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Land Tenure and Taxation in Nepal

VOLUME II

The Land Grant System: Birta Tenure

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PREFACE

Since economic development in democratic societies is essentially a process of evolutionary reconstruction, an adequate understanding of existing social and economic systems and institutions is the sine qua non for the formulation and implementation of realistic policies. Particularly in the field of land and agriculture, where the preponderance of the subjective element provides considerable latitude for a conservative and tradition-bound outlook to stand in the way of progress, the importance of studies on the origin and nature of the existing land tenure, taxation, and agrarian systems should not be underrated.

The present series of studies on the land tenure and taxation systems of Nepal is intended to provide an analysis of the legal and administrative framework within which these systems have evolved to their present form. Prior to 1951, research in almost all aspects of Nepali national life was strictly discouraged and obstructed by the Rana regime. The first description of Nepal's land system in the hill districts was published only after the overthrow of Rana rule. In recent years there have appeared several newspaper articles and pamphlets, mostly in the Nepali language, on various aspects of the land system. But the generally non-scholarly approach and the lack of empirical research have invariably affected their quality. These studies, it may be hoped, will fill a serious gap in our knowledge of contemporary Nepali society.

At the same time, since this is the first study of this type on Nepal's land system, the emphasis has been placed upon the definition of terms and a description of the system. This has been all the more necessary because Nepal's land system presents a motley pattern in almost all aspects. Prolonged isolation from the rest of the world, freedom from external domination, and the conservative character of its autocratic governments have helped to preserve in more or less primitive forms tenure and revenue systems not only dating back to various periods in Nepal's history, but also brought in by successive waves of immigrants from neighboring countries. Consequently, it is hoped that the compilation of an outline of the land tenure and taxation systems with basic definitions and classifications will provide the starting point for more sophisticated analysis and interpretation in the future.

The basic system of land tenure in Nepal is Raikar, which may be defined as a form of State landlordism. This form of land tenure provides the Government with the major portion of its land revenues; hence, recent land policies have aimed at converting most other tenure forms into the Raikar pattern,

which therefore possesses crucial significance in any study of land tenure and taxation in Nepal. An analysis of forms of taxable land, problems of classification and gradation of agricultural land, the basis of tax assessment, the nature of agricultural land taxes and their incidence in different areas of the country, and the systems and administrative machinery that have been created to collect these taxes, constituted the subject matter of the first volume of this study.

The present volume deals with the Birta system, which, in Nepal, is a system of land assignments on more or less a free-holding basis. An attempt has been made to demonstrate that this system is not of independent growth, but has been derived from the Raikar system. Under the Birta system, free-hold rights emerge not from customary occupation but from statutory grants. A system of classification of the numerous forms in which the Birta tenure has developed through the centuries has been devised, and the social, political, and economic factors that formed the background for the vicissitudes that it underwent have been discussed in detail. In addition, the impact that this system had on the peasant, the emergence of a tax system on Birta land and the administrative problems that followed in its wake, are also discussed in this volume. The concluding chapters deal with the measures taken since 1959 to abolish the system, the factors that contributed to this decision, and the progress made to date in the implementation of the abolition program.

The third volume will deal with the Rakam, Jagir, and Kipat systems, while the fourth volume will consider Guthi tenure. Rakam and Jagir tenures emerged as a result of land assignments made in consideration of the rendering of miscellaneous manual services to the Government and of service in the administration and the army. The Kipat system is a form of communal land tenure prevalent in the eastern, and several of the western, hill districts of Nepal. Unlike Raikar, this form of land tenure derives its origin from customary and traditional occupation of the land. Local autonomy in the Pallo-kirat area, of which the Kipat system forms one aspect, will also be discussed in this volume. Guthi tenure is the consequence of land grants made on a permanent and irrevocable basis to finance religious and charitable institutions. Because of religious susceptibilities, no action has been initiated as yet to abolish or even modify this form of land tenure, which nevertheless presents baffling problems in the context of fiscal and agrarian reform. Finally, some general conclusions regarding the impact of recent land reform measures on the land tenure and taxation systems as a whole will form the concluding part of the fourth volume.

In all four volumes, efforts have been made to discuss the different land tenure forms, not only as they exist at present, but also to trace their historical growth, in order to impart a balanced perspective to the evolution of the agrarian system of Nepal as a whole. Moreover, since Nepal's history--social, economic, or political--is still in the process of reconstruction, this approach may also provide insights into the history of a limited but highly significant aspect of national life.

The unprecedented character of these studies, as well as the limitation of their scope essentially to the legal and administrative framework of the land tenure and taxation systems, have perforce resulted in dependence upon official legislation, regulations, orders, notifications and reports, for basic information. Most of such materials are unpublished and have, therefore, never been available for research purposes. The Muluki Ain (Legal Code) has, of course, been available in published form, but orders, regulations, and notifications applicable to particular government offices in specific areas or situations have never been published. According to Nepal's legal system, these have overriding effect on the provisions of the Muluki Ain. Generalizations based on a study of the Muluki Ain will therefore be hopelessly out of place in many respects. Indeed, it would be very surprising if a country with such a diversity of social and economic conditions as Nepal could ever have been administered on the basis of the general body of legislation such as that provided by the Muluki Ain.

A National Archives is still in the process of formation in Nepal. Each department is still responsible for the maintenance of its own records. Permission was obtained from the Ministry of Law to utilize its records at the Central Secretariat, and from the Ministry of Finance for the records maintained by the Lagat Phant (Land Records Office), at Dilli Bazaar, Kathmandu.

Records at the Ministry of Law start from 1908. In addition to official orders on routine land revenue matters, they include notifications in this field of administration as well as district survey and revenue regulations. The survey regulations belong to different periods, but the revenue regulations are all dated 1934, the year they were remodeled for each district.

Records available at the Lagat Phant (Land Records Office) date back to King Prithvi Narayan Shah's regime, and in some cases even prior to his conquest of Kathmandu in 1769. In addition to materials on the land system, a large number of documents are also available at this office on administrative problems in several fields. Materials utilized from this office

include Birta, Guthi, and other land grants, administrative and revenue regulations mostly promulgated during the eighteenth and nineteenth centuries, tax assessment registers for Raikar and Pota Birta lands in Kathmandu Valley and the hill districts, and Birta records compiled between 1895 and 1904 in Kathmandu Valley.

In addition, tax assessment registers for several districts in the Terai were perused at the Kumarichok (Audit Office), Birta grants of various categories at the Birta Khareji Bandobast Adda (Birta Abolition Office), and recent survey regulations and assessments at the Department of Survey. Considerable information about tax-assessments and land tax collection problems was obtained from the Kathmandu, Bhaktapur, Kirtipur, and Lalitpur Revenue Offices.

My grateful thanks are due to the Ministries of Law and Finance for permission to use these records, and to the officers and other employees of all these offices for their ready cooperation and assistance.

While primary sources of the type enumerated above would appear to be unimpeachable, chronology has presented a rather difficult problem. Because of unsystematic and haphazard storage of documents, which must have led to the irrecoverable destruction of many of them, it has not been possible to ascertain how complete the information presented in these volumes is. There can never be any certainty that orders promulgated half a century or even one decade ago were not subsequently repealed or amended. The policy generally followed in respect to such materials has been to treat them as currently effective unless there exists concrete evidence to the contrary. Since it is possible that documents relating to such subsequent measures were unavailable in some cases, further research may of course supplement the information contained herein. The authenticity of whatever information has been provided, is, of course, indisputable.

It is indeed embarrassing to claim the exclusive authorship of what after all is in large measure a product of the cooperation of several people. To Mr. Shankarman Amatya, former Judge of the Kabhrepalanchok District Court, and Mr. Bhaktalal Shrestha, former Chief Officer of the Okhaldhunga Revenue Office, I am highly indebted for their valuable assistance in selecting, copying, and interpreting immense volumes of materials. I must also thank Dr. Frank Moore, who first instilled in me interest and enthusiasm for the study of Nepal's land system.

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Mahesh C. Regmi.

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CHAPTER I

The Origin and Evolution of the Birta System

In underdeveloped countries in which agriculture is the principal basis of subsistence, it is inevitable that the predominant importance of land as a form of property and a source of income should have been the principal criteria influencing the character and content of the land tenure system. Socio-religious institutions, reflecting the hierarchical stratification of the community, have fundamentally conditioned the pattern of land ownership and the tenure of rights in the land. Within such societies are found groups which, by virtue of religious tradition or their social and political function, cannot participate in general economic pursuits and must be maintained at the expense of the agrarian classes. In these circumstances, land is considered to be not only the most stable source of income, and thus the most desirable form of property, but also the symbol of high social and economic status. Such conditions subsist in Nepal where divestiture of the ownership of land by the State, primarily through the Birta system, in favor of priests, religious teachers, soldiers and members of the nobility and royal family, was the pivot on which rested the social and political framework of the State.

Socio-Economic Factors and the Origin of the Birta System

The emergence of the Birta system should not, therefore, be regarded as the result of social and economic factors peculiar to Nepal. Indeed, a study of the land tenure systems in countries such as India reveals that at one time the State granted lands free of rents and taxes to those whose services were required in the village, such as those who conducted religious ceremonies, teachers, priests, and men of learning.¹ Land grants for maintenance, appreciation or remuneration, created for reasons of political expediency or exigencies of administration, were also characteristic features of the Indian land system.² Similar systems of land tenure existed even as far away as Syria. The Mulk, Emiri and Wakf land tenures of that country appear to be more or less similar to the Birta, Raikar and Guthi systems of land tenure in Nepal.³ And while prior to the latter quarter of the eighteenth century Nepal was divided into a congerie of more than sixty petty principalities, the ubiquity of the Birta system was conspicuous, for it existed in more or less similar forms in such widely separated areas as Morang in the eastern Terai, Jumla in the northwestern hill area and Kathmandu Valley. A common religious, cultural, and economic background contributed to a similarity of land tenure forms in the midst of political diversity.

The term Birta appears to have been derived from the Sanskrit word Vritti, meaning livelihood. Birta meant an assignment of income by the State in favor of individuals in order to provide them with a livelihood. In fact, several old grants used the original term Vritti instead of the more recent Birta.⁴

Originally the Birta system probably meant an assignment of income in any form. For example, in 1797, when resolving a dispute between two rival groups of scavengers of the Poda community in Kathmandu, King Rana Bahadur Shah (1778-1799) demarcated the areas where each group should serve high caste people, and assigned such areas to them as Birta.⁵ Assignments of the proceeds of judicial fines were also sometimes called Birta.⁶ The term was thus used even when no question of land was involved. However, since in a primarily agricultural country land constitutes the most important form of income and property, the gradual narrowing down of the use of the term to mean land grants was a natural development. The Birta system thus evolved eventually as a form of land tenure, owing its origin to the divestiture of ownership in the land by the State in favor of individuals, since State ownership of the land has traditionally been the basic land tenure form (Raikar) in Nepal. Under the system, the State granted land to individuals to enable them to make a living on the rents and revenues accruing therefrom. Individual ownership of the land, conditional or otherwise, which the Birta system implied in Nepal, did not, therefore, constitute an original right but was the result of a specific grant by the State. Mere possession, in the absence of documentary evidence of a grant, did not, except under certain specified circumstances, entitle the owner to retain the land as Birta.

Birta has sometimes been defined as "an assessment of land revenue to the Birta land holder."⁷ This definition would apply in those instances where Birta grants specified the revenue which the Government was deriving from the land at the time of its assignment, or the income allotted to the beneficiary therefrom. For example, in one case in Baitadi the Birta owner was permitted to appropriate only Rs 262.38 out of a total revenue of Rs 279.09 and was under obligation to hand over the balance to the local Mal (Revenue) Office.⁸ In another case, where 238 bighas* of cultivated land fetching a total revenue of Rs 2,380.50 were granted as Birta, the recipient was under obligation to pay to the Government a tax of Rs 4.50 per bigha as well as the proceeds of certain other levies, which left him a balance of Rs 1,284.50 only.⁹ There were also cases in which Birta lands yielding specified amounts of revenue were assigned in lieu of allowances to members of the royal family and others.¹⁰ But, in spite of the fact that such Birta grants specified the revenue, in a large number of cases this referred

* One bigha is equal to 1.6 acres.

only to the revenue accruing to the State at the time of the grant and in no way implied that the recipient was not entitled to exact rents or increased revenues. Frequently rents were exacted even when the grant specified the revenue on the land. Had the rights of the recipient been limited to the revenue assigned in the grant, the question of rent payments would never have arisen. Thus the reference in the grant to the revenue was often only a statement of the existing situation and is not to be interpreted as a limitation on the ownership rights of the recipient. However, any definition of the Birta system would be too narrow if it took into consideration only such revenue assignments. There were also in existence numerous Birta grants which entitled the beneficiaries to rents. In addition, there were a large number of cases in which Birta lands were cultivated or utilized personally by the recipients.

The Concept of Birta Ownership

The distinction between Birta grants which entitled the recipients to rentier rights as well as to rights of personal cultivation and those which merely constituted assignments of revenue has in recent legislation been interpreted as the criterion for determining the existence of proprietary rights in the land. For example, the 1959 Finance Act prescribed that beneficiaries of revenue assignments were not to be regarded as proprietors of the land itself.¹¹ Nevertheless, even when Birta grants appeared to be merely assignments of revenue, the rights given by law to the Birta owner to resume the land under certain conditions testify to the existence of ownership rights over the land.¹² Had such Birta grants not implied ownership rights, the right of the Birta owner to resume land for personal use in this way would have been out of the question. In fact, restrictions on the amount of income which the Birta owner could derive from the land should be interpreted as control over rents rather than as a limitation upon ownership rights, since a measure which is enforced with the objective of regulating rents should not be interpreted as constituting a limitation upon ownership rights. In conditions where tenancy rights are secure, land-ownership is naturally limited to rentier rights and statutory regulation of such rights can hardly be construed as an infringement of land-ownership.

Moreover, even when Birta grants involved no more than an assignment of revenue, Birta owners were permitted under specified circumstances not only to increase their revenues but also to evict their tenants. Such rights are precisely those that ownership in the land implies.

Even if it is assumed that ownership rights are not vested in Birta owners under revenue assignments, we are confronted with

the question: On whom does ownership lie then? Ownership is definitely not vested in the tenants (Raiti) who, according to the Muluki Ain (Legal Code), are not permitted to alienate the land itself (Farse) but only to transfer (Rajinama) "whatever rights they possess" in the land which is "cultivated" by them, in the same way as tenants on Raikar land are permitted to transfer their occupancy rights. Such alienation, according to existing legislation, can in no way affect the rights of the owner (Dhani) who alone is permitted to alienate his ownership rights in the land.¹³ It is therefore absurd to imply, as has been done in some recent legislation, that beneficiaries of Birta grants in the form of revenue assignments do not possess ownership rights in the land.

Birta Privileges

Even though the Birta system in the course of time evolved primarily in relation to the land, the rights of the Birta owner were not limited to the collection of rents or revenues on the land. A large number of Birta grants also assigned to the recipient the proceeds of part or all of the thirty-six taxes (Rakams) that were the constituents of Nepal's traditional public finance system, and most of which had no relation whatsoever to the land. For example, in the case of certain categories of Birta grants in the Terai all levies and monopoly revenues within the area mentioned in the grant were included therein, in addition to agricultural rents or revenues.¹⁴ A Birta grant made by King Surendra (1847-1881) to Prime Minister Jang Bahadur (the founder of the Rana family regime) in 1860 assigned, in addition to the land tax, such revenues as customs duties, forest revenues, pasturage tax, taxes on hemp, market taxes, judicial fines, and escheat property.¹⁵

Two other sources of income for the Birta holders were the monopoly export duties on hides and skins and revenues from the sale of liquor. According to the regulations, Mal Offices (Revenue) in the districts were required to include Birta lands in the administration of monopoly contracts in these categories. The contract revenues were collected by the Mal Offices and then transmitted to the concerned Birta owners,¹⁶ who were prohibited from exporting hides from their area except through the monopolist on Raikar land.¹⁷ Such administrative arrangements not only ensured a large area of operation for the monopolist appointed by the Government, but also provided the Birta holders with additional income without any exertion of their own.

Birta ownership also included the right to use the forest resources thereon subject to certain governmental restrictions. The Government could declare forests on any Birta land as a protected area, in which case the Birta owner could use only the dead timber. Forests in the Mahabharat mountains, as well as those

inhabited by elephants and rhinoceroses, were similarly prohibited. In the absence of any such restrictions in Kathmandu Valley and the hill districts, the Birta owner was entitled to use timber from forests, provided it did not come under the classified categories of Sal, pine, magnolia and walnut. In the Terai, on the other hand, permission from the Government was required to utilize forest resources, and this was generally given on the condition that the Birta owner should appropriate only half of the net proceeds of the sale of timber, the other half accruing to the Government.¹⁸

In addition, Birta owners were entitled to exact unpaid labor from the people inhabiting the area mentioned in their grant. The right of the Government to exact unpaid labor (Jhara, Beth,* Begar) from the people was a recognized institution in Nepal from ancient times. Although this right was legally the preserve of the Government, government officials and other influential persons appear to have succumbed to the temptation of using this practice for their own requirements. As early as 1794, we find the Government directing that unpaid portage and other services should be provided for governmental requirements only.¹⁹ However, there is little evidence to show that such orders were enforced effectively, and, indeed, when the Government assigned land grants in the form of Birta the right to exact unpaid services from the tenants inhabiting such land was included in the assignment. The majority of Birta grants were "exempt from all taxes," including the obligation to provide unpaid labor to the State, so that all these perquisites devolved on the Birta owner as a consequence of the grant. For example, in 1861 King Surendra made a Birta grant which included an assignment of the right to exact unpaid labor.²⁰ In a Birta grant made by King Girban (1799-1816) in 1806 all classes of tenants in the concerned area were specifically included in the assignment.²¹ Although there were occasional exceptions in which the Government reserved the right to exact Jhara for its own use, the general principle appears to have been that a Birta grant entitled the recipient to exploit unpaid services of various kinds from the people living in the area covered by the grant. The Muluki Ain (Legal Code) provided that:

Tenants and care takers on both Khet and Pakho land, (irrespective of the form of tenure), shall not be forced to provide unpaid labor, except such as is permitted by law and regulations, in the absence of documents requiring them to provide field labor or portage services.²²

* Beth or Bethi, both of which are obviously corrupt forms of the Sanskrit term Vishti (unpaid labor), appears to correspond to the South Indian Vetti. Cf. Kishori Mohan Gupta: The Land System in South India, Lahore: Moti Lal Benarasi Dass, 1933. p. 171.

Since the majority of Birta grants specifically permitted the beneficiary to exact unpaid labor, such legislation amply safeguarded this right.

Birta owners also possessed judicial authority over the area covered by the concerned grant in cases other than those involving capital punishment, life imprisonment, shaving of the head, branding for degradation of caste or loss of caste (Panchakhat). In general, Birta owners were not permitted to adjudicate in cases relating to the felling of timber in prohibited forests, poaching, rape, and caste offences, or those concerning their relatives or filed by themselves against local officials. They could adjudicate only in cases involving a maximum amount of Rs 100.00 with a maximum fine of Rs 25.00 and did not enjoy the power to imprison, though they could seek to effect compromise settlements in cases involving larger sums. They were also entitled to appropriate any fines levied in connection with the exercise of their judicial authority, but persons dissatisfied with the judgement of the Birta owner could file a complaint in the concerned court.²³

In an age when transport and other difficulties constituted a serious impediment to the adequate expansion of the administrative system, such a practice enabled the Government to provide for the fulfilment of an elementary obligation at the local level without any financial encumbrance. On the other hand, it not only buttressed the Birta owner's influence and authority within his area, but also brought in a welcome increment to his earnings in the form of fines. Since fines imposed by the Birta owner accrued to him as personal income, the Government was assured that justice would be meted out and enforced rigorously.

But the most important privilege that Birta lands originally enjoyed was that of tax exemption. The term "mafi" (tax-exempt lands) which was used as a synonym for the term Birta,²⁴ would seem to indicate that tax exemption was regarded as an essential attribute of the Birta system.* At the same time, however, the State claimed certain payments from the Birta owner that symbolised his fealty or were of the nature of primer seizin.

The Birta system in its traditional form, therefore, had some feudalistic characteristics. Peasants worked on behalf of the Birta owners in conditions over which the Government exercised no direct control. Police and judicial functions were discharged by the Birta owners. As long as Birta owners were politically

* Probably this privilege also included exemption from the obligation to pay watercess on land irrigated through governmental projects. Royal Order to the Caretakers of Irrigation Channels in Kirtipur. Poush Sudi 15, 1853 (December, 1796).

loyal and were not excessively oppressive, the Government had no direct concern with the peasantry. Vested with the proprietorship of an estate, the Birta owners enjoyed a miscellany of conventional rights and the proceeds of numerous personal servitudes and exactions. Secure from the interference of local officials in the exercise of their rights, they owed allegiance only to the King, an allegiance occasionally manifested when a new King was crowned or the royal princesses were married, or during war and other emergencies.

Birta and the State

But lest the above analysis should create the impression that Birta ownership was almost allodial in character, it should be noted that the Government gradually assumed several substantial rights on the land it granted as Birta. The nature and extent of these rights have varied with time, generally to the advantage of the Government. However, the Government has all along retained and implemented its right to resume Birta land for treasonable activities, sometimes loosely interpreted to include attempts to overthrow the authority of a ruling political faction. Several Birta grants prescribed confiscation in case an offence was committed.²⁵ Existing legislation has retained this provision.²⁶

The gradual assertion by the State of several other rights on Birta land was the inevitable result of the trend toward the centralization of administrative authority which was accelerated during the Rana regime. As early as 1771 Prithvi Narayan Shah (1769-1775) exercised the sovereign right of the State to tax any form of property within its domain. By imposing taxes on certain categories of Birta lands, he altered fundamentally the tax-exempt character of the Birta system. The point will be elaborated elsewhere, but it should be noted in this context that efforts made in subsequent years to widen the ambit of the Birta taxation system constitute evidence of the gradual assertion of this right by the State over the whole of its territory.

We have noticed previously that the right of escheat was frequently assigned as part of the pattern of rights secured under the Birta system. However, subsequent legislation testifies that the right was resumed by the State, although apparently not with retroactive effect with regard to existing Birta grants. According to existing law, escheat property on Birta land in all cases accrues to the Government.²⁷

Under primitive conditions characterized by a low population density and abundance of land, it was natural that the right of eminent domain, involving the right of the State to acquire Birta lands for its own use, should not have been enforced. It

would appear that this right was first asserted during the latter part of the Rana regime and then primarily for the acquisition of lands to be used for the construction of palaces for members of the Rana family. According to regulations current at that time, the purposes for which Birta lands could be acquired by the Government included the construction of palaces and compounds for the Rana Prime Minister,²⁸ though there is evidence indicating that this facility was shared by all members of this family irrespective of status.

Along with the gradual expansion of State authority over Birta lands, a trend towards gradual State encroachment on the privileges attached to Birta ownership is also discernible, especially in the last half-century or so. During the first decade of the 20th century the Government reorganized the entire judicial system of the country and established courts at the district level. This undoubtedly contributed considerably to the gradual diminution of the judicial powers of Birta owners, since naturally the Government was considered to be a more impartial dispenser of justice than the Birta owner. The practice of sending out officers on tours of inspection (Doudaha) throughout the country also tended to undermine the importance of the Birta courts. In 1907, the Government for the first time enacted legislation seeking to regulate rents on Birta lands and to provide for the security of tenancy rights. Until then, there is no evidence that the Government exercised any of its police functions on Birta lands, the term being used in a wide sense to denote also the regulation of the relationship between the Birta owner and his tenant.

Private Rights on Birta Land

The Birta system, therefore, constituted a limited divestiture of the State's rights in the land, and the conferment of well-defined privileges to the recipient vis-a-vis the State. Although the extent of the State's assertion of its paramount rights in Birta land has varied from time to time, the rights of the Birta owner in general to possess, occupy, hold, transfer, mortgage, subdivide, and bequeath Birta lands have seldom been denied. Even when the grants were valid only during the lifetime of the recipients, restrictions were confined to transferability and inheritability, and only rarely to the manner of use.

One of the several private rights attached to Birta ownership, the right to bequeath, has been one of the major factors contributing to the emergence of the Guthi system under which lands were assigned for institutional use with religious and philanthropic motives. Birta lands were voluntarily converted into Guthi, with or without governmental sanction, not only to

satisfy the religious propensities of the owners, but also to safeguard this form of property from the encroachments of the State or the irresponsibility of heirs under the sacrosanctity which the Guthi system has usually enjoyed in Nepal. In view of the religious susceptibilities involved, at no time does the Government appear to have imposed restrictions on such conversion. But since such bequests were often limited to a negligible fraction of the income from the concerned land, the conversion of Birta into Guthi did not significantly alter the basic character of private rights pertaining to the use of the land, other than imposing some restrictions on the right to transfer the property designed to ensure the continuance of the Guthi function. Such bequests have been widely prevalent among members of the Newar community in Kathmandu Valley in particular.

Restrictions pertaining to transferability and inheritability were inevitable in the case of certain categories of Birta land which were granted to the recipient only during his lifetime. However, in the case of other categories of Birta grants which were usually regarded as both transferable and inheritable, restrictions with regard to inheritability, transferability, and even subdivisibility appear to have been made often. For example, while grants of Birta lands made to Brahmins for religious purposes created estates which were virtually unconditional one such grant made by King Rajendra Bir Bikram prescribed:

Let not us or our successors take steps to confiscate these lands. No noble, government official or local authority shall impose any taxes thereon. . . . None of your descendants shall sell or mortgage these lands. In case you die childless, all land except such as you give away as Birta to Brahmins shall remain under the control of the Government and none of your co-parceners shall have any claim thereto.²⁹

Similarly, in one case in 1938 Birta land granted to a well-known litterateur in Kathmandu in appreciation of his literary contributions was not subject to subdivision among his co-parceners.³⁰ In another case in 1907, the Brahmin husband of a girl who had been bestowed in marriage by the Queen-mother received a grant of Birta land on condition that it should be inherited by the children born of this woman and that any step-sons should have no claim thereto.³¹ Since Birta grants in such cases were meant as a mark of personal favor, such provisions eliminated the obligation to subdivide the property thus acquired as prescribed by current property and inheritance laws.

In some exceptional cases restrictions on the private use of Birta lands were imposed in order to ensure the free use of

public thoroughfares and pastures for the benefit of the community. A grant of Birta land at Lele in Lalitpur district in 1938 prohibited the recipient from reclaiming public paths and meadows included thereon and obligated him to maintain them intact.³² Occasionally Birta grants appear to have been made for specific purposes, with the result that the rights of the recipient to use them for other purposes were restricted. Such purposes were in the main religious in character and were intended to enable the recipients to establish Guthis. Not infrequently grants were made for other purposes as well. For example, in 1942 a member of the Muslim community in Kathmandu received a grant of Birta land for use as a cemetery for himself and his descendants.³³ However, such restrictions on the rights of private use, transfer, and inheritance of Birta lands were more the exception than the rule. In general, the rights that Birta ensured provided effective and considerable scope for the personal enrichment and social aggrandizement of the Birta owning class.

Birta Obligations

Nevertheless, there is ample evidence to substantiate the conclusion that obligations were as integral a part of the Birta system as privileges. The Birta system placed the recipients at the disposal of the State at all times under the obligation of rendering services, as and when required, without any additional consideration. For example, in one case at Palanchok in East No. 1, a Birta owning family was directed to establish and maintain a checkpoint at a local ferry without any additional emoluments.³⁴ Obviously the possession of Birta lands in itself was considered to constitute sufficient gratification for such onerous services. Of more importance was the obligation of the Birta owners to supply men and materials during war or other emergencies. Although only a few categories of Birta grants refer specifically to this obligation, available evidence indicates that it was implicit in all Birta grants. For example, during the struggle for power in 1800 between ex-King Rana Bahadur Shah, and the adherents of his infant son, King Girban, an order was issued in the latter's name under which every Birta owner of Thapagaun village was instructed to:

Bring one muri of rice for every twenty muris of land (owned by you), travelling day and night, to Nuwakot. If you do not comply with this order, you shall be considered to have committed an offence and become disloyal. Equip your porters, tenants and all persons of military castes with weapons and send them to us at Nuwakot. . . .³⁵

This obligation was manifested in a more general form during the Nepal-Tibet War of 1855-56. On the plea that existing funds in the government treasury were inadequate to meet the expenses of the war, which was being waged "to protect the Birta, Guthi, and Kipat land of the people and maintain the sword of Gorkha aloft," the government decreed that a levy amounting to one-third of all Birta, Guthi, and Kipat incomes should be collected for this purpose for three years.* Available evidence indicates that this levy was collected vigorously. Similarly, in 1882 Prime Minister Ranoddip Singh decreed that in the case of certain categories of Birta land:

If war breaks out in any year, the recipients of such Birta lands as well as persons who purchase them shall not be permitted to appropriate the income accruing therefrom, as this shall be utilized for military purposes. However, after the war is over, they may appropriate such incomes.³⁶

This meant that the cost of military operations was to be realized, indirectly at least, from the Birta owners. But there is no evidence in this case that this right was ever exercised by the Government.

Although Birta ownership involved both privileges and obligations, the former tended to outweigh the latter. Presumably the social and political power which the Birta owning class was able to wield almost throughout the course of Nepal's post-1769 history made evasion of obligations possible with impunity, while the oligarchic nature of the regime, with vested interests in the Birta system, tended to emphasize the privileges attached to it. This was particularly evident during the Rana regime, when:

With the rise of the Ranas and the shifting of the foreign policy of the country in favor of the British, a long period of military inactivity and internal tranquility ensued. The obligations, like supply of men and materials during war, fell into disuse. In addition, the larger part of the feudal nobility created by Prithvi Narayan Shah was either purged or

*Royal Order Regarding Collection of Levy on Birta and Other Land in Eastern Nepal, 1917 V.S. (1860). The author is indebted for a copy of this document to Mr. Bishnu Prasad Poudel, Research Scholar, Indian School of International Studies, New Delhi, who secured it from the Kumarichok Goshwara Tahabil Adda (Central Records Office) of His Majesty's Government.

reduced to such a state of political insignificance that it was not considered politically expedient to make use of their liabilities. A new Birta owning class came into prominence, but because it was composed for the most part of the new Rana rulers, their relatives, and their favorites, Birta ownership meant more a privilege than an obligation.³⁷

We are left to conclude, therefore, that irrespective of the obligations that Birta ownership entailed the privileges conferred were more tangible and effective. Birta ownership was valued not only for its economic benefits but also for the political power and social prestige it ensured.

With the gradual diminution of the obligations attached to the Birta system, combined with the expansion of government control and regulation over Birta ownership and the relationship between Birta owners and their tenants, a fundamental change occurred in the Birta system. From its original character as a socio-economic system resembling in some respects the feudal system as it once existed in Europe, the Birta system gradually evolved into another form of land tenure. With his police and judicial authority truncated, his power to exact rents and other payments from the peasantry and to evict them at will regulated by law, and his privilege of tax exemption undermined, the Birta owner lapsed from his traditional status approximating that of a territorial prince to that of an ordinary landowner subject to the authority of a multi-tiered and autocratic administration.

Birta Vis-a-vis Raikar

The nature of the evolution undergone by the Birta system may be clarified further by means of a comparative analysis of the Birta and Raikar systems of land tenure. Raikar implies State landlordism while Birta rights emerged as a result of the divestiture by the State of its ownership rights in the land in favor of individuals. In recent years the emergence of an intermediary class between the State and the cultivator has tended to obscure the essential nature of the origin of these two systems. This process has been reinforced by such factors as the commutation of tax assessments, which led to the emergence of rentier rights on Raikar land also. The distinction between these two categories of land tenure, particularly from the viewpoints of use, profitability, and transfer, has therefore tended to diminish gradually.

In its original form the Raikar system was based upon the principle that occupancy rights in the land accrue to the person who reclaims and uses it. The law ensured that land was distributed in proportion to availability among the local inhabitants, although no deduction on this account was permitted if land brought under cultivation "by the strength of one's body" exceeded this proportionate share.³⁸ Even after land had become relatively scarce and, consequently, such legislation obsolescent individual rights in Raikar land remained limited to occupancy rights, so that the occupier enjoyed security of tenure only as long as he paid his dues regularly to the State. Where dealings with the State were concerned, Raikar land had no property value as such, and even in the event of transfer it was the occupancy right only that was relinquished (Rajinama) and not the ownership itself.

In contrast, Birta represented a form of State tenure which treated land as an item of property unlimited by the requirements of personal use or the investment of "the strength of one's body." It conferred ownership rights in the land which could usually be transferred at the discretion of the owner. However, the occupancy rights that investment of "the strength of one's body" secured in the land acquired a certain value and thus became consonant with the concept of property as soon as land of certain location or production qualities became scarce. The process of the evolution of occupancy rights in Raikar land as a form of property was further buttressed when transfers therein were awarded official recognition and legal sanctity.* The result was that far from being limited to the requirements of survival or personal use, Raikar land developed as an item of property similar to Birta land. The occupancy rights that thus emerged as a form of property were as tangible as the ownership rights in Birta land, and it mattered little to the ordinary landholder whether he was disposing of his occupancy rights or the ownership of the land itself.

Another development that contributed to the tendency to diminish the distinction between Raikar and Birta lands was the emergence of rentier rights on Raikar land. At an earlier stage when the practice under which the taxes paid on Raikar land were usually in kind and, being of the nature of rents, often amounted to as much as fifty per cent of the produce, the distinction between Raikar and Birta was tangible enough. In view of the fact that the cultivator was barred from "owning" Raikar land, he was nothing more than a tenant. In contrast, Birta involved the right to appropriate the "rent" payable on the land, which

*Registration Offices were first created in Kathmandu, Palpa, Dhankuta and the Terai districts on Baisakh 1, 1979 (April 13, 1923). Muluki Ain, Part III, Registration Ko (On Registration), Section 7, p. 132.

would otherwise have gone to the State. But the growing disparity between the level of taxation and profits from Raikar land led to the emergence of intermediary interests. The chief factor responsible for this development was the commutation of tax assessments on Raikar land and the retention of the rates over long periods of time irrespective of the actual level of prices prevailing in the market.* As a consequence of this development rentier rights no longer were a characteristic only of Birta land. In either case possession implied rentier rights uninhibited by any personal obligation to render physical labor.

This point may be illustrated by means of a concrete example. At Bhaktapur in Kathmandu Valley the assessment on one ropani of Abal (Raikar) land amounted to approximately thirty pathis of grain. As long as the Government insisted on full payment of the assessment in kind, the Raikar landholder was nothing more than a tenant-cultivator. Since by definition the annual production per ropani of Abal land amounts to seventy pathis of grain, the balance left to the cultivator after taxes amounted to only forty pathis. This margin was too inadequate to support both a rentier intermediary and a cultivator; so the landholder had to remain in the latter capacity. On the other hand, if that same plot of land had been assigned as Birta, the Birta owner would have been entitled to appropriate "rent" equivalent to the thirty pathis of grain paid to the Government as tax and would probably not have cultivated the land himself. Accordingly, at this stage of development, Birta implied rentier rights while Raikar did not. But as soon as the Government commuted the assessment in kind into a cash payment at Rs 4.00 per muri, and market prices went up, the Raikar landholder made a larger profit. Since he could meet his total tax obligation, amounting to Rs 6.62, by selling less than five pathis of grain against the original assessment of thirty pathis at a market price of Rs 30.00 per muri, he could sublet the land and become a rentier. Assuming that half of the total yield, or thirty-five pathis, was left with the cultivator, the Raikar landholder could appropriate nearly thirty pathis after meeting his tax obligations with five pathis. Irrespective of the form of tenure, therefore, the rent amounted to approximately thirty pathis per ropani of Abal land.

* This argument is valid also in areas where tax assessments have been in cash. In both cases, since the total amount in cash paid as tax remained stationary, it was the cultivating class, and not the State, that benefitted from a rise in prices. The consequent loss sustained by the State in its real income constituted the profits of the cultivating class, which it used to create an intermediary class either by selling the right to appropriate the additional income or by subletting the land.

Land Acquisition Procedure

Perhaps the position of Birta vis-a-vis Raikar as a form of private property can best be exemplified by the procedures of land acquisition for these two categories of land tenure. According to law no compensation was necessary if Raikar land was acquired for governmental purposes. Provision was made for compensating only buildings and other fixtures on the land.³⁹ On the other hand, while Birta land could also be appropriated even without the consent of the owner, in such cases compensation had to be paid amounting to the value of the land, or other land of equal value had to be given in exchange. When compensation was paid in the form of cash, the regulations provided for the commutation into cash, at rates prescribed in the case of tax assessments in kind on Raikar land for purposes of collection, of rents on the land proposed to be acquired, and payment of the capital value of the amount thus computed, calculated at four per cent in Kathmandu Valley and six per cent elsewhere, as compensation.⁴⁰ Birta land thus possessed a definite value which Raikar land lacked.*

Significance of the Birta System

To sum up, irrespective of the original character of Raikar as State landlordism and of Birta as private ownership, the interplay of economic forces in the course of time brought them sufficiently close to each other to eliminate to a significant extent the distinctive characteristics of each as regards possession, utilization, and transferability. Nevertheless, the differential advantages enjoyed by Birta lands with regard to

*It was not until 1953 that action was taken to remove this disability in the case of Raikar land. In that year, while acquiring land for a highway project, the Government decided that compensation should be paid also for Raikar land, though at a lower rate than for Birta land. See Notification of the Ministry of Land Revenue and Forests, Nepal Gazette, II-20, Poush 22, 2009 (January 6, 1953), pp. 15-16. This practice, although an individual precedent, was followed consistently until the 1961 Land Acquisition Act abolished all tenure considerations in the payment of compensation for land acquired for public purposes. See Ministry of Law, Justice and Parliamentary Affairs: Jagga Prapti Ain, 2018. (Land Acquisition Act, 1961). Nepal Gazette, XI-17 (Extraordinary), Bhadra 7, 2018 (August 23, 1961), pp. 10-21. Birta land thus lost the distinctive advantage which it possessed over Raikar land in the matter of compensation, for, as a result of the 1959 Birta Abolition, the Birta system was no longer legally in existence in 1961.

land taxation and the sentimental attachment to "ownership" of land contributed to higher values for Birta land. In addition, Birta also enjoyed a comparative advantage in that it guaranteed a definite rate of compensation in the event of Governmental acquisition.

Moreover, while a few categories of Birta grants were subject to taxation, the Government was usually careful to ensure that the level of taxation on Birta land was lower than that on Raikar land. Birta was therefore characterized by exemption, partial or complete, from the normal taxation on Raikar land. One argument for having separate tax rates for certain taxable categories of Birta land in Kathmandu Valley and the hill districts was that if the rates prevailing in the former area were applied elsewhere, they would approximate the tax assessments prevailing on Raikar land.⁴¹ Exemption, even if partial, was therefore considered to be one of the several privileges attached to Birta land. Since this also meant a higher income on Birta land as compared to similar categories of Raikar land, higher land values for Birta land were inevitable.

The attachment to "ownership" of Birta land was not a mere sentiment. We have noted above how such ownership protected the Birta owner from arbitrary eviction and inadequate compensation in the event of governmental acquisition. In addition, Birta ownership also implied security from assignments. According to law Raikar land was liable to be assigned as Birta, Rakam, or Jagir,⁴² but Birta land suffered no such liability. We have noted previously that, in the event of assignment, the Raikar landholder was denied the privilege of having his tax assessments commuted into cash at favorable rates.

Birta was therefore regarded as a form of private property in land which had a clearly defined value and right vis-a-vis the State and ensured a stable and secure income. It meant land which people could call their own and therefore symbolized wealth and, more important, social status. In contradistinction, Raikar provided neither security nor property rights in the real sense of the term.

CHAPTER II

The Raison d'Etire of Birta Grants

Birta grants were made primarily because the State found itself obligated, because of religious, economic and political factors, to provide means of subsistence or enrichment to certain classes in the community. The religious motivation of land grants to Brahmins for instance, was one of the primary factors in the emergence of the Birta system in Nepal. In view of the importance of land in the national economy, the system was also utilized to extend the cultivated area and increase public revenues. Finally, it is hardly surprising that political considerations played a large role in shaping the Birta system, for it was used both to enrich the ruling classes and to assure them of the support of vested interests with a stake in the preservation of their authority. The relative importance of these various factors has differed from time to time according to existing social and political conditions.

Birta Grants to Brahmins

Ancient Sanskrit texts advocated tax-exempt and inheritable land grants to learned Brahmins, teachers, and priests.¹ A Birta grant made by a King of Jumla in Western Nepal as early as 1358 stated that any person who bequeathed land to Brahmins would dwell in heaven for 60,000 years, while anybody who confiscated land granted by himself or by others would become a worm living in human excrement for the same period.² Such injunctions are found in later grants also. In several cases the grants also invoked the blessings of the recipient for the spiritual well-being of the donor as well as his relatives and successors.³

Nevertheless, we can presume that Birta grants of this type were not always truly religious in intent. Evidence pointing to this conclusion would seem to be particularly strong during the Rana regime. The liberal grants bestowed on royal priests and preceptors⁴ suggest that these few selected Brahmin families were being compensated for the political support they extended to the regime. In many cases the grants bore an open tinge of favoritism, such as when they extended the special privileges on the Birta lands granted to the priestly families to lands purchased by them as well.⁵ In any case, since even religious grants were by the very nature of things limited to a restricted circle of Brahmins who thronged the palaces of the Rana rulers, the political motivations behind these grants are obvious.

Other Religious Grants

Included in the category of religious Birtas are those granted for the establishment of Guthis. In general, the Government appears to have made grants of this nature rather freely in view of the religious and philanthropic motives involved. The Legal Code contains provisions enabling anyone to approach the Government for land grants for such purposes:

Neither the Government nor any individual who desires to establish any rest house or other religious institution shall do so in a foreign country when his motherland is so holy, containing as it does the hallowed pilgrimages of Pashupatinath and Guhyeshwari . . . In case any person approaches the Prime Minister for land for the establishment of hospitals, schools, or other religious institutions, the matter shall be referred to the Government. The request may be refused, but if it is acceded to, such area of suitable waste or cultivated land as is sanctioned, shall be granted. . . .⁶

However, once again it would probably be erroneous to regard such grants as invariably altruistic, for the recipients were usually permitted by law to appropriate whatever remained after discharging the functions scheduled under the Guthi.⁷ There were cases in which, with an eye to such benefits, existing Birta lands assigned as Guthi were manipulated by the Rana rulers in favor of their relatives and favorites.⁸ Thus, even the Guthi system could be manipulated to the economic advantage of a grantee.

Extension of the Cultivated Area

Land being the most valuable natural resource in Nepal, governmental policy aimed at maximizing agricultural production and augmenting the public revenue from the land. There is evidence to indicate that the Birta system was utilized as a tool for the implementation of such policies.

In many cases Birta grants were made by the Government in order to extend the area under crops. In 1798, for example, Jimidars in Bara and Parsa districts in the Terai were granted Birta lands if they undertook to bring virgin forest land under cultivation.⁹ In 1902 arrangements were made in Sunar (Dang district) under which persons who financed land reclamation projects were entitled to one-tenth of the total area reclaimed as Birta.¹⁰ Apparently with similar objectives, regulations were

enforced around 1940 permitting any person who brought virgin land under the plough to acquire it as Birta on payment of the capital value of the yield at five per cent.¹¹ Obviously the tax exemption and other privileges which the Birta system ensured were considered to provide a sufficient inducement for the reclamation of waste or forest land.

Urbanization

In the same way, Birta lands were granted for residential purposes, presumably with the objective of encouraging settlement.¹² According to the Legal Code:

If a brick house is constructed on Raikar waste land anywhere in the Kingdom, land within the line of the roof and fifteen feet in the front shall be granted as Birta.¹³

The use of such land was strictly limited to residential purposes. If the house fell down, and the owner did not come forward within four months to build another house on the site, the land might be allotted for residential purposes to any person who was willing to construct a brick house thereon.¹⁴ A similar consideration applied to Birta grants made for the establishment of commercial centers.¹⁵ In urban areas, a majority of residential sites were under Birta tenure. For example, regulations promulgated in 1922 prescribed that at Sankhu in Kathmandu:

Birta lands, including residential sites within the urban area, need not be surveyed and taxed. However, if any person comes up of his own accord to have such land taxed, this shall be done according to existing regulations. . . .¹⁶

The objective in such cases may have been not only to encourage urbanization but also to satisfy the property instincts of people by enabling them to have their residence on land which they could retain under private ownership.

Increase in Revenue

Birta grants were also occasionally made to increase the public revenue. Prior to 1769 the Malla Kings of Kathmandu appear to have been accustomed to selling Raikar land to their

subjects as Birta. At a time when assignments covered the major portion of the cultivated area and the land tax yielded an insignificant amount to the State, this practice no doubt provided the Government with cash to meet the expenses of the administration or of the royal palace. The chieftains of the hilly principalities that existed prior to 1769 also appear to have resorted to this convenient but imprudent method of attracting money to the exchequer.¹⁷ However, even though Prithvi Narayan Shah himself is said to have sold land in one case to a Brahmin to meet military expenses,¹⁸ the Shah dynasty rulers appear to have used this procedure rarely, although during the Rana period sales of Raikar land as Birta appear to have been made in a few cases. Prime Minister Juddha Shamsher, for instance, purchased land from the Government as Birta, on payment of a royalty amounting to the capital value of the revenue on the land at an interest of four per cent.* The practice of permitting persons who reclaimed virgin soil to acquire it as Birta on payment of its value to the State, to which we have referred to above, also bears similar characteristics. Nevertheless, it should be noted that these recent examples were seldom concerned with bringing in revenue to the State.

Transactions of this type sometimes involved only a mortgage on the land, rather than outright sale by the State. Such mortgages appear to have been popular among the chieftains of the hilly principalities, particularly in Western Nepal prior to the Gorkha conquest. A few Birta grants of this category were also made by Prithvi Narayan Shah, mostly in the areas then under Gorkha's occupation before the conquest of Kathmandu Valley.¹⁹ Often these transactions involved payment in the form of gold or copper in addition to money.²⁰

Birta Grants to Chieftains and Members of Nobility

Oligarchic regimes, such as those that governed Nepal prior to 1950, have always depended on a select class for the sustenance and continuance of authority. Birta grants to members of such classes insured to them a stable income and thus left them free to indulge in war or politics in the interests of the rulers. In a society where land constituted the predominant source of income, and land ownership was synonymous with social status, the power to grant or withhold favors in the form of

* Sarbakar-Akar-Sarbangamafi Birta Grant to Prime Minister Juddha Shamsher, Chaitra 14, 1995 (March 27, 1939). But since the revenue was calculated after converting tax assessments in kind into cash at the scheduled conversion rates prevalent on Raikar land, the real value of the royalty in terms of prices current at that time was much lower.

Birta grants was of considerable significance in organizing the foundations of a new political authority and administration. Personal loyalty to the rulers was thus leavened with the prospects of material gain. In addition, the system ensured that the nobility remained loyal, for disloyalty was punishable with confiscation of property, including Birta lands. The Birta system thus constituted the bedrock of the political and administrative system introduced after the 1769 conquest. The Shah rulers without any exception made lavish Birta grants to the leading families of the nobility of the day, such as the Thapas, the Pandes, and the Basnets. According to one study,²¹

Prithvi Narayan Shah moulded the Birta system to suit his political and military requirements. He gave Birta holdings to reward his victorious generals, to placate the defeated chieftains, and in this way to create a feudal land nobility that should constitute an important prop to his newly-founded Kingdom.

Since top civil and military employees belonged to the nobility for the most part, Birta grants made to them are often indistinguishable from those made to the nobility as such. On several occasions, Birta grants were made in appreciation of assistance rendered during military campaigns. In 1773, for example, Prithvi Narayan Shah promised Birta lands to a Brahmin for the financial and other assistance the latter rendered in the military campaigns in eastern Nepal.²² In 1777 his successor, King Pratap Singh (1775-78) granted Birta lands to a military commander, Abhiman Singh Basnet, for his successful military expeditions in the same area.²³ There are numerous examples to prove that Birta grants were made by the Shah rulers to reward victorious generals and to win over or reward those who supported their newly-established authority.

In the last decades of the eighteenth century, the Shah rulers also granted Birtas to the chieftains and members of the nobility of some of the hilly principalities, mainly in Jumla, Dailekh, Doti, and Baglung districts, that were annexed in the process of the political unification of Nepal. In the majority of cases such favors were conferred because the nobility of the conquered principalities had deserted to the Gorkha side and rendered active assistance in their military campaigns.²⁴ Where the chieftains refrained from fighting to the bitter end, they often retained their principalities on an autonomous, feudatory basis. The obvious objective was to extend the overlordship of the Gorkha dynasty without at the same time alienating the support of the existing chieftains and nobility.

Birta Grants under the Rana Regime

The emergence of the Rana regime in 1846 heralded a new phase in the history of the Birta system in Nepal. The composition of the nobility underwent a fundamental change as a result of the massacres and banishments that preceded Prime Minister Jang Bahadur's rise to power. A policy of enriching this new nobility by means of liberal Birta grants in order to command their support at all levels was followed. In addition, the Rana family itself constituted an extensive class which had to be similarly enriched. The Birta system was therefore exploited lavishly to serve these twin purposes. This situation may be contrasted with that prevailing under the Shah rulers prior to the rise of Jang Bahadur when the personal enrichment of the ruling classes, as distinct from the nobility, did not feature prominently in the evolution of the Birta system. The Rana rulers pursued this policy with such vigor that by 1950 three leading Rana families owned a total of 227,105 acres, or 42.5 per cent of the total cultivated Birta land in the Terai, including the entire district of Bardiya in the western Terai.

Several factors explain why the Rana rulers were able to exploit the Birta system for their personal ends. Political power was combined with the unlimited prurience of successive incumbents who had not benefitted from their predecessor's accumulations because of the absence of a system of succession by primogeniture. Indeed, not infrequently Rana Prime Ministers were in relatively straitened circumstances on the eve of their accession. Such a situation continued uninterruptedly for over a century. Although frictions, often of a sanguinary character, were common occurrences within the Rana family itself and usually resulted in the confiscation of the Birta holdings of the victims this seldom meant that the confiscated lands went outside of the possession of the family as a whole.

During the Rana period Birta grants continued to be made in the name of the Crown, but the royal seal was used at the discretion of the Rana rulers. For example, a Birta grant made in the name of King Tribhuvan (1911-1955) to Prime Minister Juddha Shamsher (1932-1946) expressed appreciation of the numerous services rendered by him to the nation and added:

We are surprised to find that you have done so much for the nation within the short period you have been Prime Minister. . . . You have raised the glory of our nation and made the name of Nepal lustrous. . . . It is our good fortune that we have a Prime Minister like you. We thank you from the core of our heart, and bless you with a long life.²⁵

The sincerity of these expressions of gratification made in King Tribhuwan's name may be ascertained when it is remembered that two years earlier the latter had been charged with complicity in a plot against Prime Minister Juddha Shamsher who, in turn, had attempted to dethrone the King.²⁶

In addition to such personal accumulations, the Rana rulers bequeathed extensive Birta holdings to their relatives and favorites. It was but natural that a system of privilege such as Birta should have been utilized also as a mark of personal favor. The chieftains of the principalities that existed prior to the Gorkha conquest as well as the Shah rulers themselves had often made gifts of Birta land to their favorites. But the Rana rulers were both more lavish and less discriminate in their choice of favorites, which on occasion included even the ladies of their harems.*

Crown Lands

We have mentioned before that prior to 1846 the personal enrichment of the ruling classes, as distinct from the nobility, did not play a significant role in the evolution of the Birta system. At no point in Nepal's history were Crown lands of any political or economic significance, as they were in other monarchical countries such as Persia.

Originally, lands used for the maintenance of the royal household were called Sera and were administered by an official known as the Kapardar. According to regulations promulgated in the name of this official in 1803:

Whatever grains and other produce are received from Sera lands shall be stored at the royal palace and used according to need. Proceeds of the Ghiukhane²⁷ tax and of levies in the form of straw shall be utilized to make silver utensils which shall be submitted for the inspection of (His Majesty the King) and then stocked.²⁸

Sera lands were apparently acquired by the Crown at the discretion of the King. In 1798, for example, King Rana Bahadur Shah

* Cf. Pota Birta Grant to Bulbul Nani. Chaitra 1, 2001 (March 14, 1945). Even when Birta grants were made in appreciation of service, since the majority of top positions in the Government as well as the Army were monopolized by members of the Rana family, the grants tended to be restricted to a closed circle and frequently to be tinged with favoritism.

directed that a fourteen bigha orchard should be laid out for royal use in Mahottari district.²⁹ Crown lands appear to have been cultivated either by means of forced labor³⁰ or on a crop-sharing basis.³¹ While precise information with regard to the location and extent of Sera holdings of the Crown is not available, there is little evidence to indicate that they were extensive.

Probably Crown lands underwent very little accretion during the Rana regime. Any additions were subject to the pleasure of the Rana Prime Minister,³² and were acquired for public or other purposes under the orders of the Rana rulers without any obvious reference to the King.³³ Frequent bequests by Kings from out of the Sera holdings led to their depletion,³⁴ while legislation was enacted to prohibit the forcible acquisition of land for conversion into Sera.³⁵ The term Sera itself appears to have become largely obsolete. Recent Birta lands assumed by the Crown bear the same terminology as Birta grants of other categories.³⁶ In 1950 the total Crown lands in the Terai districts amounted to only 23,828 bighas, as compared to the 363,369 bighas in the possession of the families of Prime Ministers Bir Shamsher (1885-1901), Chandra Shamsher (1901-1929), and Bhim Shamsher (1929-1932).*

Exclusive Character of Birta Ownership

An analysis of the *raison d'etre* of Birta grants would therefore seem to indicate that Birta ownership was necessarily of an exclusive character. The religious, political, and other factors described above, ensured that favors bestowed by the State in the form of Birta grants were restricted to a few select classes in the community. Indeed, from the viewpoints of both religion and politics, Birta grants tended to be concentrated for the most part among Brahmins, Chhetris, and other classes of "Indo-Aryan" origin, to the exclusion of the "aboriginal" groups of "Mongoloid" origin such as Gurungs, Magars, Limbus, Tamangs, and Newars. Nepali history bears testimony to the gradual attainment of supremacy, in both religious and political fields, by the Indo-Aryan groups over the people of Mongoloid origin, culminating in the conquests of Prithvi Narayan Shah. Affairs of war and politics at the higher echelons became the virtual monopoly of the Indo-Aryan classes. In addition, "the victory of the Gorkhas completed the annexation of Nepal to Brahminic India."³⁷ Orthodox Hinduism became the State religion and Brahmins received the pride of place in the religious affairs of the Kingdom. The Indo-Aryan groups constituted the nobility under both the Shah rulers and the Ranas. Suspicious of the subdued Mongoloid

* Figures obtained from the Birta Abolition Office.

communities, the rulers tended to derive sustenance for their political authority from the Indo-Aryan groups. In consequence, they undertook responsibility for their maintenance and enrichment by means of liberal Birta grants.

A possible exception to this general rule was the Newar community centered in Kathmandu which is of mixed Indo-Aryan and Mongoloid origins. Even though denied top positions in the military or civil administration,³⁸ the Newars were nevertheless outstandingly successful in court life and in securing positions in the middle levels of the civil service, particularly during the Rana regime. Members of this community were therefore closer to the rulers than the Mongoloid communities and as a result received liberal Birta grants.

Absence of Stable Birta-owning Class

However, due primarily to the fact that the majority of Birta lands were transferable, the Birta system did not create a stable and exclusive landed aristocracy. While this facility was probably detrimental to the interests of the Birta-owning class, it was considered to be a form of privilege without which Birta ownership was not meaningful in the full sense of the term. But the exercise of this facility meant that Birta lands often went into the hands of moneyed interests who had little in common with the original recipients.*

Various methods were applied by the Government, as well as by Birta owners themselves, to prevent the transfer of Birta land

* Although among Birta owners of long standing the sale of Birta land was on the whole considered to be a discreditable operation, and was avoided as long as possible, transfers as a matter of fact were frequent. For example, in one case, a daughter of Commander in Chief Jagat Shamsher purchased a Birta holding from one Karnal Shamsher. In 1896 this was purchased from her in the name of the Crown and granted as Birta to Prime Minister Bir Shamsher, who gave it to his son, Rudra Shamsher, who, in turn, sold it to Colonel Dilli Shamsher Thapa. Thus the Birta holding changed hands four times in about two decades. (Kharidi Bakas Birta Grant to Colonel Dilli Shamsher. Chaitra 29, 1970 (April 11, 1914).

The alienation of tax-free lands granted out of pious motives to Brahmans in favor of other classes of people by means of sale was not a phenomenon confined to Nepal. For example, in Purnea district of Bihar in India, ". . . there is no necessity for lands, that have been granted for pious uses, being applied in that way; and the lands which have been granted to support a Brahman may be sold, and belong to a cobbler." Francis Buchanan: An Account of the District of Purnea in 1809-10. Patna: Bihar and Orissa Research Society, 1928, p. 448.

to "unsuitable" persons. Certain grants specified that transfers could be made only with governmental permission.³⁹ Members of the Rana families, as well as Sahebjus, Chautariyas,* and royal priests were prohibited to transfer their lands without such permission.⁴⁰ Birta owners on their part sought to forestall attempts by their successors to transfer lands by assigning them as Guthi and allocating a negligible fraction of the income therefrom for some religious or charitable purpose. That this practice was widely prevalent is indicated by the admission in the Legal Code that certain categories of Guthi assignments were motivated solely by the desire to prevent successors from alienating their land holdings.⁴¹ Nevertheless, it is doubtful that such ingenious methods were effective in conserving the land interests of a significant portion of the Birta-owning class.

In addition, as we shall elaborate later, the Birta system in Nepal underwent recurrent vicissitudes as a result of political upheavals. The emergence of a new political authority, whether Shah or Rana, was invariably accompanied by a major change in the composition of the Birta-owning class. There is evidence to indicate that few grants made by the Malla Kings, or even by the Shah Kings prior to 1846, were extant in 1950. Even those that were probably owed their continued existence to subsequent confirmation. The Ranas were apparently the only group that succeeded (as a family if not individually necessarily) in retaining their Birta interests for well over a century, primarily because of the continuity of their political authority for such a long period.

Prior to the advent of the Rana regime, Brahmins constituted a powerful Birta-owning class. Religious considerations made their Birta holdings not only fairly secure but also steadily expansive. As a result, there is evidence to indicate that this class wielded considerable political influence. It has been suggested, for example, that the downfall of Prime Minister Bhimsen Thapa in 1837 was due partly to the opposition he faced from the disgruntled Brahmins who had been dispossessed of their Birta and Guthi holdings in 1805 and had since made strenuous but abortive efforts to have them restored. It was to be expected, therefore, that from its very inception the Rana regime would seek to win over the allegiance of this class by providing for the restoration of these holdings to the Brahmins.** Orders to this effect were issued by Jang Bahadur barely three months after he became Prime Minister, with the note that "tranquility has never prevailed in the Palace" since the 1805 confiscation. Nevertheless, once the Rana regime was secure in power there is no evidence that it continued such a practice. That the Brahmin

* See Chapter VII.

** Branches of the present royal family in Nepal.

Birta-owning class remained influential on the social level was due to their wealth as well as to religious considerations, and probably also to the fact that as Birta owners their interests tended to coincide with those of the Ranas who had every reason to seek to entrench the sanctity of Birta ownership and privilege.

Anachronistic Character of the Birta System

The *raison d'être* of the Birta system was thus founded in archaic social, religious, economic, and political conditions, and preserved by governments that were unmoved by ideals of equality and the welfare of the common man. Outdated ideas of religion and caste sanctity, as well as the stratification of castes and classes within the community, provided an atmosphere congenial to the growth of the Birta system. The tendency in the sphere of public finance to follow the line of least resistance and not arouse antagonism to political authority by seeking to reform traditional institutions and privileges, as well as the neglect of problems of national development in general, obviated any interest in the abolition of the Birta system which the successive rulers of Nepal might otherwise have had. The oligarchic character of the regimes that fostered the Birta system depended in turn on the support of the privileged Birta-owning class, with the result that the interests of this class in keeping the Birta system intact coincided with those of the rulers and made all suggestion of Birta reform an anathema. In addition, the stagnation of national life in all its aspects during the century-old Rana regime helped to preserve this system in all its medieval relief. It was hardly surprising, therefore, that with the advent of democracy in Nepal in 1951 the Birta system should have become practically defunct, at least as far as the granting of new Birtas were concerned.* Nevertheless, the question of Birta reform has remained as one of the principle problems facing all the post-1951 governments and has been an explosive political issue that has threatened the stability of these governments on more than one occasion.

* According to one source, however, a few Birta grants were made in 1956-57. Dhundiraj Bhandari: Nepal Ko Aitihāsik Vivechana. (Historical Analysis of Nepal). Banaras: Krishna Kumari, 1959, p. 349.

CHAPTER III

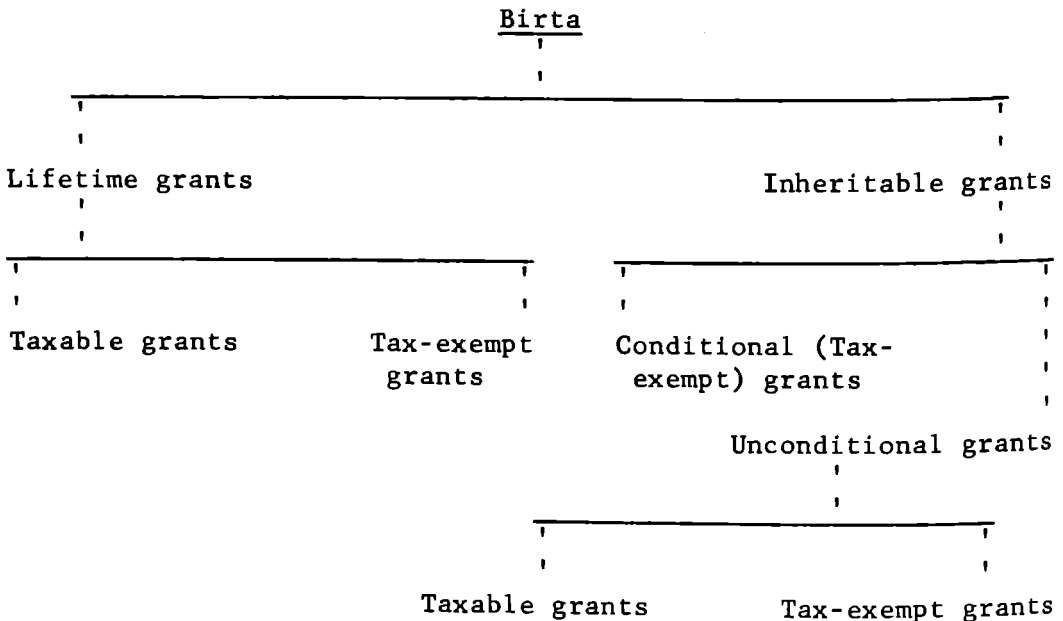
Forms of Birta Tenure

The difficulties involved in classifying the numerous forms of the Birta system are not solely taxonomic. Since Birta rights were dependent entirely upon the terms of specific grants, they were subject to whatever conditions and limitations were imposed thereon. Although there were several traditional and well-recognized categories of Birta, the conditions and limitations which they entailed, or the privileges which they conferred, were seldom of a standard character but varied according to the discretion of the donor. Thus, while watertight categorization is an impossible task, it would be useful to consider the general and conventional pattern of Birta grants, and, as a rule, ignore individual exceptions.

For the purposes of the present study, a rough system of classification may be formulated as follows:

Table I

Classification of Birta Land



The Nature of Tax Exemption

Ordinarily, tax exemption in the case of Birta grants did not apply to a number of special taxes and levies. Although Birta grants involved not only the assignment of land ownership rights, and hence the right to collect rents, but also of miscellaneous taxes levied by the State, the Government usually reserved certain levies for its own use, such as Chumawan, Goddhuwa, Gadimubarak, Kajkalyankowalak, Samriti,¹ Abuwab,² and Jhara, although the number and nature of these reserved levies varied in different cases. Accordingly, even what were generally regarded as tax-exempt variations of the Birta system were under obligation to pay one or more of these levies.

Chumawan and Goddhuwa were levied when royal princes or princesses respectively were married and Gadimubarak at the time of the coronation of a new King.* Kajkalyankowalak probably took the form of presents of agricultural produce on ceremonial occasions. Samriti, doubtless a corruption of the Sanskrit term Smriti (scriptures), appears to have been the fee payable to the courts for certain caste offences involving expiation by governmental sanction.** Abuwabs probably referred to miscellaneous levies imposed by the State from time to time,*** while Jhara, as we have already noted, is the payment made in lieu of the obligation to provide unpaid labor for governmental purposes.

* Mahesh Chandra Regmi, op. cit., p. 12. According to an English chronicler, "When in 1854, the King's daughter was married to Jang's son, the bride, as eldest daughter of the King, received as dowry the results of a "Capitation Tax" on the inhabitants of the Valley and neighbouring districts. This tax was sold by Jang to a Niwar at Patni, who paid Rs 270,000.00 cash to him for it, all raised above that sum being the Niwar's profit. . . ." (Henry A. Oldfield: Sketches from Nepal, London: W. H. Allen & Co., 1880, Vol. I, p. 411.) In 1896 and 1903, the Goddhuwa and Chumawan taxes amounted to 1/12th and 1/6th of the Pota tax respectively on Pota Birta Lands. Pota Tax Regulations, Chaitra 2, 1989 (March 15, 1933), Section 18.

** The Samriti tax in this sense exists even at present in the Kipat areas of Dhankuta district in eastern Nepal.

*** In India, "Abuwabs" were additional impositions of the State, and amounted in fact to increases of revenue although they were separately accounted for. They are to be distinguished from Abuwabs in the modern sense of the word, which implies an exaction by a landlord from a tenant in excess of the rent legally payable. Radha Kumud Mookerjee, op. cit., p. 11.

It does not require much elaboration to show why these levies were retained even when Birta grants were otherwise tax-exempt. An analysis of their nature shows that they were in fact of the nature of primer seizin imposed by the State on special occasions and did not therefore constitute annual or even periodic payments. Obviously they provided an opportunity to the Birta owner to manifest his fealty to the ruler in a quasi-feudal system. In this sense, Gadimubarak, Chumawan, and Goddhuwa were not unlike the payments made by villeins to their lords in medieval England.³

Life-time Birta Grants

Life-time Birta grants included Jiuni, Manachamal, Chhap, Bekh,* Gharbari, and Mayau. Jiuni, Manachamal, and Chhap grants were made to reward government employees or others in consideration of their services and were primarily of the nature of pensions or allowances. Since existing legislation prescribed that Birta rights should be strictly governed by the terms and conditions laid down in the concerned grants,⁴ all grants or specific facilities included, that were not prescribed as inheritable, were treated as non-transferable and valid only during the life-time of the recipient,⁵ except in regard to such categories as were legally or conventionally regarded as inheritable. But even when the grants provided the right of inheritance, this did not necessarily secure the right of transfer.⁶

The term Jiuni is synonymous with Birta, meaning livelihood. Grants of Jiuni Birta were made for services rendered by the recipients. In 1893, King Prithvi Bir Bikram (1881-1911) confirmed a grant of Jiuni Birta in the following words, "Utilize the produce of the land as long as you remain alive. After your death, the land will revert to the State."⁷ However, where Jiuni Birta grant was made by King Jayajit Malla in 1533 to a woman of the Banda caste in Bhaktapur for attending on the virgin goddess (Kumari), the service was to be performed by the women of the same family from generation to generation, and the grant was therefore prescribed as inheritable and as such continued even during Gorkha rule.⁸ Such cases, however, were exceptional.

Manachamal Birta grants were theoretically intended to provide the recipients with one mana of rice (Chamal) for two meals during the day, this quantity being considered the normal adult diet. The recipients were for the most part government employees or persons who had rendered special services to the

*Petiya was another category of Birta grants of this type. Cf., Confirmation of Manachamal Birta Land of Kulapratap Rana, Bhadra 1, 1966 (August 17, 1909).

State. The bearer of King Prithvi Narayan Shah's sword when he entered Kathmandu as a conqueror in 1769 was thus rewarded with a Manachamal grant.⁹ Similarly, King Prithvi Narayan Shah granted Manachamal Birta lands in Gorkha district, his original dominion, to twenty-four leading families of that area who had participated in the invasion of Kathmandu.¹⁰ Often such grants were of the nature of salaries, as when they were made to land surveyors.¹¹ Manachamal grants were generally valid only during the life-time of the recipients but were extended if their successors too rendered special services to the State,¹² or if they were themselves able to intercede to this effect.¹³ Although in exceptional cases these grants provided the right of inheritance,¹⁴ this did not imply the right of transfer.¹⁵ Existing regulations prescribed that Manachamal lands should be registered as Raikar immediately on the death of the recipients.¹⁶

A variant of this system was known as Halbandi Manachamal grants, which appear to have been made for the most part to the descendants of chieftains or of the nobility in the western hill districts of Doti, Dailekh, Achham, Jumla and Baitadi after their subjugation by the Gorkha rulers. In a few cases they also appear to have been made to settlers who cleared waste lands in these areas and functioned as tax collectors on behalf of the government.¹⁷ Presumably the proviso that these grants should remain valid only during the life-time of the recipients was inserted because of political considerations, i.e., to withhold extension or extend the grants under less favorable terms if the record of loyalty or service to the State was not satisfactory. According to Revenue Regulations in force in Jumla, Doti, Achham, and elsewhere, moreover,

Persons who are entitled to possess Halbandi Manachamal lands during their life-time shall present themselves at the District Office on festive and ceremonial occasions and have their attendance recorded. After their death, the lands shall be converted into Raikar.¹⁸

In addition, Halbandi Manachamal holders were also under obligation to render service on important occasions of State, war, or other emergencies.¹⁹ Birta grants of this category were tax-exempt with some occasional exceptions.²⁰

Presumably because of the political character of Halbandi Manachamal grants, Prime Minister Chandra Shamsheer (1901-1928) undertook to abolish them where possible. According to the 1908 Doti and Achham Revenue Regulations,

Documents regarding Halbandi Manachamal grants shall be scrutinized and the lands shall be measured. In case the grants were made by district authorities (Bhardars), only these signed by Kaji Balnar Singh shall be confirmed. Grants made by other local authorities or those which do not provide the right of inheritance shall be confiscated after the death of the original recipient. The lands shall be converted into Raikar and taxes thereon shall be imposed at rates prevailing on adjoining holdings of Raikar land.*

Chhap grants, the fourth category of life-time Birta grants, appear to have been for the most part limited to Pakho lands and intended to be used for residential purposes.** The recipients were generally retired officials.***

Some forms of Chhap Birta were taxable and were accordingly known as Tiruwa Chhap or Thekka Chhap, depending upon whether the tax was assessed per unit of area or constituted a contractual payment. Grants of Tiruwa Chhap Birta grants involved the imposition of a tax on the basis of the area, the most common rate being Rs 0.06 per ropani.²¹ Since Chhap grants

* Law Ministry Records: Doti and Achham Revenue Regulations, Jestha 28, 1965 (June 10, 1908), Section 28 (1). This regulation forms Section 80 of the 1934 Jumla Revenue Regulations and was applicable in Doti and Baitadi also. Kaji Balnar Singh was the grandfather of Prime Minister Chandra Shamsher and father of Prime Minister Jang Bahadur, the founder of the Rana regime. Accordingly, such provisions ensured that only supporters of the Rana family retained Halbandi Manachamal grants.

** In a few rare cases, Chhap grants appear to have concerned only judicial fines in the assigned area. Cf., Itihas Prakash, op. cit., II-2, p. 48.

*** Baburam Acharya. Sometimes Chhap and Manachamal Birta grants were made to provide the emoluments of functionaries appointed to assist in the collection of taxes. Cf., Itihas Prakash, op. cit., II-2, p. 13. Recipients of such grants were usually directed to "reclaim the land and render such services as directed," thus indicating that the reclamation of waste lands might possibly have been the primary objective. Ibid., p. 35. In particular, Manachamal grants sometimes involved the obligation to render services to the village headman (Amali) and military officials, in addition to tax collect on functions. Cf., ibid., p. 101. Sometimes Manachamal Birta owners were under the obligation to look after the transportation of government stores and bring into cultivation lands assigned to the Army. Ibid., pp. 62-63.

were usually restricted to Pakho lands, and therefore could not specify the area, the tax sometimes took the form of a *Thek Tiro* assessed on the holding as a whole. Such lands were called *Thekka Chhap Birta*. For example, in one case in Kathmandu Valley, the tax on a holding of 22.5 ropanis was assessed at Rs 8.00.²² Taxes levied in this way without reference to the area were sometimes also called *Mahasul*.²³ Taxes on *Chhap* land were occasionally assessed in kind.* For example, a *Chhap* grant made by King *Girban* in 1799 made the recipient liable to pay nine *dharnis* of copper annually to the Government.²⁴ In another case, the *Birta* owner was required to supply sixty-one *dharnis* of condensed citrus juice (*chuk amilo*) every year to the royal palace.²⁵ Such payments sometimes included turmeric powder, fish, and goats for the royal kitchen.²⁶ Where this tax was remitted for any reason, the variant that emerged was known as *Mafi Chhap* or simply *Chhap*. Several *Chhap* grants expressly mentioned that the tax payable thereon had been remitted.²⁷ Nevertheless, even *Mafi Chhap* grants occasionally obligated the recipient to make certain payments to the State.²⁸ Although the *Chhap* holder was entitled to appropriate the proceeds of miscellaneous land and homestead taxes in the lands assigned to him, he appears to have been liable to collect certain other taxes, including the *Saune Fagu* and fines on the adjudication of *Panchakhat* offences, and transmit them to the local *Amali*.²⁹ Nor were direct payments to the *Amali* ruled out. For example, in one case a *Chhap* holder was required to pay a leg of mutton and Rs 0.01 to the *Amali*.³⁰ In addition, in some cases he had to remain in attendance at the royal palace.³¹

The majority of *Chhap* grants did not expressly provide the right of inheritance. As such, they were regarded as life-time grants according to law. Although there are several instances in which *Chhap* lands were inherited, in point of fact such practices should be regarded as a result of ill-kept records and administrative negligence rather than to inheritance rights guaranteed by law.³² At the same time, there were exceptional cases in which the grants expressly provided the right of inheritance³³ but did not include the right of transfer.³⁴ There were cases in which gifts of *Chhap* land were invalidated because the land had been transferred.³⁵ Even though *Chhap* grants were generally valid during the life-time of the recipient, they could

* In some cases taxes on *Chhap* land were so high that they were indistinguishable from those on *Raikar* land. In one case in *Jumla* district, for example, a *Chhap* grant obligated the recipient to reclaim waste land and pay fifty percent of the produce as tax through the local *Amali* after an initial exemption period of three years. *Itihas Prakash, op. cit.*, II-2, p. 128. But such cases would appear to be exceptional.

be rescinded at any time at the discretion of the Government.³⁶ In addition, such grants were scrutinized from time to time and the surplus, considered unnecessary for residential or other personal purposes, was confiscated. This appears to have been done around 1836-37³⁷ and in 1862.³⁸

Gharbari lands were granted for residential purposes to top ranking but impoverished members of the nobility.³⁹ Several grants of this category were made by Prime Minister Jang Bahadur to the victims of the political purges that preceded his rise to power.⁴⁰ Gharbari lands were sometimes treated as a variant of Chhap.⁴¹ There were instances in which Chhap grants were renewed as Gharbari in favor of successors on the death of the original recipients.⁴² Gharbari lands were generally treated as tax-exempt, although Pota tax was imposed thereon in exceptional cases.⁴³

Birta lands granted to any person out of affection (Maya) were known as Mayau.⁴⁴ Although regulations were framed in 1799 prescribing that taxes should be imposed on all existing Mayau lands,⁴⁵ these do not appear to have been enforced strictly.

Bekh Birta constituted another category of life-time Birta grants. Such grants were made to leading members of the nobility,⁴⁶ and sometimes also in appreciation of special services. In a few cases they were made even to tax collectors in the Terai as their emoluments.⁴⁷ In 1837 King Rajendra made a Bekh Birta grant to a mason who was responsible for the construction of the Tower at Kathmandu.⁴⁸ Occasionally, such grants were inheritable, as when King Rajendra in 1845 gave Bekh Birta to a physician who had cured the Queen of her colic pains.⁴⁹ Legislation was subsequently enacted to prohibit inheritance unless this right was specifically secured in the grant. In the absence of such provisions, legislation enforced with effect from 1889 made transfer illegal,⁵⁰ but otherwise it was permitted.

We have noted previously that towards the end of the eighteenth century several principalities were brought under the sovereignty of the Government of Nepal on an autonomous and feudatory basis. One category of these vassal states (Rajyas) was known as Sarbangamafi. Sarbangamafi Rajyas may be regarded as still another category of life-time Birta grants since the chiefs of these vassal states were permitted to enjoy all taxes and land revenues within their boundaries. Bhirkot in West No. 4 district, Parbat in Baglung district, Jajarkot in Salyan district, and Phalawang were Sarbangamafi Rajyas. In addition, the chiefs of these vassal states were also entitled to appropriate the income from tax-exempt demesne lands (Sera) which were attached to the Rajya. The extent of such lands were not fixed, and the Raja was permitted to increase it without forcibly expropriating existing landowners.⁵¹ Sarbangamafi Rajyas were life-time Birta

grants in the sense that the grants had to be renewed in favor of the successor upon the death of each recipient. Although usually such renewal followed as a matter of course, not infrequently the Government utilized the opportunity to vary the terms and conditions attached to the grant.⁵²

Conditional (Tax-exempt and Inheritable) Birta Grants

Several forms of the Birta system, although inheritable, were subject to certain conditions as regards possession, use, and transfer. These were Rajabandhaki, Seba Birta, Purohityain Birta, Puran Birta, Pati Birta, and Bitalab Birta.

We have noted previously that lands were mortgaged by the Malla rulers, and in a few cases by the Shah rulers, to their subjects. Since such Birta grants, known as Rajabandhaki, were subject to redemption at any time, they implied conditional possession of the land. However, they were transferable in the sense that the mortgage could be passed on to a third party without prejudice to the State's ultimate right of redemption. In fact, action was taken at various times to redeem Rajabandhaki lands and thus restore them as Raikar, although no consistent policy appears to have been followed in respect to this category of Birta lands after the 1769 conquest. Several existing grants were redeemed and taxed while several others were nullified. A more definite policy was initiated by King Rana Bahadur Shah in 1795 when inspectors were sent to a number of western hill districts to scrutinize Rajabandhaki grants. In several cases where the actual area exceeded the area mentioned in the grant, the excess was converted into Raikar.⁵³ Efforts were also made at that time to reduce the area of the grants, presumably in view of rising land values.⁵⁴ Subsequently, however, King Girban issued regulations to the effect that all valid Rajabandhaki grants made by former Kings should be confirmed,⁵⁵ and it was not until 1937, 140 years later, that Prime Minister Juddha Shamsheer renewed the attempts to redeem all existing Rajabandhaki grants. But apparently the policy was not enforced satisfactorily, and therefore another order was issued in 1949, prescribing a time limit of two months for the submission of particulars for the purpose of redemption. The order further provided that after the expiry of this period, the land would be forfeited, notwithstanding the stipulation in the original deeds that "the land is to be returned whenever the money is paid back."⁵⁶ The implementation of this order, however, appears to have been impeded by the 1950 political disturbances, and the Rajabandhaki grants were not redeemed.

Another category of inheritable Birta grants called Seba Birta was conditional in the sense that possession obligated the

performance of specific services, mostly of a religious and philanthropic character. As such, they were also non-transferable. Seba Birta grants appear to have been popular among the Malla rulers of Kathmandu Valley prior to the Gorkha conquest. In 1728, for example, King Jayajagat Malla of Kathmandu granted Seba Birta land to Sadashiv Malla to conduct religious performances and festivals and provide meals at several temples, as well as to offer flowers daily at the Pashupatinath temple.⁵⁷ A similar grant in Patan in 1656 imposed on the recipient the obligation to offer a Crown of flowers at the Matsyendra Nath temple.⁵⁸ According to one authority, Seba Birta grants were also made to government officials and land surveyors as their emoluments during the Malla period, but were all abolished during the Rana regime.⁵⁹ In the hill districts, grants of Birta land to the royal priests (Purohityain Birta), to learned men for the recitation of holy books at the royal palace (Puran Birta), and to caretakers of roadside shelters (Pati Birta)⁶⁰ also appear to have been common prior to the Gorkha conquest.⁶¹ Such grants do not appear to have been popular among the Shah rulers who made land endowments for religious and charitable purposes under Guthi tenure instead. Since the line of demarcation between Birta grants of this category and Guthi endowments is very thin, the system became virtually obsolete after the Gorkha conquest. However, a large number of such grants dating back to the Malla period remained in existence until the Birta system was finally abolished in 1959. These grants were liable to confiscation in the event of nonperformance of the specified functions.⁶²

Another important category of conditional Birta grants, as listed above, was known as Bitalab Birta. Traditionally, Bitalab holders were under obligation to remain in attendance at the royal palace and render whatever services were required of them.⁶³ Occasionally the services were to be performed elsewhere, as when King Girban granted Bitalab Birta lands in 1812 for the repair and maintenance of rest-houses for pilgrims.⁶⁴ However, in the majority of cases the obligation to provide personal services at the royal palace appears to have been considerably mitigated with the passage of time. Although all conditional and inheritable grants were liable to pay the special levies mentioned towards the beginning of this chapter, occasional exceptions appear to have been made in the case of Bitalab Birta grants. One Bitalab Birta grant made by King Girban in 1806, for example, exempted the payment of Gadimubarak, Godduwa, Chumawan, Kajkalyankowalak, and Samriti.⁶⁵

Unconditional (Tax-exempt and Inheritable) Birta Grants

We have noted that Birta grants, irrespective of their category, were subject to whatever conditions and limitations were imposed therein. Unconditional, tax-exempt, and inheritable grants should therefore be defined as those which ensured such rights to the beneficiaries even in the absence of any specific provision to this effect. For example, according to existing regulations, owners of Kush, Marwat, Phikdar, Satta (i.e., new Birta grants created as a result of the exchange of existing Birta lands for Raikar lands of more convenient location), and Bakas (the term obviously being used to include similar other categories such as Bitalab, Sarbangamafi, and Sarbakar-Akar-Sarbangamafi),⁶⁶ and general Birta grants of unspecified categories⁶⁷ were inheritable and transferable in spite of the fact that the concerned grants might not have expressly secured these rights. In addition, available evidence indicates that Daijo and Suna Birta grants also belonged to the category of tax-exempt, transferable, and inheritable Birta grants.

We have also noted previously that Birta grants which were normally tax-exempt were liable to pay one or more of a number of special levies. Tax-exempt variations of unconditional and inheritable Birta grants may accordingly be classified into the following categories on the basis of the nature and extent of the "exemption" granted to them.

- (1) Birta grants, such as Kush, Marwat, Phikdar, Suna, and Bakas, which ordinarily were liable to pay all the special levies enumerated previously.
- (2) Birta grants, including Daijo, Sarbanga mafi, Sarbakar-Akar-Sarbangamafi, which specifically prescribed exemption from all special levies.
- (3) Birta grants, occasionally including Daijo, Sarbangamafi, and Sarbakar-Akar-Sarbangamafi, which were liable to pay one or more of such levies as were specified therein. The number and nature of such reserved levies varied in different cases.

Kush Birta

Kush Birta grants were made exclusively to members of the Brahmin caste since, according to Hindu religious writings, land grants to Brahmins lead to the accumulation of religious merit.

Kush Birta grants were made during solar eclipses or other occasions of particular religious significance when the act of giving was believed to be of particular efficacy in promoting the religious merit of the donor, or during births, death,* and religious performances. Kush Birta grants, particularly those made during solar eclipses, were considered to be so sacrosanct that later Kings were careful not to confiscate them. For example, one such grant made by a Malla King prior to the Gorkha conquest was spared even during the broadly inclusive 1805 confiscation** specifically on the ground that it had been made during a solar eclipse.⁶⁸ Kush Birta grants were tax-exempt, unconditional, inheritable, and transferable. Although the *raison d'etre* of such grants was religious, the facilities attached thereto as mentioned above continued even in the event of sale or transfer to members of non-Brahmin castes.

Marwat Birta

Marwat Birta was granted for the sustenance of the bereaved family of military officers killed in war.*** Several such grants were made during the 1812-14 Anglo-Nepal war,⁶⁹ the Nepal-Tibet war of 1855-56, and Prime Minister Jang Bahadur's military expedition to Lucknow during the Indian Mutiny in 1857, but the system was virtually discontinued during the Prime Ministership of Chandra Shamsher.⁷⁰ Often the act of military bravery which theoretically justified the grant of Marwat Birta lands was interpreted rather broadly, as when in 1806 a lady of the royal palace, who joined the queen of King Rana Bahadur Shah in committing Sati on his funeral pyre, received a posthumous Marwat Birta grant for the benefit of her successors.⁷¹

Marwat lands were inheritable and transferable even if such provisions were not specifically mentioned in the grants.⁷² They probably attained this status only comparatively recently,

* For example, Kush Birta grants were made on the first anniversary of the death of King Prithvi Bir Bikram in 1912. Since such grants involved an act of dedication (Sankalpa) with religious motives, they were sometimes also called Sankalpa Kush Birta. Sankalpa Kush Birta Grant to Tarkaraj Panditju, Ashadh 31, 1978 (July 15, 1921).

** See Chapter VII.

*** Marwat Birta Land of Dalbir Thapa, Kathmandu Birta Records, 1896. Sometimes grants made on such considerations were called Bakas Birta. Cf., Bakas Birta Grant to Janak Kumari Devi, Baisakh 12, 1978 (April 24, 1921).

for previous regulations provided for their rescission at the end of twelve years.⁷³ King Prithvi Narayan Shah directed:

If any soldier is killed in war, Marwat lands shall be granted to his sons until they are able to carry arms. After they become so able, they shall be promoted with the grant of Jagir lands.⁷⁴

This does not suggest that Marwat Birta grants were intended to be permanent, as later legislation prescribes. Orders were accordingly issued immediately after the downfall of Bhimsen Thapa to "confiscate Marwat lands in accordance with the usual practice."⁷⁵ Often owners of Marwat lands were under the obligation to serve the Government in times of war.⁷⁶ Since military service was in any case restricted to the members of particular castes, it is possible that these conditions were implied in all Marwat Birta grants.

Phikdar Birta

Phikdar Birta grants were made to reward government employees and other persons belonging to castes lower than Brahmin. They were so called because the documents bore the stain of betel juice which the donor had spit thereon,⁷⁷ an act that was considered to make the grants inviolable, for the taking of one's own spittle was considered to be a reprehensible act. King Girban granted Phikdar land to one Bishram Khatri for the services provided by him in recruiting soldiers for the army.⁷⁸ He also gave Phikdar land to his nurse in consideration of her faithful services.⁷⁹ Occasionally Phikdar Birta grants were made as remuneration to land tax collectors in the Terai,⁸⁰ and for the establishment of Guthis.⁸¹ According to law, Phikdar grants were inheritable and transferable whether or not they contained any specific provision to this effect.⁸² Grants made to land tax collectors constituted an exception to this rule.⁸³

Suna

Birta grants which emerged as a result of the alienation by the State of Raikar land by sale to individuals, as described previously, were known as Suna. Since Suna Birta lands were thus acquired by means of purchase, they were originally

unconditional, tax-exempt, and inheritable.* In 1770-71, however, King Prithvi Narayan Shah levied Pota taxes on all Suna Birta lands in Kathmandu Valley, thus converting them into a new form called Pota Birta. However, outside of Kathmandu Valley, Suna Birta lands appear to have retained their original tax-exempt character.⁸⁴

Bakas Birta

Bakas Birta grants were obtained by leading members of the Rana family,⁸⁵ civil servants with a long and outstanding record of service,⁸⁶ and court favorites.⁸⁷ Although the term Bakas means literally a "free gift," such grants were made to Prime Minister Juddha Shamsheer on payment of royalty to the Government.⁸⁸ They were tax-exempt with occasional exceptions.⁸⁹ Where the grant did not specify tax exemption, it was sometimes interpreted to the advantage of the Government.⁹⁰

Bakas Birta grants were first introduced during the Rana regime and played a significant role in the history of the Birta system during that period. The number of these grants was so prolific that by 1950 more land was under this form of Birta tenure than under all the other forms taken together. Birta lands appropriated by Prime Ministers and other members of the Rana family belonged mostly to this category.

Sarbangamafi and Sarbakar-Akar-Sarbangamafi Birta Grants

Numerous Birta grants also came under the categories of Sarbangamafi and Sarbakar-Akar-Sarbangamafi, which implied full exemption from all State levies and taxes.⁹¹ Sarbangamafi and Sarbakar-Akar-Sarbangamafi Birta grants were made for the establishment of Guthis,⁹² as religious gifts,⁹³ or in consideration of outstanding services in war or other affairs of State.⁹⁴ For example, in 1860, Prime Minister Jang Bahadur received a Sarbakar-Akar-Sarbangamafi grant in consideration of his service services to the State. A similar grant was made by King

* Apparently such transactions originally involved the alienation of Raikar lands by the State in return for gold or gold coins, for Suna is the Nepali word for gold. However, monetary transactions of this type later appear to have been common. Cf., His Majesty's Government: Puratattwa Patra Sangraha (A Collection of Ancient Documents). Kathmandu: Department of Archaeology and Culture, 1960, pp. 16-17.

Surendra in 1864 in consideration of services rendered by General Bakhtwar Kunwar Rana during the war with Tibet and in the 1857 uprising.⁹⁵ Often important members of the royal family also received Sarbakar-Akar-Sarbangamafi grants to provide for their personal expenses.⁹⁶ Sometimes Sarbangamafi Birta lands were assigned as Crown lands also.⁹⁷

Daijo Birta

Grants of Daijo Birta were made to princesses of the royal family and the Rana Prime Minister's family as dowry at the time of their marriage. These grants were transferable and inheritable. Sometimes the right of inheritance received special emphasis, as when provision was made that in case the beneficiary died childless, the co-parceners of her husband would be entitled to inherit the land.⁹⁸

Partial Exemption from Special Levies

Although both Sarbangamafi and Sarbakar-Akar-Sarbangamafi implied complete exemption from all special levies, there were exceptional cases in which one or more of such levies were reserved for the use of the State. Thus a grant of Sarbangamafi Birta made by King Girban in 1805 provided for the exemption of all taxes and levies with the exception of Gadimubarak, Goddhuwa, and Kajkalyankowalak.⁹⁹ Similar examples can also be cited in respect to Sarbakar-Akar-Sarbangamafi and Daijo Birta grants.

The number and nature of these reserved levies, as mentioned previously, varied in different cases. In the majority of cases, the reserved levies were Goddhuwa, Gadimubarak, and Chumawan. Since all these levies were meant for the use of the royal family, such reservation apparently signified a manifestation of fealty. Birta grants made to Rana Prime Ministers, while generally exempting Goddhuwa and Chumawan, included a reservation in the case of Gadimubarak, obviously intended to signify that their status was second only to that of the King.¹⁰⁰

A similar consideration applied in the case of Daijo Birta grants. We have noted that when such grants were made to royal princesses, they were usually exempted from all special levies. But in the case of princesses of the Rana family, the Goddhuwa tax was sometimes reserved for the State.¹⁰¹

Unconditional (Taxable and Inheritable) Birta Grants

Taxable and inheritable variations of unconditional Birta grants included Pota Birta and Tiruwa Birta. Occasionally, Birta lands used for residential purposes in urban areas were also taxable, as we shall see in Chapter IV.

Around 1770 King Prithvi Narayan Shah imposed a tax, known as Pota, on Suna Birta lands in Kathmandu Valley, the first instance of such taxation in the history of the Birta system. In addition, available evidence relating to the exemption of certain Kush Birta holdings from the new tax indicates that at least in a few cases this category of Birta grants too came within the purview of the new measure.¹⁰² According to subsequent governmental policy, all Birta categories in the hill districts as well as Kathmandu Valley that were not specifically tax-exempt were brought under the Pota taxation system. Pota Birta therefore denoted all categories of Birta that were subject to Pota taxation.

Accordingly, in the beginning, Pota Birta does not appear to have been an original form of Birta grant. Later, however, Pota-exempt grants, sometimes known as Bakas Pota Birta, also appear to have been made.¹⁰³ It may be noted that even "tax-exempt" categories of Birta grants, such as Sarbakar-Akar-Sarbangamafi, were occasionally liable to pay the Pota tax.¹⁰⁴

The Birta system meant privilege, and therefore it is hardly surprising that even when some forms of this tenure were subjected to taxation exemption from such levies emerged as another form of privilege. Birta grants which were thus exempted from Pota taxation were known as Pota Mafi or Bakas Mafi. Such exemption was granted as a special mark of the pleasure of the ruler, and, more frequently but not necessarily, if the land was used as Guthi. For example, in one case King Rana Bahadur Shah granted this exemption to a Birta owner in Patan when the latter offered him a present of Rs 101.00 in cash and 400 pounds of sugar.¹⁰⁵ King Rajendra in 1824 made a similar exemption when a holding of twenty-four ropanis was endowed as Guthi by its owner.¹⁰⁶ In several cases, exemption was made in the original grant itself if the Birta would otherwise be subject to Pota taxation, although such cases appear to have been largely limited to members of the Rana family.¹⁰⁷ In 1902, for example, an order was issued that all lands appropriated as Birta by the late Prime Minister Bir Shamsheer should be exempted from Pota taxation irrespective of subsequent transfers.¹⁰⁸ Such exemption was made even when the Rana Prime Minister or other members of the Rana family purchased existing Pota Birta lands.¹⁰⁹

Nevertheless, in later years this practice appears to have been disfavored, possibly because it tended to diminish land revenue. The Muluki Ain (Legal Code) accordingly prescribes that: "The Pota tax shall not be remitted on lands which have been made liable to its payment."¹¹⁰

Both Pota Birta and Chhap Birta were limited to Kathmandu Valley and the hill districts. Even the 1937 measures which sought to levy the Pota tax on a comprehensive basis excluded Birta lands in the Terai, probably because the ruling Rana family possessed extensive Birta interests in this region. As such, Birta lands in the Terai contributed nothing to the public exchequer. It may have been to take advantage of this potential source of revenue that the Government started making Birta grants in the Terai on a taxable basis around 1915. Birta lands of this category, which were unconditional and inheritable, were known as Tiruwa Birta. The majority of such grants provided that:

The Birta owner may appropriate rents on (Tiruwa Birta) lands. He may make gifts or donations thereof, and the recipient too shall not be held liable to pay taxes exceeding Rs 3.00 per bigha. No other taxes or levies except Gadimubarak, Goddhuwa, and Chumawan shall be payable. The land shall be inheritable.*

Although Tiruwa Birta grants were made by Rana Prime Ministers to their favorites, and the privileges accruing therefrom definitely outweighed the obligation to pay taxes, there is evidence to indicate that the objective was not only to add to the public revenues but also to encourage the reclamation of waste lands. The majority of Tiruwa Birta grants appear to have involved waste or forest land, and a liberal period of initial exemption, much longer than that generally granted in the case of Raikar land and sometimes extending to as long a period as ten years, was provided. Sometimes the recipient was under the obligation to reclaim the land within the period specified in the grant. The rate of tax usually varied from Rs 3.00 to Rs 6.00 per bigha, but sometimes it was as low as Rs 0.75. It should be noted that the Tiruwa Birta system concerned only new grants at the discretion of the donor. This policy was therefore fundamentally different from that initiated in 1937, the

* Tiruwa Birta Grant to Colonel Indra Bahadur Karki, Poush 7, 2001 (December 22, 1944). The prescribed tax of Rs 2.00 per bigha in Indian currency has been converted into Rs 3.00 in Nepali currency according to present currency regulations.

objective of which was to bring all Birta land in Kathmandu Valley and the hill districts within the ambit of Pota taxation. The majority of Tiruwa Birta grants appear to have been made in the Terai. In a few cases in which such grants were made in the hill districts, the tax sometimes took the form of a fixed payment for the entire holdings irrespective of the area contained therein.¹¹¹

Compound Forms of Birta Tenure

We have so far discussed simple forms of the Birta system. In numerous cases, new and compound forms emerged as a result of the affixture of the terms Sarbangamafi and Sarbakar-Akar-Sarbangamafi¹¹² to other forms. For example, Sarbakar-Akar-Sarbangamafi Kush Birta,¹¹³ and Sarbakar-Akar-Sarbangamafi Daijo Birta¹¹⁴ grants were made to provide for full or partial exemption from special levies and taxes, according to the provisions contained therein, which the simple forms in themselves would not have secured. Where the term Bitalab was affixed to such other grants as Kush,¹¹⁵ Phikdar,¹¹⁶ Sarbangamafi,¹¹⁷ and Sarbakar-Akar-Sarbangamafi,¹¹⁸ these categories retained their original facilities and were modified only to the extent of implying the obligation to render services at the royal palace which constituted the *raison d'etre* of Bitalab Birta grants. In view of the fact that either Sarbangamafi or Sarbakar-Akar-Sarbangamafi on the one hand and Bitalab on the other could be affixed simultaneously to several simple forms of the Birta system, combinations such as Sarbakar-Akar-Sarbangamafi Kush Birta Bitalab were not uncommon.¹¹⁹

Birta Grants Made for Establishment of Guthis

We have noted above that in several cases grants of unconditional and inheritable Birta lands were made for the establishment of Guthis. There were also cases in which Birta grants made for this purpose were called Guthi Bakas Birta.¹²⁰ Since such grants resulted in the creation of Guthis, it will be more logical to consider them under Guthi tenure in the third volume of this study. Recent legislation seeking to abolish the Birta system, for example, is not applicable to Birta lands on which Guthis have been established with governmental permission.*

Lest the above classification of different categories of Birta grants should lead to the conclusion that all grants fell

* See Chapter VIII.

within one category or other, it should be noted that there were also numerous cases in which grants were made simply as Birta in a general way without specifying any particular category.¹²¹ Although such grants were subject to such particular conditions as were specified therein, including occasionally the obligation to pay taxes¹²² or restrictions on transfer,¹²³ they were generally inheritable, transferable,¹²⁴ and tax-exempt.

Birta Statistics*

Accurate statistics of the different categories of Birta tenure which have been described above are not available. However, the following figures compiled by the Birta Abolition Office in 1952-53, although of doubtful statistical accuracy, will help to indicate the relative importance of each category.

Predominance of Particular Forms

The number of Birta categories has tended to increase over the centuries as new types were introduced by successive rulers. The emergence of such grants as Rajya, Phikdar, and Halbandi followed in the wake of the 1769 conquest. In general, lifetime and conditional forms predominated during the Shah period up to the establishment of the Rana regime in 1846. The Rana rulers, on the other hand, appear to have favored such unconditional forms as Tiruwa, Bakas, Sarbangamafi, and Sarbakar-Akar-Sarbangamafi. In fact, grants of such lifetime and conditional grants as Manachamal, Chhap, Bekh, and Bitalab, were comparatively rare during the Rana period. The general policy of the Rana rulers in the sphere of Birta was to buttress its sacrosanctity and emphasize the privileges attached to it while creating a restricted class of Birta owners as their supporters. It was hardly surprising, therefore, that the majority of Birta grants made by them were unconditional and inheritable.

* See Table 2, page 46.

Table 2
Birta Statistics*

<u>Category</u>	<u>Total Area</u>		
	<u>Bigha</u>	<u>Ropani</u>	<u>Muri</u>
Bakas	1,855,265	1,067,573	562,310
Daijo	46,056	150	514
Guthi Birta	9,122	3,710	73,135
Kush	55,621	19,408	170,114
Marwat	- - -	271	15,026
Phikdar	4,485	315	4,016
Pota	201	195,830	85,228
Rajabandhaki	- - -	- - -	102,418
Seba	223	1,601	16,073
Thekchhap	- - -	939	5,723
Tiruwa	66,351	176	7,879
Other	96,460	361,679	892,474
	2,133,784	1,651,652	1,940,400

* These statistics have been obtained from the Birta Khareji Bandobast Adda (Birta Abolition Administration Office). The area represented in bighas unmistakably belongs to the Terai, but since the ropani and muri units of land measurement are common to both Kathmandu Valley and the hill districts, the area cited in these units cannot be specifically located.

CHAPTER IV

Birta Taxation

The proprietary rights in the land which the Birta system secured originally implied exemption from taxation. Taxation, of course, can by no means constitute an encroachment upon private property rights. But, because the revenue which the State derived from Raikar land was considered to be of the nature of rent on state-owned land, taxation of Birta land was apparently interpreted as exaction of rent on privately owned land and hence an infringement of private property rights. Birta, therefore, was synonymous with Mafi, denoting tax exemption.* The situation underwent a fundamental change in 1770-71, when, as we noted previously, the Pota tax was levied on certain categories of Birta land in Kathmandu Valley. Tax exemption was no longer a basic characteristic of the Birta system, and more recent legislation has even defined Mafi land to include both taxable and tax-exempt forms of the Birta system.¹ The present chapter will accordingly be devoted to a study of the various measures taken by successive governments to widen the base of Birta taxation in Nepal.

Fiscal Aspects of the Birta System

Since the Birta system implied a relinquishment by the State of its fiscal authority over the land in some form or other, Birta grants not only deprived the State of a substantial revenue which it would otherwise have gained through land taxes but also led to the concentration of extensive Birta lands and of "unearned" wealth, in the form of rents accruing therefrom, in the hands of a privileged few. It is no exaggeration to maintain, therefore, that the Birta system obstructed the growth of a sound public finance system and created a glaring inequality of income in the community. The inadequacy of Pota taxation and other measures in absorbing this taxable wealth is proved by the fact that the Pota tax yielded only Rs 77,000.00 out of a total land revenue of Rs 15.2 million (excluding Guthi revenue) in 1956-57.²

Statistics are not available upon which it would be possible to estimate the loss involved to the public exchequer during any particular period because of the Birta system. However, available figures indicate that in 1950 the total

*The term Mafi is used in this sense in the Muluki Ain (Legal Code). Cf., On Land Evictions, op. cit., Section 20, pp. 33-38.

Raikar land in Kathmandu revenue division amounted to 5,262 ropanis³ whereas the total area of Birta land was at least 88,016 ropanis.* Since the total revenue of Raikar land amounted to Rs 164,488.00,⁴ in 1950 in the same proportion Birta land would have yielded at least Rs 282,531.00. The only income which the Government derived from the Birta land came from the Pota tax which in Kathmandu probably amounted to less than Rs 25,000. Thus the total annual loss sustained by the Government in Kathmandu revenue division during the period 1950 through 1957, when Birta taxation was universalized at increased rates, may be estimated to have been at least Rs 257,531.00 annually. The total loss sustained by the Government can be appreciated when it is realized that in 1957-58 cultivated Birta land amounted to 1.67 million acres,** or approximately 28.2 percent of the total cultivated area in Nepal which has been estimated at 5.8 million acres.⁵

The Pota Tax

Pota taxes in Kathmandu Valley were generally levied at the following rates:***

* Figures obtained from the Birta Abolition Office. Since not all Birta owners in Kathmandu may be presumed to have submitted particulars of their holdings, this figure would appear to be an underestimate.

** The breakdown is as follows: 853,059 bighas, 1,756,726 ropanis, and 2,285,500 muris. In addition, there were large Birta holdings in respect to which acreages were not available. These fetched a total income of Rs 221,567.00 to their owners. Ministry of Finance: Budget Report, 1957-58, Nepal Gazette, VII-15 (Extraordinary), Chaitra 29, 2014 (April 11, 1958), p. 98.

*** Pota Tax Regulations, op. cit., Section 17. Prior to 1895-1896 the rates were the same but in terms of the 64-pice rupee which was generally used for accounting purposes at that time. But though assessments in this currency in respect to Raikar land were later converted into the decimal rupee, Pota tax assessments remained unaffected by this change. Thus, although an assessment of Rs 0.16 in the 64-pice rupee would mean Rs 0.25 in the decimal rupee, it was retained at the original figure even when collections were made in the latter. This, incidentally, meant an indirect reduction in the level of Pota tax assessments.

Table 3

Pota Tax Rates in Kathmandu Valley

<u>Grade</u>	<u>Rate of Tax per Ropani</u>
Abal	Rs 0.48
Doyam	Rs 0.32
Sim	Rs 0.24
Chahar	Rs 0.16

In contrast to the practice prevailing on Raikar land, no distinction was made between Khet (wet) and Pakho (dry) lands. The basis of gradation was also different. For the purpose of Pota tax assessments, Birta land was considered to be of Abal grade if the rent amounted to a minimum of two muris of paddy or one muri of rice per ropani, in addition to wheat or other winter produce. On Doyam grade the rent amounted to a maximum of 1.5 muris of paddy along with wheat or other winter produce. But if the latter did not form part of the payment, or if the rent amounted to only one muri of paddy per ropani, the land was considered to be of Sim grade. On the lowest grade, Chahar, the rent amounted to less than one muri of paddy per ropani. Residential sites, including stables and courtyards, were graded as Chahar.⁶

Such a system of gradation had several obvious disadvantages. Since there was no limit to the rents Birta owners could exact from their tenants, Pota taxes assessed on the basis of rent hardly bore any relationship to the productivity of the land. Moreover, since there was no way in which the Government could verify the particulars of rents submitted by Birta owners, we can assume that the latter succumbed to the temptation to understate the rents being appropriated by them in order to obtain a lower Pota tax assessment. Finally, large areas of Birta land were under personal cultivation, and a system of gradation based on rents was meaningless.

Survey of Pota Lands

Between 1892 and 1896 all Pota Birta lands in Kathmandu, Bhaktapur, and Lalitpur were surveyed and fresh assessment lists were prepared. For the purpose of tax assessments, Pota Birta holdings were divided into two categories which were determined

by the degree of discrepancy in the actual area as compared with the registered area. Where there was no discrepancy at all, or it did not exceed one-fourth of the total registered area, the minimum rate was increased from Rs 0.16 to Rs 0.24, so that the new schedule for this category contained only three rates, Rs 0.24, Rs 0.32, and Rs 0.48, as compared with the existing four. On the other hand, if the discrepancy exceeded one-fourth of the total registered area, a higher schedule, containing the rates of Rs 0.32, Rs 0.48, and Rs 1.00 per ropani, was imposed on such area as exceeded 25 percent of the registered area. Apparently this was intended to penalize under-measurement and consequent nonpayment of tax, although it is difficult to understand how the Birta owner could have been responsible for this. At Sankhu in Kathmandu, where records were prepared three years later, an innovation was introduced in the form of a distinction between the urban and outlying areas, with slightly lower rates for the latter.

Extension of the Pota Tax System

In addition to the registration of existing Pota Birta holdings, arrangements were also made around 1895 to bring other forms of Birta lands within the ambit of the taxation system if there was no express provision justifying their exemption. Birta owners of all categories in Kathmandu, Lalitpur, Kirtipur, and Bhaktapur were called upon to submit particulars of their holdings to the Government, and a notification published in this connection directed that tax-exempt grants would be confirmed as such only if proper documentary evidence was available. Otherwise, the lands were to be converted into Pota Birta. However, the measure provided some relief to owners of the Kusha Birta lands in that such grants were confirmed as tax-exempt if the owners of adjoining holdings signed a certificate to the effect that they were Kush Birta, even in the absence of proper documentary evidence.⁷ These measures did not extend to uncultivated land. Obviously they enabled the Government to utilize potential sources of revenue while at the same time appearing to respect the sanctity of tax-exempt Birta grants. Many owners were satisfied with the arrangement since the registration of their tax-exempt Birta lands as Pota Birta enabled them to safeguard their title even in the absence of documentary evidence of grant.

The tax assessment system, followed in the case of such new entries, made a distinction between Khet and Pakho lands for the first time. However, taxes continued to be assessed on the basis of rents accruing to the Birta owner without gradation as Abal, Doyam, Sim, and Chahar. Assessments made in this way in Kathmandu and Lalitpur differ from those made in Bhaktapur. In

Kathmandu and Lalitpur, on Khet land, the usual rates of Rs 0.16, Rs 0.24, Rs 0.32, and Rs 0.48 per ropani were retained. On Pakho land taxes were levied at the rates of Rs 0.16 or Rs 0.24 per ropani for about one year. In 1897, however, a new formula was applied for Pota tax assessment on Pakho land under which rents appropriated in kind by the Birta owners were converted into cash at 5 pathis of paddy or 4.5 pathi of millet per Rs 1.00, and the tax was assessed at 6.25 percent of the total amount. This system also appears to have been applied in the case of Khet land in one or two cases. In Bhaktapur, the tax schedule contained higher rates than in Kathmandu and Lalitpur, viz., Rs 0.16, Rs 0.32, Rs 0.48, and Rs 1.00 per ropani. In general no distinction was made between Khet and Pakho land. Occasionally, where the area of Pakho land was not specified, the tax was assessed under the Bijan system, the rate being Rs 0.50 on one pathi of seeds.

In an effort to convert the specified categories of Birta tenure into Pota Birta, legislation was framed prescribing that, effective from the date Pota Birta lands were scrutinized and Pota assessment records compiled, the Birta lands of persons who failed to register their lands as Pota would not be confirmed even on evidence of possession, but would be converted into Raikar.⁸ However, in 1933, fresh regulations discontinued their outright conversion into Raikar but provided for a maximum penalty of Rs 5.00 per ropani in respect to unregistered Birta lands of the categories which were to be converted into Pota Birta.⁹ Obviously by 1933 the process of such conversion had been virtually completed and it was no longer necessary to threaten defaulters with unduly harsh measures.

The 1895-1896 measures related exclusively to specified categories of Birta lands in Kathmandu Valley. Later, the principle of Pota taxation was extended not only to other areas in the hill region but also to all categories of Birta lands including Kush Birta. The policy was primarily intended "to provide Birta owners with documentary evidence of their title and thus to avoid litigation, rather than to maximize Government revenue."¹⁰ In the initial stage such measures were probably enforced only with regard to Birta grants whose validity was open to question, but later they appear to have been enforced even when no dispute had arisen. For example, surveys were completed at Kabilas in Nuwakot in 1935 for the assessment of Pota taxes on Birta lands "irrespective of whether complaints disputing their validity have been submitted." Assessments on Khet land were determined as follows:

Table 4¹¹

Pota Taxes in Kabilas (Nuwakot)

<u>Grade</u>	<u>Rate of Pota Tax</u> (per ropani)
Abal	Rs 0.16
Doyam	Rs 0.12
Sim	Rs 0.08
Chahar	Rs 0.04

Such gradation appears to have been determined as a result of surveys conducted specifically for Pota tax assessments, but the basis is not known. In the desire to extend the application of the policy in the hill region at a faster pace, however, the Government appears to have dispensed with plans to conduct surveys in this way and to have based assessments on other available criteria. Accordingly, the following formulae were devised in East No. 3 district under an order issued on Aswin 11, 1994 (September 27, 1937).

- (1) Where the land is measured, Pota tax shall be imposed at Rs 0.10 on Khet land and Rs 0.04 on Pakho land per ropani.
- (2) Where the land is not measured, Pota tax shall be imposed on the basis of the rents being appropriated by the Birta owner at the following rates:
 - (a) In case of rents in kind, Rs 0.10 per muri of paddy and Rs 0.04 per muri of maize or millet.
 - (b) Five percent of the rent on Khet land and four percent on Pakho land in the case of cash rents.

The order recognized that such assessments were considerably below the level prevailing in Kathmandu Valley, but it pointed out that Birta owners would suffer if the Pota tax rates prevailing in the latter area were applied in the hill districts also "where they would be on the same level as tax assessments on Raikar land."¹²

Subsequently orders were issued to several Mal Offices in the hill region to levy Pota taxes on all categories of Birta lands in accordance with the above-mentioned formulae.¹³ Although the Government recognized that lack of uniformity in agricultural yields and prices of agricultural produce in different districts did not justify uniform rates of Pota tax assessments,¹⁴ the latter were sufficiently below the level of taxation prevailing on Raikar lands to put a significant tax burden on the Birta owners.

Nevertheless, the measure does not appear to have been overly successful, for more than ten years later we find new regulations admitting that "no action has been taken in this matter so far" and providing for necessary administrative arrangements.¹⁵ However, further action in this direction was impeded by the political disturbances that occurred towards the end of 1950.

Collection of the Pota Tax

The collection procedure on Pota Birta land differed from that on Raikar land in many respects. The last date for the payment of the Pota tax was Chaitra 31 (April 12), the last day of the year according to the Vikrama Calendar.¹⁶ After the expiry of this time limit, an extension of seven days was provided to the taxpayer. In case of further default, a portion of his assets, including the concerned land, sufficient to meet the arrears plus a fine amounting to 100% thereof, was auctioned. In case no person came forward to take up the land at the auction, coparceners of the taxpayer who had shared in the produce of the land were compelled to undertake the liability.¹⁷ It should be noted that, since Birta land represents private property, the land was auctioned for the realization of tax arrears. Whereas in the case of Raikar land the penalty for default is eviction and the land is given to any person who undertakes the liability.¹⁸

The Tip Tax

Tip was another tax that was levied on Pota Birta land at the rate of Rs 0.01 per receipt.¹⁹ On lands registered as Pota Birta prior to 1896, however, the rate was Rs 0.03/8 per ropani.²⁰

Taxes on Birta Land in Urban Areas

Occasionally special taxes were levied on Birta lands used for residential purposes in the urban areas of Kathmandu. When residential buildings were constructed on Raikar lands, and the owner was able to have the land granted as Birta in his favor, the existing tax assessment was retained, and the sole concession that the owner derived was the guarantee that the tax would not be increased nor would new taxes be levied in the future even in the event of transfer. In one instance, for example, Prime Minister Juddha Shamsheer granted Birta land in Kathmandu on these conditions where the existing assessment on approximately 0.5 ropanis of land was Rs 14.11.²¹ In some cases the tax was as high as Rs 23.01 per ropani.* However, such grants appear to have been extremely rare.

Recent Birta Taxation Measures

Although the policy of widening the base of Pota taxation by bringing all Birta land in Kathmandu Valley and the hill districts within its ambit was reiterated with added emphasis in 1950, the political changes that occurred a few months later appear to have held up its implementation. Since the general tendency of the new Government was to ignore or eschew policies adopted by the displaced regime, the decision to abolish the Birta system itself marked the end, at least for the time being, of all measures to extend the scope of Birta taxation.

Nevertheless, subsequent years witnessed a shift in the general trend of Birta policy. The original decision to abolish the Birta system had been influenced by the desire to eliminate a social and economic institution which had resulted in gross inequality of wealth. But with the passage of time and the inevitable resistance put up by Birta owners, the problem was reduced in the eyes of the Government to a purely fiscal question which could be solved by making Birta taxation general. In 1953 the Land Reform Commission, which included several prominent Birta owners, admitted its inability to arrive at a final decision with respect to Birta abolition on the ground that adequate statistics were not available. However, it affirmed the right of the Government to impose taxes on Birta lands and recommended that in cases where Birta owners were appropriating revenues in

* Birta Grant to Sardar Gunjaman Singh. Chaitra 13, 2004 (March 26, 1948). Often grants of this type were also made as Tiruwa Birta, cf., Tiruwa Birta Grant to Sanulal Pradhan and Others. Shrawan 30, 1998 (August 14, 1941).

cash a progressive tax should be imposed on income above Rs 500.00 per annum. On the other hand, if rents on Birta lands were being paid in kind, the Commission recommended a tax amounting to one-tenth of the value of the produce in the hill areas and equivalent to the tax rates prevalent on adjoining holdings of Raikar land in the Terai. In addition, the Commission recommended that Birta forests and waste lands should be brought under the control of the Government, although it did not specify whether this should be done without compensation.²²

It is significant that even this modest proposal met with opposition within the Commission itself. One note of dissent took the position that:

. . . Even if taxes are imposed on Birta lands, it appears proper to exempt lands owned by members of the royal family or granted in consideration of death or bravery in war or the performance of specific services, or those being used as Guthi by the people. Moreover, the view of the Birta owners as regards tax rates and methods of collection should be ascertained. . . . The Land Reform Commission should not arrive at a one-sided decision without consulting the persons to be affected by the measure.²³

The Ministry of Land Revenue and Forests, commenting on the above-mentioned recommendations, remarked that unless arrangements were made for the imposition of income taxes, Birta land taxes would not be equitable.²⁴ This obviously was an expression of the Ministry's unwillingness to levy taxes only on Birta incomes while ignoring incomes from other sources. But, as the Commission subsequently pointed out, the Ministry did not make it clear why the imposition of taxes on Birta lands would not be equitable.²⁵

Nevertheless, a royal proclamation issued on September 2, 1955, declared that "since it will take a long time for the Land Reform Commission to submit its reports and recommendations," progressive taxes would be imposed on Birta incomes as an interim measure. The schedule of rates mentioned in the proclamation was as follows:

Table 5²⁶

Proposed Birta Income Tax Schedule, 1955

<u>Income</u>	<u>Tax</u>
Rs 3,000	- -
Rs 3,001 - 5,000	5 %
Rs 5,001 - 10,000	7-1/2%
Rs 10,001 - 15,000	10 %
Rs 15,001 - 20,000	12-1/2%
Rs 20,001 - 25,000	15 %
Rs 25,001 - 30,000	17-1/2%
Rs 30,001 - 35,000	20 %
Rs 35,001 - 40,000	22-1/2%
Rs 40,001 - 45,000	25 %
Rs 45,001 - - - -	27-1/2%

The measure was certainly ideally suited for the taxation of agricultural incomes, and there was no reason why a similar policy should not have been adopted with respect to incomes from other categories of land also, although the problems of ascertaining ownership and assessing taxes would have proved formidable. However, no action was ever taken to implement this measure.

Subsequently the Draft Five Year Plan (1956-61) declared:

The question of Birta lands has been agitating the public mind. There is sentiment in favor of the abolition of Birta holdings with compensation to prevent owners and, pending such action, for payment of land taxes by the Birtawalas. This problem is receiving careful study with a view to proposing suitable legislation.²⁷

Apparently as a result of such study, the 1957 Finance Act imposed nominal taxes on all Birta lands. The Act prescribed that on all classes of Birta land, whether or not usually subject to taxation, taxes should be imposed at Rs 1.28 per bigha, Rs 0.50 per ropani, Rs 0.12 per muri, and 25 percent of the cash revenue where the area of the land was not specified. The Act further provided that the Mal Offices should prepare assessment registers in accordance with this schedule. For this purpose Birta owners were directed to submit particulars regarding the area and rents or revenue accruing to them on their Birta lands.²⁸

In justifying this measure, the 1957-58 Budget Report declared:

It is self-evident that the State possesses sovereign authority over all lands within its domain. Opinion can hardly differ in that it is not reasonable to retain a system which involves the private use of the produce of the land without necessitating any payment to the State. As it is considered desirable to impose some amount of taxation on all categories of Birta land, provision has been made for the taxation of Mafi, Tiruwa, Pota, Guthi, and all other categories which have so far been paying some tax to the State, or not at all. With the national interest in mind, Birta owners, it is hoped, will readily pay this tax.²⁹

This measure was expected to bring in a total revenue of Rs 2,299,000.00.³⁰

The situation in 1957-58 thus was similar to that of 1937, with the exception that Birta lands in the Terai also came within the purview of the later measure. Both measures provided for the imposition of nominal taxes, deliberately kept low because of the apprehension that otherwise the difference between Raikar and Birta tenures would be eliminated. The fact that these rates were considerably below even the tax rates imposed on Tiruwa Birta land in the Terai emphasized the essentially timid nature of the measure. That it had to be taken at all was perhaps due to the need to provide a sop to public sentiment against the Birta system. Even the higher level of taxation imposed in 1957-58 as compared to the 1937 level might be explained as due more to the increase in the price line in general than to any increased reformist fervor.

Nevertheless, the 1957-58 measure provided the starting point for a really effective and comprehensive scheme of Birta taxation, for the 1958 Finance Act further extended this

principle to bring Birta taxation up to the same level as Raikar taxation. It provided for the taxation of Birta lands at rates prevalent on Raikar land in adjacent areas. The tax differential between Raikar and Birta lands was retained, however, as the measure also sought to increase the level of Raikar taxation by 100 percent. Birta owners were permitted to shift the incidence of taxation only if they were realizing rents in cash on their Birta lands, but in no circumstances were they permitted to pass on their burden to such cultivators as had been protected under the 1957 Lands Act.³¹ However, the 1958 measure was repealed as a result of strong opposition from Birta owners.

In 1959, after the formation of the elected Nepali Congress Government, the Birta Abolition Program was revived. As an interim measure, however, the new Government decided to levy taxes on all categories of Birta. For the purpose of such taxation, Birta lands were divided into two new categories:

- (1) Class A. Birta lands possessed by Birta owners who are entitled to appropriate only the land revenue but have no ownership over the land itself.
- (2) Class B. Birta lands possessed by Birta owners on payment of nominal taxes, or even on a tax-free basis. The owners appropriate rents in cash or in kind and have ownership over the land.

On the first category, the tenant was required to pay as taxes to the State whatever revenue he had been paying to the Birta owner. For Class B Birta lands, on the other hand, a tax amounting to fifty percent of the rate prevailing on adjoining holdings of Raikar land was imposed. These measures were enforced with effect from Shraavan 9, 2016 (July 25, 1959).

The Role of Birta Taxation Policy

The primary objective of recent official policy with respect to the Birta system has been to bring it within the ambit of the land taxation system. The quintessence of this policy is the principle of universal Birta taxation and not taxation at any particular level. Wide variations exist in respect to assessment rates on Raikar land also, which are not infrequently lower than the rates of tax on Birta land. There is thus little justification for basing Birta taxation policy on the assumption that the rates of tax should be limited to a specified percentage of, or in any case should not exceed, the assessment rates on Raikar land. Analyzed from this standpoint,

it is clear that Birta taxation policy has failed to receive the consideration it deserved. Even while adhering to the policy of "putting an end to the feudal system of utilizing land without paying any revenue to the State,"³² the Government has taken measures in the direction of abolition. However, an extension of the principle of Pota taxation, as initiated in 1937 on the basis of assessment rates considered equitable from the viewpoint of agricultural land taxation and not necessarily determined with reference to the tax rates prevailing on Raikar land, would have fully satisfied the requirements of the Government as enunciated in the preamble to the 1959 Birta Abolition Act. As such, the failure to grasp the role of Birta Taxation Policy in eliminating Birta privileges and bringing Birta lands within the land taxation system has involved the Government in more complex problems than it set out to solve.

CHAPTER V

Problems of Birta Administration

Birta grants involved the divestiture of ownership in the land by the State in favor of individuals and therefore resulted in a contraction of the administrative jurisdiction of the State. The grants necessitated the observance of certain administrative formalities upon completion of which the Government was left with few additional administrative responsibilities in the lands thus assigned. Nevertheless, the obligation of the Government to ensure that lands were not utilized as Birta without proper authority, or that adjoining holdings were not encroached upon, required a number of administrative arrangements including the compilation and maintenance of proper records. The imposition of taxes on certain categories of Birta lands further increased the responsibilities of the Government.

Birta Grants

Birta grants were made by the King in his capacity of paramount owner of all land within his domain. All such grants, therefore, were made directly under the royal seal. This system continued nominally after the establishment of the Rana regime, but in fact divestiture of ownership was effective even on the basis of an order from the Rana Prime Minister. Indeed, throughout the Rana regime, a trend can be discerned towards a progressive deterioration in the royal authority in the matter of Birta grants. As recently as 1910, surveys and other arrangements preceding the finalization of Birta grants appear to have required orders under the royal seal.¹ But in later years the Rana Prime Minister's order was considered sufficient authority for this purpose.² Blank sheets of paper were stamped with the royal seal and were used by the Prime Minister at his own discretion.³ The use of the royal seal in Birta grants thus indicated a constitutional endorsement of the Rana Prime Minister's order rather than the exercise of a royal prerogative. The royal authority in respect to Birta grants was further curtailed when Prime Minister Juddha Shamsher promulgated regulations in 1936 appropriating to himself the power to make lifetime Birta grants without the use of the royal seal.⁴

Birta grants were issued on birch bark, palm leaf, paper, and, in special cases, stone, copper, or gold, though the use of paper and copper was more common.⁵ Usually such documents or inscriptions were issued much later than the actual grant, although this did not hinder possession. For example, in 1821 King Rajendra issued a formal royal seal document (Lal Mohar)

ratifying two Kusha Birta grants made by his father, King Girban, in 1800 and 1808.⁶ As an example of rather unusual delay, we might cite the case of a Kusha Birta grant made by King Girban in 1811, the royal order for which was issued more than a century and a quarter later in 1942.⁷ During the Rana period also, a considerable time lag usually ensued between an order issued by the Prime Minister to confer Birta land and a formal royal grant. Originally, possession of the land was permitted only after a formal royal order was issued,⁸ but later the recipient was permitted to appropriate income on the Birta land thus assigned to him during the interim period. The rents were handed over to him even if they had already been collected by the Mal Office,⁹ which in such cases deducted five percent as administrative expenses in addition to the tax collector's remunerations before handing over the proceeds to the recipient.¹⁰

Ordinarily, the grant or sale of Birta land to aliens was prohibited. In case it was necessary to make Birta grants to aliens, the law prescribed that only the value of the land should be paid to them, so that the land itself should not come under their possession.* However, the Prime Minister was empowered to waive these restrictions in the case of aliens who rendered extraordinary services to the Government of Nepal.¹¹ Such a grant was made in 1947 to an Indian professor for his faithful services at court as well as in the Nepal Bank Ltd. The land was inheritable but not transferable to other aliens.¹² This was in conformity with the Government of Nepal's policy barring aliens from acquiring real estate in Nepal unless they came in as settlers.¹³

Procedure of Birta Grants

Originally, Birta grants appear to have been made by indicating only the boundaries of the concerned land without any reference to the area contained therein. Such grants were

* It was possibly because of this consideration that cash allowances were substituted for Daijo Birta Grants to royal princesses who were married in India. Cf., Order Regarding Substitution of Cash Allowance for Daijo Birta of Princess Trailokya Rajyeshwari Devi, Ashadh 14, 2005 (June 28, 1948). However, grants which were admittedly in contravention of this law were made occasionally, as when Prime Minister Chandra Shamsher granted Birta land in Kathmandu to an Indian barber who had won his favor. Bakas Birta Grant to Shivadatta Nau, Jeshta 31, 1975 (June 13, 1917). However, the land was not transferable without governmental sanction, although it was inheritable.

called Sasim. Sasim Birta therefore referred to the procedure of the grant rather than to any particular category of Birta land. King Ram Shah (1607-1633), a predecessor of Prithvi Narayan Shah on the throne of Gorkha, had issued a decree prohibiting Sasim Birta grants¹⁴ in order to insure proper demarcation between the Birta lands of Brahmins and Raikar land, but it appears to have been largely ineffective.

In Kathmandu Valley, on the other hand, there were cases in which the area was mentioned without any reference to the boundaries.¹⁵ Legislation enacted in 1886 prescribed that in the future all Birta grants should clearly specify the boundaries as well as the area.¹⁶ If the order providing for the grant did not mention the area, the land was measured before being handed over to the recipient.* In all cases, the boundaries of Birta lands were marked with stone pillars.¹⁷ If the actual revenue exceeded that mentioned in the grant by ten percent or less on the first Rs 100.00, and a total of Rs 10.00 on the balance in the case of revenue assignments, the beneficiary was permitted to appropriate the higher amount. In the case of land assignments, discrepancies of area amounting to a maximum of one ropani in Kathmandu Valley and the hill districts and one bigha in the Terai were similarly ignored. Discrepancies involving a higher amount of revenue or a larger area were referred to the Government.¹⁸

A survey of the land proposed to be assigned as Birta was essential before the grant was finally made. Legislation enforced in 1872 centralized survey operations on both Birta and Raikar land,¹⁹ but since this practice sometimes delayed the finalization of grants, district officials were directed to undertake occasional surveys when influential persons were involved.²⁰ Regulations were promulgated in 1932 prescribing that surveys preceding Birta grants should be made by local officials in the districts, and by the Pahad Bandobast Birta Phant (Hill Region Birta Administration Office) in Kathmandu Valley.²¹

Royal Seal (Lalmohar) documents were not only issued for new Birta grants, but also when Birta lands were purchased from their owners by influential persons or were exchanged for Raikar land with the Government. Ordinarily, transactions of Birta land among individuals did not require the issuance of fresh royal seal documents.²² But when the purchaser was influential, the concerned lands were confirmed as Kharidi Birta.²³ This not

* Even after 1886, however, breaches of this law were committed occasionally when influential persons were concerned. Cf., Sasim Bakas Birta Grant to Her Highness Lok Chandra Bhakta Laxmi Devi, Chaitra 26, 1960 (April 8, 1904).

only removed any possibility of complications arising in the future as a result of defective or missing title-deeds, but also created an opportunity to secure more favorable terms than those conferred in the original grant.²⁴ The system of making Kharidi Birta grants came to an end after the downfall of the Rana regime in 1951. In 1957, when the question of issuing a Kharidi Birta grant of some Birta lands purchased by Juddha Shamsheer during his Prime Ministership was considered, the Ministry of Finance noted:

The transaction relates to Birta lands for which royal seal documents issued in the names of the ancestors of the seller are in existence. . . . There is no law which requires a new royal seal document to be issued in respect to private transactions in Birta land.²⁵

The law provided that Birta owners could exchange their Birta land for Raikar land of more favorable location with governmental sanction on condition that the Birta land that was offered exceeded both the area and the yield of the Raikar land that was obtained in exchange.²⁶ The objections of caretakers, if any, were overruled in case the land adjoined the holding of the Birta owner or was surrounded by it and was thus indispensable to him.²⁷ Exchange on these conditions sometimes proved a difficult operation, particularly when the Birta land did not exceed by twenty-five percent both the area and the yield of the Raikar land that was proposed to be acquired. Regulations were therefore promulgated in 1936 to the effect that a much higher area of Birta land might be acquired in these circumstances to make the yield thereon exactly twenty-five percent higher than that on the Raikar land the Government provided in exchange.²⁸ Fresh royal seal documents were issued when an exchange was made in this way, leading to the emergence of what was known as Satta Birta grants.

Possession of Birta Land

The law prescribed that the recipient must obtain possession of the Birta land grant within sixteen years.²⁹ Provision was also made that where land had been utilized as Birta for a period exceeding sixteen years, it might be retained as such on the basis of possession even in the absence of documentary evidence, provided that no complaint had been filed in the meantime to the effect that the land was being unlawfully utilized as Birta.³⁰ At the same time, however, if a Birta holding included land for part of which the owner was not able to produce documentary evidence, this section of his holding was

converted into Raikar even if he had possessed the land for more than sixteen years.³¹ This was intended to ensure that the land possessed as Birta in no case exceeded the area specified in the grant.

One of the biggest problems the Government has faced in the past in the sphere of Birta administration stemmed from the apprehension that Birta owners would encroach upon adjoining holdings of Raikar land. As early as 1799 regulations were framed to punish such Birta owners with confiscation of their holdings.³² This policy was executed in subsequent years with such severity that portions of Birta holdings which exceeded the area mentioned in the original grants were confiscated even when the original boundaries and markers had remained intact. Legislation enacted in 1897, therefore, recognized that this policy was oppressive because it would deprive people of lands possessed and inherited by them for several generations, and was unjust because the unit of measurement had been altered at various times by various Kings. The 1897 regulation prescribed that in the future Birta holdings would not be confiscated as long as their boundaries or markers were intact even though the area contained therein might exceed that specified in the original grant. However, if any of the boundaries or markers had been misplaced, the land would be measured and confirmed as Birta only to the extent specified in the grant. If the grant did not mention the area but only indicated the boundaries (Sasim Birta) the matter was to be referred to the Government. In any case, discrepancies of area up to a maximum of ten percent above the figure mentioned in the original grant were to be ignored if the grants had been made prior to 1868.³³ The extensive land surveys which were conducted in that year were probably regarded as having rectified such anomalies, so that a similar consideration was not afforded in the case of Birta lands granted posterior to this date.

Presumably in view of the fact that the administrative machinery was not really competent to deal with problems of encroachment, people were encouraged to provide information of such cases to the Government. False information was punishable by fines, but bonafide cases brought the informer sufficient compensation to make the risk worthwhile. Complaints of this nature were not entertained if the area of the land alleged to have been encroached upon amounted to less than ten percent of the concerned holding. But where the extent of the encroachment was higher, an equivalent area was deducted from the Birta holding of the offender and converted into Raikar.³⁴ The Birta land confiscated and converted into Raikar in this way, as well as the Raikar land that had been encroached upon, was registered in the names of any tenants and caretakers resident thereon. However, if the owner was cultivating the land personally or through tenants-at-will, he was allowed to retain half of both

categories of land, while the rest was given to the informer as reward. But if the complaint concerned Pakho land, the owner was allowed to retain it in its entirety, and the informer was rewarded by appointment as Talukdar, presumably in order not to displace local inhabitants. On the other hand, if encroachment or suppression of taxable land was revealed in course of surveys conducted by the Government, the land was converted into Raikar, but no punishment was meted out to the owner.³⁵

Birta Administration

The simple functions which Birta administration involved did not require any additional machinery in the districts, for these were discharged more or less adequately by the Mal Offices on Raikar land. These Mal Offices and other local officials were responsible for conducting necessary surveys prior to the grant of any land as Birta.³⁶ They were empowered to issue the necessary title deeds to the recipient in the event of a grant,³⁷ but the land was struck off the Raikar assessment records only when a formal royal order (Lal Mohar) was issued.³⁸ In the hill districts these offices were responsible also for the collection of taxes on Pota Birta lands,³⁹ although this function is not expressly mentioned in the Revenue Regulations.

In Kathmandu Valley, on the other hand, the administrative burden of collecting Pota taxes apparently was too heavy to be handled by the Mal offices on Raikar land, and after the Pota tax records were compiled in 1895-96, a Pota Tax Office was formed with Kathmandu, Bhaktapur, and Lalitpur under its jurisdiction. After Pota Registration Offices were created for each of these three areas on April 13, 1923,⁴⁰ this function appears to have been taken up by these offices.

Prior to 1950 Central administration was in the hands of the Pahad Bandobast Birta Phant (Hill Region Birta Administration Office) which, in spite of its name, had the entire country under its jurisdiction. Established around 1907 this office was responsible for the issuance of royal orders and other administrative functions pertaining to Birta grants. In addition, it undertook surveys of Birta lands prior to finalization of grants in Kathmandu Valley. The practice of making Birta grants came to a virtual end after 1951, and the other administrative functions of this office passed on to the newly created Department of Land Revenue. Since then, the office has functioned primarily as a Birta Records Office. In 1962 it was merged into the Lagat Phant (Records Office) in an effort to establish a full-fledged Central Land Records Office.⁴¹

Birta Records

Since Birta grants in the beginning did not involve any problems of taxation to the Government, little attention appears to have been paid to the compilation of records. The need to make arrangements for the collection of Pota taxes appears to have resulted in the maintenance of records for the first time. This category of Birta was originally limited to Kathmandu Valley and records were maintained for this area only. In 1895 these records were remodelled and provision was made to keep them current by registering mutations.⁴² Existing regulations prescribed that they should specify the class, grade, and area of the land, the rate of the Pota tax levied thereon, and the name of the Birta owner.⁴³ Such records were revised at the end of every ten years.⁴⁴

Until 1895 even in Kathmandu Valley Birta records had been compiled only with respect to Pota Birta. In that year measures were taken to compile records of all categories of Birta lands and appear to have met with a fair degree of success. In fact, the 1896 records present a reasonably authentic and complete picture of the system which has not since been improved upon. Unfortunately, however, these records were not maintained on a current basis, with the result that recent Birta taxation and abolition measures have been obliged to make separate arrangements for the compilation of particulars relating to Birta ownership. Regulations were subsequently promulgated to prescribe that the recipients of Birta grants should register their land at the Pahad Bandobast Birta Phant Office within a period of three months.⁴⁵ But there is no evidence that they were actually enforced.

Birta administration was therefore a relatively neglected field of State activity. Certainly the restricted sphere of taxation and the inevitable distrust of administrative encroachment on what was generally considered sacrosanct private property tended to abort measures initiated by the Government to widen the base of Pota taxation and compile correct records of Birta grants. Moreover, the lack of an adequate machinery for Birta has been responsible for slowing down the pace of several recent reforms connected with this system, including its abolition.

CHAPTER VI

The Birta System and the Peasant

So far we have concentrated on the relationship between the State and the Birta owner. In a situation where social and economic conditions are determined primarily by the interests of the land-owning classes, the interests of the cultivator tended to be ignored. Indeed, measures seeking to control rents and to guarantee occupancy rights are only of comparatively recent origin and have been largely ineffective. A study of the existing administrative machinery and pattern of land ownership and use will highlight the impediments to the effective implementation of rent and tenancy legislation in Nepal. While such measures have been on the statute book for more than half a century, the government has never demonstrated the capacity to solve the basic administrative problems resulting from the peculiar conditions of land ownership and use prevailing in the Kingdom.

In a situation where Birta owners and non-official land tax collectors formed an integral part of the governmental machinery at the local level, it is hardly surprising that legislation pertaining to rents and tenancy rights, no matter how well-intentioned, remained limited to the statute book. These measures were inevitably handicapped by the absence of an adequate enforcement machinery at the village level and the rights were secured to the cultivator by legislation dependent for its enforcement on the interests and goodwill of the village landlords. Since the latter could hardly be expected to act contrary to their own interests, the results were preordained.

Additional impediments stemmed from the government's apparent ignorance of the trend towards sub-infeudation in the pattern of land ownership and use. Legislation seeking to protect the cultivators usually applied only to the intermediary classes under conditions of sub-infeudation. Only the relations between the Birta owner and his tenant were regulated, thus leaving the cultivator unprotected. Some recent legislation has attempted to provide an equal measure of protection to the cultivators as well, but the situation is complicated by the absence of records of cultivators. Even on Raikar land, the assessment records maintained by the Mal Office never contain the names of the actual cultivators since the sole objective in compiling them was to collect the land taxes payable by the intermediary "land owning" classes. Recent legislation aiming at the compilation of records of cultivators has invariably remained unimplemented.

Moreover, Kathmandu has been consistently oblivious of the fact that rent control measures seldom attain their objective in the absence of complementary measures seeking to prevent sub-infeudation and absentee landlordism. A drastic reduction in rents naturally results in an enhancement of the margin of profit available to the cultivators, who then can either sell the right to appropriate the additional profit or sublet the land at the usual level of rent. There is, of course, no reason why this class should not retain the surplus accrued as a result of drastic rent reduction, but the prospects of deriving a capital gain or of appropriating rents without any obligation to invest physical labor on the land has proved irresistible more often than not.

In spite of repeated rent and tenancy legislation, therefore, the nature and level of rents payable on Birta lands remained largely unaffected. The payments exacted from the cultivators were multifarious, particularly on Pakho lands in the hill districts, since these comprised the homestead and provided scope for poultry farming, dairying, and several other industries in addition to agriculture. Moreover, the unrestricted and frequent exaction of unpaid forced labor made the condition of the peasantry on Birta lands proverbially inequitable. For example, in 1953 an official Land Reform Commission uncovered innumerable instances of "exploitation" practiced by Birta owners, the most important of which was the exaction of unpaid labor. In West No. 1 district a member of the Commission found that "Birta owners treat their tenants like slaves. . . . The system of unpaid labor (begar) has not yet come to an end."¹ In Gorkha a Birta owner was able to cultivate twenty-five ropanis of land without paying any wages to his laborers as the services of four unpaid laborers were exacted from each homestead. In some cases, the problem was of underpayment rather than of nonpayment. Thus a porter was paid only Rs 0.12 for transporting a load of agricultural produce from Gorkha to Kathmandu, a distance of more than fifty miles. Occasionally, commodities were extorted from tenants at fantastic prices--e.g., one mana of mustard oil at Rs 0.12.² Irrespective of such exactions, in many cases rents exceeded fifty percent of total production. In Kunchha (West No. 3), there were no effective restrictions on the power of Birta owners to enhance rents or evict tenants as they liked.³

This situation was aggravated because, in general, the Birta system had an inherent tendency to lead to a depression in the status and earnings of the cultivators. Birta grants were made by the King in his capacity as the paramount owner of all land within his domains either to acquire religious merit, reward Government employees and members of the nobility for the services rendered by them to the State, or solely for the enrichment of relatives and favorites. The beneficiary of Birta

grants thereby acquired social and material status and privileges, which at times also placed him in a position of overlordship over the landholder. Birta grants thus created a new class of land interests above the landholder and inevitably depressed the latter's status. Although this process did not necessarily result in outright eviction, since the Birta owner was more often than not an absentee landlord too preoccupied with the cares of war or politics to attend to cultivation personally and was in any case concerned only with his rent income, the substitution of Birta ownership for State landlordism exposed the landholder to recurrent and arbitrary demands for higher and multiple rent payments which the institutionalized character of Raikar tenure had been slowly eschewing in favor of commuted payments in cash. In 1947, for example, a holding of 0.42 ropani of Birta land at Tahachal in Kathmandu, on which the rent was eight pathis of paddy plus some other payments in kind, was acquired by the government. In exchange, the Birta owner obtained a Raikar holding of approximately 0.41 ropani. The assessment on this land was 8.5 pathis of paddy and Rs 0.04 in cash, which was commuted into a consolidated cash payment of Rs 1.75. This placed the owner of the latter holding under the obligation to pay rent in kind at the full assessment figure to the Birta owner since the commutation arrangements were not applicable in the case of rents on Birta land. Previously he had paid only the commuted value amounting to Rs 1.75. In view of the favorable rates of commutation in the case of Raikar land, this meant considerable loss to him. However, his objections were overruled.⁴ While no change was made in the assessment figure consequent to its assignment as Birta, the mere fact that the landholder was denied the facility of making payment according to the commutation value thereof, which he had enjoyed under Raikar tenure, resulted in a depression in his status and earnings.

In the above example we have discussed the effect of the assignment of a Raikar holding as Birta upon the landholder, under the assumption that sub-infeudation has already proceeded to this extent. The case holds good in respect to the cultivator as well in the absence of such sub-infeudation, though there would be one important difference. Where the income of the intermediary landholder on Raikar land was determined by the discrepancy between the commuted value of the assessment in kind (at rates much below the current prices of agricultural produce) and its actual value, enhancement of payments thereon to the level of the original assessment consequent to its assignment as Birta might even absorb his entire earnings. Unless he was in a position to shift part of this additional burden to the cultivator, this would mean his expropriation without compensation. On the other hand, the landholder-cum-cultivator would be able to withstand this encroachment on his earnings

from the land without having to part from it since his previous income included what would have been paid in the form of rent under conditions of sub-infeudation.

Another reason why the Birta system led to a depression in the status and earnings of the cultivator was its inherent tendency to lead to absentee ownership. While the Raikar system implied the obligation to render personal physical labor, Birta ownership created rentier rights devoid of any such obligation. In cases where Birta grants were not meant for purposes of personal residence, it was neither possible nor attractive for the beneficiaries to abandon the responsibilities of war or politics or the pleasures of court life in pursuit of an agriculturist's life.

Even then, the collection of rents on Birta lands was generally the responsibility of the Birta owner himself. As Birta grants had led to the emergence of private property rights in the land, the State was unconcerned with the problem of collecting the Birta owner's rents. Nevertheless, in certain cases, mostly concerning the Birta holdings of prominent members of the royal or Rana families⁵ in the Terai, the local Mal Office of the Government undertook this responsibility on behalf of the Birta owner. The procedure of collection was the same as in the case of Raikar land, but the Mal Office was required to deduct the expenditure incurred in the course of such collection before handing over the proceeds thereof to the Birta owner.⁶

Moreover, whenever the Birta owner preferred to free himself of the trouble of administering his property and collecting his dues, sub-infeudation was the inevitable result. The creation of an intermediary class between the Birta owner and the cultivator left the former with a lower income than would otherwise have accrued to him if he had administered his lands directly, but at the same time allowed him considerable leisure to attend to other occupations. Sometimes these intermediaries were in the nature of contractors.⁷ Since in such cases the contract was issued to the highest bidder, this inevitably enhanced the burden on the cultivators, particularly in a situation where rents were unregulated by law.

Where Birta grants involved entire villages, as was not uncommon in the Terai, Birta owners appear to have considered it expedient to use the existing non-official tax collectors, such as the Jimidars and Patuwaris. In such cases the only difference resulting from the assignment was that the Birta owner appropriated what would otherwise have been paid to the State. Furthermore, in situations where Rana families owned extensive holdings in this region, it was found necessary not only to retain the existing Jimidars and Patuwaris but even to create

separate Mal Offices, known as Birta Mal Offices, to supervise the task of collecting the rents.

In such cases, therefore, Birta grants not only involved a contraction of the administrative and revenue jurisdiction of the State but even resulted in the creation of what could almost be described as a parallel administration, but without the legal and political checks to which a governmental administration is usually subject. These Mal Offices were owned by the families of Prime Ministers Bir Shamsher, Chandra Shamsher, and Bhim Shamsher.

The Nature of Rents on Birta Land

Prior to 1906 there does not appear to have been any legislation to control rents payable to Birta owners by their tenants, or even to guarantee tenancy rights. Even when the income on the land assigned as Birta was expressly mentioned in the concerned grant, there is no evidence that this set a maximum limit to the rents the owners could exact from their tenants. For example, in 1839 King Rajendra (1816-1847) granted a holding of 3.37 ropanis as Birta to a member of the Damai community at Khokana in Lalitpur district. The grant clearly stated that the revenue on the land amounted to Rs 2.00 only. But when the holding was registered in the Birta records compiled in 1904 for purposes of Pota taxation, the owner stated that the rent he was appropriating thereon amounted to 12.5 pathis of maize,⁸ worth at least Rs 4.00 at that time.

A Birta grant made in 1843 empowered the beneficiary to "enhance rents and evict tenants if necessary."⁹ Thus, in the absence of statutory restrictions, the conclusion would appear to be justified that Birta owners usually availed themselves of the opportunity to maximize rents. The system of grading Birta lands for purposes of taxation, under which lands subject to a rent exceeding two muris of paddy or one muri of rice per ropani in addition to wheat or other winter produce, as Abal¹⁰ indicates that such exorbitant exactions were not unknown. There were also instances in which rice or paddy was collected even from Pakho lands.¹¹ Although such rates and practices were fairly common on Raikar lands also, the incidence thereon was mitigated by the facility of making payments in cash at generally favorable conversion rates. Rents on Birta lands were, however, rigorously collected in kind.

Nevertheless, there were situations in which the freedom of the Birta owner to enhance rents to the maximum possible extent was hampered by several factors of an economic and institutional character, if not by governmental restrictions. In the

hill districts as well as in some parts of Kathmandu Valley, the relative abundance of Pakho land and the need to attract tenants for the cultivation of khet lands of the Birta owner situated in the river basins contributed to nominal rents, mostly in cash. In addition, where sub-infeudation had progressed prior to the assignment of the land as Birta, the assignment, as well as the collections, were restricted to the level of the existing taxation on the land. Particularly in the Terai, the generally large size of Birta holdings and difficulties of personal supervision on the part of the Birta owner no doubt made it difficult for him to enhance rents and evict the existing landholders, or to cultivate the land personally. In other words, the level of rents depended in such conditions on the effectiveness of the Birta owner's control over the land. When, for the reasons mentioned above, the Birta owner was unable to increase rents up to the customary level, the tenant could take advantage of the additional margin thus available to him either to sublet the land or sell it at its capitalized value. In either case a three-tier hierarchy emerged composed of the Birta owner, the tenant, and the cultivator. In view of the comparatively low level of rents which resulted from the assignment of cultivated Raikar lands as Birta in the Terai, sub-infeudation of this type was particularly conspicuous in this region. However, it must be recognized that in such conditions it was also probable that sub-infeudation had progressed to this extent even before the assignment of the land as Birta, and that the land assignment had not created sub-infeudation, but merely retained it. In these circumstances, the term tenant did not necessarily refer to the cultivator but often to the intermediary between the Birta owner and the cultivator.

The 1906 Rent Legislation*

It was in 1906 that measures were taken for the first time to control rents and provide for the security of tenancy rights on Birta land. Even then, no arrangements were made to create the administrative machinery necessary for their effective implementation, and it is safe to conclude that these measures remained largely ineffective.

* The 1906 legislation, insofar as it dealt with tenancy rights, appears to have been amended at least twice before it attained its final form as described above in the second (1952) edition of the Muluki Ain, although the dates of such amendment are not available. In the original 1906 enactment, Birta owners were entitled to resume "the necessary area of land" for personal residence in the Terai, and also for personal cultivation

So far as rents were concerned, the 1906 measures prescribed that in all areas of the Kingdom rents on Birta lands could be increased only up to the level of taxation prevailing on adjoining holdings of Raikar land if they were lower than this figure at the time of the enactment. If the Government increased the level of taxation on Raikar lands, or if the Birta owner effected improvements in the land at his own cost so that it approximated to Raikar land of a higher category or grade, enhancements were permitted to such higher levels of taxation, and any tenant who refused to pay rents at the new enhanced level was liable to eviction.

In the Terai, if the existing level of rents on cultivated Birta land was equivalent to the level of taxation prevailing on adjoining holdings of Raikar land, enhancement was permitted up to a maximum of ten percent beyond this level, although eviction in case the tenants refused to pay the increased rents was permitted only with the approval of the Government. However, if the Birta owner secured the consent of his tenants, enhancement of rents was permitted even beyond the level of taxation prevailing on adjoining Raikar holdings. These provisions were not applicable in the case of newly reclaimed land if a written agreement between the owner and the tenant, concluded at the time arrangements were made for such reclamation, made any provision to the contrary. Obviously this was intended to encourage the reclamation of waste land by holding forth the attraction of unrestricted rents to Birta

in Kathmandu Valley and the hill districts. ["On Land Eviction" Muluki Ain, Part III, 1935 edition, p. 29.] These figures were later specified as five bighas in the Terai and five ropanis elsewhere, leaving a minimum of two bighas and two ropanis with the cultivator respectively. (Ibid., addendum to p. 34.) Subsequently the figures were reduced to 1-1/2 bighas in the Terai, as described in the text. Since, as mentioned above, the dates of these amendments are not available, the measure has been referred to as the 1906 legislation for convenience sake. See Appendix A.

owners. Apparently in an attempt to implement these measures, regulations were promulgated subsequently to provide for the assessment of rents on Birta lands on the same basis as of taxes on Raikar land, in the course of the surveys that invariably preceded Birta grants.¹²

The 1906 measures suffered from a number of inherent shortcomings in addition to the absence of adequate enforcement machinery. In particular, the level of taxation prevailing on adjoining holdings of Raikar land was an ambiguous term. Where assessments are in kind, and collection is made in cash at conversion rates which are unduly low in comparison to current prices of agricultural produce, it is apparent that the term could be used to mean either the level of assessments or of actual collection. Naturally therefore, Birta owners took advantage of this ambiguity to determine their rents on the level of assessments prevailing on adjoining holdings of Raikar land, instead of on the level of actual collection. In the Terai, however, the application of such rent control measures appears to have been easier primarily because both assessments and collection on Raikar land in this area have been in cash. Moreover, enforcement was particularly effective in this region where the emergence of a three-tier agricultural hierarchy had created a class of landed interests whose earnings were limited to the difference between what they paid to the Birta owners and what they received from the cultivators as rent. The system of collecting Birta rents through the Mal Offices on Raikar land, which existed in some Terai districts, also contributed to the effectiveness of the 1906 measures in this area.

Another defect in this legislation was that it did not directly safeguard the interests of the cultivator. Where an intermediary class of tenants existed between the Birta owner and the cultivator, the 1906 measure regulated only the relationship of the Birta owner with his tenant, and thus set no limit to the rents the cultivators might be required to pay the tenant. As in the case of taxes on Raikar land, rising prices tended to reduce the real value of the Birta owner's income while the tenants were appropriating rents in kind from the cultivators and making the most of this situation. Furthermore, certain categories of Birta owners were required to pay taxes to the State, but the tenants had no obligation of this nature. In this situation, therefore, it was the intermediary class which was enriched at the expense of both the cultivators and the Birta owners, thus making tenancy rights more tangible and profitable than Birta ownership rights themselves. To the extent of their applicability and effectiveness, therefore, the 1906

measures encouraged sub-infeudation and defeated their own stated purpose by exposing cultivators to the extortions of an intermediary class.

Even in the absence of sub-infeudation, where the Birta owner had direct relationship with the cultivator, the 1906 measures created conditions favorable to the emergence of an intermediary class. For example, in one case at Paknajol in Kathmandu revenue division, the rent which a Birta owner collected directly from the cultivator on one ropani of Pakho land amounted to two muris of paddy worth at least Rs 6.00 at that time. Assuming that the 1906 measure was implemented and reduced this rent to the level of the taxation prevailing on the adjoining holding of Raikar land, which, let us assume, was a Thek Tiro tax of Rs 2.00 per ropani, the cultivator was benefitted. But since he could now sublet his holding or sell the right to appropriate the additional income accruing from the reduction in the rent he had previously paid at its capitalized value, sub-infeudation became possible. And there was no statutory restriction on the rents which the non-working intermediary could exact from the cultivators.

The demand has been made from time to time that it should be permissible to pay rents on Birta lands in cash after having commuted them at rates prevalent on Raikar land.¹³ In essence, this was a demand for extending the benefits of the 1906 rent control measures to the cultivators in cases where an intermediary class had emerged between him and the Birta owner. However, this proposal was ignored by the Land Reform Commission on the ground that this formed only a part of the bigger question of Birta abolition.¹⁴

Security of Tenancy Rights

The 1906 measures also made provision to provide for the security of tenancy rights. Eviction was permitted only if existing tenants vacated the land or defaulted in the payment of rents, and even then only if the Birta owners were dealing directly with the cultivators. Where the tenants had sublet the land to cultivators and were paying their revenue to the Birta owner through Jimidars, it was only the latter who could exercise the eviction right. However, if sub-infeudation had not proceeded to this extent, or if it was necessary for the Birta owner to evict Jimidars themselves for the above-mentioned reasons, he was empowered to take action to evict them, but only in accordance with the revenue regulations prevailing in respect to Raikar land.¹⁵

Eviction was also permitted in the Terai if the Birta owner desired to resume land for personal residence or for the construction of tanks and gardens, and "for personal residence and cultivation" in Kathmandu Valley and the hill districts. In the Terai, resumption of land for these purposes was limited to 1.5 bighas in any one village from out of the lands of tenants who possessed a minimum of 3.5 bighas. The tenant had to retain a minimum of two bighas unless this prevented the Birta owner from acquiring a compact area. These restrictions were obviously imposed with a view to preventing the displacement of tenants and the consequent loss of livelihood, particularly in an area where land settlement has always constituted the cornerstone of official policy. Compulsory resumption was permitted only on the condition that the Birta owner arranged for the payment of a reasonable price at rates current in the village for the land thus acquired, from out of the proceeds of a levy imposed for this purpose on all tenants in possession of five bighas or more, or else extracted an equal area of land from each to provide for land in exchange to the victim of the resumption. It depended on the victim whether to accept payment in cash or land.

If the Birta owner desired to acquire more than 1.5 bighas, he could either pay the current price thereof or provide other land in exchange. In Kathmandu Valley and the hill districts, on the other hand, such resumption was permitted to the maximum extent of five ropanis at any one place after leaving a minimum area of two ropanis with the tenant. No compensation was payable to the victim of the resumption. But if the Birta owner's need for a compact plot impinged on these restrictions, resumption of land from tenants with less than two ropanis in their possession was permitted on condition that they were provided with an equivalent area of land in exchange elsewhere in the same village. Resumption of land from tenants possessing less than two ropanis, or of an area exceeding five ropanis, was permissible only if the Birta owner paid the current price thereof, or else was able to secure the tenant's consent to vacate the land without any consideration whatsoever.

Such compulsory resumption was permitted even when this led to the expropriation of tenants from mud huts* constructed on Birta land, on condition that the Birta owner paid the current price thereof or else provided a similar hut on his own

*According to existing law, if a house has walls of baked bricks or stone and roof of any material, or, if the upper portion is constructed of brick, stone or concrete in the absence of a roof, it is regarded as "brick-built." All other constructions are regarded as "mud-built." O. Construction of Houses, op. cit. Section 12, p. 73.

Birta land in the same area in exchange. However, expropriation from brick houses was permitted only with the consent of the tenant.

In addition, the 1906 measure entitled the tenants and Jimidars on Birta land to transfer whatever rights they possessed in the land without reference to the Birta owner, but only on condition that such action in no way prejudiced the rights of the latter. Arbitrary eviction of Jimidars was prohibited, and provision was made for the appointment of persons trusted by the local people to these positions. With regard to tenancy rights, the 1906 measure sought to afford protection to the cultivator only if he was working directly under the Birta owner. In other respects the position of the intermediary was strengthened and the cultivator was exposed to possibilities of arbitrary eviction.

Legislation also had been enacted to ensure that coparceners of owners possess the right of preemption in the event of transactions in real estate. Even if the transaction is already complete, the right to resume the property by paying off the purchaser is reserved to them. Where the coparceners failed to exercise this right in respect to Birta land it passed on to the tenants.¹⁶ But there was no law which required that they should be provided with due notice prior to or in the event of transactions in Birta lands or other forms of real estate, with the result that the statutory limitation often expired without their knowledge. It is doubtful whether this nominal right was ever exercised. Frequently, this law was evaded by registering the transaction at an inflated value, thereby deterring resumption by coparceners and tenants alike.

The 1957 Lands Act

The neglect with which the cultivator was treated cannot be explained solely by the inability of the Government to analyze the nature of sub-infeudation. Even on Raikar land, such measures as the Government undertook in respect to land tenure conditions were limited to the "land owning" intermediary class, which was primarily responsible for the payment of land taxation. Until 1951, the Government hardly appears to have felt any responsibility for promoting the welfare of the cultivating class, irrespective of the system of land tenure, and it was not until 1957 that concern for the cultivator's welfare manifested itself in legislative action.

It is significant that the 1953 Land Reform Commission failed to recommend measures aimed at improving the condition of the cultivator by reducing or controlling rents beyond putting

forward the rather insipid suggestion that rents on Birta lands, whenever payable in kind, should assume the form of grains only.¹⁷ Indeed, rather than taking any action to benefit cultivators on Birta lands, official policy veered to the opposite extreme of safeguarding the rentier rights of the Birta owning class. To counter the widespread sentiment against payment of agricultural rents which followed in the wake of the 1950 Revolution, legislation was enacted providing for fines and imprisonment for anyone agitating for nonpayment of rents or inciting tenants to such a course of action. The 1955 Agricultural Rents Act prescribed a fine equivalent to the value of the rent for cultivators who failed to pay rents. The Act also provided for a summary disposal of complaints of nonpayment of rents within a period of thirty-five days after their submission and prescribed special adjudicating machinery for this purpose.¹⁸

The Lands Act, promulgated in July, 1957, sought to control rents and provide for the security of tenancy rights on all categories of land tenure including Birta. According to Section 3 of the Act:

No landowner shall charge rents in excess of fifty percent of the total annual production on the land from the peasant. Rents may be collected in cash or in kind, as the case may be, in accordance with the usual practice, except as otherwise agreed upon with mutual consent. But in case the rent prescribed by custom, law, or agreement amounts to less than fifty percent, payment shall be made at the lower rate.¹⁹

The term landowner, in respect to Birta land, referred to the tenant, or, in the absence of a tenant, the Birta owner himself. It should be noted that the Act changed the terminology of the Muluki Ain (Legal Code) by referring to tenants (Raiti) as "Landowner." According to Section 10 of the Act these rent control provisions were applicable to the relationship between the Birta owner and the landowner as well as between the latter and the cultivator.

It is noteworthy that the Act recognized the difficulty of implementation in the absence of systematic records of cultivators. Accordingly, it called for the compilation of separate records of peasants whom it sought to protect. However, it created no special administrative machinery for this purpose, and instead made Patuwaris in the Terai and Jimmawals in the hill districts responsible for discharging this new function. Consequently, as might be expected, this provision of the law has remained unimplemented.

While the 1906 regulations had regarded the level of taxation prevailing on adjoining holdings of Raikar land as the normal level for rents on Birta land, the 1957 Lands Act replaced this by a maximum of fifty percent of the total annual output. In the majority of cases, this tended to act against the interests of the landowner. While the latter measure also prohibited the enhancement of rents beyond the existing level, it did not affect existing rents if they were lower than fifty percent of the total annual output. It is clear that this provision of the law was violated frequently. Arbitrary evictions by Birta owners, in an attempt to maximize rents to the level provided for in the Act, were widespread. Moreover, since fifty percent of the total annual output from the land was the maximum landowners could collect from the cultivators, it was meaningless to provide for the same maximum in the payments made by landowners to the Birta owners. If both the Birta owner and the landowner succeeded in appropriating the maximum secured to them under the Act, the latter would have been left with no return at all.

On the other hand, the Act sought to provide the cultivator under conditions of sub-infeudation with occupancy rights where none had existed before. Eviction was permitted only through legal action in specified circumstances such as nonpayment of rents, discontinuation of cultivation and deliberate damage to the land. Landowners were, however, permitted to resume lands for purposes of personal residence up to a maximum area of five bighas in the Terai, and ten ropanis in Kathmandu Valley and the hill districts. In cases where the landowner was a Government servant, a widow, a minor, or a recruit in a foreign army, resumption for purposes of personal cultivation was permitted up to a maximum area of twenty-five bighas in the Terai, fifty ropanis in the hill districts, and twenty-five ropanis in Kathmandu Valley, provided the landowner had no land under personal cultivation, or the area he was cultivating fell short of these figures.²⁰

These provisions, unlike those pertaining to control of rents, were applicable only to the relationship between the cultivator and the landowner. Accordingly, the provisions of the 1906 legislation with regard to eviction under conditions of sub-infeudation were not affected.²¹ Birta owners were still permitted to resume lands for personal cultivation and residence, and the new measure extended such rights to the landowner as well.

Let us first consider the impact of the 1957 measures under conditions where the Birta owner had direct relationship with the cultivator. By raising the maximum area which the landlord could resume for purposes of personal residence from 1.5 bighas to five bighas in the Terai and from five ropanis to

ten ropanis in Kathmandu Valley and the hill districts, the 1957 legislation definitely injured the interests of the cultivator. While the 1906 provisions had guaranteed the cultivator a minimum area of two bighas in the Terai and two ropanis in the hill districts and Kathmandu Valley, obviously with the objective of ensuring to him a minimum means of subsistence and preventing his displacement from the village, the 1957 measure paid no attention whatsoever to this problem. In view of the ubiquity of small-size holdings throughout the country, it can only be concluded that an increase in the maximum area permitted to be resumed will add to the possibilities of such displacement. In the hill districts and Kathmandu Valley, the 1906 regulations permitted resumption without the payment of compensation to the cultivator. The provision made in 1957 that twenty-five percent of the value of the affected land should be paid to the cultivator would appear to have been a gain from the cultivator's point of view. Nevertheless, this was obviously a poor consideration as against the provision of a minimum means of subsistence which the 1906 measure guaranteed to the cultivator. In the Terai, under the 1906 legislation, the cultivator had been entitled to receive the current price of the land.²² However, the 1957 measure reduced the amount of such compensation to twenty-five percent of the figure guaranteed by the 1906 legislation.

Another notable feature of the 1957 Lands Act was that it permitted certain categories of landowners to resume land for personal cultivation which the 1906 legislation had secured only with respect to Kathmandu Valley and the hill districts. Both measures rendered the payment of compensation to the victim of the resumption unnecessary. Nevertheless, the latter measure not only increased the maximum area permitted to be resumed in this way from five ropanis to twenty-five ropanis in Kathmandu Valley and fifty ropanis in the hill districts, but even abolished the provision which had guaranteed the cultivator a minimum area of two ropanis for his own livelihood. Thus if any Birta owner sought to live on his land with the intention of cultivating it personally, he was permitted by the 1957 Lands Act to resume a total of thirty bighas in the Terai, thirty-five ropanis in Kathmandu Valley and sixty ropanis in the hill districts. The average size of the family farm has been estimated at 13.8 ropanis (1.8 acres) in Kathmandu Valley, 11.5 ropanis (1.5 acres) in the hill districts, 3.12 to 6.25 bighas (5 to 10 acres) in the Eastern Terai, and 4.75 to 9.39 (7.5 to 15 acres) in the Western Terai.²³ Resumption of agricultural lands to the extent prescribed by the 1957 Lands Act without any concomitant provision to safeguard the livelihood of the cultivators could result in their outright displacement. While right of resumption might be justified on the ground that the Birta owner possesses ownership rights in the land which the cultivator does not, it must be borne in mind that even without resuming the land for personal cultivation, the former would be permitted to

appropriate fifty percent of the total annual production, whereas the cultivator, in the event of resumption, would totally lose his means of livelihood. For the Birta owner, accordingly, it would be a question of obtaining either half of the total annual production or the whole of it, whereas the alternative before the cultivator would be either half of the total annual production or nothing at all. Obviously any measure which, in the name of land reform, emphasizes the purely legalistic aspects of landownership to the detriment of the cultivator creates more problems than it solves.

Under conditions of sub-infeudation, on the other hand, the 1957 Act sought to specify the limits and conditions under which landowners were permitted to resume lands for personal use and cultivation, where none had existed previously. In other words, the right of resumption was secured not only to the Birta owners but also to the intermediary landowners. Thus even though superficially aimed at providing statutory protection to the cultivator, the Act saddled him with risks of resumption of his land from two sources instead of one. Moreover, the limits set by the Act for the purposes of such resumption were unnecessarily high.

The 1957 Act denied the right of resumption for purposes of personal residence to landowners in respect to lands adjoining houses and homesteads and comprising compounds. To this extent, therefore, the measure was in advance of the 1906 legislation in seeking to prevent the displacement of cultivators. However, this restriction was not applicable in the event of resumption for purposes of personal cultivation, and the 1957 Act made no provision as to how the victim of the resumption was to be compensated for the loss of his residence.

The Rent Control Measures of 1961

The Birta system was finally abolished in 1959. All Birta holdings were required by the 1959 Birta Abolition Act to be converted into Raikar; therefore, existing legislation aimed at controlling rents and guaranteeing the security of tenancy rights was applicable irrespective of tenure considerations. In 1962, however, an amendment²⁴ to the 1957 Lands Act sought to limit rents on Birta lands in Kathmandu Valley which were required to be registered in the names of the owners as Raikar under the 1959 Birta Abolition Act. The maximum rents prescribed by this enactment on different grades of both Khet and Pakho land and the percentage figures on the basis of estimated yields for these grades according to existing land tax assessment regulations are given in the following table.

Table 6

Rents on (Abolished) 'B' Class Birta Land in Kathmandu Valley

Khet

<u>Grade</u>	<u>Total estimated yield</u>	<u>Maximum rent chargeable</u>	<u>Percentage of total yield</u>
Abal	70 pathis (minimum)	23 pathis	32.8
Doyam	50 pathis (minimum)	18.75 pathis	37.5
Sim	35 pathis (minimum)	13 pathis	37.1
Chahar	35 pathis (minimum)	8.62 pathis	24.6

Pakho

<u>Grade</u>	<u>Total estimated yield</u>	<u>Maximum rent chargeable</u>	<u>Percentage of total yield</u>
Abal	25 pathis (minimum)	10.12 pathis	40.5
Doyam	15 pathis (minimum)	7.25 pathis	48.3
Sim	10 pathis (minimum)	4.37 pathis	43.75
Chahar	10 pathis (minimum)*	2.87 pathis	28.75

These figures, as the above tables show, are roughly one-third of the total estimated production on Khet land, but slightly less than one-half on Pakho land. The absence of a systematic basis for such assessments is thus readily apparent. In addition, it should be noted that they are considerably higher than the tax assessments on Raikar land in Kathmandu on newly cultivated lands according to regulations enforced in 1934. For example, the tax assessment on Raikar land of Abal grade is sixteen pathis of paddy, three pathis of wheat, and Rs 0.12 as Ghiukhane tax per ropani, whereas the maximum rent the present legislation permits on such land is twenty-three pathis of grains. It would appear, therefore, that the level of rents on the categories of Birta lands covered by the 1962

* Since estimates of yields on Chahar grade represent maximum figures, the percentages of the rent to the total yield will in fact be much higher than the figures in the above tables.

regulation is higher than that prescribed in 1906. In other words, enforcement of the 1906 measure would have made the cultivator liable to pay lower rents than those prescribed by the 1962 amendment to the 1957 Lands Act.

Furthermore, it would appear illogical to provide for a special rent schedule on abolished Birta lands even after all distinction between the Birta and Raikar tenures has been obliterated in accordance with the 1959 Birta Abolition Act. Any measure seeking to control rents should not have discriminated between Raikar and Birta. Presumably, the objective was to benefit the cultivator by limiting the portion of the total produce that he is liable to pay to the landowner. There is no reason, therefore, why cultivators on a particular category of land tenure which has been abolished by law should be placed in a favored position. This procedure tends to retain the distinctive characteristics of Birtas vis-a-vis Raikar, and such measures in effect defeat the very purpose of Birta Abolition. However, this measure, like its predecessors, has remained unimplemented.

There has so far been little indication that the Government has been attentive to the main factor rendering all rent control measures meaningless--the absence of an enforcement machinery at the village level. Legal measures without any administrative backing hardly prove effective. In these circumstances, it is not surprising that these measures have done little to improve the condition of the cultivator. Arguments advanced justifying such paper measures on the ground that they set the norm which will gradually be realized as the administrative machinery is modernized betray ignorance of the pernicious effects these help to initiate by creating tension between landowners and cultivators, more often than not to the detriment of the latter by manifesting themselves in the form of arbitrary evictions. Reforms in the administrative machinery at the village level, therefore, constitute the sine qua non for the effective implementation of measures aimed at reducing rents and providing for security of the occupancy rights of the cultivator.

CHAPTER VII

The Vicissitudes of the Birta System

The Birta system meant special favor and privilege. The rights and privileges conferred naturally depended on grants made by the powers-that-be, and political changes inevitably had repercussions on the Birta system as well. Almost without exception political upheavals and changes in the balance of power among rival political factions led to large scale confiscation of the Birta lands of the losers and the appropriation of Birta lands by the victors. Moreover, although a system of Birta taxation had been in existence since 1770-71, it should not be assumed that such taxation measures affected the essential character of the Birta system to any substantial extent. A very small percentage of the total area under Birta tenure, and mostly in Kathmandu Valley, was affected by these measures. The present chapter will, therefore, be devoted to an analysis of the vicissitudes the Birta system has undergone as a result of political upheavals and the desire of successive regimes to exploit this potential source of revenue.

Territorial Conquest and the Birta System

The general practice appears to have been to confiscate all Birta lands granted by former rulers when any new territory was subjugated by conquest rather than surrender. However, such confiscations were seldom of a general character since there were often elements that had supported the conquerors during the struggle. Often the victor had to pacify particular groups or areas by refraining from confiscations or perhaps by subsequent restoration of Birta grants.

Prithvi Narayan Shah appears to have followed this policy after the 1769 conquest of Kathmandu Valley. In several cases, he chose to make an outright confiscation,* rather than merely imposing the Pota taxes on Suna Birta lands.

* At Bungmati in Lalitpur district, for example, he confiscated all Suna Birta grants but later gave them out to the original owners on rent as Raikar when they complained that they had been deprived of their means of livelihood. Order to the Headmen and Villagers of Bungmati. Kartik Badi 5, 1851 (October, 1794). In several cases the lands were restored by Prithvi Narayan Shah's successors when the victims succeeded in winning their favor. Cf., Resoration of Suna Birta land of Saheb Singh Rajawat. Bhadra Sudi 10, 1858 (August, 1801).

It is interesting that no Birta grants preceding the 1769 conquest have been found in Kirtipur, as elsewhere in Kathmandu Valley. Possibly Prithvi Narayan Shah confiscated all Birta lands in this town to revenge himself upon its inhabitants who put up a staunch defence and surrendered only after several assaults had been repulsed. In order to intimidate his supporters, he issued decrees which were subsequently retained by the Rana rulers also. According to the Muluki Ain (Legal Code):

The Government shall confiscate the lands of any person who, during war with any State, goes over to the enemy and gets them confirmed. Punishment shall be awarded to him at the discretion of the Prime Minister. This law, enacted by King Prithvi Narayan Shah in 1768, is herein retained.¹

Possibly King Prithvi Narayan had too little time during his brief reign over the enlarged Kingdom (1769-1775) to take comprehensive action in this regard. Nor does his successor, King Pratap Singh (1775-1778), appear to have taken any action. It remained for Prithvi Narayan's grandson, King Rana Bahadur, to initiate action in the direction of Birta confiscation which has made him famous in Nepal's history, both during his personal reign (1794-1799), and during the period he functioned as Prime Minister for his son and successor, King Girban (1804-1806).

The Birta confiscation measures of 1805 constitute a landmark in the history of Nepal. Some historians have maintained that King Rana Bahadur was revenging himself on the Brahmans, whose appeals to divine clemency for the life of Queen Kantavati had failed.² According to another study, the confiscation measures were adopted because of the need to prepare for war with the British,³ and the proceeds of the confiscated lands were utilized for military purposes.⁴ But neither of these views appreciate the fact that the 1805 measures were not an isolated example of action taken to confiscate existing Birta lands but were part of a series of steps taken at various times between 1787 and 1804 towards the attainment of this objective. Financial stringency, though an immediate factor, was not the sole cause.

In 1787, even before King Rana Bahadur Shah had attained maturity, the Regent, Bahadur Shah, issued an order directing all Birta owners of Kathmandu Valley to register their Birta and Guthi holdings with the Government.⁵ Apparently the intention was to scrutinize all Birta grants and confiscate such lands as lacked proper documentary evidence. Further action along these lines appears to have been hindered by the Nepal-China War (1791-1792) and Bahadur Shah's downfall in May, 1794, when

King Rana Bahadur Shah assumed personal rule. In 1797 another order of the same purport was issued.⁶ All this was only a prelude to more vigorous action aimed at terminating existing Birta grants. In the same year inspectors were appointed to scrutinize all Birta grants throughout the Kingdom and to confiscate all Birta lands which lacked proper documentary evidence or had encroached upon adjoining holdings.⁷ Regulations promulgated subsequently prescribed that all Birta lands granted by the chieftains of such principalities as Kaski, Bhirkot, Sataun, Rising, Mussikot, Jajarkot, and Doti,* which had been conquered by Kathmandu around 1785, should be confiscated. Lands appropriated by members of the former princely families met with a similar fate. Exceptions were made in the case of Khas and Magar slaves (Khan-Khawas) serving in the royal palace, as well as of Kush Birta lands, provided "the documents are in proper order and other lands of this category had been restored previously." As was to be expected, such drastic measures raised a storm of protest, and

. . . members of all the thirty-six sub-castes, including Brahmins, presented themselves at the court to register their complaints. The matter was discussed at the court, and we hereby order such confiscation and restoration of lands as we deem proper . . . according to these regulations.⁸

Although King Rana Bahadur Shah abdicated in February, 1799, the joint council headed by Queen Raj Rajeshwari which ruled on behalf of his infant son, King Girban, pursued the policy of Birta confiscation with no less vigor. Regulations enforced in September, 1799, prescribed that Birta lands were to be confirmed only if they possessed the necessary documentary evidence, and penalized possession of lands as Birta on false grounds. But the most important feature of these regulations was that they prescribed that all Birta grants made by former Kings or by members of the nobility should be confiscated with effect from 1799 and that taxes should be collected thereon up to that year.⁹ Presumably because the earlier measures undertaken to scrutinize Birta grants had not been implemented satisfactorily, orders were again issued on October, 1799 to renew such action throughout the country "west of the Tista and east of Kumaun," these being the frontiers of the Kingdom at that time.¹⁰

*The regulations exempt Lamjung and Tanahun from such confiscation. The reason for this is not clear.

However, proper enforcement of these measures appears to have been impeded by the political malaise that followed soon after. King Girban, still an infant, was taken by the Council of Ministers to Nuwakot, while Rana Bahadur Shah entrenched himself at Patan and made an attempt to recover his lost authority by threatening to invade Nuwakot. This not only hindered the implementation of the confiscation program, but also led the rival factions to solicit popular support by offering certain concessions concerning Birta lands. From Nuwakot, King Girban promised the people of Kathmandu to remit half of the Pota tax in case they came over to his side.¹¹ To the people of Western Nepal between the Chepe and the Bheri, he promised,

Whatever cash and other valuables which were looted when that territory was conquered by us before are lost to you. But your Birta lands, which were unjustly converted into Raikar, shall be restored to you when we reach Kathmandu and settle our affairs there.¹²

Thus the practice of confiscating Birta lands and converting them into Raikar that usually followed in the wake of the Gorkha conquests, was admitted to be "unjust," albeit for reasons of political expediency.

The policy of the Shah rulers with regard to Birta grants in conquered territories may be further illustrated with reference to Palpa. Although Kathmandu fought and defeated Palpa in 1785, a treaty of friendship was concluded in 1786, and the two states jointly launched military expeditions in the areas west of the Kali river. Gulmi was thus conquered jointly, and King Maha Datta Sen of Palpa made Birta grants there. Twelve years later, when the Gorkha rulers started confiscating Birta lands in the area east of the Kali, these grants were not exempted. However, it was explained later that the confiscation had been made by mistake, "since Birta lands granted by a reigning King cannot be confiscated."¹³ Palpa was not annexed until 1805 and regulations framed in Ashadh, 1862 (June, 1905), decreed:

All Birta and Bandha (i.e., Rajbandhaki) lands granted by King Prithvi Pal [of Palpa] after 1791 shall be converted into Raikar. . . . Birta and Bandha lands belonging to soldiers are lost when their King loses his Kingdom. Such lands shall be confiscated and converted into Raikar.¹⁴

Nevertheless, such action was dictated more by considerations of political expediency than by principle. In Eastern Nepal, for

example, which was never thoroughly subjugated by Prithvi Narayan Shah and his immediate successors, Birta grants made by the displaced Sen Kings were retained.¹⁵ Apparently it was felt that confiscation measures could not be successfully enforced in such a turbulent area.

The 1805 Confiscation Measures

It was against this background that the famous Birta confiscation measures of 1805 were initiated. In March, 1804, Rana Bahadur Shah returned from exile in India and took up the Prime Ministership, with Girban, his son, on the throne. Apparently more determined than ever, he issued orders the following year to implement the policy of confiscating Birta grants which lacked satisfactory evidence of title. In June, 1805, he deputed officers all over the country to scrutinize existing Birtan grants for this purpose.¹⁶ We have already referred to the action he took with regard to Birta lands in Palpa at approximately the same time. Although Birta grants were still being made as late as February, 1806,¹⁷ it was only one month later that an order was issued to confiscate all Birta lands owned by Brahmins, as well as Guthi lands. This measure appears to have been preceded by extensive surveys and other preparations. As later developments indicate, it was outstandingly successful despite the intransigent opposition of the dispossessed Birta owners.

It is not clear why this measure was restricted to the Birta lands of Brahmins and Guthi lands. It is possible that the majority of Birta holdings of other categories, except some that Rana Bahadur may have wished to preserve, had already been converted into Raikar. Or possibly the King wanted to leave intact the landholdings of the royal family and the military castes. In any case, there is evidence that the confiscation measure applied to Khet land for the most part, possibly because it was more important from revenue considerations.¹⁸ In several cases, the original owners stayed on the land in the capacity of "tenants" of the Government.¹⁹ Presumably the measure penalized only absentee Birta owners, for there is evidence to indicate that the victims were allowed to retain such portions of their holdings as they could cultivate personally.²⁰ Nevertheless,

*There is no evidence, however, to indicate that the measure necessarily resulted in the expropriation of the land, for what was apparently involved in some cases was not "confiscation" but simply taxation. In 1847 records of these holdings were compiled by Prime Minister Jang Bahadur, and showed Brahmins still in possession of the lands, subject to the payment of taxes as on Raikar land.

there were also cases in which the immediate effect of the 1805 measures was depopulation of the cultivated area,²¹ with the result that the Government was compelled to redistribute the lands for renewed reclamation.²² This may have been due to the fact that taxes on Raikar lands in those times were of the nature of rents and were not infrequently as high as fifty percent of the produce, and the Birta owners did not find it worthwhile to retain the land on these terms.

The Restoration Program

In September, 1846, a decade of political instability finally culminated in the Kot massacre which dealt a deathblow to most of the existing nobility in Nepal. Jang Bahadur Rana assumed the Prime Ministership of Nepal. Apparently in order to mobilize support for his newly established authority, Jang Bahadur announced barely three months after his assumption of power, that "tranquility has never prevailed in the palace" since the Birta lands of Brahmins as well as Guthi lands were confiscated in 1805. In an effort to gain popularity by exploiting the religious susceptibilities of the people, he decreed:

The Birta and Guthi lands confiscated in 1805 have been assigned to the Army. If now they are taken away from the Army and restored to the original owners, the Army will cease to exist. If the Army does not exist, our enemies will be powerful and the religion of the Hindus may not be safe. Arrangements should therefore be made in such a way that the confiscated Birta and Guthi holdings are restored, while also maintaining the Army, so as to safeguard the religion of the Hindus.²³

Orders were accordingly issued that waste lands in the hill districts and the Terai should be given in exchange for the confiscated lands, and that the beneficiaries should also be provided with funds by the Government to bring such lands under cultivation.²⁴ Apparently this was intended only as a gesture, for in 1882, thirty-six years later, Prime Minister Ranoddip Singh (1877-1885) pointed out that the restoration program had never been effective since the recipients had not been able to reclaim the lands allotted to them, but had been compelled to

depend upon intermediaries.* Ranoddip Singh therefore provided for the grant of cultivated lands in exchange in order to ensure that "both giving and receiving should have some meaning." The decree issued in this connection also noted:

If now people do not come forward to utilize this offer . . . no sin shall accrue to His Majesty the King and ourselves on account of the confiscation . . . for they themselves have forgone it.²⁵

In other words, Rana Bahadur was deemed to have committed a sin in confiscating Birta and Guthi lands, thus illustrating the sanctity which had become attached to the Birta and Guthi system.

Ranoddip Singh fixed a period of three years to complete the restoration program. In view of the difficulty in ascertaining the exact amount of land confiscated in 1805, inspectors were sent to several districts to assess claims. In some cases compensation was even paid in cash. In the hill districts, land was provided in exchange only to claimants of more than 50 muris each. When land was given in exchange, care was taken to ensure that the revenue on the new land was equal to that on the confiscated holding. In the Terai, if the revenue was equal, discrepancies of area not exceeding 0.25 percent were ignored.²⁶

*In fact, the implementation of the restoration program as devised in 1903 by Prime Minister Jang Bahadur appears to have been rather perfunctory. Although the Government undertook to provide the victims with funds to reclaim the waste lands to be allotted to them which were estimated at Rs 250,487.00 according to an undated document available at the Central Land Records Office (Lagat Phant), only Rs 156,000.00 was proposed to be provided by the Government itself. Civil and military officials who were holding the confiscated land as Jagir in 1846-47 were held liable to provide the balance of Rs 87,986.00 while Jang Bahadur undertook to provide Rs 6,501.00 personally. However, the Government provided only Rs 500.00. Jang Bahadur fulfilled his commitment in full, but in the form of an "offering" to the priests who presided at a religious performance initiated by him, thus making a virtue of necessity. Collections from other sources amounted to only Rs 4,859.00. No wonder then that the restoration program had come to a standstill. Possibly the urgency to implement the program receded with the gradual consolidation of Jang Bahadur's political authority.

The work accomplished by Rana Bahadur Shah in 1805 was thus undone in its entirety. However, it would be erroneous to regard the 1805 measures as constituting a general Birta abolition program. It has already been pointed out that not all Birta lands were thereby affected. Moreover, the 1805 measures were motivated by considerations of expediency and were not intended to affect an abolition of privileges on the land, as is proved by the fact that King Girban, like his predecessors, continued to make fresh Birta grants.²⁷

Bhimsen Thapa's Downfall and the Birta System

The downfall of Prime Minister Bhimsen Thapa (1806-1837) illustrates graphically how political upheavals affected the Birta system. The instructions given to the new Prime Minister, Rana Jang Pande, by King Rajendra stated:

Birta grants made at the initiative of the demon, Bhimsen Thapa, shall be confiscated after proper scrutiny. Old Birta grants made in regard for services, Birta lands (purchased by the present owners), Bekh and Phikdar lands, however, shall be confirmed according to the usual practice.²⁸

Needless to say, the Birta lands of Bhimsen Thapa and other members of the Thapa family too fared a similar fate. Hardly three years had passed since these events, however, when Rana Jang Pande himself fell into royal disfavor. Birta lands owned by members of the Pande family were in turn confiscated in 1842. Fortune smiled again upon the Thapas when Mathbar Singh Thapa, a nephew of Bhimsen Thapa, became Prime Minister in April 1843. The new Prime Minister forthwith took steps to restore the confiscated Birta lands of the Thapa family.²⁹ There can hardly be better evidence to support the view that while Birta conferred the rights of private property in land to the recipients, such rights were subject to the continued political ascendancy of the donor or his faction.*

*The way in which political vicissitudes affected Birta rights may be illustrated by the following example. A Birta holding at Thansing in West No. 1 which belonged to a member of the Pande family was confiscated and converted into Raikar in 1842, when Rana Jang Pande, as mentioned above, fell into

Birta Confiscation under the Rana Regime

Under the Rana regime, Birta confiscation measures were undertaken at various times, although not on a general scale. Jang Bahadur appears to have confiscated the Birta lands of most of those who were killed in course of the massacres that accompanied his assumption of power. Most of Jang Bahadur's enemies who survived were exiled and were allowed to take only their clothes and personal possessions.³⁰ Although such measures were not aimed specifically against the Birta system, their repercussions on the Birta system are apparent. Subsequently, in 1885, Prime Minister Ranoddip Singh was assassinated and Bir Shamsher succeeded him in a coup d'etat. The sons of former Prime Minister Jang Bahadur's family as well as several other members of the Rana family were ousted from the line of succession.³¹ Action was taken seven years later to confiscate the Birta lands of the exiled Ranas. The delay was due, perhaps, to the need for the new Prime Minister to consolidate his authority and stifle potential opposition.^{**} The victims of the measure included the sons of Prime Minister Jang Bahadur as well as a brother of Prime Minister Bir Shamsher.³²

The policy initiated by Jang Bahadur under which Birta lands confiscated in 1805 were restored constitutes evidence of the regressive role played by the Rana regime in respect to the Birta system. The oligarchic character of this regime led it not only to create a new class of landed interests and enrich its own members, but also to seek to entrench the sanctity of the system by means of legislative and other action. With this

disgrace. In November 1845, it was granted to General Abhiman Singh Basnet, who was killed after a few months during the Kot massacre that preceded Jang Bahadur's rise to power. Later Prime Minister Chandra Shamsher "purchased" the holding, totaling 136 ropanis or approximately seventeen acres, from a daughter-in-law of Abhiman Singh Basnet for Rs 150.00 only. Birta Grant to Mohan Shamsher and his Brothers, Ashadh 19, 1962 (July 3, 1905).

^{**} It is also possible that the records of such confiscated lands were prepared in 1902, some years after the event.

end in view, a radical departure from the old policy of confiscating Birta land lacking documentary evidence of title was initiated when the Government decreed:

Whatever lands had been obtained during the reign of former Kings on any condition shall be confirmed in accordance with the grant if any, or else on the basis of possession, on the evidence of owners of adjoining holdings.³³

The Rana regime was in fact faced with a dilemma. It had to reconcile the conflicting objectives of maintaining the sanctity of the Birta system while at the same time confiscating the Birta holdings of their opponents. The solution which it adopted in this regard was to screen Birta grants and give prime importance to the terminology used therein. The measures undertaken by Prime Minister Bir Shamsheer in 1895-96 to compile Birta records may be regarded as an attempt to uncover defects in title and thus resume Birta holdings as Raikar. The enactment of legislation denying the right of inheritance in the case of all grants that did not specifically provide it³⁴ was also of importance in this respect. There is, however, evidence indicating that this policy was not pursued vigorously in most instances.

Nationalization of Birta Lands

In addition to confiscation, both the Shah rulers and the Ranas purchased Birta lands on a large scale from time to time, apparently in an effort to bring them within the land taxation system, for lands purchased in this way were subsequently treated in the same way as Raikar land. The first instance in which such measures were taken was in 1805, the year of Rana Bahadur Shah's confiscation. It is not clear what criterion was used to determine the category of lands to be nationalized in this way rather than confiscated outright. Assuming that the confiscation of 1805 had been restricted to the Birta lands of Brahmins and to Guthi lands in order to avoid alienating the military castes and the nobility, it is possible that the latter were made the victims of the milder measure. For example, in one case, two ropanis out of a holding of fourteen owned by a member of the Kuniwar family (which subsequently came to be known as Rana) in Bhaktapur was "purchased" by the Government.³⁵ Similar action appears to have been taken with regard to Birta lands owned by Government employees and members of castes other than Brahmin. In these cases, which appear to have mainly affected reclaimed waste lands, the Government paid the original

cost of the land plus all expenses incurred in financing reclamation and improvements. Birta lands were nationalized in this way in Kathmandu, Lalitpur, Bhaktapur, Sindhupalchok, Dolakha, Kabhrepalanchok, Gorkha, and Dhading.³⁶

Similar action was taken in 1876, the year before Prime Minister Jang Bahadur's death. This measure is of particular interest in that its victims included Jang Bahadur's brothers, the then Commander in Chief and the Senior Commanding General.³⁷

The 1951 Birta Abolition Measures

The demand for the abolition of the Birta system came to the forefront after the downfall of the Rana regime in 1951. The democratic ideals ushered in by this development were incompatible with the vested interests and privileges that constituted an integral part of the Birta system. For the first time in the country, the elimination of social and economic inequality was declared to be one of the directive principles of state policy. Public attitude as well as official policy towards the Birta system could not but be influenced by the upsurge of such egalitarian principles. Consequently, the tax privileges and the financial loss to the State which were prominent features of the Birta system became general targets of criticism. In these circumstances, the demand for the abolition of the Birta system became fairly widespread. The interim Government formed after the 1950 revolution decided on Aswin 10, 2008 (September 26, 1951) to abolish the Birta system.³⁸ There is evidence that the Government's primary objective was to ameliorate the inequalities of land ownership prevailing under the Birta system. The questionnaire circulated by the Ministry of Finance for eliciting particulars of Birta ownership required information, inter alia, on additional sources of income of the Birta owners and the amount of rents accruing from Birta lands.³⁹ Restrictions were placed on the sale and mortgage of Birta lands in excess of twenty-five ropanis in the hill districts and Kathmandu Valley and twenty-five bighas in the Terai, although such restrictions did not extend to gifts, donations, and sub-divisions, or even to the sale or mortgage of residential buildings on Birta lands, irrespective of the area covered.⁴⁰ It is thus clear that the Government desired to forestall attempts at evading the Birta abolition program, which would mainly affect holdings in excess of the above-mentioned figures, by prohibiting the indiscriminate transfer and breakup of Birta lands, but that there was no intention to abolish smaller holdings.

The initial step in the program took the form of arrangements to collect statistics of Birta ownership, "because a sound policy can be formulated only if such statistics are

available."⁴¹ In fact, it was even announced publicly that the submission of particulars as desired by the Government would not result in immediate abolition.⁴²

Administrative arrangements for this purpose were initiated only in January, 1952, with the creation of the Birta Khareji Bandobast Adda (Birta Abolition Office).⁴³ Birta owners had been directed to submit particulars of their holdings to this office on Kartik 26, 2008 (November 11, 1951) and a month's time limit was prescribed for this purpose. However, the response was hardly satisfactory, and the Government itself admitted that most of the Birta owners had failed to comply with its order.⁴⁴ Consequently, the Government was forced to extend the time limit as many as six times, covering a total period of approximately a year and a half. Even then, the entire program remained in an embryonic form.

One reason for the failure of the Government to collect Birta particulars was the absence of any provisions to penalize those who failed to comply with the orders. In the initial stages the Government restricted itself to appeals for public cooperation and to general threats that no complaints would be entertained if particulars were not submitted within the prescribed time limit. Although on April 1, 1952, fines ranging from one to ten percent of the rents were prescribed in case of failure to do so, depending on the period of delinquency, these were later rescinded on the ground that the rainy season was prevailing and people had to attend to their cultivation. Moreover, whatever fines had been collected were refunded.⁴⁵ That this was a flimsy argument can be very easily understood when we note that the owners and not the cultivators were responsible for the submission of particulars.

In fact, after the initial enthusiasm for Birta abolition in 1951, a steady drift towards the opposite policy can be discerned. The final time limit for the submission of particulars expired on Baisakh 8, 2010 (April 20, 1953), but no action was taken against defaulters nor was a further extension made. The entire program simply collapsed, and its death-knell was sounded on January 20, 1958, when the Government lifted the ban that had been imposed in 1951 on the sale and mortgage of Birta lands in excess of twenty-five ropanis in the hill districts and Kathmandu Valley and twenty-five bighas in the Terai.⁴⁶ Nearly a year later, on November 10, 1958, the Ministry explained that the restrictions had been lifted "because the collection of Birta statistics have not so far been completed . . . and people have been harassed by such restrictions."⁴⁷ The absence of any reference to the Birta abolition program in these notifications was too conspicuous to go unnoticed.

Nevertheless, it would be misleading to conclude that the Birta system remained inviolate even prior to its eventual abolition in 1959. Several important privileges pertaining to Birta ownership were abolished during 1957-58. These measures included the nationalization of forests on Birta land and the abolition of special privileges relating to the use of unpaid labor as well as to the collection of miscellaneous levies on Birta lands.

The Nationalization of Private Forests Act was promulgated in February, 1957, "in order to prevent the destruction of forest wealth" and to ensure "the adequate protection, maintenance, and utilization" of privately owned forests, that is to say, forests on Birta land. The Act terminated all individual rights on such privately owned forests and waste lands throughout the Kingdom and nationalized them without providing for any compensation.⁴⁸ Five months later, in July 1957, the Lands Act prohibited landowners from exacting any levies, in cash or in kind, in addition to agricultural rents, as well as unpaid labor in any form, without paying reasonable wages.⁴⁹ The term "landowners" was interpreted to include all persons enjoying rent-receiving rights on the land, including Birta owners. The Birta Levies (Liquor, Hides, and Skins, etc.) Abolition Act, promulgated in November 1958, prescribed that:

With effect from the fiscal year 1954-55 no Birta owner shall impose or arrange for and appropriate any levy on Birta land other than the rents thereon. . . . Income from all such levies shall thenceforward accrue to His Majesty's Government.⁵⁰

However, Birta owners were allowed to appropriate sixty-five percent of the revenues during the fiscal year 1954-55 and 1955-56, so that this measure was fully enforced only after 1956-57.⁵¹ In April 1959, legislation was enacted to abolish all special privileges relating to the use of forced and unpaid labor.⁵² These measures appear to have been primarily aimed at such ulterior objectives as forest protection and fiscal reform, rather than at the abolition of the Birta system. In fact, the Birta taxation measures undertaken in 1957-58, studied in combination with these measures, indicate that fiscal reforms pertaining to the Birta system weighed more heavily in the official judgement than considerations of outright abolition. Nevertheless, it will be unfair to presume that they did not facilitate the eventual abolition of the system. At the very least, they reduced to a considerable extent the amount of compensation which the Government was later required to pay

under the 1959 Birta Abolition Act.* A more concrete measure in this direction was the abolition of such lifetime Birta grants as Chhap and Manachamal. A decision to this effect was taken as early as 1952,⁵³ although subsequent evidence indicates that it had not been fully implemented even by 1960.⁵⁴

The Sanctity of the Birta System

The Birta system thus had a checkered history in Nepal. The liberality with which Birta grants were made by the Shah Kings between 1769 and 1846 and the frequency of attempts to abolish and confiscate them justify the conclusion that the sacrosanctity with which the Birta system came to be regarded was a comparatively recent phenomenon initiated and fostered by the century-old Rana regime. Birta rights remained secure from arbitrary encroachment and confiscation throughout the period of Rana rule unless they directly clashed with the political or economic interests of the Ranas. In time the Ranas became the largest Birta-owning family in Nepal, and they hesitated to take any action that might ultimately undermine the stability or sanctity of the system to their own obvious disadvantage. The very freedom with which Birta rights and privileges were allowed to be enjoyed engendered the theory that the Birta system was hallowed by tradition and sanctity. It was therefore but natural that with the downfall of the Rana regime this aura of sanctity should have been challenged and violated. But it should be remembered that the measures aimed at abolishing the Birta system during the post-1950 period were not innovations, but the product of an old tradition of change and vicissitude that had characterized Birtas during the pre-Rana period.

*According to Section 9 (III) of the 1959 Birta Abolition Act, "Compensation shall be calculated on the basis of the net land tax realized after providing for taxes, if any, paid or payable in the year 1958-59."

CHAPTER VIII

The Birta Abolition Program

The question of the abolition of Birtas was revived after the Nepali Congress won a two-thirds majority in the first elected Parliament of the country in early 1959 and subsequently formed the first popularly-elected government. Since it was the Nepali Congress that had first raised the slogan of Birta abolition in 1951, legislation to this effect was assured a smooth sailing through Parliament if the Government decided to press for this controversial reform. Indeed, such opposition as was voiced in Parliament concerned itself solely with the specific objectives and the modus operandi of the program rather than with the program itself, to which all political parties represented were nominally pledged. Before commencing a discussion of the 1959 Birta Abolition measures, however, we shall first analyze the major factors justifying the abolition of the system, as well as the more prominent approaches to the problem of abolition.

Raison d'Etire of Birta Abolition

The religious, economic, and political factors that led to the emergence and growth of the Birta system in Nepal were rendered obsolescent by the 1950-51 revolution. The new political life that dawned on the nation could hardly derive sustenance from outmoded ideas of religion and sectarian political interests. The existence of powerful factions with a vested interest in the status quo, however, proved an obstacle in the realization of the demand for the democratization of public life. In fact, the demand for the abolition of the Birta system that came to the forefront after 1951 had highly controversial overtones.

An oft-repeated criticism of the Birta system was that it contributed to economic inequality. But though in many instances the Birta system was accompanied by a gross inequality of land ownership, it would be erroneous to presume that this was necessarily a characteristic feature of the Birta system. In fact, inequality of land ownership has characterized the entire landholding system of Nepal for a long time past irrespective of the form of tenure. The obnoxiousness of the system stemmed particularly from the association of tax privilege with inequality of ownership. The existence of a large Birta owning class, often owning millions of acres of cultivated land without any tax liability, proved to be a social, political, and

economic anathema to the democratic forces released by the 1950-51 revolution. According to one official explanation:¹

In a democracy, the rights, duties, and liabilities of citizens are equal. A system under which some people had to pay taxes while others were fully or partially exempt even though cultivating or renting out lands of similar quality in the same area, was not suitable to and consistent with the changed times and democracy. A state of inequality under which some helped the Government by paying land taxes while others exercised civil rights without paying any constituted an injustice to the majority of the people. It has been necessary to abolish the Birta system and impose taxes thereon on the principle of equal rights and equal liability in consideration of all these factors.

Moreover, in the absence of tax liability, Birta owners often found it possible to maintain large areas as waste or forest lands. This meant considerable wastage of national resources, particularly in a situation where the incidence of landlessness was high and ubiquitous. Reckless exploitation of Birta forests constituted another example of such wastage.² With increasing pressure on the land, such a situation became intolerable. According to an official view:

When the Birta system emerged, the population was lower than at present. Land was available in abundance. No adverse consequences ensued whatever areas were assigned as Birta to any person.³

We have already referred to the loss of revenue which the Government had to sustain as a result of the Birta system. So long as the Rana Government was in power, this loss was unimportant because:

under the Rana regime, the Government did nothing for national development. An insignificant percentage of whatever revenue was collected was spent, and the balance was appropriated for private benefit. Since the administration was in the hands of a feudal lord, he paid attention only to the enrichment of himself, his family, and his sycophants. The situation has changed now. Democracy has been introduced in the country, and it is time when we should work for the benefit of the community. Population is increasing daily and we have

therefore to attain development. Development, however, requires a strong financial system.⁴

In many cases even the administrative system suffered as a result of Birta assignments. In Gorkha district, for example, the local administration was said to face a chronic deficit, primarily because of the high proportion of Birta land to total cultivated area.⁵ The Government recognized the fact that the Birta system, if carried to its logical conclusion, would have resulted in the complete loss of all revenue from the land.⁶

Nevertheless, not all political parties, nor even the Government itself, appear to have visualized the problem of Birta abolition in its basic aspect. As a result, the term abolition was subjected to varying interpretations, few among which indicated any real grasp of the problems involved.

The Nepali Congress party, which led the 1950-51 revolution and finally formed an elected government in 1959, was wedded to the abolition of "feudal exploitation" on the land in keeping with its democratic socialist professions. The party pledged itself to the "nationalization" of "large" Birta holdings, although it did not attempt a precise definition of these terms.⁷ A similar, though more concrete, demand was made by the Nepal Peasant's party that only Birta holdings in excess of twenty-five ropanis in the hill districts and Kathmandu Valley and twenty-five bighas in the Terai should be abolished.⁸ There was nothing to suggest, however, that the degree of "feudal exploitation" on the land varied with the size of the Birta holding. Even if the "large" Birta holdings were "abolished," with or without compensation, the system in the remaining holdings would be no less onerous. Indeed, the suggestion might have been met through a redistribution of Birta lands instead of their conversion into taxable Raikar land. As one communist leader pointed out:

The problem of land reform today involves not the nationalization of large Birta holdings, but the abolition of the Birta system itself. . . .

He therefore proposed:

. . . a ceiling on land holdings, the confiscation of all surplus land, and their distribution among the peasantry. . . . Birta owners whose holdings are below the maximum will be allowed to retain them. . . . The ceilings should affect not only Birta land but also Raikar.⁹

This was an ambitious program which transcended the immediate periphery of the Birta abolition problem as such. The "nationalization" of "large" Birta holdings or the redistribution of "surplus" lands, ends no doubt desirable in themselves from the standpoint of comprehensive land reform, are not particularly germane to the problem of Birta abolition.

It is interesting to note that the United Democratic Party, which was in power between July and November, 1957, stood for essentially similar objectives as the communists, though its demands were phrased in vaguer terms. The economic objectives of the party included the abolition of the Birta system, the distribution of land among landless peasants, and the nationalization of all surplus land. Under its Birta abolition program, the party demanded that:

The necessary area of land required for the sustenance of their families should be provided to Birta owners on a taxable basis as to other peasants, while the surplus should be nationalized.¹⁰

These demands would of course necessitate the imposition of ceilings on land holdings as advocated by the communists. But while the latter wanted the "surplus" lands to be "confiscated," the United Democratic Party stood merely for "nationalization," the same term that the Nepali Congress used with regard to "large" Birta holdings. This probably inferred the desirability of compensating the expropriated Birta owners. To the communists the term "abolition" was synonymous with confiscation of Birta holdings exceeding the prescribed maximum.¹¹

The Nepal Praja Parishad Party, which was in office from January, 1956 to July, 1957, recognized that the peasants were being "ruthlessly exploited" because "most of the cultivated area is monopolized by feudal lords." It advocated, as a first step, the uniform taxation of all lands including Birta, thereby eliminating the special status of Birta lands vis-a-vis Raikar.¹² Even though this program might be regarded as timid compared with the more ambitious programs of "confiscation," "nationalization," and "redistribution" advocated by the other political parties, it must be admitted that this was eminently realistic from the standpoint of Birta abolition. Proper implementation of this policy would isolate the Birta problem and make the entire land problem more amenable to eventual reform.

In its simplest definition, Birta abolition should mean a termination of special status and privileges conjoining the Birta system in comparison with Raikar land. Although an important aspect of land reform in general, Birta abolition is

nonetheless only one aspect, and attempts to involve this objective with the wider problems of land ceilings and redistribution of units of ownership exceeding the maximum area makes the issue unnecessarily complicated. The evil of concentration of land ownership does not gain any special virulence when associated with the Birta system. Indeed, as a result of social and economic changes, the Birta and Raikar tenures have tended to come closer to each other, with the result that the most significant characteristic of the Birta system, in contradistinction to Raikar, was its full or partial exemption from the land tax. Judged from this viewpoint, Birta abolition means the absorption of Birta land into the land taxation system and the resumption by the State of all other taxes and levies included in the Birta assignment, as advocated by the Nepal Praja Parishad. It should be noted that the first important measure taken since 1951 with respect to the Birta system, the Birta taxation measure of 1957 which made taxation of Birta land general all over the country for the first time, was largely initiated by the Nepal Praja Parishad Government.

Birta Abolition

On September 17, 1959, the Nepali Congress Government presented the Birta Abolition Bill in Parliament. The Bill was passed and finally received royal assent on December 10, 1959. According to the 1959 Birta Abolition Act:¹³

With effect from the date of commencement of this Act, the Birta system existing in the Kingdom of Nepal has been terminated and all Birta lands existing up to the preceding day have been abolished. All Birta lands existing in the Kingdom of Nepal, which have been abolished . . . (in this way), shall be converted into Raikar and land ownership rights and powers possessed by Birta owners on such Birta lands prior to the commencement of this Act shall be regarded to have ipso facto lapsed. All laws, regulations, orders, or other documents providing for the emergence or continuation of ownership rights and powers on Birta land in favor of any individual have been repealed or nullified with effect from the date of commencement of this Act.

In his royal address to Parliament on March 31, 1960, King Mahendra declared:¹⁴

On the basis of the principle that the ultimate ownership of the land is vested in the Government, my Government has abolished a feudal land system like Birta.

However, the measure did not apply to such Birta lands as had been established as Guthi by the Government or with its permission, or were being administered by it. This policy was in accordance with a Royal Proclamation on land reform made in 1955, according to which:¹⁵

Since the Guthi system involves the performance of religious functions and represents an act of devotion to God, the traditional system shall be continued.

Nevertheless, this exemption did not apply to Duniya Guthi lands, that is Birta lands endowed as Guthi without Governmental sanction. According to an official clarification, the Government could not be expected to take note of what was done privately without its knowledge and approval.¹⁶

The abolition program itself was divided into two parts, the "nationalization" of A Class Birta lands and the taxation of B Class Birta lands. Ignoring the complex variety of existing Birta grants, the Act classified Birta lands as A and B for the purpose of abolition. Class A Birta land meant all Birta lands on which the recipient could collect and appropriate only the prescribed land revenue or an income based on the amount of the land revenue, irrespective of the mode of grant or acquisition. The term included uncultivated and waste Birta lands as well as Birta forest land. All other forms of Birta land were classified as B. In other words, where the income of the Birta owner was limited to an amount roughly equivalent to the land tax on adjoining Raikar lands, the land was classified as A. If, on the other hand, the owner was appropriating rents up to a maximum of fifty percent of the total annual produce, or if he was using his Birta lands for purposes of personal residence or cultivation, the land was classified as B.

The land tax on Raikar land criterion was an ambiguous term, particularly in the hill districts and Kathmandu Valley, inasmuch as this could refer either to the assessment in kind or the collection in cash. The Government subsequently announced, however, that classification would be made on the basis of the latter figure. This resulted in some rather complex situations

in which Birta lands that appeared to fall within the category were actually classified as B lands. For instance, if the rent on one ropani of Birta land was 0.5 muri of paddy but the assessment on the adjoining Raikar holding amounted to one muri, the land was not necessarily classified as A Class Birta. The assessment on the adjoining Raikar holding, when commuted into cash for purposes of collection, would fetch a maximum of Rs 4.00 to the Government, a sum lower than the market value of 0.5 muri of paddy which would amount to a minimum of Rs 15.00. Thus the rent on the Birta holding exceeded the tax paid on the adjoining Raikar holding in spite of the apparent contrary situation, and the land would be accordingly classified as B Class Birta.¹⁷ According to the 1960 Birta Abolition Rules, these questions should be calculated on the basis of the scheduled rates of the District Mal Office.¹⁸

We have noted previously that legislation enacted in 1906 restricted the rents and revenues appropriated by Birta owners to the level of the land taxation on adjoining Raikar holdings. Since this measure was not retroactive, we can safely assume that in accordance with the provisions of the 1959 Birta Abolition Act, all Birta lands granted, rented out to tenants, or reclaimed after 1906 in lands and areas where assessments on Raikar land are in cash, should be classified as A, while land granted or reclaimed prior to this date, or cultivated personally by the owner, should belong to Class B. It would be unlawful, therefore, if the owner of a holding granted as Birta subsequent to 1906 in these areas claimed that the land belonged to Class B on the ground that he was appropriating normal rents thereon since such a claim would constitute a clear violation of the 1906 legislation. However, there is no indication that the Government had borne these considerations in mind while classifying land as A and B under the Birta abolition program.

The 1959 Act also provided that subsequent to abolition, A Class Birta lands should be registered as Raikar in the name of the tenant. Since the tax imposed thereon amounted to the total revenue being appropriated by the owners from their tenants, owners of A Class Birta lands were fully expropriated. Arrangements were therefore made to compensate them for such loss of income in accordance with the following schedule:

Table 7

Schedule of Compensation for Nationalized A Class Birta Lands

<u>Total net annual income</u>	<u>Amount of compensation</u>
Rs 500.00	Rs 5,000.00
Rs 1,000.00	Rs 7,500.00
Rs 3,000.00	Rs 9,500.00
Rs 6,000.00	Rs 11,000.00
Rs 10,000.00	Rs 12,000.00

Nevertheless, the maximum amount of compensation that the Act permitted to any A Class Birta owner, irrespective of the total annual revenue being paid by him, was fixed at Rs 12,000.00. The Act provided that compensation exceeding Rs 5,000.00 would ordinarily be paid in the form of development bonds, and lesser amounts in cash, either in a lump sum or in installments according to the financial need of the victims of the abolition, and that payment would start within a year after the enforcement of the program.

The Council of Ministers formed after the dismissal of the Nepali Congress Government in December, 1960, confirmed the policy of compensating A Class Birta owners.¹⁹ However, the maximum compensation which would be paid in cash was reduced to Rs 3,000.00.²⁰ As of the end of 1962, the payment of compensation had not yet started.

Since waste lands did not yield any income to the Birta owner, these were nationalized without compensation. The Act treated Birta land under forests in the same way since these had already been nationalized under the 1957 Nationalization of Private Forests Act.

It should be noted that the expropriation of owners of A Class Birta lands did not, as a matter of fact, proceed from the 1959 Birta Abolition Act. As we have indicated previously, the 1959 Finance Act, which was enforced with effect from Shrawan 25, 2016 (August 8, 1959), that is, approximately four months before the enforcement of the 1959 Birta Abolition Act, anticipated it by providing for taxation of A Class Birta lands at the rates which the tenant was paying to the owner, thus absorbing the latter's entire income from the land. So far as taxation was concerned, therefore, the Birta abolition program contained nothing new with respect to A Class Birta lands.

Thus by December 15, 1959, the day on which the Birta Abolition Act was enforced, A Class Birta lands had already been effectively abolished. The only novel feature of the 1959 Birta Abolition Act as far as A Class land was the provision providing the expropriated owners with compensation.

There is no evidence that the Birta Abolition Act was the outgrowth of the clause in the Nepali Congress election manifesto, calling for the nationalization of "large Birta holdings." Even though some A Class Birta holdings were of a huge size, this was by no means a basic characteristic of Birta holdings of this category. The program appears to have been concerned more with the problem of reducing the hierarchy of interests on Birta lands, since the nominal rents payable to owners on A Class Birta land had made sub-infeudation more feasible. At the same time, the political implications of expropriation should not be underestimated, inasmuch as the major victims were the Birta owning families descended from the Rana Prime Ministers Bir Shamsher, Chandra Shamsher, and Bhim Shamsher.

Taxation of B Class Birta lands: The 1959 Birta Abolition Act permitted the owners to retain B Class Birta lands subject to conversion and payment of taxes at rates prevailing on adjoining Raikar lands. Since the 1959 Finance Act had already provided for the taxation of B Class Birta lands at fifty percent of such rates, the 1959 Birta Abolition Act had merely doubled the tax rates on Birta lands of this category.

In respect to B Class Birta lands, therefore, taxation and not abolition was the keynote of the 1959 Birta abolition program. Assuming that the primary objective of the Government was to "put an end to the feudal system of utilizing land without paying any revenue to the State," as the preamble to the Act stated, it is apparent that what was really required was taxation and not abolition, and this, in effect, is what the Government attempted to achieve. Indeed, a careful analysis of the Act would reveal that the significance of "abolition" of B Class Birta lands is more terminological than social and economic. However, by resorting to action valuable more for sentimental and political reasons than for their effect in "strengthening and promoting the economic well-being of the Kingdom of Nepal and its people," the Act created unnecessary opposition and administrative problems which have so far obstructed its effective implementation.

From a legal standpoint, the conversion of B Class Birta lands into Raikar--that is, of privately-owned lands into State-owned lands--constituted a clear case of nationalization of private property without payment of compensation. Since the Act

required that the newly-imposed taxes on Birta lands should be collected in the same way as existing taxes on Raikar land, it followed that any landowner in Kathmandu Valley and the hill districts who defaulted payment would be evicted by the State. Since existing law does not treat Raikar land as a form of property insofar as dealings with the State are concerned, the owner of a Birta holding converted into Raikar was inevitably degraded to the position of a tenant (Mohi) of the State. Presumably the Government regarded such compensation unnecessary inasmuch as the Birta owner was left in possession of the land as before, subject only to the payment of tax, but the adverse effect of the measure on his status as owner is obvious. According to an official clarification:

Previously the Birta owner (on B Class Birta land) could sell or give away his landownership rights as well as his rentier rights. But (after the enforcement of the 1959 Birta Abolition Act) he can sell or give away only his rentier rights and not his landownership rights, since he no longer possesses them.²¹

Functioning of the Birta Abolition Program

Even after the dismissal of the Nepal Congress Government on December 15, 1960, the policy of Birta abolition was retained by the new Council of Ministers. As early as January 5, 1960, a royal proclamation on policy declared:

This Council of Ministers has decided to abolish the Birta system . . . but it shall be its duty . . . to profit by past experience and . . . achieve this objective by means of a clear and scientific policy.²²

This was generally construed to mean that the measure would be implemented in a milder form, and the impression was reinforced when the Royal Commission on Taxation and Birta Abolition was formed in February, 1961, inter alia, "to submit recommendations with regard to Birta Abolition."²³ The Commission pointed out that "the Birta problem is mainly centered on the relationship between the State and the Birta owner" and arrived at the conclusion that "the practical aspect of the Birta Abolition Program is to make the Birta owner pay a reasonable tax to the State."²⁴ It then formulated the following proposals:

1. All Birta lands acquired by Rana Prime Ministers and their relatives, except those purchased by them, should be converted into Raikar, subject to compensation in the form of five to fifty bighas of waste land.
2. All other Birta lands in all parts of the country except Kathmandu Valley should be taxed at fifty percent of the rate prevailing on adjoining holdings of Raikar land. But the Commission proposed a special schedule of rates for Kathmandu Valley, which has been described in Chapter IV.²⁵

The Commission submitted its report on Chaitra 15, 2017 (March 27, 1961). The nature of its recommendations naturally created expectations that the Birta Abolition Program would be drastically amended. Uncertainty on this question was dispelled only on August 14, 1961. In the course of his 1961-62 budget speech, Finance Minister Rishikesh Shaha announced the intention of the Government to implement the program fully, subject to a number of amendments relating to tax rates and the level of rents on B Class Birta lands in Kathmandu Valley. The recommendations of the Royal Taxation Commission were therefore largely ignored.

Although the Royal Taxation Commission was rather timid in its approach to the problem of Birta taxation, and its recommendations were unnecessarily vague, it must be conceded that the plan to compensate large Birta owners of the Rana family by providing them with waste lands in exchange would have been eminently practicable. Nevertheless, there was no need to follow such a discriminatory approach, and the recommendation might have been modified to provide for compensation in this form to all owners of A Class Birta lands with incomes exceeding a specified figure under the 1959 Birta Abolition Act. And lest the recommendation should create the impression that the history of the Birta confiscation and restoration measures of 1805, 1846, and 1882 was repeating itself, it might be pointed out that the lands to be thus provided in exchange would be taxable Raikar and not new Birta lands.

There have been frequent complaints that the abolition of the Birta system has deprived Birta owners of their means of livelihood.* This, however, betrays a gross ignorance of the measure. It would be unreasonable to suggest that the families

*This was the main slogan of the Jan Hit Sangh (Public Welfare League) an organization of Birta owners formed in Kathmandu in early 1960 to campaign against Birta abolition. Cf., Halkhabar, (Nepali Daily), April 24, 1960.

of the Rana Prime Ministers who formed the most important category of A Class Birta owners were rendered destitute by the loss of an annual income of Rs 2 million. In the case of smaller A Class Birta owners, the income they derived from their lands was admittedly inadequate for their maintenance, with the result that the question of an alternative means of livelihood for them did not arise solely as an aftermath of Birta abolition. Moreover, since B Class Birta owners were allowed to retain their lands subject to the payment of taxes, which on Abal Khet land in Kathmandu Valley amounted approximately to seven percent,* it would be an exaggeration to maintain that this modest taxation measure deprived them of their livelihood. The possession of Raikar land is regarded as desirable notwithstanding the fact that it has all along been liable to pay land tax, and there is no evidence to show that the opposite is true with regard to B Class Birta lands.²⁶

The Birta Abolition Program has also been criticized for failing to improve the condition of the peasantry. Such critics maintain that the program should have provided for security of tenancy rights, a fair share of the produce of the land for the cultivator and the elimination of absentee landlordism.²⁷ Another line of criticism held that although the 1959 Birta Abolition Act had eliminated the A Class Birta owners who belonged mostly to the Rana family, it had sought to mobilize "capitalist" support for the Government by permitting B Class Birta owners to retain their lands.²⁸

Irrespective of the desirability of tenancy reform measures and land redistribution, such criticism would appear to be misdirected because the Birta Abolition Act was framed only to abolish the Birta system and impose taxes on the abolished lands, and was never intended as a land redistribution program.²⁹ The primary objective was the conversion of Birta lands into Raikar and the imposition of taxes thereon. The sole object of the Government was to model the land tenure system of the country on the Raikar pattern in order to widen the land tax base. The program was thus essentially fiscal in character. Criticism of its so-called shortcomings has stemmed primarily from a refusal to recognize that this program was not a land reform measure in the full sense of the term, but rather was intended "to create an atmosphere congenial to land reform" as a "preliminary step" towards "more effective measures which will have to be taken for improving the condition of the peasantry." The program thus constituted a definite step ahead in the formulation and

* The tax on such land is Rs 3.00 per ropani under the 1962 Birta Abolition Amendment Act. The approximate value of the maximum rent of 23.3 pathis of paddy payable as rent thereon under the 1962 Lands (Third Amendment) Act at Rs 35.00 per muri is Rs 40.90.

execution of land reform programs rather than a land reform measure in itself.³⁰

CHAPTER IX

Implementation of the Birta Abolition Program

Whatever may have been the general objectives of the 1959 Birta Abolition Program, its implementation was obstructed by various types of administrative difficulties. These related primarily to the absence of records of Birta land and the consequent difficulties in ascertaining the grade and area of individual holdings for purposes of tax assessment.

We have already referred to the efforts made by the Government in 1951 to collect particulars of Birta lands in the entire Kingdom with the objective of compiling records. In fact, the Birta Abolition Program which the Government announced in that year was a failure primarily because of the absence of such records. In November, 1958, the Government announced that although, "the collection of statistics of Birta lands is not yet complete . . . records of all Birta lands in the Kingdom have been compiled." In the future, the Notification continued, all mutations in respect to Birta lands should be registered at the Birta Abolition Office, obviously in order to facilitate the maintenance of the records which it claimed to have compiled on a current basis.¹

Despite this claim, it is clear that no such records had actually been compiled, for in 1958 when taxes were imposed on all categories of Birta lands, Birta owners were again required to submit particulars of their holdings on more or less the same lines as in 1951.² But the 1959 Birta Abolition Act dispelled any illusions that even the latter occasion had been utilized to compile Birta records, for Birta owners were once again directed to submit particulars regarding the area and boundaries of their holdings, the total revenue realized therefrom, as well as the areas cultivated and rents payable by individual cultivators.³ Rules promulgated subsequently prescribed that Mal Offices should compile records on the basis of these particulars and then publish them for the rectification of any errors. These were then to be finalized in the form of Assessment Registers.⁴ Although these rules provided that the compilation of Assessment Registers in this way should not be held up even if the submission of particulars by Birta owners in any village or area was not complete, there is no evidence that progress in the fulfillment of these formalities has proceeded according to schedule.

Obviously such repeated demands for essentially the same type of information can be attributed to administrative ineptitude and contributed to the subsequent slackness in the implementation of the Birta Abolition Program. At the same time the failure of the Government to utilize existing records of

Pota Birta land is inexplicable. These records would not only have helped the Government to implement the program quicker, but would also have avoided considerable harassment and duplication of effort on the part of the Birta owners.

These difficulties were aggravated by the fact that frequently the Birta owners had no way of obtaining information about the boundaries of their holdings and the land tax rates prevailing on adjoining Raikar lands in order to fulfill the requirements of the 1959 Birta Abolition Act. Arrangements were therefore made to exempt them from the obligation.⁵

Assessment of Taxes on B Class Birta Land

The assessment of taxes on the abolished B Class Birta lands also involved certain administrative difficulties which mainly centered round the non-availability of data with regard to their area and grade.

Ordinarily, the area mentioned by the Birta owners was not expected to contain a discrepancy exceeding ten percent of the actual figure. Difficulties in ascertaining the area accurately arose from the fact that in several cases Birta lands had never been surveyed or measured. The 1960 Birta Abolition Rules provided that if any Pota Birta land had not been measured, the Mal Office itself should calculate the area on the basis of the total amount of Pota tax paid on the holding.⁶ The same factor also created difficulties in ascertaining the grade. The rules provided that where the grade was not mentioned in respect to any Birta land, it should be determined by the Mal Office according to the grade of adjoining holdings of Raikar land. On Pota Birta lands, however, the grade was to be determined on the basis of the rate of Pota tax in the following manner:

Table 8

Gradation of Pota Birta Lands

<u>Rate of tax per ropani</u>	<u>Grade</u>
Rs 0.48 or more	Abal
Rs 0.32 to Rs 0.48	Doyam
Rs 0.24 to Rs 0.32	Sim
Less than Rs 0.24	Chahar ⁷

So far as the assessment of tax was concerned, the rules provided that where the rates prevailing on adjoining holdings of Raikar land could not be determined, assessment was to be made on the basis of rates in cash applicable on newly cultivated Raikar lands.* While devising these formulae, the Government did not take into account the fact that the level of Pota tax assessments in Kathmandu Valley was considerably higher than that in the hill districts. Since the rates on which this basis of gradation was formulated were prevalent in Kathmandu Valley only, the application of these formulae in the hill districts also created an anomalous situation. We have noted previously that the highest rate of the Pota tax in the hill districts was only Rs 0.16 per ropani. The enforcement of these formulae, therefore, meant that all Pota Birta lands in the hill districts were invariably graded as Chahar. A separate formula suitable to the lower level of Pota tax assessments in the hill districts would have been more appropriate from considerations of both equity and revenue.

Recent governmental policy with regard to the taxation of B Class Birta lands under the Birta Abolition Program has led to the emergence of certain distinctive features as compared to Raikar taxation. In 1961, the Royal Taxation Commission, ignoring the provision that taxes on such lands should be imposed at rates prevailing on adjoining Raikar holdings, recommended that in Kathmandu Valley the rates should be Rs 2.00, Rs 1.75, Rs 1.50, and Rs 1.25 on Abal, Doyam, Sim, and Chahar grades respectively.⁸ Probably this recommendation influenced the decision of the Government to effect an amendment to the 1959 Birta Abolition Act, providing for special rates of taxes on the abolished B Class Birta land in this area. The new rates of tax per ropani are as follows:

Table 9

Tax Rates on B Class Birta Lands in Kathmandu Valley

<u>Grade</u>	<u>Khet</u>	<u>Pakho</u>
Abal	Rs 3.00	Rs 1.14
Doyam	Rs 2.44	Rs 0.94
Sim	Rs 1.69	Rs 0.56
Chahar	Rs 1.12	Rs 0.37 ⁹

* Ibid., Section 8, p. 7. But the Government does not appear to have realized that such rates had not been prescribed for all districts in the Kingdom.

It should be noted that these rates were lower than the general level of tax assessments on newly cultivated Raikar land in Kathmandu Valley. Indeed, in some cases they even reduced the rates imposed on Pota Birta lands in Kathmandu Valley in 1957-58 as described above. For example, where the usual Pota tax was Rs 0.16 per ropani in this area, the rate was increased to Rs 0.66 with the addition of Rs 0.50 per ropani in 1957-58. Since such land would be classified as Chahar according to the 1960 Birta Abolition Rules,¹⁰ the new rate, in the case of Pakho land, would be reduced to only Rs 0.37 per ropani. Thus, the rates prescribed by the 1961 Birta Abolition (Amendment) Act are lower than those prescribed by the 1958 Finance Act, at least in some cases.

It is indeed significant that different bases were employed in determining tax assessments on former Birta lands in different parts of the country. This procedure negated one of the basic principles of Birta Abolition in that it contributed to the retention of differential privileges between Birta and Raikar tenures. Moreover, the ten percent increase in the general level of the Raikar land tax which was made in 1961-62 in Kathmandu Valley and the hill districts was not applicable in the case of these rates.¹¹ Probably the concentration of opposition to the Birta Abolition Program in Kathmandu Valley, and the fact that the majority of Birta lands of the above-mentioned category in this area are used as Guthi, were factors that influenced such a policy. However, the forty percent increase in the general level of land taxation in Kathmandu Valley and the hill districts provided for in the 1962-63 budget does not make any such discrimination.¹²

In Kathmandu Valley, the comparative effect of the Birta taxation measures as outlined in the 1959 Finance Act and the Birta Abolition Program will be clear from the following figures for Bhaktapur:

Table 10

Taxes on B Class Birta Lands in Bhaktapur

(Rates on Khet Land per ropani)

<u>Grade</u>	<u>Tax rates under 1959 Finance Act</u>	<u>Tax rates under 1962 Birta Abolition Amendment Act</u>
Abal	Rs 3.31	Rs 3.00
Doyam	Rs 2.33	Rs 2.44
Sim	Rs 1.55	Rs 1.69
Chahar	Rs 0.87	Rs 1.12

These figures lead one to doubt the significance of the "abolition" measure. It is absurd to suggest that the minor adjustments in the tax rates as indicated above necessitated abolition.

On February 13, 1963, the Government fixed the assessment rates on B Class Birta lands in the hill districts at Rs 2.44 on Khet land and Rs 0.94 on Pakho land per ropani, and in the Terai districts at Rs 15.00 per bigha. This was to be an ad hoc measure only with suitable adjustments to be made in the rates subsequently.¹³ Such indecision in official policy in respect to the taxation of B Class Birta lands renders interpretation a difficult task. It is baffling to seek to determine something as simple as whether the aim was to facilitate the submission of particulars or increase the revenue. The imposition of a flat rate as against assessment at rates prevailing on adjoining holdings of Raikar land has affected poorer land and areas more adversely than richer ones. This will be clear from the following figures:

Table 11

Tax Rates on Raikar Khet Lands*

(per ropani)

<u>District</u>	<u>Abal</u>	<u>Doyam</u>	<u>Sim</u>	<u>Chahar</u>
Ilam	Rs 2.80	Rs 2.47	Rs 1.93	Rs 1.80
Pokhara	Rs 2.24	Rs 1.35	Rs 0.79	Rs 0.45
Gorkha	Rs 4.20	Rs 2.40	Rs 1.60	Rs 1.20
Baitadi	Rs 0.84	Rs 0.73	Rs 0.68	Rs 0.56

In Gorkha and Ilam, Abal land has even benefitted from the present flat rate of Rs 2.44 per ropani, while the worst affected area on the whole is Baitadi. A reduction of rates, even in a few cases, is hardly consistent with the view that this measure was motivated by the desire to increase revenue. On the other hand, if the motive was to facilitate the submission of particulars and the assessment of taxes, increasing the rate three or fourfold, as has happened in Baitadi district, can hardly be regarded as a good inducement to reluctant Birta owner owners to do so.

Since the 1960 Birta Abolition Rules also provided that where the grade of adjoining Raikar holdings had not been specified, the grade of a B Class Birta holding should be determined on an ad hoc basis and that taxes should be imposed at rates applicable on newly cultivated Raikar land,¹⁴ the above conclusion will be justified by the following figures also:

* Incorporating the forty percent general increase in the level of land taxation under the 1962 Finance Act.

Table 12

Tax Assessments on Newly-cultivated Raikar Land*

<u>Grade</u>	<u>Tax per Ropani</u>
Abal	Rs 3.92
Doyam	Rs 3.08
Sim	Rs 1.96
Chahar	Rs 1.40

Moreover, since under these Rules all Pota Birta lands in the hill districts would be invariably graded as Chahar, as we have noted previously, the percentage of increase in the tax level on such lands exceeds seventy-five percent according to the above schedule.

In the hill districts, Pakho land has rarely been measured, and tax assessment is made on such bases as the yoke of oxen needed to farm a holding, or the amount of seed expected to be used for sowing. Nevertheless, the present notification fixes the tax rate on such lands at Rs 0.94 per ropani. Such an exercise amounts to fitting a square peg into a round hole and will hardly prove successful in facilitating the implementation of the Birta Abolition Program. Assuming that for this purpose the Government intends to use the conversion formula it adopted in 1960,¹⁵ under which ten Hale holdings are equal to 13.25 ropanis, the tax thereon would amount to approximately Rs 1.25, that is, considerably less than the usual rate of Rs 2.00 on Raikar Pakho land. And in areas where the Bijan system, under which taxes on Pakho lands are assessed on the basis of the amount of seeds needed for sowing, is applicable, if the formula prescribing that an area on which approximately two manas of seeds can be used is equivalent to one ropani¹⁶ is adopted, the rates on Kodalebij land (i.e., land which does not permit the use of oxen for cultivation) will increase approximately seven times in some hilly districts.

*These rates have been calculated after converting the assessments in kind at Rs 4.00 per muri and increasing the resultant figure by 40 percent. See Ministry of Law and Justice: Arthik Ain, 2019 (Finance Act, 1962-63). Nepal Gazette, XII-17 (Extraordinary), Aswin 5, 2019 (September 21, 1962), Section 6.

The measure would, however, invariably benefit the Terai. Under the 1962 Finance Act, the minimum rate of assessment in this area is Rs 15.00 per bigha.¹⁷ By pegging assessments on B Class Birta lands in this area at the minimum rate, the Government has favored richer lands which, under the Birta Abolition Act and Rules, would have had to pay the higher rate of Rs 20.00 per bigha.

The Tax Collection Machinery

The conversion of Birta lands into Raikar meant an additional administrative responsibility on the existing Mal Offices on Raikar land in the districts since they were entrusted with all administrative functions pertaining to Birta abolition and the assessment and collection of taxes on the newly abolished Birta lands. At the same time, such Birta Mal Offices as existed in the Terai to collect revenues for a few Birta owning Rana families were nationalized.* According to the Birta Abolition Act:

With effect from the date of commencement of this Act, Birta Mal Offices established by Birta owners to discharge their functions shall be converted into Mal Offices of His Majesty's Government and all documents pertaining to the Birta holding in the possession of these offices shall be regarded as the property of His Majesty's Government. All employees of Birta Mal Offices which have been (thus) converted into government offices shall be regarded as civil servants of His Majesty's Government.¹⁸

The Government subsequently notified that all Birta Mal Offices which collected revenues less than Rs 50,000.00 would be merged into the local Mal Offices of His Majesty's Government.¹⁹ There was a fresh reorganization of the nationalized Birta Mal Offices in May, 1961, with the result that only the following were retained as separate units.²⁰

*The nationalization of Birta Mal Offices had been completed in August, 1959, that is, five months before the enforcement of the 1959 Birta Abolition Act. Vide Notification of the Ministry of Finance, Nepal Gazette, IX-12 (Extraordinary) Shraavan 25, 2016 (August 8, 1959). The Birta Abolition Act thus merely confirmed a fait accompli.

<u>District</u>	<u>Names of Mal Offices</u>
Mahottari	1. Raghunathpur Mal Office
	2. Rampur-Gudigaun Mal Office
Palhi Majhkhand	Sakraun Mal Office
Bardiya	1. Bardiya Mal Office
	2. Malbara Mal Office

In Kathmandu Valley, the dual functions of the existing Pota Registration Offices were separated and three new Mal Offices were created in Kathmandu, Bhaktapur, and Lalitpur to handle the collection of taxes on the abolished B Class Birta lands in addition to the existing Mal Offices on Raikar land.²¹

In addition, such non-official tax collection functionaries as existed on Birta lands in any part of the country were absorbed into the official land tax collection machinery, and it was prescribed that their rights and obligations would be the same as those of their counterparts on Raikar land.²²

Implementation of the Birta Abolition Program

Since the substantive part of the Birta Abolition Program related to taxation, an analysis of official estimates of land revenue earnings during the period 1958-63, as given in the following table, will indicate the extent to which it has been implemented.

Table 13

Land Revenue Estimates, 1958-63

(In millions of rupees)

	<u>1958-59</u>	<u>1959-60</u>	<u>1960-61</u>	<u>1961-62</u>	<u>1962-63</u>
Original Estimates	- - -	Rs 19.6 ²³	Rs 28.3 ²⁴	Rs 28.8 ²⁶	Rs 28.2 ²⁶
Revised Estimates	Rs 18.4 ²³	Rs 25.6 ²⁴	Rs 20.00 ²⁵	Rs 28.2 ²⁶	- - -

Although these figures are only estimates and do not represent the actual land revenue earnings of the Government, the trend they reveal is interesting. The 1959-60 revised estimates included Rs six million which was estimated to accrue from the Birta taxation measures contained in the 1959 Finance Act.²⁷ Consequent to the promulgation of the 1959 Birta Abolition Act, which raised the rates of tax on B Class Birta land, the estimates were raised to Rs 28.3 million in 1960-61. However, following the dismissal of the Nepali Congress Government in December, 1960, the revised estimates were reduced to Rs 20 million obviously reflecting the general uncertainty which characterized the Birta Abolition Program subsequent to this action. In July, 1962, Finance Minister Surya Bahadur Thapa claimed that land revenue collections during 1961-62 had reached the figure of Rs 28.2 million.²⁸ This undoubtedly indicated that the program was at last being implemented with renewed vigor. Nevertheless, the fact that the revised estimates of 1961-62 and the original estimates of 1962-63 are identical is of considerable significance. This makes a total of only about Rs 8.6 million over the 1959-60 estimates, which may be broken down as follows:

- | | |
|--------------|---|
| Rs 5 million | Estimate of increased revenue from percentage increase in land tax rates according to 1961-1962 Budget. ²⁹ |
| Rs 2 million | Revenues derived from the nationalization of A Class Birta lands under Birta Mal Offices in the Terai. ³⁰ |

This leaves only Rs 1.6 million as the estimated revenue from other abolished Birta lands in 1962-63. But even in 1959-60, when the tax rates on B Class Birta lands amounted only to fifty percent of the tax prevailing on adjoining Raikar holdings, the estimated income from Birta taxation was Rs 4 million if the income of Rs 2 million from the nationalized Birta Mal Office is excluded. These figures thus lead us to the conclusion that notwithstanding the Birta Abolition Program, the achievement in terms of increased land revenue (assuming that the 1962-63 estimates will be realized in full) has been only about forty percent of the target laid down by the 1959 Finance Act. A glaring inadequacy in the implementation of the 1959 Birta Abolition Program is therefore evident.

The Birta Abolition Act prescribes punishment in the form of a fine not exceeding Rs 1,000.00 or imprisonment for a maximum period of one year or both to any Birta owner who fails to submit particulars on his holdings. In addition, owners of B Class Birta holdings are liable to be evicted.³¹ Despite the

fact that almost three years have elapsed since the promulgation of the Act, and that on the Government's own admission the majority of Birta owners in the Bhaktapur area³² have failed to submit particulars, punishment has not been meted out in a single case, and the frequency with which the Government has been extending the time limit* has created the impression that this is an indefinite process. Such a situation can only encourage delinquent habits on the part of the Birta owners.

Nevertheless, the Government has used one method of accelerating the pace of conversion of Birta holdings into Raikar, which within its restricted sphere of applicability has been particularly effective. This involves a prohibition on transactions in B Class Birta lands without their previous conversion into Raikar, while transactions in A Class Birta lands have been prohibited altogether.³³ Owners of B Class Birta holdings have thus been forced to comply with the requirements of the Birta Abolition Act since unavoidable land transactions can hardly be postponed. However, if the Government only relies on such indirect measures, it is obvious that the process of Birta Abolition will take several generations to complete.

The Practicality of Birta Abolition Policy

Factors underlying the unsatisfactory implementation of the Birta abolition program even four years after its enactment deserve careful analysis not only to ensure its effective implementation in future, but also to explore the potential obstructions confronting any type of reforms in the land system in Nepal. It is no doubt convenient to dismiss opposition to Birta abolition as a consequence of the opportunism of political factions or of the failure of Birta-owning interests to bow before the demand for change, but at the same time it is necessary for the Government to grasp the implications of the existing land system and initiated measures which, in addition to being desirable, are also carefully planned and efficiently implemented.

In this study we have discussed some of the major administrative difficulties involved in the implementation of the Birta Abolition Program. Such difficulties are, of course, inevitable in any program of social or economic change. But there is sufficient evidence to suggest in this case that these

* In Kathmandu Valley, the last extension expired as recently as February 27, 1963. Notification of the Department of Land Revenue, Ministry of Finance. Nepal Gazette, XII-45, Falgun 13, 2019 (February 25, 1963).

were aggravated because of the failure of the government to prepare the necessary foundation for the abolition program. In other words, there appears to have been hardly any effort to comprehend all the facets of the Birta system in order to devise a systematic strategy of reform. The arbitrary classification of Birta lands into A and B categories, which has constituted the major administrative hurdle to an early implementation of the program, may be cited in support of this conclusion. Nor do recent measures aimed at simplifying the tax assessment procedure on B Class Birta lands, particularly in Kathmandu Valley and the hill districts, demonstrate any basic comprehension of the system.

The 1959 Birta abolition measure was hastily devised and carelessly administered. The target of abolishing the Birta system in its entirety all over the country within the short period of one fiscal year may have been indicative of commendable reformist energy, but it certainly cannot be considered a realistic or practical approach to Nepal's land problem. Meaningless cliches and catch words in the name of land reform may attract public attention and justify reformist labels, but they certainly will not lead to any reform in the true sense of the term. The term "abolition" when applied to B Class Birta lands in particular may be interpreted as a cliché of this type, since all that it implied in essence was taxation. Only the very credulous will believe that the term Birta, apart from the land system which it denoted, was by itself responsible for Nepal's land problems, and that the process of terminological reform would mean a change in the land system itself.

The abolition of A Class Birta lands can be defended on the grounds that it was essential for the State to resume the revenue rights it had once alienated in favor of individuals. Moreover, this step removed an entire group from the land hierarchy and can thus be regarded as real progress in the simplification of Nepal's land system. In itself this step has aroused little opposition in any part of the country. But similar action in respect to B Class Birta lands has been one of the main factors responsible for the foundering of the program. There is no doubt that this opposition would have been negligible if the "reform" had been limited to the taxation of such lands. The validity of this conclusion is reinforced when we note that while the Birta Abolition Act raised the tax rates on B Class Birta land imposed under the 1959 Finance Act to the Raikar level, subsequent measures have once more relegated Birta taxation to a differential level, thereby defeating the very purpose of abolition and conversion into Raikar. In other words, what is being implemented now is very different from what the 1959 Birta Abolition Act was intended to achieve. Certainly it cannot be regarded as abolition by any stretch of the imagination.

Very often proposals of "abolition" and "nationalization" sound much more drastic and revolutionary than simple "reform." Nevertheless, the program in essence may fall far short of the content of its revolutionary terminology, as the Birta Abolition Program would prove. It is important to note that the changes it added to the Birta Reform Program initiated four months earlier, in the 1959 Finance Act, were of marginal significance. Even if there had been no abolition program in December, 1959, a general system of Birta taxation would nonetheless have been implemented, thereby substantially obliterating the difference between the Birta and Raikar systems. Indeed, howsoever desirable uniformity in the land tenure system may be, measures striving towards the attainment of this objective must take into consideration the exigencies of Nepal's traditional land and taxation systems. Reforms divorced from the context of the existing system are likely to be ignored more often than not, or, as has happened in the case of the Birta Abolition Program, to be molded by the pressure of circumstances and vested interests so as to lose their basic objective while retaining the superficial characteristics.

In fact, in a country with such striking diversity of geographical, economic, religious, and ethnological conditions as Nepal, complete uniformity of land tenure may be possible of achievement only at considerable cultural and political sacrifice. Action aimed at the conversion of the Guthi and Kipat forms of land tenure in particular into Raikar might well create more problems than they would ever be capable of solving. Similarly, the reform rather than the abolition of the Birta system would have caused fewer administrative problems and would have aroused less opposition. The essential features of a satisfactory land tenure system in Nepal would be the accrument of revenues to the State on an equitable basis and of a fair share of the produce to the cultivator. So long as any existing land tenure form can be molded to fulfill these two conditions, outright abolition and conversion into Raikar in the name of land tenure uniformity is an objective of dubious practicality. Land tenure uniformity of the nature introduced by the Birta Abolition Program, on the other hand, will contribute little to the improvement of the conditions under which the cultivator is able to obtain land for agricultural production.

APPENDIX A

Rent and Tenancy Legislation on Birta Land

A. On Land Evictions¹

Owners of Mafi (tax-exempt) lands may continue to appropriate all rents and levies that they had been appropriating in any manner on such lands prior to Bhadra 17, 1963 (September 2, 1906). Henceforth, on all existing Mafi lands, as well as on lands which may be exempted from taxation by the Government in the future, no action to increase rents, or to make evictions shall be taken to enhance rents beyond the limits set below, or to evict, on other grounds landholders (Raiti) and Jimidars who pay up the rents and other dues thus imposed.

(1) If, on any land situated in Kathmandu Valley, the Terai, and the hill areas, rents and other levies are lower than on Raikar land, these may be increased and appropriated up to the level prevailing on adjoining Raikar holdings. If subsequently the Government conducts a revenue settlement, and the level of taxation on Raikar land is enhanced, rents may be increased only on such lands as were paying less, up to the level of taxation imposed on the equivalent grade of Raikar land. The existing landholder shall continue if he is willing to pay up rents at the enhanced rates; but if he is not so willing, the land may be given out to other persons.

(2) If the owner of the Mafi land constructs or repairs irrigation facilities at his own cost, and thus converts Pakho land into Khet or improves the quality of the land, rents thereon may be enhanced to the level of taxation prevailing on Raikar land in the same mouja of the grade similar to that into which the Mafi land is thus raised. Rents on other lands too may be levied or enhanced up to the level of taxation prevailing on adjoining Raikar lands of similar grade.

(3) Landholders and Jimidars may transfer for any reason whatever rights they possess in the lands cultivated by them or in their Jimidari holdings, only on Rajinama basis. The transfer shall not be made on Farse basis, nor shall such transactions prejudice the rights of the owner. Transfers of Jimidari holdings in this way shall be made only in favor of responsible (Mathbar) persons chosen by the landholders. In case the owner of the Mafi lands has no confidence in the person who is taking up the Jimidari, personal security for the period of one year shall be provided by the outgoing Jimidar or any other responsible person. When this is done, the owner shall not say that

he has no confidence (in the transferee). In order to enable the owner of the Mafi land to know of changes among his landholders and Jimidars, both the transferer and the transferee shall represent the matter to him or his agent either personally or in writing, and the transferee shall also pay up the Chardam Theki fee.

(4) In the Terai, on cultivated land on which rents have been fixed at the level of taxation prevailing on Raikar lands, the owner of the Mafi land shall not enhance the revenue beyond ten percent of the land tax on Raikar land and appropriate such increases without the consent of landholders and Jimidars. He may, however, keep the landholders and Jimidars satisfied, and, with their consent, enhance the revenue beyond ten percent of the level of taxation prevailing on Raikar land and appropriate such increase. If the revenue is enhanced up to ten percent of the level of taxation prevailing on Raikar land without such consent, and it becomes necessary to evict the existing tenants and Jimidars who do not agree (to such increase), a list of the landholders who are agreeable, as well as of the landholders and Jimidars who are not, and are therefore to be evicted, shall be represented to the Prime Minister, and the Mal Office shall take action as directed. In the case of waste and virgin forest land, if there is a written stipulation concluded at the time arrangements were made for its reclamation, the owner of the Mafi land may impose and appropriate revenues in accordance with the terms of the written stipulation, even though such revenues may exceed the level of taxation prevailing on Raikar lands. In the absence of such a written stipulation, revenue shall be enhanced only in the manner prescribed above.

(5) Evictions on land in the Terai shall be made as on Raikar land only if the former landholders and Jimidars vacate the land, and if the revenues prescribed above are defaulted. Eviction shall not be made unless some offence is committed. Where there are Jimidars, the landholders who are listed in the assessment records shall be evicted by them. Where there are no Jimidars, if it is necessary to evict the landholders listed in the assessment records, or if the owner of the Mafi land has to evict the Jimidar himself, a time limit shall be prescribed in accordance with the procedure observed by the Mal Office, and the Jimidar or his co-parcener, or a creditor who has invested money on the security of the land, may pay up the arrears of revenue, if any, and be permitted to continue in or take up the land. The owner of the Mafi land may retain Jirayat lands or make eviction only if the aforesaid persons do not make any such offer within the prescribed period. There shall be no obligation on him to give away the land to the owner of the adjoining holding.

(6) In the Terai, if the owner of the Mafi land desires to resume land in the possession of landholders and Jimidars for purposes of personal residence or for the construction of gardens or tanks, he may resume the land in the manner prescribed and subject to the limits set below. He shall not use force to resume land in excess of the limits set below and shall not evict (the existing landholder) in favor of another person on the pretext of requiring the land for personal residence or for constructing gardens and tanks. And he shall not use the land as Jirayat, or resume Jirayat land.

(a) If the owner of the Mafi land has to resume, for purposes of personal residence or for the construction of gardens and tanks, land which is being cultivated by landholders and Jimidars, he may resume a maximum area of 1.5 bigha from out of the Mafi land in any one mouja under the provisions of Sub-Section 2 below. Such lands shall be resumed from out of the holdings of persons who cultivate lands amounting to 3.5 bighas or more each, so that the landholder or the Jimidar is left with a minimum area of two bighas.

(b) If the land which is thus permitted to be resumed has to be resumed in one plot, and thus the land of persons of the same mouja who cultivate holdings of less than two bighas in size is also involved, resumption shall be allowed even if a fragment measuring less than 1.5 bigha of any person who possesses less than two bighas or more than 3.5 bighas, in one or several fragments, is involved. (The landholder) shall not obstruct such resumption.

(c) The price of the land at the rates current in the village, or land of equivalent quality acquired from all landholders and Jimidars of the mouja who cultivate holdings exceeding five bighas in area, in proportion to the size of their holdings, shall be paid to the persons whose land has been acquired by the owner of the Mafi land under Sub-sections (1) and (2) above, while resuming a maximum area of 1.5 bighas. No land shall be resumed without paying the price thereof or providing other land in exchange. It shall lie at the option of the landholder whether to accept the price of the land or other land in exchange.

(d) The owner of the Mafi land shall not after once resuming land in any mouja as permitted do so again in the same mouja. If he desires to resume more than 1.5 bighas of land, he shall pay the price of the land, or give other land in exchange, or else resume the land with the consent (of the landholder). He shall not use force to resume land without such consent.

(7) Rents on waste marshy or cultivated land in Kathmandu Valley and the hill region may be charged at the level of taxation prevailing on adjoining Raikar holdings of similar grade. If the owner wants to resume the land in the possession of landholders and caretakers for purposes of personal cultivation or residence, he may resume, without any consideration, five ropanis out of the total land area, that is, the total land in the village if the concerned land is included in the village, or out of the total land in the holding, if it is not included in the village and is known by a name of its own. Such resumption shall be made from out of the holdings of persons who cultivate more than two ropanis, in such a manner that the landholder or caretaker is left with a minimum area of two ropanis. If the land which is thus permitted for resumption is taken up in one plot, and therefore the land of persons possessing less than two ropanis is also involved, resumption may be made after providing land in exchange from out of the holdings of persons in that village or place who possess more than two ropanis for the land resumed in this way. For resumption of land exceeding five ropanis in area, or in the possession of persons holding less than two ropanis, payment of the price according to law or the consent (of the landholder) shall be necessary and force shall on no account be used. If once a maximum of five ropanis is resumed as prescribed above out of the total land in any village or place, the owner of the Mafi land shall not resume additional land in the same village or place, or evict the landholders and caretakers for any reason other than the nonpayment of rents.

(8) Even in cases where, as prescribed above, the owner of the Mafi land can possess the land, landholders and Jimidars who have been residing in brick houses constructed thereon prior to the tax exemption or subsequently with the consent of the owner, shall not be evicted from their houses without their consent and their houses possessed (by the owner of the Mafi land). Even if the landholders and Jimidars who own the brick houses make default in the payment of any rents which they are liable to pay according to law, a complaint shall be filed to evict them from such houses. If, after inquiries conducted by government offices and courts, (nonpayment of rents) is proved, and if it is necessary to auction the house itself for realizing the rents, it shall be auctioned accordingly, and any amount left after paying off the rents shall be handed over to the owner of the house and his eviction from the house shall then be allowed.

(9) If there is any mud built house belonging to landholders and caretakers in the land which the owner of the Mafi land is permitted to resume, eviction may be made according to law in the proper season after paying a price determined on the advice of a committee of local people. In case (the owner of

the house) is not willing to accept payment of the price determined in this way, eviction shall be made only after constructing a similar house in the same place on Birta land belonging to the owner of the Mafi land and shifting him thereto. After a similar house is constructed in this way, the landholder or caretaker shall not refuse to shift. If, within a period of three years after lands and homesteads are utilized in this way, the owner of the Mafi land desires to vacate the land and give it out, the former landholder shall be given priority. The land shall be rented out to him. After the expiry of a period of three years, however, the land may be given out to any person.

(10) Except when tax remission is to be granted according to law as a result of acts of God, no landholder or caretaker shall make attempts to damage the land in any way and reduce the rents. If, on land which is not affected by acts of God, (the landholder or caretaker), with maleficent motive, attempts to damage the land and reduce the usual rents, or if, on land which had been damaged as a result of acts of God and tax remission had therefore been granted, he does not pay up the usual rents in the year when the land was not affected by acts of God, or when the land is restored to its original condition, such landholders, Jimidars or caretakers may be evicted. The landholders and Jimidars shall not vacate the land in the wrong season. If they do so, they shall be under obligation to pay up the rents for that year.

B. Lands (Third Amendment) Act, 1962²

The following Act, framed by His Majesty the King, is published for the information of the general public.

An Act framed to amend the Lands Act

Preamble

Whereas it is expedient to amend the Lands Act, 1957 (hereinafter called the Principal Act) along with amendments made thereto from time to time,

Now, therefore, His Majesty King Mahendra Bir Bikram Shah Dev has framed this Act under Article 55 of the Constitution of the Kingdom of Nepal.

1. Short title and commencement

(a) This Act may be called the Lands (Third Amendment) Act, 1962.

(b) It shall be applicable with immediate effect.

2. Amendment in Section 3 of the Principal Act

Section 3 of the Principal Act is replaced by the following Section 3:

3. Arrangements for the payment of rents

Owners of land in Kathmandu Valley, which has been converted into Raikar after abolition as B Class Birta under the Birta Abolition Act, 1959, shall not charge payments in kind or cash equivalent thereto at prices prevailing in the local market, from out of the annual yield of the land, in excess of the following figures. Owners of land elsewhere shall not charge rents in excess of fifty percent of the annual yield of the land. While collecting rents in this way, except when payment is made in any other form by the mutual consent of the landowner and the peasant, payment shall be made either in cash or in kind according to the usual practice.

<u>Grade</u>		<u>Khet</u>	<u>Pakho</u>
Abal	per ropani	1 muri, 3 pathis	10 pathis, 1 mana
Doyam	per ropani	18 pathis, 6 manas	7 pathis, 2 manas
Sim	per ropani	13 pathis	4 pathis, 3 manas
Chahar	per ropani	8 pathis, 5 manas	2 pathis, 7 manas

But in case the rates fixed by or prevailing according to law, custom, or agreement are lower than those mentioned in this section, the lower rates will prevail. Collection shall not be made in excess of such lower rates.

4. Saving

In case this Act becomes ineffective under Clause (4) of Article 55 of the Constitution of the Kingdom of Nepal, it shall be deemed as having been repealed by some other Nepali law, and in matters and actions under this Act, Section 4 of the Nepal Interpretation of Law Act, 1953, shall be applicable. Royal Seal Affixed on: Magh 23, 2018 (February 5, 1962).

APPENDIX B

Birta Abolition Legislation

A. Birta Levies Abolition Act, 1958¹

The following Act, framed by His Majesty the King, is published for the information of the general public.

An Act framed to prohibit the imposition of additional levies by Birta owners

Whereas it is expedient to prohibit Birta owners from imposing additional levies other than rents on the land,

Now therefore, His Majesty the King, on the advice of the Council of Ministers, has framed and promulgated this Act.

1. Short title, extent, and commencement

- (a) This Act may be called the Birta Levies (Liquor, Hides, and Skins, etc.) Abolition Act, 1958.
- (b) It shall be enforced throughout the Kingdom of Nepal.
- (c) It shall commence with immediate effect.

2. Definitions

Unless otherwise meant with reference to the subject or context, in this Act.

- (a) "Birta" shall mean all forms of tax-exempt lands, enjoying full or partial tax exemption.
- (b) "Birta owner" shall mean the owner of tax-exempt lands as mentioned in Clause (a) above.
- (c) "Produce" shall mean
 - (1) The rents payable on the land by the cultivator of the Birta land to the Birta owner, or
 - (2) The crops of the land where it is cultivated by the Birta owner personally.
- (d) "Levy" shall mean liquor, hides, and skins, and other levies.

3. Prohibition to Birta owner to appropriate levies on Birta land

(a) With effect from the fiscal year 1954-55 the Birta owner shall not impose or arrange for and appropriate any levy on Birta land other than the produce thereon. But he shall be entitled to receive sixty-five percent of the income from such levies for the fiscal years 1954-55 and 1955-56.

(b) The levies or income therefrom which Birta owners are prohibited from appropriating under Sub-section (a) above shall accrue to His Majesty's Government. Arrangements in respect to such levies and collection thereof shall be made by His Majesty's Government. But in the case of levies, arrangements for or collection of which are already made by the Birta owner before this is done by His Majesty's Government, the Birta owner shall hand over to His Majesty's Government thirty-five percent of the levies collected up to 1955-56 and the entire income collected after the fiscal year 1956-57 within the time limit prescribed by means of an order.

4. Unexpired contracts to be transferred to His Majesty's Government

In case the last date of a contract concluded before on behalf of the Birta owner has not expired on the date of commencement of this Act, such contracts shall be transferred to His Majesty's Government.

But in case such contracts do not appear or are not proved to be in accordance with the prescribed formalities, or in case their term exceeds three years, they shall not be regarded as valid.

5. Punishment

Any person who makes a false representation in respect to a contract concluded prior to the commencement of this Act, or the date of the contract, or its value, or who causes loss in any way to His Majesty's Government or makes an attempt to do so, or who fails to hand over income as mentioned in Section 3, shall be liable to punishment in the form of a fine equivalent to the amount involved, or of imprisonment for a period of one year, or in both forms. The amount due to the Government shall also be realized from such person.

6. Power to hear cases

(a) Cases relating to levies under this Act, which concern His Majesty's Government, shall be summarily disposed of by the Bada Hakim or Magistrate.

- (b) The Bada Hakim or Magistrate shall exercise all the powers of a court of law with respect to action mentioned in Sub-section (a) above.
- (c) No question shall be raised in any court of law in any matter concerning His Majesty's Government under Sub-section (a) above.

7. Appeal

Any person who is dissatisfied with the decision of the Bada Hakim or Magistrate may file an appeal to His Majesty's Government, and the decision of His Majesty's Government thereon shall be regarded as final.

8. Annulment and prohibition to claim compensation

Any orders or documents entitling any person to impose and appropriate any levies mentioned in this Act shall be regarded to have become null and void with effect from the fiscal year 1954-55. No claim for compensation shall be made on the ground that the levy is taken up by the Government.

9. Power to remove obstacles

In case any difficulty or obstruction arises in implementing this Act, His Majesty's Government may issue necessary orders for removing them by notification in the Nepal Gazette. Each such order shall be regarded as part of this Act.

10. Power to frame rules

His Majesty's Government may frame rules in order to implement the objectives of this Act.

11. Action in respect to matters not provided for in this Act or the rules framed hereunder

Action shall be taken in accordance with the provisions of this Act or the rules framed hereunder in matters provided for herein; and in other matters action shall be taken in accordance with existing law.

Royal Seal Affixed on Marga 11, 2015 (November 26, 1958).

B. Birta Abolition Act² 1959

The following Act, framed by Parliament in the fifth year of the reign of His Majesty King Mahendra Bir Bikram Shah Dev, is published for the information of the general public.

An Act framed to abolish Birta lands and impose land tax thereon

Preamble

Whereas it is expedient to put an end to the feudal system of utilizing land without paying any revenue to the State, so as to create feelings and a situation of equality among various classes of people in the Kingdom of Nepal and thereby bring about amicable relations among them, as well as to achieve the sacred objective of strengthening and promoting the economic well-being of the Kingdom of Nepal and its people,

Now therefore, Parliament has framed this Act in the fifth year of the reign of His Majesty King Mahendra Bir Bikram Shah Dev.

1. Short title, Extent and Commencement

- (a) This Act may be called the Birta Abolition Act, 1959.
- (b) It shall be enforced throughout the Kingdom of Nepal.
- (c) It shall commence with immediate effect.

2. Definitions

Unless otherwise meant with reference to any subject or context, in this Act.

(a) Birta land shall mean all kinds of lands obtained or possessed in such a way that the land is wholly exempt from the State land tax, or that the tax payable thereon is less than the tax imposed on Raikar land of the same quality, and the term shall include land as defined in (b) and (c) below.

(b) A Class Birta land shall mean Birta lands on which the recipient can collect and appropriate only the prescribed land revenue, or an income based on the amount of the land revenue, irrespective of the mode of grant or acquisition, which may or may not be liable to pay any land tax to His Majesty's Government. The term shall include uncultivated and waste Birta lands as well as Birta forest land.

(c) B Class Birta land shall mean all forms of Birta land other than A Class Birta land.

(d) Birta owner shall mean the person in whose name Birta land is registered, or in whose name the document granting Birta land was issued or who is using the land as Birta. The term shall include the co-parceners of such persons entitled to use the Birta land, as well as the person who uses the land on usufructuary or simple mortgage or otherwise, or his co-parcener, as long as he is in possession of the land.

(e) Land Tax in relations to Raikar land shall mean the prescribed tax, in cash or in kind or in both forms, which the person in whose name the land is registered (hereinafter called the tenant on Raikar land in this Act) is liable to pay to His Majesty's Government. The term shall include, in relation to Birta land, the revenue prescribed to be paid to the Birta owner (which is equivalent to the land tax on adjoining holdings of Raikar land) as well as any percentage increase on such revenue, imposed with or without the consent of the tenant on Birta land, in accordance with the rights vested in the Birta owner.

(f) Revenue Office shall mean the office of His Majesty's Government which collects the land tax.

(g) Income on Birta land shall mean the income, in cash or in kind, realized in addition to the land tax, from the person who is allowed to cultivate the land, with or without a written agreement.

In case of controversy as to whether any land is Birta or not, or whether any Birta land belongs to A Class or B Class, decision shall be made by an authority appointed by His Majesty's Government for this purpose. The authority appointed to make such decision shall exercise the powers of a court in accordance with the prescribed procedure in matters such as taking evidence, recording statements of witnesses and summoning litigants. Any person dissatisfied with the decision of such authority may appeal to the Revenue and Tax Court.

3. Birta Abolition

(a) With effect from the date of commencement of this Act the Birta system existing in the Kingdom of Nepal has been terminated and all Birta holdings existing up to the day prior to the commencement of this Act have been abolished.

(b) All Birta lands existing in the Kingdom of Nepal, which have been abolished under Sub-section (a) above, shall be converted into Raikar, and land ownership rights therein shall be vested in His Majesty's Government. Land ownership rights and powers possessed by Birta holders on such Birta lands prior to the commencement of this Act shall be regarded to have ipso facto lapsed.

(c) Any law, regulation, order or other document providing for the emergence or continuation of ownership rights and powers on Birta land in favor of any individual has been repealed or nullified with effect from the date of commencement of this Act.

4. Assessment of Land Tax and Registration

(a) Subject to the provisions of Section 11, land taxes have been assessed as follows with effect from the fiscal year 1959-60 on lands converted into Raikar under this Act:

(1) On A Class Birta land, an amount equivalent to the land tax which the Birta owner has been collecting from the tenant on such Birta land.

But waste or forest Birta lands which have not been registered in the name of any tenant and have not been reclaimed shall only be struck off the records.

(2) On Class Birta lands, an amount equivalent to the land tax prevailing on adjoining holdings of Raikar land.

But during the fiscal year 1959-60, only half of the amount of land tax prevailing on adjoining holdings of Raikar land shall be realized.

(b) The Chief of the Revenue Office shall assess the land tax as determined under Sub-section (a) above, register Birta lands on which the land tax is thus assessed as Raikar in the following manner, compile assessment records, and collect the land tax.

(1) If the Birta land belongs to A Class, in the name of the tenant on such land.

But unreclaimed waste lands and forests shall not be registered in anyone's name. These shall be equivalent to other waste lands and forests belonging to His Majesty's Government.

(2) If the Birta land belongs to B Class, in the name of the Birta owner.

But in the case of land registered in the name of any usufructuary mortgagee or his heir on whom the right to use the land on such mortgage has ultimately devolved, his right shall be limited to simple mortgage, and he shall not refuse redemption according to existing Nepali law. The right of the redeemer to have the land registered as Raikar in his name shall be secure.

(c) Any person who is dissatisfied with the rates determined under Sub-section (b) on B Class Birta holdings may submit an appeal to the local Bada Hakim or Magistrate, and any person dissatisfied with the decision of the Bada Hakim or Magistrate may submit an appeal to the Revenue and Tax Court.

(d) In case the tax rates on Raikar lands of similar grade adjoining or in the neighborhood of B Class Birta lands are not uniform, the assessment shall be made at the higher rate until an order to the contrary is issued by the Government.

(e) If any tax or levy had been assessed and paid to His Majesty's Government prior to the commencement of this Act on any land on which land tax is imposed under this Act, such tax or levy shall be deemed to have been included in the land tax and remitted.

5. Power of the Chief of the Revenue Office to procure documents

(a) The Chief of the Revenue Office, in case he desires to inspect documents relating to Birta lands converted into Raikar under this Act, may issue a written order to the Birta owner or his employee engaged to manage the land and make collections thereon to submit such documents.

(b) In case any person fails to comply with the order of the Chief of the Revenue Office issued under (a), the latter may impose a fine not exceeding Rs 500.00 on such person and procure the documents.

6. Payment of Land Tax

(a) The land tax assessed under Section 4 shall, unless otherwise provided, be paid through the Jimidar, if any, or else by the registered land owner mentioned in Sub-section (b) of Section 4, in the local Revenue Office in the same way as payment is made of land tax on Raikar land. Existing Nepali Law relating to the payment and collection of land tax shall be applicable on such payment and collection.

(b) Without prejudice to the generality of the provisions of Sub-section (a) in case the land tax mentioned in Section 4 remains in arrears, it shall be realized in the same way as arrears of land tax on Raikar land.

(c) No Birta owner of A Class Birta lands on which land tax has been assessed under Section 4 or his employee shall be entitled to collect or realize land tax on such land with effect from the date of commencement of this Act.

(d) No Birta owner of B Class Birta lands shall be entitled to realize the land tax assessed under Section 4, in addition to the rent, from the person cultivating his land.

(e) In case there are any Jimidars, Patuwaris, Jimmawals, Tharis, and Mukhiyas on Birta lands, their powers and responsibilities shall be the same as those of similar functionaries on Raikar land.

(f) Birta Revenue Offices established by Birta owners to discharge their functions shall be converted into Revenue Offices of His Majesty's Government with effect from the date of commencement of this Act, and all papers and documents relating to Birta lands therein shall be regarded as belonging to His Majesty's Government.

(g) The employees of Birta Mal Offices which are thus converted into government offices shall be regarded as the civil servants of His Majesty's Government.

7. Submission and Registration of Records or Particulars

(a) Unless a fresh order is issued by His Majesty's Government, Birta owners of B Class Birta lands shall submit the following particulars about their Birta lands to the concerned Revenue Office within six months of the date of commencement of this Act and register the land in their names as Raikar.

(1) The area (Bigha, Ropani, etc.) of the Birta land, or the approximate figure thereof within a range of ten percent, in case the existing records do not specify the area, as well as the boundaries of the land.

(2) The amount of land tax on the Birta land as determined in course of a settlement, if any such has been held by His Majesty's Government, or if cultivated land has been granted, the amount specified in the grant.

(3) The names of cultivators, the area of land cultivated by them, and the rent payable by each of them to the Birta owner.

(4) Any other particular prescribed by His Majesty's Government.

(b) It shall be the duty of Birta owners of A Class Birta lands, or the officer-in-charge working at the Revenue Office, if any, on any Birta land, or the person engaged to manage and make collections on Birta lands in case the Birta owner ordinarily resides outside Nepal, to submit necessary

documents containing particulars mentioned in Sub-section (a) above to the concerned Revenue Office.

(c) In case of failure to submit particulars in respect to any Birta land as required under Sub-sections (a) and (b) or even though particulars are submitted, if they misrepresent specific particulars, each person under obligation to submit particulars under Sub-sections (a) or (b) may be fined with an amount not exceeding Rs 1,000.00 or imprisoned for a maximum period of one year or punished in both forms by the Chief of the local Revenue Office.

(d) After the expiry of the prescribed time-limit, any B Class Birta owner who fails to submit particulars and have his name registered within such time-limit may be evicted from the land by the concerned Revenue Office.

(e) Any person who is not satisfied with action taken under Sub-sections (c) and (d) above may appeal to the Bada Hakim or Magistrate, and any person who is not satisfied with the decision of the Bada Hakim or Magistrate may appeal to the Revenue and Tax Court.

8. Chief of Revenue Office to exercise some judicial powers

The Chief of the Revenue Office, while discharging his duties under this Act, shall exercise judicial powers in matters pertaining to recording statements, procuring evidence and documents, summoning witnesses, and conducting local inquiries.

9. Compensation

(a) Birta owners of A Class Birta lands shall be paid compensation by His Majesty's Government as mentioned in the schedule and according to the procedure prescribed therein.

(b) While calculating the compensation payable under Sub-section (a) above, the total amount shall be arrived at in percentages of the annual land tax which is proved to have been usually realized by any Birta owner who possesses authentic evidence of his claim.

But His Majesty's Government, while calculating such compensation, shall not take into consideration any document of less than Rs 100.00 in value, in cases where evidence of registration or possession until April 12, 1959, is not available, and no document whatsoever of a date subsequent to August 8, 1959, whether or not registered, unless in accordance with the decision of a court on a case filed earlier.

(c) Compensation shall be calculated on the basis of the net land tax realized after providing for taxes, if any, paid or payable in the year 1958-59.

10. Compensation for mortgaged Birta lands

If an A Class Birta land is mortgaged by any person, on simple or usufructuary basis, and the mortgagee has been utilizing the land by virtue of his having paid the money, compensation under this Act shall be received by the person using the land as mortgagee as mentioned above.

But if the amount of compensation exceeds the value of the mortgage, whether on simple or usufructuary basis, the surplus shall be received by the mortgager according to the procedure prescribed in the schedule. And in case of a shortfall, the mortgagee shall not be entitled to make any claim against the Birta owner or any other persons.

11. Tax concessions on certain categories of Birta lands

(a) Land tax shall not be assessed according to Section 4 on Birta lands converted into Guthi as follows, until alternative arrangements are made to operate the Guthi according to custom and tradition.

(1) Birta lands established as Guthi by His Majesty's Government.

(2) Guthi Birta lands which, though originally bestowed by the people, were subsequently turned over to His Majesty's Government and thus taken up by it, or lands administered as Guthi after being confiscated by His Majesty's Government or for any other reason, and

(3) Guthi Birta lands established with permission from His Majesty's Government.

(b) In case of doubt as to whether a particular land is Guthi or not according to Clause (1) (2) or (3) of Sub-section (a), the matter shall be referred to His Majesty's Government and His Majesty's Government's decision shall be final.

12. Right of protected peasant of tenants on Birta lands

(a) In case any person possesses tenancy rights on B Class Birta lands which are converted into Raikar under this Act, the name of the tenant also shall be registered as protected peasant when the name of the B Class Birta owner is registered as a landowner on Raikar land. Such a protected peasant shall

not be deprived of such occupancy rights and privileges as were secured by him as a tenant.

(b) After the tenant on A Class Birta lands becomes a land owner after such lands are registered in his name, any person obtaining and cultivating the land from such land owner before or after the commencement of this Act shall become a protected peasant subject to the provisions of this Act and shall acquire the rights of a protected peasant.

13. Power to frame rules

The Government may frame rules to implement the provisions of this Act.

14. Power to remove obstacles

(a) In case there is any obstacle in the implementation of this Act, His Majesty's Government, by notification in the Nepal Gazette, may issue necessary orders and such orders, subject to the provisions of Sub-section (b), shall be deemed as a part of this Act.

(b) An order issued under Sub-section (a) shall be placed before both Houses of Parliament and shall be treated according to the decision of both Houses.

15. Action in case of conflict with existing law

Notwithstanding anything contained in existing law, in all matters provided for in this Act or rules framed hereunder action shall be taken accordingly.

Schedule of Compensation

(Relating to Section 9)

<u>Serial No.</u>	<u>Total land tax realized in one year</u>	<u>Amount of Compensation</u> (Total amount payable subject to the provisions of Section 9 of this Act)
1	For the first Rs 500.00	1,000%
2	For the next Rs 500.00	500%
3	For the next Rs 2,000.00	100%
4	For the next Rs 3,000.00	50%
5	For the next Rs 4,000.00	25%

But no person shall be paid compensation exceeding Rs 12,000.00.

Procedure of Compensation

The compensation to be paid at the rates mentioned in Column 3 above shall be paid in accordance with the following procedure:

(a) Payment of compensation shall start within one year of the commencement of this Act.

(b) The compensation may be paid in cash or in the form of development bonds to be issued under the prescribed conditions.

(c) Ordinarily, compensation exceeding Rs 5,000.00 shall be paid in the form of development bonds.

(d) With regard to bonds, action shall be taken according to the conditions prescribed therein. Cash payment may be made in one lump sum as far as possible, with due consideration of the needs of the recipient.

Royal Seal Affixed on: Marga 25, 2016 (December 10, 1959)

C. Birta Abolition (Amendment) Act, 1962³

The following Act, framed by His Majesty the King, is published for the information of the general public.

An Act framed to amend the Birta Abolition Act

Preamble

Whereas it is expedient to amend the Birta Abolition Act, 1959, (hereinafter called the Principal Act).

Now therefore, His Majesty King Mahendra Bir Bikram Shah Dev has framed this Act under Article 55 of the Constitution of the Kingdom of Nepal.

1. Short title and commencement

(a) This Act may be called the "Birta Abolition (Amendment) Act, 1962.

(b) It shall be deemed to have commenced with effect from the date of commencement of the Principal Act.

2. Amendment in Section 4 of the Principal Act

(a) Clause (2) of Sub section (a) of Section 4 of the Principal Act is replaced by the following Clause (2).

(2) The rates on B Class Birta lands in Kathmandu Valley shall be as follows:

	<u>Grade</u>		<u>Khet</u>	<u>Pakho</u>
(1)	Abal	per ropani	Rs 3.00	Rs 1.14
(2)	Doyam	per ropani	Rs 2.44	Rs 0.94
(3)	Sim	per ropani	Rs 1.69	Rs 0.56
(4)	Chahar	per ropani	Rs 1.12	Rs 0.37

But, in the case of B Class lands in Kathmandu Valley,

(1) If in respect to any Birta land, the rate of the land tax fixed for the fiscal year 1959-60 at half of the rate applicable on adjoining holdings of Raikar land is less than the above-mentioned rates, land tax shall be levied on such Birta land for that year at the lower rate.

(2) If in respect to any Birta land, the rate of the land tax fixed for the fiscal year 1960-61 at the rate applicable on adjoining holdings of Raikar land is less than the above-mentioned rate, land tax shall be levied on such Birta land for that year at the lower rate.

On B Class Birta lands in the other hilly areas and the Terai of the Kingdom of Nepal, the land tax shall be levied according to the rate prevailing on adjoining holdings of Raikar land.

But for the fiscal year 1959-60 only half of the rate prevailing on adjoining holdings of Raikar land shall be charged.

(b) The following Clause (3) is added after Clause (2) of Sub-section (a) of Section 4 of the Principal Act.

(3) If any person has, for the fiscal years 1959-60 and 1960-61, paid land tax in excess of the rates mentioned in Clause (2), and if he submits a written claim along with necessary evidence, the amount proved to have been paid in excess in this way shall be refunded to him.

3. Amendment in Section 6 of the Principal Act

The following restrictive clause is added after Sub-section (a) of Section 6 of the Principal Act.

But the land tax which is to be paid and collected for the fiscal years 1959-60 and 1960-61 may be paid and collected in installments as prescribed by His Majesty's Government by notification in the Nepal Gazette.

4. Amendment in Section 7 of the Principal Act

In Section 7 of the Principal Act,

(a) The following sentence is added after the words "shall be converted into Raikar" in Sub-section (a):

The time-limit for the submission of such particulars may be extended by His Majesty's Government by notification in the Nepal Gazette from time to time.

(b) The words "The approximate area of the land shall be specified within a range of ten percent and the boundaries of the land," occurring in Clause (1) of Sub-section (a) are replaced by the words "the approximate area and the boundaries of the land also, if known."

(c) The word "deliberately" is added between "even after submitting" and "specific particulars" in Sub-section (c).

(d) Sub-section (d) is replaced by the following (d).

In the case of B Class Birta owners who fail to submit particulars for registering their names, within the time-limit prescribed in Sub-section (a), if, after the expiry of such time-limit, the tenant of the land who is in possession of documentary evidence of his tenancy submits particulars in respect to his tenancy of the Birta land, the chief of the concerned Revenue Office may register such land as is cultivated by him subject to payment of tax as Raikar land. In case even the tenant fails to submit such particulars, or if the Birta owner is personally cultivating the land in respect to which particulars have not been submitted within the time-limit, and in case inquiries initiated on the basis of any complaint reveal that particulars were not submitted within the time-limit, the Chief of the concerned Revenue Office may register the land after granting half of the proceeds of a bid held for the realization of royalty (Salami) thereon to the complainant and appropriating the other half for His Majesty's Government. The chief of the concerned Revenue Office shall furnish evidence of submission of particulars and of conversion into Raikar on the very day of such submission to the Birta owner if the particulars have been submitted by him, and to the tenants if they have done so. The form of such evidence may be prescribed by His Majesty's Government by notification in the Nepal Gazette, and until this is prescribed, the chief of the concerned Revenue Office shall provide such evidence containing the necessary particulars in the form considered suitable by him.

(e) The following Sub-section (f) is added after Sub-section (e):

(f) In case the land owner or protected peasant of B Class Birta land abolished and converted into Raikar under this Act desires to have his land measured, the Chief of the concerned Revenue Office may make arrangements for holding a plane table survey after ascertaining whether this is convenient or not, in case the applicant stipulates to bear the survey expenses at ten percent of the land tax for a period of five years.

5. Repeal

Section 14 of the Principal Act is repealed.

6. Saving

In case this Act becomes ineffective under the provisions of Clause (4) of Article 55 of the Constitution of the Kingdom of Nepal, it shall be deemed to have been repealed by some other Nepali law, and in matters and actions under this Act, Section 4 of the Nepal Interpretation of Law Act, 1953, shall be applicable.

Royal Seal Affixed on: Magh 24, 2018 (February 6, 1962)

APPENDIX C

Specimens of Birta Grants

Bakas Birta¹

From King Tribhuwan

To Kaji Ratna Man Shrestha

Whereas you have represented to us that an order was issued on Marga 7, 1992 (November 22, 1936), granting you five hundred bighas of land at Mouda in Bariyati subdivision of Morang district as Bakas Birta, in appreciation of your forty-nine years of loyal and faithful service under five Prime Ministers, during which you were promoted eleven times, from the rank of Nausinda to that of Kaji,

That, on Chaitra 3, 1997, another order was issued in respect to this land, which prescribed that since the land is your personal acquisition, your sons, brothers and other co-parceners living in the undivided family should receive only whatever you choose to give them, and shall not be entitled to claim a share therein in the capacity of co-parceners . . . even though the law prescribes subdivision, and that a survey party was subsequently deputed from the capital to measure the land and demarcate it which found the total area to be 760 bighas, that the excess of 260 bighas was separated, and boundaries were delineated in respect to 500 bighas of land granted according to the royal orders and other documents pertaining to this grant and to issue a fresh Lalmohar grant,

We hereby issue this Lal Mohar grant in this the 39th year of our age. Know this to be your Bakas Birta and utilize it from generation to generation.

Poush 7, 2001(December 21, 1944)

Birta (General)²

A. From King Surendra Bir Bikram Shah Dev

To Prince Upendra Bikram Shah

Land taxes and other revenues in the following villages in Bara and Parsa districts, including virgin forest land therein, had been granted to you as Birta for your personal expenses with effect from the year 1846 according to a Lalmohar order issued by our father on Marga Badi 6, 1903

(November, 1846). We hereby issue a copper inscription for the same on this the nineteenth year of our age. Know this to be your Birta and utilize it. Neither our successors nor we shall sin in or covet this Birta, so long as you do not commit any treason against the State or our throne. Whosoever covets it shall sin as mentioned in the following verse of the scriptures: Whosoever confiscates land granted by himself or by others shall become a worm living in human excrement for 60,000 years.

(List of Lands and Villages)

Poush Badi 12, 1904 (December, 1847)

B. From King Tribhuwan³

To Royal Priest Medini Raj Panditju of Gairidhara, Naksal, Kathmandu

Whereas you have represented to us that an order has already been made in your favor and demarcation already completed for the issuance of a Lalmohar grant of 42 ropanis of unoccupied land below the Changu Hill which has been left dry by a change in the course of the Manohara river, on condition that you enjoy tax exemption for four years from 1997 to 2000 (1940 to 1943), and thereafter, from the year 2001 (1944), pay a tax amounting to 21 muris of paddy at the rate of ten pathis per ropani, as well as 2.5 muris of paddy at the same rate on another plot of five ropanis left unoccupied in the same way, from the year 2000 (1943) after a three-year period of exemption from 1997 to 1999 (1940 to 1942) to the local Mal Office, thus making a total of 23.5 muris of paddy on forty-seven ropanis of land, and that the land should not be made liable to pay a higher tax in any circumstances including surveys conducted by the Army, and that it shall be occupied on an inheritable basis from the harvest of the year 1997 (1940),

. . . we hereby issue this Lalmohar order granting the land to you as Birta. Know this to be your Birta and utilize it from generation to generation.

Kartik 22, 1998 (November 7, 1941)

C. From King Tribhuwan⁴

To Colonel Shamsher Bikram Rana

Whereas you have represented to us that since you have, according to orders received from the Government on representation, constructed a brick house at your own cost on 2.4 muris of Raikar land, the area of which has been confirmed on fresh measurement, paying a Thek tax of Rs 14.11, and that an order has

already been made and demarcation completed, for the issuance of a royal grant of the land to you as Birta with effect from the harvest of the year 1994 (1937), on condition that the existing tax shall be paid to the Kathmandu Mal Office and that a higher tax shall in no circumstances be ever charged, that the land shall be utilized on an inheritable basis and, that even in the event of subsequent sale, the purchaser shall be permitted to utilize it subject to the payment of tax as aforesaid,

. . . we hereby issue this Lal Mohar order granting the land to you as Birta to be utilized from generation to generation.

Kartik 22, 1998 (November 7, 1941)

Chhap Birta⁵

A. From King Girban

To Ambar Singh

We hereby grant to you as Chhap the lands being utilized by Kannu Sedain in Palanchok under a Lal Mohar grant. Bring nine dharnis of copper ore every year to the Dhansar Office and, with full loyalty, utilize the land from the Dashain festival.

Ashadh Badi 14, 1856 (June, 1799)

B. From King Rajendra⁶

To Jayakar and Sahadev Joshi

We hereby grant to you as Chhap for your use whatever fines are levied in the village called Nurikurugoti in Kunda. Deposit the Sirto tax as assessed therein to the Army. Prove true to our salt, be regular in service, and utilize this (assignment) as Chhap.

Jeshta Sudi 2, 1879 (June, 1822)

Daijo Birta⁷

A. From King Tribhuwan Bir Bikram Shah Dev

To the Youngest Royal Princess, Shubha Rajya Laxmi

With regard to your representation that since you have been married to Major General Sur Shamsheer Jang Bahadur Rana, orders had already been made to issue a royal order granting

land situated in the Khesraha subdivision of Mahottari district, yielding . . . a net income of Rs 14,600.00 in Indian currency with effect from the year 1987 Vikram (1930), as Sarbakar-Akar-Sarbang-Mafi Daijo Birta exempt from Gadimabarak, Goddhuwa and Chumawan, for the use of your husband, Major General Sur Shamsher Jang Bahadur Rana, and yourself as well as your descendants, and of the co-parceners of your husband in case you remain childless, and that necessary surveys and demarcation of boundaries also had been completed,

. . . We hereby issue this Lal Mohar order granting the aforesaid land to you as Daijo Birta, on this the 33rd year of our age.

Chaitra 14, 1995 (March 27, 1939)

B. From Prime Minister Mohan Shamsher Jang Bahadur Rana

To the Chief Officer and clerks of the Pahad Bandobast Birta Phant Office

Daijo Birta lands bringing in an income of Rs 2,000.00 in Nepali currency in Nepal (Kathmandu Valley) and Rs 13,000.00 in Indian currency in the Terai had been apportioned to each of the princesses of the late King Prithvi Bir Bikram Shah Dev for bequest after their marriage.

But since the eldest princess has now been married to Prince Hardayal Singh of Shikar State in Jaipur, India, it will prove difficult to send men from Shikar to collect revenues if Daijo Birta land is granted in this way. Accordingly, instead of Daijo Birta land, an annual allowance of Rs 15,000.00 in Indian currency has been granted to the eldest princess, Trailokya Rajyeshwari Devi, and to her descendants which shall be drawn from the Kaushi Toshakhana Treasury with effect from the year 2005 Vikrama (1948-49).

Ashadh 14, 2005 (June 28, 1948)

Jiuni Birta⁸

From King Prithvi Bir Bikram Shah Dev

To Nurse Ratna Kumari Adhikari Chhetri

At a time when . . . was ill and was being taken to the crematorium, you had attended on him and thus pleased him. He had therefore directed that one hundred muris of land should be granted to you as Khet.

You have now represented through . . . and Commander in Chief General Dev Shamsher that an order had already been issued to grant you the following lands, yielding a revenue of Rs 105.00, as Jiuni, with effect from the harvest of the Vikrama year 1949 (1892), but that a royal order had not yet been made.

Since you have served . . . and pleased her, we hereby grant you as Kiuni the following lands, yielding a revenue of Rs 105.00, with effect from the harvest of the Vikrama year 1949 (1892) from out of the Daijo Birta lands of . . .

Utilize the produce of these lands throughout your lifetime. After your death, they shall revert to the State. Know these lands to be your Kiuni and utilize them.

(List of Lands follows)

Dated Jeshta Sudi 14, 1950 (May, 1893)

Kush Birta⁹

From King Rajendra Bikram Shah

To Brahma Upadhyaya Adhikari and Haribamsha Adhikari

We hereby grant as Birta forty muris of Khet land offered to you on the occasion of the sacred thread investiture ceremony of our father on Baisakh Sudi 10, 1865 (May, 1808), and twenty muris of Khet land offered by him on Marga Sudi 1, 1873 (October, 1816), thus making a total area of sixty muris along with the homestead lands attached thereto.

However, the Khet land mentioned above is hereby replaced by Pakho land at Madhutar, exceeding the area of the Khet land by one-eighth, as is the practice in the hilly areas, and thus grant 67.2 muris of Pakho land in lieu of 60 muris of Khet land. Along with the homestead Pakho lands of 16.8 muris, this makes a total area of 84 muris.

This land is bounded in the east by Raikar land, the top of the Majhuwa ravine along with the Birta land owned by Raghu Khatiwada and others; in the south by the top of an irrigation channel; in the west by Raikar land; in the north by the wall of a terraced field, and with stone markers to demarcate the boundary on each side.

Know that the 84 muris of Pakho land including the home-site and Khet lands included within the above-mentioned boundaries belong to you as Birta, and enjoy supreme happiness from generation to generation.

While this Birta was being granted, Priest Yadunath Pandit Arjyal made the recitation indicating the gift; General Bhimsen Thapa poured the holy water; the owners of the adjoining holdings, Ganapati Panth, Thari Raghu Khatiwada, Tikam Khatiwada, Laxmi Kant Pande, Shrikrishna Sapkota, Jamadagni Adhikari, Maheshwar Adhikari, Laxmi Narayan Adhikari, Harilal Sapkota, Bishuhari Bhandari, Chakramani Adhikari, and Manorath Khatiwada, as well as Bulung Mijhar, Gangaram Mijhar, Kamar Singh Mijhar, and Garung Champa Mijhar, of Madhutar, Surveyors Madhan of Walachhe Tol, and Purnashri of Bijayapul Tol, demarcated the boundaries.

The Birta owner shall not encroach upon land beyond his boundaries. The Birta land shall not be confiscated unless the Birta owner commits some offence. Whosoever fails to abide by these restrictions shall have sinned as mentioned below: Whosoever confiscates land granted by himself or by others shall in his next life become a worm living in human excrement for 60,000 years.

Ashadh Badi 4, 1874 (June, 1817)

Manachamal Birta¹⁰

From King Tribhuwan

To Ratna Kumari Devi Poudel, Yajna Laxmi Poudel, and Homanath Poudel

Out of the land assigned in Dhaibung as petiya throughout the lifetime of Durganath on Ashadh Badi 11, 1949 (June, 1892), . . . Khet lands . . . amounting to 169.9 muris . . . yielding a rent of 56.8 muris of paddy and Ghiukhane tax amounting to Rs 4.66, and Pakho lands . . . amounting to 198 ropanis . . . yielding a total revenue . . . of Rs 19.59, as well as 2.2 muris of Khet land yielding a rent of 6.5 pathis of paddy and Rs 0.04 as Ghiukhane tax, are hereby granted to you as Manachamal by means of this royal order, with effect from the year 1990 (1933), subject to the conditions mentioned in the order issued on 1949 (1892), to the effect that the lands shall not be sold, given away or otherwise transferred, but shall be inheritable. Accordingly, utilize the land from generation to generation, but you shall not sell, give away, or otherwise transfer it. If you do so, the grant shall be cancelled.

Dated Baisakh 9, 1997 (April 22, 1940)

Marwat Birta¹¹

From King Rajendra

To Ran Gambhir Lama

Your father, Dhanjit Lama, fought staunchly in the battle of Lisinkar Katyari and gave up his life. We therefore grant two hundred muris of land as listed below to you as Marwat. Know these lands to be your Marwat and utilize them.

(List of Lands follows)

Dated Falgun Sudi 10, 1873 (March, 1817)

Phikdar Birta¹²

From King Girban

To Bishram Khatri

Our father had promised to grant you two hundred muris of land in appreciation of the service rendered by you in going to Kaski in the Vikrama year 1862 (1805) and recruiting eleven regiments. Accordingly, we hereby spit betel juice on this document and grant the following two hundred muris of lands as well as the attached homestead sites as Phikdar Bitalab Birta, exempt from all taxes and levies other than the three levies of Goddhuwa, Gadimubarak, and Chumawan, with effect from Sunday, Baisakh Badi, 1868. (April, 1811).

(List of Land follows)

Dated Saturday, Shrawan Sudi 14, 1868 (July, 1811)

Pota Birta¹³

From King Tribhuwan

To Hazrat Uddin Miyan

Whereas you have represented to us that an order has already been made in your favor, and demarcation completed, for the issuance of a Lal Mohar grant of . . . 4 muris of land in Kathmandu . . . yielding a total revenue of 9 pathis of paddy and a Ghiukhane tax of Rs 0.12, for use as a cemetery for yourself and your descendants as Pota Birta on an inheritable basis with effect from the harvest of 1996 (1939).

We hereby grant the land to you as Pota Birta. Know this to be your Pota Birta and utilize it from generation to generation.

Ashadh 26, 1999 (July 10, 1942)

Rajabandhaki Birta¹⁴

From King Prithvi Narayan Shah

To Chandra Dev Jaishi

We hereby grant you as Bandha (i.e., Rajabandhaki) land belonging to Ram Chandra Upreti and Hridayaram Upreti in Chyaulitar. Amount Rupees three-hundred-and-twenty-five in coins.

Dated the Samvat year 1811 (1854)

Sarbakar-Akar-Sarbang-Mafi Bitalab Birta*

From King Surendra

To Prime Minister Jang Bahadur

In return for the following services rendered by you, we hereby bestow on you as Sarbakar-Akar-Sarbang-Mafi Bitalab Birta a portion of the newly acquired area which lies west of the Mannara, east of the Karnali river, north of the pillars installed on the new boundary and south of the watershed formed by the hills situated along our old boundary, along with land taxes, import duties, export duties, forest revenues, pasturage taxes, taxes on hemp and market taxes, fines, escheat property, and fines derived from sexual offences and also exempt you from the payment of Goddhuwa, Gadimubarak, and Chumawan in this area.

(1) Formerly, when Tibet enhanced duties on merchants and citizens of our country who visited that country, and harassed and oppressed them, your ancestor raised his troops, sent his brothers to different places, personally went as far as

* The entire document forms part of an order issued by King Prithvi Bir Bikram in Magh Badi 8, 1944 (January, 1888) to Sardar Bhakta Bir Raj Bhandari of the Sadar Dafdarkhana Office, directing the confiscation of such portion of this Birta holding as had been inherited by the sons of Prime Minister Jang Bahadur and others who had been ousted from the roll of succession in 1885. Source: Land Records Office.

Jhunga fort and subjugated the area west of Taklakhar and the Sunagumba and the Ghyakhichhebar Gumba east of Kutl. Later the Tibetan Bharadars, the Lamas of different places, the Chinese officer and Bharadars, concluded an agreement to the effect that in the future Tibet would not impose any customs duties or Jagat on goods brought by Nepali merchants and citizens. Subsequently a treaty, consisting of ten articles, was concluded whereby the Tibetan Government assumed the obligation of paying Rs 10,000.00 every year to our Government with effect from the year 1912 Vikrama (1855).

(2) When troops of the British Government in India and the Princes of different places rebelled against the British Government and indulged in indiscriminate massacres, you sent our troops for the assistance of the British Government and fought the rebels. For the procurement of arms and ammunition and the protection of our life and throne, you left some of your brothers in Nepal. Later you personally went (to India) along with troops as well as your brothers, fought battles and won Gorakhpur and handed it over to the British Government. From Gorakhpur also you fought battles at different places, joined the Commander in Chief of the British Government, fought another battle at Lucknow and overran it. In all you fought twenty-four or twenty-five battles with the rebels. As a result of the increased friendship with the British, which was achieved as a result of your tact and courage, the area which is situated west of the Baghaura Tal, east of the Dhakhra river, north of Khairigadh and the boundary of Bahraich, and south of the hills constituting our frontier, surrendered to the British Government in 1872 Vikrama (1815), was restored by the British Government to our Government.

(3) You looted the guns, weapons and ammunition of the rebels and brought them to our arsenal. By means of such acts you proved your loyalty to us, and pleased our army and our people by awarding justice according to law.

Aswin Sudi 6, 1917 (October, 1860)

Tiruwa Birta¹⁵

From King Tribhuwan

To Kaviraj Hari Prasad Khakuryal

On your representation that orders have already been made to issue a royal order and that demarcation has already been completed, for a Tiruwa Birta grant to you of lands situated in Palanchok subdivision of Kabhrepalanchok district, the total area of which has been found upon measurement to be forty-five

muris, and on which the total revenue amounts to nine muris of paddy and Rs 9.24 as Ghiukhana, subject to a tax of Rs 25.00 per annum, (with the facilities that) in no circumstances, including revenue settlements, shall this tax be increased and that the lands shall be inheritable.

We hereby issue, in this the 38th year of our age, this Lal Mohar order granting the lands to you as Tiruwa Birta. Know this to be your Tiruwa Birta and enjoy it with loyalty.

Dhaitra 4,2004 (March 17, 1947)

APPENDIX D

Historical Documents on the Birta System

Extracts from Kathmandu Valley Survey Regulations, 1799¹

Section 2

All Birta grants for which proper documentary evidence is available and in respect to which no complaints have been made shall be confirmed. In case the original boundaries have been transgressed, taxes thereon shall be collected to date and the land shall be confiscated with effect from 1799. (A fine of) Rs 32.00 on Abal grade, Rs 25.00 on Doyam grade, Rs 20.00 on Sim grade, and Rs 12.00 on Chahar grade, shall be imposed thereon per ropani.

Section 3

In case Birta land has been acquired or made to be restored on the basis of false evidence, taxes thereon shall be collected to date. The land shall be confiscated with effect from 1799. (A fine of) Rs 32.00 on Abal grade, Rs 25.00 on Doyam grade, Rs 20.00 on Sim grade, and Rs 12.00 on Chahar grade shall be imposed thereon.

Section 4

In case any Birta land which was subject to the jurisdiction of the Amali is represented as Bitalab Birta without a royal order and thus the jurisdiction of the Amali is sought to be avoided, . . . (A fine of) Rs 40.00 on Abal grade, Rs 35.00 on Doyam grade, Rs 30 on Sim grade, and Rs 25.00 on Chahar grade shall be imposed per ropani, and the authority of the Amali shall be re-established thereon.

Section 5

In case any person suppresses information relating to Pota Birta land and uses it as Ghar Ghadyari* or Chhap Birta without a royal order, the Pota tax thereon shall be collected to date. The land shall be resumed as Pota Birta and a fine amounting to double the Pota tax shall be imposed thereon.

* i.e., Gharbari Birta.

Section 6

All Mayau lands granted by the Kings of Nepal as well as by us shall be confiscated and taxes thereon shall be imposed with effect from 1799.

Section 7

All Pota Birta lands belonging to Newars or Parbates* which have been exempted from the Pota tax in accordance with a royal order shall be confirmed. . . . Any person who evades payment of Pota tax . . . shall be fined with an amount double the arrears of Pota tax.

Section 8

Any person who utilized Pota Birta land without proper title shall be fined with an amount double the arrears of Pota tax. The land shall be confirmed in the name of the person to whom the Suna Birta belongs, subject to the payment of Pota tax. A fee of Rs 5.00 on Abal grade, Rs 4.50 on Doyam grade, Rs 4.00 on Sim grade, and Rs 3.50 on Chahar grade shall be charged per ropani.

Section 12

In the case of Birta grants made by former Kings or by Bhardars . . . taxes shall be collected to date. The Land shall be confiscated with effect from 1799. The name of the Bhardar shall be found out and reported. (A fine of) Rs 30.00 on Abal grade, Rs 25.00 on Doyam grade, Rs 20.00 on Sim grade, and Rs 15.00 on Chahar grade shall be imposed thereon per ropani.

Section 13

All Marwat grants which are more than twelve years old shall be confiscated.

Section 14

All Rajabandhaki lands with proper documentary evidence shall be redeemed according to the date of grant. In case land in excess of the prescribed boundaries has been utilized, taxes thereon shall be collected to date. The land shall be confiscated with effect from 1799. A fine of Rs 32.00 on Abal grade, Rs 25.00 on Doyam grade, Rs 20.00 on Sim grade, and Rs 12.00 on Chahar grade shall be imposed thereon per ropani.

* i.e., people from the hill areas, usually used to denote non-Newar communities in Kathmandu Valley.

Section 15

A fine of Rs 50.00 on Abal grade, Rs 40.00 on Doyam grade, Rs 30.00 on Sim grade, and Rs 20.00 on Chahar grade per ropani shall be imposed in case Rajabandhaki land is sold as Birta. The land shall be confiscated with effect from 1799. Taxes thereon shall be collected to date from the purchaser. In addition, a fine of Rs 32.00 on Abal grade, Rs 20.00 on Doyam grade, Rs 15.00 on Sim grade, and Rs 10.00 on Chahar grade shall be collected from him.

Section 16

Taxes shall be collected to date on all Raikar land which is falsely represented as Rajabandhaki. A fine amounting to double the value of the land shall be imposed thereon.

Section 17

In case any Suna Birta owner does not have proper documents in support of his claim, his title thereto shall be ascertained and a royal order shall be issued. Fees shall be collected and deposited with the Government.

Section 18

In case any Raikar land has been granted as Suna Birta land subject to Pota tax on orders from the Dware (i.e., A Village Headman), taxes thereon shall be collected to date. A fine of Rs 40.00 on Abal grade, Rs 35.00 on Doyam grade, Rs 30.00 on Sim grade, and Rs 25.00 on Chahar grade shall be imposed thereon.

Prime Minister Jang Bahadur's order for the restoration of Confiscated Birta lands²

From King Rajendra Bikram Shah

To Kaji Jang Bahadur Kunwar

The Prime Minister and Commander in Chief, General Jang Bahadur Kunwar, as well as others, represented to us that tranquility has not prevailed in the Royal Palace because the Birta lands of Brahmins and the Guthi lands of temples had been confiscated in 1805. The Birta and Guthi lands confiscated in 1805 have been assigned to the Army. If now they are taken away from the Army and restored (to the original owners), the Army will cease to exist. If the Army does not exist, our enemies will be powerful and the rites and religion of the Hindus may not be safe. Arrangements should therefore be made in such a way that the confiscated Birta and Guthi lands are

restored, and the Army also is maintained, thus safeguarding the rites and religion of the Hindus. Therefore, in the case of Khet or Pakho land confiscated in 1805, constituting the Birta lands of Brahmins and the Guthi land of temples, other than lands confiscated on account of any offence or reduced in area in course of surveys, land in exchange shall be provided from out of waste land in the hilly areas and the Terai, which has not been closed (for reclamation) by Lal Mohar order, or is being used as pasture, or the cultivation of which is expected to affect others adversely.

For bringing the lands (thus obtained in exchange) into cultivation, necessary funds shall be provided according to capacity. Thus we have decided to give land in exchange for Birta and Guthi lands commencing from the harvest of the year 1904 (1847).

Necessary staff for this purpose shall be appointed, and inquiries shall be made accurately to ascertain the ownership, location and area of the Birta lands of Brahmins and Guthi lands of temples that were confiscated in 1805, other than lands confiscated on account of any offence or reduced in area in course of surveys; and reports shall be submitted to us. For the purpose of such exchange, land shall be selected from out of the waste lands in the hilly areas and the Terai which has not been closed (for reclamation) by Lal Mohar order, or is being used as pasture, or the cultivation of which is expected to affect others adversely. We hereby direct that Khet and Pakho lands yielding the same income as confiscated in that year shall be ascertained accurately and measured. After demarcating the boundaries of Guthi and Birta lands, money shall be provided to the Birta owners according to the area obtained by them for reclamation. Lal Mohar orders and copper inscriptions shall be issued for the Guthi and Birta lands which are thus given in exchange, with effect from the harvest of 1904 (1847).

With due integrity, the documents of 1862 (1805) shall be perused. Accurate inquiries shall be made without fear or favor. Waste lands shall be given in exchange in the hilly areas and the Terai, other than land the cultivation of which has been prohibited by Lal Mohar order, pasture lands, or any lands the cultivation of which affects other people adversely, and the boundaries shall also be demarcated. In this way Lal Mohar orders and copper inscriptions shall be issued in the names of the Birta owners. These shall be submitted for our perusal and then handed over to them.

Marga Badi 12, 1903 (November, 1846)

Prime Minister Ranoddip Singh's Notification on Birta Restoration³

The Birta lands of Brahmins and the Guthi lands of temples were confiscated in 1805 and assigned to the Army. The late Prime Minister directed that lands thus assigned to the Army should be restored (to their original owners), and that the victims of the confiscation should find out waste Raikar land in the Terai and the hills, after which the lands were demarcated and royal orders providing for restoration were issued.

But the work came to a standstill because the recipient could not bring such lands under cultivation themselves. This not only involved loss by the Brahmins whose lands had been confiscated, but also deprived the government of the lands thus restored, while other people utilized them as intermediaries. People therefore did not come forward to demand land in exchange for their confiscated holdings.

However, the question of people who have already received land in exchange need not be considered. Now in order to enable people whose lands were confiscated and assigned to the Army in 1862 (1805) and were not restored during the seventy-five years that have since elapsed, land in the Terai in the ratio of one bigha for one Khet shall be provided in return for the confiscated Birta lands of Brahmins and Guthi lands of temples from out of waste and virgin land listed at the bottom of the assessment records every year in the Terai, and waste Raikar lands in the hill areas. Such lands shall be brought under cultivation as far as possible, and whatever area is thus reclaimed every year shall be restored in return for the confiscated Birta lands of Brahmins and Guthi lands of temples until all such lands are fully restored. This will ensure that cultivated land is provided in exchange for similar land, and thus benefit the poor victims of the compensation. In this way both giving and receiving will have some meaning. Such a policy will also enable the Army to retain the lands assigned to it.

For this purpose waste and virgin lands listed at the bottom of the assessment records every year in the Terai and waste Raikar land in the hill areas shall be brought under cultivation. Whatever land is brought under cultivation each year with effect from 1939 (1882) shall be thus provided in exchange according to the serial order. In this way the lands shall be restored in each year they are brought under cultivation.

Even if you personally undertake to reclaim the land, instead of waiting for the Government to do so, and also to find out waste Raikar lands for this purpose, you may have such land in exchange.

After necessary orders are issued to execute the restoration of confiscated lands, and after the lands are reclaimed, any Birta owner may sell away his land, and the transaction shall be regarded as valid. But waste land shall not be sold away before it is reclaimed. Such transactions shall not be valid.

If war breaks out in any year, the recipients of such restored lands, as well as persons who purchase them after they are reclaimed, shall not be permitted to appropriate the income accruing therefrom, as this shall be utilized for military purposes. However, after the war is over, you may appropriate income from the land thus restored to you as your own Birta.

For the purpose of receiving lands in exchange in this way, as the work has been long pending, a time-limit of three months has been prescribed in addition to the time spent on the journey. Within this period the heirs of the victims of the confiscation shall produce any orders or documents relating to the confiscation of Birta and Guthi lands that they may have in their possession, to the Central Office for perusal and registration. If you do not come as mentioned above within the prescribed time-limit, this will mean that you did not come forward even though we offered to restore your confiscated lands. No sin shall therefore accrue to us or to His Majesty the King on account of the confiscation, for you yourselves will have relinquished your lands.

In the case of persons who submit their documents for perusal and registration within the prescribed time-limit, and whose lands tally with the entries in the register of confiscated lands, lands shall be provided in exchange as mentioned above according to the date of the application. This process shall continue from year to year until the restoration is complete. Understand this and come forward.

Poush Badi 2, 1939 (December, 1882)

APPENDIX E

Kings, Regents and Prime Ministers in Nepal¹

1769 - 1950

King

Prithvi Narayan Shah, November, 1769-February, 1775

King

Pratap Singh, February, 1775-November, 1778

King

Rana Bahadur, November, 1778-February, 1799

Regent

Queen Rajendra Laxmi, November, 1778-August, 1785

Bahadur Shah, August, 1785-May, 1794

King

Girban Yuddha, March, 1799-December, 1816

Regent

Queen Raj Rajeshwari, March, 1799-April, 1800

Queen Subarna Prabha, April, 1800-February, 1803

Prime Minister

Damodar Pande, April, 1800-March, 1804

Regent

Queen Raj Rajeshwari, February, 1803-March, 1804

Prime Minister

Rana Bahadur, March, 1804-April, 1806

Regent

Queen Tripura Sundari, April, 1806-

Prime Minister

Bhimsen Thapa, April, 1806-

King

Rajendra, December, 1816-May, 1847

Regent

Queen Tripura Sundari, -April, 1832

Prime Ministers

Bhim Sen Thapa, -July, 1837

Rana Jang Pande, July, 1837

Raghunath Pandit, August, 1837-August, 1838

Pushkar Shah and Rana Jang Pande, October, 1838-
February, 1840

Rana Jang Pande, February, 1840

Fateh Jang Shah, November, 1840-April, 1843

Mathabar Singh Thapa, April, 1843-May, 1845

Fateh Jang Shah, May, 1845

Jang Bahadur, September, 1846

King

Surendra, May, 1847-May-June, 1881

Prime Ministers

Jang Bahadur, -August, 1856

Bam Bahadur, August, 1856-May, 1857

Jang Bahadur, May, 1857-March, 1877

Ranoddip Singh, March, 1877

King

Prithvi Bir Bikram, May-June, 1881 - December, 1911

Prime Ministers

Ranoddip Singh, -November, 1885

Bir Shamsher, November, 1885-March, 1901

Dev Shamsher, March, 1901-June, 1901

Chandra Shamsher, June, 1901

King

Tribhuvan Bir Bikram, December, 1911 - March, 1955

Prime Ministers

Chandra Shamsher, -November, 1929

Bhim Shamsher, November, 1929-September, 1932

Juddha Shamsher, September, 1932-January, 1946

Padma Shamsher, January, 1846-February, 1948

Mohan Shamsher, February, 1948-November, 1951

GLOSSARY

Abal	First grade of land for purposes of tax assessment.
Abuwab	A levy, probably of the nature of octroi.
Amali	The head of the village council in Nepal's ancient village administration system.
Bakas	A category of Birta grants which was generally made on a tax-exempt, inheritable and transferable basis, particularly during the Rana period.
Bakasmafi	A category of Birta grants which implied exemption from the Pota tax. Similar to Pota mafi.
Banda	A branch of the Newar (Buddhist) community in Kathmandu Valley.
Begar	Unpaid labor.
Bekh	A category of Birta grants generally made on a lifetime basis in appreciation of service.
Beth	Unpaid labor rendered on a customary basis, generally for agricultural purposes.
Bhardar	A member of the nobility.
Bigha	An area of 8,100 square yards or 1.6 acres as unit of land measurement in the Terai.
Birta	Land grants made by the State to individuals, often taxable and conditional.
Bitalab	A category of Birta grants, generally involving the obligation to render service at the royal palace.
Chahar	Fourth Grade of land for purposes of tax assessment.

Chhap	A category of lifetime Birta grants, generally tax-exempt.
Chumawan	A levy imposed to cover the expenses of the sacred thread investiture ceremony of a prince of the royal family.
Daijo	A category of Birta grants made as dowry to princesses of the royal or Rana families.
Dhani	Owner.
Dharni	An avoirdupois measure equal to approximately five pounds.
Doudaha	Tours of inspection and supervision made by top-ranking officials deputed from Kathmandu to the districts.
Doyam	Second grade of land for purposes of tax assessment.
Duniya Guthi	Birta lands utilized as Guthi without official sanction.
Farse	Sale of Birta lands.
Gharbari	A category of Birta grants, generally made on a lifetime basis for residential purposes.
Gadimubarak	A levy imposed to cover the expenses of coronation.
Godthuwa	A levy imposed to cover the expenses of the marriage of a princess of the royal family.
Guthi	Land alienated by the State or by individuals for the performance of religious or charitable functions.
Guthi Bakas	A category of Birta grants made for the establishment of Guthis.
Halbandi	A category of lifetime Birta grants, generally made to chieftains or nobility of principalities annexed by the Gorkha rulers in the western hill districts.

Jhara	Forced labor.
Jimmawal	Non-official tax collecting functionary on Khet land in the hill districts and Kathmandu Valley.
Jimidar	Non-official tax collecting functionary in the Terai.
Jiuni	A category of lifetime Birta grants made in appreciation of service.
Kajkalyanko Walak	A levy in the form of garden or other produce on ceremonial occasions.
Kharidi	Birta lands purchased from the original recipient by the present owner.
Khet	Irrigated land on which paddy and wheat can be grown, in the hill districts and Kathmandu Valley.
Kipat	A form of communal land tenure, mainly prevalent among the Limbu community in the eastern hill districts.
Kush	Birta grants made to Brahmins with religious motives, sometimes also called Sankalpa.
Lalmohar	Royal Seal; document bearing the royal seal.
Luhakil	Stone pillars marking the boundaries of Birta holdings.
Mafi	Lands enjoying full or partial exemption from taxation, the term being usually used to denote Birta lands.
Mal	Revenue Office.
Mana	A volumetric measure. Eight manas make one pathi and twenty pathis one muri, which is equivalent to 2.40 bushels.
Manachamal	A category of lifetime Birta grants made in appreciation of service.

Marwat	A category of Birta grants made to the families of military officials killed in war.
Mathbar	Responsible, well-to-do.
Mayau	A category of Birta grants made out of affection (Maya).
Muluki Ain	Legal Code of Nepal.
Muluki Sawal	Administrative Code of Nepal.
Muri	(1) See Mana. (2) A unit of land measurement equal to 0.25 ropani or 1369 square feet in the hill districts and Kathmandu Valley.
Pakho	Unirrigated land on which only maize, millet and other dry crops can be grown, in the hill districts and Kathmandu Valley.
Panchakhat	Offences involving capital punishment, life imprisonment, shaving of the head, branding for degradation to a lower caste and loss of caste.
Pati	A category of Birta grants made for the maintenance of roadside shelters.
Patuwari	Non-official village functionary who assists the Jimidar in the maintenance of land tax records and accounts.
Petiya	A category of lifetime Birta grants made to provide maintenance.
Phikdar	A category of Birta grants made in appreciation of service. The Lalmohar document of grant bore the marks of betel juice (phik) spitten by the donor.
Pode	Scavenger.
Pota	A tax on certain categories of Birta lands in Kathmandu Valley and the hill districts.

Potamafi	See Bakasmafi.
Puran	A category of Birta grants made to Brahmins who recited the scriptures.
Purohityain	A category of Birta grants made to Brahmins for the performance of priestly functions.
Raiti	Landholder.
Raja	Chief of a vassal state.
Rajabandhaki	A category of Birta grants originating from the mortgage of lands by the Crown.
Rajinama	Relinquishment of occupancy rights.
Rajya	A vassal state annexed on a feudatory basis by the Gorkha rulers in the western hill districts in the latter quarter of the eighteenth century.
Raikar	State landlordism; land on which taxes are collected and appropriated directly or through intermediaries by the State.
Rakam	(1) Tax, levy. (2) Assignments of land for the performance of specific services, mostly of a manual character.
Ropani	A measure of land equal to 5,476 square feet or 0.13 acres, in the hill districts and Kathmandu Valley.
Samriti	A levy imposed as a mark of expiation for certain caste offences.
Sankalpa	See Kush.
Sarbakar Akar-Sarbangamafi	A category of unconditional, and inheritable Birta grants which were usually exempt from all taxes and levies. Also called Sarbangamafi.
Sarbangamafi	See Sarbakar-Akar-Sarbangamafi.

Sasim	A category of Birta grants in which only the boundaries, and not the area, were specified.
Satta	A category of Birta grants originating from the exchange of Raikar lands.
Saune Fagu	Homestead tax.
Seba	A category of Birta grants which involved the performance of specific services, mostly of a religious character.
Sera	Crown lands.
Sim	Third grade of land for purposes of tax assessment.
Suna	A category of Birta grants originating from the sale of lands by the Crown.
Thekka Chhap	A category of Chhap Birta lands which was liable to pay a fixed tax.
Thek Tiro	A fixed cash assessment on land on which no remissions are allowed.
Tip	A tax levied on certain categories of Birta lands in addition to the Pota tax.
Tiruwa	A category of taxable Birta grants, mostly in the Terai.
Tiruwa Chhap	A category of Chhap lands liable to pay a specified cash assessment per ropani.

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NOTES TO CHAPTER I. THE ORIGIN AND EVOLUTION OF THE BIRTA SYSTEM

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¹⁴Birta Restoration Arrangements Order, Bhadra, 1942 (September, 1885).

¹⁵Royal Order to Sardar Bhakta Bir Rajbhandari, Magh Badi Badi 8, 1944 (January, 1888). See Appendix C.

¹⁶Government of Nepal, Madhesh Malko Sawal (Terai Revenue Regulations) Kathmandu: n.d. Section 393, p. 168.

¹⁷Ibid., Section 195, p. 77.

¹⁸Muluki Ain, Part III. Rukhkatne Ko (On Felling Trees), Sections 4-6, pp. 14-15.

¹⁹Cf., Royal Order to the People of Jumla, Kartik Sudi 11, 1851 (November, 1794).

²⁰Birta Grant to Prince Narendra Bikram Shah, Kathmandu Birta Records, 1904.

²¹Chhap Birta Land of Sahadatta Upadhyaya, Bhaktapur Birta Records, 1896.

²²Government of Nepal, Muluki Ain (Legal Code). Kathmandu: Gorkhapatra Press, 1955, Part II. Jharaketala Ko (On Unpaid Labor), Section 1, p. 91.

²³Government of Nepal, Muluki Ain (Legal Code), Kathmandu: Gorkhapatra Press, 1955, Part I. Jagirdar Birtawal Le Jhagada Herdako. (Judicial Authority of Jagirdars and Birta Owners), Section 1-5, pp. 151-153.

²⁴Cf., On Land Evictions, op. cit., Section 20, p. 33.

²⁵Cf., Itihas Prakash, op. cit., Vol. 7, pp. 54-55.

²⁶Muluki Ain, Part III. Jagga Jamin Goshwara Ko (On Miscellaneous Land Matters), Section 1, p. 61. See also Muluki Ain, Part II. Kagaj Janch Ko (On Scrutiny of Documents), Section 9, p. 52.

²⁷Muluki Ain, Part III. Aputali Ko (On Escheats),
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²⁸Government of Nepal, Muluki Sawal (Administrative Code).
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²⁹Kush Birta of Ram Krishna Nyaupane, Bhaktapur Birta
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³⁰Tiruwa Birta Grant to Balkrishna Shamsher. Chaitra 5,
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³¹Kush Birta Grant to Nani Maiya Brahmani, Falgun 12, 1998
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³²Birta Grant to Subedar Krishna Bahadur and Others.
Chaitra 25, 1994 (April 7, 1938).

³³Pota Birta Grant to Hazrat Uddin Miyan, Ashadh 26, 1999
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³⁴Royal Order to Laxmi Kant Kharel and Others, Kartik
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³⁵Royal Order to the Birta Owners of Thapagaun, Jestha
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³⁶Birta Abolition Office, Notification on Birta
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Appendix D.

³⁷Mahesh Chandra Regmi, Some Aspects of Land Reform in
Nepal, Kathmandu: the author, 1962, (2nd. ed.), pp. 6-7.

³⁸On Land Evictions, op. cit., Section 2, p. 27.

³⁹On Miscellaneous Land Matters, op. cit., Section 5,
p. 62.

⁴⁰On Land Matters, op. cit., Section 16, pp. 135-136.

⁴¹Law Ministry Records, Pota Taxation Order, Marga 1, 1995 (November 16, 1938).

⁴²On Land Evictions, op. cit., Section 11, p. 30 and On Miscellaneous Land Matters, op. cit., Section 6, p. 62.

NOTES TO CHAPTER II. THE RAISON D'ETRE OF BIRTA GRANTS

¹Cf., T. Ganapati Sastri, Kautaliyam Arthashastram (The Arthashastra of Kautilya). Trivandrum: Government of Travancore, 1924, Vol I, p. 110.

²Itihas Prakash, op. cit., Vol I, p. 114.

³Cf., Ibid., p. 89.

⁴Cf., Sarbangamafi Mafi Birta Land of Shivaraj Satyal, Kathmandu Birta Records, 1896.

⁵Ibid.

⁶Muluki Ain, Part III, Guthi Ko (On Guthi), Section 1-2, p. 1.

⁷Ibid., Section 4, pp. 1-3.

⁸Baburam Acharya, Nepal Ko Bhumi Byabastha (Nepal's Land System). Unpublished MS.

⁹Virgin Forest Land Reclamation Regulations, Marga Badi 12, 1856 (November, 1799), Section 8.

¹⁰Order Regarding Land Reclamation Arrangements in Sunar District, Baisakh 31, 1969 (May 13, 1913).

¹¹Birta Grant to Jimidar Raghunath Panth, Shraavan 24, 2002 (August 8, 1945).

¹²Cf., Birta Grant to Narayan Krishna, Falgun Sudi 14, 1959 (March, 1903).

¹³Muluki Ain, Part III, Ghar Banaune Ko (On Construction of houses), Section 1, p. 71.

¹⁴Ibid., Section 2, p. 71.

¹⁵Cf., Birta Grant to Shiva Bhandari of Pokhara, Jestha Badi 13, 1845 (May, 1788).

¹⁶Law Ministry Records: Sankhu Assessment Order: Poush 14, 1979 (December 28, 1922). See also Pota Tax Regulations, Chaitra 2, 1989 (March 15, 1933), Section 31.

¹⁷Cf., Confirmation of Suna Birta Land of Shivaratna and Others. Palpa Birta Records, 1896.

¹⁸Cf., Baburam Acharya.

¹⁹Cf., Rajabandaki Birta Grant to Bidyadhar Upadhyaya, 1809 (1752).

²⁰Cf., Rajabandhaki Birta Grant to Govind Panth, 1842 (1785).

²¹Mahesh Chandra Regmi, op. cit., p. 8.

²²Itihas Prakash, op. cit., Vol. I, pp. 12-13.

²³Ibid., p. 14.

²⁴Cf., Order Regarding Halbandi Birta of Bishnu Shahi, Bhadra 14, 2005 (August 30, 1948).

²⁵Bakas Birta Grant to Prime Minister Juddha Shamsher, Baisakh 22, 1998 (May 4, 1942).

²⁶Satish Kumar, "The Nepalese Monarchy," Quarterly Journal of the Indian School of International Studies, New Delhi, Vol. 4, Issue No. 1, July, 1962, pp. 67-68.

²⁷A cash levy on agricultural lands in addition to assessment in kind in Kathmandu Valley and some hill districts.

²⁸Itihas Prakash, op. cit., Vol. I, pp. 150-151.

²⁹Royal Order to Daulat Singh Fakir, Magh Sudi 12, 1854 (February, 1798).

³⁰Cf., Royal Order to the People of Chhahajardanda, Marga Sudi 9, 1856 (December, 1799).

³¹Cf., Royal Order to Agnidhar Adhikari, Poush Sudi 4, 1842 (January, 1786).

³²Cf., Baburam Acharya.

³³Cf., Land Acquisition Order in the Bhandarkhal Gardens, Falgun 26, 1995 (March 10, 1939).

³⁴Cf., Potamafi Land of Yuddha Bikram Shah, Kathmandu Birta Records, 1896.

³⁵On Miscellaneous Land Matters, *op. cit.*, Section 5, p. 62.

³⁶Cf., Sarbangamafi Birta Grant to the Senior Queen, Poush 8, 2004, (December 22, 1947).

³⁷Sylvain Levi, Le Nepal, Paris: Ernest Leroux, 1908, Vol. I.

³⁸Ibid.

³⁹Cf., Bakas Birta Grant to Colonel Pushpa Shamsher, Falgun 23, 2002 (March 7, 1946).

⁴⁰Terai Revenue Regulations, *op. cit.*, Section 32, p. 17.

⁴¹On Guthi, *op. cit.*, Section 4 (2), p. 2.

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²Cf., Bitalab Birta Land of Jabar Singh Thapa Chhetri, Kathmandu Birta Records, 1896.

³Cf., George W. Southgate: English Economic History, London J. M. Dent & Sons Ltd., 1943, pp. 10-11.

⁴On Miscellaneous Land Matters, op. cit., Section 1, p. 61.

⁵Cf., Sarbang Mafi Birta Land of Megharaj Satyal, Kathmandu Birta Records, 1896.

⁶Ibid., Section 1A, p. 61.

⁷Jiuni Birta of Ratna Kumari Adhikari Kshetri, Kathmandu Birta Records, 1896.

⁸Jiuni Birta of Ujir Buddhacharya, Bhaktapur Birta Records, 1896.

⁹Order of the Ministry of Forests and Land Revenue on the Manachamal Land of Hiranand, Baisakh 20, 2010 (May 11, 1954).

¹⁰Itihas Prakash, op. cit., Vol. I, p. 127.

¹¹Manachamal Birta Grant to Khankhawas Land Surveyors, Marga Badi 13, 1856 (November, 1799).

¹²Cf., Manachamal Land of Bindu Ratna Gongol, Bhaktapur Birta Records, 1896.

¹³Manachamal Land of Hemanath Arijal, Bhaktapur Birta Records, 1896.

¹⁴Cf., Itihas Prakash, op. cit., Vol. I, p. 127.

¹⁵On Miscellaneous Land Matters, op. cit., Section 2, p. 61.

¹⁶On Land Matters, op. cit., Section 4, p. 30.

¹⁷Cf., Law Ministry Records: Jimmawal Remuneration Order, Chaitra 9, 2005 (March 22, 1949).

¹⁸ Law Ministry Records, Jumla Revenue Regulations, Shraavan 28, 1991 (August 12, 1934), Section 83.

¹⁹ Birta Abolition Office Records: Renewal of Halbandi Grant in Favor of Ram Chandra Joshi, Aswin 17, 1990 (October 3, 1933).

²⁰ Cf., Itihas Prakash, op. cit., II-2, p. 144.

²¹ Cf., Tiruwa Chhap Land of Faud Singh Kunwar, Kathmandu Birta Records, 1896.

²² Thekka Chhap Land of Tek Bahadur Khatri Chhetri, Kathmandu Birta Records, 1896.

²³ Chhap Grant to Tularam Kariki, Chaitra Sudi 15, 1857 (March, 1801).

²⁴ Chhap Grant to Ambar Singh, Ashadh 14, 1856 (June, 1799).

²⁵ Chhap Grant to Ram Chandra Bhandari, Shraavan Sudi 14, 1851 (July, 1794).

²⁶ Chhap Grant to Dayaram Upreti, Marga Badi 12, 1857 (November, 1800).

²⁷ Cf., Mafi Chhap Land of Mahabir Bisht and Others, Kathmandu Birta Records, 1896.

²⁸ Chhap Grant to Setu Upadhyaya, Kartik Sudi 9, 1856 (November, 1799).

²⁹ Cf., Chhap Grant to Kanak Singh Gharti, 1851 (1794).

³⁰ Cf., Mafi Chhap Land of Bakhat Bahadur Khatri and Others, Kathmandu Birta Records, 1895.

³¹ Chhap Grant to Bir Singh Khatri, Kartik Sudi 9, 1856 (November, 1799).

³² Cf., Baburam Acharya.

³³ Cf., Chhap Land of Manohar Upadhyaya, East No. 1, (Kabrepalanchok) Birta Records, 1895.

³⁴ On Miscellaneous Land Matters, *op. cit.*, Section 2, p. 6.

³⁵ Cf., Mafi Chhap Land of Jagadamba Devi, Bhaktapur Birta Records, 1896.

³⁶ Cf., Itihas Prakash, *op. cit.*, Vol. I, p. 52.

³⁷ Chittaranjan Nepali. General Bhimsen Thapa Ra Tatkalin Nepal (General Bhimsen Thapa and Contemporary Nepal). Kathmandu: Nepali Cultural Association, 1956, p. 270.

³⁸ Gharbari Land of Gunanidhi Upadhyaya, Bhaktapur Birta Records, 1896.

³⁹ Cf., Baburam Acharya.

⁴⁰ Gharbari Land of Bhaktwar Basnyat Chhetri, Kathmandu Birta Records, 1897.

⁴¹ Ibid.

⁴² Cf., Gharbari Land of Purna Prasad Shahi, Bhaktapur Birta Records, 1896.

⁴³ Cf., Gharbari Land of Nardhwaj Karki, Bhaktapur Birta Records, 1896.

⁴⁴ Cf., Mayau Birta Land of Kulanidhi Khanal, Bhaktapur Birta Records, 1896 and Mayau Birta Grant to Dwijaraj Ariyjal, Baisakh 31, 1976 (May 13, 1919).

⁴⁵ Kathmandu Valley Survey Regulations, Aswin Badi 5, 1856 (September, 1799), Section 6. See Appendix B.

⁴⁶ Cf., Baburam Acharya.

⁴⁷ Terai Revenue Regulations, *op. cit.*, Section 140, p. 61.

⁴⁸ Bekh Land of Ashamaru Banda, Lalitpur Birta Records, 1899.

- ⁴⁹ Bekh Land of Babulal Baidya, Bhaktapur Birta Records, 1896.
- ⁵⁰ On Miscellaneous Land Matters, op. cit., Sections 1-2, p. 61.
- ⁵¹ Ibid., Section 5, p. 62.
- ⁵² Cf., Order Regarding Thalahara Rajya, Falgun 10, 2002 (February 21, 1946).
- ⁵³ Royal Order Regarding Rajabandhaki Land of Bishnu Jaishi, Jesta Badi 13, 1854 (May, 1797).
- ⁵⁴ Royal Order Regarding Rajebandhaki Land of Gorbardhan Sen, Ashadh Badi 5, 1854 (June, 1797).
- ⁵⁵ Kathmandu Valley Survey Regulations, op. cit., Section Section 14.
- ⁵⁶ Law Ministry Records: Rajabandhaki Land Redemption Order, Shraavan 16, 2006 (July 11, 1949).
- ⁵⁷ Seba Birta of Laxman Malla, Kathmandu Birta Records, 1896.
- ⁵⁸ Seba Birta of Rajnar Singh Dangol, Lalitpur Birta Records, 1895.
- ⁵⁹ Cf., Baburam Acharya.
- ⁶⁰ Cf., Itihas Prakash, op. cit., Vol. I, p. 90.
- ⁶¹ Cf., Baburam Acharya.
- ⁶² Muluki Ain (Legal Code), Part III, "Jaggo Michne Ko" (On Encroachment of Land), Section 4 (3), p. 43.
- ⁶³ Cf., Bitalab Birta Grant to Narad Jaishi Adhikari, Kartik Baki 4, 1851 (October, 1794).
- ⁶⁴ Itihas Prakash, op. cit., Vol. I, p. 89.

⁶⁵Bitalab Birta Land of Sahadatta Upadhyaya, Bhaktapur Birta Records, 1896.

⁶⁶Pahad Bandobast Birta Phant Office Regulations, Baisakh 14, 1992 (April 26, 1936), Section 17.

⁶⁷On Miscellaneous Land Matters, *op. cit.*, Section 1, p. 61.

⁶⁸Kush Birta Land of Bhairav Nar Singh, East No. 1 Birta Records, 1895.

⁶⁹*Cf.*, Marwat Birta Land of Chamu Budathoki, Kathmandu Birta Records, 1904.

⁷⁰*Cf.*, Baburam Acharya.

⁷¹Marwat Birta Land of Ratna Narayan Shrestha, Kathmandu Birta Records, 1904.

⁷²On Miscellaneous Land Matters, *op. cit.*, Section 1, p. 61.

⁷³Kathmandu Valley Survey Regulations, *op. cit.*, Section 13.

⁷⁴Prithvi Birthday Celebrations Committee: Divya Upadesh (Divine Counsel), Kathmandu: the Committee, 1937 (2nd ed.), pp. 23-24.

⁷⁵Chittaranjan Nepali, *op. cit.*, p. 270.

⁷⁶*Cf.*, Marwat Birta Land of Ram Chandra Shahi, Baitadi Birta Records, 1938.

⁷⁷*Cf.*, Phikdar Land of Gokul Kumari and Others, Kathmandu Birta Records, 1896.

⁷⁸Phikdar Land of Chandra Bir Shrestha. Lalitpur Birta Records, 1904.

⁷⁹Phikdar Birta Land of Devanand and Others, Bhaktapur Birta Records, 1896.

⁸⁰Terai Revenue Regulations, op. cit., Section 140, p. 61.

⁸¹Cf., Phikdar Birta Land of Maha Singh Rana Magar, Kathmandu Birta Records, 1896.

⁸²On Miscellaneous Land Matters, op. cit., Section 1, p. 61.

⁸³Terai Revenue Regulations, op. cit., Section 140, p. 61.

⁸⁴Loc. cit.

⁸⁵Cf., Sarba-kar-akar-sarbangamafi Bakas Birta grant to Prime Minister Dev Shamsheer, Bhadra Sudi 10, 1958 (August, 1901).

⁸⁶Cf., Bakas Birta Grant to Kaji Ratnaman Shrestha, Poush 7, 2001 (December 21, 1944).

⁸⁷Cf., Bakas Birta Grant to Santabir Khatri, Chaitra 14, 1995 (March 27, 1939).

⁸⁸Bakas Birta Grant to Prime Minister Juddha Shamsheer, Chaitra 14, 1995 (March 27, 1939).

⁸⁹Cf., Bakas Birta Grant to Lok Raj Mishra, Chaitra 5, 1994 (March 18, 1938).

⁹⁰Cf., Bakas Birta Land of Dharmaraj Basnet, Lalitpur Birta Records, 1904.

⁹¹Cf., Sarbakar-Akar-Sarbangamafi, Bitalab Birta land of Narendra Bikram Shah, Kathmandu Birta Records, 1902.

⁹²Cf., Sarbakar-Akar-Sarbangamafi Birta Land of Bhairav Nar Singh and Kumar Nar Singh, Kathmandu Birta Records, 1896.

⁹³Cf., Sarbakar-Akar-Sarbangamafi Kush Birta Grant to Royal Priest Bibudhendra Prasad, Kartik 22, 1997 (November 7, 1940).

⁹⁴Cf., Sarbakar-Akar-Sarbangamafi Bitalab Birta Grant to Prime Minister Jang Bahadur, Aswin Sudi 6, 1917 (October, 1860). See Appendix C.

- ⁹⁵ Sarbakar-Akar-Sarbangamafi Bitalab Birta Land of Janak Kumari, Bhaktapur Birta Records, 1896.
- ⁹⁶ Cf., Sarbakar-Akar-Sarbangamafi Bitalab Birta Land of Sahebjū Narendra Bikram Shah, Kathmandu Birta Records, 1902.
- ⁹⁷ Cf., Order Regarding Sarbangamafi Birta Land of the Royal Household, Poush 8, 2004 (December 22, 1947).
- ⁹⁸ Cf., Sarbakar-Akar-Sarbangamafi Daijo Birta Grant to Princes Shubha Rajya Laxmi, Chaitra 14, 1995 (March 27, 1939).
- ⁹⁹ Cf., Sarbangamafi Bitalab Birta Land of Krishnadas Dahal, Bhaktapur Birta Records, 1896.
- ¹⁰⁰ Cf., Sarbangamafi Bakas Birta Grant to Prime Minister Chandra Shamsher, Shraavan 10, 1965 (July 25, 1908).
- ¹⁰¹ Cf., Daijo Birta Grant to Princess Kedar Divyeshwari, Baisakh 9, 1997 (April 20, 1941).
- ¹⁰² Cf., Birta Land of Bhuwan Lal Jha, Bhaktapur Birta Records, 1895.
- ¹⁰³ Cf., Bakas Pota Birta Grant to Ishwari Raj Mishra, Chaitra 5, 1994 (March 18, 1938).
- ¹⁰⁴ Cf., Order Regarding Sarbakar-Akar-Sarbangamafi Birta Land of Hiranya Shamsher and Others, Poush 21, 1989 (January 5, 1933).
- ¹⁰⁵ Pota Mafi Birta of Jog Bir Malla, Lalitpur Birta Records, 1904.
- ¹⁰⁶ Pota Mafi Land of Bir Dhvaj Rai Chhetri, Kathmandu Birta Records, 1896.
- ¹⁰⁷ Cf., Pota Mafi Land of Ex-Prime Minister Deva Shamsher Jang Bahadur Rana, Lalitpur Birta Records, 1904.
- ¹⁰⁸ Pota Mafi Land of Harkha Narayan Manandhar and Others, Lalitpur Birta Records, 1904.

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- ¹¹⁰ On Miscellaneous Land Matters, op. cit., Section 14, p. 65.
- ¹¹¹ Cf., Tiruwa Birta Grant to Hari Prasad Khakuryal, Chaitra 4, 20000 (March 17, 1944).
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- ¹¹³ Cf., Sarbakar-Akar-Sarbangamafi Kush Birta Grant to Bibudhendra Prasad, Kartik 22, 1997 (November 7, 1940).
- ¹¹⁴ Cf., Sarbakar-Akar-Sarbangamafi Daijo Birta Grant to Princess Shubha Rajya Laxmi, Chaitra 14, 1995 (March 27, 1939).
- ¹¹⁵ Cf., Sarbangamafi Kush Birta Bitalab Land of Gananath Upadhyaya, Bhaktapur Birta Records, 1896.
- ¹¹⁶ Cf., Phikdar Bitalab Birta Grant to Dhokal Khabas, Bhaktapur Birta Records, 1896.
- ¹¹⁷ Cf., Sarbangamafi Bitalab Birta Land of Ram Krishna Upadhyaya Nyaupane, Bhaktapur Birta Records, 1896.
- ¹¹⁸ Cf., Birta Grant to Prince Narendra Bikram Shah, Kathmandu Birta Records, 1904.
- ¹¹⁹ Cf., Sarbakar-Akar-Sarbangamafi Kush Birta Bitalab Grant to Bhogendra Raj, Chaitra 29, 1999 (April 11, 1943).
- ¹²⁰ Cf., Guthi Bakas Birta Grant to Bhanukanta Upadhyaya, Kathmandu Birta Records, 1896.
- ¹²¹ Cf., Birta Grant to Dhan Shamsher, Ashadh 27, 1995 (July 11, 1938).
- ¹²² Cf., Birta Grant to Medini Raj, Kartik 22, 1998 (November 7, 1941).

¹²³Cf., Birta Grant to Gopal Shamsher, Bhadra 2, 2004 (August 18, 1947).

¹²⁴On Miscellaneous Land Matters, *op. cit.*, Section 1, p. 61.

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²Budget Report, 1957-58, Nepal Gazette, VII-15 (Extraordinary), Chaitra 29, 2014 (April 11, 1958), p. 86.

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⁴Kathmandu Assessment Order, September 24, 1950.

⁵His Majesty's Government: Pancha Varshiya Yojana Ko Gat Dui Varsha Ko Pragati (Progress Report of the Five Year Plan for the last two years), Kathmandu: Planning Commission, 1958, p. 22.

⁶Ibid., Section 17.

⁷Kathmandu Birta Records, 1896.

⁸Muluki Ain, Part III, (1935 ed.), Jagga Jamin Goshwara Ko (On Miscellaneous Land Matters), Section 16, p. 53.

⁹Pota Tax Regulations, *op. cit.*, Section 17.

¹⁰Pota Taxation Order, November 16, 1938.

¹¹Pota Tax Assessment Register for Kabilas, 1935.

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¹³Law Ministry Records: Pota Taxation Order to Kirtipur and Other Mal Offices, Ashadh 27, 1997 (July 11, 1940). See also Nepal Kanun Patrika (Nepal Law Journal), IV-5, Marga, 2018 (November-December, 1961), p. 70.

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¹⁵Law Ministry Records: Pota Birta Regulations, Shraavan 23, 2007 (August 7, 1950).

¹⁶Pota Tax Regulations, op. cit., Section 7 as amended on Marga 1, 1996 (November 16, 1939).

¹⁷Ibid., Section 10.

¹⁸See Vol. I, p. 212.

¹⁹Pota Tax Regulations, op. cit., Section 18.

²⁰Ibid., Section 9.

²¹Cf., Birta Grant to Shamsheer Bikram, Jestha 21, 1998 (June 3, 1941).

²²Government of Nepal: Report of the Land Reform Commission, Kathmandu, The Commission, 1953. (English Translation, Mimeographed), p. 6.

²³Ibid., p. 21.

²⁴Ibid., p. 71.

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²⁸ Ministry of Finance, Arthik Ain, 2014 (Finance Act, 1957-58), Sections 3-5, Nepal Gazette VII-5 (Extraordinary), Chaitra 29, 2014 (April 11, 1958), pp. 74-75.

²⁹ Ibid., pp. 84-85.

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³¹ Ministry of Law and Parliamentary Affairs, Kar Lagaune Ain, 2015 (Taxation Act, 1958), Section 4, Nepal Gazette, IX-19 (Extraordinary), Poush 1, 2016 (December 15, 1959).

³² Ministry of Law: Birta Unmulan Ain, 2016 (Birta Abolition Act, 1959) Nepal Gazette, IX-19 (Extraordinary) Poush 1, 2016 (December 15, 1959).

NOTES TO CHAPTER V. PROBLEMS OF BIRTA ADMINISTRATION

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² Cf., Bakas Birta Grant to Commander in Chief Padma Shamsher, Baisakh 22, 1998 (May 4, 1941).

³ Cf., Prime Minister Chandra Shamsher's Order to the Pahad Bandobast Birta Phant Office, Ashadh 5, 1971 (June 19, 1914).

⁴ Pahad Bandobast Birta Phant Office Regulations, Baisakh 14, 1992 (April 26, 1935), Section 3 (1), as amended on Chaitra 26, 1998 (April 8, 1942).

⁵ Ibid., Section 41.

⁶ Cf., Kush Birta Grant to Mahananda Pandit, Ashadh Badi 4, 1878 (June, 1821).

⁷ Kush Birta Grant to Lakshmi Kant and Tulsi Prasad Upadhyaya, Baisakh 22, 1998 (May 4, 1941).

⁸ Cf., Bakas Birta Grant to Janak Kumari Devi, Baisakh 12, 1978 (April 24, 1921).

⁹ On Land Matters, op. cit., Section 31, pp. 145-46.

¹⁰Law Ministry Records: Okhaldhunga Revenue Regulations, Shraavan 28, 1991 (August 12, 1934), Section 125. See also Pahad Bandobast Birta Phant Office Regulations, op. cit., Section 4.

¹¹Muluki Ain, Part V, Adalko (On Social Discipline), op. cit., Section 21 (1)-(3), p. 6-7.

¹²Tiruwa Birta Grant to Principal Mrityunjaya, Bhadra 2, 2004 (August 18, 1947).

¹³On Social Discipline, op. cit., Section 21 (1)-(3), p. 6-7.

¹⁴Itihas Prakash, op. cit., Vol. II, Book 3, p. 421.

¹⁵Cf., Baburam Acharya.

¹⁶On Miscellaneous Land Matters, op. cit., Section 6, p. 62.

¹⁷Okhaldhunga Revenue Regulations, op. cit., Section 123 (1). See also Terai Revenue Regulations, op. cit., Section 30, p. 145.

¹⁸On Land Matters, op. cit., Section 30, p. 145.

¹⁹Muluki Ain, Part III, (1935 ed.), On Land Evictions, Section 28, p. 31.

²⁰Cf., Bakas Birta Grant to Commander in Chief General Bhim Shamsher, Ashadh 30, 1976 (July 14, 1919).

²¹Pahad Bandobast Birta Phant Office Regulations, op. cit., Section 2.

²²On Miscellaneous Land Matters, op. cit., Section 13, p. 64.

²³Cf., Kharidi Birta Grant to Her Highness the Senior Queen, Mohan Shamsher and Others, Ashadh 26, 1999 (July 10, 1942).

²⁴ Cf., Kharidi Birta Grant to Prime Minister Juddha Shamsheer, Chaitra 5, 1994 (March 18, 1938).

²⁵ Finance Ministry Order to Birta Phant Office, Poush 3, 2014 (December 17, 1957).

²⁶ Muluki Ain (Legal Code), Part III, Satta Patta Ko, (On Exchange), Sections 2-3, p. 68.

²⁷ Ibid., Section 5, pp. 68-69.

²⁸ Pahad Bandobast Birta Phant Office Regulations, op. cit. Section 14.

²⁹ Muluki Ain (Legal Code), Part III, Dan Datavya Ko (On Gifts and Donations), Section 14, p. 150.

³⁰ Muluki Ain, Part III, Lagga Michne Ko (On Encroachment on Land), Section 1, p. 41.

³¹ On Miscellaneous Land Matters, op. cit., Section 3, pp. 61-62.

³² Kathmandu Valley Survey Regulations, 1799, op. cit., Section 2.

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