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The Mundkar System in Goa: Historical Land Tenure and Legislative Developments

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ABSTRACT

In Goa, India, the mundkar was a historical land tenure system prevalent amongst the Catholic crowd during the Portuguese colonial rule. In the 16th century, it allowed the tenant farmers who are poor known as mundkars to live and cultivate on the land owned by landlords who are wealthier in exchange for labor and a share of the agricultural produce. It played a very significant role in shaping the agrarian economy of Goa, providing opportunities of livelihood for the landless farmers and ensuring a stable work labour for landowners. With time, the mundkar system underwent various legislative developments, with the introduction of protective measures and legal safeguards. Substantial changes were brought about by The Goa, Daman and Diu Mundkars (Protection from Eviction) Act of 1975, redefining the concept and ambit of mundkar and providing more security of tenure. It aimed to prevent arbitrary evictions of the mundkar and also protect the rights of mundkars. The mundkar system remains an important aspect of Goa's agrarian landscape despite its prominence diminishing in recent years.

I. INTRODUCTION

In Goa, India, the mundkar system refers to a system of historical land tenure that existed in the region. It was in practice for several centuries and mainly prevalent among the Catholic population of Goa. The term "mundkar" is derives from "mandkar," the Konkani word which means a laborer or a servant.

It was during the Portuguese colonial rule in Goa, that the mundkar system originated in the early 16th century and lasted through 1961. Under this system, landlords owned agricultural land, known as "khoris," who were members of the upper class and usually wealthy landowners. The mundkars, who were typically poor tenant farmers, would cultivate land was cultivated by the mundkars

The relationship of mundkars with the landowners was unique. They were permitted to cultivate and live on the land in exchange for their labor and a share of the agricultural produce. It was typically a oral agreement between the mundkar and the landowner, and the terms varied for

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different parties. It was in the nature of a right of the mundkar to occupy and cultivate the land as long as they fulfilled their obligations and provided the share agreed-upon to the landlord of the harvest.

Subsequently, the mundkar system became deeply rooted in the Goan society and played a very important role in shaping the agrarian economy. For the poor and landless, it provided a means of livelihood giving them access and work on land that they would otherwise not be able to own. For the landowners, it ensured a stable workforce, as the mundkars had a vested interest in the land's productivity.

The outline of the history and development of Mundkarial legislation in the territory of Goa can be explicated having reference to **four stages** that stand expounded as under.

(A) First Stage

The initial legislation governing the law of Mundkarship was the *Decree dated 24.08.1901*, wherein Mundkarship was created primarily to have a watch and ward of the coconut gardens. The word 'primarily' used above is to be read with caution as the purpose could be extended to other duties of similar nature.

The situation of the Mundkar at that time, however, was very precarious in nature as they could be evicted at the mercy of the Bhatkar. The proceedings therein would be before the Administrator of Taluka and an Appeal therefrom would lie to the Administrative Tribunal as per the Overseas Administrative Reforms.

(B) Second Stage

The second stage began, during the Portuguese rule, in order to remedy the shortcomings of the first regime, with the introduction of *the Decree no. 1952 dated 16.11.1959*.

There was no substantial change in the conception of the term 'mundkar', however, many protective measures were introduced in favour of the mundkar. One of them was that the contract of mundkarship could be in writing, and thereupon, a register of mundkars would be prepared as per Article 3 of the said Decree no. 1952².

Further, *Article 4* of the said Decree no. 1952 provided that the benefit of having the rights and obligations reduced to writing could be extended to Mundkarship created prior to 16.11.1959 i.e. prior to the coming into force of the Decree, therefore, giving the legislation a retrospective scope.

² Section 2(e) of the Goa, Daman & Diu (Protection from Eviction of Mundkar, Agricultural Labourers and Village Artisans) Act, 1971

Article 5 therein, in its *clauses (a) to (g)*, provided for the rules that would govern the contract of mundkarship in the absence of a written agreement.

Significantly, clause (a) of the said Article 5 provided that the contract shall be presumed to be 'gratuitous and for an unlimited period'. However, clause (b) of the said Article provided that a mundkar could be evicted when there was a 'just cause', for which purpose the Bhatkar was required to give notice, one year in advance, through the Administrator of Taluka, for eviction of the Mundkar. The Bhatkar could, therefore, succeed in evicting the mundkar by initiating proceedings before the Administrator of Taluka and not through the Civil Court.

II. POST – LIBERATION PERIOD

(A) The Third Stage

The third stage can be highlighted by the introduction of the *Goa, Daman and Diu (Protection from Eviction of Mundkars, Agricultural Labourers and Village Artisans) Act, 1971*, which came into force on 04.02.1971. Although the Act was a temporary statute, it was renewed from time to time until it was finally repealed by the introduction of the *Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975*.

It may be important to note that the said Act did not alter the definition of the term 'Mundkar', as its Section 2(e) provided that the term 'Mundkar' would have the same meaning as under the Decree no 1952 dated 16.11.1959. However, the Act brought within its purview agricultural labourers and village artisans, vesting in them the same privileges as on a Mundkar.

It would be relevant to cite the provisions hereunder mentioned in order to comprehend the spirit of the said Act

Section 3 of the said Act of 1971, in its *clause (a)*, introduced an absolute bar on the eviction of a mundkar. *Clause (b)* provided that, no suit or other proceedings for eviction of a mundkar would lie in any Court. The said clause also provided that any such proceeding pending at the commencement of the Act shall be stayed. This shows that there could not arise any case of filing any suit for eviction against a mundkar.

Section 5 empowered the mundkar to repair, maintain and improve his dwelling house and also to obtain benefit of supply of electricity and water without obtaining consent from the Bhatkar.

Section 8 provided that a mundkar who had been dispossessed on the date of commencement of the Act, or anytime thereafter, could apply to the Mamlatdar for restoration of possession.

Section 10 empowered the Mamlatdar to decide whether a person was a mundkar or not.

(B) The Fourth Stage

The fourth stage in the development of the law is marked by the introduction of the *Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975*.

This Act introduced radical changes in the conception of ‘Mundkar’³. As per *Section 2(p)* of the said Act, the element of watch and ward duties was eliminated and for a person to be a mundkar all what was required was that he had to be a person lawfully residing with the consent of the Bhatkar, or a person acting or purporting to act, on behalf of the Bhatkar. It, therefore, goes without saying that if a person, for instance, is a trespasser, he cannot be said to have been lawfully residing therein.

Further, *clauses (i), (ii), (iii) and (iv)* to *Section 2(p)* provide for the categories that are specifically excluded from the concept of mundkar. It includes persons paying rent to the Bhatkar (*clause (i)*); a domestic servant or a chowkidar who is paid wages (*clause (ii)*); a person employed in a mill, factory, mine workshop or a commercial establishment and residing therein in connection with his employment (*clause (iii)*); a person residing as a care-taker for the purpose of maintaining it in habitable condition (*clause (iv)*).

There is also an *Explanation*⁴ appended to the said *Section 2(p)* that contains the deeming fiction under which a person shall be deemed to be a mundkar if

- (i) such person resides in it for a period exceeding one year prior to the appointed date i.e. 12.03.1976, and

³ *Section 2(p)* of the *Goa, Daman & Diu (Protection from Eviction of Mundkar, Agricultural Labourers and Village Artisans) Act, 1971* defines mundkar as “mundkar” means a person who, with the consent of the bhatkar or the person acting or purporting to act on behalf of the bhatkar lawfully resides with a fixed habitation in a dwelling house with or without obligation to render any services to the bhatkar and includes a member of his family but does not include—

- (i) a person paying rent to the bhatkar for the occupation of the house;
- (ii) a domestic servant or a chowkidar who is paid wages and who resides in an out-house, house-compound or other portion of his employer’s residence;
- (iii) a person employed in a mill, factory, mine, workshop or a commercial establishment and is residing in the premises belonging to the owner or person in charge of such mill, factory, mine, workshop or commercial establishment, in connection with his employment in such mill, factory, mine workshop or commercial establishment; and
- (iv) a person residing in the whole or part of a house belonging to another person or in an out-house existing in the compound of the house, as a care-taker of the said house or for purposes of maintaining it in habitable condition.

⁴ *Explanation to Section 2 (p) of the Goa, Daman & Diu (Protection from Eviction of Mundkar, Agricultural Labourers and Village Artisans) Act, 1971*.— A person shall be deemed to be lawfully residing with the consent of the bhatkar in a dwelling house if such person resides in it for a period exceeding one year prior to the appointed date and the bhatkar has not initiated any proceedings, during the said period of one year, to evict such person from the dwelling house, through a competent court of law, on the ground that such person was a trespasser or, having so initiated such proceedings, does not succeed in obtaining a decree for the eviction of such person.

- (ii) the Bhatkar has not initiated any proceedings during the said period of one year, i.e. from 12.03.1975 to 11.03.1976, to evict such person from the dwelling house, through a competent Court of law, on the ground that such a person was a trespasser or, having so initiated such proceedings does not succeed in obtaining a decree for the eviction of such person.

It may be relevant to note that, although the Act specifically repealed the Decree no. 1952 and the Act of 1971, it retained the powers vested upon a mundkar by the Act of 1971.

*Section 13*⁵ of the Act provides that all the suits and other proceedings for the eviction of a mundkar pending in the Court on the appointed date i.e. 12.03.1976, shall be transferred to the Mamlatdar, and if the Mamlatdar decides that the person sought to be evicted is a mundkar, the suit shall abate. In other case, the proceeding shall be re-transferred to the Court from which it was transferred to the Mamlatdar.

Moreover, *Section 31*⁶ specifically prohibits the Civil Court from entertaining any question which the Mamlatdar, the Collector, the Government or the Administrative Tribunal is entitled to determine under the provisions of the Act.

There were drawbacks to the mundkar system. The mundkars were vulnerable to exploitation by unscrupulous landowners. There were instances where landowners evicted mundkars or changed the terms of the agreement to their disadvantage taking advantage of lack of formal documentation and legal protection, leading to social and economic inequities. Some mundkars would be living in poverty and facing precarious conditions.

Goa became a part of India In 1961, after liberating from Portuguese rule. The land reforms in Goa was initiated by the Indian government to address the issues of landlessness and agrarian

⁵ Section 13 of the Goa, Daman & Diu (Protection from Eviction of Mundkar, Agricultural Labourers and Village Artisans) Act, 1971. Transfer of pending suit or other proceedings for eviction.— (1) All suits, appeals, proceedings in execution of decree or order and other proceedings for the 8 Inserted by the Amendment Act 18 of 1978. Eviction of a mundkar or a person who has therein claimed to be a mundkar or for the curtailment or for the non-enjoyment of any right mentioned in sub-section (1) of section 6, pending in any court, on the appointed date, shall be transferred to the Mamlatdar within whose jurisdiction the dwelling house, from which the eviction is sought, is situated. (2) The Mamlatdar, to whom a suit, appeal, proceeding in execution or other proceeding is so transferred under sub-section (1), shall inquire into and first decide the question whether the person to be evicted is a mundkar or not and if his decision is that such person is not a mundkar, the suit, appeal, proceeding in execution or other proceeding shall be re-transferred to the court from which it was transferred to the Mamlatdar. (3) If the Mamlatdar decides that the person to be evicted is a mundkar, he shall declare the suit to abate and direct the bhatkar to make a fresh application under this Act, if the bhatkar so desires.

⁶ 31. Protection of action taken under the Act and bar of jurisdiction of Courts.— (1) No suit, prosecution or other legal proceeding shall lie against any officer for anything in good faith, done or intended to be done under this Act. (2) No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined, by the Mamlatdar or the Collector or the Government or the Administrative Tribunal and no order passed by such authority under this Act shall be questioned in any Civil or Criminal Court.

inequality. In 1975, The Goa Mundkars (Protection from Eviction) Act was enacted providing legal safeguards to mundkars and confer certain rights upon them. To protect the tenure rights of mundkars and prevent their arbitrary eviction from the land they cultivated being the main aim of the Act.

Under the law, if the mundkar could prove that they had been in occupation and cultivation for at least ten years he could claim the right to continue cultivating the land if they could prove. The law also provided that mundkars should be paid fair and just compensation on legitimate eviction.

There have been subsequent amendments and legal battles since the enactment of the Goa Mundkars Act, to strengthen the rights of mundkars and provide them with greater security of tenure. With reference to Goa's agrarian landscape the system continues to be an important aspect, although its prominence has diminished with changing economic and social dynamics over the years.
