jullundur tahils declared that a proprietor of a self-acquired property could make a gift of a whole or part of the self-acquired land to one or more of his relations; however, in Nawanshahr agriculturists denied that proprietors had any such power.¹⁰ In Hoshiarpur, too, agriculturists expressed their desire to restrict a proprietor’s power to gift his self-acquired property.¹¹ In Ludhiana District, Dunnet and his informants seemed unsure about a proprietor’s power to gift his self-acquired property at the Second Revised Settlement. Dunnet wrote: “the

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¹¹ Humphreys, op.cit., pp.216-217.
general custom is that gifts of immovable property are valid only where the heirs either consent or do not care to raise an objection.\textsuperscript{12} The only case of a gift of self-acquired property that he cited was an example of a gift to two married daughters; however, it is unclear what exactly the case indicated: whether it was the proprietor who had a right to gift his self-acquired property as he pleased or whether his agnates approved the gift. There was both a desire to establish the power of disposition in self-acquired property outside the realm ruled by custom, as well as the need to establish ‘customary control over self-acquired property.

It is possible that reversioners’ power to control self-acquired property was overstated in the settlement records. However, it was at least strong enough to annoy proprietors of self-acquired property. The British had to declare that no agnates could contest any alienation or any appointment of an heir regarding non-ancestral immovable property within the Punjab Custom Act in 1920 in order to protect those proprietors. Section 7 of the act declared:\textsuperscript{13}

\begin{quote}
Notwithstanding anything to the contrary contained in Section 5, Punjab Laws Act, 1872, no person shall contest any alienation of non-ancestral immovable property or any appointment of an heir to such property on the ground that such alienation or appointment is contrary to custom.
\end{quote}

Aggarwal explained the intention of the above section in his \textit{Customary Law in the Punjab} as follows:\textsuperscript{14}

Section 7 is intended to, and does, debar the descendants, collaterals, or other

\begin{footnotes}
\footnote{Dunnet, \textit{op.cit.}, p.114.}
\footnote{\textit{Ibid}.}
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relations of proprietor, from controlling his alienations of self-acquired property, and thus deprive them of the right which, according to the custom prevailing in some tribes, they might have possessed before its enactment. It is quite immaterial, whether the contest to the alienation is raised by descendents, collaterals or relations of the alienor in a suit instituted by them, or by the way of defence to claim brought by the alienee.

Despite the British presumption about a proprietor’s power to dispose of his self-acquired property, a proprietor’s power of disposition in his self-acquired property obviously needed protection from their ‘reversioners’.

The act, however, did not remove all the vagueness about the concept of self-acquired property. It left unresolved the issue of daughters’ right to succeed to the father’s self-acquired property, which was another grey area around the definition of self-acquired property. In theory, daughters were supposed to have a right to exclude any agnates as regards their father’s self-acquired property, since the land could not be ‘ancestral’ for any agnates. In reality, however, agnates were often approved to be heirs of self-acquired property in the presence of the daughters of the person who acquired the land.

British officials seemed to consider that daughters in theory should succeed to the father’s self-acquired property before agnates. Rattigan’s Digest in the fifth edition, 1896 stated: “The exclusion of the daughter in favour of collaterals is, ..., generally confined to landed property derived from a common ancestor.”\(^{15}\) No.110 PR 1906 stated that the ‘onus’ of proving their superior title to land acquired by the deceased should be upon the collaterals.\(^{16}\) Rattigan’s Digest in the seventh edition,

\(^{15}\) Rattigan, op.cit., the 5\(^{th}\) edition, 1896, p.27.

\(^{16}\) Ibid.
1909, has the following sentence, which is not included in the fifth edition, in terms of daughters' right to succeed to the father's landed property: "But in regard to the acquired property of her father, the daughter is preferred to collaterals." The Chief Court's presumption was thus that daughters were supposed to be entitled to exclude collaterals regarding the succession of the father's self-acquired property.

However, the Chief Court's was not passionate in defending the daughter's right to succeed to the land acquired by the father. In contrast to their attitude toward the concept of ancestral property, they did not care much about what was theoretically right as to self-acquired property. The court often allowed collaterals to establish their preferential right, excluding daughters' succession to the father's self-acquired property. Given the fact that the Punjab Custom Act was silent about daughters' right to succeed to the father’s self-acquired property, I suspect that the British might have been reluctant to establish the daughters' right.

One of the advantages in refusing the distinction between ancestral and self-acquired immovable property as regard daughters' right to succeed to the father's immovable property was that agriculturists were able to define self-acquired immovable property as ancestral property as soon as the proprietor died. If a daughter succeeded to the father's self-acquired property, in theory the property maintained its non-ancestral character even after the daughter's heir succeed to the land.

As far as the daughters' rights were concerned, Doaba was probably one of the areas where agriculturists refused to see the distinction between ancestral and

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17 Ibid., the 7th edition, 1909, p.28.

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self-acquired immovable property.\textsuperscript{18} AIR 1937 Lahore 223 provides us with evidence showing that the daughters’ right to succeed to the father’s self-acquired property was restricted by referring to custom.\textsuperscript{19} The jist of the decision was as follows:

Amongst Johar Jats in the Phillaur tahsil of Jullundur District in the Punjab, the daughters do not succeed to the self-acquired property of their father in preference to the collaterals of the second degree as the riwaj-i-am and the majority of the instances of such custom are in favour of collaterals:

The judgement cited 8 instances against Jat daughters, which were submitted to the court, seven of which instances are as follows:

The first instance against the daughters is Ex. P-11, a decision of a Subordinate Judge dated 24\textsuperscript{th} August 1931 in which it was held that collaterals of the third degree excluded daughters from succeeding to self-acquired property amongst Jats in tahsil Phillaur. There was an appeal to the District Judge against this decision where the matter was partly compromised. The widow had gifted the self-acquired property of her husband to her daughter and the collaterals had sued to have this gift set aside and were successful, as already stated, in the trial Court. The daughters appealed on the ground that they were entitled to succeed and the gift was therefore only an acceleration of succession. By the compromise the decree was maintained, cancelling the gift and the widow took back the land from her daughter, a rider being added that the question of succession would be taken as not having been decided an could be re-opened on the death of the widow.

The second instance ... The parties were Jats of Phillaur tahsil and the collaterals of the fifth degree were found entitled to exclude daughters from succeeding to their father’s self-acquired property.

The third instance is another clear case against daughters succeeding to the self-acquired property of their father in the presence of second degree

\textsuperscript{18} Hotu Singh, \textit{op. cit.}, p.39.

\textsuperscript{19} \textit{All India Reporter}, 1937 Lahore 223
collaterals. It is Ex. P-13. This is a mutation dated 3rd May 1932, in which the married daughter was examined on interrogatories and recognized the custom.

The fourth instance (Ex. P-14) is equally good. There again collaterals of the second degree excluded daughters from succeeding to the self-acquired property of their father. The married daughter appeared before the Revenue officer and admitted and recognized the custom as being as such.

Ex. P-17 is another mutation sanctioned on 25th October 1926 by which it was held that second degree collaterals were entitled to exclude three married daughters. This land has also been proved to be self-acquired.

The sixth transaction Ex. P-18, another mutation amongst Jats from Jullundur district. Here again the second degree collaterals by order dated 27th July 1929 were held entitled to her father. The husband of the daughter appeared and admitted that his wife was not entitled to succeed. In this case it has not been proved that the land was self-acquired, but it was land in Lyallpur and in all probability was self-acquired for reasons given at the commencement of this judgement. In any case, the custom being stated to be the same as regards ancestral and self-acquired property, this instance is not without value.

The seventh instance is Ex. P-19, another case from Phillaur tahsil, in which second degree collaterals were held on 10th February 1930 to exclude daughters from succeeding to the property of their father. This land has been proved to be self-acquired by the evidence of P. W. 10 Dalip Singh.

While Jats in the district had been endeavouring to establish a collateral’s preferential right to succeed to a proprietor’s self-acquired property in the presence of daughters even in the 1920s and 1930s, agriculturists in the district did not yet have a consensus on this issue. The Judgement also admitted confusions about the issue at courts: two judicial cases regarding Jats in the district was decided in the early 1930; one was in favour the daughter and the other was against the daughter. This case
about Johar Jats in the Phillaur Tahsil showed two points: first, there was a strong
resistance to approving daughters' right to succeed to the landed property, whether it
was the father’s ancestral or self-acquired property; second, the process of defining the
custom about the daughter’s right was still progressing as late as the 1930s.

As to Hoshiarpur District, my evidence is limited, and I find it difficult to assess
the extent of the impact of ‘customary’ restrictions on daughter’s right. Humphreys
was almost silent about the daughter’s right to succeed to the father’s self-acquired
property. The following two instances about Hindu Jats are evidence to claim that
daughters might have been approved to have wider right than in Jullundur District:

*Mauza Singhpur, Tahsil Garhshanakar.*—Mussammat Indo, widow of
Daya Ram, sold the property left by her husband to Kanhiya. Two suits,
one by reversioners and the other by Mussammat Indo’s daughters, were
lodged claiming cancellation of the sale. The suit of the reversioners
was dismissed and the daughters of Mussammat Indo were granted a
decree with the remark that the land in dispute was acquired by Daya Ram
and the daughters had a preferential right to the collaterals of distant
degree as regards the acquired property.—*(Sub-Judge, dated 26-6-12)* \(^{20}\)

*Mauza Dhat, Tahsil Hoshiarpur.*—Kahna, a sonless proprietor, gifted his
land, which was gifted to him by his maternal grandfather, to his daughter
Mussammat Atri. Moti and others, collaterals of Kahna, brought a suit
for possession by cancellation of the gift which was dismissed on the
ground that by custom Kahna was competent to gift his land acquired by
him from his maternal grandfather to his daughter.—*(Munsif, dated
16-5-94.)* \(^ {21}\)

The above evidence, however, has a flaw. Neither instances specified how
closely/remotely the collaterals were connected to the original owner of the land: it is

\(^{20}\) Humphreys, *op.cit.*, p.120.

\(^{21}\) *ibid.*, p.220.
not clear why the collaterals' right was denied. Was it because the property was self-acquired or because the collaterals were too remotely connected in the first instance. It is equally unclear whether or not the daughter’s right to succeed to self-acquired property was wider than her right to succeed to ancestral property.

In Ludhiana District, too, Dunnet did not define the daughter’s right to succeed to the father’s self-acquired property. There was a case about Goriwal Jats, in which the daughter’s right was denied by a special custom: collaterals could exclude daughters from succession to self-acquired property. In No.71 PLR 1918, Achal Singh and others, some collaterals of Fateh Singh, sued for the possession of the land in the hands of Fateh Singh’s daughter Mussammat Mahan Kaur. This land was Fateh Singh’s self-acquired property. The district court was in favour of the daughter on the ground that general custom did not approve of collaterals exercising superior right to self-acquired property. However, the Chief Court was against the daughter and accepted the special custom of Goriwal Jats, which had been established in No.29 PR 1911. As far as the case shows, Jats in Ludhiana District seemed to have had a general custom recognizing the distinction between ancestral and self-acquired property regarding the daughter’s right to succeed to the father’s immovable property. Even in such a situation, however, it was possible for collaterals to control self-acquired property with customary restrictions by claiming that they had a special custom.

On the other hand, in Gurdaspur District, as AIR 1937 Lahore 90, a case

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22 Dunnet, *op.cit.*, pp.78-84.

about Kahan Jats, showed, daughters succeeded in excluding collaterals.\textsuperscript{24} The following four actual instances where daughter managed to exclude near collaterals were cited in the judgement:

The first instance is proved by D.W. I and relates to a case where in the self-acquired property of a Kahan Jat was inherited by his daughter Mt. Prito in the presence of fourth degree collaterals. The witness himself had tried to prove a nearer degree of propinquity, at p.60, Vol. 2 of the printed book shows that the collaterals were related in the fourth degree.

The second instance proved is that of one Nikka whose widow succeeded to his property, which was self-acquired, and gifted the same to her daughter and grand-daughters, the daughters of a pre-deceased daughter. The real nephews of the deceased, Nikka, contested the mutation but failed.

The third instance proved is one where in a gift was made by the widow of a deceased male owner, one Mt. Nihal Kaur, in favour of her daughter Mt. Banto. The real nephews failed to oust the daughter in a contested mutation.

The last instance proved is that of one Kapur Singh, whose daughter, Mt. Mahindro, succeeded to his self-acquired property in the presence of real uncle of Kapur Singh, deceased.

Despite \textit{riwaj-i-am}'s statement that collaterals of however remote a degree excluded the daughter from both ancestral and self-acquired property, the judge concluded that daughters of Kahan Jats in the district could exclude near collaterals from succession to the father's self-acquired immovable property based on the four instances.

The last example is from Amritsar District. In the following case about Khaira Jats in Tarn Taran Tahsil of Amritsar District, AIR 1937 Lahore 306, the decision was

\textsuperscript{24} \textit{All India Reporter} 1937 Lahore 90
in favour of the daughter (the daughter’s sons), not by custom but by the personal law because the Court could not find any custom to decide the case then.\textsuperscript{25} According to the 1914 \textit{riwaj-i-am} in the district, “there was no distinction as to the right of a daughter to inherit ancestral property as distinguished from self-acquired property of her father.”\textsuperscript{26} However, the Court found that the enquiry was made only for 26 sub-divisions of Jats; the other sub-castes of Jats, with less than one thousand people, were disregarded. Khaira Jats were one of the ignored groups. Therefore, the Court judged that the group had no custom regarding the issue and decided to fall back on the personal law.

In sum, in the cases we examined, the definition of the daughter’s right to self-acquired immovable property probably took different courses. First, at the second revised settlement, when they were asked, agriculturists often refused to recognized the distinction between ancestral and self-acquired property; second, at a sub-caste level, they established a special custom excluding daughters; third, agriculturists had opted to allow daughters to exclude collaterals; fourth, it is clear that there was no consensus regarding the issue. Such confusions had lasted as late as the 1930s.

In Jullundur District, where land was scarce and the demand for land was high, agriculturists had probably wanted to restrict the daughter’s right to succeed to self-acquired property in the same way in which ancestral property was controlled. More precisely, at least the dominant agriculturists in the district refused to recognize the distinction between ancestral and self-acquired immovable property as regards daughter’s right so that they could define self-acquired immovable property as

\textsuperscript{25} \textit{All India Reporter} 1937 Lahore 306

\textsuperscript{26} \textit{ibid}
‘ancestral’ property as soon as the owner died. Although it is not possible to claim that agriculturists in Doaba shared any uniform attitude towards daughters’ right to succeed to the father’s self-acquired property, agriculturists in part of the area were trying to establish ‘customary’ power of collaterals regarding the issue.

Among agriculturists including Jats, there was a desire to control self-acquired property through reference to custom, even when this had no ground in agnatic theory. The attempt of collaterals to claim ‘customary’ power as ‘reversioners’ regarding self-acquired property were often accepted by the courts until 1920 when the Punjab Custom Act. As to collaterals’ efforts to establish their preferential right to daughters regarding self-acquired property, the act was silent. Despite the theoretical presumption of the British that self-acquired property was free from ‘customary’ control, self-acquired property was more or less under the control of ‘custom.’

SECTION – III

AVOIDING ‘REVERSIONERS’

In a situation where ‘reversioners’ wanted to assert their theoretically baseless claim to self-acquired property, a system was developed that sought to reward a person who made personal contribution to the land he acquired and improved the land.

In Central Punjab, it was common to reward those who rendered services at Second Revised Settlement. This practice sometimes provided the basis for a change in the form of transmission of ancestral property, a move away from agnatic theory. Humphreys cited the following three cases about Hindu Jats were from Hoshiarpur District: 27

27 Humphreys, *op. cit.*, pp.239 and 244-245.
Mauza Dhamian, Tahsil Hoshiarpur.—Buta, a sonless proprietor, gifted his ancestral property to his nieces Mussamats Santi and Basanti. Mihan Singh, the brother of the donor, filed a suit for possession, but subsequently withdrew his claim. It was held on the report of a commissioner appointed in the case that among Hindu Jats such a gift in return of services rendered was valid by custom.—(District Judge, dated 31-10-05.)

Mauza Hussinpur, Tahsil Hoshiarpur.—Kahna, a sonless proprietor, gifted his ancestral land to his wife's brother Jhalla to the exclusion of his brother Mahna. The latter hand filed a suit which was dismissed on the ground that the donee had been serving the doner whose whole land was mortgaged and he was in bad health, and moreover the donor treated the donee as his child. Among Jats gifts in return for services rendered are valid by custom. Reference—Punjab Record 33 and 96 of 1905, 14 of 1901 and 116 of 1894 and with reference to Punjab Record 125 of 1880 and 22 of 1891 the wife's brother can be appointed as heir.—(Munsif, dated 5-12-06.)

Mauza Alawalpur, Tahsil Garhshankar.—Wazir, a sonless proprietor, gifted 4 kanals of his ancestral land to his nephew Banta by executing a registered deed, dated, 18th October 1900. Indar Singh, another nephew of the donor, filed a suit for possession of his one-four share in the land in dispute on the death of the donor which was dismissed on the ground that a gift of ancestral property by a sonless Jat proprietor to one of his nephews to the exclusion of others in return for services rendered was valid by custom. Reference—Punjab Records 116 of 1894, 14 and 51 of 1901.—(L.Nathu Mal, Extra Assistant Commissioner, dated 13-11-03).

In addition to the above cases, Humphreys cited other cases about Hindu Jats in which a gift was cancelled on the ground that the gift was not in return for services rendered by the donee to the donor in his report.28 In Jullundur District, too, the situation seemed to be the same as in Hoshiarpur District. According to No.96 PLR,
which reported about Case No.966 of 1900, a reversioner had no right to claim cancellation of a gift by a childless proprietor in favour of a person who had rendered services for the proprietor. The rule seemed to be approved in both districts.

As to self-acquired property, those who contributed to the acquisition of the land had a claim over the whole of the land or at least a larger share of the land than those who made no contributions in the land acquisition.

Hotu Singh wrote regarding a son’s right to the father’s self-acquired property in Jullundur District: “The self-acquired property of one son remains excluded from partition as well as the property acquired by him by gift or succession from maternal grandfather or his father-in-law or other relative through a female.” Agriculturists in this district seemed to be properly rewarded when they contributed to land acquisition.

Humphreys’s description of Hoshiarpur District about a son’s share of the self-acquired property was a little unclear. When an estate was held jointly by father and sons and one of the sons acquired property, generally “the self-acquired property of one son, a member of joint family, does not devolve on that son to the exclusion of others on partition unless in the case of property received from his father-in-law’s or maternal-grand-father’s family when it remains his absolutely, ...” What did

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29 No.96 Punjab Law Reporter, 1903. The summary of the case is as follows: “Where a childless proprietor so crippled by rheumatism as to be hardly capable of moving about, in consideration of personal services of the defendant without which he could not have carried on the cultivation of his land and maintained himself, made a gift of half of his land to the defendant—

Held, that the plaintiff a reversioner, was not entitled to, upon the death of the proprietor, to challenge the validity of the gift, when the plaintiff had conducted himself in such a way as to lead the defendant to believe that he had not objection to the gift and to act on such belief.”

30 Hotu Singh, op. cit., p.33
self-acquired property really mean here? It is unclear whether it could mean anything more than the property received from father-in-law or maternal-grand-father. However, this does not seem to mean that the father did not reward the son who acquired land with his own effort in the district. Humphreys cited the following case regarding land acquisition by Jat sons’ effort:31

_Mauza Lehli Khurd, Tahsil Hoshiarpur—Pala Singh, Jat Bandial, made a gift of 9 karlas 18 marlas of his self-acquired land to his sons Hira Singh and Rupa Singh in equal shares, as this land was purchased by him from the money earned by these sons._

The case probably indicates that a Jat son’s personal contribution to land acquisition was properly rewarded in this district.

Dunnet wrote that a son’s right to his self-acquired property was possibly expanding between the two Revised Settlements. While “at the last settlement the custom was found to be that only separate property acquired by gift or will, or in dahez, of from the wife’s relations, was excluded from partition,” “the universal custom now is that all property acquired by one son in lifetime of their father remains his exclusive property on the death of the father.”32 Dunnet also included cases to show actual situations where a son acquired land and he was allowed to keep his land as his separate property:33

_Badan Singh and Kala Singh (two brothers), Sidhu Jats, of Malsihan Blaike, have a joint holding. Kala Singh is a Jamadar in Hoti Mardan. Badna Singh cultivated the joint holding. Three years ago Kala Singh bought 36 kacha bighas of land for Rs.3,300 separately in his own name. Badan Singh has claimed no share in it._

31 Humphreys, _op.cit._, pp.85-86 and 88.
32 Dunnet, _op.cit._, pp.64-65.
33 _Ibid._, pp.65-69.
Prem Singh, Sidhu and Sundar Singh, Gil Jats of Jhorran (brothers), have a joint holding. Sundar Singh is a Jamadar in the army and is buying land separately in his own name. Three years ago he took in mortgage Daya Singh’s land for Rs. 600 and 4 years ago he bought in his own name Jodh Singh and Mohan Singh’s land for Rs.800.

Samand Singh, Jat Hindu, of Sawaddi Khurd, had three sons, one of whom, Ralla Singh, was a Jamadar in the Rurki Sappers and Miners and bought land in his own name in Samadn Singh’s lifetime. In fact he took in mortgage 7 ghumaos of his own father’s land for Rs. 1,650 paying off debts. Samand Singh is now dead and Sahib and Sahib Ditta and Khazana’s (sons of Samand Singh) share of the land continues in possession of their brother, Ralla Singh, as a mortgage. During their father’s lifetime all the brothers lived jointly.

Ram Singh, Hindu Jat, of Kaonke, had two sons, Hira Singh and Bhola Singh. The former was employed in the army and with his personal income he bought land for about Rs. 1,700 in the lifetime of his father. Ram Singh and Hirs Singh are both dead now. The self-acquired land of Hira Singh has gone to his sons, Gujjar Singh, and not to his brother, Bhola Singh, who has got only half of the ancestral land.

Surjan Singh, Arjan Singh, Basant Singh and Anand Singh, four brothers, Hindu Jats of Rajoana Kalan, had a joint holding. Surjan Singh was enlisted as a soldier and his brothers cultivated his share of the land. He acquired land worth Rs. 800 which on his death went to his son and not to his brothers.

Sundar Singh and Kalu, sons of Mana, Jat Rai of Raikot, live jointly with their father. Sundar Singh is a Havildar in the army and has taken in mortgages 20 bigahs of land for Rs. 400 separately in his own name.

Buta Singh, Partaba and Harnaman (brothers), Hindu Jats of Giddarwindi, have a joint holding cultivated by Partaba and Harnaman. Buta Singh, who has a square in Chak No. 475, Gugera Branch, is acquiring land separately in his own name. Three years ago he took in mortgage Arura’s land for Rs. 200.

Atru, Fattu and Karam Singh (brothers), Jat Khaira of Giddarwindi, have a joint holding cultivated by Atru. Fattu has a square in the Chenab Colony and has bought 3 ghumaos of land for Rs.300 separately in his own name.
Jat sons in Ludhiana District had established their right to keep their self-acquired property exclusively on the father’s death by the second revised settlement.

The rule to reward the person who rendered services was not necessarily common everywhere in the Punjab. In Rawalpindi District, where enlistment in the army was popular, and peasants brought back money into the village to supplement their income from agriculture, personal effort to improve/increase family land was not always appreciated. Robertson wrote about this district in 1887: “A son who improves or increases the common undivided estate, is not on that account entitled to be a larger share than his brothers.”, which he described as “injustice”. However, he also added, “whenever one son has opportunities of making larger profit, he immediately separates himself off from the others, if he has not already done so.” While he found that “the only cases in which a sharer would be entitled to keep certain property apart from partition would be cases in which he had acquired property quite apart from the common holding by the employment of his own earnings obtained by labour or in service or in some such manner.”, there were many cases from this district even at the Second Revised Settlement in which a son’s personal contribution to land improvement and land acquisition did not ensure him the exclusive right for the land or a larger share.\(^34\) I will cite some of those cases.\(^35\)


Rajput.— (...) Mauza Kaniat Khali, Tahsil Gujar Khan: Azim-ullah Khan had two sons, Mohamed Akbar Khan and Risaldar Sarwar Khan; Sarwa Khan sent his savings to Mohamed Akbar Khan who bought land with it in his own name. When Sarwar Khan retired and came home, the whole land was divided in equal shares.

Mauza Thoha Khalsa, Tahsil Kahuta: Bahawal acquired more land when he was in service and gave a share to his brother Nawab. The two brothers divide it equally in 1906.

Janjua—Mauza Mator, Tahsil Kahuta: Subedar Painda Khan sent money to increase the common holding. One brother stayed at home. At partition both took equally.

Mauza Mawara, Tahsil Kahuta: Faiz Khan has four sons, of whom one is Subedar-Major Shar Nawaz Khan. Shah Nawaz Khan sent money from his regiment, with which more land was acquired; at partition, all took equally.

Mauza Kethal Durga Das, Tahsil Kahuta: Chuhar Khan, son of Niaz Khan, had five sons, of whom Farman Ali is a Subedar. He sent money from his regiment with which more land was acquired. At partition it was divided equally.

Saiad.—Mauza Mohra Shah Wali Shah, Tahsil Rawalpindi; Bahadur Shah, son of Saif Ali Shah, was a contractor and sent about Rs.2,000 home, with which more land was bought. When the estate was partitioned all five sons took equally.

Awan.—Mauza Ghita, Tahsil Rawalpindi: Ata Mohamed, son of Fazal Din, was a patwari. He sent Rs.1,200 home with which a well was bought. At partition all three sons took equally.

Although it seemed to be common that a migrant or a returned migrant was allowed to keep the self-acquired property that he obtained with his earning separately from the family property, the migrant's contribution to land acquisition was not always rewarded even in such a situation, as the first case indicates:36

[Awan-]Mauza Gangal, Tahsil Rawalpindi: Ahmad Ali, son of Fazal Khan,

36 Ibid., pp.105, 110.
is a Jamedar and Lambardar. In Africa he saved much money and increased the joint holding. At Fazal Khan’s death all four sons took equally.

Satti.—Mauza Damnoian, Tahsil Murree: Zaman Ali, son of Faqira Khan was in service in China. He earned money and bought more land through brothers. When he was in China, his two sons—Bhola and Kala—cultivated and took the produce of all the land including acquisitions. When Zaman Ali retired, he took the land acquired by him.

Dhanial.—Mauza Chanwan, Tahsil Murree: Rusmat Khan, son of Asfar Khan, was Jemadar in Hong Kong. Asfar Khan being alive, Rusmat Ali earned money and bought land through his father and brothers, who subsisted on it and other land. When Rusmat Ali retired on pension, he took all the land acquired by his earning.

Saiad.—Mauza Bhamrot, Tahsil Murree: Bada Singh, son of Sardar Shah, was in service in China. He earned money and bought land through his father and brothers, who subsisted on it. When Bada Shah retired he took the land acquired by his earning.

When a son earned money to purchase additional land, and yet could not acquire exclusive right over the land, or a larger share of the land, it did not necessarily mean ‘injustice’. As Robertson wrote, we need to keep in mind that the other sons’ effort to take care of their family land should be also rewarded equally; however, the system of rewarding contributors to land acquisition was more effective in encouraging sons to acquire additional land.

A son’s right to his self-acquired property in Doaba and in Ludhiana District seemed more established than in Rawalpindi District at the Second Revised Settlement. Dunnet’s descriptions on Ludhiana District showed that this right was expanding between the two Revised Settlements. Although there was no mention of such expansion of a son’s right in Doaba, the expansion of a son’s right to self-acquired property could have been an effective incentive for land acquisition.
A proprietor’s power of disposition that was being slowly though incompletely established in his self-acquired property was thus supplemented by the rule that recognized personal services rendered in the improvement of the land.

SECTION – IV
MEANING OF LAND RIGHT RECOVERY/ACQUISITION

Establishing the proprietor’s power to alienate self-acquired property protected him from ‘custom’.

AIR 1939 Lahore 541 serves as a piece of evidence to show that ‘redefinition’ of ancestral land as self-acquired property by an actual land transaction between a father and a son successfully protected the land from the interference by reversioners. The land in dispute was in the hands of defendants, Arjun Singh and others. On the 22nd July 1909, Gurbax Singh made a will to leave the land first to his mother, Mt. Jiwan Kaur, and to the plaintiffs, Gurbachan Singh and others, and to the father of the defendants. Mt. Jiwan Kaur retained possession of the property till her death on 19th April 1930. Then the land came into the possession of the defendants, who were collaterals of Gurbax Singh. The plaintiffs’ right was ignored. When the plaintiffs sued for possession of the land as beneficiaries under the will, their suit was dismissed on the ground that the property was ancestral; however, it was found later that the property was Gurbax Singh’s self-acquired property, by which the plaintiffs’ claim was approved. The reason why the property was considered to be ancestral at first was that Bir Singh, father of Gurbax Singh, was in possession of the land before the land came into the hands of Gurbax Singh. However, Gurbax Singh had himself purchased the land by two deeds dated 20th February 1899 and 1st December 1901 from his father. These alienations were unchallenged by any reversioners. In this
case, land naturally became the self-acquired property for Gurbax Singh on the ground that the land came into his hands 'otherwise than by descent or by reason merely of his connection with the common ancestor', which enabled him to have power to will it away. 37

Although I have no intention to claim that Gurbax Singh purchased the father's ancestral land in order to have a wider power of disposition over the land and to avoid 'custom', the case showed that a redefinition of ancestral property as self-acquired property could protect the proprietor from 'customary' interference.

Mortgaging ancestral land or part of it and redeeming the land was also a means of redefining ancestral land as self-acquired land. Since the major target of a migrant's family was to maintain their ancestral land and if possible add more land to their family property, migration as family strategy had the effect of redefining their ancestral land as self-acquired property. However, the extent of liberation that they could expect from the process of redefinition highly depended on how much power of disposition in self-acquired property their caste-group or sub-caste group established, as far as the pre-1920, or the period before the Punjab Custom Act was concerned. As AIR 1939 Lahore 541 indicated, even if the process of redefinition or of land acquisition took place before 1920, the process seemed to promise a proprietor wide power of disposition in self-acquired property after 1920 when a proprietor's power of alienation in self-acquired property was protected by statute. This enabled the proprietors to resist the claims of reversioners, and it limited the conflicts around property.

37 All India Reporter 1939 Lahore 541.
SECTION - V
CUSTOM, LANDED PROPERTY AND MIGRATION

The migrants who brought back money to the villages to invest on land could not have done this on a large scale unless customary control over self-acquired property was weakened, unless the rights of reversioners were curtailed. It was risky to invest on land rights when 'reversioners' could attempt to control a migrant's self-acquired property under the name of 'custom.'

In the pre-1920 period, migration abroad took place from places where the demand for control of self-acquired property under 'custom' or the influence of the agnatic theory was strong, as well as from places where the demand for such control was moderate. For example, in the former area, the fathers' power to gift his self-acquired land was not always guaranteed. In Jullundur District, for instance, agriculturists saw no distinction between ancestral and self-acquired property regarding daughters' right to succeed to the father's immovable property. While self-acquired property was supposed to lie outside the domain of the Punjab Customary Law, there were attempts to control self-acquired land under 'custom.'

A proprietor's power to dispose property was liberated from customary control in 1920. But even before this year, migrants acquired land actively. This was possible because agriculturists had the power to grant their self-acquired land as a reward to persons who contributed to the acquisition of land. This land could be retained by those who purchased the land, though it is unclear whether the person who acquired the land could always dispose of his land as he pleased.

Due to the fact that self-acquired property was in some cases ruled under the influence of 'custom', the conflict between the desire to establish a full power of
disposition in self-acquired property and the desire to restrict it under the name of.
'custom' was a significant part of the history that defined the concept of self-acquired
property in colonial Punjab. In a situation where land market expanded and land
values increased, Punjabi agriculturists generally hoped to maintain self-acquired
property under a moderate influence of 'custom' since they could use 'customary law'
to claim property rights. They did not consistently oppose the regulatory power of
'custom' over self-acquired property.

The colonial power also seemed to cater to a pro-'custom' attitude in defining self-acquired property. They did not introduce any legislation to protect the daughters' right to succeed to the father's self-acquired property in the presence of collaterals, even when the norm recognized the daughters' right to succeed to the property of her father. However, given that they were under the strong influence of the agnatic theory, the British attitude is understandable. Excluding daughters from the inheritance of the father's self-acquired property in the presence of near agnates ensured that the property would circulate among the father's clan members.

Before 1920 land acquisition through various strategies including migration abroad thus did not mean complete 'liberation' from 'custom' for the migrants' families. Successful migration abroad included both redefinition of ancestral immovable property through redemption of their family land and land acquisition for the family, which reduced possibilities of future conflicts over the land by decreasing the number of reversioners. The process was probably effective enough to minimize the harassment of reversioners among groups who recognized the difference between self-acquired property and ancestral property to some extent for the future generations.

Migration brought money into the village. With money there was an
increasing desire for independent control of individuals over land. As I already stated, a migrant could maintain the land he acquired as his separate property even after his father’s death even in the pre-1920 situation; however, his power of disposition of his land was not always guaranteed. This desire for a full power of disposition of his self-acquired property created a pressure against customary law rules regarding property rights. Introduction of the rules denying “reversioners” right to contest any alienation of self-acquired property or any appointment of an heir to such property because of “custom” was crucial for a society in which migration became so important. In that sense, the change in customary law in 1920 was very significant.

The 1920 Act probably affected the strategy to gain a woman with dowry, too. As we have seen acquisition of property became crucial for upward social mobility and for power in the marriage market, migrants sought to acquire land so that they could command dowry instead of paying bridewealth. Without purchase of land financed by money brought from abroad, this was not possible.

Purchase of land that could be claimed by reversioners could not be a secure basis for upward mobility. It could not establish the land owning family’s social position within the community. So the emergence of self-acquired property outside the domain of customary law was critical for upward social mobility.

On the other hand, the Act’s ignoring daughters’ right to succeed to the self-acquired property provided a migrant who ended up as a sonless proprietor with possibilities. Two of them are as follows: first, he could appoint his daughter’s son as his heir and define his self-acquired land outside the reach of his agnates; secondly, he could allow his near agnates to succeed to his self-acquired property and let it be destined to circulate among agnates as soon as possible. The Act thus allowed a
migrant to have a chance to define the nature of his self-acquired property for his next generation.

Before the 1920 Act, the meaning of owning self-acquired property was diverse according to each area and group because influence of 'custom' over self-acquired property was not uniform through the Punjab, even within Jullundur District. After the Act, migration abroad could be a means of liberation from 'custom' in the area where customary control over both ancestral and self-acquired land had been strong. Although the largest wave of migration abroad from the British Punjab took place before 1920, one of the cornerstones of the tradition/habit of migration of abroad was placed in 1920.