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# Lineage Ownership to Individual Rights

## Social History of *Jamma* Land Tenure in Kodagu

M A KALAM

This article details the manner in which the land rights of the Kodava have changed over the past two centuries and the various implications of that. It shows how customary land rights were codified first by the Lingayat Rajas, how this codification was strengthened by the British, and the consequences of a historical transformation from common ownership in a marketless context to individual ownership in an increasingly market-dominated political economy.

Land rights are a complex issue even when there is just one form of land tenure and taxation prevalent in a given region. When there is a multiplicity of land tenure patterns the situation gets quite dense. Add to it the aspect of changing political reigns and it leads to a maze of economic and social factors that have a bearing on the life and cultural practices of the tenurees. Due to certain changes in land tenure patterns, pertaining in particular to land alienation, that were allowed first by the Lingayat Rajas and then by the British, an interesting scenario emerged in Kodagu district of Karnataka during the early part of the 19th century.

The repercussions of those changes are still causing ripples in the district. People's assertions as regards rights in land and property have led to agitation and litigation in courts of law vis-à-vis the state, and one of the events in this drama has been the decision of the court granting partial rights to the people. How these changes have affected land use and land-holding practices of the people of Kodagu is the focus of this paper. Here, we are dealing with the issue of control over resources: contested land (and forest) and resistance, by a community vis-à-vis the state.

While in the modern and contemporary contexts all states have (or assume to have) control over their citizens in terms of governance and administration, to what extent can a state, through legislation or otherwise, intervene in matters pertaining to property rights of its citizens? Various factors need to be addressed in order to answer this question. The aspects that need to be looked at are, primarily, the nature of the state itself, in terms of its political ideology, the kind of property that we are dealing with, and the people/community in focus.

All nation states grant rights of various kinds and degree, in some measure at least, to their citizens to hold and/or own private property (both movable and immovable). While in some contexts there may not be any limit at all on the amassing of private property, in others a certain ceiling may be imposed on how much land individuals can acquire and possess. These ceilings may themselves vary depending on the kind of property; say from forestland to pastures, from wetland to dry land, and from vacant land for construction to real estate in urban settings.

A variation of the above is where different groups of people (like certain minorities and ethnic groups) may enjoy different kinds of rights and privileges in order, on the one hand, to protect and preserve traditions and customs of those

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groups which the state considers desirable to the interests of the said groups, and on the other, to correct historical imbalances and discriminations perpetrated against some groups. That is, some customary laws may prevail in certain contexts. In most settings, however, there are resentments (even agitation at times) when states alter or try to modify existing practices or customary laws. Invariably some group or the other feels discriminated against when legislation/ordinance is introduced to change an existing practice, though the state's attempts may appear to have some logic or reasoning. No doubt the rhetoric of the state in such situations could be that it is bringing reforms in the "larger" interest. Affected groups go in for corrective or redress mechanisms and these processes (or movements) vary from being the most docile and dialogic to being the most forceful and violent.

Kodagu<sup>1</sup> district is spread over an area of 4,102 square kilometres. Though it is one of the smaller districts of Karnataka, its unique features have given it social and economic prominence. The Kodava<sup>2</sup> (Coorgs), one of the better known communities in social science literature because of their unique customs and practices, are the prominent inhabitants of the district. A dynasty of Lingayat Rajas ruled Kodagu from the late 16th century. The British deposed the last of them, Vira Raja, and annexed the province in 1834. In 1947, when India became independent, Kodagu (then known as Coorg) was declared a Part-c State. However, in 1956 Coorg merged, as a district, with the then Mysore state, on the recommendations of the States Reorganisation Commission (SRC). The people of the district resented the merger; this resentment is evident even today. It is pertinent to mention here that the Kodava have never directly held the political reins of the district; also they have never translated their economic power, and a relatively high degree of education, into any significant form of political power.<sup>3</sup>

### Land Tenure with a Difference

During the time of the Lingayat Rajas, the Kodava were granted a special land tenure known as *jamma*, which was assessed at half the amount levied on the general tenure known as *sagu*. *Jamma* was therefore considered a privileged tenure, though it called upon the *jamma* tenurees to perform certain duties for the Raja and the palace. The most significant feature of *jamma* tenure was that it was granted to the *okka* (lineage) and not to individuals, and it could not be partitioned, alienated, mortgaged, or leased.<sup>4</sup> *Shist* (land/revenue) accounts prepared in 1812, at the time of Vira Raja II, refer to *jamma* holdings; but the tenure itself existed prior to the codification of *shist* accounts. From 1834 onwards the British<sup>5</sup> too granted *jamma* tenure till 1895 when it was decided by the then Government of India that no more lands were to be given on this tenure.

Certain landholding (owning) and inheritance patterns, unique regional peculiarities, and the relative isolation of Kodagu from the rest of the country till the middle of the 18th century all played a role in the genesis of the land tenure

patterns in Kodagu. Accompanying the *jamma* lands, are the *bane* areas.

The attached *Bane* [were] for servicing the holding of the wet land which was held by them on *Jamma* tenure and that he [sic] could use this *Bane* for grazing, supply of firewood and timber required for the domestic and agricultural purposes of the cultivator, so long as he continues in possession of the wet land, and he could use this *Bane* for aforesaid limited purposes without any liability to pay any land revenue (Indian Law Reports, Karnataka Series [ILRKS] 1993: 2960).

However,

the holder had no interest or right in the sub-soil of the *Bane*... [as] also no interest in the wood of the trees standing in the *Bane* save and except taking wood for the limited domestic purposes unless he paid the full timber value for cutting such trees... (ILRKS 1993: 2960).

In any case, sandal wood trees were not to be touched at all, even if they were found in a tenuree's backyard.

*Jamma* lands consisted of *wargs*, plots for paddy cultivation. Each *warg* averaged about one-and-a-half acres. To begin with, the area of *bane* lands had no correlation with the extent of the *wargs* to which they were attached. Hence *bane* lands attached to a *jamma* holding varied from a few acres to 300 or more acres. *Bane* lands that were so attached to *wargs* of *jamma* lands came to be known as *jamma-bane* and there was no revenue assessment on these lands. Similarly, *bane* lands attached to *sagu* lands were known as *sagu-bane*. But as *sagu* lands were assessed for taxes the *bane* so attached were also assessed. In 1885, it was ruled by the British that the maximum amount of area to be allotted as *bane* should not exceed double the amount of *warg* to which the *bane* were attached. In 1895, however, the practice of grant of land on *jamma* tenure was dispensed with.

The British who were familiar with, and subscribed to the institution of *Entail* (which was based on primogeniture and had an implicit ban on alienation of property) in Britain, as also other parts of Europe, and some of the British colonies in North America, particularly in Virginia (Brewer 1997; Goody 1976), did not, at least initially, go in for the promotion of private property in Kodagu. They continued to follow the policies laid down by the Lingayat Rajas, and later, in fact, did support the contention of the people of Kodagu that there ought to be a ban on the alienation of their ancestral property which was on *jamma* tenure; the Lingayat Rajas had allowed alienation of *jamma* property for a period during the beginning of the 19th century. So, in general, the British did not wish to tamper with the land tenure practices that were prevalent from the time of the Lingayat Rajas. This is illustrated in the Kodagu Chief Commissioner's Report to the Secretary to the Government of India, Revenue and Agriculture Department, Simla, dated 17 March 1883:

On the submission of Coorg to the British Government, lands held by the *Jamma* Ryots were confirmed to them on the *Jamma* tenure, as it existed in the days of the Coorg Rajahs. The Chief Commissioner does not, in the least desire to interfere in any way, with land now held on the *Jamma* tenure, but he is very strongly of opinion that the time has arrived when, in the interests of the Province, a stop should be put to the acquisition of new lands on the '*Jamma*' tenure, and to the conversion into that tenure of lands held on the '*Sagu*.'

A perusal of different accounts and sources on Kodagu (like Gazetteers, Reports, Revenue and Administrative Files in the District Records Office in Madikeri [Mercara], the capital of Kodagu district) tells us that there was hardly any pressure either on clearing of the bane for cultivation or for the felling of trees in them, at least till 1854 when the cultivation of coffee was introduced in Kodagu. Gradually the jamma and sagu ryots (peasants/cultivators)<sup>6</sup> took to the cultivation of coffee in their bane lands. Initially, *halat*, an excise levy, was imposed on coffee cultivators. However, in 1865 the state withdrew *halat* and granted permission to cultivate coffee in up to 10 acres of bane lands without any assessment. The area thus cultivated, that is up to ten acres of bane, came to be known as “privileged jamma-bane.” Though it was converted for coffee cultivation it was still considered as attached to the wargs and remained a part of the overall bane. The uncultivated bane area was referred to as “unprivileged jamma bane.” Any area of bane that was utilised for coffee (or any kind of cultivation for that matter) over and above the 10 acres limit was considered to have been alienated from the warg and hence did not remain jamma-bane; this came under the category of “alienated bane” and attracted full assessment as in the case of sagu. Alienation here has the same connotation as sale; once jamma property is alienated/sold it converts to sagu and is liable to full assessment.

To sum up, there were, in the main, two kinds of bane (ILRKS 1993: 3000):

- (a) Alienated bane, which had ... ceased to be a bane, because of alienation from the warg or because of its being put to coffee cultivation and subject to assessment.
- (b) Bane proper. They remained as an appendage to wet land or warg land and which given [sic] limited right to bane holder to remove leaves from the trees and to use timber for domestic, and agricultural purposes without having any right in the land. This type of bane tenure consisted of two sub-categories.
  - (i) Privileged bane. Wherein the Government permitted bane-holder to cultivate land upto 10 acres without paying any assessment; and
  - (ii) Unprivileged. Where no cultivation whatsoever was permitted, meaning thereby that part of the bane-land exceeding 10 acres could not be brought under cultivation and such bane land was also held free of assessment by the bane-holder....

In 1875 a further concession was made for coffee cultivators in jamma-bane lands: coffee could be grown in excess of 10 acres provided no clear felling of trees was undertaken and the coffee bushes were planted amidst natural forest. There was no limit on such cultivation of coffee in “primeval shade.” The understanding here is that as long as tree growth (and biodiversity) is maintained and the servicing role of the bane is adhered to, the latter remain attached to the warg as (unprivileged) jamma-bane; and, as we have seen above, there is no assessment on jamma-bane. Going by the different steps taken by the state as regards concessions given to the coffee growers it is quite apparent that there was tacit encouragement for the cultivation of coffee, and full encouragement to expand the extent of land for coffee cultivation with an eye on earning good returns and revenue.

The southern and western parts of Kodagu, at times referred to as Kodagu (or Coorg) “proper,” has slightly different climatic

conditions than the northern and eastern areas. The former area is quite moist and has heavier rainfall, whereas the latter area is relatively dry. Bane lands were the norm in Kodagu proper. In the other region, northern and eastern areas, the servicing requirements of the cultivators were met, in the absence of appurtenant areas of bane, from resources obtained from *urudves* (village forests) and *aramaneparambu* (palace or state wastes).

Ideally, it was held that the jamma lands were not to be alienated. However, it appears as though a (arguably deliberate) loophole was provided whereby alienation could be carried out, as seen in the following (and many other) regulations (ILRKS 1993: 2977):

By the customary law of Coorg, no jamma ryot can transfer his jamma lands; if he does transfer them, all privileges which he enjoyed in such lands are forfeited and the land is liable to full assessment. It follows therefore, that when a jamma warg together with the bane, attached or any part of the bane, has been alienated (i.e., transferred by sale, lease, or mortgage), the sagu or full rate of assessment should be imposed on the warg and the whole area in the bane cultivated with coffee should be assessed.

As can be seen from the above, alienation is not expressly banned; a *via media* is in fact provided, even suggested, by notifying what the state would do if alienation indeed occurs; even bane land by itself could be alienated without alienating the warg portion of the jamma lands. The land use policy as it stood then appears to have been designed by the British in such a way that it indeed did facilitate alienation, which in turn helped in acquiring more and more land for coffee cultivation. As is apparent, the demand for coffee in the international market, and ultimate commercial interests, dictated the policy of the British as regards land use in Kodagu.

### Seeds of Contradiction

During the early part of the 19th century the Lingayat Rajas did allow partition and alienation<sup>7</sup> of jamma land in accordance with the Hindu Law that was applicable to the ruling dynasty and to Hindus in general. This practice continued during the early decades of British rule too. Meanwhile, the British rewarded loyal Kodava with *jagir* lands which were granted to individuals and not to the lineages/families. However, in 1859, due to a move initiated by the Kodava *takkas* (headmen), the Judicial Commissioner of Coorg<sup>8</sup> passed a decree that partition and alienation of jamma land was in conflict with Kodava customs. But the award of jagirs to individuals continued and had already set in motion the acquisition of (private) property by individuals. So a sort of conflict was at play as regards the pitching of the lineage property, that is, jointly held property versus individual acquisition of property by those who lived in the *ain mane* (ancestral house) with the other members of the lineage, and continued to hold rights in property that belonged to the lineage.

In spite of the 1859 decree it was possible to partition and alienate jamma property if all adult male members of a lineage gave their consent to such partition/alienation. On getting such consent the pattedar of the okka concerned had to apply

to the revenue department for permission to alienate the jamma land. The seller had to pay 5% (later raised to 20%) of the market value of the property as *nazarana* to the state. Veto even by a single adult male member of the lineage was enough to thwart the process of sale of the jamma land. If jamma land was partitioned or alienated, it came under sagu tenure, and the revenue assessment on it doubled.<sup>9</sup> In 1981, however, the Government of Karnataka again banned alienation of jamma land. It came about as a result of a letter from the Karnataka government stating that

Bane lands including Jamma-Bane lands are Government lands and that Bane holders have no proprietary right over the Bane lands.<sup>10</sup>

On receiving the aforesaid letter the deputy commissioner of Kodagu district gave directions to the registrar based in Madikeri and the sub-registrars in the three taluk headquarters of the district, not to register the sale deeds pertaining to lands on jamma tenure. This aspect of the link and attachment of the accompanying bane lands with the jamma lands has been the bone of contention between the landowners and the state. There have been instances of bans on land alienation in other parts of India but the ostensible reasons for such promulgations were into an altogether different realm.

Let us look at two of the better known cases of these. One, the Punjab Land Alienation Act of 1901 (Gilmartin 1988), and two, the Bombay (Presidency) Land Alienation Act of 1902 (McLane 1977). In both instances restrictions were imposed in order to prevent non-agricultural "groups/classes/tribes" from buying land from the cultivators. These acts were restrictive only to the extent of alienation of land outside a defined circle of agricultural communities; land could be alienated, sold, bought within the circle as the buyers would not be from a non-agricultural group or class or tribe. The apparent aim here was to protect the interests of agricultural communities and to prevent their exploitation, through land grabbing, by moneylenders and the business class.

The Kodagu case, however, is entirely different. Here, the state bans land alienation by staking a claim that it has jurisdiction over a particular category of land, and that the said land belongs to it (the state), and hence it cannot be alienated by the owners even if they have held it for generations. It is quite clear that the people were claiming the right to partition and alienate jamma property, while the state contended that the occupants are not the rightful owners of the accompanying bane land which, the state claimed, belonged to it. Thus the state decided that bane lands would revert to it in case the jamma lands were alienated.

The ban on sale of jamma, in a way, is in conflict with the state's land reforms policy favouring more equitable distribution of land by reducing big agricultural landholdings. Besides, since Hindus are governed by the Hindu joint family law, which allows partition and alienation of ancestral land, the Kodava<sup>11</sup> too would like to come under the purview of this as regards jamma property too, since the sagu tenurees have no restrictions in terms of alienation. At one level it appears as though the state is trying to preserve or balance traditional

land rights of the Kodava. However, when we link the ban on alienation of jamma to the controversy as regards the bane issue, then it appears as though the state's action is not all that altruistic.

### Property and Ownership Rights

The jamma tenure is a form of primogeniture in land that is inherited (transmitted, seems to be more appropriate) by the *pattedar* (the oldest male member) of the *okka* (lineage). But the names of all adult male members<sup>12</sup> of the lineage are also included (as coparceners) in the *jamma-bandhi* register (with the revenue department) as co-owners. So land vests with the *pattedar* on behalf of all the adult male members of the lineage. The success of this form of primogeniture depends on the ability of a lineage to remain together as a co-residential group. Hence as long as co-residence is the norm, there are no qualms about holding property jointly and transmitting the same patrilineally, without any partition/alienation.

Another way of saying this is that since property could not be partitioned lineages did not split. But once dispersal of lineage members from the ancestral house began due to diverse economic pursuits—acquisition of individual (sagu) property being one—joint landholding around the ancestral house, at a location away from their current habitats, had very little meaning for the dispersed members. After the advent of the British, however, lineage members who were educated and had independent income and earnings acquired individual property while living in the ancestral house as a result of which they came to be regarded as individual self-acquired (private) property owners. Alluding to this, Srinivas (1952: 52–53) says,

Coorgs who were government officials under the British bought farms and coffee- and orange-gardens with their savings, and the law courts established by the British permitted these to be regarded as the property of the individual acquirer and not of the *okka* of which he was a member.

Besides, the institution of *Entail* had weakened and had little meaning in England itself; so hardly anyone held any store by it by the second half of the 19th century.

When there is residential mobility, that is, dispersal of members of a lineage from the ancestral house, immovable property, house and land in particular, had to be acquired afresh by those who move away from the ancestral house, because the jointly owned ancestral property cannot be partitioned or alienated. The foundation on which primogeniture rests is weakened as other forms and patterns of ownership and inheritance of property come into being. This is what has happened among the Kodava (Kalam 1987, 1991). Dispersal from the ancestral house was basically in the direction of acquiring property for oneself and for the immediate nuclear family. Thus conflict vis-à-vis the ideology of lineage landholding, away from the current, dispersed habitations of the members of a lineage, was inevitable. Moreover, there was always a possibility of acquiring jamma property, till 1895, for a nuclear household or for a *kuthi* (segment of a lineage), by being away from the

ancestral house and settling down in another locality and acquiring jamma property there, which was not possible while dwelling together with other members of the household or segments of a lineage.

The transformation that has come about as regards later living arrangements is from close-knit co-residential lineage groups in ancestral houses to dispersed independent nuclear household dwellings in villages or towns away from the ancestral houses. The accompanying changes have been the acquisition of property for the nuclear household unit (jamma as well as sagu) as opposed to the erstwhile situation of lineage property (only jamma, for the whole lineage group). Not being a member of a large co-residential group means not being under the wings of the pattedar; it also means that one could have full and unhindered control over one's property, both in terms of acquisition and disposal. So in the dispersed-households context, that is, away from the ancestral house, pressure was exerted by those members who had moved away from the ancestral house, not always for alienation of the ancestral property but quite often for some sort of partition. The latter situation enabled some control and some sort of ownership, even if it was in a diluted form, as compared to the situation where individual ownership was at best a muddled reality in a (cooperative) lineage-owned context.

As a monolithic group operating from under a single roof, a lineage had a lot of clout and bargaining power vis-à-vis other lineages and households. Doubtless, those who moved away did derive other benefits but did also lose something in the bargain. After dispersal from the ancestral house pressure for partition and/or alienation among the members of a lineage was high, particularly in situations where there was pronounced economic heterogeneity between different segments of a lineage. That is a sort of economic stratification or class formation within a group; in this case an okka, the lineage. In cases where there was relative homogeneity in terms of economic statuses between the different segments of a lineage (at both ends of the plane, the higher as well as the lower one), the pressure for partition or alienation was much less. The growth of intra-lineage economic hierarchies is not unusual if the lineage holds a vast amount of land, has a large membership as a corporate group, and in addition the members have had independent sources of income and have acquired individual property over a period of time. Besides, as Srinivas has pointed out (1952), this would be particularly true if they were government officials and had bought farms, or coffee estates and orange-gardens with their savings.

### Discourse on Property

Social science discourse on property tells us that actual control over property, and the power to utilise it in ways that the owner would deem fit is a crucial and important dimension in access to property (Bromley 1992; Furubotn and Pejovich 1974; Libecap 1989). Symbolic ownership sans control, or the lack of freedom to operate property, has very little

meaning for someone who is an owner but only in a putative sense at best.

Among the Kodava the notion of individual property rights seems to have taken roots from the beginning of the 19th century when the Lingayat Rajas allowed jamma property to be partitioned and/or alienated in line with the Hindu joint family law. With the advent of the British in 1834, the ideology of private property for the individual and nuclear family as opposed to joint holding by a group of kin belonging to a lineage gained ground when the new rulers, on the one hand continued the policy of the Rajas and allowed partition/alienation of jamma, and simultaneously, awarded jagirs (reward of lands for loyalty) to individuals and not to the lineages of which these individuals were members of. Subsequently, during the middle of the 19th century the introduction of coffee cultivation brought in further changes as many bane areas were cleared off, along with a number of forest hill slopes, and the commercial crop of coffee, with its high returns, played a crucial role in promoting the idea of private property and individual rights. Though a sort of stability came in through the 1859 decree brought about by the British, there was to be no turning back from the process of individual acquisition of private property that was on.

There always was scope for partition and/or alienation of jamma as long as unanimity was achieved between all the adult male members of a lineage. Furthermore, the possibility of acquiring jamma property for a nuclear household, by not necessarily leaving the ancestral house, existed till 1895. Many Kodava who left the ancestral house for some reason or the other utilised this opportunity and did acquire property for self, that is for their nuclear households (Kalam 1987, 1991). This also meant that additional property could be acquired as private property (sagu) at double the assessment rate, while what was inherited as members of a lineage remained as common property (jamma) for all the members of the lineage, at half the assessment of sagu.

Along with upward economic mobility the concomitant aspect of educational advancement too has had an impact in bringing about economic diversification resulting from job opportunities and vocations away from the natal home and its environs. The net effect of economic, educational and residential mobility led to the exertion of pressure on doing away with joint land holding from which individuals residing without the ancestral house derived little or no benefit.

While the jamma property of lineages could be considered as a sort of lineage commons, claims of the members of different lineages for individual property ownership rights, however, need not be construed as a "tragedy of the commons", particularly due to the fact that a majority appears to be in favour of acquiring full rights of ownership which do not exist at the moment. As of now the question whether the emphasis is on individual ownership rights or on lineage ownership rights appears to have taken the back seat. What is of primacy is to claim the right to have rightful control over jamma property. So at present the manifest move is to convince the state to lift the ban on alienation of jamma property.

A victory of sorts was achieved by the jamma landholders when the state finally acted on the decision of the full bench of the High Court of Karnataka in Bangalore, dated 30 November 1993 (which was held in abeyance by the Karnataka government for over three years), and sent a directive to the deputy commissioner of Kodagu district on 18 December 1996,<sup>13</sup> which says:

In suppression of the Government letter .... dated 10.2.1981 ... I am directed to state that the Government is pleased to issue the following instructions:

2 ... a Full Bench of the Karnataka High Court has inter alia declared

(i) that holders of Jamma Bane lands, both privileged and unprivileged, are full owners thereof. However, they have limited privileges qua these lands, subject to the rider that once the Jamma Bane lands become alienated Bane, the holders of such alienated Bane are entitled to the rights and subject to the obligations of occupants of unalienated fully assessed lands. And they are governed by the provisions of the Karnataka Land Revenue Act, 1964;

(ii) ....

(iii) ....

(iv) that the letter of the Revenue Commissioner and Secretary to the Government of Karnataka... dated 10.12.1981, addressed to the Deputy Commissioner, Kodagu District which states that Bane Lands including Jamma Bane lands are Government lands and that the holders of such land have no proprietary rights in it are unsustainable in so far as it covers alienated Bane lands which are fully assessed to land revenue and are under cultivation.

3 What follows from the findings of the Full Bench above stated, is that a transferee of a Jamma Bane land which is under cultivation and brought in for revenue assessment is entitled to have acquisition of his rights in that land entered in the register of mutation as prescribed in Section 129 of Karnataka Land Revenue Act, 1964. If the land is under cultivation and the same is not brought in for revenue assessment then steps may be taken to bring the land for assessment.

4 Further, I am also directed to state that the rights over the tree growth in respect of alienated Jamma Bane lands are available only in respect of redeemed Jamma Bane lands.

The above notification was prompted due to a series of contempt pleas instituted in the Karnataka High Court by the jamma landholders against the state.

### Beating the Ban

The above steps on the political front have not yielded any tangible results. So it was necessary for the people to have recourse to some measures that would counter the ban imposed by the state. In the main, there have been two ways in which they have endeavoured to tackle this issue: one, by forming cooperative societies among the members of the lineage, that is, on an intra-lineage basis, and two, by selling their jamma lands. While the former practice does not in any way contravene state regulations, the latter one appears to do so.

To form a cooperative society the members of a lineage join together and demarcate the land of the lineage into different portions or segments according to fertility and yield, and bid the portions for varying amount of money for cultivating those portions for a year or more. A portion of the jamma land, *karvo*

*bhumi* (land for the ancestors), is kept apart for common use. Produce from the *karvo bhumi*, which comes directly under the supervision of the *karvokara*, the oldest male member inhabiting the ancestral house, is utilised on occasions like marriages, deaths, naming ceremonies, and meetings of the lineage, when all members of the lineage are expected to congregate in the ancestral house. The process of going in for bids for the different portions of the ancestral land by the members of a lineage is repeated on the expiry of the lease. Such cooperative societies, in fact, have existed in Kodagu for quite some time and have not necessarily come up as a result of the ban on land alienation. In some cases cooperative societies were formed as there was no unanimity between the members of a lineage as regards alienation of jamma, and members who lived away from the ancestral house wanted returns from their ancestral land.

The second method that is adopted as a counter to the ban on alienation is sale of the jamma property to another lineage/individual/interested buyer. The use of the term sale is valid only partially, and in a limited sense. It is sale in terms of the seller getting an economic compensation from the buyer. But it is an incomplete transaction as it cannot be registered with the state authorities nor can a sale deed be obtained. What is interesting, however, is the invocation of a traditional practice for such a transaction.

The Kodava take all important decisions concerning the lineage and its members in the ancestral house under the *tuk boluch*, the lamp in the central hall that hangs from the ceiling and is lit in the morning and in the evening. According to tradition all important decisions and agreements among Kodava take place with the lamp in the central hall as the witness; in lieu of a written agreement the event witnessed by the lamp is considered absolutely binding on the parties involved. Ideally all adult men of the lineage visit the ancestral house and participate in the decision-making which has the significance of a ritual. For the transaction of land the members of the two transacting lineages meet in the ancestral house of the seller and enter the transaction on a judicial stamp paper in the presence of witnesses from both sides.<sup>14</sup> That is all there is to the contract of sale of the land. It is based on mutual trust.

Such contracts, needless to emphasise, have no legal validity and cannot be enforced through the court of law if the seller, for some reason, goes back on the sale, retracts the transaction and reclaims the land. The most important factor, however, is

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the fact that traditionally such decisions have been binding on those who take an oath under the lamp and any violation of its sanctity would invite the wrath of their ancestors, and miseries would befall the violators. A traditional mechanism is being utilised by the Kodava to combat and overcome the constraint that the modern state has placed on them as regards the sale of their ancestral land.

A variation that occurs in such transactions is that instead of an outright sale the parties involved go in for a lease lasting 90 to 99 years.

As a minority group, there is a strong feeling of identity as Kodava, and a sense of belonging to a particular lineage. This is also evident from the existence of well-knit Kodava *samajas*, Kodava associations, all over the district of Kodagu, the state of Karnataka, various cities in India, and also in North America. The political movements among Kodava during the last few decades have strengthened not only their resolve but have also contributed to their awareness as a distinct community.

Though we often assume, or may actually demonstrate, how a wealthy person, or a group of people or a community for that matter, translates his/its economic resource into political power or clout, the Kodava seem to be an exception. However, the economic power that the Kodava would derive from the right to individual property would be more in the way of promoting their quality of life (like having a big house and a car) and well-being, and to invest the economic resource in education and skills. The latter aspect is quite evident from the number of Kodava children sent to expensive private schools and colleges in different parts of India.<sup>15</sup> So while wealth is not directly converted into political power it is spread and spent over what are perceived as prestigious traits by the community. Owning a coffee plantation and paddy land are status symbols among Kodava and those who have money would invest in these rather than in other ventures. For instance, we have very few instances of wealthy Kodava investing in, say, the hotel business or grocery or textile shops to begin with. The investment pattern has been to go in first into plantations/orchards and paddy cultivation, and then to branch off (or diversify) to other businesses after having tasted a degree of success in their traditional occupations.

Education has, no doubt, played a significant role in shaping the ideology and world view of the Kodava as regards property, ownership of assets, and individual economic holdings and rights. As mentioned above, the rate of literacy among Kodava is almost cent per cent.

### Conclusions

The decision of the Karnataka High Court will, in the main, enable only one particular category of land, alienated bane and which is under cultivation, to be affected to some degree. And if such land had already been alienated then the state has to recognise it.

Though it is not always possible to predict how things would have progressed if there were to be no intervention from the state, there appear to be built-in safeguards which

could have seen to it that fragmentation of the jamma lands would not occur to any great degree. The convention that exists among lineages whereby consent of all adult male members (coparceners) is required before the pattedar could initiate sale proceedings is one such safeguard. Veto by a single member would bring the attempted sale process to a halt. In fact, in many cases during the 1970s lack of unanimity between the members of a lineage did prevent alienation.

Second, the permission to sell off jamma had to be obtained from the revenue department. Though a mere formality, it was, nevertheless, mandatory. Another safeguard played the role of an active deterrent: the payment, by the seller, of 20% of the sale amount of the jamma property as *nazarana* to the state. Though in spite of the above, sale of jamma land did take place, these do seem to have reduced the incidence of sale. And from the point of view of the buyer the land did not remain jamma but was converted to *sagu* and attracted double the assessment.

However, when we look at the situation that presently obtains in Kodagu, it does seem certain that what led to the ban on alienation of jamma was due to attempts made by certain lineages to alienate their property. The state stepped in to prevent the tagging of the bane lands along with the jamma, and thus reversed the erstwhile situation. As a result there was controversy whether bane could be separated from jamma. Those who owned jamma thought the two were integral parts of each other and if and when jamma was sold bane went along with it. The negation of this claim of the people by the state and the latter's insistence that if jamma were to be sold now then the bane would revert to the state led to the impasse.

In actuality many Kodava lineages may not go in for the alienation of their jamma land but the existence of the ban seems to motivate them to agitate against it and to ask for the lifting of the embargo. The embargo affects them psychologically, besides doing so in other ways too. The feeling that the right that they should enjoy as rightful owners has been taken away from them has an effect on their psyche. While they had the freedom to alienate the jamma property, not many exercised the right; but now the ban seems to have strengthened their resolve to do so. Inadvertently, the ban may have even spurred the people to think of alienation of their lands. So if the argument of the state is that it is working towards the protection of the tradition of the people, that is, their customary rights are being protected, then this step may end up in doing exactly the opposite of what was desired. Going against the wishes of a people may lead to a situation where unintended consequences may manifest themselves much more prominently than what was intended. The people themselves are not inclined to hold on to, or abide by, their own customary laws any more, and would like to have parity with others who are governed by the Hindu joint family law wherein an adult male can claim his share from the ancestral property and go in for partition of the same.



## NOTES

- 1 Kodagu, meaning steepness, was anglicised to Coorg by the British but was reverted to Kodagu after the Independence of India.
- 2 Kodavas too was anglicised to Coorgs.
- 3 This aspect has not received the attention it deserves from historians and social scientists; for that matter the whole of Kodagu district itself has been a relatively neglected area, in terms of social science research, as is evident from the lack of historical as also social and economic studies.
- 4 Some other communities besides the Kodava were also eligible for the grant of land on jamma tenure.
- 5 After the advent of the British, slavery was abolished in Coorg. The introduction of coffee cultivation by the British planters around 1854 changed the agricultural, economic and social landscape of Coorg.
- 6 "[In a *ryotwari* system] Government deals with an individual, who is assumed to be acting on his own account and not to be a middle man. Accordingly a *ryot* who has acquired possession of land is allowed to retain it as long as he pays the Government dues. Even when he becomes defaulter only such portion of his land is sold as is sufficient to cover the amount due" (quote from Indian Law Reports Karnataka Series 1993: 2967).
- 7 Once alienated jamma land loses its privileged tenure and becomes sagu.
- 8 In an Additional Special Appeal Suit (No 117) of 1858-59.
- 9 Individuals are free to treat and deal with sagu tenure as they please; there are no restrictions as regards partition or alienation of sagu lands.
- 10 Letter written by the revenue commissioner and secretary to the Government of Karnataka, revenue department, Bangalore, to the deputy

commissioner, Kodagu district, dated 10 December 1981.

- 11 It is another matter whether the Kodava are Hindus. For a detailed discussion on this see Kalam (1988).
- 12 Women do not have a share in the ancestral property, jamma, either in their father's or in their husband's lineage. But they do so in the sagu property that is acquired by individuals. However, in reality, hardly any woman actually claims a share. So the fact of not being a beneficiary in the ancestral property does not, and has not, bothered them (the women) at all. The women I interviewed, even those with undergraduate and postgraduate degrees, were least concerned about it. The general rhetoric that emerged was that if they claimed a share from their father's lineage then the women who out married from the lineages they married into would do likewise; it would all even out and get balanced. Hence there was no point in doing so. Moreover, parents do spend a lot in marrying them and giving them gifts and household items at the time of marriage. Any further claims would lead to conflict and bad blood particularly between the women and their brothers.
- 13 Letter written by the undersecretary to the Government of Karnataka, revenue department, to the deputy commissioner, Kodagu district, Madikeri, dated 18 December 1996.
- 14 The Kodava have the institution of the *aruva*, friends of the lineage, who stand by one and the other lineage on occasions like marriage, death, and other rituals, including decisions of this sort.
- 15 There is, however, a bias in favour of male children here. In most local schools girls outnumber boys because the boys have the first preference in going to expensive private schools. Not all parents can afford (or sometimes think it worthwhile) to send both their sons and daughters to private schools.

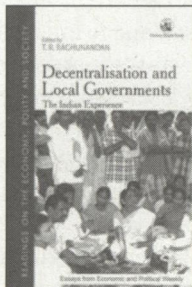
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## Decentralisation and Local Governments

Edited by

T R RAGHUNANDAN



The idea of devolving power to local governments was part of the larger political debate during the Indian national movement. With strong advocates for it, like Gandhi, it resulted in constitutional changes and policy decisions in the decades following Independence, to make governance more accountable to and accessible for the common man.

The introduction discusses the milestones in the evolution of local governments post-Independence, while providing an overview of the panchayat system, its evolution and its powers under the British, and the stand of various leaders of the Indian national movement on decentralisation.

This volume discusses the constitutional amendments that gave autonomy to institutions of local governance, both rural and urban, along with the various facets of establishing and strengthening these local self-governments.

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