CHAPTER 1
(Land Ownership)
I. LAND OWNERSHIP:

Given the fact that the agrarian relations underwent some radical changes from time to time during our period of study and the problem of land ownership especially witnessed dramatic changes at different times, it is, therefore, necessary to study the subject in different phases:

PHASE --I (1846-1894)

The transfer of Kashmir to Maharaja Gulab Singh (1846-1887) in 1846, by virtue of the Treaty of Amritsar, led to the momentous consequences affecting the life and conditions of the people of Kashmir. One such consequence was the declaration of all occupancy and proprietary rights in land in Kashmir.

1. The Treaty of Amritsar was offshoot of the Treaty of Lahore. Raja Gulab Singh of Jammu who had supported the British in the Second Anglo-Sikh War of 1846 was rewarded with the territories of Kashmir for which a provision was incorporated in the Treaty of Lahore. (For full details of the Treaty of Lahore, See Appendix "A"), which consequently gave birth to the Treaty of Amritsar of March 16, 1846 between the British on one side and Raja Gulab Singh on the other.

For full provisions of the Treaty of Amritsar, See Appendix "B".
null and void. This declaration was made by none other than Maharaja Gulab Singh, the founder of the Dogra rule in Kashmir, and was strictly adhered to by the subsequent Maharajas during our period of study. Maharaja Gulab Singh and his successors claimed Kashmir as their private property on the


It may be noted that we have a connected evidence of private ownership of land enjoyed by the people of Kashmir since ancient times till Kashmir was transferred to the Dogra Maharaja in 1846. In this regard, see Kalhana, Rajatarangini, Vol. I, p. 235; Vol. VI, pp. 30 and 33 for pre-Sultanate period; for Sultanate period, see, Tehfiz-ul-Akhbar, F. 82 (available in the Research and Publication Department, J&K Government, Srinagar, hereafter RPD); J. C. Butt, Rajatarangini, P. 81; and for Mughal, Afghan and Sikh periods, see, Document Nos. 582/5; 589/3; 574/422; 2, 23; 27 and 33, 572/2, 529/5; 574/2; 575/35 and 40 (RPD) and Ahmad Azam, Kaslat-i-Kashmir, F. 147b; Khalil Mirjanpur, Isirish-i-Kashmir, pp. 16-20; Birbal Kachru, Feigh-i-Iqtaish and Kilafat-i-Intizam-i-Muliki Kashmir etc. For further details, see, A. A. Kau, Nature of Land Rights in Medieval Kashmir, pp. 19-35 in the Journal of Central Asian Studies, Nos. 1, Vol. III, K. U. O., 1992.

ground that they had purchased it in lieu of seventy-five lakhs of rupees from the British. To what extent they were genuine in their claims, is a question beyond the scope of our present discussion, yet it is a fact that the provision, "In consideration of the transfer made to him (Maharaja Gulab Singh) and his heirs by the provisions of the foregoing articles, Maharaja Gulab Singh will pay to the British Government the sum of rupees fifty lakhs (Nanak Shahi) to be paid in ratification of this Treaty, and twenty-five lakhs on or before the 1st October of the current year A.D. 1846", embodied in the Treaty was fully exploited by

4. It has been a moot point whether the Maharaja really purchased Kashmir. However, from a close examination of the Treaty and other records of the period, it seems quite clear that contrary to the claims of Maharaja, the payment of seventy-five lakhs of rupees was not a price in lieu of which Kashmir was sold to Maharaja Gulab Singh. Instead, it was simply an amount which they demanded from him for bestowing upon him the rulership of Kashmir. For all practical purposes he was under the control of the British paramountcy and was never allowed a free hand in the affairs of the state which is clear from the tenth article of the Treaty of Amritsar which provides, "Maharaja Gulab Singh acknowledges the supremacy of the British Government and will in token of such supremacy present annually to the British Government one horse, twelve goats (6 male and 6 female) and three pairs of Kashmiri shawls." Though the Maharaja of Kashmir exploited the ignorance of the Kashmiris and established his absolute ownership, but we do not find even a single reference that Gulab Singh had ever paid the said amount and received by the British. The transfer of Kashmir to Gulab Singh was more a reward than a sale-deed. INA, For. & Pol. Deptt; Sec. E., Nos. 1243-47, Progs. Dec., 26, 1846; INA, For. Deptt; Sec., Nos. 442-43, Progs. Dec. 26, 1846. See also, N.D. Nargis, Tarikh-i-Doora Desh, p. 605; Sisir Gupta, Kashmir, A Study in Indo-Pak Relations, p. 21.
Maharaja Gulab Singh and his successors. The Dogra propaganda that Kashmir was their purchased property convinced even the Kashmiris; which is why the Treaty of Amritsar was translated and spoken of not only in the official records and by the officials but also by the public as Bai'tmai Amritsar, meaning sale-deed effected by the Treaty of Amritsar.

While thus regarding everything that existed in Kashmir as their purchased property, the Dogra Maharajas laid much emphasis to the concept of State Ownership of land. We have

5. Even Dr. Mohammad Iqbal, a contemporary and a renowned poet of the Indian sub-continent, considered Kashmir to have been sold to Maharaja Gulab Singh. He expressed his grief over this situation in these words:

6. The concept of personal property was carried by Maharaja Rambir Singh (1857-1885) as an ancestral legacy to his royal progeny by means of his Dastur-ul-Amal issued on October 6, 1857. This instruction was followed by Maharaja Pratap Singh in its letter and spirit. Saif-ud-Din, op. cit., Vol. X, ff. 307-9.

For full details of the Dastur, see Chapter, Agrarian Taxes.

"O breeze, if thy happen to go Geneva way, Carry a word to the Nations of the world, Their fields, their crops, their streams, Even the peasants in the Vale, They sold, they sold all alas! How cheap was the sale!"

During the Freedom Struggle in Kashmir (1931-1947), the common slogan was Bai'tmai Amritsar Tod Do, Kashmir Ko Chod Do, Rashid Taasir, Farikh-i-Huryat-i-Kashmir, Vol. I, p. 50.
evidence which refers to Maharajas legalising their claim of being proprietors of the land on the basis of having purchased it. Even as late as 1918 A.D., Maharaja Pratap Singh (1885-1925) wrote to his Chief Minister:

"As you are already aware of the proprietary rights in all the lands in Kashmir belong to the Ruling Chief exclusively, for the simple reason that the territories of Kashmir were purchased by my late lamented grandfather Maharaja Gulab Singh Ji and hence any sale of such land by anyone else is illegal."

7. Maharaja Gulab Singh, while moving about the holding of Guru Baba, was told by a subject, "we are the natives of Kashmir and in the exercise of our hereditary right built a pacca house. But the house has been razed to the ground by a sepoy, so that he may built one for himself at that place? To this Maharaja answered, "the Nazim (Hakim-i-Ala) or the Hakim (kotwal) who can afford to built the house is the owner of only the building material (bricks, stones and wood) and not of the land. The land really belongs to someone else." The Maharaja's reference here was to himself and not to anybody else. Saif-ud-Din, op. cit., Vol. III, f. 142.

8. JKA, Pol. & Gen., Deptt; File NO: 191/H-75 of 1918.

One Tehsildar, who had entered some land in the name of somebody in the revenue records was terminated from service because of the violation of the existing law that the state was the sole proprietor of the land in Kashmir. JKA, Pol. & Gen. Deptt; File NO: 58 of 1899.
Hence in the new circumstances, government became "a farmer working with coolies under a management closely approximating forced labour". During the initial phase of Dogra rule we even find the state resorting to the annual distribution of land among the peasants.

It is a fact that a few individuals other than the Maharaja enjoyed the proprietary rights in land, but this proprietary right, it is to be noted, was conferred by a sanad and was especially bestowed upon the grantees. Referring to this fact Andrew Wingate writes:


"We find in A.D. 1859 the country parcellled out among Kardars, who were land agents of the state, with very large powers. The kardar divided his charge into three belts. In the lower belt, he allowed nothing to be grown but rice, in the middle belt he allowed some rice to be grown, and in the highest belt he permitted no rice. It was the Kardar's duty to get the largest possible amount of grain for the state, and he knew that rice cultivation at a high altitude was on the whole unprofitable.

Every year the Kardar would arrange for the cultivation of the estate. The unit was known as nafre which consisted of a man and his wife and one adult son. To the nafre was given four acres of irrigated land. To the nim-nafre, or half unit consisted of a man and his wife, they were given two acres of irrigated land. The pau-nafre, or quarter unit, was a bechelor, and he only received one and a half acres of irrigated land." Lawrence, The Valley of Kashmir, p. 402.

Now whatever rights cultivators may have it is certain that ownership of villages unless conferred by the Darbar by _senad_ does not exist in Kashmir.\(^{12}\)

Not only this, the _Mukarrari Chakdars_ were allowed to sell their assignments with the prior sanction of the Darbar.\(^{13}\)

Andrew Wingate who was appointed as the first Land Revenue Settlement Officer of Kashmir in 1887, provides us a detailed information about the fact that the Kashmiri peasant enjoyed neither occupancy nor the proprietary rights. Pleading for the occupancy rights to be given to the peasants, he writes:

\(^{12}\) Wingate, _op. cit._, p. 90.

\(^{13}\) Ibid. Also, JKA, Gen. Deptt. (PR), File NO: V-486/B-93 of S. 1931; JKA, Gen. Deptt. (PR), File NO: 718 of S. 1933. Also JKA, Pol. & Gen. Deptt; File NO: 117 of 1896.


\(^{15}\) To quote Wingate, "The Kashmiris are called cowardly, because they have lost the rights belonging to the peasantry elsewhere and tamely submit to be driven like sheep before a sepoy" Wingate, _op. cit._, p. 61.

It is quite strange to know that both the proprietary as well as occupancy rights were snatched from the Kashmiri peasantry only, who were Muslims, but the peasantry of Jammu, the non-Muslims, were not interfered at all with their rights which they enjoyed fully. (R. L. Handa, _History of Freedom Struggle in Princely States_, p. 252). This was a policy of "Provincial prejudice", P. N. Bazaz, _Inside Kashmir_, p. 72.
"The Darbar cannot protect itself without the assistance of the cultivators, nor is any land settlement likely to last which does not engage the active sympathies of the agricultural population in support of the state policy. This assistance and this sympathy can only be won by conferring upon the cultivators, possession of the land they till."

While disapproving the policy of the Darbar to "govern much as a Zamindar manages a private estate by farming with tenants-at-will", he further says that, "If he (peasant) is to sell his produce, buy cattle and seed, enter into banking arrangements, who is going to contract or to open accounts with a day labourer, a man who, when he is turned out, wanders about with a petition in his hand for months? If your Highness looks for revenue, the cultivator must have a right to remain in possession and it is, I feel sure, your Highness's wish that he should remain in possession. The only question, therefore, is for how long ought the right of possession to be conceded. A lease for a long term say, 30 to 50 years, would doubtless effect some good."

16. Wingate, op. cit., p. 94.
17. Ibid., p. 81.
18. Ibid., p. 123.
It is at the instance of the strong recommendations of Adrew Wingate and his successor Settlement Officer, Walter Rooper Lawrence that occupancy rights were given a legal sanction by the Maharaja in 1895-96. Yet the peasant of Jagirs and Chaks continued to remain as tenant-at-will. The state policy of revoking even occupancy rights of the peasantry was obviously meant to legalise its policy of fleecing the latter.


A small portion of peasants were given occupancy rights without the right to sale or mortgage and they could not be ejected so long as they paid the revenue to the state. Those tenants who occupied land at the time of the first regular settlement were declared to be the occupancy tenants and all the waste and fallow land which was not occupied by anybody at that time was declared as Khalsa by the state. JKA, A Handbook of J&K State, pp. 28-29; Adm. Rep. 1895-96, pp. 17-37; INA, For. Deptt; Intl. A., Nos. 78-79, Progs. Feb., 1904. See also, G. J. Alder, British India's Northern Frontier, pp. 95-96; Bazez, op. cit., pp. 71-72.


22. Wingate, op. cit., pp. 54 and 82.

For further details, see Chapter, Khalsa.
It is a fact that theoretically peasants did not enjoy even the occupancy rights, but it is also a fact that practically occupancy rights were not interfered with. Interference in this right was neither in the interests of the Government nor those of the peasants. Therefore, the possession of the occupancy rights by the peasantry was a practical, if not a legal, fact. This fact has been vividly summarized by Lawrence in these words:

"It is necessary to define the word assami so often used in this report. It is a word of old standing in Kashmir. The assami may be defined as a man recognized by the state as the lawful occupant of land in Kashmir, and in the Mughal times and thereafter, from the point of view of the state, the status of assami in theory meant nothing more than a tenant-at-will. But in the village the assami was a man in whom vested the miras or hereditary rights to certain plots and of good and irrigated land within the boundaries of the village. In the many disputes which I have had to decide as to rights in land the decision always rested on the existence of miras, and in the village it was never difficult to ascertain on the spot whether a claimant were a mirasdar or not. Changes of dynasty and changes of system, earthquakes, floods, and famines, have alike failed to obliterate the hereditary principle in land tenure in Kashmir, and while Mughals, Pathans, Sikhs, and Dogras have steadily ignored the existence of hereditary rights, those rights have been kept alive by the village."

23. Ibid., p. 92, INA, For., Deptt; Sec., E., Nos. 196-211, Progs., Dec. 1890; JKA, A Handbook of J&K State, pp. 25-35.
It was because of the regard shown to the hereditary occupancy rights that we find some influential persons offering protection to the peasants from begar or forced labour and official persecution in lieu of agreements from them that "their village has long been the property of such and such Pandit". However, it does not mean that a peasant could continue to occupy his land even if he would not cultivate it. If a peasant failed to cultivate his land, it was given to someone else.

However, one need not get confused when one finds Wingate and Lawrence referring to the sale of land by the peasants. It was not the sale of the proprietary rights but the sale of these what Lawrence terms as the "shadowy rights" or "silently recognised mires rights" which we find the peasants frequently enjoying. The state did not bother much about these


27. Wingate, op. cit., p. 62, 86 and 96; Lawrence, op. cit., p. 413. See also, INA, For. Deptt; Sec. E, Nos. 295-300, Progs, Feb., 1891; E. F. Knight, Where Three Empires Meet, pp. 69-70.


29. Ibid., p. 428; Wingate, op. cit., p. 91.
"private sales" believing that since "the Darbar is the owner, it does not matter if people do buy and sell their land.... there is no custom of sale or mortgage and that all such documents are null and void.\textsuperscript{30}

As a matter of fact the state, because of the scandlous character of the officials, failed to prevent "private sales. To quote Wingate:

"Last year the Darbar ruled that sales are illegal and yet during the last winter not one of the officials from the highest downwards paid any attention to the order.\textsuperscript{31}

Though the occupancy rights, non-alienable by sale or mortgage were conferred on a small portion of peasantry in 1895-96 living in villages, such alienations were permitted in the cities\textsuperscript{32} however, the ownership rights still vested with the state. Transfer of land under lease for a specific period also was permitted prior to the sanction of the Darbar under some conditions.\textsuperscript{33}

\textsuperscript{30} Wingate, \textit{op. cit.}, p. 92.

\textsuperscript{31} Ibid., p. 91.

\textsuperscript{32} Transfer were permitted within the Muncipal limits of Srinagar, and in Anantnag, Shopian, Bijbehara, Pampore, Sopore, Baramulla and Muzaffarabad towns. Bazaz, \textit{op. cit.}, pp. 70-71; JKA, Pol. & Gen. Deptt; File NO: 91/H-75 of 1908; JKA, A Handbook of J&K State, p. 13; Adm. Rep. of 1915-16, pp. 11-12.

\textsuperscript{33} For instance, Mr. A.C. Baines rented a pice of land in Sher-i-Khas tehsil for working a carpet factory belonging to Anwar Shah on the conditions that, "(a) he shall not acquire any right in the buildings which shall continue to be vested in Anwar Shah subject to the proprietary rights of the state in land; (b) no extensions shall be made to the building without the previous sanction of the state council; (c) nothing herein before contained shall preclude the state from acquiring land or the buildings for public purposes under the law in force; (d) the lease shall not be extended beyond a period of 12 years subject to renewal at the discretion of the State Council; and (e) he (Mr. Baines) cannot enter into an engagement with Anwar Shah without the prior sanction of the Council." JKA, Pol. & Gen. Deptt; File NO: 113/B-19 of 1898.
PHASE -- II (1895--1932)

The second phase is important in this respect that the peasant got some legal status on land. It is, however, necessary to know the background which motivated the Dogra rulers to take this important step. It must be noted that the British never wanted to give a free hand to the Dogras, instead wanted to have a dominant say in the Kashmir administration. To fulfil their aim, they made one or the other excuse till they succeeded in establishing permanent Residency in Kashmir in 1885, through which they kept supervision over Kashmir affairs, though for their own imperial aggrandisements. The British Government mounted great pressure on Kashmir Darbar for undertaking reforms, which is evident from a letter from Lord Kimberly to the Viceroy of India in 1883 A.D.:

"As to the urgent need for reforms in the administration of the state of Jammu and Kashmir, there is no room for doubt. It may, indeed, be a question whether having regard to the circumstances under which the Sovereignty of the country was entrusted to the present Hindoo Ruling family, the intervention of the British on behalf of the Mohammadan population has not already been for long delayed."

Same views were expressed in a letter by the Viceroy to the Secretary of State for India in 1884:

34. INA, For. & Pol. Deptt; Sec. F, Nos. 1211-13, Progs, Sept., 1883.
the British did not take the action earlier concerning that a favourable opportunity would present itself on the occurrence of a fresh succession—an event which seemed unlikely to be long postponed. When that event takes place we consider that it will be our duty to impress upon the Cashmere Government its obligations to its own subjects, and to see that the reforms which are so urgently needed are no longer postponed.

In order to give Kashmir Government their expert advice, the British managed to send some British Officers for this purpose. This is what the Secretary to the Foreign Department, Government of India, wrote to the Officer on Special Duty in Kashmir on August 1, 1884 A.D., "... and will also be willing to place at his disposal, for a time, the services of officers of the British Government who may seem specially qualified to assist the new administration to carry out the measures contemplated. Such assistance seems to be more particularly required with regard to the revision of the Settlement and the construction of the road." Hence Andrew Wingate was sent in 1887 to conduct the Land Settlement.

Wingate, after studying the problem very minutely and completing the survey of two tehsils—Lal and Phak in Kashmir, submitted his Preliminary Report of Settlement Operations

35. INA, For. Deptt; Sec. E., Nos. 1468-69, Progs, March, 1884
36. INA, For. Deptt; Sec., Nos. 2164-68, Progs. August, 1884.
in Kashmir and Jammu on August 1, 1888. He made various proposals with regard to land ownership, Chakdars, waste land, distribution of water for irrigation, waddari system, etc. But we will mainly focus on the aspect of land ownership here and the recommendations made thereof by Wingate. He took a very bold step when he recommended not only the hereditary occupancy rights but also the proprietary rights for the Khalsa peasants, which can be summarized briefly as under:

1. The rules of settlement should declare land as state property;
2. The rights of occupancy be conferred on the cultivators for the land into their account at the time of settlement;
3. The occupant should have the land in his possession and actually cultivating it directly or indirectly;
4. The name of anybody belonging to the non-cultivating class be entered as occupant only after proper inquiry;
5. The right of occupancy should be hereditary;
6. The occupant should have the right to sell, mortgage or transfer the land but only to a person belonging to the cultivating class; and
7. The occupant could sell or mortgage the land to a person belonging to the non-cultivating class only if such sales or mortgages would be first of all sanctioned and then registered by an office specially constituted for this purpose, otherwise the defaulter would be liable to punishment and eviction.


As anticipated by Wingate himself, his proposals were opposed and resisted by all the vested interests led by the Revenue Officials and land grabbers combinely. Even the cultivators were made to believe the uselessness of Wingate's proposals and, therefore, "he had to give up in the face of bitter opposition and intrigue." So in 1889, Walter Rooper Lawrence replaced Wingate as the successor Settlement Officer of Kashmir to carry on the Land Settlement. Though Lawrence, too, faced bitter opposition from the side of the revenue machinery and others, but he managed to win over the cultivating class and succeeded in his mission.

Regarding the land ownership, Lawrence agreed with Wingate except in respect of right of sale and mortgage for the assamis. Like Wingate, he also advocated that all the Muslims having undisputed occupancy of land, should be entered as assamis, and the disputed cases be settled on spot, by the Settlement Officer on the basis of evidence and all the Hindus and Sikhs could be entered as assamis only on the orders of the Settlement Officer. He also proposed that all waste and fallow lands be entered as Khalsa lands but the village assamis will have the prior right to acquire these under rules, and if they fail to do so, then only the outsiders could acquire this.

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that the bestowal of permanent hereditary occupancy right would be all conditional to the fact that at the time of assessment, he had agreed to pay the assessment fixed for him and entered into the settlement papers, and could not be ejected so long as he pays the assessment. "This right of occupancy is hereditary", says Lawrence, "but it is not alienable either by sale or mortgage". Lawrence had strong arguments for not allowing the right of sale and mortgage to the hereditary occupant of the land whom he calls as assami. Wingate had allowed these rights with the condition that he could sell or mortgage the land only to the bonafide cultivators, unless there was a proper sanction of the Darbar on the recommendation of an Officer specially appointed for the purpose. But Lawrence argued that even if there was such a condition on the right of sale and mortgage, but there existed in villages numerous greedy Lambardars who themselves were bonafide cultivators and could purchase these lands from the needy cultivators. Besides, even the officials could purchase the lands by proxy through their cultivator-agents and also it was not possible to have an honest officer who could not be induced by huge bribes and thus manage

45. By assami Lawrence meant a man recognised by the state as the lawful occupant of land. The assami would be having superior claim on land who had the miras. Ibid., p. 428.
46. Ibid., p. 428.
47. Ibid., p. 431
48. Ibid.,
sanction in favour of a person belonging to non-cultivating classes. On the other hand, cultivators were ignorant and lacked farsightedness who would acquire money by selling their lands and in this way bring ruin for themselves. Lawrence argued that the price of land was increasing because of the road upto Kohala and the peasants of Kashmir would be deprived of valuable lands.

Thus the Khalsa peasants (especially mirasdars) were conferred upon the permanent hereditary occupancy rights, non-alienable either by sale or mortgage.

Before giving further details, it is necessary to deal with the Jagirdars and Chakdars and their tenants with respect of land ownership. Leaving a detailed discussion on them to the third chapter, it is suffice to say here that before the settlement, no occupancy or ownership rights were enjoyed by them legally. Some landlords enjoyed ownership rights bestowed upon them by the Darbar. When Wingate came, he saw

49. Ibid.
50. Ibid., pp. 431-32.
51. Ibid.
52. Supra, fn. 20.
53. The Jagirdars, Pattadars, Illagadars, Chakdars, Muafidars and Mukarraridars are hereby collectively termed landlords.
54. Though proprietary rights were held by the state, yet the Darbar sometimes bestowed such rights on some persons it liked (Wingate, op. cit., pp. 90-91). For instance, Dewan Kripa Ram was conferred the proprietary rights in land, JKA, Pol. & Gen. Deptt, File NO: 117 of 1896. For further details see, Chapter, Jagir, Chak and Muafid.
that the allotment of *Chak* to increase revenue was being misused by the officials for parcelling out cultivable lands among themselves. Since that authority of allotment had been accepted, the rules should, he argued, therefore, confer occupancy title on such landholders but without giving them the right of sale and mortgage. With regard to the excess lands, Wingate recommended that these be resumed on the report of the Settlement Officer, otherwise these lands be recognized. Such a provision would do away with the difference made in the tenures of the tenants and *Chakdars*, and the Settlement Officer should also have the power to decide if the tenant had the right of occupancy under *Chakdar* in case the land taken as *Chak* had been cultivated land or temporarily fallow. The Settlement Officer should also, argued Wingate, have the power to give the right of occupancy to a cultivator evicted since the day the settlement started. In this way Wingate confirmed the *Chak* grants. Lawrence, too, proposed that their land allotment be confirmed on privileged rates up to the next settlement and the excess land held by them be retained if there was no dispute but only on ordinary rates.

The privileged rates could continue only for ten years of settlement after which only ordinary rates could be applicable. Thus while confirming the landlords, Lawrence also did not recommend any right to the tenants working in their estates. The tenants of these landlords continued to be tenants-at-will.

The position being already established by both Wingate and Lawrence, the landlords now mounted pressure on the Darbar to confer on them such rights as soon as possible. It was, therefore, in 1900 A.D. that the assami rights were conferred on them legally but their tenants were only given permanent cultivating rights but not the assami rights.

Thus Wingate and Lawrence brought about a tremendous change in the status of the peasant, but they were not revolutionary in their reforms. They did give peasant a legal status of occupancy on land but did not confer upon him the status of peasant proprietor, and legally land continued to be the property of the Maharaja. Moreover, they made the landlords assamidars which was against the interest of peasant community because now these landlords could grab more and more land, taking advantage of the wretched condition of the peasant, and now were awaiting an opportunity when the assamis could be given proprietary rights which could give them the right to sale and mortgage.

60. JKA, Pol. & Gen. Deptt; File NO: 32-R/L-186 of 1913.
The conferment of Assami rights to the landlords created great tenancy problems because the number of tenants increased greatly because of the evictions. So Maharaja Pratap Singh passed the Tenancy Act of 1923 which divided the occupancy tenants (Kashtkar Mustakil) into four categories and the landlords were restricted to evict their tenants till they declare the land unfit for cultivation or failed to cultivate it. At the same time, the tenant could be declared as occupancy tenant of any category under rules if he had been shown as tenant-at-will by mistake at the time of the first regular settlement and even those who were not occupancy tenants, were declared as protected tenants.

PHASE III (1933-1947)

The Third and the last phase of the Dogra rule with regard to land ownership is most important in the sense that the occupancy rights conferred on the marusi peasants in 1895-96 were converted into proprietary rights in 1933 as a consequence of the pressure exerted by the Kashmiri leadership and the British Government since twenties of the present century.

61. See Chapter, Jagir, Chak and Muaf.
62. Ibid.
In 1924, the landlords of Kashmir submitted a Memorandum to the Viceroy of India, Lord Reading, on his visit to Kashmir, which contained among other things, the demand for granting proprietary rights to the peasants of Kashmir. It is surprising how they demanded the grant of such rights to the peasants which was obviously against their interests. But, in fact, they knew it for certain that the grant of ownership rights would undoubtedly benefit them to purchase more and more land mainly because of their stable economic and social positions.

On the other hand, after the establishment of Residency in Kashmir in 1885, the European influx had tremendously increased. The British Government of India insisted the Maharaja to allow them the purchase of land in Kashmir; a demand which was not conceded by the Maharaja. Instead, Hari Singh, the heir-apparent, issued a circular in 1924 to the effect...


The Memorandum was drafted at the residence of Ab. Aziz, Zaildar, the signatories to the Memorandum were:

64. The Europeans were always disallowed to purchase land in Kashmir (JKA, Pol. & Gen. Deptt; File NO* 138/H-32 of 1901), yet they were allowed to get land on a fixed ground-rent for opening schools, hospitals etc. in the Valley. JKA, Pol. & Gen. Deptt; File NO; 79 of 1896; JKA, Pol. & Gen. Deptt; File NO; 122 of 1896; Adm. Rep., 1896-97, pp. 35-36.
that "no land will be given to non-state subjects henceforth". A Committee was set-up for the purpose in September, 1924, which submitted its report in 1925; the recommendations of which were readily accepted by the Maharaja.

13th July, 1931 marked a beginning of a new epoch in the history of Kashmir, as it became the founding stone for the Freedom Struggle of Kashmir, which mounted a great pressure

The circular reads as:

"His Highness the Maharaja Bahadur Sahib has been pleased to inform you that in future all grants of land for agricultural and house-building purpose and grant of houses and other state property shall be made to state subjects only, and every proposal to make a grant shall be accompanied by a written statement setting forth the reasons for doing so. It should be made clear to all concerned that any disobedience of these Orders will be dealt with severely and no exception will be made". JKA, For. & Pol. Deptt; File NO: 328-PR/H-103 of 1925. See also, Bazaz, Op. cit., p. 85.

The definition of State Subject was duly formed and passed into a law on January 31, 1927, which laid as:

"All persons born and residing in the state before the commencement of the reign of Maharaja Gulab Singh Bahadur and also persons who settled therein before the commencement of Samvat 1942 (1885 A.D.), and have since been permanently residing, are the hereditary subjects of the state" (JKA, For. & Pol. Deptt; File NO: 517-PR/H-157 of 1928). This definition was really a bolt form blue to the outsiders as it meant instantaneous stoppage, in future of their entry into state service, get land, etc., JKA, For. & Pol. Deptt; File NO: 92/R-9 of 1937; JKA, For. & Pol. Deptt; File NO: 107/P-16 of 1938. Also, Bazaz, Op. cit., pp. 86-87.

The movement started first by the formation of the Reading Room Party in April, 1930, and then the July 13, 1931 incident precipitated the process and ultimately led to the foundation of All J&K Muslim Conference in 1932, which was later on changed into All J&K National Conference in 1939. For details, see S. M. Abdullah, Op. cit., pp. 40-60.
on Maharaja for economic and political reforms in Kashmir.

Subsequently a Memorial of the Demands of People was submitted on October 19, 1931 to the Maharaja which besides other things demanded the grant of proprietary rights to the Kashmir peasantry. The demand laid down as:

"Zamindars in Kashmir are deprived of proprietary rights. The people of Kashmir cannot sell or mortgage their lands of their own will. They cannot even cut the mulberry, the walnut and the Chinar trees grown on their private lands or make use of them, nor can they remove the dead and fallen timber of such trees with the result that the Kashmir Zamindar is no better than a mere tenant. There is no reason to make a distinction between Kashmir and other parts of the State. The State cannot claim proprietary rights over Kashmir lands merely because Kashmir was purchased from the British. A transaction of this kind could only affect the rights of the Government, but not the proprietary rights of the lands belonging to the people. We, therefore, request Your Highness to be most graciously pleased to restore Your Highness' Zamindar subjects to their full proprietary rights.

In this connection we may add that the view expressed in certain quarters that the present system is in the interest of Zaminder himself is incorrect. There can be no justification whatever in depriving a

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68. The Memorial was signed by ten leading Muslim leaders, of whom five belonged to Kashmir, namely: (1) Mirwaiz Hamdan, (2) Mirwaiz Moulvi Yusuf Shah, (3) Syid Hassan Shah, Jalal, (4) Saad-ud-Din Shau, and (5) Sheikh Mohammad Abdullah.

person of his lawful rights with the alleged objection of protecting him against danger of his land passing into the hands of the money-lenders. In our opinion this danger can and should be effectively guarded against by the introduction of such measures as the Land Alienation and Pre-Emption Acts. Anyhow, nothing should stand in the way of full proprietary rights being granted to the Kashmir Zamindars.69

It is, however, worth noting that after the uprising of July, 1931, the Resident in Kashmir submitted a note to the Maharaja asking compliance within twenty four hours, suggesting among other things, the appointment of an English Officer for looking into the grievances of the Muslims70. On the other hand, the Movement also increased its pressure for the purpose, resulting in that Maharaja Hari Singh (1925-1947) appointed a Commission under the Chairmanship of a British Officer, B. J. Glancy in 1931.71 The Commission recommended many things to the Darbar. Regarding the proprietary rights, the Commission recommended:

"In the Kashmir province the state is the owner of the land, but Malikana is merged in the land revenue, that is to say, no recovery is made on this account over and above the land revenue. ...... From what has been said


70. JkA, For. & Pol. Deptt; File NO: 319 of 1933.

71. Due to this pressure, Maharaja Hari Singh appointed Glancy Commission on Nov. 12, 1931, under B. J. Glancy, a man from Political Department, Government of India, Ibid.
it will be recognized that the bestowal of proprietary rights, where these rights are now vested in the state, would be in the nature of a pure concession. In the opinion of the Commission, if His Highness is pleased to approve of this policy, the advantages to be expected therefrom are sufficient to outweigh any objections that can be raised, provided that suitable steps are taken to prevent the concession from abuse.\textsuperscript{72}

In order to prevent the transference of land into the hands of non-agriculturists, the Commission recommended:

"If proprietary rights are bestowed it appears essential to safeguard the interests of agriculturists by the introduction of Land Alienation Enactment in those parts of the state where such legislation is not at present in force; a Pre-emption Act is also desirable and it is suggested that, at least as a temporary measure, an agriculturist should only be allowed to alienate his land whether by sale or mortgage to a member of that particular agricultural class to which he belongs himself. It is suggested that no holder who does not at present possess proprietary rights should be permitted to alienate more than 25% of his holding within the next ten years; after the lapse of that period the situation might be carefully reviewed; and it could then be decided in the light of the experience gained whether the process of alienation had been such as to make it advisable for those restrictions to be continued or for any other safeguards to be imposed.\textsuperscript{73}


\textsuperscript{73} Ibid., p. 28.
As already noted above, alienations and mortgages in the city of Srinagar and other major towns was already in practice, the Commission, therefore, did not make any strong recommendation in this regard, which is borne by the following statement of the Commission:

"In case of Srinagar city and certain towns in the Kashmir province, it appears that the grant of proprietary rights would not involve a change of any great practical importance. Landholders in Srinagar already possess what is known as "Haq-i-Marafaq" (right of easement) which does not differ materially from proprietary rights, since it carries with it the power to alienate."

It is, however, worth-noting that the Commission recommended the grant of proprietary rights to the peasants whose lands were hitherto held in ownership by the state, but did not touch the lands of the landlords. In other words, it can be inferred from this that he confirmed the rights and privileges whatever of the landlords.

Ultimately, it was in April, 1933 that the Maharaja agreed to the demand of granting proprietary rights to all those who were hitherto enjoying occupancy rights.

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74. Supra, fn. 32.
75. JKA, Glancy Commission Report, p. 28.
76. JKA, For. & Pol. Deptt; File NO: 319 of 1933; JKA, Maharaja's Order, Revenue Secretariate Notification NO: S-92, issued as Aflan, NO: 13, See also, Bazaz, op. cit., p. 229.
The Order issued to this effect reads:

"His Highness the Maharaja Bahadur is also graciously pleased to concur in the recommendations that proprietary rights should be conferred in respect to all lands of which the ownership is now held by the state and occupancy rights are enjoyed by private persons. The Revenue Minister should in the first instance examine the safeguards suggested by the Commission for the protection of the agricultural classes, and should submit his report accordingly."

Also it was due to the demand of the Kashmiri leaders made by them through their Memorial of 1931 that the Land Alienation Act of 1933 was passed to stop alienation of land into the hands of the non-agriculturists, which restricted from alienating land beyond twenty five percent of his holding for the first ten years. One more Act, known as the Right of


78. Supra, fn. 68.


80. Ibid. Also, JKA, A Handbook of J&K State.
Prior Purchase Act of 1937 also was passed which recognised the right of pre-emption among agriculturists in respect of such lands. 81