CHAPTER V

LAND RIGHTS

Land rights operating in ancient India pose a baffling problem for the historians. While almost all monographs on the social and economic history of the period touch the subject, none of them has dealt with it in a proper perspective taking into consideration its various aspects. Literary sources have generally been interpreted according to pre-conceived notions. The proprietary rights in land have been mostly ascribed to one exclusive category, either communal,¹ or royal,² or individual,³ which is simply


misleading. The possibility of the existence of comparative rights of various categories of claimants to land has not been systematically explored. While the political and economic developments over the time brought about substantial changes in the nature of land rights of these categories, no attention has been paid to such changes. The practice of land grants, which became fairly common during the Gupta period, not only created new rights in land, but also seriously undermined some of the existing ones. The subject, therefore, requires fresh investigation.

In the law-books, each village is regarded as a distinct and separate unit having well-defined limits. Permanent boundary marks were constructed to demarcate the limits of different villages.1 There are references in the Smṛitis to disputes occurring between two or more villages over matters related to land.2 The well-defined boundaries of separate villages have been construed as an indication of communal rights in land.3 According to Henry Maine, 'the oldest discoverable forms of property in land were forms of

1. Manu, VIII, 246 ff ; Brih., XIX, 20-22.
2. See Manu, VIII, 245 ; Yāj., II ; Nārada, XIX.

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While the peasants held separate well-marked plots of land, in Rhys Davids' view, they enjoyed no proprietary rights against the community as such. At another place, Rhys Davids states that the rights of the individual householders as against those of community varied from place to place.

On the basis of a land charter from Bengal, Pargiter has tried to prove community rights in land during the Gupta period. The charter states that land could be purchased only after the unanimous approval of the leading men of the village community as well as the common folk (prakṛtayāh). R.G. Basak also argues that if we assume that the lands belonged to the State then why could it not be alienated without the consent and approval of the people's representatives --- and sometimes even the common folk?

One way of answering these questions, he says, may be that...

1. Henry Maine, Village Communities in the East and West, pp. 61, 76, 77. E.W. Hopkins defines collective property as 'the ownership of land in which the villagers have got no notion of a divided or undivided right, all corporate in tilling, in cultivating and improving the village fields, raising the crops and storing it at a common granary from which each is to take according to his needs and none has any share in village lands, which he can call his own'. See India Old and New, p. 229.

2. Rhys Davids, Buddhist India, Calcutta, 1959, p. 46.


these lands belonged not to the State but to the whole village or village assemblies, and hence its transfer could not take place without the consent or approval of the latter.\(^1\) This argument of Basak is supported by R.C. Majumdar also.\(^2\) The rules regarding settlement of boundary disputes and land transactions gave the village community a strong voice in such matters. The alienation of land to outsiders was evidently a matter that concerned the whole village and the consent of the villagers through their leading men was considered important.\(^3\)

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2. R.C. Majumdar, Corporate Life in Ancient India, p. 186. Also see R.S. Sharma, Indian Feudalism, New Delhi, 1980, p. 219.
3. U.N. Goshal, 'Land Revenue Administration in Bengal', IHQ, vol. V, 1929, p. 111; D.N. Jha, Revenue System in Post-Maurya and Gupta Times, Calcutta, 1967, p. 10. The village elders also served as witnesses in case there was any dispute about land rights. See AS., III, 9. In Laveleye’s opinion, the village communities of all countries were averse to the alienation of land to the strangers. "No one", he says, "could sell the property to a stranger without the consent of his associates, who always had a right of pre-emption". See Primitive Property, p. 118. The members of the village community are so conscious of their community rights that they always think in terms of 'ours'. - J.H. Nelson, Perspective of the Scientific Study of Hindu Law, London, 1881, p. 189. Moreover, the Indian village community protected small farming against the invasion of capitalistic interests, and it did so by maintaining for the villages the right to entail, pre-emption and preoccupation. When in the fourth century B.C. in China, free transfer of land was allowed, merchants accumulated substantial landed property, the government had to take strong fiscal measures to reduce their wealth, and by an edict in 119 B.C., they were forbidden to own land. See Karl. A. Wittfogal, Oriental Despotism, New Haven, 1957, pp. 273, 280, 290.
In the early village settlements, the title to land was based upon the labour expended in clearing the land and making it fit for cultivation.¹ In the Ganga plains the climatic conditions are such that the fields once laboriously cleared must be kept clear, otherwise the work would be undone within a very short time. This necessitated separate demarcation of fields which, in turn, developed not only a strong claim to land which had been cleared, but also produced naturally a union of separate families in villages for mutual co-operation. The 'bad spirits' had to be propitiated collectively.² In some respects the inhabitants of each village formed a single unit in the eyes of law. They were required to pay certain taxes collectively.³ If a stolen property could be traced in a village, all its inhabitants bore joint responsibility for it.⁴ In the Jātakas, there are references to the kings levying taxes and imposing fines on the village as a whole.⁵ But in the Vedic texts and the Smritis, there is no reference to the grāmas -

1. Baden Powell, The Indian Village Community, Delhi, 1972, p. 76.
2. Ibid., pp. 50-51.
3. AŚ', II, 15, 'Pindakara'.

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as the proprietors of all cultivable land.\(^1\) Nearchus, while sailing down the Indus in 325 B.C., observed that families cultivated the land in common.\(^2\) The families mentioned by Nearchus evidently mean joint families that formed separate units of a larger group -- the village community.\(^3\) The village community, in its social and economic aspects, was an organised society of joint families. The proprietary rights lay not in the village community but in the joint families.\(^4\) Even as early as the Vedic age, it is the joint family that formed the basic unit of the Aryan society.\(^5\)

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2. Strabo, XV, I. 66.

3. See Rhys Davids, Buddhist India, pp. 45-47.

4. Romila Thapar, From Lineage to State, Bombay, 1984, p. 37; R. Mookerjee, History and Incidents of Occupancy Rights, Delhi, 1984, pp. 16-17. Baden Powell explains the growth of proprietary rights in land in some detail. According to him, each household laboriously works to clear and make fit for cultivation a certain unoccupied area of forest clad but fertile plain, over which the family claims its right by virtue of the labour and skill expended on it. Such rights are mutually recognised by other members of the clan on the same basis of labour expended on their respective plots. Eventually, the idea of clan-right to territory as a whole including the cultivable and waste land as distinguished from the territories of other clans becomes definite. The right to landholding cleared by the family, however, remains superior to the clan territorial claim. See The Indian Village Community, p. 400. Also see Karl A. Wittfogal, Oriental Despotism, p. 230.

5. See R. Mookerjee, History and Incidents of Occupancy Rights, p. 17.
The hereditary occupation of landed property was generally the prevailing practice in the settled and organised villages.¹

The ancient law-givers hold that the earth is a common property, and a right to a particular portion of it can be acquired by reclamation of unoccupied land. This is clearly stated in the often quoted verse of Manu where he says that the land becomes the property of a man who first clears the jungle for the purpose of cultivation.² Jaimini, in the Mīmāṃsā-sūtra, distinctly lays down that the earth is not the king's but is common to all beings enjoying the fruit of their own labour. "It belongs", he says, "to all alike".³ According to Śavarasvāmin, the commentator, 'Men are the lords of their own fields'.⁴ Milinda Pañho illustrates how acquisition of land by clearance of forests created proprietary rights in it. "It is as when a man clears away


2. Manu, IX, 44. The passage has been explained by the commentator Kullūka as' the field is spoken of as the property of a man who removes the fixtures (jungles) and thereby converts the jungle into a field.

3. Na bhūmiḥ syātārāṇaṇaṇaḥ sāyaḥ sāyaḥ sāyaḥ - Jaimini, VI, 7, 2-3. In the Roman law, land not brought under cultivation or not taken possession of with the object of approximating it, was without owner (rex-nullius), and, as such, it was the common property of all men just as air and water (rex-communes).

4. On Jaimini, VI, 7, 2.
the jungle and sets free a piece of land, and the people say - 'that is his land'. Not that the land is made by him. It is because he has brought the land under use that he is called the owner of the land'. Similar instances of reclamation of forest land and its appropriation is referred to in the Jātakas and the Epics. Thus, theoretically, the investment of physical labour in a piece of unclaimed land was supposed to confer on the individual the title to that land at the early stages in the development of agrarian economy. The element of proprietary rights in land, therefore, emerged relatively early.

The early law-books do not sanction the partition of land within the joint families. Gautama enjoins that what is considered livelihood (yogakshema) cannot be divided.

1. Milinda Pañho, IV, 4. 15, (bhūmisāmiko).
2. Jāt., II, 99 ; IV, 167 ; Rām., II, 32. 30 ; Mbh., XII, 296. 3.
3. For John Locke, private ownership was a law of nature. The private property arose out of the common possession of the earth by all because man had 'mixed his labour with and joined to it something that is his own and thereby makes it his property'. See Two Treatises of Government, London, 1824, p. 146. It was labour, Locke insisted, that put value on land. He was stressing the right of the individual against the State. With the growth of state system, however, the king came to be recognised as the owner of all waste and uncultivated lands in ancient India.
5. Gaut., XXVIII, 46.
This obviously includes cultivable land which cannot be partitioned among the members of the family. As such, the landed property constantly remains undivided for several generations under the occupation of joint or extended patriarchal families. It is only from the Gupta period onwards that the law-books refer to the provision of the partition of land. Brihaspati, the law-giver of the Gupta period, clearly states that in partition land can not be given to a śūdra son of a higher caste father.1 Similarly, Kātyāyana declares that when land is partitioned, the eldest son should get his share either on the southern or the western side.2 All this seems to suggest that in the middle or towards the end of the Gupta period, large joint families, owning vast stretches of land, began to break up into smaller units. Once the principle of partition of land was recognised, the increasing density of population in the Ganga plains was bound to accelerate the pace of fragmentation of cultivable land.3 Consequently, individual families came to enjoy proprietary rights in land.

While proprietary rights in cultivable land in a village lay in the joint and individual families, there were

2. Ibid., p. 1201.
3. In lower Ganga plain, in one case, even one and a half kulyavāpa of land had to be purchased in smaller plots at four different places. See Ep.Ind., XX, No. 5.
other village lands where the entire community enjoyed common rights. For instance, the grazing lands were the common property of the entire village and none of the residents had the right to appropriate any part of it for purposes of cultivation. In the Vedic period, such lands were called khila or khilya.\textsuperscript{1} Under the Mauryas, while the State extended its rights over all waste and unclaimed lands, the people were allowed to enjoy the traditional rights of grazing their cattle on such lands.\textsuperscript{2} In the Jātakas, we find references to meadow lands and uncleared waste and wood lands around the gāmakhettā, which were used by the villagers in common.\textsuperscript{3} The law-givers also enjoin the king to make provision for the common pasturage and lay down that such lands, being common property of the village community, can not be divided.\textsuperscript{4} Even in the adjoining forest tracts, the entire village enjoyed similar rights. Besides, there were the water-courses, the village temple, etc., which were the common property of the whole village.

\begin{enumerate}
  \item Rigveda, X, 19. 3-4.
  \item AS', II. 2.
  \item Jāt., I. 194, 317, ; II. 358 ; III. 130 ff., 149 ; IV. 359 ; V. 103 ; Rhys Davids, Bhuddist India, p. 23 ff. 45.
  \item Manu, VIII, 237 ; IX, 219 ; Vishṇu, XVIII, 44 ; Yāj., II, 167. According to H.H. Wilson, padar or padr is a common land adjacent to the village left uncultivated. See Glossary of Judicial and Revenue Terms, New Delhi, 1968, p. 286.
\end{enumerate}
In the *Rigveda*, the king has been described as devouring the people. A similar idea is found in *Satapatha Brāhmaṇa* and *Aitareya Brāhmaṇa*. According to Gautama, the king is the master of all except the brāhmaṇas. Manu states that the king obtains one half of the ancient hoards and metals because he is the lord of all soil. Brihaspati explains that the king becomes the owner of the property left without heir because he is the ‘owner of all’. The Epics state that all the wealth belongs to the kshatriyas and to no one else. These statements from the Vedic literature and the *Smritis* have been interpreted almost as a proof of the king’s absolute proprietary rights in all land.

1. *Rigveda*, I. 65.4; *Atharvaveda*, IX, 22.7.
2. *Sat.Brāh.*, I. 8.2.17; IV. 2.1.3.17; V. 3.3.12; X 6.2.1; *Ait.Brah.*, VII, 29.3.
3. Gaut., XI. I.
5. *Brih.*, XXVI, 119; See also Nārada, XI. 42.
6. *Rām*, 4.1.86; *Mbh.*, Śānti Parva, 136.3. In the Mahābhārata, we have a reference from Rāmāyana where Dasaratha claims before Kaikēyi that all property in his kingdom except that of the brāhmaṇas belongs to him, and that he can confiscate anybody’s wealth. See Vana Parva, 275.23.
James Mill holds that according to ancient law-givers, the king had the absolute proprietary rights in the soil.\(^1\) He draws his conclusions on the basis of the verses of Manu where the king is called 'the lord paramount of the soil' and where the occupier of land is held responsible to the king if he fails to sow it.\(^2\) Vincent A. Smith, while dealing with land revenue during the reign of Chandragupta Maurya, expresses the same view that 'the native law of India has always recognised land as being crown property'.\(^3\) To substantiate his statement, he cites a passage from the commentary on the *Arthaśāstra* which runs thus: those who are well versed in the śāstras admit that the king is the owner of both land and water, and that the people can exercise their rights of ownership over all things except these two.\(^4\) E.W. Hopkins says, "It is unquestioned that the king is the master of all. The king is not only the overlord, he is the owner and one of his old titles is 'the one owning all'. The king in the earliest period is expressly said to be 'the devourer of his people'. This is no isolated phrase nor are the people other than his own (vaisāyas)".\(^5\) He further adds, "It is nonsense to suppose a

3. V.A. Smith, *The Early History of India*, p. 123; Also see *Asoka*, Oxford, 1924, p. 76.
peasant proprietor openly described as fit only to be robbed by the king, could have any secure hold on his landed property. The king’s ownership extended to all property except a priest’s, which is especially described as the only land in his realm outside the king’s district”.¹

But the verses of Manu, on which both Mill and Hopkins rely, are not conclusive. The verse justifying the king’s right over hoards and metals in the earth had nothing whatsoever to do with the proprietary rights in the soil.² The second verse is simply intended for the protection of the king’s share of the produce to which he was entitled on

1. Ibid., pp. 221 ff. He refers to a passage in the Aitareya Brāhmaṇa, according to which the vaiśya’s peculiar function is to be devoured by the priest and the king - VII. 29.3. While discrediting Baden Powell’s view of undiluted private ownership, Hopkins says, “The general Hindu theory of impartible real estate is a distinct blow to the sweeping generalisation made by Baden Powell when he stated that the early Aryans in India recognised only private ownership in land”.

2. Buhler translated the verse as ‘the king obtains one-half of ancient hoards and metals found in the ground by reason of his giving protection and because he is the lord of the soil’. In the foot-note he says, “I take the last clause which might be translated ‘and because he is the lord of the earth’ as a distinct recognition of the principle that the ownership of all land is vested in the king”. But Manu clearly states that the land belonged to him who first cleared it. - IX. 44. Buhler, referring to this statement says, ‘the ultimate sense of the expression is that the land in question is made over to the donee with the same full rights of ownership which the first cultivator would have possessed who cleared it”. See Ep.Ind., I, p. 74 fn. Therefore, to draw any conclusion that the king had absolute rights in land on the basis of Manu’s verses seems too far-fetched.
account of his rights. Mill's very approach to the subject seems vague when he says that 'the property of the soil resided in the sovereign; for if it did not reside in him, it will be impossible to show to whom it belonged'.

Kautilya, whose devotion to the task of empire building led him to exalt the position and dignity of Chandragupta Maurya, never claimed for him the ownership of the soil in his empire. The passage referred to by Vincent A. Smith makes only a general reference to the Śāstras without mentioning any particular texts. Macdonell and Keith have rightly pointed out that the evidence is inadequate to prove what is sought, that the evidence adduced from the Vedic literature, the Smṛitis and the Epics does not prove the theory of the original kingly ownership and his absolute rights in landed property. These references imply more a growth of royal authority than the actual proprietary rights. When the Buddhist texts ascribe to Bimbisara an overlordship of eighty thousand villages, they do not expressly mention that he possessed absolute proprietary

1. Manu, VIII, 243.
rights over all such lands.  

The Greek writers are inconsistent and their statements on the subject are not trustworthy. Diodorus remarks 'They (husbandmen) pay a land tribute to the king, because all India is the property of the crown'.

Strabo states, 'The whole of the country is of royal ownership and the farmers cultivate it for a rental in addition to paying a fourth part of the produce'. Arrian, who also largely draws from the Indica of Megasthenes, however, says nothing about land rights save that the cultivators used to pay tribute to the king. M. Rostovtzeoff, while commenting on the observations of the Greeks, writes that they had the Hellenistic eyes and thought that in India, as in Ptolemaic Egypt, the king was the absolute owner of the soil,

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2. J.W. McCrindle, Ancient India As Described by Megasthenes and Arrian, Calcutta, 1926, p. 84 ; Diod., II. 40.5.
4. Arrian, Indica, XI. From these references S.K. Maity concludes that from Mauryan period onwards the authority of the crown had extended over all lands. See Economic Life of Northern India, p. 16. Also see R.K. Choudhary, 'Ownership of land in Ancient India', IHQ, vol. 53, 1967, for similar views.
It seems that the rights of the Mauryan rulers were so broadly interpreted by the Greek observers that they were tempted to find a parallel with Egypt where the Pharaoh owned all the land. In fact, from the time of Herodotus, the Europeans have accepted the image of an Asian government as despotic. An integral feature of that despotism, as understood by them, was the ownership of all land by the sovereign. Charles Drekmier, a modern scholar, has also fallen into the same error when he says that the Mauryan king had the right of eminent domain over all the land in his kingdom. But Anquetil Duperson, who translated the *Upanishads* into Latin, has questioned the idea of all land being owned by the sovereign. He has pointed out that the whole concept of despotism, as the westerners understood it, was false, and that in India there were written codes which were obeyed by the rulers as well as their subjects. In this context, it would be relevant to note the observation of Romila Thapar that the rules of

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property changed significantly over the centuries and it 'disapproves the basic premise of the argument in support of the theory of Oriental Despotism as applied to India'. It seems that Megasthenes, during his stay at Pāṭaliputra, had seen only crown lands which covered quite a large area and hence he made such a categorical statement.

Kātyāyana, the law-giver of the late Gupta period, declares the king to be 'the owner of the earth (bhusvāmin), and, as such, claimant to a share of the produce'. But he dilutes his theory of royal ownership by that of the ownership by inhabitants when he says that because they dwell on the land, human beings are declared to be the owners of it.

To prove the king’s proprietary rights in the cultivable land, it is sometimes argued that the taxes which the peasants paid to the king were a sort of rent for the lands used. The Chinese pilgrim Fa-hsien, while describing the general conditions of the Madhyadesha observed, 'only those who cultivate the royal land have to pay a portion of the grain from it'. This statement has been interpreted to

2. Kat., 16, p. 121.
3. S.K. Maity, The Economic Life of Northern India, p. 25 ; Also see Bongard Levin, Mauryan India, p. 179.
4. J. Legge (tr.), A Record of Buddhist Kingdoms, Oxford, 1886, pp. 42-43.
mean that revenue was mainly derived from the rents on land.\(^1\) Hiuen-Tsang also states that the peasants as tenants of the sovereign paid one-sixth part of the produce as rent.\(^2\) The theory that the taxes were paid as rent to the king, however, is not based on sound foundations. One fundamental duty of the State was to protect the people and their property and to maintain law and order. This was the justification, in the main, for the payment of taxes to the State or to the king who symbolised the State.\(^3\) Savarasvāmin, commenting on Jaiminī, says that the king is entitled only to a share of the produce by virtue of his


2. T. Watters (tr.), *On Yuan Chwang’s Travels in India*, Vol. I, New Delhi, 1961, p. 176. Hiuen-Tsang, perhaps misunderstood the ordinary revenue paying lands as similar to the public lands of his own country and, as such, to him the peasants were king’s tenants and paid the share of the produce as rent. The fundamental feature of Chinese public economy in ancient times was the system of public distribution of land known as tsing tien, which continued in a modified form till 780 A.D. See Chen Huan-Chang, *The Economic Principles of Confucius and His School*, Vol. II, New York, 1911, pp. 497 ff.

3. Romila Thapar, *The Past and Prejudice*, pp. 53, 55. The Buddhist texts explain that there was a time in the past when everyone was virtuous and there was perfection and harmony in society. But this condition gradually changed into that of evil. Differences of sex became apparent. People began stealing each other’s stock of rice. Ultimately, they fought for possession over women and over the rice-fields resulting in a situation of lawlessness. Finally, the people gathered together and elected one from amongst themselves to maintain an orderly society, and for his services, they decided to pay him a share of the produce. See Digh. Nik., III, pp. 61-77.
affording protection to his subjects.  

We have abundant evidence in the Dharmasūtras as to the king’s right to a share of the produce in lieu of protection. The later law-givers are also unanimous on the point. Manu lays down that the king, not protecting his subjects but receiving his share as tax, has taken upon himself all the impurities of the people. Similar views are found in the Arthaśāstra and the Māhābhārata. Kālidāsa frequently refers to the king’s claim to land tax as one in lieu of protection afforded to the people. It was only in case of crown lands, over which the State had absolute proprietary rights, that the land tax paid by the tenants was actually identical with rent.

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1. On Jaimini, VI. 7. 3.
2. Gaut., X. 24-29 ; Baud., I. 10. 18 ; Vaś., I. 42.
3. Manu, VII, 130 ; Nārada, XVIII. 48 ; Vishnu III. 22.
5. Mbh. Sānti Parva, LXIX ; AS., II. I.
6. (raksā - sadrsameva bhuh). See B.S. Upadhyaya, India in Kalidasa, p. 155. Also see Bongard Levin, Mauryan India, p. 147.
7. Karl Marx states that the tax and rent coincide if the State is the proprietor of land. See Das Capital, Vol. III. Moscow, 1966, p. 315. K.Z. Ashrafyan, a Russian scholar, says that tax as such does not make land the property of the recipient of the tax. See Bongard Levin, Mauryan India, p. 179. Romila Thapar also states that the payment of land tax does not presuppose state ownership of land. See From Lineage to State, Bombay, 1984, p. 124.
Under the Mauryas, the imperial authority was keenly felt in the Ganga plains. In post-Maurya times, the institution of kingship came to be divinised. Manu states that the king is vested with the respective attributes of eight gods.\(^1\) Thus, not only did the Kushana rulers adopt the title of devaputra, but also the law-givers helped in divinisation of kingship.\(^2\) This, in turn, further helped in consolidating the territorial authority of the rulers. The Imperial Guptas continuously ruled for about two hundred years in the Ganga valley. The region, from Thanesar to Magadha, was under the direct control of Harsha-Vardhana.\(^3\) The authority of the rulers manifested itself in levying numerous taxes on the peasants. These taxes which the king levied by virtue of his sovereign power came to be looked upon as a sort of rent in return for tenancy. According to P.V. Kane, the State was deemed to be the owner of all lands as a general proposition, but individuals and groups that had cultivated lands in their possession were regarded practically as owners of those lands subject to the liability of paying land tax.\(^4\) Since the king’s rights in

1. Manu, VII, 7. In the Mahābhārata also, the king is described as the descendant of God. See Sānti Parva, 59.
the share of the produce were so regularly asserted through the collection of taxes, it is easy to see why the ruler was regarded as the owner of all land.\textsuperscript{1}

III

With the growth of royal machinery and the establishment of unified empire under the Mauryas, large tracts of unclaimed land came under the direct control of the king. The royal or crown lands are distinctly referred to in the \textit{Arthaśāstra} as \textit{svabhumi}.\textsuperscript{2} Vast areas were reclaimed by establishing new settlements.\textsuperscript{3} The large scale clearing of land by the State led to an unprecedented growth in agriculture, especially in the Ganga plains which formed the core area of the Mauryan Empire. Such lands were cultivated either directly by the State under the supervision of \textit{sītādhyaksa} (Superintendent of Agriculture), who employed \textit{dāsas}, \textit{karmakāras} (labourers), and \textit{dandapratikaritri} (prisoners) for the purpose,\textsuperscript{4} or were

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\textbf{1.} Ainslie, T. Embree, 'Land Holding in India and British Institutions', \textit{Land Control and Social Structure in Indian History}, (ed.), R. C. Prykenberg, p. 46.

\textbf{2.} AŚ., II. 24. The term 'svabhumi has been renderd by Shāmaśāstry as 'crown lands'. See JRAS, 1929, p. 90-91.

\textbf{3.} Ibid., II.1. One of the principles of the state policy under the Mauryas was to put to use all arable land.

\textbf{4.} Ibid., II. 24.
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leased out to tenant-cultivators on payment of half-share of the produce (*ardhasītikās*) and they were required to employ their own capital.\(^1\) When the seeds and implements were supplied by the State, the cultivators received only one-fourth or one-fifth share of the produce (*chaturtha-panchabhagikam*).\(^2\) Kautilya further lays down that these lands should be given over to tax-payers (*karada*) for cultivation only for a lifetime (*ekapurushikāni*), and the unprepared lands (*akṛtani*) were not to be taken away from those preparing them for cultivation.\(^3\) Lands could be confiscated from those who did not cultivate them and given to others.\(^4\) Thus, it may safely be inferred that there were some specific lands which were unquestionably the state property. Such lands could be leased out for the lifetime of a cultivator in return for a fixed share of the produce. In case of negligence on the part of the cultivator, lands could be resumed and given to other cultivators. Moreover, the State exercised the right of ownership with regard to the ownerless property of all except the brāhmaṇas.\(^5\)

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2. *Ibid.* Such cultivators were called *svavīryo-pajīvin*. Also see M.H. Gopal, *Mauryan Public Finance*, p. 58.


5. Āpast., II. 6. 14; Gaut., XXVIII. 42; Baud., I. 5.11; Vas., XVII, 83; AS., III, 9; Manu, IX. 189.

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absence of any male heir, the property lapsed to the State.\(^1\) In case a dispute over fields between two villages did not result in agreement, such fields also became the state property.\(^2\) As such, the State enjoyed proprietary rights over isolated fields in the villages as well. It had its monopoly over mines, minerals and treasure-trove (nidhi) also.

In the post-Maurya period, however, we do not come across in our sources any reference to the state lands cultivated by the tenants on a half-share of the produce. It seems that the share-croppers of the Maurya times had acquired some permanent rights in such lands.\(^3\) Moreover, those who brought the waste land under cultivation in later times, were perhaps given proprietary rights over such lands as the State was basically interested in the land revenue. During the Mughal times, the State recognised the proprietary rights of the pioneer cultivators on the waste

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2. Bongard Levin, *Mauryan India*, p. 146. Normally, such cases were rare as the village communities kept the boundary marks of the village lands in proper order.
lands appropriated by them. In case such lands were left uncultivated for a long time by the possessors, they were transferred to new ryots on the usual conditions.

IV

The Dharmaśāstras clearly indicate the growth of rights in land in terms of possession and legal title. According to Vishnū, in case of land acquired by the father in legitimate possession or by the grandfather, the son's right to it after his father's death cannot be contested for it has become his own by force of possession. He recognised possession to such an extent that he dispensed with a written title after three generations. "If possession", he observed, "has been held of an estate by three successive generations in due course, the fourth shall keep it as its property even without a written title". The proprietary

1. I.H. Qureshi, 'The Ownership of Agricultural Land During the Muslim Rule in India', JIH, Trivandrum, 1942, pp. 230-232.
2. Ibid., pp. 232-236. The State claimed a share of the produce of land rather than the title to its proprietorship. See Baden Powell, 'Is the State the Owner of all Land in India', Asiatic Quarterly Review, vol. VIII, Nos. 15 & 16, 1894, pp. 4-8. In fact, the Mughal emperors freely bestowed zamindari rights to those who brought forest and waste land under cultivation. See S. Nurul Hasan, ' Zamindars Under the Mughals', Land Control and Social Structure in Indian History (ed.), R.C. Frykenberg, p. 27.
3. Vishnu, V, 186.
4. Ibid., 187.
rights were also created through legal title such as by purchase, donation, etc. Vishnù makes a specific reference to land in this connection when he says that in case of dispute regarding a field, possession with a valid title was irrevocable.\textsuperscript{1} He maintained that for the information of the future rulers, the land grants made by the king should furnish a document, written on a piece of cotton cloth or a copper-plate, containing the names of his three immediate ancestors, the extent of land granted, and it should be under his own seal.\textsuperscript{2} Yājñavalkya distinguishes between acquisition of property by means of purchase or gift and hereditary possession.\textsuperscript{3} He states that possession becomes valid when coupled with a legitimate title.\textsuperscript{4} In case a suit is brought against a person who has acquired a piece of property by purchase or gift, he will have to establish his right of acquisition by legal proof, but such a proof is not necessary in the case of his son or grandson, whose testimony of possession is stronger.\textsuperscript{5} As such, according to Yājñavalkya, possession through heredity was the first claim to proprietary rights in land. Almost similar views have

\begin{enumerate}
\item Ibid., 184.
\item Ibid., 82.
\item Yāj., II, 27.
\item Ibid., 29.
\item Ibid., 28.
\end{enumerate}
been expressed by other law-givers. According to Nārada, "where there is enjoyment but not title of any sort, there is a title required in order to establish proprietary right. Possession is not sufficient to create proprietary right in that case."¹ He further adds that a clear title having been produced, possession acquires validity. Mere possession without any proof of title amounted to theft as it was tantamount to illegal possession.² But hereditary possession of three generations, according to him, required no such title to establish proprietary rights in land.³ Manu lays down seven lawful means of acquiring property, i.e., inheritance, donation, purchase, conquest, lending at interest, the performance of work and the acceptance of gifts from virtuous men.⁴ According to Brihaspatai, the different ways of acquiring immovable property are by learning, purchase, mortgage, valour, dowry, inheritance from an ancestor, and by succession to a childless kinsman.⁵ He further observes that in case of property acquired by one of these methods, possession coupled with a legitimate title

1. Nārada, I, 84.
2. Ibid., 87.
3. Ibid., 89.
constitutes proprietary right.\textsuperscript{1} But the hereditary possession extending over three generations became legitimate right and no title, as such, was required in that case.\textsuperscript{2} These provisions made by the law-givers evidently suggest the existence of individual proprietary rights in land.

Kauṭilya states that 'if one does not till land that is inalienable, another may use it for five years and return it after receiving compensation for his exertions'.\textsuperscript{3} Similarly, Nārada says, 'If the proprietors of a field are unable to till it, have deceased or departed, then he who, upon permission of relatives or neighbours tills that field, may reap all the crop from it’ ; 'if, however, in the meantime when the field is being tilled by others, the proprietor returns, let him take back his land after he pays to the men all the expenses incurred in tilling the land’.\textsuperscript{4}

If a person can use his landholding without any restriction for the purpose of cultivation, can sell, transfer or alienate it permanently or for a fixed period, and can pass it on to his heirs, he has absolute proprietary

\textsuperscript{1} Ibid., 3.
\textsuperscript{2} Ibid., 26.
\textsuperscript{3} ASf., III, 10.
\textsuperscript{4} Nārada, XI, 23-24.
The proprietary rights in that piece of land involve more than a relation between a person and a thing. It involves a relation between the proprietor and other individuals who, through the former's prerogative, are excluded from disposing of the object in question. Kautilya prescribes an order of priority in choosing buyers - kinsmen, neighbours and rich persons - when a piece of land is to be sold. In case of transaction of lands, auction without proprietary rights is considered a serious offence. Anyone selling land without having proprietary rights in it was considered a thief. If during such auction, the price of the plot of land is increased over its original price by the bidders, the amount so increased together with the toll on its value is to be deposited in the state treasury. Similarly, in case of land disputes, these are to be settled by the neighbours and elders of the village. Manu suggests that if there is a dispute between villages concerning the boundary, the king is to settle the limits in the month of Gyaishtha when the landmarks are most

1. I.H. Qureshi, 'The Ownership of Agricultural Land During the Muslim Rule', JIH, Trivandrum, 1942, p. 225.
4. Ibid.
clearly visible.¹ The king intervenes not to reappropriate the land but only to settle disputes.² If there is some doubt after the inspection of the landmarks, the dispute is to be settled by the testimony of the witnesses concerned.³ If the neighbours gave false evidence about the boundary marks they were liable to be fined.⁴ According to Kātyāyana, land intended for purchase should be carefully examined.⁵ He further lays down that tax-bearing land could be sold for the purpose of paying taxes, which implies that the peasant could be compelled to sell a part of his land for the clearance of his dues.⁶ We have only a few instances of the actual sale of land during our period of study, but the rules laid down in the texts regarding sale of land indicate proprietary rights of the peasants.⁷

¹. Manu, VIII, 245; Also see AS', III, 9.
². In case a dispute over land between two villages did not result in an agreement, such lands became the state property. In reality, however, the village communities vigorously protected their rights over village lands. See Bongard Levin, Mauryan India, p. 146, fn. 161.
³. Manu, VIII, 253.
⁴. Ibid. 99.
⁷. In R.S. Sharma’s view, the lack of actual instances of the sale of land was probably on account of the lesser use of coins in the Gupta and post-Gupta period. See Indian Feudalism, p. 120. An early instance of the actual sale of land is recorded in a Buddhist cave inscription in western India. The land was purchased from a brahmana to make gift of a field for providing food to the monks. Ep.Ind., VIII, p. 78. For
all land had been the property of the State, there could hardly be any need for making such elaborate provisions regarding land transactions and the settlement of land disputes. The law-givers even suggest that a piece of land can be given as a form of pledge to the creditor. Brihaspati defines the use of a mortgaged house or the produce of a field as bhogalabha (interest by enjoyment).\(^1\) Katyāyana ordains that the boundaries of the house or land to be pledged and the villages or the countries in which they are situated must be defined.\(^2\) Brihaspati states that when a field or other immovable property has been enjoyed and the principal amount and the interest have been actually collected from it by the creditor, the debtor receives back his pledge.\(^3\) Katyāyana adds that the debtor can get back his field, etc., transferred for enjoyment as interest, from the creditor on paying back the amount he had taken.\(^4\) The use of a plot of land, as a pledge in case of debt, towards the payment of the principal amount and the interest again shows individual rights in land.

In the organisation of land economy, Yājñavalkya

\(^1\) Brih., XI, 1.
\(^2\) Kat., 522, p. 220.
\(^3\) Brih., XI, 23.
\(^4\) See R.S. Sharma, Indian Feudalism, p. 121.
suggests three stages, i.e., mahipati (king), ksetrasvāmin (proprietor), and karṣaka (cultivator).\(^1\) This classification is almost corroborated by Bṛhaspati who considers svāmin as an intermediate category between the rājā and the actual tiller of the soil.\(^2\) The karṣakas were further categorised into permanent and temporary tenants.\(^3\) The permanent tenants had more or less secure rights of occupancy, but the temporary tenants did not possess such rights.\(^4\) Most Gupta and post-Gupta law-givers stress the obligation of the tenants to cultivate the fields leased to them and to pay the fixed share to the owner even when they neglected cultivation.\(^5\) The owner's share known as kṛṣṭa-phala varied from one-sixth, one-eighth to one-tenth part of the produce, depending upon the nature of the soil.\(^6\) Such tenants obviously employed their own implements, capital and labour, etc., in the fields. Kātyāyana further makes clear the legal position between the tiller of the field and its proprietor. If the proprietor could not repay through inability the expenses incurred by the tenant in bringing the fallow land under cultivation, the proprietor would be entitled to only

4. André Béteille, Studies in Agrarian Social Structure, p. 120.
6. Ibid., p. 954.
one-eighth part of the produce. For eight years, the actual tiller who had incurred the expenditure in this manner, could benefit from the land in question, and thereafter, he would have to return it to the proprietor.¹ Yājñavalkya says that the owner of the field (kṣetrasvāmin) had the right to assign it to a cultivator of his choice.² Even Manu suggests that the claims of 'the owner of the field' have precedence over the actual tiller 'the owner of the seed'.³ In the inscriptions from the fourth century A.D. onwards, the choice to give land out on lease is implicit in the obligation placed on the donees, i.e., to cultivate the land or get it cultivated.⁴ I-tsing observed that the Buddhist monasteries usually leased out their lands to share-croppers.⁵ The addhiyamanussas were evidently hired cultivators employed for tilling the donated lands.⁶ The mahipati was entitled to land revenue by virtue of his political authority. So long as the kṣetrasvāmin paid land tax to the State and the karṣaka gave rent to the kṣetrasvāmin, their respective positions remained unchanged. It shows not only varying degrees of rights in

2. Yāj., II, 158.
3. Manu, IX, 52.
4. Ep.Ind., XV,

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land, but also clearly indicates individual proprietary rights.\(^1\)

Yājñavalkya lays down that if the cultivator does not cultivate after having taken the field, he shall be compelled to pay the owner’s share. Surprisingly, nothing is said about the royal share.\(^2\) But the position is made clear by Bṛihaspati\(^3\) and Vyāsa\(^4\) when they enjoin the tenant to pay the due share not only to the landowner (svāmin), but also an equivalent fine to the king. For the loss in revenue due to the neglect of cultivation, landowner should be held responsible and not the tenant. The superimposition of his rights show that the king enjoys some general authority over land.\(^5\) This authority seems to emanate from

\(^1\) Romila Thapar, *Asoka and the Decline of the Mauryas*, p. 63; Bongard Levin, *Mauryan India*, pp. 153-154. During medieval times in England, land was conceived as being subject to great number of real rights differing among themselves and superimposed. The whole situation is described by Marc Bloch as: the tenant who from father to son, as a rule, ploughs the land and gathers in the crop; his immediate lord to whom he pays dues and who in certain circumstances assumes possession of the land; the lord of the lord, and so on --- how many persons are there who can say, each with as much justification as the other, ‘This is my field’. See *Feudal Society*, p. 116.

\(^2\) Yāj., II, 154.


his sovereignty. But it clearly indicates that proprietary rights in land belong to someone other than the king to whom the tenant is required to pay the 'due share'.

The king normally charged one-sixth or one-fourth of the produce from the lands in possession of the peasants.\(^1\) It may be fairly argued that he, who takes the remaining five-sixth or three-fourth part of the produce, must have had the greater interest of the two in the whole property.\(^2\) It naturally indicates that the peasant enjoys superior proprietary rights over land which he cultivates. The fact that the land tax paid by the peasant does not stand on a higher footing than that, for example, of a merchant who pays taxes on the goods sold, also indicates that the superior rights on the taxable property lay with the taxpayer and not with the king or the State. Moreover, if the king by taking advantage of his royal authority deprives a person of his land and gives it to another as a gift, such a gift is considered illegal.\(^3\)

While referring to land rights in medieval India Francois Bernier, the French traveller observed, 'The Great Mogol is the proprietor of every acre of land in the

\(^{1}\) See Chapter on Land Revenue.
\(^{3}\) Brih., XIX, 22.
Irfan Habib, disagreeing with the statement of Bernier, says, 'there is documentary evidence to show that persons other than the king laid claim to a right upon land that in name was ownership'. He further adds that the reason for the Europeans not realising this is likely that the Mughal jagirdars appeared to them to be the same as European landlords. Since the jagirs were transferrable at the king's will, the Europeans concluded that there was no private property in India. Under the Mughals, though both in theory and practice, the State was the proprietor of all the unclaimed land, yet it did not possess any proprietary rights in an absolute sense over the vast cultivable lands already in hereditary possession of the various categories of riaya. In the chapter on 'Rowai Rozi', the Ain-i-Akbari categorically recognises the proprietary rights of the cultivators in land.

3. Ibid.
5. Ibid., p. 3. William Erskine, while referring to the nature of land rights in medieval India, states, "The rights of landed property were considerably different from those that prevailed in the west. There are two separate and legal rights in the land, that of the ryot or cultivator, who held it by hereditary succession, and that of the government, which could justly claim a fixed share of the produce. Both of these are..."
The practice of land grants resulted in the growth of new rights in land. In the Arthaśāstra, the chapter Bhūmichchhidra Vidhānam deals mainly with tracts not meant for cultivation. These were used as pasture lands, as forests for soma plantation and for religious studies, as lands that were to be donated to the brāhmaṇas, etc.¹ U.N. Ghoshal is of the view that under the rule known as bhūmichchhiddranyāya, land was granted with such proprietary rights as were acquired by a person who makes barren land cultivable for the first time.² Similar view is expressed by Buhler.³ On the other hand, according to Barnett, when land was granted under this rule, the king reserved the right to eject the grantee whose position was, therefore, permanent.⁴ Though the musulman conquerors claimed in theory an absolute right in property in soil, the right was in practice restrained in conformity with the ancient law and usage to some fixed portion of the produce collected from villagers⁵. See A History of India under Babur and Humayun (ed.), Vol. I, Delhi, 1954, p. 528. Moreland also states that in Mughal India, wherein two parties existed, the ruler and the subjects, the latter were required to pay a share of the produce of land to the former in return for the protection received. See India at the Death of Akbar, London, 1920, pp. 96-97.

1. AS', II, 2.
3. Ep.Ind., I, p. 74; vol. XXIX, p. 5 fn. 3. Pushpa Niyogi states that the donees who brought the waste land under cultivation had no liability to pay the rent for it. See Contribution to the Economic History of Northern India, Calcutta, 1962, pp. 69-70.
that of a tenant-at-will and not a proprietor. In the land charters, we come across the term *akshayanîvi*, which is a perpetual endowment for meeting the needs of the donees out of its interest without destroying the capital. The land granted under this rule, therefore, implied the perpetual enjoyment of royal revenue by the donees without actual transfer of proprietary rights to their persons. Some land charters, however, clearly mention that the grant made is not a temporary one, terminable at the will of the donor, but a perpetual heritable grant. Even future rulers are asked to respect the rights thus transferred.

In many inscriptions of the Gupta period, we find that the entire villages were donated by the rulers. In such cases, the donees were entitled only to the land taxes which


3. The donees had no right to transfer, sell and destroy the tenure which was vested in the State. See AS', I. 19. For detailed discussion on these terms, see S.K. Maity, *Economic Life of Northern India*, p. 25-32.


were previously collected by the State. Some later inscriptions explicitly state that the taxes, which the villagers had earlier paid to the State, were now to be paid to the brahmana recipient of the grants. Bongard Levin clearly points out that 'what is meant by donation is merely the transfer of the right to collect the tax from the village and not the right to the land as such. The donee had no legal right to dispossess the peasants at will. When the State required any plot of cultivable land, it was not confiscated, rather it was purchased from the holder. When the proprietary rights were transferred to the donee,

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it was usually in case of small plots which were either purchased by the king or these belonged to the State as crown property. In case of the grant of land which was not the crown property, the rights of the peasants stood unchallenged.

In due course of time, however, these grants of villages brought about substantial changes in the nature of land rights. Initially, only the State share of the produce from the village was transferred to the donee. But when the administrative and judicial rights were also transferred to the donees, they became quite powerful and started regarding themselves as the virtual owners of the whole place. The original land holders 'sunk more and more into an indistinguishable mass of non-proprietary cultivators'. As a result, a new class with superior proprietary rights in land emerged in the form of big landlords. The temples and monasteries also came to enjoy proprietary rights in lands granted to them by the rulers.

2. A.N. Bose, Social and Rural Economy, p. 20
4. See Chapter on Land Grants.

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This tendency was related to the practice of paying the salaries of the high officials of the State through the grant of revenue from a particular area. Revenue rights soon came to be regarded as land rights, especially when the office became hereditary. Many brāhmaṇas were holding high offices in the State and by acquiring land rights they became all the more powerful.1 The payment of salaries to high state officials through land grants and their offices becoming hereditary, undoubtedly introduced significant feudal elements in the land system.2

The rights in land evolved gradually. As long as cultivation was of a shifting character, the land was held in temporary possession. With the emergence of a settled agrarian economy, the continuous possession created permanent rights in land. In the Vedic period, arable land was held by the joint families and the pasture land was the common property of the whole village community. Later on, when the law of partition of landed property was recognised, the individual families came to enjoy proprietary rights in land. With the growth of royal power, some remarkable

2. The brāhmaṇa officials, who were granted land by the State in lieu of their salaries, can be compared to the feudal lords. R.S. Sharma, Aspects of Political Ideas and Institutions, p. 136. The land grants weakened the authority of the king. See Romila Thapar, A History of India, Vol. I, p. 146.
changes took place in the nature of land rights. The king started asserting his royal prerogative over the land. The State possessed absolute rights in all unclaimed waste and forest lands, but it did not possess any proprietary rights, in an absolute sense, over the vast cultivable lands under the hereditary possession of the peasants. Under the Mauryas, vast stretches of land were reclaimed, which were cultivated either directly by the State or given to sharecroppers. The State enjoyed absolute rights over all such lands. The king, by virtue of his sovereignty, exercised his supreme rights over the lands under the possession of peasant proprietors through the imposition of various taxes. The customary rights of the peasants were not disturbed so long as they paid the taxes regularly to the State. Rather, it was the duty of the State to protect their rights. The practice of granting land in perpetuity to the donees created new rights in land. In case of the grant of whole villages, the donees were initially given only the right to land revenue and other allied taxes. Later on, when their privileges were greatly increased, they began to assert superior rights in land. These socio-economic developments considerably affected the rights of the free peasants. All this suggests a multiple pattern of land rights.