

Land Tenure and Taxation in Nepal



VOLUME IV

Religious and Charitable Land Endowments: Guthi Tenure

by MAHESH C. REGMI

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PREFACE

This volume is the last in a four-part series of studies on the land tenure and taxation systems of Nepal. It deals with the Guthi land tenure system, under which lands are endowed for religious and charitable purposes. The previous volumes in this series have dealt with the following types of tenure: Raikar, under which the State traditionally exercised rights of landownership and taxation; Birta, or land grants made by the State to individuals; Jagir, or land assignments to government employees and functionaries; Rakam, or compulsory labor taxation on the basis of land and homestead ownership; and Kipat, a form of communal land tenure prevalent among certain communities of Mongoloid origin in the hill districts of Nepal. The Birta, Jagir and Rakam tenure systems were abolished in 1951, after the end of the Rana regime, while the Kipat system has been retained only in the case of the Limbu community in eastern Nepal. Despite the general trend during the post-1951 period towards the abolition of outmoded land tenure and taxation systems which limited the ownership and taxation powers of the State, the Guthi tenure system has remained largely unaffected, because of the religious and sentimental considerations connected with it. A study of the Guthi land tenure system therefore is important at the present moment not only to complete our understanding of Nepal's land tenure and taxation systems, but also in order to analyze attitudes and motivations in the field of social and economic change.

The Guthi system in Nepal provides a wide field for study and research. It is concerned with the establishment, function, and administration of temples, monasteries, and other religious and charitable institutions. Land tenure thus is only one aspect of the Guthi system. The present study is not concerned with the Guthi system in its entirety, but only with its land tenurial aspects. However, it has not always been possible to divide the subject into watertight compartments. Not infrequently in the course of the present study, it became evident that problems of Guthi land tenure could be comprehensibly analyzed only after a general description of religious and charitable motivations and a discussion of the background of administrative and political systems, institutions, and developments.

Our study therefore begins with a discussion of the origin and meaning of the Guthi system. In Chapters II and III the religious, economic, social, and political factors which contributed to the endowment of Guthi land and the different categories of Guthi land endowments are discussed in order to provide the necessary background for an analysis of the fiscal and tenurial characteristics of the Guthi system (Chapter IV) and problems relating to the assessment and collection of Guthi revenue (Chapter V). An historical study of the Guthi system follows in Chapter VI,

while the subsequent two chapters deal with problems of Guthi administration and management and the newly-created Guthi Corporation. The agrarian aspects of the Guthi land tenure system are analyzed in Chapter VII from the viewpoint of both the landlord and the cultivator. Chapter VIII provides a critique of the Guthi land tenure system in the light of current economic and social conditions, and an estimate of the impact of recent land reform measures on this form of land tenure. Some general conclusions about the land tenure system are discussed in the last chapter, which deals primarily with the evolution of property rights on Raikar land and the tenurial aspects of the land reform program.

Ours is the first attempt to study the Guthi land tenure system of Nepal in a systematic manner. The study is therefore almost wholly based on primary sources. Guthi legislation contained in the different editions of the Legal Code (Muluki Ain) from 1853 to 1963, as well as regulations promulgated in this field after 1920-21, provided a basic understanding of the legal and administrative framework of the Guthi system. Copies of most of these materials were obtained from the Law Ministry of His Majesty's Government. Documents concerning Guthi endowments and their administration and management since the last quarter of the eighteenth century, copies of which were obtained from the Records Section (Lagat Phant) of the Department of Revenue, Ministry of Finance of His Majesty's Government, provided an opportunity of analyzing the executive aspects of these laws and regulations. Records of Guthi endowments maintained by the Guthi Records (Lagat Janch) Office of the Guthi Corporation made it possible to understand many facts of Guthi policy and administration which the laws, regulations and grants in themselves could not have revealed. In addition a considerable volume of valuable materials was obtained from the Tibetan Affairs (Jaisi Kotha) Section of the Ministry of Foreign Affairs of His Majesty's Government, the Pashupatinath temple offices, and the Kathmandu Guthi Tahasil (Revenue Collection) Office of the Guthi Corporation. Personal visits to Pashupatinath temple in Kathmandu and a few monasteries in Bhaktapur helped to clarify many points regarding the actual enforcement of different laws and regulations and the present status of several important Guthi endowments. I must express my gratitude to the large number of government officials, Guthi functionaries, and others who extended sincere cooperation to me in this task. I am deeply indebted also to the concerned authorities of His Majesty's Government who gave me permission to utilize these materials.

The entire study has taken almost seven years, from August, 1960, to March, 1967, and has run to more than 1,000 pages in four volumes. I must thank the Institute of International Studies of the University of California, Berkeley, for the indulgence they have shown me notwithstanding the unexpected length of time my study has involved and the voluminous character it has acquired.

Completing these four volumes over a long period of time has led to a number of problems, because land tenure and taxation have been in a state of flux in Nepal in recent years. Consequently, a considerable part of the study of Raikar tenure made in Volume I in such fields as the basis of tax assessment, land tax assessment rates, and systems and machinery of land tax collection has already become obsolete. I have therefore considered it necessary to describe the latest developments in these fields in Appendix B of this volume. Statistics contained in Chapter I of Volume I are given in a revised form in Appendix A on the basis of the results of the 1962 Agricultural Census. Recent developments in the field of Kipat land tenure, which formed part of the subject matter of Volume III, are also given in Appendix B.

My thanks are due to Mr. Shankar Man Amatya for his invaluable cooperation in the collection of materials from different government offices, and his assistance in their interpretation. I am indebted to Mr. Dan B. Shrestha and Mr. Shyam B. Suwal for their patient, accurate typing of interminable corrected drafts. I must also express my gratitude to Mr. Chaitanya K. Adhikari, Mr. Kesar Lal, Mr. Peter Burleigh, and Mr. Frederick H. Gaige, who have carefully studied the manuscript and given many valuable suggestions.

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Mahesh C. Regmi

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I. ORIGIN AND MEANING OF THE GUTHI SYSTEM

Guthi--like Birta, Jagir, and Rakam--is a variant of the Raikar land tenure system. Raikar, or State landlordism, was a reflection of the unlimited prerogative of an absolute government which identified land ownership with sovereignty. The variants of Raikar tenure which emerged were basically in answer to the need to adapt the land system to different economic, political, social, religious, and administrative requirements: the Birta system helped to create a feudalistic class which gave social and political support to the rulers; the Jagir and Rakam systems enabled the government to support an administrative structure without the use of much cash in a situation where an exchange economy had not yet properly developed. The Guthi system, on the other hand, contributed to the satisfaction of religious propensities of both the rulers and the common people.

ORIGIN OF THE GUTHI SYSTEM

The Guthi system has its origin in the endowment of land and other forms of property for the establishment and maintenance of religious and charitable institutions such as temples, monasteries, schools, hospitals, orphanages, and poorhouses. Such endowments are not confined to Nepal. Systems such as the Guthi system have existed in some form or other in almost all parts of the world, irrespective of the predominant religion sponsoring them. The origins of such systems are probably as old as settled agriculture and organized religion themselves. It would be futile, therefore, to attempt to trace the origin of the Guthi system in Nepal to similar systems prevailing in India and elsewhere. In all of these systems, surplus agricultural production combined with religious instincts made the fulfillment of altruistic motives possible through land endowments.

A British anthropologist has provided an interesting case study of how surplus agricultural production has resulted in increased expenditure for religious purposes among the Sherpa community in East No. 3 district.¹ The introduction of the potato in that area during the mid-nineteenth century led to the sudden development of a surplus in food supplies. This surplus, over a 50- or 80-year period, made possible the construction of new temples, monasteries, and religious monuments. The surplus food supply in itself was not important; more significant was the strong religious impulse which insured that any margin of resources left after essential needs were met would be largely devoted to religious purposes.

Similar developments have occurred at different times and in different areas of the world. Terminological or other

coincidence can therefore hardly be regarded as evidence that the Guthi system of Nepal was borrowed from India or elsewhere. Although the Guthi system is virtually synonymous with the vaqf system of India, Egypt, Syria, Iraq, Iran, and other nations with important Muslim communities, with the Dharmada and Devottar land tenures of Hindus in India, and with the mortmain tenure of medieval Europe, it would be erroneous to establish any organic or imitative link between them.

The origin and growth of the Guthi system as it exists at present in Nepal may be traced to the social and religious customs of the Newar community of Kathmandu Valley. For non-Newari communities, Guthi is simply a system used to finance religious and charitable institutions. For the Newars, on the other hand, the system is an organic part of their social and cultural life. The assimilation of such a system into the social and cultural attitudes and practices of a community is possible only in the context of an ancient and mature civilization such as that of the Newars of Kathmandu Valley. The warlike and individualistic Gorkhali borrowed this system to propitiate their gods and add religious significance to their military glories. But socially and culturally, the Guthi system has had no organic connection with the Gorkhali way of life. Linguistic evidence too would substantiate this conclusion. The term Guthi, however, has been fully assimilated into the Newari language and is used in several compound expressions which the Nepali language lacks.

Among the Newars of Kathmandu Valley, the term Guthi is used to denote an organization based on caste or kinship, or occasionally on geographical propinquity, which insures the continued observance of social and religious customs and ceremonies of the community. For example, a Sanaguthi is a Guthi organization composed of members of the same caste or patrilineal group, which is responsible for conducting the funeral ceremonies involving its members. The term Guthi, in this sense, is primarily used to denote a social institution which determines the rights and obligations of a Newar vis-a-vis his community. It is obvious that such an institution has no relationship with the land tenure system.² A Guthi organization of this type may acquire and hold land and other forms of immovable property, which then automatically come under the Guthi land tenure system.* However, the

*Colin Rosser, a British anthropologist, has written, "Among Newars there is an ubiquitous form of a voluntary association known as a Guthi. These are common interest groups with restricted recruitment All Newar males must belong to a Sanam Guthi and all members of a single Guthi of this type must belong to the same caste. A Sanam Guthi is a kind of funeral society basically Each Guthi has a senior member and an

organization is not based on ownership of property as such, and thus lies outside the scope of the present study.

MEANING OF THE TERM GUTHI

The term Guthi is derived from the Sanskrit term Gosthi, meaning a society or association. Religious endowments made during the medieval period in Nepal, which are generally in Sanskrit, naturally use the term in its original form.³ Later endowments often used the Pali or Prakrit equivalent Gothi,⁴ which in the course of time, became corrupted into Guthi or Guth.⁵ The Guthi system had been well established in Kathmandu Valley at the time of the Gorkha conquest of 1768-69, but there is no evidence that the term was in use in other parts of the country. The Sen kings of eastern Nepal, who were displaced in 1773-74 by the Gorkhas, appear to have used variations of the term Birta to denote land endowments which would then have been described as Guthi in Kathmandu Valley.* Prithvi Narayan Shah (1768-75) made "Guthi" endowments for religious ceremonies at the temple of Gorakhnath in Kathmandu;⁶ however, his successor, Simha Pratap Shah (1775-78), used the term "Birta" while confirming a religious land endowment made by the Sen kings in eastern Nepal,⁷ presumably because the original endowment had been described as such. In western Nepal as well, available evidence indicates that the term Guthi was

organizing Committee. Each Guthi requires an annual cash subscription from its members, and an entrance fee from new members. . . . In addition to the obligation of turning out for the funerals of fellow members, each individual member has the privilege of attending the annual feast paid for out of the funds. And he may in some cases borrow money at favourable rates of interest, or no interest at all, from the Guthi funds. Wealthy Guthis may own land and considerable property, the income of which is used for these feasts and loans." "The Newar Caste System," in Christoph von Furer-Haimendorf, ed., Caste and Kin In Nepal, India and Ceylon, pp. 96-97; see also pp. 110-120.

*Cf. Land Grant By King Kamadatta Sen to Pindeshwari Monastery, Ashadh Badi, 1810 (June, 1753). Another branch of the Sen dynasty, which ruled over Mahottari and other eastern Tarai districts from Makwanpur, also appears to have followed the same practice. The Gorkha kings in their turn followed local practices when they conquered new territories. Thus both the Sen kings and King Ran Bahadur Shah of Gorkha bestowed lands on temples in Mahottari district as Kush Birta, while King Girban confirmed the bequest as Bitalab Birta. Royal Order to Mahant Buddhi Ram Das Regarding Confirmation of Birta Lands of Simardahi Asthan in Mahottari District, Marga Badi 12, 1863 (November, 1806).

rarely used before the Gorkha conquests.* The use of the term Guthi was thus originally confined to Kathmandu Valley, and gradually spread to other parts of the country in the period following political unification.

During the late eighteenth century changes also occurred in the connotation of the term Guthi. In ancient and medieval Nepal, as in India,⁸ the term appears to have been used to connote a board of trustees in charge of religious and charitable endowments, but not the endowments themselves. The Lichchhavi King Narendra Dev (740-777) endowed lands in Yupa~~g~~rama (Patan) "for attaining religious merit," and placed them under a "Gosthi."⁹ During the Malla period too, we find lands dedicated for religious and charitable purposes entrusted to a "Gosthi-Jana" or board of trustees.¹⁰ The transition is rather abrupt when, immediately after the conquest, we find Prithvi Narayan Shah making "Guthi" land endowments for religious functions at a temple in Kathmandu without making any reference to trustees.¹¹ It would be plausible to argue that, notwithstanding his desire to use a term which he found in general use in the territories annexed by him in Kathmandu Valley, Prithvi Narayan Shah failed to distinguish the exact connotation in which the term was used. Thus the term Guthi, although derived from Sanskrit, eventually became a part of the Nepali language with its form and content molded successively by Pali, Newari, and Gorkhali linguistic and cultural influences.

FORM AND NATURE OF GUTHI ENDOWMENTS

The majority of existing Guthi endowments are in the form of land, primarily because of the predominant importance of land as a form of property and a source of income. But the term Guthi has a connotation wider than its use in the context of land tenure suggests. Recent legislation has defined Guthi as an endowment of movable or immovable property** or income-yielding funds for any

*The term occurs in the Legal Code of King Ram Shah (1605-32) of Gorkha. Itihas Prakash Mandal, Itihas Prakash (Light on History), Vol. 2, Book 3, p. 421. But since this text was written some time during the beginning of the nineteenth century, it cannot be adduced as evidence that the term Guthi was commonly used at the time of Ram Shah. In Achham, in one case, lands belonging to local temples were confirmed as "Manachamal" immediately after the conquest; it was only when formal confirmation followed in 1807 that the term "Guthi" was used to denote these lands. Cf. Royal Order to Jaya Sharma Upadhyaya Confirming Manachamal Lands of Varada Devi Temple in Achham as Guthi, Jestha Badi 12, 1864 (May, 1807).

**The 1953 Nepal Laws Interpretation Act defines immovable property as land, the benefits accruing therefrom and things attached thereto. Ministry of Law, Nepal Kanun Vyakhya Sambandhi

religious, charitable, or philanthropic purpose.¹² Until late in the nineteenth century, governmental endowments often took the form of an assignment of a specified amount of revenue, which did not necessarily pertain to land. Thus in 1840, King Rajendra endowed a sum of Rs 75.00 annually as Guthi for the maintenance of a rest house which he had constructed at Tibrikot in Jumla district¹³ with the proceeds of judicial fines. Sometimes Guthi endowments were raised by a levy on every homestead in the village to finance the prescribed religious or charitable function. In 1822, for instance, every homestead at Chhinasim in Jumla district was directed to supply one pathi of grain for religious performances at a local temple.* In certain cases, revenue collected from members of religious orders were assigned as Guthi endowments, obviously because it was considered sinful for the government to utilize these funds for secular purposes. In Achham district, for example, the Shah rulers assigned the revenues derived from the lands and homesteads of members of certain religious orders for the use of local temples.¹⁴

Endowments in the form of revenue were gradually discarded as a result of government reforms in public finance during the early part of the twentieth century. The government then took measures to prevent the leakage of revenue before it reached the treasury; thus endowments exclusively in the form of non-agricultural revenues which were assigned for direct collection by the beneficiaries became rare.

Guthi endowments are sometimes made in cash. In such cases the interest which accrues is utilized for the performance of the stipulated religious or charitable functions. In 1844, a private endowment of Rs 20.00 was deposited as Guthi with the priest of a temple in Jumla to finance offerings of oil and vermilion powder every Tuesday.¹⁵ There is no indication in the document why a cash endowment was preferred to land. Several such endowments have also been made in recent years. Prime Minister Chandra Shamsher established a sanatorium at Tokha in Kathmandu district with a cash endowment of Rs 100,000.00 in Indian currency, invested in Government of India promissory notes.¹⁶ Guthi endowments of this type appear to have been rare, however, presumably because of the scarcity of investment facilities within the country. In one case involving a Guthi endowment in cash made by Prime Minister Chandra Shamsher to subsidize food supplies to the

Ain, 2010 (Nepal Laws Interpretation Act, 1953), Nepal Gazette, Vol. 4, No. 26, Magh 25, 2021 (February 7, 1955), Section 2 (b).

*Light on History, op. cit., Vol. 2, Book 2, pp. 43 and 47. This levy was payable in Jestha (May-June) and Marga (November-December) for the monsoon and winter crops respectively.

military, government regulations promulgated in July, 1927 stressed the need for investing Guthi funds in order to finance the proposed subsidy with the interest. As a stop-gap arrangement pending final investment in land, the regulations also prescribed that loans to private individuals be supplied against the security of Birta lands or gilt-edged securities of the Government of India.¹⁷ In view of the comparatively stable character of land endowments, even Guthis established with cash endowments tended to invest their funds in land purchases. These regulations also prescribed:

If these funds are invested in the bank,* some income will accrue for the time being. . . . But this [Guthi] institution will be able to exist on a permanent basis if these are utilized [to purchase] land within the country.¹⁸

Guthi endowments in the form of land had certain advantages which other forms of endowment lacked. Endowments in land facilitated collecting rents in the form of commodities required for the performance of the prescribed Guthi functions, and utilizing the unpaid services of the cultivators. Possibly it was these economic considerations which imbued gifts of land with religious significance. Where such gifts were made as Guthi endowments, the virtues normally associated with them were leavened with the spiritual satisfaction derived from the consummation of altruistic objectives.

Today, with local investment opportunities increasingly available, and with the growing uncertainty of income from land as a result of recent land reform measures, Guthi endowments in the form of cash may become progressively more common.** However, Guthis established in the form of revenue assignments or cash endowments have no relationship to the land, and thus lie outside the scope of the present study.

The Guthi system, from the point of view of the present study, is concerned with the endowment of lands for the performance of religious and charitable functions. In other words, to be a part of the Guthi system, it is not enough that lands should merely

*It should be noted that investment in a bank in 1927, when these regulations were promulgated, meant investment in India. It was only in 1935 that Nepal's first commercial bank was established.

**The Madan Puraskar Guthi, which was established in 1955 with a cash endowment of Rs 553,000.00 with the objective of developing the Nepali language and literature, has its entire capital invested in Nepal, mostly in the form of national development bonds issued by His Majesty's Government. Nepali, 23, Baisakh-Ashadh, 2022 (April-June, 1965), p. 51.

be endowed for specific purposes. The religious or charitable nature of such purposes constitute the criterion for determining whether or not the endowments fall within the ambit of the Guthi system in the sense of the term we are using. However, Guthi endowments of land for secular purposes have not been unknown in the past. King Girban endowed lands and revenues in the Tarai districts to finance the salaries and Jagir land assignments of mechanics employed in State-owned arsenals.* Indeed, administrative regulations promulgated in 1793 prescribed that Guthi endowments should be made to finance major items of expenditure in the royal household.** In 1919, Prime Minister Chandra Shamsher created a Guthi endowment with Rs 2.2 million in Indian currency, utilizing the income to sell rice to the military at subsidized rates in view of the high prices of food during the period following the First World War.¹⁹

Such Guthi endowments resulted from the backward state of the fiscal and administrative systems. Instead of making budget allocations every year for secular purposes such as those described above, the government found it simpler to utilize the Guthi system, which was traditionally used to finance religious and charitable endowments. It seems appropriate, however, to exclude secular Guthi endowments from the scope of the present study. Since no motives of religion or charity are involved in these endowments, resumption by the donor does not constitute an encroachment upon religious tradition. Permanence and irrevocability, two essential characteristics of Guthi land tenure, are thus absent. Actually, secular Guthi endowments have been rare. Moreover, they have become virtually obsolete with progressive fiscal and administrative reforms.

*Cf. Royal Order to the Subbas and Other Officials of Bara and Parsa Districts, Bhadra Sudi 11, 1850 (September, 1802). This practice also appears to have been common during the Malla period. Thus King Siddhi Narsingha Malla (1620-61) is said to have assigned Guthi lands to carpenters whom he employed to build temples and palaces in Lalitpur. See Daniel Wright, History of Nepal, p. 159.

**Foreign Ministry Records, Administrative Regulations, Falgun Badi 4, 1849 (February, 1793), Section 11. Thus, in 1795, revenue from 115 muris of land was assigned for financing repairs in the royal palace at Gorkha. Revenue Assignment for Repair of Royal Palace at Gorkha, 1852 (1795). This document does not use the term Guthi, however.

AREA AND LOCATION OF GUTHI LAND ENDOWMENTS

The Shah and Rana rulers seldom imposed any restriction on the endowment of lands as Guthi. On the contrary, they made liberal land grants to private individuals for Guthi endowments. Moreover, the government considered itself directly responsible for the maintenance of existing temples, monasteries, and other religious and charitable institutions. It therefore made munificent land endowments under the Guthi system on its own initiative. Private endowments, too, were made in large numbers, particularly for the installation of new temples or the maintenance of specific rituals in existing ones. Lands under Guthi tenure are therefore found in all districts of the Kingdom of Nepal, although no statistics are available to indicate their total area or distribution.

The majority of existing Guthi endowments, as well as some of the richest, appear to be concentrated in Kathmandu Valley and the eastern and central Tarai districts of Bara, Parsa, Rautahat, Sarlahi, Mahottari, Saptari, and Morang.* Kathmandu Valley is the site of such renowned Hindu temples and Buddhist shrines as Pashupatinath and Swayambhu which have benefited from the liberal Guthi land endowments made by kings and commoners alike throughout several centuries. In addition, Kathmandu Valley accommodated the capitals of the Malla kings, who were great temple builders. Although no great builders themselves, the Shah rulers excelled in making Guthi land endowments for the upkeep of these temples. The central and eastern Tarai was once the domain of kings of the Sen dynasty, a branch of which styled itself as "Lord of the Hindus." The Sen kings founded temples and monasteries which are even now among the richest Guthi owners in Nepal. In addition, certain areas of great religious sanctity are located in the central Tarai. Janakpur, in Mahottari district, is said to have been the birthplace of Sita, famed in the Ramayana. There are several temples there consecrated to Rama and other personalities connected with the epic. These too own extensive Guthi lands in this region.

The government generally discouraged making Guthi endowments in foreign countries. Legislation to this effect was first enacted in 1853 in view of the difficulties encountered by King Ran Bahadur Shah (1778-99), whose Guthi endowments in India were

*In 1961, the Kingdom was reorganized into 14 zones and 75 districts for the requirements of developmental planning. In 1966, these zones and districts were formally recognized as administrative units. The old districts (such as East Nos. 1-4 and West Nos. 1-4) have thus been abolished. However, we did not think it advisable to refer to the newly-created zones and districts, since Guthi administrative regulations are based on the old system.

confiscated by the British Indian Government on some pretext. Similar difficulties were experienced by Prime Minister Ranganath (1837-38) and others as well. Kings and ministers were therefore urged not to let their subjects make Guthi endowments in foreign countries "since this is contrary to the interests of the State and the people."²⁰ The 1866-67 Legal Code stressed this point in greater detail:

In case one's sons die out so that no descendants are left, our law entitles daughters, if any, to inherit one's wealth. But in foreign countries, daughters are not permitted to inherit wealth in this manner. Such wealth thus becomes escheat . . . which, however, does not accrue to our King. . . . We have our own holy land, where cows, Brahmins and women are not killed, . . . where such sacred temples as those of Pashupatinath, and Guhyeshwari . . . exist, and which is the only Hindu Kingdom in this Kali age. . . . Nobody, from the King to a subject, shall construct temples or rest houses in a foreign country. . . . Anybody who does so harms the people, the country and the Kingdom.²¹

The ban on making Guthi endowments in foreign countries was abolished only in 1963.²² However, it never applied to Guthi land endowments made in Nepal for religious functions at Indian temples.* In 1880, King Prithvi Bir Bikram Shah, Crown Prince Trailokya, and Prime Minister Ranoddip Singh visited Rameshwar, Jagannath, and Dwaraka in India and donated a total amount of Rs 16,000.00 for religious functions at these temples. This amount was utilized to purchase 129 bighas of Birta land in Rautahat district fetching an income of Rs 480.00 (at 3 percent interest) yearly. The income was then transmitted every year to the appropriate priest.²³ When influential or high-ranking persons were involved, the government generally undertook the direct collection and remittance of the Guthi revenue to the beneficiary in India.²⁴

Information about the total area under Guthi land tenure in different periods of Nepal's history is not available. However, it appears correct to presume that this area underwent an unprecedented expansion after the foundation of the Kingdom of Nepal by King Prithvi Narayan Shah in 1769. We do not intend to suggest that the royal dynasties displaced in different parts of Nepal after 1769 were less concerned with religion than the Shah and Rana rulers, but it is indisputable that the latter were in possession of far greater resources in the form of lands and

*For all practical purposes, the ban applied only to India because of geographical proximity and religious affinities.

revenues than any of their predecessors, most of whom were petty chieftains. Dynastic stability during the last two centuries was possibly another factor contributing to the steady proliferation of Guthi land endowments in Nepal.

SCOPE OF THE PRESENT STUDY

The religious and charitable aspects of the Guthi system and its basis in the endowment of land are the primary factors determining its present connotation as a form of land tenure utilized for the establishment of temples, monasteries, orphanages, charity-kitchens, and other similar institutions. Guthi is thus a form of institutional land tenure, the religious and charitable aspects of which have given rise to special problems and characteristics in the fields of land tenure and taxation. It is to these problems and characteristics, rather than to the religious and charitable aspects of the Guthi system, that the present study will be devoted. Religious and charitable aspects will receive attention only insofar as they help to explain the basic features of the Guthi land tenure system. We shall also study problems connected with the assessment and collection of revenue on Guthi lands, as well as the different tiers of interests depending upon Guthi lands for their sustenance and their mutual relationships. In order to provide a better understanding of the fiscal and tenurial aspects of the Guthi system, we will analyze the *raison d'etre* of Guthi land endowments and describe their different categories. We will then discuss official policy towards the Guthi system from an historical point of view, and will conclude our study with an analysis of recent as well as future trends in this sphere.

II. RAISON D'ETRE OF GUTHI LAND ENDOWMENTS

The nature of the Guthi land tenure system is to a large extent determined by its social and religious aspects. The need to insure the continued performance of social ceremonies and religious functions under the Guthi system has imparted a special character to lands endowed as Guthi. Guthi land endowments are thus permanent, irrevocable, and non-alienable. A discussion of the *raison d'etre* of Guthi land endowments and of the social and economic aspects of the Guthi system should therefore precede an analytical study of its tenurial aspects. In this chapter, we shall discuss how the majority of Guthi land endowments were made for the establishment and maintenance of temples and monasteries or for the performance of specific rituals at these institutions. We will also discuss endowments made for such charitable and philanthropic purposes as the maintenance of orphans and indigent persons and the construction and maintenance of bridges and water supply projects.

RELIGIOUS FACTORS

The desire to acquire religious merit through the performance of religious, charitable, and philanthropic acts has constituted the primary *raison d'etre* of Guthi land endowments in Nepal. Gifts of land per se earned religious merit for the donor. According to traditional Hindu belief, "he who makes a gift of land remains in heaven for 60,000 years."¹ Such gifts acquired increased significance when given for religious or charitable purposes, such as the performance of a ritual ceremony at a temple or the feeding of pilgrims. The 1866-67 Legal Code, explaining the spiritual motivation behind Guthi land endowments, states:

Religious acts [such as Guthi land endowments] make the country prosperous and ward off diseases and epidemics. Famine is averted . . . and the country becomes beautiful. . . . Local artisans and craftsmen develop their skills, and poor people are able to maintain themselves by earning wages. . . . In case any person makes a Sadavarta* endowment, his family obtains spiritual deliverance for seven generations.²

Religious merit was maximized when Guthi land endowments for religious and charitable purposes were made on an auspicious day, such as the birthday of the reigning king. Thus on the

*Sadavarta means a place where raw or cooked food is distributed to poor people or pilgrims.

occasion of his twentieth birthday in 1795, King Ran Bahadur Shah made an endowment of 100 ropanis of land to the Taleju temple at Kathmandu.³ At times Guthi endowments were made for the deity of the donor's choice to insure the fulfillment of a wish, such as success during military expeditions. Commander in Chief Dhir Shamsheer thus endowed 40 muris of land at Sipakot (East No. 1 district) on the eve of his departure for the front during the 1854-56 Nepal-Tibet War.⁴ However, the desire to secure divine assistance for success in war was not confined to individuals. During the 1792-93 Nepal-China War, Guthi endowments were made by the government to Brahmans for the performance of mystic rites to ward off the Chinese invasion.⁵

In 1889, King Surendra made a Guthi endowment for a temple in Mahottari district, wishing "a long life, luster, and valor" to his grandson, Prithvi Bir Bikram.⁶ In the northern hill areas, the religious functions performed by Lamas in Buddhist monasteries were considered efficacious in insuring adequate rainfall and a good harvest. Thus in 1843 the people of a village in Jumla complained:

Since the time of the Sijapati Kings* up to 1841, Lamas conducted religious functions at the monastery in Leti. This brought rain, made the country prosperous and provided succour to us. In 1842 . . . no Lama came to the monastery . . . so that its lands remained uncultivated. This disrupted religious functions there, and thus led to drought and famine.⁷

SOCIAL, ECONOMIC, AND POLITICAL FACTORS

There were, of course, other factors in addition to religious sentiments which caused people to endow land as Guthi. Such endowments, once made, could not be revoked. Landowners, thus, could legally deter their heirs from alienating landed property by endowing it as Guthi. A small portion of the income accruing from the land was then utilized for religious and charitable purposes, while the balance was appropriated by the family of the donor. In one case involving a Buddhist monastery in Solu (East No. 3 district):

All the land around Phaplu [village] belongs to close cousins and their families, having been purchased by the grand-fathers of the present owners. It was this worthy gentleman . . . who forty years ago founded this monastery as an act of merit and endowed all members of the community with basic food supplies in perpetuity.⁸

*Kings who ruled in Jumla before the Gorkha conquest.

The founder thus not only earned religious merit by donating the land to the monastery, but also insured economic security for his descendants. The religious character of the Guthi system was thus exploited to concentrate landownership in the family. Far from discouraging endowments of this nature, the government enacted legislation in 1886 granting them legal recognition.⁹ The law which was enacted is still in force, although the express assertion of the motive has been repealed.¹⁰

Such practices, designed to safeguard familial interests in the name of religion and charity, are not confined to Nepal. In India, for instance, Islamic law recognizes endowments (Wakf-ul-aulad) that are made exclusively for the benefit of the donor's family, in which case the residue is to be used for charity if and when the family becomes extinct.¹¹ Nepali law, however, does not recognize the validity of endowments under which the religious and charitable character is conditional upon the extinction of the donor's family, but insists on the immediate use for such purposes of a portion, however meager, of the income accruing from the endowed property.

Another motive behind endowment of land as Guthi, equally remote from considerations of religion and charity, was the landowners' desire to safeguard their landed property from arbitrary confiscation by the State. Throughout Nepal's history, whenever any new territory was subjugated by conquest, the general practice appears to have been to confiscate Birta lands granted by former rulers. 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. However, if Birta lands were endowed as Guthi, religious susceptibilities prevented the State from confiscating them. In case the donor or his heirs were guilty of treason, the Guthi was entrusted to the nearest coparcener who had committed no offence, or else was taken over for State management.¹² The entire property of Prime Minister Bhimsen Thapa was confiscated when he fell from power in 1837,¹³ yet in 1896 some of his descendants were still in possession of Guthi endowments which he made from Birta lands previously granted by King Rajendra.¹⁴ It is obvious that these lands escaped confiscation along with the rest of Bhimsen Thapa's property only because they had been endowed as Guthi.*

*Similarly, in 1768, "The Raja [i.e., Prithvi Narayan Shah] obtained possession of Lalitpur, and confiscated the property of the Pradhans [i.e., nobles], who had been put to death; but he confirmed the acts of charity performed by one of them on the night before their capture." Daniel Wright, History of Nepal, p. 158.

RELIGIOUS ENDOWMENTS

The majority of existing Guthi land endowments in Nepal have been made for the maintenance of temples and monasteries, or for the performance of specified rituals at these institutions. An English official who visited Nepal during the last decade of the eighteenth century observed that there were more temples than houses in Kathmandu. What is more remarkable is that every temple or monastery has been munificently endowed with Guthi lands by successive kings and rulers of Nepal, as well as by ordinary individuals. Particularly after the emergence of Shah rule in Nepal, many temples which had previously been financed through local levies or offerings made by devotees received land endowments under the Guthi system for the performance of regular or ceremonial functions. Since the State undertook primary liability for the continued performance of such functions, the majority of such lands were State endowments. There were, of course, also cases in which new temples were established by private individuals, and were endowed with lands belonging to the donor or obtained by him from the State for this purpose.

People of all classes have made Guthi land endowments at the temples of their choice for the maintenance of specified functions or rituals, or for the supply of specified commodities. One private Guthi endowment at the temple of Taleju in Bhaktapur provides for a daily offering of betel-leaves to the Goddess,¹⁵ apparently in fulfillment of a personal vow. After electric power was introduced in Kathmandu in 1911, several such Guthi land endowments were made for the electrification of temples.¹⁶ Often endowments were made for the playing of specified musical instruments at a temple on a regular basis.¹⁷ Occasionally, lands have been endowed by individuals at temples for the performance of mystic or esoteric rituals.

Another religious act which brought merit, both to the State and to private individuals, was the establishment and maintenance of monasteries for members of particular Hindu or Buddhist religious orders. Hindu monasteries, the majority of which were founded by State endowments, are concentrated mainly in Kathmandu Valley, the central and eastern Tarai districts, and the western hill districts of Doti, Dailekh, and Pyuthan. Buddhist monasteries are found mainly in Kathmandu Valley and the northern hill areas. There are at least three monasteries in Kathmandu devoted to Sikhism.

The number of Guthi land endowments made for temples and monasteries possibly reflects the vicissitudes undergone by various religions during different periods of Nepal's history. Private land endowments for the establishment of Hindu temples appear to have been made frequently until almost the end of the Rana regime; stray cases are still reported from different parts of the

country.¹⁸ However, almost all existing Hindu monasteries belong to the period prior to the political unification of the kingdom, bearing witness to the decline of traditional Hindu sectarianism. The fate of the Buddhist monasteries, particularly in Kathmandu Valley, appears to have been worse. Although there are in Patan fourteen great monasteries with about a hundred subsidiaries, and in Kathmandu eight main monasteries and over seventy-five subsidiaries, "their number bears witness to the great strength of Buddhism towards the end of the first millennium A.D."¹⁹

Prithvi Narayan Shah, after his conquest of Kathmandu, made Guthi land endowments for Buddhist monasteries.²⁰ His Shah and Rana successors do not appear to have followed his example, since in Nepal Buddhism "has died of atrophy, leaving outward forms that have long since ceased to be Buddhist in anything but the name."²¹ However, in the northern hill areas, particularly in areas inhabited by the Sherpa community in East No. 3 district, Tibetan Buddhists have succeeded in establishing "extra-territorial communities,"²² resulting in the establishment of monasteries through private Guthi land endowments. In Solu alone, no less than five monastic establishments have been founded since the early 1920's,²³ extending the area under Guthi land tenure.

A survey of the land holdings of Pashupatinath temple at Kathmandu illustrates the relative importance attached to it by the State as well as by private individuals at different times. In 1799, King Ran Bahadur Shah had endowed lands at Phatakshila (East No. 1 district)²⁴ and Kathmandu, fetching rents amounting to at least 3,435 muris of foodgrains, in addition to miscellaneous in-kind payments and cash levies.²⁵ In 1810, the total area of Guthi lands owned and directly managed by the temple, excluding the above, amounted to 360.8 ropanis.²⁶ In 1964, this area had increased to 591.6 ropanis²⁷ mainly through private land endowments. In addition, there were many land endowments made by private individuals for the performance of specific rituals or other religious functions at the temple which are not included in this figure.²⁸ However, the last time land endowments for the temple were made by a reigning king appears to have been in 1837, when King Surendra endowed 25 ropanis of land for daily food offerings.²⁹

Guthi land endowments for religious purposes were also made for the maintenance of rest houses and roadside shelters at places of pilgrimage or along main pilgrimage routes, where drinking water, food, and lodging were supplied to pilgrims and travelers.³⁰ Elaborate arrangements have been made under Guthi endowments to provide pilgrims visiting Pashupatinath temple at Kathmandu during the Shivaratri festival with food and other necessities at different stages of their journey.³¹

Religion, however, has been subject to a very elastic interpretation when making Guthi endowments. Guthi land endowments

in the name of religion were thus made for grazing the sacred bulls of Pashupatinath temple, and for feeding sacred monkeys in the temple area.* Notwithstanding the religious sentiment attached to the protection and maintenance of every form of life, particularly of animals associated in any manner with the gods, it is impossible not to think of such religiosity as rather misplaced. A situation in which land is reserved for bulls and monkeys in the name of religion while large numbers of able-bodied people migrate to foreign countries in search of food and employment every year is hardly likely to promote the cause of religion and charity itself.

CHARITABLE ENDOWMENTS

Provisions for maintaining orphans and indigent persons, the sick, and the aged with Guthi revenues have been on the statute book since 1853.³² In addition, individual endowments have been made in different parts of the country for the establishment and maintenance of charity kitchens, poorhouses, orphanages, and student hostels. Charity kitchens, known as Sadavartas, are usually associated with temples, monasteries, rest houses, and pilgrimages. In a Guthi endowment made by King Rajendra at Rising (West No. 4 district) in 1834, the surplus income left after performing regular and ceremonial religious functions at a local temple is required to be utilized for feeding "guests and wayfarers."³³ Another endowment made in the same year for a temple and rest house in Mahottari district prescribed that thirty-one wayfarers, pilgrims, Brahmans, helpless persons, and mendicants were to be provided with food and lodging every day.³⁴ Such facilities are an essential aspect of Guthi land endowments made for monasteries in the Tarai districts, where detailed arrangements have been made to serve the individual tastes of visiting mendicants. Regulations promulgated in 1936 for a monastery in Morang district recognize that "some mendicants take only wheat flour, not rice." Nor are their requirements of tobacco and marijuana left unprovided.³⁵ One of the largest Sadavartas of the country is attached to Pashupatinath temple in Kathmandu.

*Pashupati Amalkot Kachahari Office, Guthi Land Acquisition for Gauchar Airport, Ashadh 1, 2019 (July 15, 1962). According to this document, 250 ropanis of land were endowed for the maintenance of the bulls by King Ran Bahadur Shah. In 1816, another 750 ropanis were granted for this purpose (Land Grants for the Maintenance of Bulls at Deopatan, Kathmandu, Ashadh Badi 12, 1873 [July, 1816]). Thirty-six ropanis of land were endowed in one case in Kathmandu for feeding corn to the monkeys of Pashupatinath temple (Guthi Lagat Janch Office, Guthi Land Endowment for Feeding Monkeys at Pashupatinath Temple in Kathmandu, Ashadh 24, 1973 [July 8, 1916]).

Endowments made wholly for charitable purposes, as opposed to those of a religious-cum-charitable character, appear to have been fairly recent. Most of those currently functioning were established after the emergence of the Rana regime. It is significant that on the occasion of King Tribhuvan's coronation in 1911, orphanages and poorhouses, not temples or monasteries, were established in Morang, Saptari, Birganj, Taulihawa, Banke, and elsewhere in the Tarai under Guthi land endowments.³⁶ Guthi land endowments for educational purposes do not appear to have been common before the late nineteenth century. One of the first of such endowments was made in 1884 by King Prithvi Bir Bikram for the establishment of a Sanskrit school and hostel in Janakpur.³⁷ Hostels for Sanskrit students were subsequently established in Kathmandu,³⁸ Ridi³⁹ (Palpa district), and elsewhere, but educational progress does not appear to have provided a strong motivation for Guthi land endowments.

In 1914, two separate institutions known as the Benevolent Society and the Charitable Society, were created to disburse social security benefits to members of "respectable"* families and others. This step was prompted by the government's realization that existing facilities for maintaining destitute orphans were inadequate, while no arrangements existed for taking care of widows, aged persons, and children of "respectable" families who were not in a position to take advantage of existing charitable facilities. The Benevolent Society provided assistance in the form of an educational stipend amounting to Rs 30.00 per month, as well as a sum not exceeding Rs 50.00 for sacred thread investiture ceremonies, weddings, funeral rites, or other social and religious ceremonies. The society was also required to establish lunatic asylums and pay traveling expenses to convicts from distant areas who wished to return home after their release. In addition, the Benevolent Society was required to maintain supervision and control over existing poorhouses and orphanages. The Charitable Society, on the other hand, was responsible for the disbursement of a monthly allowance amounting to Rs 5.00 to not more than 12 widows of lower grade government employees.⁴⁰

These arrangements were generally vitiated by sectarian considerations, however, as the classification of the beneficiaries

*The term was defined to include members of the families of major-captains in the Army and Mir Subbas in the Civil Service (Law Ministry Records, Benevolent and Charitable Society Regulations, Chaitra 14, 1970 [April 6, 1914], Section [1]), and higher ranks, although it was later applied to Captains and Subbas (ibid., Addendum made on Marga 20, 1973 [December, 1916]), as well as to Chaudharis in the Tarai districts who drew emoluments exceeding Rs 2,000.00 (in Indian currency) per annum.

into "respectable" and "others" clearly indicates. Moreover, the regulations stipulated that even "respectable" families would forfeit the prescribed benefits if the concerned officer or functionary committed any crime, or if his property was confiscated in realization of amounts outstanding from him in the course of his official functions.⁴¹ Crimes could of course be political in nature. Far from being genuinely motivated by charitable considerations, therefore, the benefits distributed by these societies were obviously used by the Ranas to bolster their regime.

The same parochial outlook is evident in the establishment of the Sainik Samartha Chandrodaya Samstha in July, 1927. In 1919 a fund had been established to meet losses incurred from supplying subsidized food to the military, but it lay unutilized. Prime Minister Chandra Shamsher pointed out that, in view of rising prices, the salaries of Army privates had been gradually increased from Rs 5.00 to Rs 12.50 per month. However, he felt that they would be better benefited if this amount was invested in land, and the revenue accruing therefrom utilized to import rice from the Tarai districts to Kathmandu Valley and supplied to them at a subsidized price. Orders issued in this connection also noted that since World War I, prices of all commodities had risen, and all efforts undertaken from time to time to hold the price line had proved unsuccessful.⁴² Apparently, in view of this measure, efforts to stabilize prices for the benefit of the general public were considered unnecessary.

Consideration of class in the disposal of charitable benefits under Guthi endowments was not restricted to social security measures and food subsidies. They extended also to the use of rest houses and other institutions. Accommodations in the upper story rooms of a rest house built by Prime Minister Chandra Shamsher at Tripureshwar, Kathmandu, in 1918 were reserved for "holy men, heads of monasteries, Jimidars, and other respectable people," and only the bottom story was available for use by the common people.⁴³ Hostels were open for Brahman students only,⁴⁴ while poorhouses and orphanages were barred to persons of untouchable castes. On the other hand, some Guthi land endowments were meant to benefit all classes of people without discrimination, such as those for the construction and maintenance of bridges,⁴⁵ irrigation channels,⁴⁶ and water supply projects. Such endowments, however, appear to have been rare.

RECENT TRENDS

Religion and charity, and security and protection of landed property were thus the primary *raison d'etre* of Guthi land endowments in Nepal. The existing land tenure and taxation systems provided an appropriate economic setting for these subjective motivations. The Guthi land endowment system was in fact sustained

by a semi-feudal land tenure system such as Birta which permitted the unlimited concentration of landownership rights in the hands of select groups in the society. Influential persons were able to obtain large Birta grants from the government; endowment of a part of these lands as Guthi contributed to both religious edification and social prestige. We do not mean that persons with meager land holdings did not make Guthi endowments. But had the large endowments by Birta owners not been made, the importance of the Guthi form of land tenure, from the point of view of the area it covered, would undoubtedly have been much less. Moreover, since the State was more preoccupied with the need to maintain social stability and religious tradition than with the promotion of such egalitarian ideals as the welfare of the peasantry, it naturally made liberal land endowments under the Guthi system for the establishment of temples and monasteries. Considerations of the adverse effect of such endowments on the nation's finances were viewed as irrelevant, and, indeed, anti-religious.

However, the importance of the factors which previously motivated Guthi endowments has declined with changing social and political conditions and attitudes. Since the downfall of the Rana regime in 1951, the State practice of making land endowments for temples and other religious and charitable institutions has become obsolete. Among private individuals, apprehensions of arbitrary confiscation of landed property for political reasons no longer persist. Slogans and measures of land reform have made land less desirable as a form of property than in former times. As a result, not much inducement exists to endow land as Guthi in order to prevent confiscation or alienation in the future. Growing contacts with the outside world and with materialist values and attitudes of life have made the Guthi land endowment system somewhat out of step with its medieval setting.

Although stray cases of Guthi land endowments are still reported from different parts of the country, it is evident that the system is no longer an important aspect of State and individual conduct as it was during the eighteenth and nineteenth centuries. Moreover, the majority of recent Guthi endowments are made for philanthropic purposes such as the establishment of educational institutions, and are made for construction rather than maintenance. Recent land reform legislation can hardly be expected to resuscitate the Guthi land tenure system, since ceilings have been imposed on landholding. From the State's point of view, land endowments for particular religious and charitable institutions are of less importance in its campaign of social welfare than the maximization of revenue from the land to finance development activities throughout the country.

Problems now faced in connection with the Guthi land endowment system are therefore limited to the need for utilizing the resources tied up in existing endowments for the benefit of the

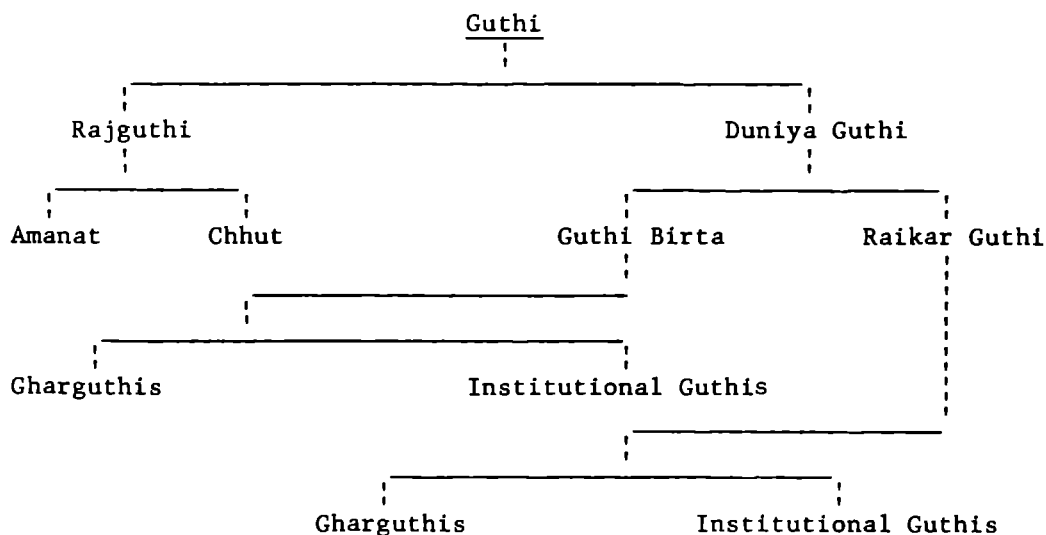
community in general. To be sure, the religious character of the system can hardly be ignored. But, subject to this restriction, the State will no doubt make attempts to divert Guthi resources on an increasing scale towards public welfare measures. A beginning has already been made in this direction with the formation of the Guthi Corporation, an autonomous and corporate body entrusted with the responsibility of taking over Guthi management and administration. It is significant that the formation of the Guthi Commission in 1963, on the basis of whose report this measure was taken, was prompted by the realization that Guthi incomes were not being fully utilized for the development of educational institutions.⁴⁷

III. GUTHI LAND ENDOWMENT CATEGORIES

Taxonomy presents a considerable difficulty in any attempt to classify Guthi land endowments. Traditional categories and sub-categories are primarily concerned with the authorship of the endowment and the administrative procedures employed for discharging the stipulated religious or charitable function. However, under the impact of different government policies over the past century, the connotations of the terms used have gradually changed. A scientific system of classification based on these categories and sub-categories is therefore more difficult to achieve than might appear.

In this chapter, we will attempt to overcome these difficulties by adopting several bases of classification pertinent to those aspects of the Guthi system which form the subject matter of the present study. We shall therefore retain the traditional systems of classification based on authorship and administrative procedure and analyze their significance in the light of current legislation and usage. We shall also discuss different sub-categories of Guthi land endowments based on land use and the nature of the individual or institutional beneficiary. Not all these categories and sub-categories of Guthi land endowments are relevant in an analysis of the nature and problems of the Guthi system as it presently exists in Nepal. Nevertheless, a broad understanding of them will facilitate an appreciation of the role of State-operated Guthi endowments, the principal subject matter of this study, in the Guthi land tenure system as a whole.

For the purposes of the present study, a rough system of classifying Guthi land endowments may be devised as follows:



RAJGUTHI AND DUNIYA GUTHI

The desire to acquire religious merit through the endowment of lands under the Guthi system appears to have been common to all classes of people in Nepal, from members of the ruling family to the ordinary landowner. Guthi land endowments were therefore traditionally classified on the basis of their authorship. A distinction was made between Rajguthi, endowments made by members of royal families, and Duniya Guthi, those made by private individuals. According to the 1870 Legal Code, Rajguthi denoted Guthi endowments made by King Drabya Shah (1559-1570), a prince of the ruling dynasty of Lamjung who founded the Kingdom of Gorkha in 1559, and his successors, as well as by the chieftains of the petty principalities annexed by Kathmandu during the eighteenth and nineteenth centuries.¹ Duniya Guthi, on the other hand, denoted endowments made by private individuals on Birta lands on which they enjoyed the rights of possession, use, transfer, and bequest. According to law any person may request Raikar lands of the government for private endowment as Guthi:

In case any person requests land from His Majesty's Government for the establishment or construction of hospitals, schools, or other public welfare institutions inside the territory of Nepal, State-owned land on which nobody else has rights and [the grant of which] does not affect others adversely, may be granted.²

Duniya Guthi may thus be defined as endowments made by private individuals on lands owned by them or on those obtained from the government for use or endowment as Guthi. Lands used or endowed in this manner were also known as Guthi Birta.*

Guthi Birta grants must be distinguished from Birta grants made by the State for the performance of religious and charitable functions without formal endowment as Guthi. From time to time Birta grants of different categories were made for the performance of religious and charitable functions. The terms and conditions mentioned in such grants, such as the use of the revenue from the

*Birta grants made by the State to private individuals for endowment as Guthi were scarcely distinguishable from unconditional (tax-exempt and inheritable) Birta grants, with Sarbangamafi or Bitlab occasionally suffixed. For example, several Guthi Birta grants have been described as "Sarbangamafi Guthi Birta Bitlab" or simply "Sarbangamafi Birta Guthi," depending on the nature of privileges granted (see Vol. II, p. 37). The sole difference between them is that though unconditional Birta grants are alienable, Guthi Birta lands are not. Guthi endowments are always permanent and irrevocable.

land strictly for the prescribed religious and charitable purposes, are normal features of all Guthi land endowments. The only distinction between these and Guthi Birta endowments is that the term Guthi is not used. For all practical purposes, therefore, Birta grants of this category may be regarded as Guthi endowments. Such pseudo-Birta grants appear, for the most part, to be limited to the eastern and central Tarai regions.³ The nonutilization of the term Guthi in these cases is attributed to the fact that this term was originally used to denote land endowments for religious and charitable purposes mainly in Kathmandu Valley and peripheral areas.

However, this traditional classification of Guthi land endowments as Rajguthi and Duniya Guthi on the basis of whether the donor was a member of the royal family or a private individual has lost all significance today. Indeed, not all existing Rajguthis have been endowed by members of the royal family.⁴ At present, Rajguthis include lands which, though originally endowed by private individuals, were subsequently acquired by the government as a result of confiscation, the extinction of the donor's family, or voluntary surrender on the part of the donor or his successors.

The State's assumption of the responsibilities of administration and management of Duniya Guthis through their conversion into Rajguthi is based on the generally accepted principle that Guthi endowments are permanent and irrevocable, and that any violation of the religious and charitable functions prescribed therein constitutes an encroachment upon religion. The State therefore assumed the obligation of insuring that such functions were not disrupted under any circumstances. If Duniya Guthi holders committed treason, their Guthi lands were taken from them and granted to the nearest agnate relative. In the absence of such relatives, the Guthi was taken over under State management.⁶ In the course of Nepal's turbulent political history, particularly during the eighteenth and nineteenth centuries,⁷ a large number of private Guthis must have been converted into Rajguthi under this provision.

The role of the State as protector of the Guthi system is further highlighted by the obligation it assumed in taking over the management of Guthis left unclaimed as a result of the extinction of the donor's family or, in the case of endowments made through a formal gift with the intent of religious merit, of the beneficiary's family. The 1963 Legal Code prescribes that unclaimed private Guthi endowments should be converted into Rajguthi.⁸ Moreover, in cases when no documentary evidence was available regarding the authorship of any Guthi endowment, that endowment was converted into Rajguthi even though the persons responsible for discharging the prescribed functions might have been doing so in the customary manner.⁹ A Guthi endowment at Balambu in Lalitpur district was registered as Rajguthi in 1917 on the following grounds:

No evidence exists as to whether this Guthi is Rajguthi or Duniya Guthi. The author of the endowment is not known, nor is tax being paid on lands held by it. It is thus an unclaimed Guthi . . . which must be registered as Rajguthi.¹⁰

Another factor which contributed to the conversion of private Guthi endowments into Rajguthi was voluntary surrender by the donor or his successors. The 1964 Guthi Corporation Act empowers the Corporation to take up the management of any private Guthi if all or the majority of its owners make a written request to this effect. In case the Corporation decides to accede to such a request, the owners of a Guthi are obligated to hand its entire assets over to the Corporation, which then undertakes all liabilities.¹¹

The Rajguthi system underwent an unprecedented expansion in 1951, after the downfall of the Rana regime, when the government acquired all Guthi endowments made by members of the Rana family. Such Guthis were known as Tin Sarkar Guthis, after the title "Tin Sarkar" assumed by the Rana Prime Ministers. During the later phase of the Rana regime, separate administrative arrangements had been made for the operation and management of these Guthis, which almost paralleled the administrative structure created for Rajguthis. Indeed, Tin Sarkar Guthis were treated as Rajguthis for all intents and purposes, and genuine Rajguthis were described as Panch Sarkar Guthis after the title "Panch Sarkar" used by kings of the Shah dynasty in Nepal. After 1951, administrative offices created for the management of Tin Sarkar Guthi lands were taken over by the government. As a result, such Guthis were automatically converted into Rajguthis. Thus, the exigencies of administration and management, and not the nature of authorship eventually constituted the criterion differentiating Rajguthis from Duniya Guthis. The 1964 Guthi Corporation Act has therefore defined Rajguthis as Guthis under the jurisdiction of His Majesty's Government or those for which it made the necessary arrangements.¹²

AMANAT AND CHHUT GUTHIS

On the basis of the administrative arrangements made to insure the regular discharge of the prescribed Guthi functions, Rajguthi endowments may be classified as Amanat and Chhut. Under the Amanat system, Guthi functions are discharged under the direct control and supervision of the government. The system emerged after 1920, when the system of operating Guthi endowments through contractors was abolished. Naturally, the government refrained from taking direct administrative control of Rajguthis which had been assigned to private individuals on a lifetime or inheritable basis. Rajguthis operated by private individuals in this manner were then known as Chhut Guthis.

The introduction of the Amanat system did not mean, however, that the contract system was entirely discarded. Particularly

in the district areas, many Guthis continued to be operated on a contract basis even after 1920. Because of their small size, many Guthis could not be operated under the Amanat system. It was necessary, therefore, to give them away on contract.¹³ Often Amanat Guthis with large surpluses were granted on contract by the Rana rulers to their relatives and favorites.¹⁴ We may therefore cite contractual (Thekka) Guthis as another sub-category of Rajguthi land endowments, although these cases constituted the exception rather than the rule. The general trend since 1920 has been progressively to bring Rajguthis under Amanat operation.

The basic factor contributing to the emergence of Chhut Guthis was the condition stipulated in the original deed of endowment entitling assignees to operate the Guthi on a lifetime or inheritable basis. The Rana regime seldom attempted to supercede these deeds; its efforts were mainly directed towards detecting cases of utilization of Rajguthis as Chhut in the absence of proper entitlement, and to tracing out loopholes in documentary evidence. The Ranas were thereby able to take up Rajguthis under their direct control without appearing to have violated the sanctity of royal orders issued in the past. Several categories of Chhut Guthis entitled the assignee also to appropriate the entire surplus income. During the Rana regime Rajguthis with large surpluses were therefore assigned on a Chhut basis to relatives and favorites. This provided an additional *raison d'etre* for the emergence of Chhut Guthis.

Rajguthis were occasionally allowed to be operated as Chhut if the person who had been operating them had personally incurred expenditures in repairing Guthi buildings. In one case, the Guthiyar of a temple at Chaubise in Pallokirat was permitted to use the temple Guthi on a Chhut basis when he reported that he had spent Rs 900.00 in renovating and repairing it. He was then required to hand over the surplus income of this Guthi, amounting to Rs 0.56, to the government.¹⁵ The personal investment of the Guthiyar was apparently only a specious pretext on the part of the government to assign the Guthi as Chhut, since such assignment yielded the same income that would have been obtained under Amanat management.

Moreover, the operation of Guthis occasionally involves the performance of mystic and esoteric rites. In 1938, a Buddhist monastery in Helambu (East No. 1 district) was allowed to be operated as Chhut on a token payment of Rs 1.00 from a surplus income of Rs 25.35, on the ground that it sponsored the performance of esoteric rites customary among the Lama community.¹⁶ However, this too was an invalid pretext, since in many other cases take-over as Amanat has not displaced priests and functionaries responsible for the performance of mystic and esoteric rites. Possibly the government only wanted to bring the monastery within the ambit of the Rajguthi system through a nominal payment.

In the case of Chhut Guthis assigned on a lifetime basis, the government took great care to insure that they were not converted into Amanat by default on the death of the assignee. As a preventative measure, lifetime Chhut Guthi assignees were required to present themselves at the prescribed government office at the beginning of every year. Failure to do so was punished with conversion of the Chhut Guthi into Amanat.¹⁷ However, Chhut Guthis assigned on a lifetime basis were not always automatically converted into Amanat on the death of the assignee. Revenue was a major factor influencing this decision. The government usually left to the heirs of the deceased assignee the responsibility of operating the Guthi in case it operated at a deficit. Thus, in the case of one Chhut Guthi in East No. 1 district:

Since the original deed of endowment does not indicate that the assignment has been made on an inheritable basis, this Guthi should have been operated as Amanat. However, it does not have any surplus income. In fact, it has an annual deficit of Rs 58.79. . . . For the time being, therefore, it may be operated as Chhut.¹⁸

Only Rajguthis operating at a deficit or with large surpluses were thus assigned on a Chhut basis, and no Rajguthi was taken up as Amanat unless it had a surplus.

Nevertheless, the mere fact that a Rajguthi had been assigned as Chhut did not mean that the assignee was entitled personally to appropriate the surplus income. The essential characteristic of a Chhut Guthi is private management, without reference to the method used for disposing of the surplus income, if any. Thus Chhut Guthis may involve payment to the government of the entire surplus.¹⁹ When the government appropriated the surplus income of any Chhut Guthi, it automatically assumed the obligation to finance the repair and maintenance of buildings or temples owned by it.²⁰

Often the government relinquished the right to appropriate the surplus income from a Guthi because the expenses involved in such maintenance exceeded the amount of surplus. In one case relating to Guthi lands endowed in Bungmati, Lalitpur district, for financing the annual festival of a local temple, the government prescribed that "the beneficiary has been allowed to appropriate the surplus income because the gold-plate dome of the temple chariot must be renovated frequently."²¹ The surplus income amounted to a mere Rs 1.98, which could hardly have been adequate for this purpose. The meager amount of surplus income lent additional weight to the government's reluctance to undertake the liability. Where the obligation was outweighed by the size of the surplus income, the government sometimes appropriated only a nominal payment called a Salami, which usually amounted to Rs 1.00. When the Salami alone was paid, rather than a part or the whole of

the surplus income, the government was not responsible for repairing and maintaining Guthi buildings. Salami was thus nothing more than a nominal manifestation of State control over the Guthi endowment.

The Chhut Guthi system is thus a modus vivendi between individual ownership and full-fledged State control of Guthi land endowments. It reconciles individual control and operation with the nominal administrative authority of the State. It has enabled the State to enlarge the ambit of the Rajguthi system without at the same time undertaking the onerous responsibility of operating deficit Guthis or those with small surpluses. Even in the case of Guthi endowments with large surpluses, the State has been able, under the Chhut Guthi system, to absorb a part and at times even the whole of the surplus income without simultaneously undertaking commensurate managerial responsibilities.

As a result of the emergence of the two sub-categories of Amanat and Chhut, the term Rajguthi can now be used to denote several degrees of governmental "control" and "supervision," from mere registration by payment of a nominal annual fee to full-fledged governmental operation and management. A Buddhist monastery in East No. 1 district subject to virtually no governmental interference in its daily affairs except an annual payment of a Salami of Rs 1.00 is as much a Rajguthi as a monastery in Janakpur where the abbot is obligated to hand over most or all of the surplus income to the government, and where accounts are audited regularly through the government's auditing machinery.

The policy of converting Guthi endowments into Rajguthi without imposing governmental control on their operation and management is, however, open to question. What is primarily involved in this arrangement is registration. A simple system of registration of Duniya Guthi endowments will therefore be adequate. Guthi endowments which the government has no desire or any reason to take up for direct management, even though they must be converted into Rajguthi under existing regulations, should be placed in the same category for purposes of registration. A partial start was made in this respect in December, 1959, with the enactment of legislation permitting institutions and associations formed with charitable, philanthropic, scientific, literary, artistic, or educational objectives to be registered with the government.²² One or two Guthi endowments were subsequently registered under this law. But since registration was optional, and since the government also assumed the powers of general supervision and auditing of accounts, this law seems to have become virtually a dead letter. It might therefore be advisable to enlarge the scope of this law to cover religious endowments as well, and make registration compulsory.

FORMS OF DUNIYA GUTHI ENDOWMENTS

Duniya Guthi endowments consist of lands either granted by the State or belonging to the donors themselves. Such lands in the majority of cases were under Birta tenure. Since Birta ownership usually included the right of bequest, the validity of private Guthi endowments was not conditional upon government approval. Influential persons often arranged for the approval of their private bequests, apparently with the objective of protecting them from governmental confiscation or encroachment in the future by imparting to them a status comparable to that of official endowments.* Guthi endowments of this category were legally valid only if the owner did not have any arrears of payment due to the State or to other individuals at the time of the endowment.²³

From the standpoint of the nature of the religious and charitable objectives involved, Duniya Guthi land endowments may be classified into two sub-categories: Gharguthis and institutional Guthis. Gharguthis are endowments made within the family. They are made for such purposes as the maintenance of a prescribed ritual function at a particular temple, the worship of the family deity, or the performance of religious ceremonies on the anniversary of the donor's death. In the past, religious motives played only a secondary role in the institution of Gharguthis. The primary motive for their endowment was to prevent the alienation of the lands endowed. Such Guthis therefore are in fact private family affairs. In contrast, institutional Guthis are endowments made for some public charity or religious function. They are not primarily intended to benefit the donor's family and generally have trustees, known as Guthiyars, designated for their operation and management. Duniya Guthi endowments in this category have been made for the construction and maintenance of temples, rest houses, and roadside shelters, for the institution of Sadavarta facilities, and for other religious, charitable, and philanthropic purposes intended to benefit the general public.

The main principle underlying Gharguthi endowments is that the donor does not relinquish ownership rights in the lands endowed, and does not appoint Guthiyars.²⁴ Such endowments do not lead to the emergence of a Guthi as a legal entity. On the other hand, in the case of institutional Guthis, relinquishment of individual title is essential. Ownership rights in the land are then

*For example, General Amar Singh Thapa had endowed 90 muris of land in Kewalpur (West No. 1) district as Guthi for a local temple from Birta lands owned by him. The endowment was confirmed under royal seal in the name of his grandson several years later. Royal Approval for Endowment of Birta Lands As Guthi by Kaji Amar Singh Thapa in Kewalpur, (West No. 1 District). Kartik Sudi 15, 1879 (November, 1822).

vested in the Guthi, which is thus a corporate and permanent body. Recent Guthi legislation has regarded relinquishment of individual title as an essential attribute of Guthi land tenure.²⁵ Gharguthis, therefore, lie outside the scope of the Guthi system in the proper sense of the term. In addition, certain lands granted by the government for endowment as Guthi are not necessarily recognized as such under the 1964 Guthi Corporation Act, for the recipient may have endowed them as Gharguthi without relinquishing his title.

OTHER GUTHI CATEGORIES

We shall now describe several other well-known categories of Guthi land endowments. Although included in the Rajguthi-Duniya Guthi dichotomy, these categories owe their origin to criteria other than the authorship of the endowment or the system followed for operation and management. They are: Bakas Guthi, Sunaguthi, Lohaguthi, Gulphul, Duka Birta, Fakirana, and Kot Mamuli. Most of these forms have already become obsolete, and none has any particular significance from the viewpoint of land tenure and taxation. Nevertheless, a brief study of these categories is essential in order to obtain a proper perspective on the development of the Guthi land tenure system.

Even Guthi land endowments made by members of the royal family were generally entrusted to private individuals for operation and management. Such endowments were known as Bakas Guthi when they entitled the trustee to appropriate the entire surplus income. The 1895 land settlement regulations in Sindhupalchok district defined as Bakas Guthi all endowments:

. . . which, instead of stating that Birta lands have been granted [to private individuals] for endowment as Guthi, specify that the land has been endowed as Guthi, but at the same time entitle [the recipient] to operate the Guthi and appropriate the surplus income, without obliging him to make payment thereof to the government.²⁶

The criterion differentiating Bakas Guthi from Rajguthis in general was thus whether the private individuals entrusted with the management of Rajguthis were entitled personally to appropriate the surplus income. No specific term appears to have been used to denote Rajguthis other than Bakas Guthis under which the surplus income was utilized for such other purposes as the maintenance of reserves to be spent in the event of crop failure.²⁷ The Bakas Guthi category has become obsolete with the emergence of Chhut Guthis, although the latter also occasionally entitles the assignee to appropriate surplus income in the same manner as Bakas Guthi holders.

Information about the nature and origin of Sunaguthi* land endowments is not available. On the basis of an analogy with the term Suna Birta (i.e. lands sold by the State to private individuals as Birta), we would presume it to refer to Birta lands purchased from the government and endowed as Guthi. The term is rarely used in recent Guthi literature, possibly because Sunaguthi lands were made subject to taxation, or were gradually converted into Rajguthi. Instances of Raikar lands having been purchased as Birta from the government and endowed as Guthi are not infrequent. In 1874, Prime Minister Jang Bahadur Rana purchased 1006 muris of Raikar and Jagir lands from the government at a price of Rs 33,549.00--i.e. the capitalized value of the annual revenue amounting to Rs 1,677.00 at 4 percent interest--and endowed them as Guthi for temples constructed by him at Kalamochan, Kathmandu.** Still another category of obscure Guthi endowment is known as Loha Guthi.²⁸ In the Newari language, the word Loha(n) means stone, and possibly Loha(n)guthi refers to Guthi endowments made for the supply of stones to temples.

In at least one case, Guthi endowments are classified on the basis of the use to which the land is put. Gulphul denotes lands endowed as Guthi for growing flowers used in religious performances at temples and monasteries.²⁹ Although Gulphul lands have in many cases been converted into paddy fields,³⁰ their status as Guthi appears to have remained unaffected. There are cases in the Tarai districts where Gulphul lands are cultivated by tenants against rents in cash, as are other categories of Guthi lands in this region.³¹

Lands owned by Pashupatinath, Taleju, and certain other prominent temples in Kathmandu Valley are known as Duka Birta. A distinction is usually made between Duka Birta lands owned by the temple and Guthi lands endowed to it, whether by the State or by private individuals.³² Fakirana lands belong to members of religious orders and were granted on a non-alienable basis in

*The term occurs at a few places in the 1866-67 Legal Code, "Jhara Khetala Ko" (On Unpaid Labor), Muluki Ain (Legal Code) (1866-67 ed.) (1965 reprint), Section 1, p. 83. An entire village in Lalitpur district is called Sunaguthi, possibly because it had been endowed as such.

**Purchase of Raikar and Jagir Lands As Birta for Guthi Endowments at Kalamochan, Kathmandu, Poush Sudi 2, 1933 (December, 1876). Regulations then current prohibited the conversion of Jagir lands into Guthi, (Government of Nepal, "Jagga Jamin Goshwara Ko" [On Miscellaneous Land Matters], Ain [Legal Code] [1873 ed.], Section 8, p. 16), but this order expressly sanctions their violation as a special case.

dedication to a particular deity. Succession was on a disciple-to-disciple basis.³³ Lands were endowed as Kot Mamuli by the chieftains of principalities in the hill regions for the conduct of religious ceremonies at the temple of the chief deity in the local fort. The system appears to have continued after the Gorkha conquests.³⁴

In the present study, we are primarily interested in Rajguthi land endowments, particularly those operated under the Amanat system. In the case of Amanat-operated Rajguthis, systems of revenue assessment and collection have evolved and subinfeudation of landholding rights has emerged along characteristic lines. Similar developments in the case of Guthi Birta lands more properly belong to a study of Birta tenure, which formed the subject matter of Volume II of this study. In the next chapter we will discuss tenurial aspects which are common to all categories of Guthi land endowments. We will then proceed with an analysis of revenue, administrative, and agrarian problems on Rajguthi land endowments.

IV. GUTHI LAND ENDOWMENTS AND THE LAND TENURE AND TAXATION SYSTEM

In countries such as Nepal where land constitutes the most important source of income, religion and charity become important considerations only when agricultural income is sufficient to provide resources in excess of current consumption needs. Guthi land tenure thus emerges when surplus agricultural production or rent is utilized for religious and charitable purposes. A study of the Guthi land tenure system is therefore concerned with the conditions under which rent-receiving rights (Talsing-Boti) are alienated for the performance of religious and charitable functions. Accordingly, any form of land tenure which involves the enjoyment of rent-receiving rights by the State or by private individuals may be converted into Guthi through the alienation of such rights. The rights to Jagir lands, on which the Jagirdar's enjoyment of rent-receiving rights is temporary and limited, and to Rakam lands, on which such rights are nonexistent, cannot be so alienated. Jagera,* Birta, and Kipat are therefore the basic forms from which Guthi land tenure emerges.

TENURIAL ASPECTS OF THE GUTHI SYSTEM

According to Nepal's traditional land tenure system, the State was the absolute owner of Raikar land.** Rent-receiving rights*** on Raikar lands could be endowed as Guthi or granted to private individuals as Birta only in the name of the reigning king.

*Raikar lands were known as Jagir if assigned to government employees and functionaries as emoluments, and as Jagera if retained by the government for the collection of taxes.

**Traditionally, the fruits of the soil accruing to the absolute owner, the State, are known as Talsing-Boti, while the usufruct of the cultivator is known as Mohi-Boti. This division may be compared to the reqaba and tasarruf rights recognized in Syria, Iraq, and elsewhere (Doreen Warriner, Land Reform and Development in the Middle East, p. 66). In old China two rights in land were recognized: the "skin" right, or the occupancy rights of the cultivators, and the "bone" right, or the landlord's right to a share of the produce. (Government of Bengal, Report of the Land Revenue Commission, Bengal, Alipore, Bengal Government Press, 1940, Vol. I, p. 8).

***Cf. "Raikar land belongs to the government, even when it is assigned as Jagir." (Government of Nepal, "Balika Jhagada Ko" [On Rent Disputes], Muluki Ain [Legal Code], Part II [1952 ed.], Section 20, p. 57.) For a fuller discussion of the theory of State ownership of the land in Nepal, see Volume I, pp. 17-20.

The lands were no doubt cultivated by private individuals who could alienate their share of the produce (Mohi-Boti) for endowment as Guthi. But since this share comprised an insignificant portion of the surplus agricultural production, Guthi endowments of the cultivator's share of the produce appear to have been rare.*

State endowment of Raikar lands as Guthi was subject to certain restrictions. The law prescribed that only waste or unclaimed Jagera lands should be endowed as Guthi and specifically prohibited Jagir lands from being used for this purpose.¹ Until the beginning of the twentieth century, agricultural lands were utilized primarily for the purpose of Jagir land assignments. According to administrative regulations promulgated in 1793, all cultivable lands, particularly in the hilly regions, were to be reclaimed as far as possible and utilized entirely for Jagir assignments.² This policy appears to have been scrupulously followed. In 1852-53, 98.2 percent of the total revenue from Khet lands and 99.6 percent of the total Pakho revenue had been assigned as Jagir, while Ilam district in eastern Nepal, and Doti, Bajhang, Jajarkot, Achham, Dailekh, and Jumla districts in western Nepal did not contain a single muri of land under Jagera tenure.³ The government's capacity to endow cultivated Raikar lands as Guthi was therefore limited. Prime Minister Chandra Shamsheer was obviously facing this difficulty in 1904 when he made an assignment of Rs 28,80 yearly for a temple in Palpa district as Guthi "until suitable land is available for endowment as Guthi."⁴

A large number of Guthi endowments were therefore given from waste lands.⁵ Even members of the royal family were often obliged to make Guthi land endowments with their own private Birta or Sera** holdings.⁶ In addition, endowments of waste lands as Guthi helped to extend the area under cultivation and settlement, a prime objective of official land policy. As in the case of Birta,⁷ lands were occasionally granted for endowment as Guthi from waste lands reclaimed by private individuals.⁸ However, it would be incorrect to say that endowments in the form of cultivated Raikar lands were unknown. Endowments were made in this form by influential persons.⁹ Also, whenever existing Guthi lands were acquired for government requirements, it was necessary to give cultivated lands in exchange. Moreover, at times the shortage of cultivated lands under Jagera tenure created such difficulties that the law was deliberately violated in order to convert Jagir lands into Guthi.¹⁰

*For the sole available example of a Guthi endowment of the cultivator's share of the produce in Jumla in 1877, see *Itihas Prakash Mandal, Itihas Prakash (Light On History), Vol. 2, Book 1, pp. 95-96.*

**I.e., Crown lands.

Recent developments have enabled not only the State but private individuals as well to alienate rent-receiving rights on Raikar lands for endowment as Guthi. Previously, rents on Raikar lands were identical with tax assessments, and generally amounted to half the gross produce.* However, around the beginning of the present century, the government commuted such in-kind payments into cash at rates which were not in accordance with the rising level of prices of agricultural produce. The real value of the share of the produce appropriated by the State thus kept declining as prices increased. A new class of intermediaries then interposed itself between the State and the actual cultivator, and appropriated the difference between the real value of the rent assessment and its official value as determined on the basis of outdated commutation rates.¹¹ Payments received by this intermediary class from the actual cultivators assumed the form of rent, which could be utilized for endowment as Guthi. Naturally such endowments did not concern the State, and the land continued to be registered as Raikar in the official tax assessment records.

An analysis of Guthi legislation promulgated since 1853 by the Government of Nepal clearly indicates the process of this development. The 1870 Legal Code notes only the endowment of Birta lands as Guthi by private individuals,¹² and makes no reference to similar endowments of Raikar lands. However, since 1888 the Legal Code has been silent on the tenurial character of the lands that may be converted into Guthi. Only the use of Raikar land as pasture without government approval has been prohibited,¹³ possibly for considerations of agricultural production. In 1935 the government recognized the use of Raikar lands for the performance of religious or charitable functions under Guthi tenure without its approval. Accordingly, lands of all categories including Raikar which are personally acquired by heads of monasteries become monastic property at the owner's death and hence come under Guthi tenure. Similarly, lands utilized by members of religious orders for religious and charitable purposes become Guthi property after their death. Their disciples are entitled to utilize such lands as Guthi even in the absence of a formal endowment,¹⁴ although they must, of course, pay the taxes due on such lands.

Private rentier rights on Raikar lands did not emerge until the beginning of the present century. This fact possibly explains why the vast majority of existing private Guthi endowments have been made on Birta lands. Moreover, the use of Raikar lands for

*According to one Nepali authority, "Available documentary evidence indicates that since the fifteenth century, the land tax has absorbed half of the gross produce." Babu Ram Acharya, Nepal Ko Bhumi Byabastha (Nepal's Land System), unpublished manuscript.

the performance of religious and charitable functions was usually risky. Prior to 1961, no compensation was paid when Raikar lands were acquired for government requirements.¹⁵ Birta lands, on the other hand, had to be compensated for at statutory rates in the event of acquisition. Consequently, there was less possibility that the stipulated religious and charitable functions would be dislocated if Birta rather than Raikar lands were endowed as Guthi.

Where Guthi tenure emerged from the endowment of Birta lands, the income accruing therefrom to the Guthi, as well as the other terms and conditions of the endowment, were determined according to the nature of the grant. Lifetime Birta lands could not be endowed as Guthi, for the owner had no right to endow on a permanent and irrevocable basis lands which would revert to the State after his death. Similarly, if the Birta income was limited solely to agricultural rents, endowment of non-agricultural revenue accruing therefrom would be illegal, since the owner could not bequeath or endow something to which he had no title.

Kipat is another category of land tenure which may be endowed as Guthi. Kipat tenure was at one time found among Mongoloid communities in the hilly regions of Nepal, but now is confined to the Limbu community of Ilam and Dhankuta districts in eastern Nepal. Kipat lands generally cannot be alienated outside the community, but no restrictions exist on their endowment as Guthi. Occasionally, government approval was sought for such endowments,¹⁶ but there must also have been cases in which endowments were made without such approval. At times Kipat lands were granted by the government to other persons for endowment as Guthi with the consent of the Kipat owners.¹⁷

GENERAL FEATURES OF GUTHI LAND TENURE

Any form of land tenure, Raikar, Birta, or Kipat, can thus be endowed as Guthi through the alienation of rent-receiving rights (Talsing-Boti). In other words, the same land may be under Guthi tenure and under Raikar, Birta, or Kipat tenure simultaneously. Endowment as Guthi only implies that the income accruing from the endowed land must be utilized for the prescribed religious, charitable, or philanthropic purposes, and cannot be diverted to other uses. Guthi land endowments once made can therefore never be revoked. The dislocation of the prescribed functions, which the resumption of the endowed lands would involve, is prohibited by law,¹⁸ and is a State offense.¹⁹ If the prescribed functions are dislocated or the Guthi income is misappropriated even on Duniya Guthi lands, the law prescribes that appropriate action should be taken by the government.²⁰

It is obvious that permanence and irrevocability present no problems on Rajguthi land endowments, which are operated under

government control and supervision. In the case of Duniya Guthi endowments, on the other hand, their essentially private character makes detection of cases of dislocation of Guthi functions virtually impossible. Complaints from persons affected by such dislocation are the only basis for government action. In order to insure that Guthi land endowments, irrespective of category, are not revoked, the government has enacted two more provisions, one determining the nature of relinquishment of individual title to the land endowed, and the second a ban on the alienation, both temporary and permanent, of Guthi lands.

Guthi land tenure emerges solely as a result of the alienation of rent-receiving rights in favor of the Guthi.* Legislation enacted in 1888 prescribes that "Guthi endowments involve a relinquishment of individual title [to the property endowed] in order to please the gods."²¹ The Legal Code, of course, recognizes another category of Guthi endowments, known as Gharguthi, in which relinquishment of title is not essential,²² but in this study we do not regard these endowments as Guthi in the proper sense of the term. According to the 1964 Guthi Corporation Act, which supercedes all previous legislation on this subject,²³ relinquishment of individual ownership rights is a basic attribute of Guthi land endowments.²⁴

Relinquishment of title is complete and unqualified in the case of Guthi land endowments made through a formal ritual gift with the intent of acquiring religious merit. In such cases, the donor or his heirs are not permitted to resume possession of the endowed lands or management of the Guthi under any circumstances. The lands are held by the grantee and his successors according to current property and inheritance laws. The only right enjoyed by the donor or his successors is that of replacing a beneficiary who violates the performances of the prescribed functions by his nearest agnate relative.²⁵ When a Guthi endowment has not been made through such a gift, the donor and his successors are permitted to inherit the endowed lands and appropriate the surplus income. The endowed lands are not bequeathed outside the donor's family, and hence relinquishment of title is effective only in preventing resumption and use of the income for purposes other than those mentioned in the deed of endowment. In case any Guthiyar violates the performance of the prescribed religious or charitable function, he is deprived of the right to operate the Guthi and to appropriate his share of the surplus.

*Cf. In India, when grants of land are made in the name of deities, "the courts have held that . . . the deities are juridical persons, and become the actual owners of the property." Report of the Bengal Land Revenue Commission, op. cit., Vol. I, p. 48.

This provision is applicable in a milder form in the case of Gharguthis where the surplus income exceeds 10 percent of the total income. The offender is then only deprived of his right to operate the Guthi, but not of his right to appropriate his share of the surplus income.²⁶ However, Guthi land holdings are not subdivisible; only the surplus income may be subdivided. The land itself must be held on a joint basis. At the same time, there is no restriction on parceling out the holding among a number of tenants for actual cultivation.

Originally the sale of Guthi lands was an offense punishable by confiscation of the endowment itself.²⁷ Legislation permitting Guthi lands to be exchanged for other lands of equivalent quality and yield was enacted only in 1853.²⁸ Subsequently, more liberal legislation was enacted relaxing the absolute ban on alienation. The sale of Guthi lands was permitted if the proceeds were meant to be utilized for the purchase of other lands of at least equal yield. In other words, the motive behind the sale determined the validity of the transaction. If the proceeds of the sale were misappropriated, the transaction was nullified, and the Guthi endowment was restored.²⁹ However, these facilities were apparently abused by Guthi holders, nor was there any way in which the government could ascertain how the sale proceeds of Guthi lands were actually utilized. In 1886, therefore, the law was amended to prescribe that Guthi lands should not be sold or mortgaged in any manner.³⁰ This provision is still in force. Guthi lands cannot be alienated even if the transferee undertakes to continue the functions stipulated in the original deed of endowment.

There is, however, no restriction on the temporary alienation of the right to appropriate surplus income through mortgage. In the case of Gharguthis, this can be done only if the surplus income exceeds 10 percent of the total income in the year in which the endowment was made. In that event, however, the debtor is required to undertake a number of obligations in order to insure that the stipulated Guthi functions will not be affected. In the event of crop failure, he is obliged personally to finance any necessary operations and repairs. It is the duty of the creditor to make sure that the debtor fulfills these obligations. If the debtor does not do so, the creditor is required to undertake them himself and to cover the expenses incurred in this process using the surplus income which he has acquired on mortgage. Until such expenses are paid in full he is not permitted to appropriate the surplus income.³¹

BIRTA ABOLITION AND THE GUTHI SYSTEM

The Guthi land tenure system underwent far-reaching changes when the Birta system was abolished. Under the 1959 Birta Abolition Act, all categories of Birta lands in the Kingdom of Nepal were abolished and converted to Raikar. According to the Act:

The Birta system existing in the Kingdom of Nepal has been terminated and all Birta lands existing up to the day preceding the date of commencement of this act have been abolished. . . . Birta lands abolished [in this way] shall be converted into Raikar and landownership 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.³²

The terminology makes it clear that Birta lands endowed as Guthi were exempted from abolition and conversion into Raikar. Since in several cases Birta lands endowed as Guthi by the government or by private individuals were taken over by the government as Rajguthi, it is clear that Birta abolition has resulted in the conversion into Raikar of these categories of Rajguthi lands as well. Obviously, this measure excludes Raikar lands directly endowed as Guthi by the government, for only Birta lands were affected.

TAX EXEMPTION

The majority of existing Guthi land endowments are fully exempt from State taxation. Tax exemption is therefore often erroneously regarded as an essential attribute of the Guthi land tenure system. However, the fact that taxable Raikar lands have been endowed as Guthi proves that this is not the case. There have been several cases in the past when taxes were imposed on Guthi lands by the State. Immediately after the conquest of Bhaktapur in 1769, King Prithvi Narayan Shah imposed a tax on Guthi land endowments in that area. This tax was often as high as Rs 10.00 per ropani,* and Guthi functions were occasionally disrupted in consequence.³³ Taxation of Guthi land endowments became a general policy by the Shah rulers. Guthi taxation on a country-wide basis was ordered by Prime Minister Jang Bahadur during the 1854-55 Nepal-Tibet War,** probably for the first and

*Remission of Mahsul Tax on Guthi Lands of Shankar Nath Ojha in Thimi, Magh Sudi 12, 1860 (January, 1804); Samshodhan Mandal Itihas Samshodhan (Corrections of History), No. 62, p. 7. According to this source, local authorities in 1792 were collecting a tax of Rs 2.00 on 25 ropanis of land endowed by Prithvi Narayan Shah for a Buddhist shrine in Kirtipur after the conquest of that town. The tax was remitted on Kartik Sudi 9, 1849 (November, 1792).

**This levy amounted to three manas of grains per muri of land under all land tenure forms, including Guthi.

only time in the history of Nepal. In 1874, Jang Bahadur directed the compilation of up-to-date records of revenues which would accrue from such a levy,³⁴ but there is no evidence that taxes were actually reimposed.

At the present time, several categories of Guthi lands are still liable to pay the Pota tax which King Prithvi Narayan Shah imposed in 1772 on Birta lands in Kathmandu Valley. In subsequent years this tax was gradually extended to cover almost all categories of Birta lands in the hill districts, and regulations promulgated by the government of Nepal³⁵ do not exempt Guthi Birta lands. There were of course cases in which Guthi Birtas, like other forms of Birta, obtained specific exemption.³⁶ However, such exemption reinforces the view that they were not automatically tax-exempt. It would appear correct to generalize that where Guthi endowments were made directly by the State, exemption followed as a matter of course. Where endowments were made on privately owned Birta land, no exemption was made unless the grant included a specific provision to this effect. There are thus numerous cases in which Guthi Birtas continued to be taxable even after being taken over for management by the government.³⁷ There is evidence, nevertheless, that the government desired to discontinue this system. According to an official order issued in 1932 in respect to the Guthi land endowment of a temple at Kathmandu, "it is not proper that the Pota tax should continue to be imposed even after this endowment has been registered as Rajguthi. . . . The tax should now be paid to the Guthi."³⁸ However, no attempt appears to have been made to implement this policy on a comprehensive basis.

The 1959 Birta Abolition Act has provisionally exempted certain categories of Guthi endowments from the new taxes imposed on Birta lands following their abolition and conversion into Raikar. According to that Act, until alternative arrangements could be made to operate the Guthi according to custom and tradition, the land tax should not be imposed on the following categories of Birta lands which had been endowed as Guthi: Birta lands established as Guthi by the government; Guthi Birta lands, which were originally endowed by private parties and subsequently turned over to the government or taken up by the government through confiscation or other means, and are being operated as Guthi; Guthi Birta lands endowed with the permission of the government.³⁹

Private endowments made without the government's permission have thus been converted into Raikar and taxed at normal Raikar rates. According to an official clarification of the provisions of the 1959 Birta Abolition Act:

Guthi Birta [endowments] have been retained as usual, [since] the government does not intend to disrupt the religious system. . . . So far as private Guthi endowments made without governmental permission are concerned, they

may continue to be operated as before; the government does not interfere in such matters. . . . How can it know what anybody has done privately without its permission? . . . The government has made no decision in this regard.⁴⁰

There is no doubt that a large number of private Guthi endowments were made without the government's permission, but there is no evidence that they were also made without the government's knowledge.* Conversion of private Guthi endowments into Raikar without governmental permission is not necessarily unjustified; however, more appropriate reasons could have been offered to justify the measure.

The actual practice of taxing of Birta lands endowed as Guthi without governmental permission appears to have been determined on the basis of whether such lands were held by private individuals or by temples and monasteries. Birta lands donated as Guthi by private individuals to Pashupatinath and other temples have remained unaffected by the abolition program, although they were donated without governmental approval. Such lands are under the administrative jurisdiction of His Majesty's Government. They should therefore be regarded as Guthi Birta lands taken over by the government, which have been provisionally exempted from taxation under the 1959 Birta Abolition Act.

However, no provision has been made with regard to the existing Pota tax, even in respect to those Guthi categories which have been provisionally exempted from taxation under the 1959 Birta Abolition Act. Consequently, the tax is still current,* but

*According to the 1910 Pota Tax Regulations, private Guthi endowments in Kathmandu Valley were recorded in the Pota tax assessment registers and a fee of Rs 0.04 was charged for each entry. Law Ministry Records, Pota Tax Regulations, Baisakh 4, 1967 (April 16, 1910), Section 9. Records of private Guthi endowments pertaining to Pashupatinath temple in Kathmandu were maintained at the appropriate Guthi offices of the government. Pashupati Goshwara Office, Regulations of the Pashupati Goshwara Office, Chaitra 11, 1989 (March 21, 1933), Section 47; Law Ministry Records, Shri Panch Sarkar Guthi Bandobast Office Regulations, Bhadra 30, 1992 (September 14, 1935), Section 33.

**The Nanak Monastery at Kathmandu, an Amanat-operated Rajguthi, is liable to pay Pota tax amounting to Rs 4.70 on lands it holds. On Magh 8, 2022 (January 22, 1966), the Guthi Corporation directed that the tax be paid to the Kathmandu Mal Office. Guthi Lagat Janch Office, Order Regarding Pota Tax on Guthi Lands of Nanak Monastery at Kathmandu, Falgun 13, 2022 (February 24, 1966).

collection appears to have been disrupted for the time being in the administrative confusion following the implementation of the Birta abolition program.

Previously, it was the usual practice to remit taxes when Raikar land was endowed as Guthi with governmental approval. Indeed, even though the law is cognizant of situations in which Raikar land was actually so used, no record is available of any case in which the use of Raikar land has been sanctioned subject to continued payment of tax. The 1960 Land Tax Act empowered the government to remit, in whole or in part, taxes on lands utilized for hospitals, temples, rest houses, roadside shelters, public schools, orphanages, and other religious and charitable purposes.⁴¹ However, this law was repealed on March 23, 1966.⁴² At present the government has assumed no powers under existing legislation to remit land tax on Raikar lands used as Guthi.

These particular tenurial characteristics of the Guthi system make it possible to draw a parallel between Guthi lands and church and monastic lands of medieval Europe. According to medieval canon law, lands acquired by the Church were inalienable. Moreover, the Church was partially successful in establishing the claim that its constantly increasing wealth in the form of land and goods should be completely free from taxation. Alienation of land to the Church and to monasteries thus represented mortmain, that is a state or condition in which lands are held by a legal person in perpetual and inalienable tenure.⁴³ In this respect, Guthi tenure is virtually synonymous with mortmain tenure.

RAJGUTHI AND RAIKAR

The law describes Rajguthi tenure as equivalent to Raikar.⁴⁴ Since Raikar tenure refers to lands owned by the State, this provision is liable to be misinterpreted as constituting evidence of State ownership of Rajguthi lands as well. Nothing, however, could be further from the truth. Private Guthi endowments involve alienation of individual title, but there is no proof that the beneficiary is the State. Nor are ownership rights in the case of Rajguthi lands vested in the Guthi Corporation. Under the 1964 Guthi Corporation Act, all rights vested in the government and liabilities assumed by it in respect to Rajguthis are delegated to the Guthi Corporation,⁴⁵ but landownership rights on Rajguthi lands which do not belong to His Majesty's Government cannot be delegated to the Corporation. According to existing law and custom, a Rajguthi is a corporate body which enjoys full ownership rights on the lands endowed to it; the government only assumed general powers of supervision and management. These powers have now been delegated to the Guthi Corporation. The Corporation no more enjoys ownership rights on Rajguthi lands than does a court of law in respect to intestate property.

The 1964 Guthi Corporation Act thus not only provides for the termination of all kinds of individual rights on Rajguthi lands, but also prescribes that full rights thereon shall again accrue to the Rajguthi.⁴⁶ Since alienation of title is an invariable feature of all endowments, we may conclude that it is the Guthi endowment itself which exercises ownership rights to the land. The provision which states that Rajguthi is equivalent to Raikar tenure can thus be explained only in the context of administration and management. In other words, legislation promulgated in the case of Raikar tenure is also generally applicable to Rajguthi tenure except where it is superseded by specific Guthi legislation in such matters as acquisition, revenue collection, transfers, and land transactions.

Rajguthi tenure therefore represents a permanent and irrevocable alienation by the State of its ownership rights. The powers of regulation and control which the State continues to assume are designed to insure the continuance of the prescribed religious, charitable, and philanthropic functions, and do not affect the landownership rights of the Guthi as such. The sole authority which the State still assumes in respect to Rajguthi lands is that of eminent domain.

GUTHI LAND ACQUISITION

As Guthi endowments are permanent and irrevocable, we might assume that the area under this form of land tenure has been growing at a steady pace. Nevertheless, the supposedly sacrosanct character of Guthi land endowments has never hindered the State from exercising its right of eminent domain on Guthi lands. An analysis of legislation relating to Guthi land acquisition will enable us not only to understand this aspect of the State-Guthi relationship but will also highlight other essential characteristics of the Guthi land tenure system.

Prior to 1961, the Legal Code contained provisions enabling the State to acquire Guthi lands "for government requirements and the construction of palaces and compounds for His Majesty the King, His Highness [the Rana Prime Minister], as well as for government temples, rest houses, roadside shelters and buildings."⁴⁷ These provisions were interpreted to mean that the right of eminent domain could not be exercised to acquire lands for other public purposes, i.e., those not directly sponsored by the government. When Duniya Guthi lands were acquired for government requirements, compensation was paid in cash according to the value of the land, or other land of equal yield was given in exchange. When compensation was paid in cash, the regulations provided for the payment of the capital value of the income at 4 percent in Kathmandu Valley and 6 percent in the hill districts.⁴⁹ However, available evidence indicates that compensation for Duniya Guthi lands generally took

the form of an assignment of Raikar land as Guthi, so that the prescribed Guthi functions would not be disrupted.⁵⁰

These regulations made no provision for the acquisition of Rajguthi lands. Since the law treats Rajguthi land as equivalent to Raikar,⁵¹ no special legal provision was necessary for their acquisition. In the event of acquisition, Rajguthi lands were assigned a status inferior to that of Duniya Guthi lands. In May, 1957, the government acquired Rajguthi land in Kathmandu for the use of the British Embassy at Rs 400.00 per ropani, the same rate which was applicable in the case of Raikar. Compensation for Birta land acquired for the same purpose amounted to Rs 1,374.85 for the owner and Rs 600.00 for the tenant. The compensation obtained from the British Embassy for the Rajguthi land was appropriated by the government, which then assigned fresh Raikar land in exchange for the Guthi.⁵²

Legislation before 1961 also contained no provision for the acquisition of Duniya Guthi lands in the Tarai region. The purposes for which the law permitted acquisition, such as the construction of palaces, pertained primarily to Kathmandu Valley where a significant portion of the cultivated area is under Rajguthi tenure. The Rana rulers possessed extensive Birta holdings in almost every Tarai district, so that the need seldom arose to encroach upon Guthi lands in this region. It should be noted, however, that the absence of legislation seldom deterred the Rana regime from acting as it pleased.

The 1961 Land Acquisition Act has radically changed the land acquisition procedure. The Act empowers the government to acquire land for public welfare purposes (for "the welfare, benefit or use of the general public, or for any work to be done by the government on a governmental level"), as well as for the construction of factories, quarters for factory workers, "or any other construction project meant for the welfare of the general public."⁵³ The government has also been acquiring land under these provisions for the use of private industrial concerns.⁵⁴ A "reasonable" compensation is then paid to the owner of the acquired land.⁵⁵ If the land is acquired for government use, it is not subject to land tax assessment.⁵⁶ In addition, the 1964 Highway [Construction Arrangements] Act empowers the government to acquire land for the construction of national highways, including an area of 25 yards on either side thereof. No compensation is paid for such acquisition, except when more than 50 percent of any individual's holding is acquired. However, the land so acquired is not subject to land tax assessment.⁵⁷

No consideration has been given under either of these laws to the form of tenure of the land proposed for acquisition. Guthi tenure thus no longer enjoys a favored status as compared to Raikar. Moreover, no provision has been made to grant Raikar land in

exchange for Guthi land acquired. In fact, according to the 1963 Compensation Act, compensation for any property acquired by the government for public purposes is payable either in cash or in the form of bonds.⁵⁸ As a result of these measures, a progressive depletion of the area under Guthi tenure is inevitable in the process of gradual economic development. Nevertheless, when powerful Guthi interests are involved, the government has occasionally hesitated to exercise the rights it assumed under the 1961 Land Acquisition Act. For example, approximately 250 ropanis of Guthi lands belonging to Pashupatinath temple,⁵⁹ which had been used as pasture for grazing sacred bulls according to a tradition established by King Ran Bahadur Shah (1778-99), were recently acquired for the construction of an airport. The temple authorities demanded that the Civil Aviation Department assign 35 percent of the revenue from the airport to the Guthi. As an alternative they proposed that the Department pay rents in kind at statutory rates for the use of the land. The government rejected both proposals, but conceded the sacrosanct nature of the tenure by agreeing to pay a quit-rent of Rs 0.50 per ropani.⁶⁰

STATE CONTROL AND GUTHI TENURE

To sum up, Guthi tenure refers to lands which are used for religious, charitable, or philanthropic purposes, even though from the legal and administrative viewpoints they may be simultaneously under Birta, Raikar, or Kipat tenure. Irrevocability, relinquishment of individual title, and non-alienability are common attributes of all Guthi land endowments. Except when the Guthi has been brought under State control and management, the laws and practices governing the original tenure form prevail in matters relating to taxation and landlord-peasant relations. In other words, even if Raikar land is endowed as Guthi, it will enjoy no privileges in respect to taxation or rent or tenancy reform measures by virtue of such endowment. As the previous volumes of this study have already dealt with these aspects of the Raikar, Birta, and Kipat tenure forms, we shall confine our attention in the present volume to the administrative, fiscal, and agrarian problems emerging on Guthi lands on which the State has assumed the responsibilities of control and management.

V. GUTHI REVENUE

Guthi endowments derive their income from the movable or immovable property or income-yielding funds endowed; however, the present study is solely concerned with endowments in the form of land and the agricultural or other revenues* collected therefrom. The rights alienated by the State were more or less identical whether the endowment was an Amanat Guthi, a Chhut Guthi, or a Guthi Birta. However, the systems of revenue assessment, commutation, and collection differ for each category of Guthi lands. Those employed on Rajguthi land endowments in the Amanat category are generally modeled on regulations applicable in the case of Raikar, and have thus acquired a standard and institutional character. On the other hand, payments appropriated by Chhut Guthi assignees and Guthi Birta owners basically resemble rents payable on Birta lands, and are not subject to effective administrative control. We shall confine our study to the revenue assessment system on Amanat-operated Rajguthi land endowments.

THE NATURE OF GUTHI PRIVILEGES

The nature of the privileges granted to Guthis depends upon the terms and conditions stipulated in the deed of endowment. These terms and conditions are in turn governed by such factors as the area of land endowed and the importance of the temple or other beneficiary in question. If the Guthi endowment covered an entire village or an entire subdivision instead of a mere field, a more complete assignment of revenues was possible. In 1807, for instance, Prime Minister Bhim Sen Thapa endowed the entire area of Purkot in Tanahu district to a local temple. The endowment then automatically included all of the revenue accruing therefrom, including land taxes, judicial fines, and escheats.¹ Moreover, Guthi lands endowed for an important temple such as Pashupatinath in Kathmandu definitely carry more privileges than those endowed for a roadside shelter in some remote part of the country. As such, Guthi revenues can range from agricultural income alone to a combination of agricultural and other revenues, including miscellaneous taxes and levies derived from the area covered by the endowment.

Guthi land endowments which conferred the largest number of revenue sources were, like Birta,² known as Sarbangamafi or

*In order to avoid terminological confusion, we shall use the term "revenue" to denote payments due to the Guthi Corporation. All payments made to intermediary landholders, Chhut Guthi assignees, and Guthi Birta owners by actual cultivators will be described as "rent."

Sarba-Kar-Akar-Sarbangamafi. In general, Sarbangamafi implied full exemption from all State levies and taxes. An endowment made by King Rajendra in 1811 to a monastery in Morang district specifically lists such revenues as land taxes, import and export duties, taxes on fishing and on the extraction of forest products, market dues, judicial fines, and miscellaneous perquisites,* as well as the privileges of appropriating unclaimed property and of exacting forced and unpaid labor from the inhabitants of the area covered by the endowment.³ This endowment, in addition, also included Raja-Anka revenues, those meant exclusively for the use of the royal palace.** In general, Guthi endowments, including those made on Sarbangamafi basis, appear to have been exempted from Raja-Anka levies only if the deed had made an express provision to this effect. The government did not hesitate at times to appropriate the proceeds of such levies if the endowment was of a charitable rather than of a religious character. Where the beneficiary was a temple, these proceeds were usually utilized to make ornaments for the deity.⁴

The right to exact compulsory and unpaid labor from tenants on Guthi lands appears to have been ubiquitously exercised. According to regulations enforced in 1920 for Tin Sarkar Guthi endowments,

In case the number of laborers per ropani of [Guthi] land is specified in the records, their services should be utilized accordingly. Except in cases where unpaid labor [Rakam] obligations are customarily exacted from the people . . . , the services of one laborer should be exacted per ropani.⁵

Indeed, there were also cases in which the cultivator's burden was heavier. At a rest house constructed by Prime Minister Chandra Shamsher at Tripureshwar, Kathmandu, unpaid labor was exacted at the rate of six laborers per ropani on Guthi lands situated within

*The term used is Farroyat, a corrupt form of the Persian Faru'at, which in Mughal India meant "exactions and perquisites appropriated by officials personally and by Zamindars, & C." (Irfan Habib, The Agrarian System of Mughal India, Bombay, Asia Publishing House, 1963, p. 243.)

**These included the Gadimubarak, levied on the occasion of a royal coronation, the Goddhuwa, levied during the marriage of the eldest royal princess, the Chumawan, levied during the sacred thread investiture ceremony of the Crown Prince, and the Godan, which was meant to be used to finance gifts of cows on special occasions such as funeral ceremonies of members of the royal family. This levy was imposed when Ran Bahadur Shah was assassinated in 1806. Cf. Royal Order Regarding Imposition of Godan Levy in Lamjung, Poush Sudi 10, 1863 (January, 1807).

the compound of the rest house, and four laborers per ropani on lands situated elsewhere. Such unpaid labor services were utilized for the transportation of commodities required for discharging Guthi functions, work on temple gardens, and repair of damaged Guthi lands. Surplus labor was commuted into cash at Rs 0.16 per laborer for one day's work.⁶ The system was slightly more liberal on Panch Sarkar Guthi endowments. Regulations for such endowments enforced in 1934 prescribed that the services of Guthi cultivators be impressed on a compulsory basis only when the appropriate Guthi functionaries themselves could not provide the required transportation facilities. The laborers were either paid wages at the rate of Rs 0.06 each or were allowed to participate in feasts.⁷

The foregoing description of the privileges usually attached to Guthi endowments makes it clear that something beyond a mere land endowment was involved. What the State alienated was more or less its internal sovereign authority insofar as the lands and areas covered by the endowment were concerned. The beneficiary was granted the authority to dispense justice--an important attribute of the internal sovereign authority of the State. Sarbangamafi Guthi endowments automatically implied assignment of judicial authority.⁸ However, Guthi functionaries were primarily interested in the income they could appropriate in the form of fines, not in the dispensation of justice as such. On Rajguthi lands, therefore, legislation was enacted prescribing that in cases where authority was exercised by the State courts, the income should be transmitted to the appropriate Guthi and utilized for making ornaments for the deity.⁹ People were free to go to the State courts if they so desired, but the fines collected from them accrued to the appropriate Guthi.¹⁰

At the present time, Sarbangamafi and equivalent categories of Guthi endowments have become virtually meaningless. Recent reforms in the sphere of customs and public finance have denied such revenues as customs duties to Guthis. Raja-Anka levies too have become obsolete. Forced and unpaid labor has been abolished; only in certain cases such as Pashupatinath temple is such labor still exacted. Even when a Guthi covered an area wide enough to make the exercise or assertion of judicial authority practicable, jurisdiction was curtailed to cases involving claims not exceeding Rs 100.00 in value or fines not exceeding Rs 25.00.¹¹ Traditional sources of revenue were altered or discarded in the course of reform measures undertaken by the State, but no attempt was made to compensate Guthi endowments for the consequent loss of revenue. The State on its part expanded and diversified its own sources of revenue in other ways. It is significant, nevertheless, that the judicial authority of Guthi institutions has been safeguarded by recent legislation.*

*The 1961 Judicial Administration (Miscellaneous Arrangements) Act thus defines the original jurisdiction of district level courts as encompassing "cases of all categories, except when other

There are a few important cases in which Guthi privileges are still being utilized in virtually the same form in which they were originally assigned. The revenues of Pashupatinath temple in Kathmandu provide the most conspicuous example. The temple has jurisdiction over an area of approximately four square miles at Deopatan in eastern Kathmandu. In this area, according to a royal charter issued by King Girban in 1814, it may appropriate revenues from taxes and levies collected from the local inhabitants. These include special levies imposed on washermen, butchers (Kasai), sweepers, and players of lung-powered musical instruments (Kushle), and taxes on fish and ginger produced or buffaloes slaughtered in the area. Asmani revenues, income derived from miscellaneous unspecified sources, such as fines levied in the course of dispensation of justice, and unclaimed property form part of the assignment. The temple authorities have also been permitted to utilize the unpaid and compulsory labor (Jhara) of the local inhabitants to repair roads, bathing places, and temples.¹² These assignments are still effective today.¹³

As for judicial authority, Pashupatinath temple authorities originally exercised jurisdiction not only over the actual temple area but over all lands owned by the temple Guthi, irrespective of their actual location.¹⁴ However, it is doubtful to what extent such authority is still effectively exercised in outlying areas. In 1918, orders were promulgated limiting the judicial jurisdiction of Pashupatinath temple authorities to cases involving claims not exceeding Rs 50.00 in value and fines not exceeding Rs 10.00. Even then, fines collected in cases beyond these limits were credited to the temple accounts.¹⁵

Within the temple area itself, the temple Guthi enjoys proprietary rights on all unoccupied lands, forests, and pastures. The use of these lands is discouraged even for the construction of temples if it involves the clearing of wooded tracts. According to traditional belief, reiterated in a royal order issued in 1847, "plants and trees in the Pashupatinath temple area are actually

arrangements have been made in other current Nepal law. Ministry of Law and Justice, Nyaya Prashasan (Vividh Vyavastha) Ain, 2018 (Judicial Administration [Miscellaneous Arrangements] Act, 1961, Nepal Gazette, Vol. 11, No. 25 [Extraordinary], Kartik 29, 2018 [November 14, 1961], Section 4). The 1953 Nepal Laws Interpretation Act defines "Nepal law" as including "all acts as well as laws, regulations, rules, orders, or bye-rules applicable in the form of law in any part of Nepal." Ministry of Law, Nepal Kanun Vyakhya Sambandhi Ain, 2010 (Nepal Laws Interpretation Act, 1953), Nepal Gazette, Vol. 4, No. 26, Magh 25, 2011 (February 7, 1955), Section 2 (m).

hermits and sages. . . . Not a single twig shall be cut from them."¹⁶ In 1953, a road construction project linking the temple area with the Kathmandu airport was shelved because it involved the felling of trees.

In the Tarai districts, Guthi income includes revenues from the monopoly export duties on hides and skins and excise duties on the sale of liquor. Contracts for the collection of such revenues on Guthi lands are authorized by the appropriate Revenue Office. The proceeds are then collected and handed over to the Guthi, as they are in the case of Birta.¹⁷ Occasionally, revenues are also obtained from duties on opium and marijuana, from date and palm trees, from caste and occupational impositions, such as those on shopkeepers, oilmen, and leather-workers,¹⁸ and from levies imposed to meet the loss of fodder for State elephants resulting from the cultivation of new lands.¹⁹ These taxes and levies were also common on Raikar lands a century ago, and therefore their inclusion in the Guthi endowment was inevitable. But while they have become obsolete on Raikar lands, the conservative character of the Guthi system has insured their continuation on Guthi lands.

NON-AGRICULTURAL INCOMES FROM GUTHI LANDS

Even when Guthi income is derived from the land, it is not necessarily agricultural income. Generally, however, no distinction is made for purposes of revenue assessment between Guthi lands devoted to non-agricultural and other uses. Income from Guthi lands devoted to non-agricultural uses is of relatively minor importance, and is mainly derived from the use of such lands for residential or commercial purposes. For example, in some Tarai districts, temples and monasteries collect Bal Bithauri tax on Guthi lands situated in the market area.²⁰ A similar case was the Bhubahal tax imposed on vacant sites used for residential or commercial purposes inside the Pashupatinath temple area in Kathmandu.²¹ Occasionally, lands under Guthi tenure were specifically granted for use as commercial sites, possibly because their use for agricultural purposes would be less profitable. In May, 1847, 70 ropanis of waste lands were granted as Guthi to a Newar at Thankot, Kathmandu Valley, for shopping sites. The rents accruing therefrom were then utilized for the establishment and maintenance of a roadside shelter.²²

Revenue is also derived from Guthi-owned buildings used for residential or commercial purposes. In 1935 a proposal was made in Kathmandu to prohibit this private use of Guthi buildings. However, the proposal was abandoned when it was pointed out that the existence of such buildings would have no meaning if travelers and pilgrims were denied accommodation there. Moreover, rents on these buildings were being utilized to finance routine religious functions at many temples.²³

THE BASIS OF REVENUE ASSESSMENT

Miscellaneous revenue assessments from non-agricultural sources have now become vitually obsolete on Guthi lands. Moreover, at no time does income derived from the non-agricultural use of Guthi lands seem to have been of much importance. Thus agricultural income is at present almost the sole source of revenue on Rajguthi lands. We shall now discuss the basis on which revenue was assessed on Guthi lands used for agricultural purposes in different parts of the country.

Information is not available to indicate the basis on which revenue assessments mentioned in the original deeds of Guthi endowments were determined. Possibly these deeds denoted the tax assessments being collected by the State at the time of the endowment. The grade of the lands endowed was not mentioned, so that productivity does not appear to have been used as a criterion for assessment. A Guthi endowment made in Jumla district in 1826 prescribes that revenues should be assessed "at rates paid by tenants [on Jagir lands] assigned to the Army."²⁴ This would mean that the produce was shared equally between the Guthi and the cultivator as this was the most common form of tax-assessment on Raikar lands until the mid-nineteenth century.

The rates of revenue assessment mentioned in these deeds were seldom treated as sacrosanct. The government did not hesitate to increase them if it could do so without appearing to have violated customary practices. Contractors and Guthiyars too generally exercised their initiative to exact both higher and more numerous payments from the cultivators. Payments were sometimes exacted from a Guthi in the form of commodities required for the prescribed Guthi functions, even when these did not form part of the original assessments. The government apparently ignored such practices unless it received complaints from the aggrieved persons. In cases where mutual complaints were filed, the government felt obliged to call for strict observance of the provisions of the original deed. In one case in East No. 1 district, local functionaries in 1847 were restricted from imposing additional levies on Guthi lands owned by a local temple on the ground that customarily only paddy had been paid as revenue.²⁵

The introduction of the Amanat system in 1920 provided the government with the opportunity to frame regulations restating and consolidating the existing arrangements pertaining to the assessment of revenue on Guthi lands. According to these regulations, revenue on Guthi lands was to be collected in the form and at the rates prescribed in the original deeds of endowment or in existing records of the endowments. However, if higher rates had customarily been charged, these were to be retained. If an original deed mentioned only the area of the land endowed and did not prescribe specific assessments, the customary level of collection was to be

retained if it was not less than 1 muri of paddy per ropani. Assessments were to be revised on the basis of the rates prevailing on adjoining holdings only if they were lower than this figure. However, no ceilings were imposed. The regulations prescribed that existing assessments, if they were higher, should not be reduced in any circumstances. In the event of any discrepancy between the original particulars and the form of actual collections, the assessment of higher quality was to be retained.²⁶ Thus if the original deeds or records stipulated payment in the form of paddy, but actual collection was being made in the more profitable form of rice, the regulations prescribed that revenue should be collected in the latter form.

As yet no attempt has been made to correlate assessment rates with productivity or even to impose standard rates. In all cases the existing level of assessments has been used as a basis for redetermining assessments under these regulations. Gradation of land on the basis of the texture of the soil, availability of irrigation facilities, and estimated productivity is therefore conspicuous by its absence. Naturally, such a system could not insure equitability of assessments. According to revenue regulations current until 1963 in Kathmandu Valley and the hill districts, the yield of the lowest grade of Khet land was estimated at a maximum of 1.75 muris of paddy per ropani. A minimum assessment of 1 muri of paddy per ropani thus meant that often virtually the entire paddy crop was absorbed by the Guthi, leaving the Guthi cultivator with only the straw and other subsidiary produce.

Thus there were no ceilings imposed upon revenue assessments on Guthi lands. General policy, moreover, was not to reduce the "customary" level of assessment under any circumstances. Accordingly, those additional impositions which had been arbitrarily exacted from Guthi cultivators by contractors and Guthiyars prior to the introduction of the Amanat system were now incorporated in the government's regular assessment. What had been only a private arrangement between these functionaries and the cultivator was now put in writing and enforced as a statutory obligation on the part of the latter. The cultivator was now forced to pay the government those impositions which Guthi functionaries had previously been able to extort from him. This was a radical departure from the policy implied in the case we cited at the beginning of this section in which additional exactions were prohibited on the grounds that customarily only paddy had been paid as revenue.

The desire to maximize Guthi revenues by regularizing such arbitrary exactions has been buttressed by the need to collect those commodities actually required for the discharge of the prescribed Guthi functions. Regulations promulgated in 1920 prescribed that revenue on Guthi lands was to be collected according to the nature of present Guthi requirements, irrespective of the form of original revenue assessments, if such a practice had been

customarily followed.²⁷ This meant that once any new or increased payment had been demanded and paid, "custom" required that it be continued. "Custom" was thus invoked both to ban arbitrary exactions and to incorporate them in the regular assessment, according to the convenience of the government.

FORM AND LEVEL OF REVENUE ASSESSMENTS

The form and level of Guthi revenues are governed by the extent of the rights conferred upon the Guthi in respect to the lands endowed. Some Guthi endowments are no more than an assignment of revenue in which the beneficiary is only permitted to appropriate the income derived from the land at the time of endowment. On the other hand, there are occasionally cases in which beneficiaries of Rajguthi land endowments are entitled to cultivate the land personally or through tenants-at-will. This naturally places them in a position to derive higher and generally in-kind payments. Several Amanat-operated monasteries in the eastern Tarai districts own large Jimidari holdings. These holdings contain both lands held by individual landholders and Jirayat lands which the Jimidar can cultivate on his own account. The revenue which these monasteries derived from private holdings approximated Rs 15 per bigha. On Jirayat lands, on the other hand, revenue is appropriated in kind on a share-cropping (Mankhab) basis.²⁸

Revenue assessments on Rajguthi lands generally follow the pattern of the Raikar land tax assessment system. The broad division of the hill regions including Kathmandu Valley on the basis of whether Raikar land tax assessments were in cash, in kind, or both can thus be applied to revenue assessments on Rajguthi lands as well.* Moreover, assessments on Rajguthi lands, like those on Raikar lands, generally assume a composite character. In Kathmandu district, assessments often consist not only of rice, wheat, millet, and other cereals, but also of such subsidiary

*In Majhkirat, Chhathun, Terhathum, Ilam, Bajhang, Dailekh, Jumla, Doti, Baitadi, Dandeldhura, Bajura, Gorkha, Pokhara, and Kunchha assessments were in cash. In Kabhrepalanchok, Sindhupalchok, Palpa, Achham, Kathmandu, Bhaktapur, Lalitpur, and Kirtipur assessments were generally in kind. In Ramechhap, Dolakha, Okhaldhunga, Nuwakot, Dhading, Syangja, Bandipur, Gulmi, Baglung, Salyan, and Pyuthan revenue assessments assumed both forms (see Vol. I, p. 92). This division is now no longer in existence, as in-kind tax assessments were abolished on Raikar land in the hill districts in 1963. (Ministry of Law and Justice, Arthik Ain, 2020 [Finance Act, 1963], Nepal Gazette, Vol. 13, No. 10 [Extraordinary], Shrawan 32, 2020 [August 15, 1963], Section 6.)

items as mustard oil, soybean, straw mats, eggs, potatoes, and curd. The Serma tax levied in cash on Pakho lands under Raikar tenure in Kathmandu Valley and the hill districts is also applicable to Rajguthi lands. There are, however, exceptional cases in the hill districts where revenue on Rajguthi lands is assessed in kind even though the assessments in that particular district are usually collected in cash. For example, in Majhkirat district, where assessments are generally in cash, some are in kind.²⁹ Moreover, revenue on Pakho lands occasionally takes the form of paddy, although Pakho land by definition does not grow this crop. Such examples, illustrating both the number and variety of exceptions, can be multiplied for both Raikar and Rajguthi lands. In the Tarai districts, revenue assessments on Guthi lands are exclusively in cash.

The level of assessment on Raikar and Guthi lands seems to be more or less the same in most areas. According to a survey conducted in Kathmandu district in 1950, the average amount of assessment on Raikar lands was 19.25 pathis of paddy, 2.5 pathis of wheat, and Rs 0.12 per ropani of Khet land of Abal grade. Corresponding figures for Guthi lands were 18.5 pathis of paddy, 3 pathis of wheat, and Rs 0.12.* In the Tarai districts as well, Rajguthi assessments generally correspond to the level prevailing on Raikar lands. Thus in Mahottari district, the most widely prevalent rate on Dhanahar lands of Abal grade was Rs 15.00 per bigha in the case of Raikar, and Rs 14.90 in the case of Guthi.

Not all measures initiated in recent decades to achieve uniformity in the form and level of land tax assessments on Raikar lands have been applicable to Guthi lands. An exception was the introduction of the Bijan system; under this system taxes on Pakho lands were assessed on the basis of the estimated amount of maize seeds required for sowing in several hill districts during the period from 1938 to 1948. The Bijan system was applied to both Raikar and Guthi lands. According to regulations enforced in the eastern hill districts in 1945:

Even though the introduction of the Bijan assessment system on Guthi lands will mean a diminution in Guthi revenue, the total land revenue will not diminish. Revenue on Pakho lands under Guthi tenure shall therefore be determined according to the Bijan system at the rates introduced on Raikar lands.³⁰

*Law Ministry Records, Kathmandu Assessment Order, Aswin 8, 2007 (September 24, 1950). But the exceptions are no less striking. In Bhaktapur district, the rates per ropani of Khet land of Abal grade were almost 50 percent higher on Guthi than on Raikar (see Vol. I, p. 105).

The government was thus willing to bear the loss of Guthi revenue resulting from the introduction of lower assessment rates under the Bijan system, but was compelled to retract when the previous assessment had been in the form of commodities required for the discharge of the prescribed Guthi functions.³¹ Thus in Gorkha district, the Bijan system was revoked on Guthis where in-kind expenditures were prescribed. Cash assessments were retained under the Bijan system if previous assessments had been in cash and in-kind expenditures were not necessary.³² However, since most Guthi endowments involved in-kind expenditures in some form, the result was the virtual abolition of the Bijan system on Guthi lands in Gorkha district. Obviously, the continuance of traditional Guthi functions was deemed more necessary than uniformity between Raikar and Rajguthi revenue assessments, but there were also cases in which requests for the restoration of previous assessments were rejected on similar grounds, thus indicating the absence of a uniform policy in this regard.

There was an inherent contradiction in the twofold objective of achieving uniformity of revenue assessments for Guthi and Raikar lands without at the same time dislocating the performance of customary Guthi functions. Thus concerted official efforts to achieve this objective were discouraged. Not until 1950 did the government state in unequivocal terms that "it is not equitable to assess revenue at different rates on Raikar and Guthi lands of equivalent grade which may often be cultivated by the same person."³³ In Kathmandu district, orders were issued on September 24, 1950, prescribing a uniform schedule of assessment rates for both land tenure categories without increasing the total amount of revenue being derived from each source.³⁴ However, the political changes of 1950-51 intervened. Although the new government formed after the downfall of the Rana regime did not formally repeal these orders, no arrangements were made to implement them. Measures for achieving such uniformity in Bhaktapur district were reintroduced in April, 1953.³⁵ Orders promulgated in this connection specifically noted that "even though this measure will reduce revenue . . . continuance of different assessment rates on Raikar and Rajguthi lands will mean hardship for the cultivator."³⁶ The choice of Bhaktapur for this reform may have been influenced by the wide disparity between Raikar and Guthi assessment rates in this district.

No action was taken, however, to extend this policy to other areas, nor were measures undertaken during the post-1961 period to increase the Raikar land tax assessment system extended to Guthi lands. Legislation introducing these measures specifically prescribed that "revenue on Guthi lands operated by His Majesty's Government shall be paid in cash or in kind, as the case may be, as usual."³⁷ The only change made during the 1961-64 period was a 10 percent increase in the total value of revenue assessments³⁸ on Guthi lands.

RECENT DEVELOPMENTS IN THE GUTHI REVENUE ASSESSMENT SYSTEM

Since 1965, His Majesty's Government and the Guthi Corporation have taken several steps to revise the system of revenue assessments on Guthi lands. We shall now discuss these measures separately as they relate to cash and in-kind assessment. On February 11, 1965, the Guthi Corporation decided that cash assessment rates on Guthi lands in the hill and Tarai districts should be raised to the level prevailing on Raikar lands. However, this decision was primarily motivated by considerations of revenue rather than from a desire for uniformity between Raikar and Guthi revenue assessment rates. The Corporation also prescribed that no change should be made if existing revenue assessment rates on Guthi lands were higher than those prevailing on Raikar lands.³⁹ Nearly three weeks later these arrangements were extended to Kathmandu Valley.⁴⁰

As the level of taxation on Raikar lands underwent frequent changes during 1965-66, revenue assessment rates on Guthi lands followed suit. In the Tarai districts, tax assessment rates on Raikar lands were raised to Rs 15.00 or Rs 20.00 per bigha in 1962-63, and to Rs 26.00 and Rs 34.00 per bigha in 1966-67.⁴¹ Since the previous level of assessment was more or less the same for both Guthi and Raikar lands, these changes have resulted in increased Guthi revenue assessment rates in all cases in the Tarai districts. However, Raikar land tax assessment rates were also reduced in certain areas. In 1966-67 in Kathmandu Valley, they were reduced so drastically that the total land revenue is expected to fall by approximately 50 percent.⁴² However, according to the 1965 order, Guthi revenue assessment rates cannot be reduced under any circumstances. The discrepancy between assessment rates for these two land tenure categories in Kathmandu Valley has thus widened.

As far as in-kind assessments are concerned, the main objective of recent official policy has been the introduction of equal assessment rates on both Raikar and Guthi lands. In other words, the intention of this policy has been to insure that a Guthi landholder pays to the Guthi Corporation no more than a tenant pays to the landowner on Raikar land. According to an official statement:*

*"1966-67 Budget Speech of Chairman Surya Bahadur Thapa of the Council of Ministers," Nepal Gazette, Vol. 16, No. 13A (Extraordinary), Ashadh 26, 2023 (July 10, 1966), p. 126. A statement to this effect had been made at a public meeting at Bhaktapur on January 17, 1965, by Dr. Tulsi Giri, then Chairman of the Council of Ministers. Gorkhaptara, Magh 4, 2021 (January 17, 1965).

Peasants who are paying revenue on Guthi lands at current rates have to pay more than on Raikar lands, and hence there is hardship and inequality. Accordingly, with effect from the fiscal year 1966-67, the Guthi Corporation will charge rents* on Guthi lands at the rates mentioned in the 1964 Lands Act.

This assurance has yet to become a reality. On the contrary, the Guthi Corporation has announced that legal action will be taken against Guthi landholders who do not make payments in kind at the usual rates.⁴³ There is no point in speculating how this conflict of policy and interests between the government and the Guthi Corporation will ultimately be resolved; we shall concentrate our attention on studying the assessment rate schedule which will become effective if the rent provision of the 1964 Lands Act is extended to Guthi lands.

The 1964 Lands Act prescribes that rents shall not be charged in excess of 50 percent of the land's annual yield. In Kathmandu Valley, however, specific rates have been prescribed for different categories and grades of land. These are given in Table I.

Table I
Rates of Rents in Kathmandu Valley under
the 1964 Lands Act⁴⁴
(Rates per Ropani)

<u>Grade</u>	<u>Khet Land</u> <u>(in pathis)</u>	<u>Pakho Land</u> <u>(in pathis)</u>
Abal	23	10.12
Doyam	18.75	7.25
Sim	13	4.37
Chahar	8.62	2.87

*It should be noted that the term rent is being used here to mean payments made by Guthi landholders to the Guthi Corporation, which we had been describing as revenue for the reasons mentioned in the footnote at the beginning of this chapter.

The act also provides that in no case shall the current level of rents be increased if it is lower than the statutory level mentioned above.⁴⁵ Enforcement of the rent provisions of the 1964 Lands Act will thus prohibit the Guthi Corporation from increasing existing levels of payment on Guthi lands under its jurisdiction. Even so, "hardship and inequality" to peasants on Guthi lands will persist. In-kind assessments have been abolished on Raikar lands, but not on Guthi lands. The statutory rate of rent on the lowest class of Guthi land is 2.87 pathis of grain under the 1964 Lands Act, but this far exceeds the sum of Rs 1.40 which must be paid as tax on Raikar land in a similar category.⁴⁶ Uniformity can hardly be achieved as long as the form of assessment is different.

PROBLEMS OF REVENUE COLLECTION

The level of in-kind assessment rates is not the only factor which determines the actual volume of income from Guthi lands. Income also depends on the form in which revenue is actually collected. Individual landowners, such as Guthi Birta owners and Chhut Guthi assignees, face few problems in collecting rent. They collect rent directly from the cultivator, and need not concern themselves with an elaborate collection machinery. Even if they collect in-kind assessments in cash, conversion is effected at a rate mutually agreed upon. For them, collection procedure requires no sanction from higher authorities, nor can uniformity such as that between different groups of rent-receivers and cultivators be practicable. Moreover, they may demand higher or additional payments. They merely must not be so overly oppressive as to impel the cultivator to embarrass the authorities by filing complaints.

Until 1920, contractors who were responsible for the collection of revenue on Rajguthi lands in Kathmandu Valley and the hill districts operated under similar conditions. The government, in those circumstances, was only required to maintain general supervision in order to insure that customary Guthi functions were not disrupted by undue negligence or oppression on the part of contractors and Guthiyars. However, with the introduction of the Amanat system in 1920 the situation was altered. Under the Amanat system revenue collection on Guthi lands were made directly by government agencies. Still the actual form in which collections were made depended on several factors, such as whether the Guthi was under central or district jurisdiction, or where the Guthi lands were located.

FORM OF REVENUE COLLECTION

The way in which in-kind revenue assessments on Guthi lands are actually collected depends upon the availability of transport facilities and the nature and quantity of commodities required for discharging the prescribed Guthi functions. Regulations enforced in 1920 prescribed that all assessments on Guthi lands inside Kathmandu Valley in the form of rice, paddy, and millet should be fully collected in the same form irrespective of actual needs. Assessments in the form of other commodities in Kathmandu Valley as well as all in-kind assessments in areas situated outside Kathmandu Valley but under the jurisdiction of the central Guthi revenue collection offices were to be collected in kind only to the extent of the actual Guthi requirements. The balance was to be collected in cash.⁴⁷ What the government wanted to avoid by these regulations were transportation difficulties, not in-kind collections. The regulations, therefore, also prescribed that collections in areas outside Kathmandu Valley should be made completely in kind, irrespective of actual needs, "if tenants and cultivators have customarily been transporting commodities for meeting Guthi requirements."⁴⁸

By deciding that Guthi revenues in Kathmandu Valley should be collected in kind, the government obviously failed to profit from the experience it had gained over the preceding decades in the field of land tax collections on Raikar lands. Collection, storage, transport, and marketing difficulties had compelled the government to commute in-kind tax assessments on Raikar lands since the beginning of the twentieth century. There was no reason to suppose that similar difficulties would not be encountered in respect to revenue collections on Guthi lands. To be sure, the decision to continue collections in kind was primarily induced by the heavy in-kind expenditure requirements of most Guthis. But necessity alone is no guarantee of the successful implementation of any measure.

REVENUE COLLECTION UNDER THE AMANAT SYSTEM

The record of the first few years of collection of Guthi land revenue under the Amanat system in Kathmandu Valley could hardly be regarded as encouraging. By 1931, arrears totaling 44,975 muris of foodgrains and approximately Rs 22,000.00 in cash had accumulated in addition to those for miscellaneous payments in kind. During the period from 1932 to 1934, fresh arrears accumulated. These amounted to 107,290 muris of foodgrains and approximately Rs 87,000.00 in cash in addition to miscellaneous payments in kind.⁴⁹ Statistics are not available to indicate what percentage these arrears constituted of the total value of the revenue assessment, but the figures in themselves are quite sizeable. Moreover, a progressive decline in administrative

efficiency is apparent. The arrears accumulated during the three-year period from 1932 to 1934 exceeded those of the eleven-year period ending in 1931. Disruption of work due to earthquakes in 1934 and paucity of staff were cited as the reasons for such poor performance, but the real reason became apparent when additional village level functionaries were recruited in 1936 to establish better contacts between the revenue collection offices in Kathmandu and the cultivators in the villages.⁵⁰ A formal setup in Kathmandu could hardly replace the personal efforts of contractors and Guthiyars in the collection of revenue on Guthi lands.

Administrative shortcomings were only one reason why Guthi revenue collections could not be made in full. In addition, cultivators withheld payment because of the disparity between payments on Raikar and Rajguthi lands. With an assessment of 1 muri of paddy, a tenant on Raikar land would pay a total revenue of Rs 4.00. On the other hand, the Guthi cultivator would have to transport the paddy all the way from his village to Kathmandu. Moreover, a rise in the market price of paddy had a different effect in each case. The Raikar tenant gained an additional benefit whenever the price of paddy rose beyond Rs 4.00 per muri. For the Guthi cultivator the rise in price meant a rise in the market value of the payment he had to make to the Guthi revenue collection offices.

THE PARTIAL COMMUTATION SYSTEM

In January, 1937, with the objective of speeding up revenue collections on Guthi lands, the government decreed that 50 percent of assessments in the form of rice and paddy, as well as of other in-kind impositions, should be commuted into cash. Assessments amounting to less than 10 pathis of rice or paddy were made payable wholly in cash.⁵¹ However, this measure does not appear to have brought about the desired result. By April, 1939, fresh arrears of 2,400 muris had accumulated. A total of 10,000 muris of such arrears were actually remitted,⁵² since it was considered virtually impossible to collect them in full.

After 1939 official policy in respect to the percentage of assessment to be commuted into cash was subject to repeated fluctuations. In July, 1939, the government decided to make collections wholly in cash.⁵³ The proceeds of such cash collections were then utilized to procure foodgrains from the Tarai to meet in-kind Guthi expenditures.⁵⁴ This decision had initially been made on a one-year basis, but actually it remained in force until 1944. However, it was cheaper though more difficult to collect rice from Guthi lands than to procure it from the Tarai, and heavy losses resulted from the full commutation of in-kind assessments. In 1945, therefore, the government decided to collect 75 percent of the assessment in kind.⁵⁵ The interim government formed

after the overthrow of the Rana regime in 1951 standardized the percentage of revenue assessment payable in cash at 50 percent and announced its intention to bear the resultant losses from the general budget.⁵⁶ Except for a brief period in 1952-53 when the percentage was once more raised to 75 percent,⁵⁷ the figure has remained unchanged at 50 percent. In the case of lands under the Tin Sarkar Guthi, the percentage of in-kind assessments payable in cash has all along remained stationary at 50 percent. On lands owned by the Matsyendranath temple in Lalitpur, the percentage was determined each year on the basis of the actual Guthi requirements until 1951-52, when it too was standardized at 50 percent.⁵⁸

Thus in Kathmandu Valley the Guthi tenant has not reconciled himself to a situation which compels him to pay part of the revenue assessment on Guthi lands in cash. The government on its part has hesitated to abolish in-kind Guthi expenditures. In 1953, the All Nepal Peasants' (Purification) Association, in a statement before the Land Reform Commission, demanded that Guthi revenues be made payable exclusively in cash, and that expenditures be scaled down in accordance with the reduced revenue. It further maintained that "this problem can never be solved if revenue is sought to be collected on the basis of the original assessment records."⁵⁹ However, the Commission was unable to take a definite stand on this demand.

There are some exceptional cases where revenues on Guthi lands are still collected fully in kind, notwithstanding official policies adopted since 1937. Until 1950-51, rents on Duka Birta and other Guthi lands owned by Pashupatinath temple in Kathmandu and elsewhere were collected fully in kind, apparently because of heavy in-kind expenditures at the temple. Only after the downfall of the Rana regime was the partial commutation system extended to these lands. According to arrangements introduced in 1951, 50 percent of all assessments on these lands in the form of paddy is collected in kind, but in-kind rice and oil assessments are collected in full. Other miscellaneous assessments, such as millet and wheat, are wholly converted into cash.⁶⁰ However, Guthi lands endowed to Pashupatinath temple in Kathmandu, East No. 1 district, and elsewhere for specific rituals by King Ran Bahadur Shah, King Rajendra, and King Surendra pay revenue wholly in kind even at present.

In the hill districts, priests and Guthiyars are personally responsible for the collection of revenue assessments on Amanat-operated Guthi lands. The need for converting in-kind revenue assessments into cash for purposes of collection has therefore not arisen. The commutation system emerged because of administrative difficulties. No formal government agency was involved in revenue collection because of the direct relationship between the priest or Guthiyar and the cultivator.

COMMUTATION RATES

Any system involving the collection of in-kind revenue assessments in cash requires fixed rates of conversion. If the real value of the actual payment is to be kept constant, the commutation rates must be closely tied to the current price level of agricultural commodities. Regulations enforced upon the introduction of the Amanat system in 1920 therefore prescribed that the commutation rates were to be determined each year⁶¹ on the basis of current market prices. The policy was reiterated in 1937 when the commutation system was extended to include assessments in the form of rice, paddy, and millet.⁶²

Commutation rates are still determined on a yearly basis, but there is no evidence that the current price level is being used as an indicator. In 1937 the commutation rate was 3.62 pathis of paddy per Rs 1.00.⁶³ This was changed in 1939 to 3.25 pathis⁶⁴ and has been retained at that level subsequently. Even though commutation rates on Tin Sarkar Guthi lands were also in principle based on current market prices,⁶⁵ the actual rates sanctioned for this purpose were not. In 1951-52, the commutation rate for paddy on these lands was 1.8 pathis per Rs 1.00.⁶⁶ On Guthi lands owned by Matsyendranath temple in Lalitpur, it was 2.5 pathis of paddy per Rs 1.00. The rate for all these categories of Guthi endowments was standardized at 3.25 pathis per Rs 1.00 in 1951-52.⁶⁷

Table II illustrates the present discrepancy between commutation rates on Raikar and Rajguthi lands for a few selected commodities:

Table II

Comparative Commutation Rates for Raikar and
Guthi Lands in Kathmandu
(Pathis per Rs 1.00)

<u>Commodity</u>	Rate of Conversion in Pathis	
	<u>Raikar</u> ⁶⁸	<u>Guthi</u> ⁶⁹
Paddy	5	3.25
Crushed rice	3.12	2
Wheat	3.12	2.37
Maize	4	2
Millet	5	2.75

In Kathmandu Valley the commutation rates on Rajguthi lands are thus 50 to 100 percent higher than those on Raikar lands. These rates are not applicable to lands owned by centrally-operated Guthis in the districts. Revenue on such lands is collected by the appropriate Revenue Offices of the government, and the commutation rates are the same as those applicable on Raikar lands in those areas.

Thus, the policy of basing commutation rates on the current market prices of agricultural commodities has in effect been abandoned. In April, 1965, the Guthi Corporation offered to convert in-kind payments at Rs 50.00 per muri on a one-time basis on the ground that in-kind collections made up to that time had proved sufficient to meet current Guthi requirements.* In May, 1966, the Corporation raised the commutation rate to Rs 75.00 per muri,⁷⁰ according to the prices of foodgrains then current. The notification does not stipulate that this time its decision was motivated by the accumulation of sufficient stocks of foodgrains, as was the case in 1965. In fact, payment in cash is optional. Those who choose to pay in kind have been permitted to do so. At present, therefore, revenue assessments in the form of paddy on Guthi lands in Kathmandu Valley are commuted into cash at two different rates: Rs 6.16 and Rs 75.00 per muri.

The administrative process of commutation is therefore very complicated. If the assessment is 1 muri of paddy, the total amount due to the Guthi Corporation is Rs 41.20, as commuted in Table III:

Table III

Commutated Value of In-Kind Revenue Assessment on Guthi Lands

10 pathis, at Rs 6.16 per muri	Rs 3.08
10 pathis, at Rs 75.00 per muri	Rs 37.50
10 percent surcharge of value of total assessment calculated at Rs 6.16 per muri	<u>Rs 0.62</u>
	Rs 41.20

*Notification of "The Guthi Corporation," Gorkhapatra, Baisakh 7, 2022 (April 19, 1965). Certain Guthi lands belonging to Pashupatinath temple were exempted from this provision, obviously because of their need for commodities.

DISCREPANCY BETWEEN ASSESSMENT AND ACTUAL COLLECTION

Thus there are different methods and systems of commutation in respect to in-kind assessments on Raikar and Guthi lands in Kathmandu Valley. Uniformity of assessment rates does not necessarily mean uniformity in the amount of actual payments. A uniform assessment of 1 muri of paddy means an actual payment of Rs 4.00 in the case of Raikar (after commuting the assessment at the statutory rate of 5 pathis per Rs 1.00), but Rs 41.20 in the case of Guthi. Guthi tenants have from time to time expressed resentment over such "discrimination." In 1953, the All Nepal Peasants' (Purification) Association demanded that all Guthi revenues be commuted into cash at the rates applicable on Raikar lands.⁷¹ Nevertheless, we cannot really justify equating the land tax payable on Raikar land with Guthi revenue. Guthi landholders are tenants of the appropriate Guthi. Their position therefore corresponds to that of cultivators working Raikar land owned by others. These cultivators must pay a maximum of 50 percent of the total produce to their landowners as rent. The Guthi landholders' claim to a superior status and hence to preferential rates of revenue payments is therefore unreasonable. Furthermore, Guthi landholders collect rents from their tenants at a minimum of 50 percent of the total produce. Guthi revenue rates are at times in excess of this figure, but the exorbitance of the assessment has been severely mitigated by the facility of paying 50 percent of the assessment in cash at preferential commutation rates. If the denial of commutation facilities to Guthi landholders at Mal Office rates causes them hardship, there is an equally good case for providing these facilities to cultivators working Raikar lands as well.

NEED FOR REFORMS IN THE COMMUTATION SYSTEM

It is noteworthy that though commutation rates were originally based on current market prices, they have in the course of time ceased to have any such relationship. No attempt has been made since 1939 to revise the commutation rate of 3.25 pathis of paddy per Rs 1.00. Indeed, the reverse trend became evident when the commutation rate of Tin Sarkar Guthis was lowered in 1951-52 to bring it in line with that of Panch Sarkar Guthis. At present there are two commutation rates for revenue assessments on Guthi lands, one based on the 1939 prices and the other based on the 1965 prices. For all intents and purposes, the 1939 rate is considered sacred and inviolable.

The sole reason for the Guthi Corporation's apparent unwillingness to revise the 1939 commutation rate has been the emergence of a new and influential class of land interests which has appropriated the profits created by the discrepancy between this rate and the current prices of agricultural produce. This

class has insinuated itself into a land tenure system which originally provided for a direct relationship between the cultivator and the Guthi, and has resisted all attempts at reform. We will discuss the nature and process of this subinfeudation in the next chapter. We need only point out that the need to calculate payments in cash under the partial commutation system and the existence of two different commutation rates have made the revenue collection system on Guthi lands unnecessarily complicated.

The administrative problems involved in calculating the actual revenue in cash would be considerably simplified if the commutation rates were fixed in such a way as to fetch the same amount of revenue for the Guthi Corporation. There is thus no point in commuting 50 percent of the revenue per muri at Rs 6.16 and the balance at Rs 75.00. The Corporation might well fix the rate at Rs 40.58 for the entire assessment to obtain the same amount in cash.

VI. GUTHI AND THE STATE

Since the mid-eighteenth century the policies followed by the Government of Nepal in regard to Guthi land endowments have been guided by two primary considerations. In the interests of national policy, which was sometimes also interpreted to coincide with the personal interests of the ruling clique, it was necessary to safeguard religious institutions in order to insure social and political stability. But there also existed the desire to exploit the Guthi system in order to maximize its revenue. The relative importance of these two considerations has naturally varied at different periods in Nepal's history under the impact of changing political, fiscal, and administrative factors. Moreover, these objectives obviously suffer from an inherent mutual contradiction. The government no doubt tried its best to exploit the Guthi system to maximize revenue, but it generally hesitated, or at least proceeded with caution in taking any step which might be interpreted as an attempt to undermine the religious sentiments of the people. Nevertheless, political or military factors at times created extraordinary situations in which considerations of revenue necessitated, or were employed to justify, measures encroaching upon the traditional sanctity of the Guthi land tenure system.

GUTHI POLICY DURING THE PERIOD OF NATIONAL CONSOLIDATION

As a rule, the Shah rulers do not appear to have interfered in the social and religious life of the inhabitants of territories conquered by them. Immediately after a principality was annexed, existing Guthi endowments were confirmed by military commanders and local officials pending formal approval from Kathmandu.* Such formal confirmation usually followed as a matter of course, except when political considerations were involved. The general policy was to confirm Guthi land endowments formally made by the displaced chieftains,¹ but at the same time an attempt was made to detect causes of lands being utilized as Guthi without such authority. In Kathmandu Valley, King Prithvi Narayan Shah "scrutinized the signature" on Guthi land endowments made by the displaced Malla kings.² According to an order issued by King Girban in 1804:

*Itihas Samshodhan Mandal, Itihas Prakash (Light on History), Vol. 2, Book 2, pp. 54-55. This document refers to Guthi endowments for a temple in Jumla, which had been retained by local commanders and officials, presumably at the time of annexation, and were formally confirmed by King Rajendra in 1824.

After we entered Nepal,³ our great-grandfather⁴ scrutinized Guthi land endowments made by the Malla king, abolished those that were to be abolished, and confirmed those that were to be confirmed.⁵

The peremptory note, as well as the reference to abolition of Guthi land endowments made by the displaced Malla kings, suggests that confirmation was not based wholly on a scrutiny of the signature. It must have been difficult to confiscate all Guthi endowments made by former kings because of the risk of wounding the religious feelings of the people and hence arousing unnecessary political opposition to the newly established regime. Nor did the Shah rulers have any desire to do so, for they owed spiritual allegiance to the same temples and monasteries as the defeated Malla and Sen kings. But all such scruples were ignored when political expediency was involved. In fact, confiscation appears to have been the general policy insofar as Kaski (West No. 3) district was concerned.⁶ The King of Kaski, Siddhi Narayan, had been vanquished by Kathmandu in 1771 and forced to sign a treaty acknowledging Gorkha's suzerainty. He rebelled soon after Gorkha troops had left his dominions, but was again defeated. According to regulations promulgated in 1798: "King Siddhi Narayan of Kaski has broken his pledge with us; all acts done by him shall therefore be invalidated."⁷ In the same way, political rather than religious considerations influenced Guthi policy when regulations were enforced in Majhkirat district in August, 1806, prescribing that Birta and Guthi lands endowed under the seal of kings other than those belonging to the donor's dynasty should be converted into Raikar and assigned as Jagir to the Army.⁸ Such measures naturally resulted in the dislocation of existing religious and charitable institutions.

A possible explanation for this apparently irreligious policy may be found in the legal view that all lands belonged to the State and hence could not be alienated except under the seal of the reigning king. Since Guthi meant an alienation of the land-ownership rights of the State in perpetuity, the government did not favor the endowment of lands as Guthi by officials acting on their own initiative. According to regulations promulgated for Kathmandu Valley in 1799:

In case any district official has granted Pota Birta lands as Guthi without royal permission, he shall be fined with an amount four times the value of the land. If it is necessary to offer lands for gods and goddesses, we shall do so. If it is necessary to confiscate such lands, we shall do so. Let such matters be represented to us.⁹

Transport and communication difficulties and the extensive authority granted to district officials during the eighteenth and early nineteenth centuries made such irregular Guthi endowments

frequent and difficult to check. Officials were therefore sent from time to time from Kathmandu to different districts to detect and confiscate such irregular endowments. There is no evidence, however, that such measures were particularly successful.*

The Shah rulers also did not hesitate to confiscate Guthis in cases involving violation of the stipulated religious or charitable functions and sale of Guthi lands.¹⁰ It would have been more consistent with religious traditions in such cases to punish the guilty persons and make arrangements to continue the prescribed Guthi functions. Administrative and political confusion inevitably followed in the wake of the Gorkha conquests, and the government presumably wanted to take advantage of consequent lapses on the part of Guthi functionaries to widen the ambit of the Guthi system, while nominally professing to respect the sanctity of Guthi land endowments.

Apparently considerable areas of land under Guthi tenure were abolished and converted into Raikar on such legalistic pretexts. In view of the long religious history of Nepal, one is struck by the virtual non-existence of Guthi land endowments made by the various royal dynasties which ruled parts of Nepal prior to its unification. A few endowments made by the Malla kings are still extant,¹¹ but their number and volume appear too small when we note that this dynasty ruled a comparatively prosperous and advanced part of the country for more than four centuries, and, moreover, was well known for the construction of temples and the performance of religious acts. It would be erroneous, however,

*In 1787, the Government of Nepal issued an order to Birta and Guthi owners in Kathmandu Valley to register their holdings (Order to Birta and Guthi Owners of Kathmandu Valley, 1844 1787 . That this evoked little response is proved by the fact that in 1797 officials were deputed to survey Guthi Birta and other lands in Kathmandu Valley (Land Survey Regulations in Kathmandu Valley, Bhadra Sudi 15, 1854 September, 1797 . Another order with exactly the same wording was issued two years later (Land Administration Regulations for Kathmandu Valley, Aswin Badi 5, 1856 September, 1799 . An order for the survey of Guthi lands in Bhaktapur was issued in 1804 (Land Survey Regulations for Bhaktapur, Kartik Badi 14, 1861 October, 1804 , indicating that implementation of this policy was far from satisfactory. Similar orders were sent to Jumla (Land Survey Regulations for Jumla, Jestha Sudi 14, 1862 May, 1805 , Majhkirat (Land Survey Regulations for Majhkirat, Bhadra Badi 1, 1863 August, 1863 , and Bara, Parsa, Saptari, Mahottari, and Bijayapur (Morang) as well, with specific instructions to confiscate "irregular" Guthi endowments (Order to Subedar Dhokal Khawas Regarding Scrutiny of Birta and Guthi Grants, Marga Sudi 13, 1863 December, 1806).

to attribute such lack of philanthropy to the Shah rulers alone. Possibly they were only following a practice which was generally accepted at the time, and the Malla kings too treated the Guthi land endowments made by the Lichchhavi, the Thakuri, and other royal dynasties that had preceded them in a similar manner. It is also possible that the victorious dynasty made a fresh endowment of existing Guthi lands in its own name.

GUTHI CONFISCATION

The Guthi system suffered a major setback in 1806. In that year, the Government of Nepal undertook the drastic step of confiscating Birta and Guthi lands throughout the kingdom. Information is not available regarding the exact nature of this measure, however, it appears correct to assume that the motive was primarily financial, for the confiscated lands were assigned to the Army.¹² Nepal was at that time preparing for war against the British in India, and ex-King Ran Bahadur, who was Prime Minister at that time, appears to have chosen to risk unpopularity at home rather than jeopardize the nation's military preparations.

Nevertheless, there is no evidence that the entire area under Guthi land tenure was affected by this measure. Orders issued in Majhkirat,¹³ Bara, Parsa, Saptari, Mahottari, Bijayapur (Morang),¹⁴ and other parts of the country at that time indicate that Guthi lands were still in existence several months after the confiscation. Efforts were made to distinguish between "regular" and "irregular" endowments. Furthermore, confiscation was not only discriminatory, but also partial. Thus in one case involving 60 muris of land in Sindhupalchok (East No. 1) district, 30 muris were confiscated, while the rest was confirmed as Guthi.¹⁵ In another case, a Guthi holding which the government presented to a Brahman for the performance of mystic rites to secure victory during the 1792-93 Nepal-China War remained unaffected by the confiscation measure.¹⁶

If Ran Bahadur had confiscated Guthi lands of all categories, no Guthi endowment created before 1806 would be extant today, but this is far from being the case. There is also no evidence that traditional religious functions in Pashupatinath and other important temples were disrupted as a result of the 1806 confiscation measures. Presumably Ran Bahadur Shah for the most part confiscated those Birta lands which had been endowed as Guthi by private individuals. However, it would be incorrect to conclude that his actions were based on a definite and uniform policy. Thus in one case a Guthi holding given by a King of Patan prior to the Gorkha conquests was confiscated,¹⁷ but a large number of Guthi endowments made by the Malla kings in Bhaktapur remained intact.¹⁸

In any case, confiscation meant only taxation, not the outright eviction of the occupant. Some Guthi landholders of Jumla district reported to Kathmandu in 1831:

Our Guthi lands . . . confirmed during the reign of the Kalyal¹⁹ kings . . . were confiscated in 1806 and assigned as Jagir to the Army, but we continue as tenants.²⁰

Occasionally cultivators refused to cultivate the land on payment of the new taxes, and the land remained uncultivated. It is interesting to note that in one case in this district, the same family applied for and received permission to reclaim the land after 40 years, subject to payment of taxes at current rates.²¹ Obviously, the higher level of prices in 1846, when such permission was given, had offset the disadvantages created by the taxes imposed in 1806. Moreover, the confiscation measure applied for the most part to paddy land, possibly because it was more important from revenue considerations.*

The total area of Guthi lands abolished under this measure in Kathmandu Valley and the hill districts amounted to only 11,804 muris. Although it is by no means definite that the confiscation measures covered the entire area under Guthi land tenure in these regions, the figure at least gives a rough estimate of the total area of Guthi land at that time. The breakdown by region (Table IV) is shown on the following page. Not a single muri of Guthi land appears to have been confiscated in areas corresponding to the present districts of East No. 1 and East No. 3, in Tanahu, Gulmi, and several other districts in the far-Western hill region, or in the Tarai, thus indicating the possible nonexistence of Guthi lands in these areas at that time. This situation may be contrasted with that of 1952-53, when Gorkha district in the Western hills alone had Guthi lands amounting to 1,023 muris.²²

GUTHI POLICY DURING THE RANA REGIME

These confiscation measures were undertaken out of financial necessity, and did not aim at reforming the land tenure and taxation system in Nepal. Accordingly, they did not preclude the possibility of fresh Birta and Guthi land grants being made in the future. King Girban himself confirmed Guthi land endowments a few months after the confiscation.²³

*Cf. Order Regarding Pakho Birta Holding of Ritu Padhya Subedi in Chuplu (East No. 3), Magh Badi 12, 1921 (January, 1865). According to this document, a Birta owner of Chuplu stated in his complaint: "In 1806, when Birta lands were confiscated, only Khet lands were affected, while Pakho lands were confirmed." See also Volume 2, p. 88.

Table IV*

Total Area of Guthi Lands Confiscated in 1806
in Kathmandu Valley and the Hill Regions

Kathmandu Valley	9,777 muris
Kathmandu	695
Lalitpur	4,751
Bhaktapur	4,331
Eastern Hills	495 muris
Western Hills	<u>1,532 muris</u>
Total	11,804 muris

The partial confiscation of a number of existing Guthi land endowments did not affect the *raison d'etre* of the Guthi system. Naturally, the victims of the confiscation found it difficult to face with equanimity a situation in which their old Guthi lands were converted into Jagir, while fresh Raikar land was progressively endowed as Guthi to other persons. The pressure exerted by the dispossessed Birta and Guthi owners became so great that according to an official document issued in 1846, "tranquillity has not prevailed in the royal palace since the Birta lands of Brahmans and the Guthi lands of gods and goddesses were confiscated in 1806."** Occasionally the government yielded

*These statistics have been obtained from an undated document in the possession of the Lagat Phant (Land Records Office) of the Department of Land Revenue which gives particulars of the confiscated lands for every village in the regions mentioned above.

**General Bhimsen Thapa and Contemporary Nepal, *op. cit.*, pp. 283-284. During the 1814-1816 Anglo-Nepal War, General Amar Singh Thapa wrote to Kathmandu from the western front: "When the Chinese Army invaded Nepal, we implored the mercy of Heaven, by offerings to the Brahmans and the performance of religious ceremonies; and through the favor of one and the intercession of the

to such pressures and compensated individual Guthi endowments. In one case, King Girban directed that 12 muris of Raikar land should be assigned as Guthi for the maintenance of a roadside shelter on a temporary basis, until a confiscated Guthi land endowment of an equivalent area was formally restored.²⁴ But it was only in 1846 that systematic action was initiated to provide the victims with land in exchange for their confiscated Birta and Guthi holdings.

In September, 1846, a decade of political instability ended with the rise of Jang Bahadur to the Prime Ministership of Nepal. Jang Bahadur obviously wanted to placate the powerful Birta and Guthi owning classes. He therefore posed as a staunch defender of religious traditions and institutions, particularly the Guthi system. According to the Legal Code promulgated in 1853:

Foolish Kings and evil-minded ministers who damage temples, rest houses, roadside shelters, bridges, water-spouts, tanks, roads, wells, gardens, etc. constructed by others, or who confiscate Guthis endowed by others, block their way to heaven and pave their way to hell. Incapable of tolerating the religious merit acquired by good people, they act against the public interest. Such people will sink in sin.²⁵

This provision reads more like a moral tirade than a law. It was obviously directed against Ran Bahadur Shah and Bhimsen Thapa, the authors of the 1806 confiscation.

At the same time, Jang Bahadur was unwilling to relinquish the revenue which the Government of Nepal had been receiving from the abolished Birta and Guthi lands since 1806. He therefore pleaded:

The Birta and Guthi lands confiscated in 1806 have been assigned to the Army. If now they are taken away from the Army and restored to the original owners, the Army will

other, we succeeded in repulsing the enemy. Ever since you confiscated the Jagirs of the Brahmins, thousands have been in distress and poverty. Promises were given, that they should be restored on the capture of Kangra. . . . We failed, however, in that object and now there is a universal commotion; you ought, therefore, to assemble the Brahmins and promise to restore to them their lands and property, in the event of your conquering and expelling the English. By these means, many thousands of respectable Brahmins will put up their prayers for your protection, and the enemy will be driven forth. B. D. Sanwal, Nepal and the East India Company, p. 170.

cease to exist, our enemies will be powerful and the religion of Hindus might not be safe.²⁶

Jang Bahadur therefore devised a modus vivendi by initiating

. . . arrangements to restore the confiscated Birta and Guthi lands, while also maintaining the Army, so as to safeguard the religion of the Hindus.²⁷

Jang Bahadur was too much of a politician to state expressly that his motive was also to achieve an extension of the cultivated area. He offered the victims of the confiscation waste lands in the hill districts and the Tarai as well as funds to reclaim them.²⁸ However, there is no evidence that the restoration program was taken seriously after Jang Bahadur had fulfilled his immediate political aims. Thirty-six years later, Prime Minister Ranoddip Singh (1885-87) pointed out that the program had never been effective. The recipients had not been able to reclaim the lands allotted to them and had been compelled to depend upon intermediaries. He therefore directed the grant of cultivated lands in exchange for the confiscated lands in order to insure that "both giving and receiving should have same meaning."²⁹ Even then, it is doubtful how far these measures resulted in the full restoration of confiscated Guthi lands.*

The restoration of confiscated Guthi lands was not the only measure which was undertaken by Prime Minister Jang Bahadur to entrench the sanctity of the Guthi system. He also decreed that if any Guthiyar sold or mortgaged Guthi lands or violated the prescribed religious or charitable functions, the Guthi should be taken over for State management.³⁰ This meant a departure from the old policy of abolishing such Guthi lands and converting them into Raikar. In addition, encroachment by Guthi landowners upon adjoining holdings of Raikar land was punishable by fine,³¹ instead of by outright confiscation. Jang Bahadur also decreed:

Nobody shall confiscate Guthi lands even if the person who endowed them or his descendants commit any crime punishable by death, life imprisonment, loss of caste or confiscation of property. . . . In such cases their relatives may operate the Guthi and appropriate the surplus income. If no relatives exist . . . the Guthi shall be operated by the State.³²

*The entire episode may be compared with the resumption of ouqaf land in Persia by Nadir Shah and restoration thereof in the mid-eighteenth century by his successor, Ali Quli Adil Shah. Ann K. S. Lambton, Landlord and Peasant in Persia, pp. 131-132.

These provisions are still in force in much the same form, and have effectively prevented the depletion of the area under Guthi land tenure through government action. Thus as a result of policies initiated during the Rana regime, the Guthi land tenure system has acquired a sacrosanct character which has often stood in the way of land tenure and agrarian reform. This sacrosanctness, combined with religious conservatism on the part of almost all classes in society, has discouraged any demand for reform of the Guthi land tenure system, even after the political changes of 1950-51.

REVENUE CONSIDERATIONS

While implementing measures to entrench the sanctity of the Guthi system, Prime Minister Jang Bahadur was fully aware of its revenue potential. He did not have to improvise a new policy to divert the surplus income from Guthi land endowments for the use of the government. This had already been done in the past, although haphazardly.* In 1852-53, need for financial stringency** finally tipped the scales in favor of a more systematic procedure designed to absorb these surpluses. Records of Rajguthi endowments

*For example, until 1837, Guthi lands of Taleju temple in Bhaktapur were managed by one Laxmi Das Newar. In that year, Syuna Putwar obtained two-thirds of these lands on a seven-year lease on condition that he repaired a portion of the royal palace of Bhaktapur. Two years later, Laxmi Das Newar offered to pay Rs 200.00 per annum if at least one-third of these lands was restored to him, and the government accepted the offer. Foreign Ministry Records, Order Regarding Lease of Taleju Temple Guthi Lands in Bhaktapur, Shrawan Sudi 12, 1896 (August, 1839); Order Regarding Contract for Lands Owned by Nilakantheshwarnath Monastery in Bhaktapur, 1842 (1785). According to this order, 435 ropanis of monastic lands were given out on contract for a five-year period, subject to an annual payment of Rs 200.00 to the government.

**Nepal's public finances were in a deplorable condition during the early years of Jang Bahadur's regime. In 1852-53, the total cash revenues of the Government of Nepal amounted to only Rs 1,694,944; land revenue amounting to Rs 1,928,605 was spent in the form of Jagir and other land assignments before it reached the public exchequer. Meanwhile, Kathmandu was at that time engaged in preparations for a war with Tibet and hence needed to utilize all possible sources of revenue. Revenue and Expenditure of the Government of Nepal, 1909 (1852-53).

were therefore compiled for the first time in 1852-53. The original deeds of endowment were examined to detect cases of unauthorized personal appropriation of surplus income by Guthiyars. In cases where the original deed had entitled the Guthiyar to operate the Guthi and appropriate the surplus on a lifetime or inheritable basis, possession was left undisturbed according to the prescribed conditions. But if the deed did not specifically entitle the Guthiyar to these privileges, the government resumed the right of operating the Guthi. It then gave the Guthi on contract to the person who offered to pay the highest amount of royalty without dislocating the prescribed Guthi functions.³³

Thus the new policy actually involved a meticulous reference to and implementation of the original deeds of endowment. Jang Bahadur was thus not only able to maximize revenue from Guthi endowments for the use of the State, but was at the same time able to show that the desire to entrench the sanctity of the Guthi system had been his primary motivation. The success of this policy can be ascertained from the growing volume of revenue which the government thereafter derived from Rajguthis, amounting to Rs 25,728.00 in 1852-53 and Rs 34,467.00 in 1861-62.³⁴

The policy appears to have undergone unusual vicissitudes, however. In at least one case, the surplus income of a Guthi which was being handed over to the government in accordance with the new policy was restored to the Guthi for expenditure on religious ceremonies because of the fear of divine inclemency. In 1863, the Guthiyar of a temple in Nuwakot reported:

I had been operating 9 Guthi endowments of the Bhairav temple in Nuwakot and depositing Rs 9.42³⁵ with the Guthi Kachahari Office every year. . . . In 1854, when a war was being fought with Tibet, the image of God Bhairav perished. . . . In 1863, therefore, Prime Minister³⁶ Jang Bahadur Rana directed me to utilize this amount of Rs 9.42 in burning 108 wicks and sacrificing a goat at the temple .³⁷

However, very few divine beneficiaries of Guthi land endowments in Nepal appear to have possessed such anthropomorphic characteristics.

The contract system was no doubt indispensable to the operation of Rajguthis in the early stages of the development of Nepal's administrative machinery. However, it soon outlived its utility, particularly in Kathmandu Valley, which was better administered than other parts of the country. We do not have information concerning the actual reasons which led Prime Minister Chandra Shamsher (1901-29) to initiate measures in which regular Guthi administrative offices replaced contractors under the Amanat system. Presumably, the profits earned by the contractors

attracted his attention in the same way as those made by Guthiyars had invited Jang Bahadur's half a century earlier. Nevertheless, the first steps to end the contract system appear to have ended in failure. The Amanat system was introduced on 41 Guthis in Kathmandu Valley in 1902, but Chandra Shamsher was soon compelled to retrace his steps.³⁸ The policy of replacing the contract system by the Amanat system was effectively implemented in Kathmandu Valley only in 1920.

The administrative reforms introduced by Prime Minister Chandra Shamsher in 1920 thus led to the emergence of a clear-cut policy whereby the surplus income from Guthis could accrue to the government. The assessment of this surplus necessitated compiling detailed lists of income and expenditure. Arrangements for the compilation of such lists were first initiated in 1901;³⁹ however, the process does not appear to have ever been completed. Finalization of lists of income and expenditure was a very slow administrative operation. In one case, 27 years passed before the decision to compile such lists for a monastery in Parsa district was actually implemented.* Moreover, there was no machinery available for ascertaining whether any Guthi liable to be classified as Rajguthi under existing regulations was being utilized by private individuals without proper authority. The situation necessitated a dependence upon private informants. In order to provide sufficient inducement to such informants to report cases of unauthorized utilization of Chhut Guthis, the government promised to assign such Guthis to them if their information was found correct. However, such indirect measures were apparently not very successful.

Rajguthis previously untraced are still being registered at the appropriate Guthi offices. In order to ascertain the surplus, lands owned by the Guthi are listed and the revenue assessment is then fixed. The in-kind expenditure required for discharging the prescribed Guthi functions is deducted from this assessment. The balance is converted into cash at the prescribed commutation rates. The amount to be spent in cash on the prescribed Guthi functions is then deducted. The remainder is then determined as the surplus income of the Guthi. Table V, which contains a summary of the lists of income and expenditure of the Nilbarahi temple in Bhaktapur, illustrates the procedure for determining the surplus income. The procedures for compiling lists of income and expenditure is similar for both Amanat and Chhut Guthis. Nor does there exist any difference with regard to the

*The decision was made on Falgun 13, 1981 (February 24, 1925), but the lists of income and expenditure received government approval on Bhadra 3, 2009 (August 19, 1952). Guthi Lagat Janch Office Records, Pindera Monastery Lands in Chainpur, Parsa District, Bhadra 31, 2009 (September 16, 1952).

Table V
Income, Expenditure, and Surplus Income of
Nilbarahi Temple in Bhaktapur⁴⁰

Total in-kind revenue	16.25 muris of paddy 2.28 muris of wheat	
In-kind expenditure	7.96 muris of paddy	
Total value of surplus grains:	Rs 47.76	
8.29 muris of paddy at 5 pathis per Rs 1.00		Rs 33.15
2.28 muris of wheat at 3.12 pathis per Rs 1.00		Rs 14.61
Cash revenue	<u>Rs 6.39</u>	
Total amount in cash	Rs 54.15	
Total cash expenditure	<u>Rs 38.50</u>	
Surplus income	Rs 15.65	

deposition of surplus income with the Guthi offices. The sole difference is that, during the Rana regime, the surplus income on Chhut Guthis was sometimes assigned to individuals.

The primary objective of official policy was to maximize revenue and keep expenditures at the lowest possible level. According to orders issued in 1914, no expenditure was to be sanctioned at a level higher than the prevailing one.⁴¹ Regulations were subsequently promulgated which stated that if prescribed expenditure on Guthis established by private individuals but currently being operated as Rajguthis exceeded the revenue accruing from the lands endowed, it should be scaled down accordingly. In similar situations involving Guthis established by the State or by members of the royal family, the matter was to be represented to the government before expenditure was curtailed because of the inadequacy of revenue.⁴²

The surplus income from Guthis was then transmitted to the government. In the case of Amanat Guthis, it was automatically appropriated by the government. In the case of Chhut Guthis, the surplus income was occasionally assigned for the personal use of

the Chhut Guthi holder, but more frequently it was paid to the government in full or in part.*

THE GUTHI SURPLUS

As a result of these measures, a large amount of Guthi surplus funds accumulated in the hands of the government. These funds were not tied to any specific Guthi endowment, and Prime Minister Jang Bahadur had in fact treated them as part of the State revenue.⁴³ However, Prime Minister Chandra Shamsher appears to have followed the policy of using such surplus Guthi funds exclusively for charitable and philanthropic purposes. Until 1917, funds for the repair of government buildings, bridges, and other installations in the district areas came from revenues collected in the district. Regulations promulgated in that year prescribed that bridges and hospitals should be repaired with Guthi surplus income.⁴⁴ Guthi surpluses were thus kept separate from the general revenues.

These regulations also prescribed that such surpluses should be utilized for the operation of hospitals in specified districts, mostly in the Tarai. Measures were subsequently taken to widen the sphere of Guthi expenditure to cover "hospitals, ayurvedic dispensaries, English and Nepali language schools, and hostels."⁴⁵ In fact, almost all public welfare activities undertaken during the Rana regime appear to have been financed with Guthi surpluses. Even the expenditure incurred on the administration of such activities was charged similarly. The trend was

*These payments are variously described as Kasar, Salami, or Khatami Salami. However, it is not possible to define these terms in a precise manner, because they are generally used loosely to refer to payments which are basically identical in nature. Salami is a token payment, usually of Rs 1.00, but in one case the payment of Rs 1,802.80 out of a total surplus income of Rs 3,014.30 is also called Salami (Guthi Lagat Janch Office, Karkach Monastery Lands in Bara District, Jestha, 1993 [May, 1936]), while in other cases similar payments are described as Khatami Salami (Cf. Guthi Lagat Janch Office, Pindara Monastery Lands in Chainpur, Parsa District, Bhadra 31, 2009 [September 16, 1952]). However, it appears correct to generalize that Khatami Salami payments are usually realized from monasteries, particularly in the Tarai districts. Kasar is for the most part used to denote the entire surplus accruing in the case of Chhut Guthis in the hill districts and Kathmandu Valley. (Cf. Guthi Lagat Janch Office, Pouwa Guthi Lands at Junphedi in Pyuthan District, Shrawan 31, 2000 [August 15, 1943]).

partially reversed by Prime Minister Juddha Shamsher (1932-46) in July, 1941, when he decreed that in the future expenditures for educational administration, ayurvedic dispensaries, water supply and administration, and the construction of roads and bridges should come from the general revenues. The items on which Guthi surpluses were to be utilized were specifically listed as the distribution of doles, the operation of charity kitchens and leper houses, the payment of salaries and other expenses in Guthi administrative offices, and the repair of Guthi buildings, bridges, rest houses, and temples.⁴⁶

TEMPLE FUNDS

The surplus revenue from Guthi land endowments differs from those funds maintained by certain important temples such as Pashupatinath in Kathmandu. The surplus revenue of the temple, as well as all offerings made by devotees, are credited to the temple treasury. Cash, ornaments, jewelry, and other valuables, once deposited in the Pashupatinath temple treasury, remain unutilized. The total value of deposits made over the centuries must therefore be considerable. There have been certain occasions when the government utilized the Pashupatinath temple funds for specific purposes. King Jaya Prakash Malla (1736-68) of Kathmandu is said to have drawn considerable amounts of money from the temple treasury to finance his wars against Prithvi Narayan Shah.⁴⁷ Prime Minister Chandra Shamsher drew Rs 367,000.00 from the same source to pay compensation to slave owners when he abolished slavery in 1924.⁴⁸ There is no evidence that these amounts were ever refunded.

There are examples of other temple funds also having been utilized occasionally for governmental or individual requirements on a refundable basis. King Ran Bahadur Shah and certain members of the nobility borrowed a sum of Rs 6,044.00 from the Digutaleju temple at Kathmandu; a memorandum prepared in 1798 shows that only Rs 400.00 had been repaid by that year.⁴⁹ There is no evidence in recent history to show that the practice of borrowing temple funds was commonly followed.

PUBLIC WELFARE ACTIVITY AND THE STATE

After the downfall of the Rana regime in 1951, a budget system was introduced in Nepal. Since that time expenditures for health, education, and other public welfare services have also increased considerably. As a result of these developments, the distinction between Guthi funds and the general revenues has lost all practical significance. Nevertheless, the sacrosanct nature of Guthi revenues was observed as a matter of principle. In 1962, provision was made in the Constitution for keeping separate accounts

of the two revenues.⁵⁰ With the objective of implementing this constitutional provision, in 1964 the management of Guthis was removed from the jurisdiction of the government and placed under the Guthi Corporation. Problems relating to the administration and management of Guthis will be discussed in the next chapter. In the present context, however, we may add that with the formation of the Guthi Corporation, the government relinquished a source of revenue which yielded approximately Rs 1 million yearly. The government does not appear to have delegated to the Corporation the activities financed through this income heretofore. The formation of the Guthi Corporation thus constitutes a recognition of the fact that public welfare activities are the normal function of government and need to be financed from public revenues on a progressively expanding scale. It also indicates that such activities can no longer be financed by the more or less static Guthi revenue. The Corporation has, however, been permitted to utilize its resources in supplementing these activities in the fields of religion, education, culture, and social welfare.⁵¹

VII. PROBLEMS OF GUTHI ADMINISTRATION AND MANAGEMENT

In Chapter III, we discussed how the meaning of the term Rajguthi underwent changes owing to the exigencies of administration and management. Originally, it referred to Guthi land endowments made by members of the royal family. The term is now used to denote all Guthi land endowments under the administrative control of the State. This development in itself indicates an increasing movement towards State control and management of Guthi land endowments. We shall now describe the various categories of trustees and functionaries traditionally employed to discharge Guthi functions and analyze the impact of the Amanat system on the traditional pattern of Guthi administration and management. We shall then discuss the administrative responsibilities of the State in the light of these developments.

GUTHIYARS AND TEMPLE FUNCTIONARIES

Trustees who are responsible for the management of Guthi endowments are called Guthiyars. In the case of Rajguthis, these trustees were generally respectable persons belonging to the area where the endowment was located.¹ In order to insure that they performed their function with integrity, endowments made during the Malla period sometimes stipulated that trustees should not concurrently hold any salaried office in the government or receive their means of livelihood from the king.² However, there is no evidence that the position of Guthiyar has been subject to such disqualifications during recent periods.

Responsibility for the actual performance of those religious and charitable functions stipulated under Guthi land endowments, which often involve mystic or esoteric rites, rests with the priests and other functionaries belonging to particular castes or communities. In addition, every temple and monastery employs a number of menial functionaries such as caretakers, players of musical instruments, and sweepers. Members of the Kushle and Pode communities have been traditionally employed as sweepers.³ The playing of wind instruments and the beating of drums are usually reserved for the Kushle and Damai communities, since people of higher caste are considered to have lost their caste if they perform these functions. Kushle musicians are also often employed as watchmen.⁴ Functionaries who assist in the collection of revenue on Guthi lands are known as Mohinaikes.

Heads of Hindu monasteries, called Mahants, comprise another category of Guthi functionaries. Mahants must belong to the particular religious order for whose benefit the monastery was founded, and the appointment of aliens as Mahants is prohibited.⁵ However, members of the same religious order are found in both

Nepal and India and there is constant traffic back and forth among them. The traditional functions of Mahants, according to an order issued by King Girban in 1806 to the Mahant of a monastery in Mahottari district, are:

. . . to collect the produce of the lands endowed, and, subject to religion and morality, conduct the regular and ceremonial functions, including offerings of lights and incense to God Vishnu; to operate the Sadavarta, and appropriate the surplus income of the monastery.⁶

The general distinction between Guthiyars and temple functionaries is that while the latter are responsible for the actual performance of the stipulated Guthi functions, the duties of Guthiyars are restricted to administration and management. According to a Guthi endowment made at a temple in Pachali, Kathmandu, in 1813:

The Guthiyars are responsible for the management of this Guthi. They shall collect the rents in time, sell the proceeds according to need and purchase materials required for religious observances. They shall supervise the periodic Guthi functions, prepare accounts of income and expenditure, take custody of the surplus income and undertake necessary repairs.⁷

However, there were numerous cases in which the functions of the Guthiyar were assigned to the temple priest, who was thus entitled to appropriate the surplus income of the Guthi.⁸ In fact, in the case of Mahants, this is the general rule. Elsewhere, "the Guthiyar shall provide the materials, and the priest shall perform the worship."⁹

In view of the difficulties which arise from frequent changes of Guthiyars, the government generally favored the appointment of Guthiyars on a permanent and inheritable basis.¹⁰ The position was inheritable, subdivisible, and occasionally even transferable.¹¹ The position of temple functionaries is also generally inheritable. On the death of a temple priest whose position is inheritable, the most suitable person among his heirs is appointed to succeed him;¹² however, the position cannot be shared among several heirs. The position of lower-grade functionaries is inheritable as well as subdivisible. Minors are entitled to have their obligations discharged through a proxy until they come of age.¹³

In the case of the Mahants of Hindu monasteries, inheritability is generally on a disciple-to-disciple basis, subject to government approval.¹⁴ In Buddhist monasteries situated in the northern hill areas, the abbots are called Lamas. Deceased Lamas are often succeeded by persons believed to be their reincarnations.¹⁵

The system of appointing priests at Pashupatinath temple in Kathmandu is completely different. According to a convention believed to have been established by Shankaracharya, the great Hindu revivalist who flourished in India around the beginning of the ninth century, only Brahmans belonging to the "Karnatak, Maharashtra, Andra, and Dravid communities and born in the regions south of the Vindhya mountains" in India can be appointed as priests at this temple.¹⁶ The convention is still observed. The appointment of relatives of the Chief Priest is strictly prohibited, although his recommendation is essential.

The remuneration of Guthiyars of Rajguthis generally consists of the surplus income of the Guthi. This is sometimes supplemented by free feasts on ceremonial occasions. The practice of paying Guthiyars for their services in the form of land assignments does not appear to have been followed. Temple functionaries, on the other hand, receive remunerations in various forms. These include assignments of lands or rents on Guthi lands belonging to the temple,¹⁷ cash salaries on a monthly or yearly basis,¹⁸ or one or more Handis, consisting of rice, blackgram, salt, turmeric powder, and other foodstuffs sufficient for one meal for an adult person daily.¹⁹ At Pashupatinath and certain other temples in Kathmandu, functionaries appointed to assist in the collection of revenue are occasionally paid a commission, called Daje, amounting to 1 pathi of grain for every 20 pathis actually collected.²⁰ Land assignments are variously called Seba Birta,²¹ Jagir,²² or Khangi Guthi.²³ Jagir and Seba Birta tenures ordinarily come under Birta tenure. However, in this case these assignments, irrespective of the actual terminology used, constitute a part of the land endowed as Guthi. They represent an assignment of Guthi lands, not of Raikar lands, and hence come within the scope of the present study. Recent measures aimed at the abolition of the Birta and Jagir forms of land tenure in Nepal are not applicable to these pseudo-Birta and -Jagir land assignments.

The area assigned to temple functionaries naturally depends on the status of the beneficiary and the Guthi lands available for disposal. The most affluent functionary from the point of view of land assignment is the Chief Priest of Pashupatinath temple with approximately 285 ropanis and additional perquisites in various forms.²⁴ Kushle musicians at the Suryavinayak temple in Bhaktapur have an assignment of 5 to 6 ropanis each for 10 persons, with an additional 3.5 ropanis to be held in common for celebrating communal feasts.²⁵ Occasionally, such land assignments have been made on a collective basis to all functionaries of one class at a temple. In 1838 Kushle musicians at the Nilbarahi temple, also in Bhaktapur, were granted 18 ropanis of waste and Pakho lands as Jagir.²⁶

Temple functionaries were usually granted additional privileges, such as exemption from the Saune Fagu and other taxes,

and exemption from the obligation to provide unpaid labor (Jhara, Beth, and Begar) for government requirements.²⁷ Exemption from compulsory labor was a privilege of doubtful utility, as their temple duties must have made it physically impossible for many functionaries to discharge both obligations simultaneously. However, temple services were more regular and necessitated less mobility than compulsory labor obligations. Often these exemptions constituted the sole benefits which temple functionaries enjoyed. Local inhabitants were thus obligated to bring flowers for daily worship at temples, draw the chariot of the deity on the occasion of festivals, and sweep temples, without any land assignment or other perquisite.²⁸ Even then, such exemption was more a matter of custom than of standard policy. According to an order issued to local authorities in a village of Dailekh district in 1835:

If it appears that caretakers and sweepers employed in different temples have been exempt from unpaid labor obligations from ancient times, do not exact such labor from them now.²⁹

An interesting privilege provided to Kushle musicians in certain temples was the right to collect food and customary dues from the people inhabiting areas around the temple.³⁰ But there is no reference to the quid pro quo, if any.

Wages of Guthi functionaries are generally very low. The caretaker of a rest house at Purtightat in Gulmi district receives an annual salary of only Rs 12.00.³¹ Where remuneration is paid in the form of land or rent assignments, an income of even 3 muris of paddy per year is not uncommon, though it is hardly sufficient to feed even one person for a year. In addition, rising prices have reduced the real value of cash emoluments. In the example given above, Rs 12.00 fetches hardly 1.5 pathis of rice at the present time. However, no attempt has ever been made to increase the wages of temple functionaries, either in absolute terms or relative to the present purchasing power of the rupee. Some functionaries appear to have partly overcome the problem by occupying several positions simultaneously.³² What is more, not all Guthi functionaries are obligated to work on a full-time basis. At Pashupatinath temple, there are functionaries who are required to discharge the functions assigned to them only once every two or three years.³³ They are thus able to supplement their income from other sources.

ROLE OF THE STATE

Originally, the government does not appear to have supervised the function of Guthiyars beyond issuing normal or religious injunctions. A Guthi endowment made by King Girban in 1809 thus enjoined Guthiyars "not to covet more than what has been assigned

to you, but to perform the daily religious functions in the prescribed manner and wish our welfare as well as that of our children."³⁴

In another case concerning a Guthi land endowment to Pashupatinath temple in Kathmandu in 1814, Guthiyars were reminded that they would be guilty of "sin as mentioned in the scriptures" if they succumbed to greed or negligence.³⁵ Formal arrangements were occasionally felt necessary to insure that Guthiyars performed their duties properly. In 1804, King Girban appointed an officer to supervise the work of Guthiyars on Guthi lands endowed by his parents to the Taleju, Pashupati, Guhyeshwari, and other temples in Kathmandu Valley.³⁶ He discovered that Guthi functions had been disrupted in many cases.*

Sometimes, in order to insure the proper management of Guthis endowed by members of the ruling family, Guthiyars were specifically obligated to maintain accounts of income and expenditure and to submit them to the royal palace when so directed.³⁷ Guthiyars in such cases were also required to approach the royal palace directly if natural calamities disrupted the supply of materials prescribed for discharging Guthi functions. Severe penalties were imposed on delinquent Guthiyars. According to an endowment made for the Guhyeshwari temple by the Queen-Mother during King Girban's reign in 1805:

May the anger of the Goddess fall on any Guthiyar who neglects his duties! . . . Such Guthiyars shall be shaved and degraded from their caste, or their property shall be confiscated, or they shall be punished with death and members of their family sold as slaves, or they shall be banished from the kingdom, according to their caste and the nature of the offense.³⁸

However, these arrangements covered only a few specified Guthis. In general, only complaints that traditional religious functions were violated by Guthiyars resulted in government interference in Guthi affairs. The Guthiyar of a temple was dismissed in 1834 when the local people complained that he did not provide

*Thus in one case involving a Guthi endowment in Deopatan, Kathmandu: "When investigations were conducted to ascertain whether the religious functions were being conducted or not according to custom and tradition, it was found that the Sadavarta was not being conducted, and that the income of the monastery had been misappropriated. . . . The head of the monastery thereupon absconded" (Guthi Endowment in Deopatan, Kathmandu, Granted to Baladev Ban, Marga Badi 12, 1863 November, 1807).

the temple functionaries with money to buy sacrificial goats and buffaloes in time and generally did not attend to his duties properly.³⁹ The need for private cooperation in detecting cases of violation was thus an important aspect of official policy in respect to Guthi administration. According to one endowment:

Any virtuous person who protects this Guthi and makes efforts for the continued performance of the prescribed religious functions shall acquire the merit of having performed the Five Great Sacrifices. He shall be blessed with the grace of the Goddess.⁴⁰

The responsibilities which the Government of Nepal assumed in respect to Guthis until the mid-nineteenth century thus did not cover any aspect of operation and management. They were, for the most part, limited to discovering and taking action on cases of violation of the prescribed religious or charitable functions or misuse of Guthi lands. In orders issued by King Ran Bahadur Shah on the eve of his abdication in February, 1799, we find government officials directed to

. . . find out if Guthiyars of Guthis anywhere in the Kingdom have appropriated the Guthi income but let the Guthi lands be damaged. In case any Guthiyar is found to have done so, a fine amounting to double the value of the rents appropriated by him shall be imposed, and he shall be obligated to repair the land. He shall then be warned that if he does not perform the prescribed Guthi functions every year with the Guthi income, the Guthi will be taken away from him.⁴¹

In these circumstances, the machinery created for purposes of Guthi administration appears to have been rudimentary. It consisted solely of an office at the central level, known as the Guthi Kachahari. This office discharged quasi-judicial functions relating to confirmation of Guthi land endowments, Guthi land titles, misappropriation of Guthi funds, and violation of Guthi functions. The Guthi Kachahari was also responsible for taking over unclaimed Guthi endowments for State management.⁴² There is no evidence, however, that this implied direct management. No such system ever existed for Guthis endowed by members of the royal family.

GUTHI MANAGEMENT UNDER THE AMANAT SYSTEM

The contract system of Guthi management was introduced by Prime Minister Jang Bahadur in 1852-53. Under this system, the powers of Guthiyars were drastically curtailed. Functions relating to revenue collection were removed from their jurisdiction, and entrusted to contractors. In addition, contractors were put

in charge of procuring the commodities required for discharging the prescribed religious or charitable functions. The Guthiyar's responsibility was limited to insuring that all these operations were performed smoothly. Originally a trustee-cum-manager, the Guthiyar lapsed into a mere supervisor.

The introduction of the contract system inevitably led to a proliferation of the administrative responsibilities of the government in respect to Guthi land endowments. It was now necessary to maintain detailed lists of such endowments and arrange for the issuance of contracts. These developments necessitated a reorganization of the Guthi administrative machinery. Prime Minister Jang Bahadur appears to have instituted a separate office for that purpose, the Guthi Bandobast Adda (Guthi Administration Office), at his official residence in Kathmandu. Apparently this new office replaced the old Guthi Kachahari Office.

In 1920, the contract system was abolished, and the Amanat system of Guthi administration was introduced. Functions relating to revenue collection, disbursements, and procurement of commodities, and to inspection and supervision were taken over by different government agencies. The abolition of Guthiyars on Amanat-operated Rajguthis was inevitable under these circumstances. According to an official order issued in February, 1933, regarding the Guthi land endowment of a temple in Lalitpur: "Guthiyars are no longer necessary to operate this Guthi, since it has been taken over as Amanat."⁴³ The introduction of the Amanat system therefore necessitated the creation of separate government agencies to handle the collection and disbursement of Guthi revenue.⁴⁴

In subsequent years new offices were created on the central level to handle different aspects of Guthi administration and management. Separate offices were set up, not only to maintain records of Guthi land endowments, collect Guthi revenues, and disburse them, but also to discharge administrative functions relating to Guthi functionaries and Chhut Guthi assignees and to check whether the religious and charitable functions stipulated under both Chhut- and Amanat-operated Guthi land endowments were being performed according to the customary procedure. The old Guthi Bandobast Office functioned as the central agency coordinating and supervising the work of all these offices. In 1938, the records section of the Guthi Bandobast Office was reorganized as a separate office to facilitate the proper maintenance and availability of endowment deeds and other Guthi documents.⁴⁵ Since Guthi revenues were kept separate from the general revenues, these Guthi offices were wholly financed from Guthi revenues, but at the same time remained part and parcel of the government administrative machinery.

All the offices mentioned above were located in Kathmandu. In Bhaktapur, an office for handling Guthi revenue collection and

disbursement has been functioning since 1934.⁴⁶ In the districts, Guthi functions, including the collection of revenue, are handled by the appropriate Revenue Offices of the government,⁴⁷ but there is no evidence that the administrative expenses incurred in discharging these functions are deducted from the revenue collected. Nevertheless, the heavy load of Guthi functions in certain districts have made separate Guthi offices necessary. In Mahottari district, there is a separate Revenue Office devoted exclusively to handling collections and disbursements, and to discharging other administrative functions relating to Guthi land endowments in the district.⁴⁸ Guthi revenues collected by this office in excess of local requirements are sent to Kathmandu.⁴⁹ Similar administrative machinery has been created in Morang and Janakpur as well. In addition, a few important temples and monasteries in different parts of the country have their own administrative arrangements for the collection and disbursement of revenue and the performance of other administrative functions. These include a number of offices at Pashupatinath temple in Kathmandu, as well as at Matsyendranath Temple Guthi Office in Lalitpur and the Matihani Asthan Managery Office in Mahottari.

Closely paralleling the central Guthi administrative setup in Kathmandu was the machinery created for the administration and management of Tin Sarkar Guthis, that is, Guthi land endowments made by members of the Rana family before 1950. The Tin Sarkar Guthi had its own Guthi Bandobast Office. It also had offices for the collection and disbursement of revenues as well as for the maintenance of records. Prior to 1950, this setup functioned under the jurisdiction of the Rana Prime Minister in his private capacity. Unlike Rajguthi land endowments under the Panch Sarkar Guthi, its functions relating to the construction and repair of temples and other Guthi buildings, the audit and maintenance of cash were not performed through the appropriate departments of the government. The Tin Sarkar Guthi therefore had its own offices to audit its accounts and undertake repair and construction operations. It also had its own treasury.

Revenue on Guthi Birta and Chhut Guthi lands is collected by the owners and assignees themselves without any official intervention. In exceptional cases, this revenue is collected through official channels and transmitted to the appropriate Guthiyar. When Raikar land was assigned as Guthi to compensate for Guthi land acquired by the government, the landowner was obligated to pay rents in kind. Under Raikar tenure, in-kind tax assessments were commuted into cash at rates much lower than the current price level of agricultural produce. But this advantage was denied to the landowner when his land was converted into Guthi. Such landholders, therefore, often defaulted in payments of rent to the Guthi. In 1938, the government directed that in such cases collections for the first year should be made through the official collection machinery on behalf of the private Guthi owner.⁵⁰ But

since compensation for Guthi lands is now made in cash in the event of acquisition, this arrangement is no longer necessary.

The abolition of Guthiyars on Amanat-operated Guthi endowments has enhanced the status of temple and other functionaries and has led to their proliferation. In the hill district, the introduction of the Amanat system has not necessitated the creation of separate government agencies to handle revenue collection and disbursements--priests and caretakers of temples and other Guthi institutions are responsible for these operations under the supervision of the appropriate revenue office of the government.⁵¹ In many such cases, the number of functionaries has been increased. Priests have been assigned a definite income, whereas previously they depended at times solely on individual offerings of food or money to the temple deity.⁵² In at least one respect, however, the introduction of the Amanat system has meant a new burden on Guthi functionaries. Notwithstanding their low wages, functionaries in Amanat-operated temples, with the exception of sweepers and musicians, are required to pay a levy called Salamiaat rates ranging from Rs 0.13 to Rs 1.00 each according to the value of the wages received. Thus, functionaries who receive a salary of Rs 26.00 to Rs 50.00, or a land or rent assignment fetching an income of 6 to 10 muris of foodgrains yearly are taxed at the rate of Rs 0.25 each.⁵³ The levy is certainly low, but so is the income on which it is assessed. Its regressive character is highlighted by the fact that no such obligation has been imposed on the profits accruing to landholders on Amanat-operated Guthi lands.

In 1938, in an effort to impose stricter government supervision on lands assigned to the various functionaries on non-Amanat Guthi endowments, the government decided to introduce the Tirja (draft) system as on Jagir lands.* Under this system, these functionaries would be entitled to appropriate rents on their land assignments only on the basis of drafts issued every year in their favor.

The modifications which were subsequently made in this decision highlight the basic difference between the Guthi land assignment system and the Jagir. It was pointed out that many Guthi land holdings were damaged by riverine action or washouts or, owing to discrepancies in land records, were even non-existent. Thus the issuance of Tirja drafts covering individual plots of land might at times deprive the temple functionary of his entire income. Normally, such losses are deducted on a proportionate

*The Tirja system was introduced on Tin Sarkar Guthi lands in 1920. Law Ministry Records, Shri Tin Sarkar Guthi Tahasil Bakyauta Office Regulations, Baisakh 19, 1977 (May 11, 1920), Section 31.

basis from functionaries holding good lands, and therefore this practice was continued. The introduction of the Tirja system was also opposed because since Guthi land assignments are both inheritable and subdivisible, the same holding is not infrequently held by a number of relatives. Tirja drafts in such cases could not therefore be issued only in the name of one person. Accordingly, the names of all beneficiaries were listed and the value of the assignment was also indicated. Moreover, in many cases assignments were made collectively in order to insure that the produce was shared equally even if the holding comprised lands of varying qualities. The Tirja draft was therefore handed over to the leader of the team of functionaries in the presence of all the beneficiaries.⁵⁴

RECENT DEVELOPMENTS

In 1951, with the downfall of the Rana regime, Tin Sarkar Guthi Offices automatically came under the control and jurisdiction of the government. Tin Sarkar Guthis were thus brought within the ambit of the Rajguthi system. The existence of parallel administrative offices to discharge similar functions in respect to existing Rajguthis and the abolished Tin Sarkar Guthis thus became anomalous, but it was not until 1961 that the entire Guthi administrative machinery at the central level was reorganized. Accordingly, new offices were created to collect and disburse Guthi revenues in Kathmandu, Bhaktapur, and Lalitpur. Separate offices were established for discharging administrative functions relating to temple functionaries and Chhut Guthi assignees, maintaining records, repairing and constructing temples and other Guthi buildings, and supervising the discharge of Guthi functions in all Rajguthis. All distinction between the Tin Sarkar Guthi and the Panch Sarkar Guthi has thus been placed under the Lalitpur Guthi office.⁵⁵ However, similar efforts to amalgamate the different offices at the Pashupatinath temple have proved abortive. Apparently as a result of opposition on the part of the temple authorities, the government subsequently decided that "these offices will not be amalgamated, but will remain separate as usual according to royal orders and tradition."⁵⁶

Although long overdue, these upper level reforms do not touch the basic problem. No attempt has been made to rationalize the structure of the Guthi administrative machinery at the level of individual endowments. Guthi land endowments made for Pashupatinath temple at Kathmandu are currently administered by the temple offices themselves or by offices directly under the Guthi Corporation, according to the nature and author of the endowment. This procedure leads to frequent difficulties in the collection and disbursement of what are, after all, lands belonging to the same temple. It would therefore be more appropriate to reorganize the administration of Guthi land endowments on the basis of the temple or other beneficiary.

A basic reorganization of the Guthi administration and management system must in fact be preceded by the adoption of clear-cut policies with regard to public versus private management. The administrative machinery can hardly effectively encompass the entire range of the Guthi system as long as large numbers of Guthi endowments of considerable national importance remain under private management. Questions relating to the public versus private management of Guthi land endowments will therefore be discussed in the next chapter.

VIII. THE GUTHI CORPORATION

The existing pattern of the Guthi administration and management system reflects a compromise between the conflicting goals of public and private management of Guthi lands. It was developed during the Rana regime to fulfill the State's need for additional sources of revenue to finance the charitable and public welfare activities which must be operated by every modern State to some extent or other. However, this administrative system also provided satisfaction for the desire for personal privilege of members of special groups in the society under an autocratic regime. We shall now describe the formation of the Guthi Corporation which took over the administration and management of Rajguthi lands and analyze the measures it has taken so far. We shall also discuss necessary reforms in the existing Guthi administration and management system in the changed conditions of post-1951 Nepal.

THE GUTHI CORPORATION: COMPOSITION AND FUNCTIONS

The Guthi Corporation formed under the 1964 Guthi Corporation Act¹ has been superimposed on the existing Guthi administrative structure. It is an autonomous and corporate body with a 13-member Board of Directors headed by the Chief Ecclesiastical Authority of the Kingdom. The Assistant Chief Ecclesiastical Authority, the Chief Royal Priest, the Commissioner of the Bagmati Zone, the Directors of the Land Revenue and Archeology Departments, and a representative of the Ministry of Law are ex officio members of the Board, while the Administrator of the Corporation is ex officio member-Secretary. In addition, five nonofficial persons experienced in Guthi affairs are nominated as members by His Majesty's Government. The Act also provides for the formation of Guthi Boards at the district level to discharge functions delegated by the Corporation in respect to local Rajguthis, in case the government so directs.

The 1964 Guthi Corporation Act assigns to the Guthi Corporation the responsibility for the administration and management of all Rajguthis. The Corporation has been empowered to utilize the assets or revenue of any Rajguthi for any religious, educational, cultural, social, or philanthropic purpose. However, it cannot sell or otherwise alienate the immovable property of the Guthi or alter the functions prescribed in the deed of endowment, except with the prior approval of the government. The government has in this manner assumed the power of tampering with the traditional objectives of Guthi endowments, which it has seldom exercised before. The Corporation has been authorized to maintain surplus revenues in a reserve fund and can utilize or invest them in whatever manner it deems appropriate.

Actually, the formation of the Guthi Corporation to take over the administration and management of Rajguthis is a culmination of the contract system policy initiated by Prime Minister Jang Bahadur in 1852 and carried on by Prime Minister Chandra Shamsheer in the form of the Amanat system. The powers of general management, control, and supervision, which so far had been vested in the government, have now been delegated to an autonomous and corporate body. The over-all administrative jurisdiction of the government continues, however.

This divestiture of governmental responsibility for the discharge of quasi-governmental functions is not a development limited to the Guthi system. Similar corporations have also been formed to operate the electric supply and other public utility services. One of the reasons for such a policy is that "many of these services do not manage to cover even their annual expenditure from revenue and as a result they have to be subsidized from government funds."² According to a report prepared a few months before the formation of the Guthi Corporation, "for many years, Guthi has been operated with an excess of expenditure over income and the government has had to find this balance."³ The rationale is thus primarily fiscal and administrative. The preamble to the 1964 Guthi Corporation Act states:

Whereas it is expedient, since the Constitution of Nepal has separated the Guthi revenue from the State revenue, to take away Rajguthis from the jurisdiction of His Majesty's Government and provide for the establishment of a Guthi Corporation to insure their systematic management . . .⁴

However, the question of separating Guthi revenues from the Consolidated Fund was really only of secondary importance in the formation of the Guthi Corporation. The principle had first been adopted and actually implemented by Prime Minister Chandra Shamsheer approximately half a century ago.

In any case, the formation of the Guthi Corporation has set the pattern for the administration of Guthi land endowments at the central level for the time being. However, this is not the case in respect to district level administration. In 1962, before the Corporation was formed, District Panchayats had been empowered "to supervise the working of Guthis and make arrangements relating thereto."⁵ This vague provision was subsequently interpreted to mean that District Panchayats were empowered directly to operate Guthi endowments and to appropriate the surplus income.*

*Ministry of Panchayats, Jilla Panchayat Karya Vyavastha Niyamavali, 2020 (District Panchayat Working Procedure Rules, 1963), Nepal Gazette, Vol. 13, No. 27, Aswin 28, 2020 (October 14, *

It is thus clear that two different bodies have been entrusted with administrative responsibilities relating to Guthi land endowments at the district level--District Panchayats and District Guthi Boards.

The 1964 Guthi Corporation Act states that in all matters prescribed in it and the regulations framed thereunder, action should be taken accordingly, and that action in other matters should be taken under existing law.⁶ This may be construed to mean that with the enactment of the Guthi Corporation Act, those provisions of the 1962 District Panchayat Act which empower a District Panchayat to assume administrative responsibilities relating to Guthi have ipso facto lapsed. Otherwise, since District Guthi Boards will function under the Guthi Corporation, the surplus revenue of Guthis operated by these Boards will naturally accrue to the Corporation. There is little reason to think that District Panchayats will be interested in taking up an additional administrative burden when they are not entitled to appropriate the surplus revenue. It is possible, however, that they may be vested with a supervisory role over the working of District Guthi Boards under the general administrative control of the Guthi Corporation. How far such multiplicity of authority, if established, will contribute to administrative coordination and efficiency is another question.

CRITIQUE OF THE CHHUT GUTHI SYSTEM

The introduction of the Amanat system in 1920 and the formation of the Guthi Corporation in 1964 indicate the growing need for public participation in the operation and management of Guthi land endowments. Institutions financed through such endowments must naturally be operated from the point of view of the national interest, and not for individual benefit. It is therefore necessary to reappraise the need to retain the Chhut Guthi system in the light of recent administrative reforms and the social ideals ushered in after the downfall of the Rana regime. In essence, Chhut Guthi is a system under which the management of Guthis is entrusted to private individuals for operation and management. It usually carries the privilege of appropriating for personal benefit a part or the whole of the surplus income of the Guthi.

In the past, the management of Guthi land endowments was occasionally assigned to private individuals primarily because the

1963), Schedule 2. This schedule lists "Guthis operated by the District Assembly" as one of the sources of District Panchayat revenue.

government did not have a suitable machinery for this purpose. During the Rana regime, this system was often misused in order to enrich relatives and favorites. Nepal's social, political, and administrative conditions have undergone far-reaching changes since the time that the Chhut Guthi system was devised. More appropriate arrangements for operating Guthi endowments and insuring a better deal both to the divine beneficiary and to the nation are therefore necessary. There is no reason why the management of public temples and institutions should continue to be the prerogative of any particular family or clan only because its ancestor had been granted this privilege 100 or 150 years ago. The Guthi land endowment system may be sacrosanct, but specific arrangements created with specific motives at a particular point in the history of the Guthi system in Nepal cannot be assigned the same status.

The Chhut Guthi system has neither contributed to the operational efficiency nor to the proper utilization of Guthi resources. The main factor responsible for such inefficient management is that Chhut Guthi assignments are generally inheritable.* Inheritability has usually been interpreted to include the right of subdivision, which has often proceeded to extraordinary limits. In 1944, the number of persons responsible for the management of a Guthi endowed in Kathmandu for the maintenance of a bridge totaled 95.⁷ Since the Guthi could be operated by rotation, this meant that one person's turn would occur once every 95 years, assuming that the number remained stationary. The system thus insures neither administrative stability nor adequate attention to the development of the Guthi lands.

Superficially, it would appear that the Chhut Guthi assignee functions under close government supervision and is entitled to appropriate only what is specifically stipulated in the lists of income and expenditures. However, the government's failure to make continual adjustments in these lists in keeping with the rising prices of agricultural produce has fundamentally altered the percentage of the total income appropriated by the Chhut Guthi assignee and the Guthi Corporation and that actually utilized for the performance of the prescribed religious and charitable functions. While compiling the lists of income and expenditure, commodities were converted into cash at the commutation rates of

*Often specific conditions were attached to these rights. In one case, the government prescribed that this (Chhut) Guthi need not be subdivided among brothers nor operated by rotation along with other Guthiyars. After the death of the Guthiyars, it shall be inherited on the basis of primogeniture. But such cases are extremely rare. Guthi Lagat Janch Office, Pachali Ghat Guthi Lands in Kathmandu, Poush 29, 1983 (January 13, 1927).

the local Revenue Office, while part of the expenditure was listed in cash. Chhut Guthi assignees therefore make the prescribed disbursements in cash even though the same amount of money fetches progressively smaller quantities of the commodities required, consequent to the falling value of money. Accordingly, the difference between the increased value of the in-kind revenue and the static lists of expenditure is appropriated by the assignees themselves.

A concrete example will make this point clear. Lists of income and expenditure of a Guthi endowment belonging to Bhadrakali temple at Kathmandu were officially approved in April, 1931. The Guthi was assigned as Chhut. The total revenue assessment amounted to 21 muris of paddy, 1 load of firewood, and 3 gourds. Approximately 11.5 muris of paddy were to be used for the temple functions, while the balance of approximately 9.5 muris was converted into cash at the prescribed commutation rate of Rs 4.00 per muri. A sum of Rs 34.24 was allocated for necessary expenses in cash. The balance of Rs 4.30 was prescribed as the assignee's share.⁸ However, the actual value of the surplus in-kind revenue at the current price of Rs 75.00 per muri of paddy amounts to Rs 715.49.* As the prescribed cash expenses of Rs 34.24 do not mention the quantity of commodities required, there is no obligation on the Chhut Guthi assignee to spend a higher amount of money. The net surplus now left to him is thus Rs 681.23, although only Rs 4.30 had been assigned to him originally.

The amounts and percentages of the total income spent on the prescribed Guthi functions and appropriated by the Chhut Guthi assignee, both at the scheduled commutation rate and at current prices, are given in Table VI:

Table VI

Guthi Expenditure

(As percentage of total revenue at statutory and current prices)

	At Scheduled Commutation Rate		At Current Prices	
	<u>Amount</u>	<u>%</u>	<u>Amount</u>	<u>%</u>
Guthi functions	Rs 80.10	94.01	Rs 894.17	56.76
Chhut Guthi assignee	Rs 4.30	5.09	Rs 681.23	43.24

*This figure includes Rs 0.40 as the commuted value of 1 load of firewood and 3 gourds. It has been retained at the same level as in the original schedule.

Thus the percentage of the total revenue spent on the prescribed Guthi functions has decreased from 94.01 percent to 56.76 percent. The surplus appropriated by the Chhut Guthi assignee has increased from 5.09 percent to 43.24 percent. Thus, a little less than half of the total revenue is appropriated by the assignee, where only one-twentieth had been allotted to him before, a windfall which has accrued to him as a result of the discrepancy between the rates at which the revenue was originally valuated, the expenditure schedule finalized, and the current prices of agricultural produce.

The original schedules of income and expenditure for Chhut Guthis were formulated according to the principle that the entire surplus or a specified portion thereof should accrue to the assignee alone. There are also cases in which the entire surplus must be paid to the Guthi Corporation. The assignee therefore has no moral or legal claim to any additional surplus resulting from the discrepancy between the official rates at which in-kind revenue was converted into cash and the current price level of agricultural commodities. Chhut Guthi assignees would undoubtedly have demanded a revision of the schedules had prices fallen below the level mentioned therein; they have in fact made such claims when expenditure was specified in commodities which no longer could be purchased at the old rates. Since the discrepancy benefits the assignee, the initiative to revise the lists must be taken up by the Guthi Corporation.

The Guthi Corporation should revise the schedules in such a way that the assignee will be left free to appropriate no more than what was originally assigned to him. In the past, these schedules had been revised to make allowance for rising prices, irrespective of whether the Guthi was Chhut or Amanat. Rice collected as revenue on land owned by the Kumbheshwar Mahadev temple in Lalitpur was evaluated at 4.5 pathis per Rs 1.00 in 1853, but in 1901 the rate was changed to 3.12 pathis for the same amount.* There is no reason why a similar step should not be taken in the light of the current price level of agricultural produce.

CONVERSION OF CHHUT GUTHIS INTO AMANAT

Recent notices issued by the Guthi Corporation indicate that it recognizes the need to make changes in the Chhut Guthi system and to revise the income and expenditure schedules of Rajguthis of both Amanat and Chhut categories. In May, 1965, the

*It is significant, however, that no such step was taken when records of this Guthi endowment were compiled in 1933. Guthi Lagat Janch Office, Guthi Lands of Kumbheshwar Mahadev Temple in Lalitpur, Falgun 12, 1989 (February 23, 1933).

Corporation directed all Chhut Guthi assignees to submit accounts of their income and expenditure.⁹ It is not clear whether this directive applied also to these Chhut Guthis which had submitted such accounts before. The apparent objective was to absorb a portion of the surplus income so far appropriated by Chhut Guthi assignees.¹⁰ Indeed, the Corporation is reported to have already made a decision to abolish the Chhut Guthi system gradually.¹¹ The decision is no doubt appropriate. However, the gradual nature of the proposed measure creates certain difficulties that will have to be faced in the process. All Chhut Guthis recently abolished by the Corporation are monasteries in the Tarai districts where "inheritability" meant succession on Mahant-disciple basis. Such succession was, moreover, conditional upon government approval, and was not an automatic right as in the case of Chhut Guthis inheritable on the basis of consanguinity. It is not clear whether the Guthi Corporation also intends to take the drastic step of abolishing all such inheritable rights under the Chhut Guthi system.

REVISION OF INCOME AND EXPENDITURE SCHEDULES

The revision of income and expenditure schedules has so far been completed only in a few monasteries in the eastern Tarai districts, as well as in Pashupatinath temple in Kathmandu. No statement of objectives has been made, but it is possible to analyze the general policy followed in the changes made so far. The Guthi Corporation appears to have tried to refrain from making any change in the expenditure actually incurred for religious functions and ceremonies. It has slightly increased the emoluments of Guthi functionaries in selected cases, and has made drastic cuts in the allocation for the supply of food to visiting mendicants and pilgrims. This will be clear from the following figures for the Parsa* monastery in Mahottari district given in Table VII.

Expenditure on religious functions has thus remained stationary in monetary terms. The number of persons entitled to free food supply have been reduced by approximately one-third, while the total allocation for the wages of functionaries has been increased by slightly less than one-fifth. The changes made in respect to the yearly wages of functionaries at this monastery according to the order are given in Table VIII.

The wages of lower-grade functionaries have been increased. Those of higher grades have been left unchanged or have even been reduced in one case. The extent of the increase is more significant in the case of the Tarahi monastery, also in Mahottari district.

*This name should not be connected with Parsa district.

Table VII

Expenditure Schedules for Parsa Monastery in
Mahottari District

<u>Purpose</u>	<u>Expenditure According to Old Schedule*</u>	<u>Expenditure According to New Schedule¹²</u>
Religious ceremonies	Rs 540.30	Rs 539.50
Food supply	Rs 834.30 (for 5,240 persons)	Rs 558.88 (for 3,352 persons)
Guthi functionaries	Rs 1,329.60	Rs 1,573.00

Table VIII

Wages of Functionaries at Parsa Monastery in
Mahottari District

<u>Functionary</u>	<u>Wages According to Old Schedule¹³</u>	<u>Wages According to New Schedule¹⁴</u>
Mahant	Rs 960.00	Rs 960.00
Priest	Rs 144.00	Rs 114.00
Sweeper	Rs 57.60	Rs 134.40
Storekeeper	Rs 86.40	Rs 192.00
Attendant	Rs 43.20	Rs 134.40
Instrument player	Rs 38.40	Rs 38.40

*Law Ministry Records, Mahottari District Guthi Revenue Office Regulations, Ashadh 30, 1992 (July 13, 1935), Section 8. All figures given in Indian currency in these regulations have been converted into Nepali currency at Indian Rs 100:Nepali Rs 160. This was the official rate of exchange prevailing on April 30, 1966, and was used by the Guthi Corporation in revising the schedules of income and expenditure.

Previously, the total allocation for functionaries at this monastery, including the Mahant, amounted to Rs 69.60 and 7 maunds of agricultural produce. The amount has now been raised to Rs 1,418.00 and 104 maunds.¹⁵

The net result of these changes has been an increase in the amount of Guthi surplus revenues transmitted to the Guthi Corporation. Figures available for 11 Amanat Guthis in Mahottari, Saptari, Parsa, Kathmandu, and other districts, in which income and expenditure schedules were recently revised by the Corporation, indicate that a net deficit of Rs 7,763.00 in cash and a net surplus of 171 maunds of foodgrains have been converted into a net surplus of Rs 9,867.00 and 6,696 maunds.¹⁶ However, the conversion of Chhut Guthis into Amanat appears to have been more profitable from the standpoint of revenue. Ten Chhut Guthis in Mahottari, Parsa, Bara, and Kapilavastu districts, which were recently converted into Amanat, have thus yielded an additional Rs 240,869.00 to the Guthi Corporation.¹⁷ As a result of these measures, the Corporation's revenue account showed a net surplus of Rs 1,080,266.00 for 1964-65.¹⁸

OTHER REFORM MEASURES

The Guthi Corporation has initiated a number of measures with the objective of checking the misuse of Guthi lands. One such measure has been to increase revenue from Guthi lands used for residential purposes through differential rates of taxation. The Corporation has doubled existing rates of revenue on Guthi lands to be used for residential purposes in the future. Another component of this measure is a 10 percent tax on rents accruing to the owner from buildings constructed on Guthi lands, as well as on the value of such lands in the event of their alienation.¹⁹ Yet though the rationale behind this measure may be purely fiscal, it may actually serve as a deterrent to the use of Guthi lands for non-agricultural purposes, especially in urban areas.

The Corporation has also banned grants of vacant residential and commercial sites in the Pashupatinath temple area in Kathmandu, pending decision on an upward revision of the rate of the tax payable thereon, previously approximated at Rs 0.05 per square foot.²⁰ In Janakpur, efforts are being made to compile records of unauthorized construction of residential and commercial buildings on Guthi lands without paying any taxes thereon.* Chhut Guthi assignees have been prohibited from authorizing the construction of buildings on Guthi lands.²¹

*It has been pointed out that such registration alone will entitle the owners to sell their buildings. Anchal Sandesh Weekly, Baisakh 29, 2023 (May 11, 1966).

PUBLIC VERSUS PRIVATE MANAGEMENT

It is too early yet to analyze the impact of these measures on Guthi revenue, but it is obvious that public control of Guthi land endowments through the Guthi Corporation will prevent surpluses from being utilized for private benefit. In theory, therefore, the Amanat Rajguthi system of Guthi operation and management through the Guthi Corporation has much to commend it, in contrast to the Chhut Guthi and Duniya Guthi systems. We do not suggest that the Guthi Corporation should take up the direct management of all existing Chhut Guthi and Duniya Guthi endowments in the Kingdom of Nepal. Such a step would be neither administratively feasible nor socially desirable. What is necessary is to stabilize the management system, prevent Guthi resources from being appropriated by private individuals, and insure a minimum standard of efficiency and integrity. These objectives will be fulfilled even if all existing Guthis are not brought under Amanat operation.

Future policy in this sphere need not be based on the existing distinctions between Chhut and Amanat Guthis, or even between Rajguthis and Duniya Guthis. These distinctions are the result of such factors as favoritism and the reluctance to take up the Amanat operation of deficit Guthis. None of these factors has any relevance under existing conditions. The primary objective of the Guthi Corporation is to insure the proper administration and management of Guthi land endowments. There is no reason why it should be inhibited by the legacy of obsolete administrative arrangements and considerations of personal privilege.

It is desirable that all temples, monasteries, and other religious institutions of national or archeological importance should be under the direct control and management of Guthi Corporation. Private management of such institutions will definitely not be in the national interest. It is only by public management through the Guthi Corporation that Guthi institutions will be run with minimum danger of undue individual or communal interference or negligence. Legislation already exists empowering His Majesty's Government to acquire and control temples, buildings, rest houses, and other ancient monuments of importance. According to the 1956 Ancient Monuments Protection Act:

In case any ancient monument or archeological object located in any place is found to have been destroyed or damaged by reason of the negligence of the owner thereof, or in case any national loss is apprehended by reason of the misappropriation of any article contained therein, His Majesty's Government may, if it deems it necessary to protect them, acquire such ancient monuments or archeological objects from the owner thereof without any compensation, confiscate the concerned Guthi endowment in consideration of

the failure to protect the national wealth, register it as a State Guthi and thus protect such area or object.²²

However, a positive policy aimed at bringing all such Guthi endowments under the Guthi Corporation will be more effective than negative measures seeking to acquire them only in the event of loss or damage. According to one report:

Apparently in the desire to insure that the Guthi income is utilized in the manner stipulated by the donor . . . the government has not brought many ancient monuments owned by Guthis under its direct control and management. . . . However, not even one pice is spent on the maintenance of a temple which may have an annual revenue exceeding Rs 20,000.00, even if it already looks like a haunted house. Reports are frequently received that the temple ornaments are stolen. This tendency to utilize the Guthi system as a source of exploitation and fulfill individual interests has created a great danger to the safety of our well-known temples. In view of the large number of ancient monuments under Guthi endowments, it is obvious that administrative control over them is very inadequate.²³

The criterion for the public management of Guthi endowments should thus be their importance from the national or archeological viewpoint, not whether they fall in the category of Amanat, Chhut, or Duniya Guthi at the present time.

Guthi endowments of a charitable and philanthropic character may be entrusted to public organizations. Under the 1961 National Guidance Act, class organizations have been formed for children, youths, women, students, peasants, workers, and ex-servicemen with the objective of "channeling the forces of such organizations for the welfare and development of the appropriate class, as well as for national development and reconstruction."²⁴ These organizations might therefore be entrusted with the responsibility of managing Guthi land endowments pertaining to their sphere of activity, with the government or the Guthi Corporation maintaining over-all supervision. A precedent has already been established in this regard by the delegation of responsibility for managing certain orphanages in Kathmandu, previously operated by the Benevolent and Charitable Societies, to the Nepal Women's Organization. According to the 1964 Infants (Maintenance) Rules, the government allocates funds every year for the maintenance of these orphanages, and also deposes an advisor to assist the organization in discharging these functions. The rules contain provisions that the government will assume direct responsibility for the maintenance of these institutions in case the Nepal Women's Organization is unable to fulfill its obligations.²⁵ There is no reason why the same system should not be followed in respect to

other charitable and public welfare endowments. Hostels maintained under Guthi land endowments in Kathmandu and elsewhere might thus be entrusted to the Nepal Students' Organization and poorhouses to the Nepal Youth Organization. In some cases Panchayats at the village or district level may be able to discharge such responsibilities more effectively.

On the other hand, there is no reason why the Guthi Corporation should seek to interfere in the management of Guthi land endowments of a personal or family nature, such as the maintenance of a ritual function to be performed by private functionaries at a particular temple, the worship of the family deity, or the performance of religious functions on the anniversary of the donor's death. It is essential to lay particular stress on this aspect of Guthi management because recently, in course of the take-over of Tin Sarkar Guthis, the Guthi Corporation has also undertaken responsibility for observing the anniversary of the death of a member of the Rana family.²⁶ This provides additional ground to justify the proposal that the pattern of Guthi management in the future should be based not on the existing categories of endowments, but on the nature of their functions. A similar policy should be adopted with regard to religious institutions established for local or communal benefit, if the concerned community is itself taking an active interest in their management. More problems would be created than solved if the Guthi Corporation attempted to establish direct control over the Buddhist monasteries of the northern border areas. There is no evidence that the Guthi Corporation is doing any fresh thinking on the question of reorganizing the existing pattern of Guthi administration and management on these or any other lines.

Changes in the Guthi system are indispensable also to insure to the cultivator a fair share of the produce and permanent rights in the Guthi lands he tills. Agrarian relationships under the Guthi land tenure system, another major aspect of the Guthi problem, will be discussed in the next chapter.

IX. LANDLORD AND PEASANT ON GUTHI LANDS

In the previous chapters, we have discussed problems relating to the assessment and collection of revenue on Guthi lands and the discharge of the prescribed Guthi functions. Our discussion necessarily involved a survey of the Guthi system from above, that is, from the viewpoint of the Guthi authorities. We shall now shift our focus to study the type of landholding system which emerged as a result of measures taken to collect revenue on Guthi lands. We will also examine the circumstances which have led to subinfeudation on Guthi lands and the role to which the cultivator was relegated under the conditions of such subinfeudation.

APPOINTMENT OF CULTIVATORS

The Guthi system is essentially a rent-oriented land tenure system. Guthi functionaries seldom undertake the direct cultivation of the lands endowed. The system followed by certain Christian monastic orders, under which lands owned by the monastery are farmed under the personal direction of the abbot,¹ is largely unknown in the Rajguthi-endowed monasteries of Nepal.* Persons entrusted with the responsibility of supervising and performing religious and charitable functions under the Guthi system were not generally expected to cultivate the land themselves. Priests and Guthiyars belonged to the upper layers of society, which did not traditionally take up agriculture as an occupation. Moreover, direct cultivation was not feasible when large areas of Guthi lands situated in widely separated areas were involved. Another factor which possibly contributed to the development of tenancy on Guthi lands was the need to insure that Guthi functionaries performed their duties properly. Musicians and sweepers employed in temples thus received their remuneration in the form of a title to rents on Guthi lands assigned to them, even though they were often in a position to cultivate these lands personally. Finally, tenant cultivation provided Guthi owners with labor resources which could be impressed on a compulsory basis.**

* In East No. 3 district, however, there are Buddhist monasteries in which "at the time of planting or harvest the younger monks work in groups on the monastery's fields," (Christoph Von Furer Haimendorf, The Sherpas of Nepal, p. 152), indicating direct cultivation of monastic lands. But these appear to be exceptional cases and beyond the ambit of the Rajguthi system.

** Similarly, in medieval England, "the priory leased plots of land to sub-tenants, because it found drawing rents just as lucrative and less troublesome than farming its land directly." H. Bagley, Historical Interpretation: Sources of English Medieval History, 1066-1540, p. 120.

However, the importance of these factors should not be exaggerated at the present time. There are several cases in which Chhut Guthi assignees² and heads of monasteries³ personally hold lands belonging to Guthis managed by them, though not necessarily in the capacity of cultivators. The income they derive in this manner does not accrue to the Guthi. These assignees and functionaries thus operate in a dual capacity. Such practices per se do not have any effect on the Guthi management and landholding system.

Two systems are followed for appointing cultivators on Guthi lands. In general, the rights of existing cultivators are customarily inheritable and subdivisible. In the event of a vacancy occurring through the extinction of the cultivator's family or eviction due to default in the payment of the stipulated rents, any person who offers to pay the arrears is allowed to take up the lands for cultivation. However, there are also cases in which Guthi lands are leased out for specified periods to persons who offer to pay the highest amount of rent. This latter system is generally followed in the eastern Tarai districts on Jirayat lands attached to Jimidari holdings owned by Guthi temples and monasteries. Since the land is held on lease, no question of inheritability or subdivisibility can arise under this system. Moreover, rents are determined through bids, and are generally in kind.

EMERGENCE OF A LANDHOLDING CLASS

Cultivators appointed on a permanent and inheritable basis naturally enjoy a greater measure of security than tenants who hold their land by lease. Their occupancy rights have in the course of time emerged as full-fledged landholding rights, comparable to landownership rights on Raikar lands. The main factor contributing to this development has been the falling real value of payments due on Guthi lands. The discrepancy between the face value and the real value of these payments has created a margin of profit sufficient to accommodate a new class of rent-receivers in a position between the actual cultivator and the Guthi.

We shall first discuss how occupancy rights gradually emerged as landholding rights. The security of occupancy rights on Guthi lands, as on other categories of agricultural lands, has been a long-established custom in Nepal. The 1866-67 Legal Code prohibited the eviction of tenants on all categories of lands, including Guthi, as long as they paid the prescribed assessments regularly.⁴ According to an order issued by King Rajendra to the Guthiyars of a Guthi endowment at Handigaun, Kathmandu, in 1847, "cultivators on Guthi lands shall not be evicted as long as they pay the prescribed dues regularly."⁵

The rights of the Guthi tenant were based on the custom that any person who mixes his labor with the soil is entitled to

the use of its fruits. Subject to this general principle, Guthi lands were redistributed periodically to all active members of the local community in proportion to their physical capacity and the size of their family under what was known as the Raibandi system. Private enterprise was encouraged through the provision that if any person reclaimed waste lands and constructed irrigation facilities on them "through the strength of his loins," he could retain possession of the area thus reclaimed even if it exceeded the allotment which would have accrued to him through redistribution.*

Guthi land tenure policy was thus primarily related to the need for survival and the capacity for direct use. The person who reclaimed any land was allowed to cultivate it personally, but he was not entitled to resume possession if he had given it to others for cultivation.⁶ Individual rights on Guthi lands were thus limited to occupancy. They were inheritable and subdivisible, but their sale and mortgage were expressly prohibited by law.⁷ Even these rights reverted to the State at the time of periodic redistribution. Such redistribution appears to have been last effected in the course of the extensive land settlements conducted between 1854 and 1868. The records of land rights compiled during these settlements thus constitute the basis for existing private rights on Guthi lands.

However, the redistribution system became obsolete after 1868. Lands of better location or those with higher production capacity gradually became scarce. Sale and transfer of Guthi lands were then frequently conducted in spite of the statutory ban on

*Government of Nepal, "Jagga Jamin Ko" (On Land Matters), Muluki Ain (Legal Code), (1866-67 ed.), (1965 reprint), Section 1, p. 19. Although these provisions were enacted in 1853, there is evidence that they introduced no innovation, but only gave statutory form to a long-standing custom. Raikar land thus appears to have also been redistributed on a Raibandi basis during the 1837 settlement. According to an order issued in January, 1846, to revise the Raibandi redistribution made in course of this settlement in Thansing, West No. 1 district, "Collect complete particulars of good and bad as well as waste lands throughout Thansing, apportion them according to physical capacity and the size of the family, join inferior lands to good ones in such a way that rents payable to Jagirdars are not affected, and register the lands in the name of the Mohis." Raibandi Land Distribution in Thansing, Magh Sudi 4, 1902 (January, 1846). This system resembles in some respects the "Bhaichara" system of "land allotment in equal portions to cultivating families" in some areas of Uttar Pradesh, India. Gerald D. Berreman, Hindus of the Himalayas, p. 41.

such transactions. One method of circumventing the ban was to transfer such lands without any reference to the monetary transaction involved. When influential persons were concerned, such nominally gratuitous transfers were usually ratified under the royal seal.⁸ Innumerable transactions of this type must have also been conducted among common people although they lacked the influence to obtain similar ratification. Restrictions on the sale and mortgage of Guthi lands thus became ineffective in actual practice. Indeed, a general provision permitting land transfers irrespective of the form of tenure has been on the statute-book since 1888.⁹ This development was buttressed by the enforcement of legislation in 1923 requiring transactions in real estate to be officially registered.*

Occupancy rights on Guthi lands have thus been transferable since approximately 1888. The arrangements made in 1923 for the official registration of these transactions appear to have made them very popular. One problem which subsequently confronted the government was the need to adjust existing records of Guthi land rights in accordance with the new arrangements. Frequent transfers made it difficult to identify the person cultivating Guthi lands in the event of default in payments of revenue. In 1939, therefore, arrangements were made to record the names of actual holders of Guthi lands and to maintain Guthi records on a current basis.** As a result of these measures, private rights on Guthi lands became not only inheritable and subdivisible, but also transferable. They thus acquired the basic characteristics of full-fledged landownership, i.e., rights to use the land and enjoy its fruits, and to transfer such rights.

*Government of Nepal, "Registration Ko" (On Registration) Ain (Legal Code) (1932 ed.), Part III, Section 1, p. 126. This law does not expressly refer to Guthi lands, only to "Birta, Raikar and other categories of lands, as well as buildings constructed thereon." But since Guthi lands have been included in the Raikar land tenure category since 1888, transfers of tenancy rights on Guthi lands were obviously considered valid. Government of Nepal, "Jagga Pajani Ko" (On Land Evictions), Ain (Legal Code) (1888 ed.), Part III, Section 1, p. 25.

**These arrangements were first introduced in Lalitpur and Kirtipur revenue divisions in Kathmandu Valley on an experimental basis. Kathmandu Guthi Tahasil Office, Notification Regarding Guthi Land Transfers, Baisakh, 1996 (April, 1939). One decade later, in 1949, similar arrangements were decreed in the hill districts. Law Ministry Records, Land Mutations Order, Falgun 10, 2005 (February 22, 1949).

THE PROCESS OF SUBINFEUDATION

We will now discuss the second major development affecting the Guthi landholding system on Amanat-operated Rajguthi lands. The direct relationship between the cultivator and the Guthi had given way on a significant portion of the total cultivated area to a three-tiered hierarchy consisting of the Guthi, the landholder, and the actual cultivator. An increase in the cultivator's share of the produce was the basic factor contributing to subinfeudation. This share amounted to half the gross produce, according to a time-honored concept in Nepal. This concept has conditioned the level of the cultivator's expectations from the land. The cultivator would therefore prefer to relinquish his lands rather than remain satisfied with less than half of the produce. Since neither the Guthi nor the cultivator was prepared to accept less than the customary income being derived by each from the land, the emergence of another class of land interests between these two was unlikely.

When the Amanat system was introduced the earnings of Guthi cultivators exceeded the customary level. At that time arrangements were made to commute a percentage of the in-kind assessments into cash at fixed rates. This measure in itself would not have made a change in the prevailing situation if the commutation rates had kept pace with the rising prices of agricultural commodities. But they had not, with the result that the real value of the payment made by the cultivator progressively declined. Thus if the total assessment was 1 muri of paddy, half of this quantity was collected in cash at the conversion rate of Rs 6.16 per muri. The other half was collected in kind. As long as the market price of paddy remained constant at Rs 6.16 per muri, it made no difference to the Guthi cultivator whether the assessment was commuted into cash or not. But the price of paddy is now at least Rs 75.00 per muri. The cultivator therefore fulfills through payment of Rs 3.08 (for 10 pathis of paddy) an obligation for which he would have been required to pay Rs 37.50 in the absence of commutation facilities at rates fixed in 1934. The discrepancy between the statutory commutation rate for 50 percent of the in-kind assessment and the current value of paddy thus amounts to Rs 34.42. It constitutes an income additional to the normal share of half of the produce accruing to the cultivator.

This increased income could of course have been utilized for increased consumption. But two other alternatives have proved more attractive to cultivators on Guthi lands in Nepal. Cultivators found that the increased income could be utilized to yield a nonrecurring income in the form of its capital value; in other words, the right to this extra income could be sold. At 10 percent interest, this would bring in an amount of Rs 344.20 as a windfall. Alternatively, the increased income could be utilized to provide increased leisure. The cultivator then sublet the Guthi land on a rent of half of the gross produce and appropriated the increased

income without actually working on the land himself. His total earnings of course decreased, but he was now free to take up other gainful occupation.

The actual form which this choice takes depends upon a number of subjective factors which are not pertinent to the present discussion. But the end result is the same--the emergence of an intermediary class of interests on Guthi lands in a position between the actual cultivator and the Guthi. This development is entirely attributable to the discrepancy between the commutation rates of in-kind assessments and the current market prices of agricultural commodities. This intermediary class depends for its existence on the rigidity of the commutation rate schedule as compared to the current price level. Any attempt to tamper with these commutation rates will therefore immediately affect the earnings of this class. It is now clear why the government has been unable to modernize these rates: the political pressure exerted by this intermediary class has made it hesitant to alter the status quo, even if the *raison d'etre* for this class has entirely disappeared in the context of rising prices and the need to maximize Guthi revenue.

The foregoing discussion was concerned with the division of rights on Guthi lands between the intermediary landholder and the actual cultivator as a result of the partial commutation of in-kind revenue assessments. A similar development did not occur on Chhut Guthi lands only because no arrangements existed for the commutation of in-kind revenue assessments. However, it would be incorrect to presume that commutation facilities were the sole factor responsible for subinfeudation on Guthi lands. Subinfeudation also occurred on Guthi lands, both Amanat and Chhut, where revenue was assessed in cash. Since revenue assessment rates were determined long ago on the basis of prices then current, they represent a very low percentage of the real value of the produce. The difference between the total payment due to the Guthi and the real value of the produce therefore promoted subinfeudation in almost the same way as when in-kind revenue assessments were partially commuted at outdated rates. Revenue assessment rates in cash in fact meant nothing other than the full commutation of the in-kind rent at prices prevailing at the time of the endowment.

POSITION OF THE CULTIVATOR

We shall now study the problems faced by the actual cultivator under conditions of subinfeudation. Developments which took place in the lower stratum of the Guthi system concerned neither the Guthi authorities nor the government. Official policy and administration centered around measures to maximize revenue from Guthi lands, keep expenditure at a minimum, and insure the continuance of the customary Guthi functions. As long as the registered landholder remained responsible for payment of the prescribed

assessments, the Guthi authorities did not care in the least whether he cultivated the lands personally or appointed tenants for this purpose. The law therefore only defined the privileges and obligations of the landholding class, and ignored those of the actual cultivator. Provisions regarding registration of rights, fixed revenue assessments, and commutation facilities thus benefited the cultivator on Guthi lands only if he dealt directly with the Guthi Corporation or the Chhut Guthi assignee, instead of through intermediary landholders. There were no restrictions on the "right" of these landholders to evict cultivators or enhance payments due from them.

Nepali custom has generally accepted the principle that no peasant should be evicted from his holding as long as he makes the stipulated payments regularly. Fifty percent of the gross produce was considered the customary rent. However, there has been a conspicuous absence of adequate legal provisions and administrative machinery to insure that this custom was actually followed. In 1906, legislation was enacted to control rents and protect tenancy rights on Birta lands of transferable categories;¹⁰ however, Guthi Birta lands were not transferable and hence remained outside the purview of this measure. Intermediary landholders were therefore able to evict cultivators, subject only to the general rule that such eviction should not be made during the agricultural seasons.¹¹ They also enhanced rents without restriction. This situation was not peculiar to lands under Guthi tenure; cultivators working Birta and Raikar lands have fared similarly.

Legislation to protect tenants and control rents was first enacted in 1957. The definitions in the 1957 Lands Act were worded to cover rents and tenancy rights on Guthi lands as well. The act prohibited the realization of rents in excess of 50 percent of the gross produce, prohibited additional levies, and permitted evictions to be made only through courts of law.¹² In December, 1959, the act was amended to exclude Rajguthis until alternative arrangements were made for operating the religious and charitable functions prescribed thereunder.¹³ Recent land reform legislation has left this situation unaffected. The 1964 Lands Act is concerned only with the relationship between cultivators and "landowners," the latter term being defined as persons in whose name the land is registered subject to payment of land tax to the government according to existing law, and who possess title to such land by virtue of such registration.¹⁴ Its provisions, therefore, do not apply to landholders on Guthi lands who have no "title" to their land and do not pay any "land tax" to the government. The rent control provisions of the act thus do not benefit cultivators on Guthi lands. The 1964 Lands Act also prescribes that tenancy rights should not accrue to cultivators working lands under the jurisdiction of the Guthi Corporation.¹⁵ Intermediary landholders on Guthi lands therefore have full legal powers to evict tenants or increase rents as they like.

PROFITS OF THE GUTHI LANDHOLDER

We shall now discuss the impact of these developments on the Guthi system, with special reference to Amanat-operated Rajguthis. Although a newcomer in the hierarchy of Guthi land interests, the Guthi landholder was able to appropriate the predominant portion of income from Guthi lands. As a result of rising prices and outdated commutation rates, the income of the Guthi Corporation has varied in an inverse ratio to that of Guthi landholders. In Kathmandu Valley, the normal revenue assessment is 1 muri of paddy per ropani, while the rent appropriated by the landholder from the cultivator would be at least 2 muris on the basis of 50 percent of the crop. The respective incomes of the Guthi landholder and the Guthi Corporation during the period from 1964 to 1966 are given in Table IX:

Table IX
Distribution of Income from Guthi Lands
1964-66

	<u>1964-65</u>	<u>1965-66</u>
Market value of rent amounting to 2 muris of paddy	Rs 120.00*	Rs 150.00**
Revenue paid to Guthi Corporation	Rs 33.70	Rs 41.20
Percentage of total rent	28.08	27.46
Net income of Guthi landholder	Rs 86.30	Rs 108.50
Percentage of total rent	71.92	72.54

Thus almost three-fourths of the rent is appropriated by the Guthi landholder as net income. Between 1964-65 and 1965-66, the commutation rate for the percent of the in-kind assessment which had previously been collected in the same form was raised from Rs 60.00

*Paddy converted into cash at the then official rate of Rs 60.00 per muri.

**Converted at the new official rate of Rs 75.00 per muri.

to Rs 75.00 per muri of paddy on the basis of the current market rate. This raised the actual revenue collected by the Guthi Corporation from Rs 33.70 to Rs 41.20, a difference of Rs 7.50, but the Guthi landholder earned an additional Rs 22.50 from the higher price. Even with the higher rate, the income of the Guthi Corporation actually decreased from 28.08 percent to 27.46 percent of the rent, while the landholder's share increased from 71.92 percent to 72.54 percent. While the cultivator appropriates the largest share of the produce, i.e. 50 percent, he bears the entire cost of production. Moreover, this share is generally the sole means of livelihood available to him. On the other hand, rents from Guthi lands constitute an unearned income and generally a subsidiary means of livelihood for the intermediary landholder.

REFORMS IN THE GUTHI LANDHOLDING SYSTEM

In recent years measures have been initiated by the government to overhaul the Guthi landholding system and reestablish a direct relationship between the Guthi Corporation and the cultivator. The 1964 Guthi Corporation Act has terminated all private rights on Rajguthi lands, and has prescribed that "full rights on such lands shall accrue to the concerned Rajguthi as if no person had any rights thereon, except in cases where the Corporation agrees otherwise." The Guthi Corporation has been prohibited from evicting persons who had constructed houses on Rajguthi lands prior to the commencement of the act. However, "it may, with the approval of His Majesty's Government, impose, reduce, or enhance rents on such residential sites, keeping in view the importance of their location."¹⁶

The nonrecognition of private rights on Rajguthi lands means that existing Rajguthi landholders are no longer entitled to transfer their rights. This measure thus considerably downgraded the status of Guthi landholders, making them no better than tenants-at-will whom the Guthi Corporation could evict without any obligation to pay compensation. These rights have thus, in effect, been abolished without compensation. This measure would involve considerable financial loss for the Guthi landholding class, since such rights have often been acquired through purchase. It may therefore be compared to the elimination of nonworking tenants on Raikar lands under the 1964 Lands Act.

Recent legislation has treated the Guthi Corporation as a landlord vis-a-vis the state, comparable to private landowners on Raikar lands. The position of Guthi landholders thus approximates that of nonworking tenants on Raikar lands. Failure to abolish this class, or to provide compensation in case of such abolition, would have resulted in conflicting policies towards the same class of land interests on Raikar and Guthi lands.

The 1964 Guthi Corporation Act has provided for the elimination of the intermediary landholding class subject to the proviso that the Guthi Corporation may grant exemption when it so desires. Recent decisions of the Corporation do not indicate that these powers have been exercised in accordance with the objectives of the Act. In May, 1965, the Corporation permitted transactions in landholding rights on Guthi lands of this category to be registered as usual on the ground that existing law regards Rajguthi lands as equivalent to Raikar lands.¹⁷

The sale and purchase of Rajguthi landholding rights has thus been freely permitted, and the Corporation has recognized the existence of such rights on a general basis. It has clearly acted beyond its authority to confirm such rights only in individual cases. The "clarification" has in fact nullified the spirit underlying the 1964 Guthi Corporation Act.

The Guthi Corporation thus appears to have failed to take any interest in reforming the Guthi landholding system. It has taken no concrete measures to eliminate the nonworking intermediary class, protect the tenancy rights of cultivators, or regulate the rents paid by them. As a result, the government has had to take the initiative directly in this regard. According to the 1966-67 budget speech,¹⁸ cultivators on Guthi lands will be entitled to pay rents at statutory rates directly to the Guthi Corporation. The intermediary landholder has thus been bypassed, notwithstanding anything the Corporation might stipulate under the powers granted to it under the 1964 Guthi Corporation Act. Recent official statements have emphasized that cultivators on Guthi lands will be granted tenancy rights in the same manner as their counterparts on Raikar land.¹⁹ The government has expressed its intention to contribute the necessary funds for the discharge of Guthi functions according to Hindu custom and tradition if such rent control measures lead to a reduction in Guthi revenue.²⁰

However, it is difficult to evaluate the impact of rent control on Guthi revenue, as it is not yet clear whether the existing commutation system will be continued under the new arrangements. Assuming that it is continued, the cultivator's share of the produce will be greatly increased. On one ropani of Khet land of Abal grade in Kathmandu Valley, where the total yield is 4 muris of paddy and the market price is Rs 75.00 per muri, the new arrangements will result in the division of income from Guthi land portrayed in Table X. The additional income accruing from the abolition of the intermediary landholder will thus be shared by the Guthi Corporation and the cultivator in shares of 10.6 percent and 89.4 percent respectively. The income of the cultivator will increase by as much as 64.8 percent. However, the proposed rent control has yet to be implemented.

Table X

Distribution of Income from Guthi Lands

1965-66

	<u>1965-66</u>	<u>1966-67</u>
Guthi Corporation	Rs 41.20	Rs 52.78*
Guthi landholder	Rs 108.50	
Cultivator	Rs 150.00**	Rs 247.22

REFORMS IN LEASEHOLD TENURE

The Guthi Corporation has recently taken steps to reform the leasehold system prevailing on monastic lands in certain Tarai districts. In Bara, Parsa, Mahottari, Dhanusha, and Taulihawa districts, such lands were given out on contractual rent (Mankhap) on one-year leases. The Corporation has now decided to grant leases for 5 to 7 year periods.²¹ Moreover, in the past leases used to be given for 100 or 200 bigha plots. This practice has been changed, and steps have been taken to distribute 2 or 3 bighas each to local peasant families.²² With this new policy, the intermediary contractor has been eliminated, and the Guthi Corporation maintains a direct relationship with the actual cultivator. However, the Corporation does not appear to have discarded the system under which such allotments were made to the highest bidder. It would be more appropriate to abolish the bid system and parcel out Guthi lands to local peasants at the statutory rates of rent mentioned in the 1964 Lands Act. Nor is there any reason why leases should be valid for only 5 to 7 years. The conferment of permanent tenancy rights to the cultivators would have been more consistent with the spirit of the government's new land policy.

*After commuting 50 percent of the assessment of 23 pathis at Rs 6.16 per muri, the other 50 percent at Rs 75.00, and adding 10 percent on the total value commuted at Rs 6.16 per muri.

**Value of 50 percent of the produce, i.e., 2 muris, at Rs 75.00 per muri.

NEED FOR EFFECTIVE ADMINISTRATIVE PREPARATION

The elimination of nonworking intermediary landholders on Guthi lands and the measures to control rents and protect the tenancy rights of cultivators will solve many of the problems arising from subinfeudation. They will thus contribute to the evolution of a more equitable system of Guthi land tenure under which peasants will not be required to pay exorbitant rents and suffer from insecurity of tenure in the name of religion and charity. However, a mere statement of policies and objectives will hardly result in reform. The elimination of intermediary landholders, control of rents, and protection of tenancy rights cannot be implemented unless the preliminary step of compiling records of cultivators on Guthi lands is completed. In the absence of such records, the Guthi Corporation will be unable to identify the cultivator for purposes of revenue collection. Moreover, cases of eviction of cultivators who are attempting to regain possession of their lands by intermediary landholders will be difficult to detect. As yet the 1964 land reform program and operations relating to the registration of land rights thereunder have not been extended to lands under the jurisdiction of the Guthi Corporation. The proposed reforms will require careful administrative preparations.

X. RATIONALE OF GUTHI POLICY

We have now completed a general interpretative description of the Guthi system in Nepal. We have studied its origin, enumerated its categories, analyzed its *raison d'etre*, described its fiscal and tenurial characteristics, and have seen how Guthi revenue is assessed and collected. Policies followed by the Government of Nepal towards the Guthi system during different periods in Nepal's history have been discussed, and their impact on systems of Guthi administration and management has been analyzed. We have also studied the emergence of different categories of private interests on Guthi lands, their mutual relationship, and the distribution of Guthi land incomes among them. In this chapter, we will make an attempt to analyze the role of the Guthi land tenure system in a modern, progressive, and developing society, and will discuss to what extent the system is consistent with the objectives of social justice, increased agricultural production, and general economic development.

ATTITUDE TOWARDS THE GUTHI SYSTEM

Public and official attitudes towards the Guthi system have generally been colored by ignorance and conservatism. An idealized conception of the Guthi system without regard to its social and economic ramifications has naturally retarded an objective evaluation of its contribution to religion and charity in the national context. It is indeed significant that even after the political changes of 1950-51, no political party had sufficient courage and understanding of the public mind to spell out its attitude towards reform of the Guthi system. The popular sentiment on the question of Guthi policy was adequately expressed in a royal proclamation issued in September, 1955, which declared in unequivocal terms that the Guthi system, which involves the performance of religious functions and represents acts of devotion to God, should be retained.¹

Such demands as were voiced during the early post-1951 period for reform of the Guthi system were concerned solely with the amelioration of the condition of cultivators on Guthi lands without affecting what was regarded as the religious and charitable character of the system. In 1953, the official Land Reform Commission and the All Nepal Peasants' [Purification] Association thus jointly expressed the view that "the abolition of the Guthi system will be an anti-social and anti-religious act."² The statement was accompanied by the demand that payments on Guthi lands should be accepted at the rates prevailing on Raikar lands.³ A distinction was thus drawn between the religious character of the Guthi system and its agrarian aspects.

There is little evidence, however, that this conservative attitude was shared by the people or even by government officials. The Gorkha Revenue Office, in a memorandum to a visiting team of the Land Reform Commission in 1953, recommended the abolition of all Guthi lands and their conversion into Raikar. It demanded at the same time that the amount required for the performance of the prescribed Guthi functions should be met by the government itself.⁴ According to a team deputed by the Commission to Gorkha district in the same year, local public opinion held that:

We want no Raikar, no Birta, and no Guthi. Our only demand is that land should be distributed among the people on a humane and scientific basis. . . . This is what the general mass of the peasantry wants.⁵

This, on the other hand, represented a one-sided and rather unsophisticated view which could hardly offer a broad basis for reform policy.

A new attitude towards the Guthi land tenure system has become evident in recent years, particularly in the context of the formation of the Guthi Corporation in October, 1964. In January, 1965, the Chairman of the Council of Ministers, Dr. Tulsi Giri, declared:

The gods will be pleased if the peasants are happy. . . . The government has no desire to violate religious traditions, but neither can it forget the public interest in the name of Guthi, for the public interest is indeed the basic purpose of religion.⁶

Recent official measures seeking to protect the rights of cultivators on Guthi lands and to control the rents paid by them may thus be regarded as a concrete outcome of the government's belief that the public interest is indeed the basic purpose of religion.

CRITIQUE OF THE GUTHI LAND TENURE SYSTEM

A reasonable amount of revenue to the States, the proper utilization of land resources, a fair share of the produce to the cultivators, and conditions favorable to the maximization of agricultural production are the sine qua non of an equitable system of land tenure. The Guthi land tenure system satisfies none of these criteria. The system evolved in an age when society desired stability rather than growth. It is the product of a situation in which privileged classes in society utilized economic resources for non-material objectives and thus earned "religious" merit for themselves. The system permits the exaction of exorbitant rents from cultivators for such purposes as the regular performance of mystic rites at a temple or the feeding of animals. It attaches

more importance to custom and tradition in the sphere of religion and charity than to the material needs and egalitarian aspirations of the society. The Guthi land tenure system has thus helped to retain in a more or less unspoiled form outdated customs, practices, institutions, and beliefs. A Nepali historian has pointed out that the Guthi system has provided the necessary financial backing for the preservation of medieval culture and tradition of the Newar community, and that many traditional festivals would have disappeared in the absence of this system.⁷ This financial support, however, was secured at the cost of social and agrarian exploitation which hindered economic progress.

According to law and popular conception, Guthi is a system under which lands are endowed for religious and charitable purposes. This is no doubt an appropriate definition of the original *raison d'etre* of Guthi land endowments--Guthi is primarily intended to be a manifestation of "the desire to please the gods." However, it is to a human agency that the cultivation of Guthi lands, collection of rents, and discharge of the prescribed religious and charitable functions must be entrusted. These are the essential temporal responsibilities without which the act of endowment would be ineffective. The revenue collector and the temple manager are thus essential components of the Guthi system. Accordingly, it is to them rather than to the gods that the cultivator owes primary allegiance. Aided by such factors as rising prices and growing government control over Guthi endowments, the revenue collector and the temple manager have been successful in gradually retaining for themselves the lion's share of income from Guthi lands. Guthi in these circumstances should more appropriately be defined as a form of land tenure under which only a small portion of the total produce is devoted to purposes which are not infrequently of dubious religious and charitable significance. In plainer language, it denotes a system under which a semi-feudal form of land control seeks to justify itself behind a thin facade of religious motive.

FISCAL ASPECTS OF GUTHI LAND TENURE

Guthi land tenure, having no organic connection with the national economy, is nothing less than mortmain. Guthi lands yield no revenue to the State, since they are tax-exempt. While Birta and other tax-exempt categories of land tenure are being progressively brought within the ambit of the Raikar system and made to yield revenue, religious sentiment has hampered the extension of this policy to the Guthi land tenure system. It is not possible to ascertain the extent of this loss to the public exchequer, since statistics on lands under Guthi tenure are not available. According to available statistics, the total area of Raikar land in Kathmandu district in 1950 was 51,262 ropanis, which yielded a revenue of Rs 164,488.00 at an average rate of Rs 3.22 per ropani.⁸ On the same basis, the total revenue from

the total area of 17,968 ropanis of Rajguthi lands in this district at that time would amount to Rs 57,856.96. In other words, had Guthi lands been taxed at the same rates as Raikar lands, the government would have derived additional revenue amounting to Rs 57,856.96 in 1950 from Kathmandu district alone. There is no evidence that the area under Guthi tenure in this region has declined since then. The Lollards of medieval England protested that the monasteries had "almost all lordship amortized in them yet they will not pay tax nor tribute to the King for maintenance of the realm."⁹ The tax-exempt character of most Guthi lands in Nepal shows that conditions are hardly more progressive in modern Nepal. Fiscal loss and consequent overtaxation of secular lands have been the inevitable result.

It is easy to understand why a general principle of Guthi land taxation was not introduced in the past: there was popular misconception about the tax-exempt and sacrosanct character of the Guthi land tenure system. Another factor was the reluctance of the Rana rulers to introduce an unpopular revenue measure. After all, it was common knowledge that the revenue thus collected would only go into their personal coffers. However, the present situation is completely different. Taxes are now imposed to finance nation-building activities. There can certainly be no objection to any act of beneficence to a temple or some other institution that has been founded or endowed. But such endowments must not obstruct the mobilization of resources for nation-building activities. A Guthi land endowment may be made for the construction of a water spout, but the imposition of taxes on the land thus endowed would be justified if the proceeds were utilized to implement a water supply project.

The tax exemption provided to Guthi Birta endowments under the 1959 Birta Abolition Act "until alternative arrangements are made to operate the Guthi according to custom and tradition"¹⁰ is difficult to justify. The maximum rate of tax now imposed on Raikar lands is Rs 2.60 per ropani,¹¹ which represents only 3.01 percent of the total earnings of the Guthi Birta owner, assuming that rents on such lands are controlled at the level prescribed in the 1964 Lands Act and that the market price of paddy is Rs 75.00 per muri. Exempting Guthi Birta owners from payment of this tax can only be justified if the tax is paid from the portion of the income reserved for the prescribed religious or charitable functions. There is no reason why such landowners should be placed in a special category and permitted to enjoy a tax-free income merely because a small part of the income from their land has been endowed for the performance of religious or charitable functions. If they or their ancestors chose to endow a part of their income from the land in this way, even with government approval, there is no reason why the government should relinquish its legitimate share in the produce of the land. There have been very few complaints that the imposition of taxes under the 1959 Birta Abolition Act on

Duniya Guthi lands not endowed with government permission has dislocated religious and charitable functions.

LAND USE AND AGRICULTURAL PRODUCTION

The Guthi land tenure system does not create favorable conditions for insuring that land is put to its best physical or ecological use. In several cases, land which might be better suited for the cultivation of more valuable crops is being used to grow paddy or even flowers because the original deed of endowment prescribed assessment in these forms. The situation is even worse in the case of Guthi lands which are used for non-agricultural purposes. The Guthi Corporation owns extensive lands in the urban areas of Kathmandu Valley and the eastern Tarai districts which are potentially of great value, and which could yield large revenues, both through direct use and sale. The Guthi Corporation might find it more profitable to invest surplus funds to finance the construction of residential or commercial buildings on such lands.* It might also be practicable to demolish existing buildings and construct modern ones for commercial and other use in order to utilize more vertical space. It is true, of course, that some of these buildings are of considerable archeological value. Public sentiment would hardly tolerate such action in many cases--but there is no evidence that such sentiment has been strong enough to prevent these valuable buildings from gradually falling to pieces.

Under the existing Guthi landholding system, neither the Guthi Corporation nor the individual cultivator is in a position to insure that Guthi lands will be put to the most economical use, or that agricultural production will be maximized. Regular payment of the prescribed assessments in the prescribed form is all the Corporation seeks. No increase of production will increase its share. This is undoubtedly a situation of considerable advantage for the cultivator, inasmuch as he would be able to retain for himself any increase in production achieved through improved techniques of cultivation, but this advantage is illusory. Even though rents in all parts of the country except Kathmandu Valley are fixed at 50 percent of the total annual produce under the 1964 Lands Act, recent analyses have shown that the share of the produce thereby accruing to the cultivator does not constitute an adequate incentive for him to invest in improved seeds, fertilizers, insecticides, and water.** Even this mild measure of rent control has so far not

*For example, the Janaki temple in Janakpur is presently undertaking the construction of commercial stalls in the area around the temple. Anchal Sandesh Weekly, Jestha 10, 2022 (May 23, 1965).

**James B. Hunt, "The Effects of Land Reform on Achieving the Agricultural Production Targets of the Third Plan," Economic Affairs

been applied to Guthi lands. The climate for increased effort by cultivators to maximize agricultural production is therefore much more unfavorable.

Guthi land tenure has the worst features of absentee landlordism. The Guthi Corporation is interested only in revenue and is not at all concerned with the actual processes of agricultural production. What it takes from the land is never reinvested in the form of seeds, fertilizers, and insecticides.

The Guthi Corporation is the largest landowner in Nepal, with extensive areas of agricultural land in different parts of the country under its control. But this has not brought any of the advantages of large-scale operations or investment. The tenants do not have the benefit of working with better equipment or better seed; the Corporation is less interested in maintaining the fertility of the soil, or in increasing agricultural production than in holding wealth in a secure form.¹² Guthi land tenure means that the Guthi Corporation holds its wealth in the form of land. This accumulation of capital does not lead to productive investment. As in medieval Europe, temples and monasteries have become landlords "more harsh than any baron, if only because [they were] never driven by death or poverty to sell [their] irritating feudal rights or to emancipate [their] serfs."¹³

GUTHI LAND TENURE AND RECENT LAND REFORM MEASURES

Recent policy pronouncements extending the rent control and tenancy protection provisions of the 1964 Lands Act to Guthi lands may be expected to solve some of the problems mentioned above. Nevertheless, the special character of the Guthi Corporation as a landowner creates a number of other problems. We shall now discuss these problems with reference to three recent land reforms: ceilings on land holdings, compulsory savings, and Panchayat development taxation.

The 1964 Lands Act stipulates that no family (the term includes an adult coparcener in an undivided family) shall own more than 25 bighas of land or cultivate more than 4 bighas in the Tarai, 10 ropanis in Kathmandu Valley, or 20 ropanis in the hill

Report, Vol. 3, No. 3, August, 1965, p. 5. According to this analysis, if a tenant-tiller tilling a 4 bigha farm in the Tarai, who bears all costs of production himself and pays 50 percent of the produce as rent to the landlord, invests Rs 530.00 in fertilizers, the net increase in his income (after paying 50 percent of the additional production also as rent) will be only Rs 480.00. He will thus lose Rs 50.00 by using fertilizers.

districts in the capacity of a tenant. The Act also provides for small additional holdings to be used for residential purposes by landowners only.¹⁴ However, these ceilings are not applicable to lands under the jurisdiction of the Guthi Corporation.¹⁵ The motive behind this exemption is not clear. Private landholding rights have already emerged on Guthi lands. Such rights, as well as the occupancy rights of cultivators, have customarily been subdivided and fragmented. The imposition of ceilings on Guthi lands would therefore mean no basic change in the existing situation. In case Guthi holdings were fragmented as a result of this measure, the number of landholders or cultivators might increase, but the Corporation would in no way be affected thereby. An important program of land reform has thus been withheld from Guthi lands for no valid reason.

Agricultural production cannot be maximized, nor can agriculture provide the necessary resources for economic development in other sectors, unless adequate savings are made in the agricultural sector itself. To this end, two important policies have been adopted by His Majesty's Government in recent years. The 1964 Lands Act provides for compulsory savings at prescribed rates by every landowner and tenant.* In addition, the 1965 Panchayat Development and Land Taxation Act provides for a consolidated land tax on both landowners and tenants on the basis of the share of the main annual crop appropriated by each.** The objectives of

*Ibid., Section 40. Rates of compulsory savings were as follows: 1 maund per bigha or 6 manas per ropani from landowners, and 0.5 maunds per bigha and 3 manas per ropani from tenants on lands growing food crops, if rents amount to 50 percent of the total annual produce. If rents are lower, the position will be reversed. On land growing nonfood crops, the rates are 5 percent of the value of his share from the tenant, and 7.5 percent of the rent from the landowner. Owner-cultivators are obligated to pay 1.5 maunds per bigha or 9 manas per ropani in the case of land growing food crops, or 10 percent of the rent in the case of other lands (Ministry of Land Reform, Bhumi Sambandhi Niyam Haru, 2021 [Lands Rules, 1964], Nepal Gazette, Vol. 14, No. 21 [Extraordinary], Marga 8, 2021 [November 23, 1964], Section 26). These savings are refundable after five years (Lands Act, 1964, op. cit., Section 42). The rates of compulsory savings were reduced by one-third on December 19, 1966. Ministry of Land Reform, Agriculture and Food, Bhumi Sambandhi (Tesro Samshodhan) Niyam Haru, 2023 (Lands [Third Amendment] Rules, 1966), Nepal Gazette, Vol. 16, No. 33, Poush 4, 2023 (December 19, 1966), Rule 2.

**Ministry of Law and Justice, Panchayat Vikas Tatha Jagga Kar Ain, 2022 (Panchayat Development and Land Tax Act, 1965), Nepal Gazette, Vol. 15, No. 14 (Extraordinary), Bhadra 14, 2022 (August 30, 1965), Section 4. The rates of this tax are 15 percent of the

these measures are, inter alia, to divert inactive capital from the land to other sectors of the economy, provide encouragement for the maximization of agricultural production, mobilize local resources for local development activities, and make the land tax system more equitable. Compulsory savings and Panchayat development taxes on Raikar lands have yielded considerable resources which are being utilized for the supply of agricultural credit and the financing of local development activities. Unless Guthi lands too are brought within the ambit of these measures, the Guthi land tenure system will continue to impede economic and social progress.

It would be possible, of course, to collect compulsory savings and Panchayat development taxes from the Guthi Corporation, but Guthi revenues are utilized for the performance of religious and charitable functions which generally involve in-kind expenditures. Such a step can thus hardly be contemplated without scaling down these expenditures in a large number of cases. This would, therefore, be regarded as an anti-religious step, inconsistent with the sacrosanct character of the Guthi land tenure system.

RATIONALE OF GUTHI LAND TENURE POLICY

The justification for utilizing a significant proportion of the nation's agricultural production for the performance of religious functions at temples and monasteries under the Guthi system is open to question. An enlightened conception of religion and charity is, perhaps, hardly consistent with the supplying of tobacco and marijuana to mendicants or the feeding of monkeys at temples. There is no point in multiplying these examples, for the main objective of this discussion is to stress the need to prevent wasting of economic resources as a result of misplaced notions of religion and charity. However, these questions lie outside the scope of economic study. We are primarily concerned here not with how the economic resources of the nation should be utilized, but with the impact of the choice of a particular mode of use on the land tenure and taxation system.

Even so, it may not be out of place to point out that the original objectives of Guthi endowments will not be fulfilled by a meticulous adherence to the letter of the deed in some instances. There are Guthi land endowments for rest houses on ancient tracks, for instance, which are no longer in use because of the improvement of transport facilities. The purpose of the endowment would

main annual crop from landowners and 3 percent of the tenant's share of this crop from tenants if rents amount to 50 percent of the crop; if rents are lower, tenants are required to pay 5 percent of their share of the produce. See Appendix B.

be better served if these rest houses were now shifted to newly-constructed roads and highways. Even within the existing framework of religion and charity, it may thus be possible to achieve a more rational allocation of Guthi resources.

However, the use of economic resources for religious and charitable functions under the Guthi system represents only one aspect of the problem. There is no evidence that the performance of such functions is inextricably linked with the Guthi land tenure system. In other words, the religious and charitable objectives of the Guthi system will hardly be undermined if the Guthi Corporation invests its resources in non-agricultural sectors. The Corporation needs income, and the particular source through which it is derived is of little significance. Guthi endowments were made in the form of land in an age when land was the most important form of property and a stable source of income, and investment facilities in other sectors were non-existent. But the situation has now completely changed. The drive for industrial development and the emergence of banking and financial institutions have made investment in non-agricultural sectors also possible and profitable.

In medieval Europe, the exigencies of social and economic change created a situation in which the constant addition of lands brought monasteries into conflict with the State. It was therefore necessary to pass acts of mortmain and to resort to other means in order to restrict the growth of their landed wealth.¹⁶ In Nepal, Guthi lands are not as extensive as monastic lands were in medieval Europe and have not precipitated a similar conflict. A conservative bent in both social and economic spheres in Nepal has been another factor lessening the need for such drastic measures as acts of mortmain. Social and economic stagnation has heretofore suppressed such conflict. But since social and economic development is now a basic goal of national policy, a program under which Guthi lands are put up for sale and the proceeds invested in government loan bonds and other securities may be given serious consideration. The Guthi Corporation will in the future be permitted to charge a rent of 23 pathis per ropani of Abal grade paddy land in Kathmandu Valley. This will fetch Rs 81.25 at Rs 75.00 per muri of paddy. The same income can be derived by selling the land at a price of approximately Rs 1,160.00 per ropani and utilizing the proceeds to purchase loan bonds bearing interest at 7 percent per year. In view of current land prices in Kathmandu Valley and elsewhere in the country, there is no reason why Guthi lands should not fetch much higher prices. The program will of course have to be phased over a period of several years. The speed of its implementation will obviously depend on the demand for land and the extent of available investment facilities.

It may be argued that this program will make Guthi revenue static, whereas at present the value of its in-kind revenue is

liable to increase continuously. However, there are several other factors which make investment in the non-agricultural sector more attractive and beneficial from the long-range viewpoint. Problems of revenue collection will disappear and the Guthi Corporation will be able to save the administrative expenditure currently being incurred for this purpose. The inflated value of real estate at the present time may even make it possible to raise sufficient capital through the sale of Guthi lands to earn interest greater than that which Guthi lands are earning now. Surplus income may be reinvested to yield progressively larger revenues. But most important, the Guthi Corporation will be able to convert its fixed assets into liquid capital which may meet part of the costs of industrializing the nation. This, indeed, would mean a fulfillment of religious and charitable motives in their most enlightened form.

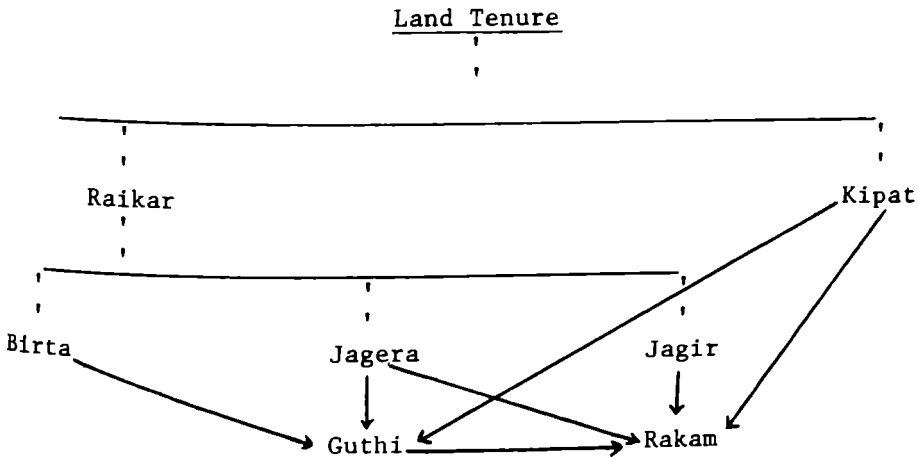
Nevertheless, it would be futile to expect that such a measure would contribute to the complete abolition of the Guthi land tenure system. The mere fact that Guthi institutions generally consist of temples, monasteries, and rest houses which must be constructed on land precludes such a possibility. The in-kind expenditures involved in many such institutions and the sentimental antipathy towards introducing any kind of innovation where religious institutions are involved constitute additional hindrances. Irrespective of the nation's dedication to egalitarian ideals, therefore, the Guthi land tenure system is likely to continue in the foreseeable future with all its inequities as the price of retaining static conceptions of religion and charity in the changed social and economic conditions of the modern world.

XI. LAND TENURE, PROPERTY RIGHTS, AND LAND REFORM

We have now completed our study of the land tenure and taxation system of Nepal, both current and traditional. In Volume I of this series we studied the Raikar form of land tenure, under which the State has traditionally exercised the rights of landownership and taxation. Birta, land grants made by the State to individuals, formed the subject matter of Volume II. Volume III examined Jagir, land assignments to government employees and functionaries; Rakam, compulsory labor taxation on the basis of land or homestead occupancy; and Kipat, communal land tenure prevalent among certain communities of Mongoloid origin in the hill districts of Nepal. Guthi, land endowments for religious and charitable purposes, we discussed in the previous chapters of this volume. We shall now discuss some general conclusions about the land tenure system in Nepal, with special reference to the emergence of private property rights on Raikar land, and the impact of recent land-reform measures on the tenurial structure.

INTERRELATIONSHIP OF LAND TENURE FORMS

Raikar, Birta, Jagir, Rakam, Kipat, and Guthi are thus the main forms of land tenure in Nepal. In these four volumes we have attempted not only to describe these forms, but also to analyze their interrelationship. Nepal's land tenure system may be schematically represented as follows:



The basic forms of land tenure, from the legal and administrative viewpoints, are thus Raikar and Kipat. The Raikar system is based on the theory of State landlordism, while Kipat represents a

customary form of land tenure which has gradually been adapted into the State tenure system. Raikar land was known as Birta when alienated by the State in favor of individuals, as Jagera when its revenue was reserved for the use of the State, and as Jagir when it was assigned as emoluments of office to government employees and functionaries. Guthi tenure originates from the alienation of Jagera, Birta, or Kipat lands by the State or by private individuals for religious and charitable purposes. Compulsory labor tax, which gave rise to Rakam tenure, used to be imposed only on Jagera, Guthi, Jagir, and Kipat lands.

TRADITIONAL FEATURES OF STATE LANDLORDISM

The division of rights between the State and the individual and the emergence of private property rights on the land form the main basis of land tenure problems. Raikar tenure was traditionally synonymous with State landlordism. Property rights on the land in Nepal, under this system, were possible only under Birta tenure. Private property on the land exists only where the opportunities to use and occupy the land are made secure through law and order, and where these opportunities are transferable by lease, inheritance, or sale.¹ Raikar tenure in Nepal only began to acquire those characteristics after the beginning of the twentieth century. The process of this evolution was completed only during the decade from 1951 to 1961.*

In the absence of private property rights on Raikar land, the individual could enjoy only the right to cultivate Raikar land and enjoy its produce subject to payment of rent to the State. He was permitted to relinquish this right of occupancy, but not to sell or otherwise alienate it. Legislation was enacted as early as the first decade of the nineteenth century prescribing transactions in Raikar lands as a punishable offence.²

The 1870 Legal Code treated Raikar land as virtually a free commodity which was to be allotted to each active member of the local community. Under this system, once a holding was registered in the name of any person he was entitled to limited occupancy rights therein. Eviction was not permitted except in the event of failure to pay the prescribed dues.³ The occupant was also permitted to have his lands cultivated by others and to resume possession whenever he liked,⁴ as long as he paid these dues himself

*The general nature of this development has already been discussed in Chapter IX with reference to Guthi tenure. However, the process of evolution of property rights on Raikar land possesses many distinctive features which are analyzed in this chapter, often at the risk of repetition.

and remained in the same area. His rights automatically lapsed if he shifted his residence to another area.* Official documents relating to land administration issued during the mid-nineteenth century prescribe that eviction may be made in the event of a holding being vacated, but that no person who retains possession of a holding should be evicted.⁵

Raikar land could be cultivated by creditors in consideration of the loan advanced by them to the registered landholder. However, the validity of such transactions depended on the behavior of the debtor, since in the event of his migration the holding automatically reverted to the State.⁶ Monetary transaction in Raikar lands thus involved considerable risk. Tenancy too could hardly emerge in a situation where the State dealt directly with the cultivator and charged from him rent amounting to half of the produce. Circumstances in which lands were utilized by persons other than the registered landholders appear to have been limited to "lack of resources" or "affection."⁷ The registered landholder did not have an adequate margin of profit to be able to claim rent on his land from the actual cultivator, nor did he enjoy rights to hold or transfer the land at his pleasure. Under the traditional form of State landlordism, therefore, the State exercised unlimited prerogative over land use and occupancy, and the "residuum of opportunity"^{**} for individuals to exercise their will was severely restricted. Such a situation inevitably hampered economic growth. Land use was tied to subsistence. There was consequently little scope for individual enterprise and investment.

FACTORS CONTRIBUTING TO CHANGE

However, gradually a discrepancy emerged between actual economic conditions and the legalistic concepts of State landlordism. Restrictions on occupancy rights and on transactions in Raikar

*Ibid., Section 44. This provision was enforced with effect from 1868, but, as in the case of the Raibandi land redistribution, it appears to have been a long-standing custom. Cf. Revenue Department Records, Chautaria Fatte Jang Shah's Order to the Naikes of Alapot Village, Lalitpur District, Baisakh Sudi 5, 1903 (May, 1846). According to this document, the holding of a Newar in Alapot Village reverted to the State and was given to another person when he shifted to another district.

**Kenneth H. Parsons, "Agrarian Reform Policy as a Field of Research," in U.S. Department of Agriculture, Agrarian Reform and Economic Growth in Developing Countries, pp. 18-19. According to Parsons, ". . . the rights of property are the rights to exercise one's own will with respect to a thing, and this right is nonexistent unless there is a residuum of opportunity to use and enjoy where the will is free."

lands thus became obsolete. The State may not have conceded more than a limited occupancy right to persons using Raikar lands, but even such limited rights made lands of certain desirable production or location qualities unavailable for others. The mere fact that the occupant had invested labor and some amount of capital in making his plot of land productive led to the emergence of a diluted form of property rights. The law did not take cognizance of such rights; however, they possessed exchange value for any person who preferred to pay the value of the investments rather than personally go through the pioneering venture of breaking new land, even if such lands were available in a suitable location. If it had not been for such practices, the 1810 ban on transactions in Raikar land would not have been necessary. Significantly, legislation was introduced in 1888 which permitted landholders to transfer their occupancy rights, subject only to the approval of the local Talukdar. We can easily imagine that such transfers, in the majority of cases, involved monetary transactions.

The system of State landlordism was based on a direct relationship between the State and the cultivator. In Kathmandu Valley and a number of hill districts, the State, like an individual landlord, assessed and collected rents in the form of paddy and other agricultural produce. However, State landlordism based on in-kind rent payments by the actual cultivator was more suited to the petty principalities which existed before political unification than to the large kingdom which emerged thereafter. The system created several difficulties. For example, it obstructed the growth of a central public finance system. Collection of rents on Raikar lands in the form of agricultural produce created manifold problems, such as those of the construction of storage facilities in different parts of the country, and profitable disposal in the absence of transport and communication facilities. Thus while the flow of income from rent collections was checked at different points, the financial liabilities of the government remained intact. The gravity of this situation was to some extent modified by the alienation or assignment of a major portion of the total cultivated area as Birta, Guthi, or Jagir.* In 1952-53, half a century after the process of Jagir abolition was initiated by Prime Minister Chandra Shamsheer, the total area under Jagir tenure in Kathmandu constituted at least one-third of the total Raikar area.⁹

Nevertheless, the effort to evade problems of revenue collection and disposal by making assignments of land under the Jagir system created more serious problems than it actually solved. No government anxious to develop a centralized system of administration

*Such a situation existed in Kathmandu as recently as 1926. Cf. Law Ministry Records, Chandrodaya Sainik Samstha Regulations, Kartik 12, 1983 (October 28, 1926), Preamble.

and public finance could tolerate a situation in which the major portion of the revenue from its most important available resource --the land--was spent before it reached the treasury. Moreover, in the changed conditions of the twentieth century, a system which gave government employees a feudal status without any obligations to the government in their capacity as landlord was obviously undesirable. Since the beginning of the twentieth century, therefore, the gradual abolition of the Jagir system and the exploitation of Raikar land to increase the public revenue have become important components of Nepal's land tenure and taxation policy.

But the decision to gradually abolish the Jagir system did not solve those particular problems that it was to have solved in the first place. The difficulties involved in the collection, storage, transportation, and disposal of in-kind rents paid by landholders to the State were not alleviated.* The Government of Nepal therefore adopted a policy of commuting in-kind rent assessments into cash.** The in-kind assessment system was thereafter retained only to emphasize the right of the State to revert to it whenever the exigencies of the food situation so demanded.

The commutation rates appear to have been fixed on a permanent basis in 1910, at a level slightly below that of prices then current.*** However, the government does not appear to have taken

*Cf. Law Ministry Records, Order Regarding Remission of Land Tax Arrears, Ashadh 2, 1967 (June 16, 1910). According to this order, arrears of land tax which had accumulated since 1922 (1865) were remitted in 1959 (1902) because attempts to realize them had caused hardships to the people. This measure was meant to insure that no such arrears accumulated in the future.

**Law Ministry Records, Order Regarding Commutation of In-Kind Tax Assessments in Kathmandu Valley and Hill Districts, Poush 16, 1967 (December 31, 1910). According to this order, in-kind tax assessments were commuted into cash because of the difficulty involved in collecting the increased volume of land revenue resulting from the 1907 decision to withhold newly-reclaimed lands from assignment as Jagir. Another reason, also mentioned in this order, was the abolition of Jagir land assignments on a gradual basis after 1907. Apparently, the commutation system was first introduced in 1907. The commutation rates were fixed on a permanent basis under this order in order to avoid the hardships caused to the people by changing the rates every year.

***The price of paddy was 4.5 pathis per Rs 1.00 throughout the period Jestha 10 to Chaitra 28, 1967 (May 23, 1910, to April 9, 1911). It was 5 pathis per Rs 1.00 only on Baisakh 27, 1967 (May 9, 1910). Gorkha Samachar, different weekly issues of the year 1967 (ending April 12, 1911).

into account the possible effects of a rigid commutation rate schedule on the real value of the land tax revenue accruing to it. Since the rates had been fixed on a permanent basis, there was thus no way to tie them to the current price level on a continuing basis. The trend of the post-1910 period was one of steadily rising prices, which soon outpaced the fixed commutation rates, and this trend was even further accelerated after the First World War.* The incidence of State rental decreased in proportion to the rise in market prices, and the resultant benefit accrued to the registered landholder on Raikar land.** He could now remain content with this profit and give away his land for cultivation to a tenant. Or he could continue as a tenant and sell the right to this profit.*** In either case, a new tier of land rights

*During the period from April 19, 1915, to November 24, 1920, the price of paddy in Kathmandu fluctuated between 3.5 to 4 pathis per Rs 1.00, mostly at the lower level. On December 1, 1920, it decreased suddenly from 3.5 to 2.5 pathis per Rs 1.00. The price remained constant at 2.43 pathis per Rs 1.00 throughout the next quarter (Gorkhapatra, different weekly issues for the appropriate dates). According to an official document of Kartik 12, 1983 (October 28, 1926): "Since the great European war, prices of all commodities have been rising everywhere. This situation has had repercussions in Nepal also, so that the people have been put to great hardships." Law Ministry Records, Chandrodaya Sainik Samartha Samstha Regulations, Kartik 12, 1983 (October 28, 1926).

**Thus 1 muri of paddy was worth Rs 4.00 according to the commutation rate, but Rs 8.00 according to market price prevailing in Kathmandu in early 1921, as the price statistics given in the preceding footnote indicate. A landholder who was required to pay a rent of 1 muri of paddy to the government met his obligation by paying Rs 4.00 only. The difference of Rs 4.00 constituted an additional income which he was able to appropriate because of the discrepancy between the commutation rate and the actual market price of paddy.

***The circumstances which induced cultivators to alienate their lands to intermediaries while they themselves continued as tenants, and which induced people with money to acquire intermediary land rights, have already been explained in Chapter IX. According to one report, the rising volume of imports and the declining prosperity of the village consequent to free trade policies introduced under the 1922 treaty with British India may have compelled many landholders to sell their holdings of Raikar lands to intermediaries, thus resulting in increased landlessness among the rural community. Government of Nepal, Industrial Survey Report for East No. 1 District, 1949, p. 4.

emerged which was not based on actual occupancy. Thus measures initiated by the government to monetize the nation's public finance system weakened the traditional direct State-cultivator relationship on Raikar lands.

The commutation of in-kind tax assessments made the land tax a specific amount stated in cash. The process of evolution of a new class of intermediary landowners on Raikar lands was therefore similar to that occurring in areas where land tax assessments had traditionally been in cash. Irrespective of whether land tax assessments had been in kind and had been commuted into cash at fixed rates or had traditionally been in cash, the crucial factor was that the tax system had been monetized. Only a rigid monetary tax structure and rising prices can result in the progressive reduction in the real value of the revenue accruing to the State and the absorption of the profit emerging therefrom by nonworking landowners.

CHANGE IN THE LANDHOLDING SYSTEM

The emergence of a nonworking, intermediary class of land interests between the State and the actual cultivator had a profound effect on the nature of landholding rights on Raikar lands. Such rights were now prized not because they yielded an opportunity for personal labor and subsistence, but because they created a new avenue for profitable investment. Possession of Raikar land under these circumstances implied the right to appropriate rents uninhibited by any personal obligation to render physical labor. This development appears to have caught the government unawares. A legal and administrative framework which visualized a direct relationship between the State and the actual cultivator had no room for this new class. It was therefore virtually ignored in pre-1957 land legislation.* Moreover, the monetary transactions involved in the alienation of landholding rights on Raikar lands to the new intermediary class were conducted in an extra-legal capacity. They were not illegal, however.

There is evidence that the new opportunity to appropriate rents, which had heretofore existed only on Birta and Guthi lands,

*This hierarchy is mentioned only once in the 1952 Legal Code, in the law dealing with land evictions, in connection with a situation in which Raikar land is cultivated on a tenancy (Magani) basis by a person other than the registered landholder. Government of Nepal, "Jagga Pajani Ko" (On Land Evictions), Muluki Ain (Legal Code), Part III (1952 ed.), Section 4 (1). The registered landholder was described in pre-1957 land legislation as Mohi (tenant), a term now reserved for actual cultivators.

was utilized in an increasing degree. One indicator of the large number of transactions in Raikar lands was the growing volume of litigation.¹⁰ An official order relating to Bajhang district stated in 1926 that there had been considerable litigation in respect to land transactions conducted in private, with the result that it had become difficult for simple people to carry on their affairs.¹¹ The law finally caught up with the realities of the situation in 1923 when arrangements were made to have transactions in Raikar land officially registered.* In addition, legislation enforced in 1935 permitted tenancy even if the owner did not pay the tax himself, on the condition that the tenant made a written statement undertaking to vacate the land when the owner so desired. Residential restrictions on land occupancy rights were also abolished, and the right to mortgage Raikar or other lands on a possessory or other basis forfeiting title thereto was legally recognized.¹² As a result of these developments, Raikar landholders, though still "holding" land under the State, became the de facto owners.

We shall now discuss the possible factors which led the government to extend legal recognition to these transactions in Raikar land. Certainly, the considerations which in 1810 had led to the imposition of a ban on such transactions were neither valid nor appropriate in the changed economic and social context of the early twentieth century. The beneficiaries of such transactions included merchants from urban areas who sought to enhance their social status by acquiring property in land. Gurkha soldiers of the British Indian Army who brought in large amounts of money in cash, particularly after the First World War, and government employees of all categories were other prospective buyers. The government was hardly in a position to take measures which would run counter to the interests of such important and articulate groups in the society. It was forced to concede to them the right to acquire intermediary rights on Raikar land. It must be noted, nevertheless, that only occupancy rights to cultivate the land, not intermediary rentier rights, were involved in Raikar land transactions in 1810. The government at that time was hardly concerned about which particular individual cultivated the land and undertook the liability of making the payments due on it. It therefore understandably refused to countenance any infringement of the time-honored concept of absolute State ownership rights on Raikar land. The situation underwent a profound change with the limitation of the State's claim on the produce of the land to a specific sum stated in cash. Raikar land transactions after 1923 were mainly concerned with nonworking intermediary rights, not actual occupancy rights.

*These arrangements have been described in Chapter IX of Volume I.

The emergence of tenancy on Raikar lands resulted in a cleavage between ownership and actual use. Units of ownership were thus not necessarily the same as units of production. The nouveau riche Raikar landowning class did not engage directly in a low-status occupation such as agriculture; it derived income from such non-agricultural sources as trade and government service. Even when crops failed, considerations of social status and expectations of better prospects in the future impelled members of this class to continue remitting their tax obligations to the State. Under these circumstances, they could be counted upon as more dependable land tax payers than the actual cultivators. Their non-agricultural income actually provided an insurance to the government against land tax delinquency.* Far from having acted reluctantly in conferring legal recognition upon the new intermediary landowning class, therefore, the government may actually have welcomed its emergence.

EMERGENCE OF PROPERTY RIGHTS

In 1923, for the first time in the history of Raikar land tenure in Nepal, the registered landholder's right to sell and mortgage Raikar lands was thus recognized by law. As long as the State did not concede its title, payment for the use of the land it claimed from the occupant was considered rent par excellence. In a situation where the State exercised unlimited prerogative over land use and occupancy, the individual's residuum of opportunity to use the land was limited. Rent was then synonymous with tax. As the State limited its prerogative through the conferment of certain definite and alienable rights on the registered holders, an indefinite residuum of opportunity to use the land emerged, marking the beginning of the evolution of private property rights on Raikar land.

The emergence of a new stratum of property rights on Raikar lands and the legal recognition thereof resulted in a clear distinction between the taxation powers of the State and the right of the registered landholders to receive rents from the actual occupants. Rent, as the value of this newly-acquired freedom to use

*A similar development occurred in England during the period from 1660 to 1750, when large estates emerged as units of ownership, not of production. The landowners, "for social reasons and because of their other resources, . . . cushioned their tenants against the full force of falling prices and thus raised the level of investment above what it otherwise might have been." E. L. Jones, "Agricultural and Economic Growth in England, 1660-1750: Agricultural Change," The Journal of Economic History, Vol. XXV, No. 1, March, 1965, p. 9.

the land, was thus paid to the registered owner, while the sovereign rights of the State were reduced to those of taxation, police power, and eminent domain. Schematically, this development may be presented as follows:*

Unlimited prerogative over land use and occupancy (Before 1888)	Limited sovereignty defined rights regarding land (1888-1961)		Taxes and police power regulations as sovereign right (1961-)
	Indefinite residuum to holder of land	Property in land	Rent as residual value of freedom to use

It would be erroneous, nevertheless, to conclude from the previous discussion that the emergence of private property rights on Raikar lands and their legal recognition during the first quarter of the twentieth century resulted in the creation of a class of landowners enjoying full-fledged proprietary rights. The emergence of private property rights and the contraction of the State's traditional ownership prerogatives on Raikar lands were subject to certain qualifications which insured that the concept of State landlordism did not dwindle away to a mere legal fiction. One of these qualifications was the State's power of eminent domain without compensation. Private property rights on Raikar lands were ignored when such lands were acquired by the State. These were essentially rights between individuals, and not between the individual and the State. Moreover, the State's power of taxation implied the power to alienate the tax on Raikar land as Birta or Guthi. In the event of such alienation, the individual Raikar landholder's "residuum of opportunity" to use the land was ipso facto transferred to the beneficiary, along with the right to appropriate rent in consideration thereof. Such an ambivalent

*Parsons, in Agrarian Reform Policy as a Field of Research, op. cit., pp. 19-20, writes, "The rent of land is derived from the use and enjoyment of land, made secure by property relations which give security of expectations regarding the indefinite residuum of opportunity to use the land. . . . Property, and consequently rent, are deductions from sovereignty when viewed from the public perspective of history. . . . The distinction between rent and taxes disappears where private property in land is wiped out . . . along with the indefinite residuum of opportunity for the independent exercise of the will . . ."

attitude on the part of the State towards private property rights on Raikar lands was an inevitable aspect of the political system that prevailed in Nepal prior to 1951. Limited sovereignty, the liberty of the citizen, and property rights were reciprocally inter-related.¹³ Accordingly, restricted property rights on Raikar lands and conferment of Birta ownership privileges on selected groups and communities provided an economic class structure in tune with the autocratic nature of the century-old Rana regime.

DEVELOPMENTS AFTER 1951

The political changes of 1950-51 introduced far-reaching changes in the area of property rights. The system of alienating Raikar lands as Birta or Guthi became obsolete, with the result that the Raikar landholder no longer feared losing his rentier rights through alienation on the part of the State. The 1959 Birta Abolition Act finally gave this security legal sanction. Similarly, Raikar landholding rights were entrenched by the practice of compensating the landholder in case his Raikar lands were acquired by the State. The 1961 Land Acquisition Act gave a legal basis to this practice. These two measures removed the qualifications on private property rights on Raikar land which had existed during the Rana regime.

The 1957 Lands Act was perhaps of greater importance in entrenching the status of Raikar land as a form of private property. This act was no doubt enacted to protect the interests of tenants. Nevertheless, for the first time it conferred on registered holders of Raikar lands the status of "landowners."* The final stage in the evolution of property rights in Raikar land in Nepal was thus reached during the period from 1951 to 1961. The 1957 Lands Act also for the first time gave legal recognition to the right of the registered landholder to appropriate rents from the actual cultivators.

The emergence of property rights on Raikar land was thus accompanied by the emergence of a multi-tiered land tenure structure with the nonworking intermediary landowner in a position between the State and the actual cultivator. Landownership became divorced from the obligation to actually cultivate the land. It assumed the form of a rent collection function, devoid of any positive contributions to farm management or real investment. Exorbitant rents, insecurity of cultivators' tenure, and the "agrarian exploitation" mentioned repeatedly in official policy pronouncements

*The term "Jaggawala" is used to denote registered landowners, whereas they previously had been termed Mohi (tenant) in legal and administrative terminology.

since 1951 are organic consequences of this dissociation of ownership from management and investment. Land reform policy in these circumstances was basically concerned with objectives of social justice. It took the form of such measures as rent controls and security of tenancy rights.*

RAISON D' ETRE OF LAND REFORM POLICY

In recent years, there has been a marked change in official thinking on the scope of land reform policy. It is generally admitted that land reform in the sense of adjustments in tenurial rights affects production only indirectly, by influencing the cultivator's incentive to work, invest, and innovate; thus the chief inspiration behind land reform is socio-political and ideological.¹⁴ It is therefore necessary to supplement such measures as protection of tenancy rights, control of rents and interest rates, and imposition of ceilings on landholding by arrangements for the supply of credit, fertilizers, and irrigation facilities, and for the development of cooperatives.¹⁵ This line of thought is best reflected in the official American definition of land reform as "the improvement of agricultural economic institutions."¹⁶

Another problem faced in determining the goal of land reform policy is that in Nepal, as in other developing nations in Asia, the investments of the wealthy are largely in land, and the practice of investing in enterprises controlled by others is practically nonexistent.¹⁷ There is a definite need to utilize this investment capital for development in other spheres of the economy. Accordingly, the basic motivation for the present land reform policy stems more from the need to accelerate growth in non-agricultural spheres than from the egalitarian desire to achieve social justice in a sphere which has been traditionally recognized as a

*According to a notification published by the Ministry of Food and Land Administration in 1952, "Unless the land tenure system is improved, the economic condition of the peasantry and agricultural production will not improve. . . . Landownership is passing from the hands of peasants to those of money-lenders and other rich people. . . . But the actual cultivators do not have any security of tenure. This has reduced agricultural productivity and increased the number of landless peasants. . . . In certain districts, these developments are leading to an agrarian revolution." Notification of the Ministry of Food and Land Administration, Nepal Gazette, Vol. 1, No. 22, Poush 23, 2008 (January 7, 1952). Land tenure reforms are thus considered to be an effective instrument in themselves for raising agricultural productivity.

feudalistic stronghold.* The 1964 Lands Act therefore aims at "diverting inactive capital and manpower from the land to other sectors of the economy in order to accelerate the pace of national development." The need to improve the standard of living of the peasantry through the equitable distribution of cultivable land and the provision of agricultural know-how and resources is only secondary.¹⁸

The present land reform policy thus recognizes the fact that economic development is a composite process of which land reform is only one of the several components. A land reform program isolated from other facets of the economic development process is therefore likely to give rise to dislocations and maladjustments in the national economy. For this reason tenurial reforms constitute only a secondary aspect of current land reform policy in Nepal. The final goal of land reform is to give impetus to the industrial development of the nation.¹⁹ It is hardly surprising, therefore, that the 1964 Lands Act** is a conservative measure from the tenurial point of view. It is designed merely to reform the existing landholding system by regulating rents, protecting tenancy rights, and imposing ceilings on holdings. It contains no provision to eliminate the nonworking intermediary landowner and thus change the basic structure of the land tenure system.

TENURIAL PROVISIONS OF THE 1964 LANDS ACT

The 1964 Lands Act prohibits landowners from appropriating rents in excess of half the annual yield of the land. In Kathmandu Valley, however, specific rates have been prescribed, ranging from 8.62 pathis to 23 pathis of grain per ropani in the form of the main annual crop.*** Existing levels of rent, if lower than these

*According to an official view, "From agriculture must come Nepal's non-farm labor force and most of the investment capital which she herself provides for development. . . . Unless processes are set in motion which will draw labor and investment capital from agriculture and set them to work in non-agricultural sectors, economic growth will not take place." Ministry of Economic Planning, Economic Affairs Report, No. 2, Vol. 1, May, 1963, p. 9.

**The 1964 Lands Act has replaced the 1957 Lands Act and the 1963 Agricultural [New Arrangements] Act in the field of land reform.

***The Act defines the main annual crop as the crop which has the highest yield among all crops grown on any land throughout the year. 1964 Lands Act, op. cit., Section 2(b).

ceilings, have been retained.* In areas other than Kathmandu Valley, the 1964 Lands Act has not affected the existing situation. Rather, it has given formal recognition to a practice prevalent over a large part of the country, and might possibly even aggravate the situation for tenants, particularly those on newly reclaimed lands. The general practice is to share only the main crop, but the act entitles the landowner to claim half of each crop and subsidiary produce grown throughout the year.²⁰ Moreover, even before land reform, most landlords exacted half of the entire crop as rent. The practical effect of the 1964 Lands Act was thus to do absolutely nothing about rents. According to one study:

Whereas most democratic countries of Asia have limited rents by law to one-third or less of the annual crop . . . Nepal has preserved the status quo in this critical area completely undisturbed. The result will be that while land reform has been an effective instrument in stimulating increased agricultural production and other changes in the economy--because rents were affected, the failure to deal with this in Nepal will prevent equally beneficial results.²¹

Another point which this study makes in this regard is that liability to pay rents on each crop acts as a deterrent to multi-cropping and hence undermines efforts aimed at increasing agricultural production. It also maintains that a system of rent payment at 50 percent of the produce discourages the use of fertilizers.²²

In the sphere of tenancy rights, the 1964 Lands Act prescribes that persons cultivating land in the capacity of tenants at the time of its commencement, as well as those growing the main annual crop on any land at least once thereafter, are entitled to tenancy rights. A cultivator who acquires such rights cannot be evicted by the landlord except through a judicial decree. Circumstances in which eviction is permitted include failure to pay rents

*Legislation fixing rents at half of the total annual yield of the land was first enacted in 1957 (Ministry of Law and Parliamentary Affairs, Bhumi Sambandhi Ain, 2014 [Lands Act, 1957], Nepal Gazette, Vol. 7, No. 5 [Extraordinary], Shrawan 22, 2014 [August 18, 1957], Section 3). The specific rates for Kathmandu Valley contained in the 1964 Lands Act were first introduced in 1962 (Ministry of Law and Justice, Bhumi Sambandhi [Tesro Samshodhan] Ain, 2018 [Lands (Third Amendment) Act, 1962]. Nepal Gazette, Vol. 11, No. 40 [Extraordinary], Magh 24, 2018 [February 6, 1962], Section 3). These rates are 23 pathis, 18 pathis and 6 manas, 13 pathis and 8 pathis and 5 manas on Khet lands, and 10 pathis and 1 mana, 7 pathis and 2 manas, 4 pathis and 3 manas, and 2 pathis and 7 manas on Pakho lands, for Abal, Doyam, Sim, and Chahar grades respectively per ropani.

or cultivate the land properly, so that its value or yield goes down, or discontinuation of cultivation for a period exceeding a year, except in unavoidable circumstances.

An important provision is the abolition of the rights of tenants who sublet their lands to actual cultivators.* Since in many cases nonworking intermediary tenancy rights were acquired through purchase,** this provision has meant the expropriation of property without compensation. In addition, the act has taken away the rights of tenants to transfer their rights through sale or other means. Tenancy rights will of course accrue to the husband, wife, or son after the tenant's death, "whomsoever the landowner trusts," but the act does not prescribe the course of action to be taken in case the landowner finds none of them trustworthy. In effect, therefore, tenancy rights are inheritable only subject to the landlord's evaluation of the personal character of the prospective successor.

The act provides a number of benefits to the tenant which are certainly illusory. The tenant is permitted to construct buildings and other fixtures on the land for purposes of cultivation even without the landowner's consent. He may remove such assets in the event of the termination of his tenancy rights if the landowner does not offer him compensation. However, there is no reason why the landowner should make such an offer, inasmuch as it is physically impossible for the tenant to remove "walls, enclosures, drains, bridges, irrigation channels, wells, huts, etc." from the land.

The landowner has been given the right to resume specified areas of land for residential purposes,*** on payment of compensation to the tenant amounting to 25 percent of the value of the

*According to Section 25 (1) of the act, "In case any person who has obtained land from any landowner under any condition has given it away for cultivation to another person instead of cultivating it with the labor of his family and his own, the actual cultivator shall be recognized as the tenant and all rights belonging to the intermediary between the landowner and the actual cultivator shall lapse."

**The 1959 amendment to the 1957 Lands Act had made tenancy rights alienable through sale, gift, or donation. Ministry of Law, Bhumi Sambandhi (Samshodhan) Ain, 2016. (Lands [Amendment] Act, 1959). Nepal Gazette, Vol. 9, No. 19 (Extraordinary), Poush 1, 2016 (December 15, 1959), Section 5.

***These limits are 0.5 bigha in any Village Panchayat area and 0.2 bighas in any Town Panchayat area in the Tarai, 5 ropanis in Kathmandu Valley, and 10 ropanis in any Village Panchayat area and 5 ropanis in any Town Panchayat area in the hills. 1964 Lands Act, op. cit., Section 7 (1).

land. But no provision has been made to insure that the tenant is not displaced thereby. The landowner is even entitled to resume land from a tenant who is in possession of an area equal to or less than the area permitted, so that the latter may be rendered landless. Legislation enacted in 1906 permitted certain categories of landowners to resume land for personal residence or cultivation on the condition that the tenant was fully compensated for it and was not deprived of his entire holding.²³ Restoration of this enactment to cover all categories of landowners would have been more advantageous to tenants.

The discriminatory treatment which has been shown in the 1964 Lands Act toward landowners and tenants regarding ceilings on landholding should not pass unnoticed. A landowner is allowed to own as much as 25 bighas of land, in addition to homesites. The same person can hold 3 bighas in the Tarai, 8 ropanis in Kathmandu Valley, and 16 ropanis in the hills simultaneously for residential purposes.²⁴ A tenant, on the other hand, is not allowed to cultivate more than 4 bighas in the Tarai, 10 ropanis in Kathmandu Valley, and 20 ropanis elsewhere in the hill region, nor is he allowed to own homesites in addition. Moreover, a landowner whose surplus lands are acquired under the act is entitled to compensation,* but a tenant who loses his surplus land does not have a similar right. Compensation will be paid to him at one-fourth the value of the land only if the government considers it necessary in particular cases.

The objective of such measures may be to check the concentration of landownership and tenancy rights in a few hands. Nevertheless, they make the economic gulf between landowners and tenants too wide to be bridged easily. A tenant will be able to cultivate a farm a little smaller than what has been considered to be an economic holding in the Tarai.** An owner-cultivator, on the other

*The rate of compensation is one year's land tax for waste lands, 5 to 10 times one year's land tax for lands under Khar grass or bamboo bushes, and 10 to 30 times one year's land tax for cultivated lands.

**According to a 1963 Report on the Nawalpur Resettlement Project, "after careful calculations based on available data on farming in Nepal and Northern India, 4.2 bighas of land was found to be a reasonable economic holding for an average farmer-family consisting of three adults and two children." This includes 0.2 bighas for the construction of residential buildings, cattle-sheds and poultry-yards, for fruit plants and a kitchen-garden. Department of Agriculture, Resettlement Project: Nawalpur, 1963, p. 13. It should be noted that this report refers to owner-cultivated holdings only. For tenant-cultivated holdings, the size will have to be twice as large to be economic, in a situation where 50 per cent of the produce is paid as rent.

hand, may cultivate a farm 62.5 percent larger. Moreover, failure to make provision for compensation to tenants whose surplus lands are acquired indicates that more importance has been attached to ownership rights obtained through monetary investment than to actual occupancy rights.

A recent official report on the first year of land reform in the Budhabare Village Panchayat area of Jhapa district largely substantiates this conclusion. The net after-tax income from a typical 4 bigha tenant-cultivated farm in this area was estimated at Rs 688.00 for the tenant and Rs 1,304.00 for the landlord, a difference of approximately 200 percent. The net after-tax income of a landlord owning 25 bighas of land was estimated at Rs 8,150.00, i.e., slightly less than 12 times the maximum earnings of a tenant from his 4 bigha farm.²⁵ This disparity has been aggravated because the tenant cannot increase his income, as he is not allowed to cultivate more than 4 bighas of land. Significantly, the report notes that "the landlords are seen to have little room to complain."^{*}

Surplus lands acquired under the 1964 Lands Act are redistributed subject, of course, to the ceilings, to tenants currently cultivating them, to members of their families, to owners of adjoining holdings, or to other landowners, in this order of preference. Landless persons come at the bottom of this list, since the main objective of this measure is to consolidate existing holdings into economic units rather than to create a multitude of uneconomical holdings. The imposition of ceilings will thus have no effect on the land tenure system. Landowners whose holdings are below the ceilings and who charge rents at one-half the annual yield of the land have remained unaffected by the enforcement of the 1964 Lands Act.

The 1964 Lands Act has thus failed to make any basic change in the existing structure of landownership and tenancy. The protection of tenancy rights is at best a measure seeking to stabilize an agrarian development not envisaged when existing land tenure legislation was remodelled several decades ago. The acquisition of surplus lands does not affect the nature of the landholding system per se. With the exception of Kathmandu Valley, the

*It should be noted that in Budhabare, "most of the rent was fixed in terms of an amount of paddy [or other crop per unit of land]. The principle followed was to fix an amount in maunds equivalent to 50% of the normal yield of the main crop. (In a few cases where a lower rent had been established by custom, the lower rent was used)." Quentin W. Lindsey, "Budabari Panchayat: The Second Year after Reform," in Department of Land Reform, Nepal Ma Bhumi Sudhar/(Land Reform in Nepal), p. 39. A strict interpretation of the 1964 Lands Act would have meant a much higher rent.

traditional pattern of rents continues. No attempt has been made to check absentee landlordism. Recent land reform measures have, in fact, only strengthened the position of landowners as rent-receivers without giving them commensurate obligations.

Measures taken to "improve" the condition of the peasant are only palliative in nature. The Act has, of course, made many substantive contributions such as the elimination of the traditional money-lending class, mobilization of capital from the agricultural sector through compulsory savings, supply of agricultural credit, institutionalization of the agrarian structure, and the general awakening of the peasant community.* In fact, if "the key to successful land reform in Asia is the degree to which the controlling political forces of a country are willing to support reform and their readiness to use all instruments of Government to attain their goals,"²⁶ there is no doubt that Nepal has achieved a significant breakthrough. However, the present study is primarily concerned with the impact of these reforms on the basic relationships between landowner and peasant. These relationships have now been defined and regulated by law, but mere definition and regulation, although essential components of any reform program, cannot be regarded as reforms in themselves.

NEED FOR A REALISTIC LAND TENURE POLICY

This situation stems in part from the government's failure to envisage any model form of land tenure for eventual adoption. The conversion of Birta and other tenure forms into Raikar is no doubt a progressive step, but Raikar in itself does not denote any uniform or model form of land tenure. Raikar tenure means nothing besides the private ownership of land subject to the payment of taxes. It is not concerned with whether the land is actually cultivated by the owner or through a tenant. Since land tenure is also concerned with the splitting of property rights, or their division among various owners and occupiers,²⁷ it becomes evident that the term Raikar alone is inadequate to describe the different categories of property relationships that exist on taxable lands in Nepal.

*Thus, in the Budhabare Village Panchayat area of Jhapa district, as a result of land reform, "[The tenants] have tenure security. . . . They have a plentiful supply of credit at reasonable rates from the cooperative society. In these respects, they are 'free men' no longer trepidly dependent on their landlords for land and the means to till it." James B. Hunt, "The Political Repercussions of Land Reform on the Economic Development of Nepal," in Department of Land Reform, Nepal Ma Bhumi Sudhar (Land Reform in Nepal), p. 23 (English Section).

In fact, two different forms of tenure can be observed on Raikar lands at present. Large areas of Raikar lands are personally cultivated by the owner. No legal restriction exists on the renting out of such lands to tenants. However, Raikar lands reclaimed under resettlement projects and allotted to private individuals for resettlement must be cultivated personally by the allottee, so that tenancy is not permitted. Moreover, in this case, subdivision, fragmentation, and alienation are subject to a number of restrictions.²⁸ On the other hand, large areas of Raikar lands are cultivated on payment of rent by persons other than the registered owners. Measures which primarily emphasize the common characteristic of taxability and ignore the different levels of property interests under these different forms can hardly contribute to the conferment of ownership rights on the actual tiller, the ultimate objective of official land reform policy.²⁹

The inadequacy of such measures becomes obvious when we note that no legal restriction exists on the emergence of tenancy on lands which are currently personally cultivated by the owner. Certainly it would be a more realistic policy to forestall such a development than subsequently to seek to protect tenants by reducing rents and making tenancy rights secure. But restrictions on the emergence of tenancy on owner-cultivated lands can hardly be imposed until the law precisely defines the different categories of tenure relationships. Owner occupancy and tenancy are land tenure forms so different in their impact on land use and rural life that it appears incongruous to lump them together under the same tenure policy.

ABOLITION OF NONWORKING LANDOWNERS

The elimination of the intermediary landowner must thus constitute the main plank of land tenure policy. This, of course, would mean the abolition of the tenancy system itself. Such a step will no doubt be regarded as a revolutionary measure, inexpedient from the political and administrative viewpoints. However, it must be considered that the regulation of the relationship between landowners and tenants is a much more difficult administrative task. According to a close observer of Nepal's current reform program:

Enforcing rent reduction or security of tenure bristles with problems, particularly in the conditions of Nepal. The large mass of the peasantry is illiterate and not fully conscious of their new rights under the law. Even if they were, the traditional power structure in the village centering round the landlord is such that very few tenants will dare go against him. In the absence of a wide net-work of administrative supervision and the difficulties of communication, tenants can continue to be at the mercy of the landlord.³⁰

The accuracy of this appraisal was vividly illustrated in the Budhabare Village Panchayat area of Jhapa district, where land reform was started as a pilot project in 1963. Tenants living in two wards of this area, situated across a river and some distance away from the local Land Reform Office, were reluctant to stand up for their rights, unlike those living in more accessible wards.³¹ Conditions in other parts of the country, where land reform is not being as effectively administered as in Budhabare, can easily be imagined. In Kathmandu Valley, after one and a half years of land reform, landowners had to be warned not to charge rents in excess of the statutory rates, and to restore to the tenants the excess amount already collected by them.³² Conditions with regard to the security of tenancy rights are basically similar. Nor are such problems limited to Nepal. In India, according to one study:

. . . If you do not totally reject the principle of non-working cultivators you cannot prevent the village oligarchs from acting as landlords. As soon as you leave the door barely open for property income to non-working proprietors --which you do when you permit landownership to exist unassociated with labor in the fields--you allow all the evils of concentration of power at the village level to come trotting back in. As long as some peasants are without land or very short of land, they will be at the mercy of those who are allowed to have land without working it. The whole world of organized subterfuge, with which so many villages are already replete, will continue unabated.³³

It is of course true that the institution of tenancy possesses several advantages. In countries such as Britain, it provides a convenient way of supplying capital for agriculture, and, by means of a division of labor, often leads to better land management. However, tenancy in Britain is merely a division of the functions of agricultural production and thus is not necessarily associated with any particular social system.³⁴ However, landowners in Nepal provide nothing besides the land, and tenancy is often only a euphemism for unpaid labor.* Even with all the reforms provided for in the 1964 Lands Act, the landowner is not required to spend anything on production from the income he derives from rent. The cultivator, on the other hand, must bear all the expenses of cultivation and maintain himself and his family with an

*A survey jointly conducted in Palpa and Syangja districts of western Nepal by the Ministry of Economic Planning and the Tribhuvan University shortly after the 1964 Lands Act was enforced there detected cases in which 22 muris of paddy were paid as rent on a total yield of 23 muris, so that the cultivator was left with only crops grown on dry lands and straw. Jannabhumi, Magh 11, 2022 (January 24, 1966).

equal amount. The landowner's sole responsibility is to receive rents at the end of the year and issue receipts.³⁵

Measures designed to prevent owner-occupied lands from lapsing into tenancy and to enable tillers to acquire the ownership of lands cultivated by them, thus gradually building up an agrarian system based on independent farmers through the elimination of intermediary landowners, are therefore prime components of a progressive land tenure policy. The 1964 Lands Act, however, has none of these objectives. Nor do there exist any grounds for hope that the changes it introduced will create the conditions necessary for courageous future measures which will gradually bridge the gulf between landowner and tenant. Authoritative statements have emphasized from time to time that the land reform program is not meant to cause hardships to the landowning class.* The act is thus designed to perpetuate the existing agrarian class structure. Class coordination is no doubt a cardinal principle of the Panchayat System, but it should certainly be possible to interpret and apply this principle in a manner which is consistent with the basic objective of Panchayat policy--the establishment of a social order which is just, democratic, dynamic, and free from exploitation.**

*In an address to the nation on December 15, 1964, which was celebrated as Historic, Constitution, and Land Reform Day throughout the country, King Mahendra declared, "The land reform program is not meant to benefit one class at the expense of the other. It is based on the principle of class coordination, not class conflict. A situation in which the majority of the people are poor, hungry, and naked is dangerous not only for national security and independence but even for the rich and landed classes themselves." Gorkhapatra, Poush 2, 2021 (December 16, 1964).

**Article 19 (1) of the Constitution of Nepal states: "The aim of the Panchayat system shall be to promote the welfare of the people by securing a social order which is just, democratic, dynamic, and free from exploitation by integrating and consolidating the interests of different classes and professions from a comprehensive outlook." Ministry of Law and Justice, Samvidhan Ko Pratham Samshodhan (First Amendment to the Constitution), Nepal Gazette, Vol. 16, No. 45 (Extraordinary), Magh 14, 2023 (January 27, 1967), Article 19 (2).

APPENDICES

A. LAND USE AND AGRICULTURAL STATISTICS

In 1962, the Central Bureau of Statistics conducted an agricultural census throughout the kingdom. The census contains reasonably accurate statistics on the land use and agricultural pattern of Nepal.

Out of a total of 1,775,645 families, 1,493,500 in the Kingdom of Nepal (93 percent) depend upon agriculture for their livelihood. The total area under cultivation covers approximately 12 percent of the total land area, amounting to 1,837,490 hectares, of which 1,066,920 hectares are wet land (Khet) suitable for the cultivation of paddy.¹ This area can be increased by an estimated 8 percent. At present, the total area used for principal crops, total production, and average yields are as follows:

Total Area Used for Principal Crops and Average Yields²

<u>Crop</u>	<u>Total Area</u> (In Hectares)	<u>Total Production</u> (1964-65, in Metric Tons)	<u>Yield</u> (In Kilograms per Hectare)
Paddy	1,106,610	2,201,000	2,010
Maize	438,350	854,000	1,976
Mustard	91,210	51,000	563
Wheat	73,248	952,000	946
Millet	64,791	62,000	1,312
Jute	13,000	39,000	1,236

Average yields are higher in the eastern than in the western Tarai. Recent studies have indicated that these yields could easily be doubled through irrigation.³

The total area comprising agricultural holdings and the nature of the tenure in each region are indicated in the following table. A holding, for the purpose of the agricultural census operations, is a unit of cultivation and not a unit of ownership.

The total area of 144,754,000 muris which comprises agricultural holdings consists of 84,174,000 muris of Khet lands and 60,580,000 muris of Pakho lands. 64.33 percent of the total Khet area and 83.15 percent of the total Pakho area are cultivated by

Total Area of Agricultural Holdings and Tenure⁴

(In Muris⁵)

<u>Region</u>	<u>Owner- cultivated</u>	<u>Tenant- cultivated</u>	<u>Total Area of Holdings</u>
Eastern Hills	11,534,000	3,594,000	15,128,000
Eastern Inner Tarai	3,099,000	838,000	3,937,000
Eastern Tarai	42,388,000	19,226,000	61,614,000
Kathmandu Valley	1,490,000	792,000	2,282,000
Mid-Inner Tarai	3,708,000	682,000	4,390,000
Western Hills	14,384,000	1,490,000	15,874,000
Western Inner Tarai	2,759,000	2,012,000	4,771,000
Western Tarai	8,201,000	5,857,000	14,058,000
Far Western Hills	7,413,000	1,122,000	8,535,000
Far Western Tarai	<u>9,547,000</u>	<u>4,618,000</u>	<u>14,165,000</u>
	104,523,000	40,231,000	144,754,000

the owners themselves.⁶ It is possible that a considerable area of land cultivated by tenants was represented as owner-cultivated during the census, because, as the report admits, "the rumor of land reform was in the air."⁷ Not all the land contained in a holding is arable: 98 percent of Khet lands and 86.55 percent of Pakho lands contained in agricultural holdings are arable.⁸ Twenty-six percent of the total cultivated area is tilled by landless peasants.⁹

All-Nepal figures on the size of holdings have not yet been compiled. Figures for Jhapa in the Tarai, Palpa in the hill region, and Kathmandu in Kathmandu Valley are as follows:

Size of Holdings

<u>District</u>	<u>Total Number of Holdings</u>	<u>Size</u>		
		<u>Category I</u>	<u>Category II</u>	<u>Category III</u>
Jhapa ¹⁰	20,478	11,114	8,415	949
Palpa ¹¹	29,016	25,970	2,720	329
Kathmandu ¹²	20,008	13,214	6,484	310

Figures in Category I indicate the area in different regions which a peasant family can cultivate through its own labor.

They correspond roughly to the ceilings on tenant holdings imposed under the 1964 Lands Act, which reflect the official conception of economical holdings. Thus:

<u>District</u>	<u>Category I</u>	<u>Category II</u>	<u>Category III</u>
Jhapa	4.5 bighas or less	4.5 to 15 bighas	Over 15 bighas
Palpa	80 muris or less	80 to 320 muris	Over 320 muris
Kathmandu	10 ropanis or less	10 to 40 ropanis	Over 40 ropanis

The percentage of holdings exceeding the size considered economical is thus only 45.7 in Jhapa, 10.4 in Palpa, and 33.9 in Kathmandu.

In the hill region, the per capita cultivated area varies from 0.4 to 0.6 hectares. It is higher in the Tarai region, and expands progressively as one goes west.¹³ The total irrigated area in Nepal is 88,560 hectares. In 1965-66, only 3,000 metric tons of chemical fertilizers (ammonium sulphate) were used throughout the country. Their use was limited to Kathmandu Valley and a few districts in the Tarai.¹⁴

B. RECENT DEVELOPMENTS IN THE LAND TENURE AND TAXATION SYSTEM

Measures implemented by His Majesty's Government in recent years have rendered a considerable part of the studies and analyses in the first volume of this series obsolete. In this appendix, therefore, we shall discuss these new measures, particularly those concerning the fields of land classification and gradation, land tax assessment rates, and tax collection machinery on Raikar lands.

Land Classification

The term Raikar has never been precisely defined in Nepal's jurisprudence. The Legal Code, following traditional usage, uses this term as synonymous with State land;¹ however, the 1963 Land (Survey and Measurement) Act makes a distinction between State and

public lands. State lands have been defined as lands in the possession of His Majesty's Government, involving no liability to any individual, for such uses as roads, railways, and government offices, including waste lands, forests, and rivers. Public lands, on the other hand, have been defined as lands used by the community for paths, sources of water, pastures, and the like, which are not owned by any individual or family.² No question of taxation arises with regard to either State or public lands. It is thus clear that the traditional connotation of the term Raikar has been contracted to include only taxable lands held privately. There is no evidence in recent land legislation to indicate that the area under Raikar tenure comprises the totality of State, public, and private lands.

This new classification of Raikar lands appears to have been devised to define the property rights of the local Panchayats. Public lands generally come under the jurisdiction of Village and Town Panchayats. The property of Village Panchayats includes public drains, bridges, ponds, temples, roadside shelters, wells, water taps, tanks, pasture grounds, bathing ghats, outlets, roads and trees on either side thereof, those mineral deposits which are not sought to be exploited by His Majesty's Government or the local District Panchayat, waste lands not exceeding 52 ropanis or 4 bighas in areas which do not constitute private property, and forests³ demarcated as Panchayat forests.⁴ Similarly, the property of Town Panchayats consists of houses and lands not owned by any private individual and not controlled by His Majesty's Government, as well as public drains, outlets, bridges, ponds, temples or any other similar place, or houses, inns, water taps, roads and trees standing on either side thereof, and stones, sands, and fish in streams.⁵

Gradation Formulae

The 1963 Land (Survey and Measurement) Act has standardized the formulae for the gradation of agricultural lands throughout the country. These formulae are as follows:*

Dhanahar or Khet

1. Abal. On Abal land, paddy is usually sown or transplanted. Irrigation facilities are always available through irrigation channels. The soil is not mixed with sand or gravel, but is moist and of the best quality. Two crops of paddy can be cultivated.

2. Doyam. On Doyam land, irrigation facilities through irrigation channels are not always available. Crops are sown with

*Op. cit., Section 10.

the help of rainwater. The soil is not mixed with sand or gravel. Two crops of paddy can be cultivated.

3. Sim. On Sim land, irrigation facilities are available neither through irrigation channels nor through inundation. Crops are sown with the help of rainwater. The soil is slightly sandy. Only one crop of paddy can be cultivated.

4. Chahar. On Chahar land, the soil is sandy, gravelly, or dry. Crops are sown only with the help of rainwater. Water dries up quickly. The land is situated at a high level or is terraced. Only one crop of paddy can be cultivated. The land is under water for a long time, and paddy can be cultivated only in intermittent years.

Bhith or Pakho

1. Abal. On Abal land of Bhith or Pakho category, the soil is of good quality and fertile. Instead of paddy, Ghaiya, maize, Kodo, mustard, rape, and similar other crops can be cultivated.

2. Doyam. On Doyam land of Bhith or Pakho category, the soil is sandy, gravelly, and of inferior quality. The land is steeply inclined and is damaged by washouts. Crops can be cultivated at intervals of two or three years. Instead of paddy, maize, Kodo, mustard, rape, and similar other crops can be cultivated.

The Act does not define the terms Dhanahar, Khet, Bhith, or Pakho. We should note that these formulae are still basically the same as those introduced in 1919.⁶ The only significant change since that time has been that the productivity of the different grades has not been estimated.

Today some confusion in the actual application of these formulae is likely to arise from the fact that they are obviously meant to apply only to agricultural lands. But the 1963 Land (Survey and Measurement) Act does not define the categories of taxable lands at all. Its definition of the term land includes all categories, such as residential sites, gardens, orchards, factory sites, tanks, and ponds. It is obviously difficult to grade residential and industrial sites on the basis of such factors as the texture of the soil, the availability of irrigation facilities, and the number of crops that can be sown per year. Moreover, the attempt to impose standard gradation formulae in a country such as Nepal, with its great diversities of terrain, climate, and altitude, involves a number of difficulties which the Act ignores. Abal and Doyam grades are thus defined as producing two crops of paddy per year. Literally interpreted, this would mean that the rich agricultural area of Kathmandu Valley contains Khet lands of only Sim and Chahar grades. Consequently, these formulae do not insure that

lands of similar production qualities are graded on a uniform basis throughout the country. In addition, no importance has been attached to such factors as proximity to market areas.

Taxation Assessment Rates

Since 1961, the Government of Nepal has introduced a series of measures aimed at making land tax assessment rates uniform throughout the country, often even ignoring revenue considerations. These measures are summarized below:

Hill Districts

Khet Lands. The 1963 Finance Act made land tax assessment rates uniform in all the hill districts. The new rates are as follows:⁷

Abal grade	Rs 0.65 per muri
Doyam	Rs 0.55 per muri
Sim	Rs 0.45 per muri
Chahar	Rs 0.35 per muri
Ungraded lands	Rs 0.60 per muri

The in-kind assessment and commutation system was thus abolished. The tax assessment rate on ungraded Khet lands in the hill districts was subsequently reduced to Rs 0.35 per muri.⁸

Pakho Lands. Pakho lands in the hill districts have not been measured. Tax assessments in these areas are based on either the Hale (plow team) or the Bijan (seed) system. In 1963, tax assessment rates under the Hale system were standardized as follows:⁹

Hale	Rs 3.00
Pate	Rs 1.50
Kodale	Rs 0.75

The 1963 Finance Act¹⁰ standardized the assessment rate under the Bijan system at Rs 0.15 per mana of seeds. This was reduced to Rs 0.10 per mana in 1964.¹¹

Kathmandu Valley

The 1966 Finance Act prescribed that the uniform tax assessment rates introduced in the hill districts in 1963 should also be applicable to Kathmandu Valley.¹² The rates, calculated according to the ropani unit (4 muris = 1 ropani) are as follows:

Abal grade	Rs 2.60 per ropani
Doyam	Rs 2.20 per ropani
Sim	Rs 1.80 per ropani
Chahar and ungraded lands	Rs 1.40 per ropani

Tarai Districts

The tax assessment rate schedule prescribed in 1963 for the hill districts was extended in 1966 to the Tarai districts.¹³ The rates, calculated according to the Bigha system (53 muris = 1 bigha) are as follows:

Abal grade	Rs 34.00 per bigha
Doyam	Rs 29.00 per bigha
Sim	Rs 23.00 per bigha
Chahar	Rs 18.00 per bigha

Ungraded lands:

<u>Old Rate</u>	<u>New Rate</u>
Rs 20.00	Rs 34.00
Rs 15.00	Rs 26.00

In the hilly areas of the Tarai region, including the Inner Tarai, the tax assessment rate had been reduced from Rs 15.00 to Rs 10.00 per bigha in 1964.¹⁴ It has now been raised to Rs 18.00 per bigha.¹⁵

The new rates for the various grades will be enforced only after the completion of cadastral surveys. The new schedules make no distinction between Khet and Pakho lands; moreover, they give only four rates, thus rendering meaningless the six-grade system (four grades for Khet and two grades for Pakho lands) prescribed by the 1963 Land (Survey and Measurement) Act.

Other Land Taxes and Miscellaneous Levies

The 1963 Finance Act increased all other land taxes in the hill districts, including the Khachari or pasture tax and the Thek tax on Kipat holdings, by 100 percent.¹⁶ In 1966, such taxes were retained in the hill districts, but abolished in Kathmandu Valley.¹⁷ The absence of a definite policy becomes apparent when we note that the Chari Rakam or pasture tax levied in the Tarai districts has been abolished,¹⁸ whereas the Karchari tax in the hill districts has been doubled.

In 1963, all levies imposed on land, including Jhara, Bethi, Megjin, Khani, Goldaura, Kalamat, Ghu (Khane), and Sarbachandrayan, were abolished throughout the country.¹⁹ However, the tax on

homesteads owned by landless peasants was retained. According to the 1966 Finance Act, "In Kathmandu Valley, miscellaneous levies imposed in cash or in kind, at different rates, including Serma, Walak, Saune Fagu, and Ghardhuri, have been abolished. Land Taxes in such cases will be assessed at rates prevailing on adjoining holdings. However, since land tax assessment rates have now been standardized at rates prevailing in the hill districts, levies other than those mentioned herein have been retained."²⁰ As a result of these measures, the homestead tax on the central level has been retained only in the case of landless peasants. It is difficult, however, to understand why a homestead should continue to be taxable if owned by a landless peasant, but not when owned by a landowner.

Critique of the New Land Taxation Policy

Explaining the *raison d'etre* of the new land taxation policies, the Chairman of the Council of Ministers stated in the course of his budget speech on July 10, 1966:

It is indisputable that land tax assessment rates are not in keeping with the times. Discrepancies in these rates exist not only in different places, but also between the Tarai, Kathmandu Valley, and the hill region. Land tax at present contributes only 19 percent of the total revenue. Its contribution to the revenue may thus be expected to be higher. A comparison of the land tax assessment rates prevailing in the Tarai, Kathmandu Valley, and the hill region indicates that rates are highest in Kathmandu Valley, up to Rs 28.00 per ropani, while the hill region comes next. The hill region is naturally inaccessible, [a place] where agriculture is an arduous undertaking. Moreover, not many crops can be cultivated in this region because of natural factors, while transport facilities and markets for the sale of agricultural produce are lacking. It would therefore be equitable if land tax assessment rates were higher in Kathmandu Valley and the Tarai than in the hill region. Uniformity will be achieved if from this fiscal year a standard schedule of land tax assessment rates is introduced throughout the Kingdom on the basis of rates prevailing in the hill region. It is the policy of His Majesty's Government to introduce uniform land tax assessment rates on land of the same quality all over the Kingdom. This will reduce revenue from the land tax in Kathmandu Valley by approximately 50 percent. But this will remove the great hardship so far undergone by landowners in Kathmandu Valley. This measure will put an end to the age-old inequalities prevailing in respect to land tax assessment rates and progressively reduce economic inequality on the basis of social justice. . . . The introduction of uniform rates of land tax will increase the land revenue by Rs 25 million.²¹

However, these statements do not provide a convincing explanation of the *raison d'etre* of land tax uniformity on a countrywide basis. The equitability of higher tax assessment rates in Kathmandu Valley than in the hill districts has been admitted, so that we must inevitably conclude that uniformity by no means contributes to equity. There is no evidence that the absence of uniform rates of taxation in Kathmandu Valley, the hill districts, and the Tarai region have contributed to inequity in the past. Under an equitable taxation system, levels of assessment are based on productivity, location, and other economic and geographical factors.

The introduction of uniform land tax assessment rates has reduced land revenue in Kathmandu Valley, but the loss has been more than compensated for by the approximate 70 percent increase in tax assessment rates in the Tarai districts. On June 6, 1966, one month before the introduction of these measures, the exchange rate between the Indian and the Nepali rupee had been reduced from Rs 100: Rs 160 to Rs 100: Rs 101.55. Although the use of Indian currency in the Tarai districts had been gradually discouraged, it was still the more comprehensible unit of currency to farmers in these areas, particularly because considerable quantities of agricultural produce are exported from this region to India every year against payments in Indian currency. Accordingly, a farmer who could previously meet his tax obligation of Nepali Rs 20.00 per bigha by selling rice worth Rs 12.50 in Indian currency now found that he had to increase this quantity to fetch approximately Rs 33.43 in Indian currency to meet his new tax obligation of Nepali Rs 34.00 per bigha. For him, therefore, the percentage of increase was approximately 267 percent.

"The great hardship so far undergone by landowners in Kathmandu Valley" has been stressed in the budget speech, but it has not been explained at what level this hardship has been expressed. In spite of the 10 percent increase made in land tax assessment rates in Kathmandu Valley during 1962-63, it had been officially claimed that collections had been made in time to the extent of 90 percent. This can hardly be interpreted as evidence of resistance to "hardship." In fact, the ever-rising prices of agricultural produce in this region, as elsewhere, had effected the impact of this measure.

Land Tax Revenue, 1961-67

The impact of these changes on the total land tax revenue is indicated by the following figures:

Land Tax Revenue in Nepal

1961-67

<u>Year</u>	<u>Land Tax Revenue</u>	<u>Percentage of Total Revenue</u>
1961-62*	Rs 28,234,000 ²²	31.02
1962-63**	Rs 39,930,456 ²³	40.85
1963-64**	Rs 40,000,000 ²⁴	25.32
1964-65**	Rs 43,158,000 ²⁵	22.43
1965-66*	Rs 45,000,000 ²⁵	20.07
1966-67***	Rs 44,000,000 ²⁵	17.43

Surcharge on Land Tax

The surcharge on the land tax introduced in 1959 with the objective of breaking up large units of Raikar landownership was finally abolished in 1962. Collections made in 1959-60 and 1960-61 were refunded, but no such consideration was shown to landowners for the fiscal year 1961-62.²⁶ The reasons for such discrimination are not clear, although it should be noted that tax delinquency during 1959-60 and 1960-61 was higher than during 1961-62, and hence the government may have made a virtue of necessity by granting remission. Actual revenue from this source for the two-year period was only Rs 50,000.00.²⁷

Tax on Agricultural Income

Nevertheless, the decision to abolish the surcharge on the land tax did not mean that the government had finally abandoned the idea of introducing a progressive element into Nepal's land tax system. The 1963 Nepal Income Tax Act prescribed agricultural income as one of the components of general income for purposes of taxation.²⁸ In order to determine the net income from agriculture, gross in-kind income was converted into cash at Rs 25.00 per muri or Rs 16.00 per maund,²⁹ and 75 percent of the resultant figure was deducted to provide for incidental expenses, including payment of the land tax. The balance of 25 percent was then regarded as net income. The Act also empowered the government to grant remissions on account of floods, droughts, and other natural calamities causing damage to crops.³⁰

*Revised estimates.

**Actual revenue.

***Original estimates.

The tax on agricultural income was substantially the same as the surcharge on the land tax, for both measures made an attempt to impose progressive taxes on landownership. The sole difference between them lay in the basis of assessment, the total land tax being payable in one case and the net income from the land in the other. Examples may be cited from Uttar Pradesh and elsewhere in India where the agricultural income tax used to be assessed on incomes calculated as multiples of the total land tax payable by the landowner. In any case, the measure appears to have been largely unsuccessful. In 1966, the tax on agricultural income was abolished on the grounds that the devaluation of the Indian rupee in June, 1966, had exerted an adverse effect on the agricultural sector, particularly in the Tarai.³¹ But since this decision was made simultaneously with the enhancement of land taxes in the Tarai, there is reason to believe that the fall in agricultural income resulting from a lower exchange rate between the Indian and Nepali rupees was not the main factor contributing to it. The assessment and collection of taxes on agricultural income present formidable problems, particularly in a country like Nepal where the history of direct and progressive taxes is less than ten years old.

Land Taxes on the Panchayat Level

The formation of Panchayats at the village, town, and district levels after 1962 and the delegation of administrative, fiscal, and other powers to them under the program of administrative decentralization have led to the emergence of a land taxation system at the Panchayat level. Taxes and levies imposed by Panchayats under these arrangements are listed below:

1. Panchayat Development Tax. The Panchayat development tax was first introduced in the Budhabare Village Panchayat area of Jhapa district in the eastern Tarai on January 31, 1965. It amounted to 10 percent of the main annual crop from owner-cultivators, or 15 percent of the crop from landowners and 15 percent from tenants if rent amounted to less than 50 percent of the crop.³² The rates for landowners and tenants were later adjusted to provide for three different levels of rent: 50 percent, 33-1/3 percent, and less than 33-1/3 percent of the main annual crop.³³

The Panchayat Development and Land Tax Act which was promulgated on August 30, 1965, gave legislative sanction to this measure, with certain changes. The Act fixed the tax assessment rates at 6 percent of the main annual crop from owner-cultivators; 15 percent from landowners, irrespective of the level of rent; and 3 percent or 5 percent of the cultivator's share of the crop, pending upon whether rents were above or below 50 percent of the main annual crop. Provision was made for the abolition of all other taxes and levies on the land with the imposition of the Panchayat development tax.

The objectives of this measure were to mobilize local resources to the maximum possible extent for local development activities, to achieve economic development by further activating and consolidating local Panchayats, and to make the land tax system more equitable. The act prescribes that 35 percent of the proceeds of the Panchayat development tax should go to His Majesty's Government, 10 percent to the District Assembly, and the balance of 55 percent to the appropriate Village or Town Panchayat. However, the tax was also intended to be part and parcel of efforts to divert investment capital from land to non-agricultural sectors of the economy. According to one study:

The intent of this combination of rental ceilings and increase in land revenue is to squeeze the income from land available to the non-tiller owner to the point where other investments in the non-agricultural sector look more favorable. By this process, land will be closed off as a favorable investment opportunity to the landlord.³⁴

The assessment and collection of the Panchayat development tax is the responsibility of the local Panchayat. Assessment must be completed before the main annual crop is harvested. The in-kind assessment is then commuted into cash at rates prescribed by the local Panchayat with the approval of the District Panchayat.

Land tax assessment at a fixed proportion of the produce is not a new concept in Nepal. Ancient Sanskrit writings have prescribed that the land tax should be assessed at 8 percent, 12 percent, or 16 percent of the crop, obviously depending on the productivity of the land.³⁵ What is more, the principle of land tax assessment at one-sixth of the produce had been adopted in Nepal in certain areas during the Rana regime.³⁶ It is an interesting coincidence that the rate of the Panchayat development tax is also roughly one-sixth of the main annual crop on lands not personally cultivated by the owner.

Under Nepal's traditional in-kind land tax assessment system prevalent in Kathmandu Valley and some hill districts, specific rates were prescribed per unit of area on the basis of the estimated productivity of the land. Eventually, problems of collection of in-kind tax assessments were solved through their commutation into cash at fixed rates. In 1962-63, the government finally abolished the in-kind tax assessment system in these areas, as it had lost all meaning under the existing circumstances.

Since the Panchayat Development and Land Tax Act requires local Panchayats to assess the tax before the crop is actually harvested, it is obvious that sharing will be done on the basis of estimation and that there will be no actual division of the produce. Instead of a fixed commutation rate schedule, as was the case under the old system in Kathmandu Valley and the hill districts,

local Panchayats have been empowered to prescribe rates every year with the approval of the District Panchayat. It is thus clear that the new tax is only a modified form of Nepal's traditional in-kind tax, and there is little evidence to justify the hope that administrative difficulties will not lead to a repetition of the old sequence of events. It is indeed significant that more than two years after its introduction, the Panchayat development tax is still an "experiment" limited to the Budhabare and two other Village Panchayat areas³⁷ of Jhapa district.

2. Homestead Tax. District Panchayats have been empowered to levy taxes on homesteads in rural areas under their jurisdiction.³⁸ In urban areas, the power to levy this tax has been conferred on Town Panchayats.³⁹ The rate of this tax does not exceed Rs 10.00 in either case. Few District and Town Panchayats in the country appear to have failed to take advantage of these provisions.

3. Bal Bithauri Tax. The 1962 Village Panchayat Act also empowers Village Panchayats to collect and appropriate the proceeds of the Bal Bithauri tax⁴⁰ traditionally imposed on lands situated in the market areas of the Tarai districts.

4. Surcharge on Land Tax. Town Panchayats have been empowered to levy a surcharge of 10 percent on the regular land tax on lands situated in the area under their jurisdiction.⁴¹ So far, no Town Panchayat appears to have exercised this authority.

5. Education Levy. Both Village⁴² and Town Panchayats⁴³ have been empowered to impose an education levy for providing free and compulsory primary education. Although this levy is to be imposed on both landowners and other persons, its main thrust is to increase the total tax payment on agricultural lands.

Reforms in the Land Tax Collection System

An important reform made in the land tax collection system in recent years has been the abolition of the Thekka Thiti system, under which adjustments in revenue necessitated by damage to the land due to hail, drought, riverine action, or washouts were made only in the course of the next revenue settlement, and under which the Talukdar was committed in all circumstances to pay the amount fixed in the previous settlement. Moreover, there was no obligation under this system to register newly cultivated lands for purposes of taxation. The Thekka Thiti system has traditionally existed in the revenue divisions of Ilam, Chhathum, and Terhathum in the far-eastern hill region and in Baitadi, Dandeldhura, Doti, Achham, Bajhang, Dailekh, and Jumla in the far-western hill region.⁴⁴

On June 8, 1964, His Majesty's Government promulgated rules under which landowners in the Thekka Thiti areas were entitled to tax remissions on lands damaged in the manner mentioned above. At the same time, landowners were required to register reclaimed lands for tax assessment at current rates.⁴⁵ This, in effect, meant the abolition of the age-old Thekka Thiti System.⁴⁶

The Land Tax Collection Machinery

In the first volume of this study, we suggested that Revenue [Mal] Offices should be reorganized on the basis of the 75 newly created development districts.⁴⁷ A decision to this effect was taken by His Majesty's Government in early 1965.⁴⁸

Legislation seeking to abolish the Jimidari system in the Tarai and the Talukdari system in the hill region was first enacted on April 12, 1963;⁴⁹ these provisions are retained in the 1964 Lands Act.⁵⁰ However, this is merely a permissive measure, which will be enforced in different areas on such dates as the government will prescribe from time to time.

The 1964 Lands Act prescribes that in case the Jimidari or Talukdari system is abolished in any area, the existing Jimidar or Talukdar, any other person, or the appropriate Village Panchayat may be entrusted with the responsibility of collecting land taxes on prescribed terms and conditions.⁵¹ This provision not only highlights the role which the local Panchayats are expected to play in the future pattern of land tax collection, but also indicates the lack of clear thinking and the hesitancy regarding the abolition of the non-official land tax collection functionary at the local level. It is apparent that even though the government wants to use local Panchayats in the collection of land taxes at the village level, it is not entirely convinced that these bodies have sufficiently developed to be able to handle this responsibility efficiently.

A study of the 1961 Land Tax (Special Arrangements) Act, as amended on September 27, 1962 to cover the hill districts,⁵² would appear to justify these conclusions. According to this Act, Revenue Offices have been empowered to entrust the responsibility of collecting land taxes on vacant Jimidari and Talukdari holdings to local Panchayats if the latter submit an application to this effect. The act also provides that this responsibility may be withdrawn, and the Jimidari or Talukdari system restored, if the local Panchayats fail to collect land taxes satisfactorily and in time.⁵³ It is significant that vacant Jimidari or Talukdari holdings are not immediately allotted to local Panchayats, and that the transfer of this responsibility to local Panchayats has not been considered a final arrangement. In the early part of 1964, there were reports that some Village Panchayats in Sindhupalchok district

had been entrusted with this function on an experimental basis.⁵⁴ His Majesty's Government appears to be proceeding with great caution in this respect.

Abolition of the Ukhada Land Tenure System

Since the Ukhada land tenure system was not discussed in adequate detail in Volume I, the following account of its origin and development will facilitate an understanding of the measures which have been taken in recent years to abolish it.

The Ukhada land tenure system prevails in the administrative districts of Palhi, Majhkhand, Sheoraj, and Khajahani (corresponding to the present districts of Nawal-Parasi, Rupandehi, and Kapilavastu in the Lumbini Zone in the Western Tarai). The total area under this form of land tenure is approximately 110,000 acres.⁵⁵ The system was principally characterized by rents paid in cash. Land taxes varied between Rs 5.00 and Rs 11.00 per bigha,⁵⁶ while Ukhada rents varied between Rs 18.00 and Rs 22.50 per bigha.⁵⁷ The Ukhada landowners' income thus averaged approximately Rs 11.00 to 13.00 per bigha. In June, 1932, rent rates were fixed by the local administration under authority sanctioned by Kathmandu.⁵⁸ Recent land tax legislation protected the Ukhada landowners' interests to some extent by prescribing that:

In case any landowner has given his land for cultivation to any protected peasant against rent payments in cash, and in case the landowner is liable to pay as tax more than 90 per cent of the payment he is permitted to receive from such protected peasant, His Majesty's Government may remit the tax amount in excess of this percentage.⁵⁹

Such a provision was necessary because landowners were prohibited from shifting the incidence of recent tax enhancements on the tenant.⁶⁰ Nevertheless, Ukhada landowners are said to have done so in several cases.⁶¹

Regulations promulgated in 1932 also prohibited Ukhada landowners from evicting their tenants. In the event of default in the payment of rents, landowners were required to obtain an injunction from the local Revenue Office to evict the tenant. In such cases, owners were permitted to cultivate their Ukhada lands personally on the condition that tenants were appointed with the approval of the local Revenue Office as soon as possible. However, default in the payment of rents on the part of tenants was not considered an excuse for withholding payment of land taxes due to the government.⁶² Tenants on Ukhada lands were exempted from providing unpaid labor to their landowners.⁶³ It should be noted that tenants cultivating Raikar lands of other categories did not enjoy such statutory privileges. However, Ukhada tenants were denied the right of transfer.⁶⁴

The Ukhada land tenure system appears to have emerged primarily as a result of the appointment of Jimidars to function as agricultural entrepreneurs and land tax collectors. The Western Tarai region was settled comparatively recently.⁶⁵ Lands not taken up by individual cultivators, including waste and forest lands,⁶⁶ were registered in the name of the Jimidars subject to payment of taxes. In order to mitigate their tax liability, Jimidars gave such lands for cultivation to tenants on relatively favorable terms. These terms later assumed the form of the Ukhada land tenure system. As official orders issued in 1921 stated, Jimidars alienated their lands as Ukhada "for their own benefit."⁶⁷

In 1930, records of Ukhada lands were compiled for the first time. Statutory provisions were then made with regard to rents and tenancy rights thereon. An order issued by the Government of Nepal in November, 1930, noted that disputes were frequent in respect to Ukhada lands.⁶⁸ Since this was a period of depression, the government appears to have made efforts to meet the problem of widespread delinquency in the payment of rents by Ukhada tenants by insuring tenants tenurial security and fixed rent assessments.⁶⁹ The need to stabilize the peasantry and encourage land reclamation at this time led the Government of Nepal to permit the settlement of even Indian citizens on Ukhada lands in the Western Tarai. In fact, 45 percent of the Jimidars in Sheoraj district are said to be of Indian origin.⁷⁰

The Ukhada land tenure system thus constituted a via media between full-fledged landownership and tenancy. Since rents were not payable in kind, and the tenant was therefore eventually able to appropriate the benefits of rising prices, the system differed from tenancy in the usual sense of the term. The Ukhada landowner, on the other hand, was assured nominal ownership of the land and a small margin of profit. In the form it ultimately assumed, the Ukhada land tenure system represented an uneasy compromise thrust upon these two classes by the government in an effort to mitigate tax delinquency and stabilize the agrarian population. The system lost its usefulness in the post-1940 period because of rising prices and increasing profitability of kind. Since that time it has been characterized by deteriorating landlord-peasant relations.⁷¹

The Ukhada Land Tenure Act, which came into force on October 2, 1964, has terminated the rights of landowners on Ukhada lands. It provides that such lands should be registered in the name of the peasants on payment of compensation to the expropriated landowners. Compensation amounts to ten times the land tax and is payable to the landowner in five equal installments spread over a period of five years from the date on which the land is registered in the name of the peasant.⁷²

There has been some difficulty in abolishing Ukhada lands, because large areas of Ukhada lands in these districts are being

cultivated by Indian citizens. The Act provides that abolished Ukhada lands shall not be registered in the name of aliens.⁷³ As this provision enabled landowners to retain ownership of such lands and even to resume possession, thus vitiating the general objectives of land reform policy, the law was subsequently amended to provide that in case any peasant is an alien, or is subsequently proven to be so, the Ukhada land cultivated by him shall be registered in the name of His Majesty's Government for ultimate sale or distribution to Nepali landless peasants on any condition. The responsibility of compensating landowners for Ukhada lands acquired in this manner was then taken up by His Majesty's Government.⁷⁴ The rules promulgated under the Act prescribe that in case a controversy arises with regard to the citizenship status of any peasant, the appropriate authority may direct him to produce a citizenship certificate within not more than seven days. In the event of his inability to produce the certificate within this time limit, the peasant forfeits the right to have the land registered in his name subsequent to abolition.⁷⁵

Recent Developments in the Kipat Land Tenure System

Efforts to reform the Kipat land tenure system have been less pronounced than in the case of Raikar lands. Kipat lands are held by the Limbus, a small but powerful communal group in the eastern hill districts. Traditionally, the Government of Nepal has sought to conciliate this community by safeguarding its land rights under the Kipat system, and the royal charter of 1961, which confirmed its customs and traditions and its traditional rights and privileges,⁷⁶ may be regarded as a continuation of this policy. Nevertheless, this charter has not constituted any impediment to the introduction of the new land reform program in the Kipat districts of Terhathum, Dhankuta, Panchthar, Ilam, Sankhuwa-Sabha, and Taplejung in eastern Nepal.⁷⁷

This step has created a controversy regarding the consequences of the enforcement of the credit provisions of the 1964 Lands Act in these districts. The Chairman of the Nepal Peasants' Organization has declared:

Land reform in districts where the Kipat form of land tenure exists must be introduced in consultation with both Kipat owners and non-Kipat owners as well as the Nepal Peasants' Organization. . . . In case agricultural loans are scaled down in these areas under the 1964 Lands Act, non-Kipat owners, who have acquired Kipat lands on mortgage, will be rendered homeless.⁷⁸

On the other hand, official spokesmen have emphasized that "the land reform program will make no distinction between Kipat and Raikar lands," and that "the program is not meant to displace peasants."⁷⁹

It is, however, difficult to justify the view that the land reform program makes no distinction between Raikar and Kipat lands. In respect to Raikar lands, the 1964 Lands Act prescribes that in case a creditor has utilized any property on mortgage in such a way that he has appropriated an income exceeding 10 percent of the loan, the excess shall be deemed to have been deducted from the principal. On the other hand, the Act exempts "areas where land cannot be relinquished or alienated according to law or custom," which includes lands under Kipat tenure. The income appointed on possessory mortgages dating prior to the commencement of the Act shall not be thus deducted from the value of the mortgage.⁸⁰ Non-Kipat owners who have acquired Kipat lands on mortgage have thus been protected from the cancellation of their mortgage bonds. The apprehension of the Nepal Peasants' Organization that the introduction of the 1964 Lands Act in the Kipat districts would lead to the displacement of non-Kipat mortgages seems therefore to be ill-founded, at least for the immediate present.

To a certain extent, confusion about the possible impact of the credit provisions of the 1964 Lands Act in Kipat areas appears to have resulted from failure to interpret them correctly. The Act provides that in case a creditor has already realized interest double the amount of the principal, the loan shall be deemed to have been fully repaid.⁸¹ But this provision does not apply in the case of mortgages.⁸²

It is true that under the 1964 Lands Act no safeguard has been provided to non-Kipat mortgages in the case of income appropriated by them in excess of the statutory rate of 10 percent after the enforcement of the Act. Over a period of time, therefore, a situation might arise in which such excess would be deducted from the value of the mortgage. But this in no way justifies any demand for the enforcement of the 1964 Lands Act in the Kipat districts in an amended form. The question of deduction arises only in the event of non-Kipat mortgaging violating statutory provisions and appropriating an income exceeding 10 percent of the value of the loan. If their earnings are limited to 10 percent, the question will not arise at all. There is little justification for amending the 1964 Lands Act to enable non-Kipat owners to exact illegitimate profits from their Kipat mortgages.

C. GUTHI LEGISLATION

Guthi Legislation in the 1963 Legal Code¹

Section 1

In case [any person] requests land from His Majesty's Government for the establishment or construction of schools, hospitals, or other public welfare institutions within the territory of Nepal, State land may be granted if available, in case it does not belong to other persons, or in case such grant does not prejudice the interests of other persons.

Section 2

Rest houses or religious endowments established in accordance with the prescribed procedure shall not be damaged by any person, and shall not be confiscated for any reason whatsoever. In the absence of any person possessing any claim thereto, they shall be registered as State Guthis.

Section 3

In case Guthis are established in any manner, action shall be taken as follows:

(1) In the case of Guthis [which are] endowed after relinquishing title thereto and [which are] placed under Guthiyars, the persons who endowed them or their heirs and relatives may mortgage only the surplus which they are entitled to enjoy, not that surplus which is to be kept in reserve after performing the functions indicated in the gift-deed or stone or other inscription of the Guthi. Nothing other than that mentioned herein shall be sold, presented, or donated, nor shall the entire [Guthi property] be mortgaged on [a] possessory or other basis. The functions prescribed in the deed [of endowment] shall not be discontinued or [the requirements of] the religious endowment violated. In case the heir or relative does not perform the functions prescribed [in the deed of endowment], or sells, presents, or donates the surplus income which he is entitled to enjoy instead of merely mortgaging it on [a] possessory or other basis, or sells, presents, donates, or mortgages on [a] possessory or other basis the entire Guthi property, thus violating [the requirements of] the religious endowment, he shall not be entitled to his turn [in the management of] the Guthi, nor to his share in the surplus income. His turn in such management shall accrue to the next person who has a claim to the Guthi. The amount paid by the creditor who takes up [the surplus income or the entire Guthi on mortgage] through ignorance shall become an unsecured loan. In case he has done so willfully, he shall not be entitled to repayment.

(2) In the case of a Gharguthi which has been endowed without appointing any Guthiyars, if the income that can be utilized [for personal requirements] amounts to more than ten percent at prices current during the year concerned, the person who made the endowment or his heirs may perform the functions prescribed in the gift-deed or stone or other inscription, and mortgage the surplus which he is entitled personally to utilize. However, such surplus income shall not be sold, presented, or donated, nor shall lands and buildings belonging to the Guthi be mortgaged, sold, presented or donated. The religious requirements [pertaining to the Guthi] shall not be violated through the non-performance of functions prescribed in the gift-deed or stone or other inscription of the Guthi endowment. Any person who is guilty of such violation shall forfeit his turn [to manage] the Guthi. His turn shall accrue to the nearest relative. However, the person who is thus guilty shall be entitled to appropriate his share, according to law, of the surplus income which may be personally utilized. In respect to creditors, action shall be taken in accordance with Sub-Section (1) above.

(3) In the case of Guthis endowed under Sub-Sections (1) and (2) above, if the person who makes the endowment or his heirs and relatives mortgage the surplus income which they are entitled to enjoy and the creditor takes it up, and if no income is derived from the Guthi lands because of acts of God, the functions pertaining to the Guthi shall be performed, and necessary repairs undertaken with the reserve maintained for this purpose, if any; and in case no provision has been made for such reserves, so that the [entire] surplus can be utilized for personal purposes, expenses in performing such functions and undertaking necessary repairs according to the gift-deed or stone or other inscription of the Guthi shall be borne personally, if necessary. In case no income is derived from the Guthi lands because of acts of God, and in case no provision has been made to maintain reserves for financing such functions and repairs, the person who mortgages the surplus income shall bear the necessary expenses personally and conduct such functions and repairs, and the creditor too on his part shall make him do so. In case the debtor does not do so, then, in Guthis other than Murda Guthi,² the creditor who has taken up the Guthi on mortgage shall incur the necessary expenses himself and conduct such functions and repairs as he may conduct himself, and, in the case of other functions and repairs which he may not conduct himself do so through the debtor or any of his relatives. In case neither the creditor nor the debtor does so, both shall be deemed to have been guilty of violating the religious requirements. The relatives mentioned in Sub-Sections (1) and (2) shall conduct such functions and repairs in the presence of the creditor if he is willing. If he is not, they shall do so in the presence of four other respectable persons, and have the creditor or other respectable person sign the [statement of] expenditure incurred thereon. Expenditure thus incurred may be recovered from the mortgaged

surplus income. Until such expenditure is fully restored, the creditor shall not be entitled to the surplus income. He may appropriate the surplus income according to the deed of mortgage only if expenditure is fully recovered in this manner. The mortgage may be redeemed by a relative who is entitled to a turn in the management of the Guthi.

Section 4

In case the Guthi endowment is a donation, the beneficiary is a hakdar. In case such hakdar or his heirs violate the religious performance [of the Guthi], the donor or his heir may remove them and assign the Guthi to any relative [of the hakdar] he likes. But [the donor or his heir] shall not utilize the Guthi himself. A Guthiyar shall not dispose of a Guthi in favor of another person by means of gift, donation, or sale or otherwise.

Section 5

In case there are several relatives, they shall each manage and utilize the Guthi in accordance with the terms of the deed, if any. In the absence of a deed, they shall do so by two-year turns. In case any relative is alive, his sons and grandsons shall have no claim to the Guthi as long as he lives. In the absence of a deed, no complaint shall be entertained in the matter of two-year turns unless it is filed within sixteen years after accrual of title.

Section 6

Any reasonable depletion or depreciation in the movable assets of the Guthi, in [the] course of their use for the prescribed purposes, shall not involve the Guthiyar in any offence. But in case the Guthiyar causes loss or damage [to such assets], he shall be regarded as having acted contrary to the religious purposes of the Guthi. Such [a] Guthiyar may be removed.

Section 7

If a Guthi has been established in the form of a religious institution on land acquired from His Majesty's Government under Section 1 of this law, and in case the person who made the endowment or his heirs and coparceners cannot renovate it, and this is done by some other person, the land acquired from His Majesty's Government may be utilized by the person who thus renovated it after discharging the functions of the Guthi as prescribed by His Majesty's Government.

Section 8

In case [any person] has utilized for 16 years without any documentary title a Guthi belonging to another person, he may

continue to do so as long as he is alive. After his death, the Guthi shall accrue to the person who possesses title to it.

Section 9

In case a Guthi endowment is made after debts are contracted or arrears become due to His Majesty's Government, [the endowment] shall not be valid until such debts or arrears are paid off. But no punishment shall be awarded [to the person who made such endowment].

Section 10

In case Mahants³ who have obtained State monasteries acquire lands and buildings prior to their appointment, or do so subsequently through their own resources, they may sell or conduct written transactions in respect to such lands and buildings according to law during their lifetime. After the death of the Mahant who thus acquired [such lands and buildings], whatever is left of the lands and buildings acquired before they obtained [to] the monastery, as well as those acquired thereafter, shall belong to the monastery, not to any relative. No Mahant shall subsequently [give as a] gift, nor shall other persons take, such lands and buildings as have accrued to the monastery. Such transactions shall be invalid. But tenants on [such lands and buildings] may be changed.

Section 11

In case income from lands registered in the name of members of religious orders or those to which they possess title, which is left over after paying the taxes [due on such lands] and which may be personally appropriated [by the members of religious orders owning the lands] has been assigned or is being used for the performance of religious worship of gods and goddesses and other religious functions or [the operation of] Sadavartas, or for similar other purposes [but] without formal endowment as Guthi, the disciples [of such members] may, after the death [of the latter] pay taxes due [on the lands], utilize the remaining income for the usual purposes, and personally enjoy the surplus, if any. No mortgage or sale or gift or donation involving relinquishment of rights in respect to such lands shall be permitted. In case taxes due on the land are defaulted, eviction may be made according to law.

Section 12

In case the post of the Mahant of any monastery falls vacant, and in case there is a royal charter prescribing succession from disciple to disciple, any disciple who can manage the functions of the monastery smoothly and is a citizen of Nepal shall be appointed to this position.

Section 13

In case [any person] misappropriates money payable to a Guthi, the amount concerned shall be recovered from him and a fine of the same amount shall be imposed on him.

Section 14

In case any person has made any false claim and has also appropriated rents, and in case he has conducted [the prescribed] functions, the surplus shall be recovered from him and he shall be fined with an amount equal to five percent of the rents accruing from such lands in one year.

Section 15

In case he has only seized the Guthi, he shall be fined with an amount equal to ten percent of the rents accruing from the lands and other assets thus seized by him.

Section 16

No complaint shall be entertained if it is not filed within a period of two years after commission or occurrence, except in matters where a time limit has been prescribed elsewhere in this law, or in matters relating to the violation of religious performances and the unauthorized endowment of a Guthi.

Guthi Corporation Act, 1964⁴

Whereas it is expedient, since the constitution of Nepal has separated Guthi revenue from State revenue, to provide for the establishment and management of a Guthi Corporation in order to remove Rajguthis from the jurisdiction of His Majesty's Government, place them under a Corporation, and thus insure their systematic management,

Now therefore, His Majesty King Mahendra Bir Bikram Shah Dev has enacted this law on the advice and approval of the National Panchayat.

Chapter I

Preliminary

1. Short Title, Extent, and Commencement

- (1) This law may be called the Guthi Corporation Act, 1964.
- (2) It shall be applicable throughout the Kingdom of Nepal.
- (3) It shall be enforced at once.

2. Definitions

Unless repugnant to the subject or context, in this Act,

(a) Corporation means the Guthi Corporation established under Section 3.

(b) Board means the Board of Directors to be formed under Section 4.

(c) Director means a member of the Board, including the Chairman.

(d) Secretary means the Secretary of the Board.

(e) Administrator means the administrator of the Corporation.

(f) Guthi means a Guthi endowed by any philanthropist through relinquishment of his title to movable or immovable property or any income-yielding funds for the construction, operation, or maintenance of any temple, rest house, roadside shelter, inn, well, tank, bridge, school, house, building, or institution in order to run any monastery or celebrate any religious occasion, ceremony, or festival or for any other religious or philanthropic purpose.

(g) Rajguthi means a Guthi under the jurisdiction of His Majesty's Government or one for which necessary arrangements are made by [His Majesty's Government].

(h) District Guthi Board means the District Guthi Board to be formed under Section 11.

(i) Prescribed or As Prescribed means prescribed or in the manner prescribed in the articles framed under this Act.

3. Establishment of Corporation

(1) There shall be formed a corporation called the Guthi Corporation.

(2) The Corporation shall be an autonomous and corporate body having perpetual succession. It shall have a separate seal of its own for all of its functions. It may sue and be sued in its own name.

(3) Subject to this act and the articles framed hereunder, the Corporation may acquire, use, and transfer or otherwise alienate movable and immovable property.

(4) The head office of the Corporation shall be situated at Kathmandu.

4. Formation of Board of Directors and Tenure of Directors

(1) The Corporation shall have a Board of Directors consisting of the following members:

- | | | |
|-----|---|--------------------------------|
| (a) | <u>Bada Gurujiu</u> ⁵ | Ex Officio Chairman |
| (b) | Assistant <u>Bada Gurujiu</u> | Ex Officio Member |
| (c) | Chief Priest | Ex Officio Member |
| (d) | Commissioner, Bagmati Zone | Ex Officio Member |
| (e) | Director,
Department of Land Revenue,
His Majesty's Government | Ex Officio Member |
| (f) | Director,
Department of Archeology,
His Majesty's Government | Ex Officio Member |
| (g) | A representative of the
Ministry of Law and Justice,
His Majesty's Government | Ex Officio Member |
| (h) | Five non-governmental mem-
bers experienced in Guthi
administration, nominated
by His Majesty's Government | Member |
| (i) | Administrator of the
Corporation | Ex Officio Member
Secretary |

(2) The tenure of directors nominated under Clause (h) of Sub-Section (1) shall be three years. But they may be renominated on the expiration of this term if His Majesty's Government so desires.

(3) Notwithstanding anything contained in Sub-Section (1), His Majesty's Government may make necessary alterations in the composition of the Board.

5. Disqualification of Directors

None of the following persons shall be nominated as a director under Clause (h) of Sub-Section (1) of Section 4:

- (a) Paid officials of the Corporation;
- (b) Persons who have been declared bankrupt;
- (c) Lunatics or persons who lack mental balance; or
- (d) Persons who have not completed the age of 21 years.

6. Power of His Majesty's Government to Remove Director

(1) His Majesty's Government may, in the following circumstances, remove a director who has been nominated under Clause (h) of Sub-Section (1) of Section 4:

(a) In case he is subject to any of the disqualifications mentioned in Section 5;

(b) In case he submits his resignation in writing;

(c) In case he absents himself from three consecutive meetings of the Board without its permission;

(d) In case he is proved to have been a partner in any contract with the Board; or

(e) In case His Majesty's Government is satisfied that his continuation in this post is not conducive to the interests of the Corporation.

(2) In case any director is unable to attend meetings of the Board for any period of time for any reason, His Majesty's Government may prescribe another person to replace him during such period.

7. Remuneration of Directors

Every director other than the Administrator shall receive the prescribed fee for every day he attends meetings of the Board or its Subcommittee.

8. Management

(1) The supervision, guidance, and management of all functions of the Corporation shall be performed by the Board.

(2) Except when this Act or the articles framed hereunder explicitly provide that action shall be taken in accordance

with the decisions of His Majesty's Government, the powers and duties vested in the Corporation shall be exercised and discharged by the Board in respect to all other matters.

But the Board may delegate any of such powers and duties as it considers necessary and proper to be exercised and discharged by any director or by a Subcommittee of directors or other officials of the Corporation or the District Guthi Board.

(3) The actions of the Board shall not be held invalid simply on the ground that there was a defect in the composition of the Board or that these [actions] had been performed by the Board while the post of any director was vacant.

9. Meetings of the Board

(1) Meetings of the Board shall be convened as directed by the Chairman. But it shall be obligatory for the Chairman to convene a meeting if at least three directors submit a request in writing to this effect along with the agenda seven days in advance.

(2) Meetings of the Board shall be presided over by the Chairman, or, in his absence, by any director elected by the members present from among themselves for the purpose of that particular meeting.

(3) Decision on every issue presented at the meeting of the Board shall be made by a majority of the directors present and voting. The presiding director shall not have the right to vote. But in the event of a tie, he may exercise his vote.

(4) No meeting of the Board shall be held unless it is attended by more than half of the total number of directors.

10. Appointment of Advisors and Other Employees, and Other Conditions of Service

The Corporation may appoint such advisors and employees as it may consider necessary for the systematic and efficient discharge of its functions. Their appointment and other conditions of service shall be as prescribed.

11. Formation and Functions of District Guthi Board

(1) In case His Majesty's Government so directs, the Corporation shall form a District Guthi Board in any district.

(2) The disqualifications mentioned in respect to the directors of the Corporation in Section 5 shall be applicable also

in respect to the members of the District Guthi Board.

(3) The District Guthi Board shall exercise and discharge the powers and duties delegated to it under the restrictive clause contained in Sub-Section (2) of Section 8 in respect to local Rajguthis in the district under the jurisdiction of the Corporation.

(4) The procedure of meetings of the District Guthi Board shall be as prescribed.

(5) The tenure, qualifications, remunerations, and other conditions of service of the members of the District Guthi Board shall be as prescribed.

12. Administration of Rajguthis

(1) The administration and management of all Rajguthis existing at the time of the commencement of this Act and of the movable and immovable property of such Rajguthis shall be conducted by the Corporation, and all rights and liabilities vested in His Majesty's Government in respect to such Guthis shall devolve on the Corporation after the commencement of this Act.

But:

His Majesty's Government may issue such directives or take such action as it deems necessary in order to preserve any house, building, structure, or other movable and immovable property which is important from the viewpoint of archeology, history, or architecture, or the convenience of the general public, to prevent it from damage, collapse, or destruction.

(2) The Corporation may take any of the following actions in respect to Guthis to be administered by it under Sub-Section (1).

(a) Utilize the movable or immovable property of the Guthi or the income accruing therefrom for any religious, educational, cultural, social, or philanthropic purpose;

(b) Enter into or finalize contracts and other agreements on behalf of the Guthi;

(c) Sell, purchase, or otherwise acquire or alienate movable or immovable property on behalf of the Guthi;

(d) Maintain the surplus revenue of the Guthi in a reserve fund after providing for its scheduled functions, utilize the fund in any way, or invest it;

(e) Initiate legal action on behalf of the Guthi, if necessary, and defend any legal action initiated against the Guthi; and

(f) Make any other necessary or proper arrangement. But the Corporation shall not sell or otherwise alienate the immovable property of the Guthi or alter the functions mentioned in the Guthi deed without fulfilling them, except with the prior approval of His Majesty's Government.

13. Appointment of Administrator and His Duties and Functions

(1) The administrator shall be appointed by His Majesty's Government, and the Corporation shall pay him remuneration as prescribed by His Majesty's Government.

(2) It shall be the responsibility of the Administrator to implement the policy determined by the Corporation, and he may do any work incidental to such implementation.

14. Power of His Majesty's Government to Suspend the Board

In case His Majesty's Government feels that the Board is incapable of discharging its functions under this Act, it may, by notification in the Nepal Gazette, suspend the Board and appoint any individual or public body to discharge the functions of the Board under this Act. All actions taken by such individual or public institutions under this Act or the articles framed hereunder shall be valid as if they had been taken by the Board under this Act.

15. Relationship Between His Majesty's Government and the Corporation

Correspondence in all matters on which the Corporation has to obtain the advice or approval of His Majesty's Government, or which it has to represent to His Majesty's Government, shall be conducted through the Department of Land Revenue, Ministry of Finance of His Majesty's Government.

16. Provision of Fund for the Corporation

(1) The Corporation shall have a separate fund of its own and the following amounts shall be credited thereto:

- (a) Amounts received from His Majesty's Government;
- (b) Amounts received from other persons;

(c) Amounts received from the assets of the Corporation; and

(d) All other funds obtained by the Corporation.

(2) All cash balances of the Corporation shall be deposited in an account to be known as "Corporation Fund," which shall be maintained at the Nepal Rashtra Bank where there is one, or else at the Revenue Office of His Majesty's Government or a local bank. All stores belonging to the Corporation shall be maintained as provided for by it.

(3) All expenses to be incurred by the Corporation shall be borne out of its fund.

17. No Rights to Accrue on Rajguthi Lands

Notwithstanding anything contained in other existing Nepal law, in case any person has been enjoying any right on any Rajguthi land or any other property administered or managed by the Corporation under this Act at the time of its commencement, such right shall terminate after the commencement of this Act unless the Corporation agrees otherwise, and full rights on such property shall then accrue again to the Rajguthi as if no one had any right thereto.

But:

(a) In case any person has built houses on any Rajguthi land before the commencement of this Act, he shall not be evicted from such homestead land. The Corporation may, with the approval of His Majesty's Government, impose, reduce, or enhance rents on such homestead, keeping in view the importance of its location.

(b) In case any person has failed to pay rent or any other amount due to the Rajguthi before the commencement of this Act, and is thus liable to pay the arrears, the Corporation may recover such outstanding amounts.

18. Accounts of Corporation

The Corporation shall maintain its accounts according to the form and in the manner prescribed by His Majesty's Government.

19. Reports on Profit and Loss and Annual Business

(1) The Corporation shall submit to His Majesty's Government accounts of its profits and losses as well as an annual report

of its business within three months from the date of expiration of every fiscal year, according to the form and method approved by His Majesty's Government.

Explanation: For the purpose of this Sub-Section, the term "fiscal year" means the fiscal year of His Majesty's Government.⁶

(2) The accounts and the annual report to be submitted to His Majesty's Government under Sub-Section (1) shall bear the signature of the Chairman, the Directors, and the Chief Accountant of the Corporation.

20. Audit

(1) The accounts of the Corporation shall be audited by an auditor prescribed by His Majesty's Government.

(2) The Corporation shall pay such fee to the auditor as may be prescribed by His Majesty's Government.

(3) After auditing the accounts, the auditor shall prepare an audit report explicitly indicating the following points. He shall then submit a copy thereof to His Majesty's Government and another copy to the Corporation.

(a) Whether the account of profit and loss prepared by the Corporation contains necessary particulars or not and whether it reflects the actual financial condition of the Corporation or not;

(b) Whether the account of profits and loss submitted is in order or not;

(c) Whether any explanation or information demanded by the auditor has been provided or not, and if provided, whether such explanation or information is satisfactory or not;

(d) Whether the method adopted by the Corporation in maintaining its accounts is correct or not; and

(e) Other matters which the auditor deems to be proper and necessary.

21. Management of Private Guthis

(1) The Corporation may manage any private Guthi, if all or a majority of its members request it in writing. In case the Corporation agrees to manage any private Guthi upon such request,

it shall be the duty of the concerned Guthi owners to hand over all the assets of such Guthi to the Corporation, and the liabilities of such Guthi shall also be borne by the Corporation.

(2) The Guthi to be managed by the Corporation under Sub-Section (1) shall be deemed a Rajguthi, and this Act and the rules framed hereunder shall also be applicable in respect to the management of such Guthis.

22. Power to Issue Directives to the Corporation

In the national interest, or in the interest of any Guthi, His Majesty's Government may issue necessary directives to the Corporation, and it shall be the duty of the Corporation to comply with such directives.

23. Arrangements for Research

The Corporation may arrange for research for the purpose of improving the religious, moral, social, cultural, and economic standard of Guthis. It shall submit a report to His Majesty's Government containing its opinions and suggestions on the findings of such research.

24. Dissolution

In case the Board feels that it is necessary to dissolve the Corporation for any reason, it shall submit a report to His Majesty's Government explaining the reasons therefor. On receipt of such report, His Majesty's Government shall take over all rights and liabilities of the Corporation and then dissolve it. The procedure of dissolution shall be as prescribed by His Majesty's Government.

25. Immunity of Officials for Loss or Damage

No director or administrator or any other official of the Corporation shall be personally responsible for any loss or damage resulting or likely to result from any act performed or sought to be performed by him in the discharge of his duties under this Act, or the articles framed hereunder, and no suit or complaint of any kind shall be filed against him in respect thereto.

26. Penalties

(1) In case any officer or employee of the Corporation causes any loss or damage to it willfully or in bad faith, such

loss or damage shall be recovered from him and in addition, he shall be fined with an amount not exceeding Rs 1,000.00, or imprisoned for a term not exceeding one year.

(2) In case any officer or employee of the Corporation obstructs the auditor appointed under Section 20 in the discharge of his functions or does not provide necessary document or information as sought by the latter, he shall be fined with an amount not exceeding Rs 1,000.00.

(3) In case any person commits any act other than those mentioned in Sub-Section (1) and Sub-Section (2) in contravention of this Act, he shall be punished with a fine not exceeding Rs 500.00.

27. Jurisdiction of Court

The power to take preliminary action on and dispose of any cases in which the Corporation is a plaintiff or defendant shall vest in the local district court.

28. Power to Frame Articles

(1) The Board may frame articles for the purpose of fulfilling the objectives of this Act. But these articles shall not be enforced until they are approved by His Majesty's Government.

(2) Without prejudice to the generality of the power conferred by Sub-Section (1), the articles may, in particular, provide for the following matters:

(a) Methods whereby the Board may function and the procedure of its meetings;

(b) Delegation of authority by the Board to the administrator, and by the administrator to his subordinate officers and other employees;

(c) Appointment, promotion, privileges, discipline, and other conditions of service of officers and other employees of the Corporation.

(d) Establishment of the Reserve Fund of the Corporation and conditions for making expenditure and investment from this Fund;

(e) Conditions for executing contracts and agreements on behalf of the Corporation;

(f) Procedure of operating the seal of the Corporation; and

(g) Other arrangements ordinarily to be made by the Corporation under this act.

29. Saving

On all matters provided for in this Act and the Articles framed hereunder, action shall be taken accordingly, and on other matters, action shall be taken in accordance with existing Nepal law.

Royal Seal Affixed on:

Aswin 17, 2021

(October 2, 1964).

D. HISTORICAL DOCUMENTS ON THE GUTHI SYSTEM

1. Mahsul Tax Commission on Guthi Land of Sadashiv Jangam in Bhaktapur¹

From King Girban

To Sadashiv Jangam.

Former Kings had endowed lands in the Bhaktapur area for the propitiation of Shri Vishweshwar and other gods [names follow]. After our conquest, Mahsul [tax] had been imposed on these Guthi [lands]. Sadavarta functions under these Guthis were [consequently] dislocated. We therefore confirmed [these lands] as Sadavarta Guthi by granting them as Kush Birta and remitting the Mahsul [tax] in order that these [functions] may be resumed. With due loyalty, utilize the crops on the lands mentioned below for the performance of the religious and Sadavarta functions of the Guthi in the customary manner, and acknowledge our grace. Appropriate the surplus income. In case any person commits sin or avarice in this Guthi, or violates the Guthi [functions], the Five Great Sins shall accrue to him, and the angry eyes of God . . . shall fall on him. No person shall damage the lands of this Guthi.

43 ropanis of Khet lands endowed by King Jaya Jagat Jyoti,²

62.5 ropanis of Khet lands in Panauti endowed by Jayajitmitra Malla.³

67 ropanis of Khet lands purchased by
and endowed to

Poush Sudi 7, 1860
[January, 1804]

2. Royal Order Regarding Revenues of Pashupatinath Temple⁴

From King Girban:

On Friday, Falgun Badi 14, 1870 [February, 1814], on the occasion of the Shivaratri festival,⁵ King Girban endowed this Guthi for the grace of God Pashupatinath.

On the occasion of the Shivaratri and other festivals, religious worship and food shall be offered to God Pashupatinath. For this purpose, we hereby endow lands and buildings situated in Chabahil, Kotubahil, and Deopatan⁶ [excluding temples and rest houses, and lands previously endowed, alienated, or assigned as Guthi, Birta, or Jagir in these areas]; Jagir land assignments held by temple functionaries; Darsani Mahsul⁷ proceeds collected from such functionaries, amounting to Rs 162.00;⁸ similar income collected from the functionaries of nine other Guthi endowments in these areas, amounting to Rs 19.50; taxes collected from Lamas, Kasais, and Kushles, as well as those charged on ginger and fish, and levies collected to finance religious performances on the occasion of the Laxmipaja festival,⁹ amounting to Rs 51.00; and the proceeds of the tax imposed on buffaloes, amounting to Rs 71.00, thus making a total revenue of Rs 303.75. Fruits and vegetables growing in orchards and gardens, and timber and firewood from forests situated in these areas shall also be utilized for the performance of the prescribed religious functions.

From this amount or Rs 303.75, a sum of Rs 272.70 shall be utilized for the performance of the functions mentioned above. The balance of Rs 31.05, Asmani¹⁰ revenues, and income from escheat property, as well as the unpaid labor [Jhara] of the local inhabitants shall be utilized for the repair and maintenance of temples, bathing places, rest houses and paths in the areas mentioned above.

All authority in this respect is hereby vested in the Chief Priest. Necessary accounts shall be maintained, and the surplus income shall be deposited at the temple treasury. We hereby endow

this Guthi, exempting it from all taxes, levies, and obligations.

Dated Monday, Chaitra Badi 30, 1870 [March, 1814].

3. Royal Order to Functionaries at Tripureshwar Temple in Kathmandu¹¹

From King Rajendra:

The Rawal Bhatta¹² and other Bhatta who perform the daily and ceremonial functions of [God Tripureshwar] and the Biset, the attendants, the two Brahmins, the two Bhadels, the Jaishi, the two Bhandaris, the Caretaker, Kushle musicians, and all other [functionaries] shall work according to the royal order: "The Rawal Bhatta shall perform the daily and ceremonial religious functions. The Bhatta shall help him in discharging these functions, perform the evening worship and also worship the gods outside the temple. The Rawal Bhatta shall observe a fast on the thirteenth day of the moon, while the Bhatta shall do so on the fourteenth day. The two Brahmins shall cook eatables to be used as offerings, and perform other sacred functions inside and outside the temple as well as other work in connection with the daily and ceremonial religious functions as ordered by the Bhattas. The Biset, Bhadel, Jaisi, and Mohinaike shall manage the [Guthi] lands and sell the paddy, and the Guthiyars shall jointly purchase materials required for the daily and ceremonial religious worship with the proceeds thereof. Rents as prescribed in the copper deed shall be assigned to the Rawal Bhatta and others from Kathmandu and the hill areas according to existing arrangements. The Guthiyars shall jointly maintain accounts of the surplus under their signature and deposit it at the temple treasury [Bhandar]. The Biset and the Jaisi shall check the inventory of ornaments and other goods every month. The Biset, Jaisi, Bhadel, and Mohinaike shall remain in constant attendance at the temple treasury. The two Bhandares shall engage themselves in the daily and ceremonial religious functions as ordered by the two Bhattas. The Caretaker shall assist in preparing the materials for the food offerings and clean the utensils. The Kushles and Damais shall play on musical instruments every morning and evening during the daily and ceremonial religious worships. Four Ghadis¹³ before daybreak, the Damai shall beat on drums and wake up the God. The Kushle sweeper shall arrive one Ghadi before daybreak, pull out the weeds at the bathing place and temple buildings and sweep the place.

We hereby issue this royal order confirming the existing system. Any person who complies with the provisions of this order and encroaches upon the income shall be deemed to have committed an offence. 1877 [1820].

4. Endowment of Waste Lands as Guthi for Temple in Sarlahi¹⁴

From King Rajendra:

We hereby endow 15 bighas of waste lands, situated in Shivanagar Sarlahi [Bara-Parsa district] for offering rice in the course of the daily worship at Prakatnath Mahadev temple, with effect from Baisakh Badi 1, 1879 [April, 1822]. With due loyalty, utilize the produce of this land to conduct the daily worship of God Prakatnath Mahadev. The surplus income may be appropriated by the priest after blessing us.

Kartik Badi 5, 1879
[November, 1822]

5. Appointment of Kanta Padhya Acharje as Priest in Jhangajholi (East No. 1)¹⁵

From King Rajendra:

To Kanta Padhya Acharje

Formerly, Rup Naran Padhya had obtained a royal order entitling him to perform the daily and ceremonial functions of the Siddha-Guthi in Jhangajholi [East No. 1] with 30 muris of paddy fields, as well as hillside lands and homesites. We hereby cancel this order and issue a fresh one in your favor. Perform the daily and ceremonial functions in the customary manner, acknowledge our grace and utilize the surplus income as Guthi.

Magh Badi 30, 1882
[January, 1826]

6. Guthi Endowment for Mahadev Temple at Gokarna, Kathmandu¹⁶

From King Rajendra:

On Thursday, Falgun Sudi 10, 1883 [March, 1837], our father¹⁷ had made a gift of 100 muris of land in Gokarna to [the temple of] Gokarneshwar Mahadev for religious performances on the occasion of the Shivaratri festival.

[Boundaries of individual plots follow]

We hereby remit all revenues on the 100 muris of land situated within these boundaries and grant [these lands] as Guthi through a copper inscription bearing the royal seal. The religious

performances herein mentioned shall be conducted with the produce of the Guthi lands. The Guthiyar shall maintain the surplus amount as reserve. In case [crops] are destroyed by hail or by insects, or in case [the fields] are not sown, this reserve shall be utilized to conduct the religious and other functions herein mentioned. The accounts of income and expenditure of this Guthi shall be kept ready. They shall be produced, and clearance obtained, whenever sought by the palace.

While this Guthi land was being presented, Priest Yadunath Arjyal made the recitation acknowledging the gift. Commanding Colonel Ranbir Singh Thapa poured the holy water.

Names of owners of adjoining holdings and tenants and surveyors who demarcated the boundaries follow.

Total amount in cash		Rs 44.54
Value of 29 muris and 6 pathis of paddy, at 14 pathis per Rs 1.00	Rs 41.86	
Proceeds of cash levy	Rs 2.68	
Amount to be spent in cash in purchasing materials required for religious performances on the Shivaratri festival		Rs 35.29
[Detailed list of expenses follows]		
Surplus amount to be kept in reserve		Rs 9.25

The Guthi shall not encroach on [lands] beyond its boundaries. No person shall raise any dispute concerning the land situated inside these boundaries. Anybody who fails to abide by these conditions shall incur sin as herein mentioned: A person who confiscates land he or others have given shall be reborn as a worm living in human excrement for 60,000 years.

Magh Badi 12, 1884
[January, 1828]

7. Appointment of Amoli Pande as Guthiyar¹⁸

From King Rajendra

To Amoli Pande

Our father had endowed lands as Guthi at . . . for the temple of God Narayana, and had appointed you as Guthiyar. We hereby confirm [the appointment of] you and your descendants for the discharge of functions mentioned in the copper inscription. You or your descendants shall not be removed unless you commit an offense in any matter. Perform the daily and ceremonial religious functions and manage the Sadavarta. Maintain the temple and other buildings and tanks, and reclaim and resettle lands, villages, etc [under this endowment]. Repair any damage therein. Keep them clean and pay rent assignments to the functionaries. Deposit the surplus income, as well as savings resulting from price decreases, in the temple treasury. Submit accounts of income and expenditure every three years and obtain clearance. In case the Guthiyar appropriates the payments due to the functionaries, or is otherwise guilty of sin or avarice, the Five Great Sins shall accrue to him. With due loyalty, use [the Guthi lands] in the capacity of Guthiyar.

Magh Badi 10, 1892
[January, 1836]

NOTES

CHAPTER I

¹Christoph von Furer-Haimendorf, The Sherpas of Nepal, pp. 10-11.

²Gopal Singh Nepali, The Newars, pp. 191-197.

³Cf. Bholā Nath Poudyal, "Yaksheshwar Mandir" (The Temple of Yaksheshwar) Purnima, 5, Baisakh, 2022 (April-May, 1965), p. 18, which refers to a "Gosthi" endowment made by Queen Kirti Laxmi Devi of Kathmandu in 1544 Vikram (1487).

⁴Cf. Land Records Office (Lagat Phant), Guthi Grant to Minha Vaidya, Marga Badi 8, 1847 (November, 1790). Unless stated otherwise, all unpublished documents cited in the present study have been obtained from the Land Records Office (Lagat Phant) of the Department of Revenue in the Ministry of Finance of His Majesty's Government. The equivalent western calendar month and year of all lunar calendar dates of these and other documents cited in this study have been indicated in parentheses. Accurate conversion of dates requires more astronomical knowledge than the author possesses. The method of conversion used cannot indicate the exact day on which a document was issued. However, such lack of accuracy hardly affects general studies of trends and developments such as those attempted here in the field of Guthi land tenure. The inaccuracy is less marked in the case of dates after 1903, when the Government of Nepal abolished the lunar calendar for official purposes and formally adopted the solar calendar. The corresponding western calendar dates for the post-1903 period contain a maximum margin of error of one day on either side.

⁵Cf. Itihas Prakash Mandal, Itihas Prakash (Light on History), Vol. 2, Book 3, p. 287.

⁶Ibid., Vol. 2, Book 3, pp. 287-288.

⁷Confirmation of Religious Land Endowment in Morang District, Jestha Sudi 9, 1834 (May, 1777).

⁸Cf. Atindra Nath Bose, Social and Rural Economy of Northern India, p. 82.

⁹Lila Raj Shrestha, "Prachin Lalitpur (Yupagram)" Ancient Lalitpur (Yupagram), Gorkhapatra, Magh 16, 2022 (January 29, 1966). See also Samshodhan Mandal, Abhilekh Sangraha (A Collection of Inscriptions), Part I, p. 27.

¹⁰Shankar Man Rajvamshi, ed., Puratattwa Patra Sangraha (A Collection of Ancient Documents), pp. 8-10. The Newari variations of

this expression are "Guthi-Jana" (Ibid., pp. 18-19), and "Guthi-Loka" (The Temple of Yaksheshwar, op. cit., p. 19).

¹¹Light on History, op. cit., Vol. 2, Book 3, p. 287.

¹²Ministry of Law and Justice, Guthi Samsthan Ain, 2021 (Guthi Corporation Act, 1964), Nepal Gazette, Vol. 14, No. 15 (Extraordinary), Aswin 17, 2021 (October 2, 1964), Section 2(b).

¹³Light on History, op. cit., Vol. I, p. 11.

¹⁴Cf. Royal Order to Pir Aitwar Nath Jogi of Achham, Bhadra Sudi 7, 1852 (September, 1795).

¹⁵Light on History, op. cit., Vol. 2, Book 3, p. 497.

¹⁶Law Ministry Records, Tokha Sanatorium Regulations, Kartik 25, 1992 (November 10, 1935).

¹⁷Order Regarding Formation of Sainik Samartha Chandrodaya Samstha, Ashadh 19, 1984 (July 3, 1927).

¹⁸Ibid.

¹⁹Royal Order Regarding Purchase of Birta Lands in Bara District by Sainik Samartha Chandrodaya Samstha, Poush 11, 1987 (December 25, 1930).

²⁰Government of Nepal, "Datta Guthi" (On Guthi Endowments). Ain (Legal Code), (1866-67 ed.) (1965 reprint), Section 1, pp. 8-9.

²¹Loc. cit.

²²Government of Nepal, "Guthi Ko" (On Guthi), Muluki Ain (Legal Code), Vol. III (1952 ed.), Section 1, p. 1. This provision is not contained in the 1963 edition of the Code.

²³Guthi Endowment for Rameshwar, Jagannath, and Dwaraka Temples in India, Shrawan 1, 1939 (July 16, 1882).

²⁴Cf. Order Regarding Collection of Revenue on Guthi Lands Endowed by the Wife of Colonel Umakant for Mahadev Temple in Banaras, Magh Sudi 11, 1921 (January, 1865).

CHAPTER II

¹Itihas Prakash Mandal, Itihas Prakash (Light on History), Vol. I, p. 70.

- ²Government of Nepal, "Datta Guthi" (Guthi Endowments), Muluki Ain (Legal Code) (1866-67 ed.) (1965 reprint), Section 1, p. 9.
- ³Guthi Land Endowment for Taleju Temple at Kathmandu, 1852 (1795).
- ⁴Royal Order to Tharghar Hari Prasad Upadhyaya Arjyal and Others Regarding Guthi Land Endowment Made by Commander-in-Chief Dhir Shamsher at Sipakot, East No. 1 District, Poush 24, 1960 (January 8, 1904).
- ⁵"Guthi Land of Suvam Devi Brahmani," Bhaktapur Guthi Records, 1953 (1896).
- ⁶Guthi Land Endowment to Gulab Das Bairagi, Magh, 1945 (January, 1889).
- ⁷Light on History, *op. cit.*, Vol. 2, Book 2, p. 221.
- ⁸David Snellgrove, Buddhist Himalaya, p. 217.
- ⁹Government of Nepal, "Guthi Ko" (On Guthi), Ain (Legal Code) (1886 ed.), Section 24.
- ¹⁰Cf. His Majesty's Government, "Guthi Ko" (On Guthi), Muluki Ain (Legal Code) (1963 ed.), Section 3(2), p. 112.
- ¹¹Noshirvan H. Jhabvala, Principles of Mahomedan Law, p. 106.
- ¹²Government of Nepal, "Guthi Ko" (On Guthi), Muluki Ain (Legal Code) (1952 ed.), Part III, Section 3, p. 1.
- ¹³Chittaranjan Nepali, General Bhimsen Thapa Ra Tatakalin Nepal, (General Bhimsen Thapa and Contemporary Nepal), pp. 50-55.
- ¹⁴"Guthi Birta Lands of Jahar Singh Thapa," Kathmandu Guthi Records, 1953 (1896).
- ¹⁵Guthi Lagat Janch Office, Guthi Land Endowment for Offering of Betel Leaf at Taleju Temple in Bhaktapur, Falgun 23, 1990 (March 7, 1934).
- ¹⁶Cf. Guthi Lagat Janch Office, Guthi Land Endowment for Electric Supply at Maitidevi Temple in Kathmandu, Baisakh 21, 1991 (May 3, 1934).
- ¹⁷Cf. Pashupati Goshwara Office, Guthi Land Endowment of Mod Nath Upadhyaya, Magh 5, 1998 (January 18, 1942).
- ¹⁸Cf. Nepal Sandesh, Jestha 25, 2022 (June 7, 1965).

¹⁹David Snellgrove, op. cit., p. 102.

²⁰Cf. Samshodhan Mandal, Itihas Samshodhan (Corrections of History), No. 62, p. 7.

²¹David Snellgrove, op. cit., p. 106.

²²Ibid., p. 212.

²³Christoph von Furer-Haimendorf, The Sherpas of Nepal, p. 174.

²⁴Cf. Order Regarding Collection of Rents on Guthi Lands of Pashupatinath Temple at Phatakshila, East No. 1 District, Bhadra Sudi 12, 1903 (September, 1846).

²⁵Kathmandu Guthi Tahasil Office, Revenue Assessment on Mahasan Guthi Lands of Pashupatinath Temple, 2019-20 (1962-63).

²⁶Bhandar Tahabil Office, Royal Order Regarding Management of Pashupatinath Temple at Kathmandu, Marga Badi 7, 1867 (November, 1810).

²⁷Bhandar Tahabil Office, Income and Expenditure of Pashupatinath Temple at Kathmandu, 2021-22 (1964-65).

²⁸Cf. Pashupati Goshwara Office, Records of Guthi Land Endowments in Pashupati Temple, 1998 (1941).

²⁹"Guthi Land Endowment Made by King Surendra for Pashupatinath Temple," Bhaktapur Guthi Records, 1953 (1896).

³⁰Cf. Guthi Lagat Janch Office, Guthi Land Endowment for Rest House and Water Supply at Sitapaila, Kathmandu, Shrawan 10, 1989 (July 8, 1932).

³¹Law Ministry Records, Shivaratri Pilgrims' Regulations, Bhadra 22, 1993 (September 7, 1936).

³²His Majesty's Government, "Garib Kangal Ko" (On Poverty and Indigency), Muluki Ain (Legal Code) (1963 ed.), Sections 4-5, pp. 108-109.

³³Guthi Land Endowment for Gargeshwar Mahadev Temple in Rising, West No. 4 District, Poush Sudi 14, 1890 (January, 1834).

³⁴Guthi Land Endowments for Temple and Rest House in Mahottari District, Baisakh Badi 14, 1891 (April, 1834).

³⁵Law Ministry Records, Administrative Arrangements Regarding Pindeshwar Monastery in Morang District, Bhadra 15, 1993 (August 31, 1936).

³⁶Guthi Land Endowments for Orphanages and Poorhouses in Tarai Districts, Ashadh 28, 1969 (July 12, 1912).

³⁷Guthi Land Endowment for Sanskrit School and Hostel at Gangasagar, Janakpur, Baisakh Badi 10, 1941 (May, 1884).

³⁸Government of Nepal, "Guthi Bare Ko" (On Guthi Matters), Muluki Sawal (Administrative Code) (1953 ed.), Section 10, pp. 196-197.

³⁹Law Ministry Records, Ridi Sadavarta Regulations, 1992 (1935).

⁴⁰Law Ministry Records, Benevolent and Charitable Society Regulations, Chaitra 24, 1970 (April 6, 1914), Preamble and Sections 1 and 7.

⁴¹Ibid., Section 90.

⁴²Order Regarding Formation of Chandrodaya Sainik Samartha Samstha, Ashadh 19, 1984 (July 3, 1927).

⁴³Law Ministry Records, Tripureshwar Rest House Regulations, Shrawan 17, 1975 (August 1, 1918), Section 2.

⁴⁴Cf. Law Ministry Records, Ridi Sadavarta Regulations, 1992 (1935); Guthi Land Endowments for Hostels in Mahottari District Poush 29, 1968 (January 13, 1912).

⁴⁵Cf. Guthi Lagat Janch Office, Guthi Land Endowment for Bridge on Bagmati River in Kathmandu, Kartik 15, 2001 (October 31, 1944).

⁴⁶Cf. Guthi Lagat Janch Office, Guthi Land Endowment for Maintenance of Irrigation Channel in Bhaktapur, Marga 14, 2000 (November 29, 1943).

⁴⁷Gorkhapatra, Ashadh 16, 2020 (June 30, 1963).

CHAPTER III

¹Government of Nepal, "Guthi Ko" (On Guthi), Ain (Legal Code) (1870 ed.), Section 34, p. 20.

²Government of Nepal, "Guthi Ko" (On Guthi), Muluki Ain (Legal Code) (1963 ed.), Section 1, p. 112.

³Cf. Kush Birta Bitabal Grant to Mahant Durga Giri, Kartik Sudi 11, 1867 (November, 1810); Royal Order to Mahant Buddhi Ram

Das Regarding Confirmation of Birta Lands of Simardehi Asthan in Mahottari District, Marga Badi 12, 1863 (November, 1806).

⁴Cf. Guthi Land of Brihaspati Upadhyaya. Bhaktapur Guthi Records, 1953 (1896). This Guthi land has been listed as Rajguthi even though it was endowed by Kaji Bal Nar Singh Kunwar Rana, father of Prime Minister Jang Bahadur.

⁵Government of Nepal, "Guthi Ko" (On Guthi), Muluki Ain (Legal Code) (1952 ed.), Part III, Section 3, p. 1.

⁶Loc. cit.

⁷This law was first enacted by Prime Minister Jang Bahadur in 1853. Government of Nepal, "Guthi Ko" (On Guthi), Ain (Legal Code) (1870 ed.), Section 4, p. 26. The 1963 Legal Code does not contain this provision.

⁸Government of Nepal, "Guthi Ko" (On Guthi), Muluki Ain (Legal Code) (1963 ed.), Section 2, p. 112.

⁹Law Ministry Records, Shri Panch Sarkar Guthi Lagat Janch Office Regulations, Bhadra 10, 1990 (August 25, 1933), Section 55.

¹⁰Guthi Lagat Janch Office, Mahalaxmi and Thakali Guthi Lands at Balambu, Lalitpur District, Baisakh 22, 1974 (May 4, 1917).

¹¹Ministry of Law and Justice, Guthi Samsthan Ain, 2021 (Guthi Corporation Act, 1964), Nepal Gazette, Vol. 14, No. 15 (Extraordinary), Aswin 17, 2021 (October 2, 1964), Section 21.

¹²Ibid., Section 2 (g).

¹³Law Ministry Records, Shri 5 Sarkar Guthi Bandobast Office Regulations, Bhadra 30, 1992 (September 14, 1935), Section 58(1).

¹⁴Law Ministry Records, Shri 5 Sarkar Guthi Tahabil Phant Regulations, Shrawan 16, 1995 (July 31, 1938).

¹⁵Guthi Lagat Janch Office, Trailokyeshwar Mahadev Temple Lands at Chaubise, Pallokirat, Baisakh, 1974 (April, 1917).

¹⁶Guthi Lagat Janch Office, Chhimi Ghyang Guthi Lands in Helambu, East No. 1 District, Ashadh 2, 1995 (June 15, 1938).

¹⁷Law Ministry Records, Guthi Bandobast Office Regulations, Addendum made on Poush 17, 1997 (December 31, 1940).

¹⁸Guthi Lagat Janch Office, Records of Ghyang Guthi at Mulikot, East No. 1 District, Chaitra, 1992 (March, 1936).

¹⁹Government of Nepal, "Guthi Bare Ko" (On Guthi Matters), Muluki Sawal (Administrative Code) (1953 ed.), Section 1, p. 185.

²⁰Cf. Guthi Lagat Janch Office, Chure Ghyang Guthi Lands in Helambu, East No. 1 District, Bhadra 27, 1989 (September 12, 1932).

²¹Guthi Lagat Janch Office, Gnyaneshwar Temple Guthi Lands in Lalitpur, Chaitra 21, 2001 (April 3, 1945).

²²Ministry of Law and Parliamentary Affairs, Samstha Registration Ain, 2016 (Associations Registration Act, 1959). Nepal Gazette, Vol. 9, No. 19 (Extraordinary), Poush 1, 2016 (December 15, 1959), Section 3.

²³Government of Nepal, "Guthi Ko" (On Guthi), Muluki Ain (Legal Code) (1952 ed.), Part III, Section 10, p. 4.

²⁴Government of Nepal, "Guthi Ko" (On Guthi), Muluki Ain (Legal Code) (1963 ed.), Section 3, p. 112.

²⁵Guthi Corporation Act, 1964, *op. cit.*, Section 2(b).

²⁶Sindhupalchok (East No. 1) Guthi Records, 1952 (1895).

²⁷Cf. "Guthi Land Endowment by King Rajendra for Pashupatinath Temple at Kathmandu," Poush Sudi 8, 1885 (January, 1829), Bhaktapur Guthi Records, 1953 (1896).

²⁸Cf. Confirmation of Lohaguthi Land of Sangram Singh at Deopatan, Jestha Sudi 14, 1860 (June, 1803).

²⁹Cf. Gulphul Land Grant to Gosain Sukhchain Giri in Mahottari District, Baisakh Sudi 12, 1868 (May, 1811).

³⁰Babu Ram Acharya, Nepal Ko Bhumi Byabastha (Nepal's Land System), unpublished manuscript.

³¹Cf. Guthi Lagat Janch Office, Guthi Lands of Janaki Monastery in Koradi, Janakpur, Chaitra 30, 1991 (April 12, 1935).

³²Cf. Bhandar Tahabil Office, Royal Order Regarding Management of Pashupatinath Temple, Marga Badi 7, 1867 (November, 1810).

³³Cf. Confirmation of Fakirana Lands of Mahant Tej Giri, Marga Sudi 11, 1863 (December, 1806).

³⁴Cf. Itihas Prakash Mandal, Itihas Prakash (Light on History), Vol. I, p. 38; Government of Nepal, Land Tenure Conditions in the Western Hill Districts, 1953, p. 9.

CHAPTER IV

¹Government of Nepal, "Jagga Jamin Ko" (On Land), Ain (Legal Code) (1866-67 ed.) (1965 reprint), Section 58, p. 34. This provision was repealed in 1963, when the abolition of the Jagir system had already made it unnecessary.

²Foreign Ministry Records, Administrative Regulations, Falgun Badi 4, 1849 (February, 1793), Section 12.

³See Volume III, pp. 17-18.

⁴Guthi Land Endowment for Bhairavi Temple in Palpa District, Shrawan 24, 2002 (August 8, 1945). The endowment was made in 1904, but land was actually made available only in 1945.

⁵Cf. Order Regarding Guthi Birta Lands of Khadga Bahadur Chhatkuli in Parsa District, Marga Sudi 9, 1930 (December, 1873); Guthi Birta Grant to Brigadier Colonel Jang Dhvaj Kunwar Rana in Balambu, Lalitpur District, Aswin Badi 11, 1924 (September, 1867).

⁶Cf. Guthi Land Endowment by Her Majesty the Third Queen, Baisakh 10, 1986 (April 22, 1922); Itihas Prakash Mandal, Itihas Prakash (Light on History), Vol. 2, Book 2, p. 61.

⁷See Volume II, pp. 18-19.

⁸Cf. Guthi Birta Grant to Dittha Kaladhar Upadhyaya in Lamjung, Falgun Sudi 4, 1944 (March, 1887).

⁹Cf. Grant of Sarbangamafi Guthi Lands to General Jit Jang, Ashadh Badi 2, 1940 (June, 1883). Jit Jang was a son of Prime Minister Jang Bahadur; Order to Khajanchi Shiv Prasad Arjyal Regarding the Delivery of Blank Lal Mohar Forms for Guthi Birta Grant to Hiranya Garbha Kumari Devi, Poush Sudi 11, 1921 (January, 1865). Hiranya Garbha Kumari Devi was one of the several wives of Prime Minister Jang Bahadur.

¹⁰Cf. Acquisition of Jagir Lands to Compensate Guthi Lands of Pashupatinath Temple Acquired for Construction of Elephant Pen at Kathmandu, Shrawan Badi 9, 1938 (July, 1881).

¹¹Mahesh C. Regmi, A Note on the Land Tenure System in Nepal, Berkeley, California: Institute of International Studies, University of California, pp. 20-22. This subject will be discussed more fully in Chapter XI.

¹²Government of Nepal, "Guthi Ko" (On Guthi), Ain (Legal Code), (1870 ed.).

¹³Government of Nepal, "Guthi Ko" (On Guthi), Ain (Legal Code), (1888 ed.), Section 14.

¹⁴Government of Nepal, "Guthi Ko" (On Guthi), Muluki Ain (Legal Code) (1963 ed.), Sections 10-11, p. 114. This law appears to have been enacted around 1935.

¹⁵Legislation was enacted to provide compensation against the acquisition of all forms of land, including Raikar, only in 1961. Ministry of Law, Justice, and Parliamentary Affairs, Jagga Prapti Ain, 2018 (Land Acquisition Act, 1961), Nepal Gazette, Vol. 11, No. 48 (Extraordinary), Bhadra 9, 2018 (August 25, 1961). See also Volume II, p. 15.

¹⁶Cf. Confirmation of Guthi Endowment on Kipat Land in Budunchuli Village, Aswin Badi 11, 1941 (October, 1854).

¹⁷Cf. Kipat Lands Granted as Guthi Birta to Lt. Bijaya Ram Upreti, Baisakh Sudi 5, 1940 (May, 1883).

¹⁸Government of Nepal, "Guthi Ko" (On Guthi), Muluki Ain (Legal Code) (1963 ed.), Section 2, p. 112.

¹⁹Government of Nepal, "Adalati Bandobast Ko" (On Judicial Procedure), Muluki Ain (Legal Code) (1963 ed.), Section 22, p. 12.

²⁰Law Ministry Records, Shri Panch Sarkar Guthi Bandobast Office Regulations, Bhadra 30, 1992 (September 14, 1935), Section 33.

²¹Government of Nepal, "Guthi Ko" (On Guthi), Ain (Legal Code), Part III (1888 ed.), Section 4.

²²Government of Nepal, "Guthi Ko" (On Guthi), Muluki Ain (Legal Code) (1963 ed.), Section 3(2), p. 112.

²³Ministry of Law and Justice, Guthi Samsthan Ain, 2021 (Guthi Corporation Act, 1964), Nepal Gazette, Vol. 14, No. 15 (Extraordinary), Aswin 17, 2021 (October 2, 1964), Section 29.

²⁴Ibid., Section 2(b).

²⁵Government of Nepal, "Guthi Ko" (On Guthi), Muluki Ain (Legal Code) (1963 ed.), Section 5, p. 113.

²⁶Ibid., Section 3(3), pp. 112-113.

²⁷Cf. Judicial Regulations for Morang District, Jestha Sudi 14, 1861 (June, 1804), Section 3.

²⁸Government of Nepal, "Guthi Ko" (On Guthi), Ain (Legal Code) (1870 ed.), Section 20, p. 18.

²⁹Government of Nepal, "Datta Guthi" (On Guthi Endowments), Muluki Ain (Legal Code) (1866 ed.) (1965 reprint), Section 16, p. 13.

³⁰Government of Nepal, "Guthi Ko" (On Guthi), Ain (Legal Code) (1886 ed.), Section 4.

³¹Government of Nepal, "Guthi Ko" (On Guthi), Muluki Ain (Legal Code) (1963 ed.), Section 3, p. 112.

³²Ministry of Law and Justice, Birta Unmulan Ain, 2016 (Birta Abolition Act, 1959), Nepal Gazette, Vol. 9, No. 19 (Extraordinary), Poush 1, 2016 (December 15, 1959), Section 3.

³³Mahsul Tax Remission on Guthi Land of Sadashiv Jangam in Bhaktapur, Poush Sudi 7, 1860 (January, 1803). For a full translation of this document, see Appendix D.

³⁴Miscellaneous Regulations for Eastern Nepal, Aswin Badi 5, 1931 (September, 1874).

³⁵Cf. Law Ministry Records, Pota Taxation Order to the Kirtipur and Other Mal Offices, Ashadh 27, 1997 (July 11, 1940).

³⁶Cf. "Pota Mafi Guthi Land of Birdhwaj Rai Chhetri," Kathmandu Birta Records, 1953 (1896).

³⁷Cf. "Rajguthi Land of Dip Kumari," Kathmandu Birta Records, 1953 (1896).

³⁸Guthi Lagat Janch Office, Guthi Lands of Nardevi Temple at Kathmandu, Kartik 26, 1989 (November 11, 1932).

³⁹Birta Abolition Act, 1959, *op. cit.*, Section 11.

⁴⁰His Majesty's Government, Bhumi Sudhar Ke Ho? (What is Land Reform?), p. 10.

⁴¹Ministry of Law, Jagga Kar Ain, 2017 (Land Tax Act, 1960), Nepal Gazette, Vol. 10, No. 3 (Extraordinary), Jestha 2, 2017 (May 15, 1960), Section 12(1).

⁴²Ministry of Law and Justice, Khareji Ra Samshodhan Ain, 2022 (Repeal and Amendment Act, 1966), Nepal Gazette, Vol. 15, No. 36 (Extraordinary), Chaitra 10, 2022 (March 23, 1966), Schedule 2.

⁴³H. D. Hazeltine, "Mortmain," Encyclopaedia of the Social Sciences, XI-XII (1963), p. 40.

⁴⁴Government of Nepal, "Jagga Pajani Ko" (On Land Evictions), Muluki Ain (Legal Code) (1963 ed.), Section 1, p. 119.

⁴⁵Guthi Corporation Act, 1964, op. cit., Section 12.

⁴⁶Ibid., Section 17.

⁴⁷Government of Nepal, "Jagga Jamin Bare Ko" (On Land Matters), Muluki Sawal (Administrative Code) (1953 ed.), Section 16, pp. 135-136.

⁴⁸Cf. Jivanidhi Pande Jaisi Vs. Khaga Nidhi Tiwari et al., Nepal Kanun Patrika, Vol. IV, No. 2, Bhadra, 2018 (August-September, 1961), pp. 26-30.

⁴⁹On Land Matters, op. cit., Section 16, pp. 135-136.

⁵⁰Cf. Guthi Land Acquisition at Tahachal, Kathmandu, Falgun 28, 2009 (March 11, 1953); "Notification of the Department of Land Revenue and Forests," Nepal Gazette, Vol. 2, No. 20, Poush 22, 2009 (January 6, 1953).

⁵¹Government of Nepal, "Jagga Pajani Ko" (On Land Evictions), Muluki Ain, (Legal Code) (1963 ed.), Section 1, p. 119.

⁵²Land Acquisition for British Embassy at Kathmandu, Baisakh 27, 2014 (May 9, 1957).

⁵³Land Acquisition Act, 1961, op. cit., Sections 2-3.

⁵⁴Cf. "Notification of the Ministry of Industry and Commerce," Nepal Gazette, Vol. XIII, No. 18, Shrawan 28, 2020 (August 12, 1963). This notification refers to arrangements made for land acquisition for a private limited company in Bhairahawa.

⁵⁵Land Acquisition Act, 1961, op. cit., Section 5.

⁵⁶Ibid., Section 17.

⁵⁷Ministry of Law and Justice, Rajamarga (Nirman Byabastha) Ain, 2021 (Highway [Construction Arrangements] Act, 1964), Nepal Gazette, Vol. 14, No. 15 (Extraordinary), Aswin 17, 2021 (October 2, 1964), Sections 2-5.

⁵⁸Ministry of Law and Justice, Kshati Purti Ain, 2019 (Compensation Act, 1963), Nepal Gazette, Vol. 12, No. 44B (Extraordinary), Chaitra 30, 2019 (April 12, 1963), Sections 3-4, p. 16.

⁵⁹These lands appear to have been endowed as Guthi by King Pratap Malla (1641-1674). Cf. Daniel Wright, History of Nepal, p. 147.

⁶⁰Pashupati Amalkot Kachahari Office, Guthi Land Acquisition for Gauchar Airport, Ashadh 1, 2019 (June 15, 1962).

CHAPTER V

¹Order Regarding Revenues of Kalika Temple Guthi Land in Tanahu, Jestha Sudi 12, 1904 (June, 1842).

²See Volume II, pp. 40-41.

³Birta Bitalab (Guthi) Grant to Mahant Mahadev Shaiva of Pindeshwar Monastery, Ashadh Badi 7, 1868 (June, 1811).

⁴Cf. Order to Dittha Kalidas Dhamala Regarding Proceeds of Godhuwa Levy on Rajguthi Lands, Falgun Badi 10, 1911 (February, 1855).

⁵Law Ministry Records, Shri Tin Sarkar Guthi Tahasil Bakyants Office Regulations, Baisakh 29, 1977 (May 11, 1920), Section 12.

⁶Law Ministry Records, Tripureshwar Rest House Regulations, Shrawan 17, 1975 (August 1, 1918), Section 1(8).

⁷Law Ministry Records, Shri Panch Sarkar Guthi Kharcha Office Regulations, Bhadra 24, 1991 (September 9, 1934), Sections 19 and 26.

⁸Government of Nepal, "Jagga Jamin Ko" (On Land), Ain (Legal Code) (1866-67 ed.) (1965 reprint), Section 45, pp. 29-30.

⁹Government of Nepal, "Datta Guthi" (On Guthi Endowments), Ain (Legal Code) (1866-67 ed.) (1965 reprint), Section 5, pp. 10-11.

¹⁰Cf. Order Regarding Judicial Incomes on Guthi Lands of Chandannath and Batukbhairav Temples in Jumla District, Jestha Sudi 12, 1915 (May, 1858).

¹¹Government of Nepal, "Jagirdar Birtawar Le Jhagada Herda Ko" (Judicial Authority of Jagirdars and Birta Owners), Muluki Ain (Legal Code), Part I (1953 ed.), Section 5, p. 152.

¹²Pashupati Goshwara Office, Royal Order Regarding Revenues of Pashupatinath Temple in Kathmandu, Chaitra Badi 30, 1870 (April, 1814). For an abstract of this document, see Appendix D.

¹³Cf. Amalkot Kachahari Office, Revenue Records for 2021-22 (1964-65).

¹⁴Cf. Order Regarding Judicial Authority of Pashupati Amalkot Kachahari Office in Phatakshila (East No. 1 District) and Other Areas, Poush Sudi 5, 1906 (December, 1849).

¹⁵Amalkot Kachahari Office, Order Regarding Management of Pashupatinath Temple in Kathmandu, Falgun 6, 1974 (February 17, 1918).

¹⁶ Amalkot Kachahari Office, Order Regarding Land Grants in the Pashupatinath Temple Areas, Chaitra 12, 2004 (March 25, 1948). This document repeats the provisions of orders issued in 1847 and earlier in this respect.

¹⁷ Government of Nepal, Madhesh Malkot Sawal (Tarai Revenue Regulations), Section 393, p. 168; "Notification of the Rautahat Revenue Office," Gorkhapatra, Baisakh 24, 2021 (May 6, 1964); see also Volume II, p. 4.

¹⁸ Cf. Guthi Lagat Janch Office, Records of Janaki Monastery in Koradi, Janakpur, Chaitra 30, 1991 (April 12, 1935).

¹⁹ Guthi Lagat Janch Office, Records of Auriya Monastery in Rautahat District, Marga, 2010 (November, 1953).

²⁰ Law Ministry Records, Matihani Asthan Amanat Managery Office Regulations, Ashadh 2, 1992 (June 15, 1935), Section 14.

²¹ Cf. Amalkot Kachahari Office, Revenue Records for 2021-22 (1964-65).

²² Guthi Land Grant for Roadside Shelter at Chunikhel, Thankot, Baisakh Badi 30, 1904 (May, 1847).

²³ Law Ministry Records, Order Regarding Guthi Buildings in Kathmandu, Falgun 4, 1996 (February 15, 1940).

²⁴ Itihas Prakash Mandal, Itihas Prakash (Light on History), Vol. 2, Book 2, p. 71.

²⁵ Prohibition to Impose Chardam Theki and Ghiukhane Levies on Guthi Holdings in Nala, East No. 1 District, Jestha Sudi 7, 1904 (May, 1847).

²⁶ Law Ministry Records, Shri Panch Sarkar Guthi Lagat Janch Office Regulations, Bhadra 10, 1990 (August 25, 1933), Sections 11-16. These provisions appear to have first been promulgated in the form of an order on Kartik 15, 1964 (October 31, 1907). Reference to this order is contained in Guthi Lagat Janch Office, Records of Mahalaxmi and Thakali Guthi Lands in Balambu, Lalitpur District, Baisakh 22, 1974 (May 4, 1917).

²⁷ Law Ministry Records, Guthi Amanat Regulations, Chaitra 24, 1976 (April 6, 1920), Section 19.

²⁸ Law Ministry Records, Matihani Asthan Amanat Office Regulations, Ashadh 2, 1992 (June 15, 1935), Section 6-8.

²⁹ Cf. Guthi Lagat Janch Office, Baneshwar Mahadev Temple Guthi Lands in Majhkirat, Baisakh, 1982 (April, 1926).

³⁰Law Ministry Records, Bijan Survey Regulations for East No. 3 and 4 Districts, Magh 23, 2001 (February 6, 1945), Section 6.

³¹Cf. Law Ministry Records, Order Regarding Revenues of Ghyang Guthi Lands in Sindhupalchok District, Kartik 11, 2007 (October 27, 1950).

³²Law Ministry Records, Order Regarding Revenue Assessments on Guthi Lands in Gorkha District, Ashadh 3, 2005 (June 17, 1948).

³³Law Ministry Records, Kathmandu Assessment Order, Aswin 8, 2007 (September 24, 1950).

³⁴Ibid.

³⁵Kathmandu Guthi Tahasil Office, Order Regarding Revenue Assessment Rates on Guthi Lands in Bhaktapur District, Baisakh 13, 2010 (April 25, 1953).

³⁶Ibid.

³⁷Ministry of Law and Justice, Arthik Ain, 2020 (Finance Act, 1963), Nepal Gazette, Vol. 13, No. 10 (Extraordinary), Shrawan 32, 2020 (August 16, 1963), Section 6.

³⁸Kathmandu Guthi Tahasil Office, Order Regarding Increase in Guthi Revenue Assessment Rates, Marga 25, 2019 (December 9, 1962).

³⁹Bhandar Tahabil Office, Order Regarding Cash Assessment Rates on Guthi Lands in the Hill and Tarai Districts, Falgun 8, 2021 (February 19, 1965).

⁴⁰Kathmandu Guthi Tahasil Office, Order Regarding Cash Assessment Rates on Guthi Lands in Kathmandu Valley, Falgun 25, 2021 (March 8, 1965).

⁴¹See Appendix B.

⁴²Nepal Gazette, Vol. 16, No. 13A (Extraordinary), Ashadh 16, 2023 (July 10, 1966).

⁴³"Notification of the Guthi Corporation," Gorkhapatra, Poush 22, 2023 (January 6, 1967).

⁴⁴Ministry of Law and Justice, Bhumi Sambandhi Ain, 2021 (Lands Act, 1964), Nepal Gazette, Vol. 14, No. 18 (Extraordinary), Marga 1, 2021 (November 16, 1964), Section 33(a).

⁴⁵Ibid., Section 33(c).

⁴⁶See Appendix B.

47 Law Ministry Records, Shri Panch Sarkar Guthi Tahasil Office Regulations, Chaitra 24, 1976 (April 6, 1920), Section 4.

48 Ibid.

49 Law Ministry Records, Administrative Arrangements for Collection of Guthi Revenue Arrears, Bhadra 15, 1993 (August 30, 1936).

50 Ibid.

51 Law Ministry Records, Commutation Rate Schedule for Guthi Revenue Collections, Magh 13, 1993 (January 30, 1937). Certain Guthi lands belonging to Pashupatinath Temple were exempted from these provisions because of the heavy in-kind expenditures involved.

52 Law Ministry Records, Order Regarding Collection of Guthi Revenue Arrears, Baisakh 11, 1996 (April 23, 1939).

53 Law Ministry Records, Commutation Rate Schedule for Guthi Revenue Collections, Ashadh 29, 1996 (July 12, 1939).

54 Law Ministry Records, Order Regarding Procurement of Paddy for Guthi Requirements, Marga 15, 1996 (November 30, 1939).

55 "Notification of the Department of Forests and Land Revenue," Nepal Gazette, Vol. 2, No. 19, Poush 15, 2009 (December 30, 1952).

56 "Notification of the Ministry of Food and Land Administration," Nepal Gazette, Vol. 1, No. 30, Falgun 20, 2008 (March 3, 1952).

57 "Notification of the Ministry of Forests and Land Revenue," Nepal Gazette, Vol. 2, No. 19, Poush 15, 2009 (December 30, 1952).

58 "Notification of the Ministry of Food and Land Administration," Nepal Gazette, Vol. 1, No. 30, Falgun 20, 2008 (March 3, 1952).

59 Government of Nepal, Report of the Land Reform Commission, 1953, p. 26.

60 Bhandar Tahabil Office, Income and Expenditure of Pashupatinath Temple at Kathmandu, 2021-22 (1964-65).

61 Law Ministry Records, Shri Panch Sarkar Guthi Tahasil Office Regulations, Chaitra 24, 1976 (April 6, 1920), Section 20.

62 Law Ministry Records, Commutation Rate Schedule for Guthi Revenue Collections, Magh 13, 1993 (January 30, 1937).

⁶³Ibid.

⁶⁴Law Ministry Records, Commutation Rate Schedule for Guthi Revenue Collections, Ashadh 29, 1996 (July 13, 1939).

⁶⁵Cf. Law Ministry Records, Commutation Rate Schedule for Tin Sarkar Guthi Lands, Poush, 1991 (December, 1934).

⁶⁶Kathmandu Guthi Tahasil Office, Order Regarding Commutation Rates on Tin Sarkar Guthi Lands, Falgun 19, 2008 (March 3, 1952).

⁶⁷"Notification of the Ministry of Food and Land Administration," Nepal Gazette, Vol. 1, No. 30, Falgun 20, 2008 (March 3, 1952).

⁶⁸Law Ministry Records, Kathmandu Revenue Regulations, Shrawan 28, 1991 (August 12, 1934), Section 16. These rates remained in force until 1965-66.

⁶⁹Kathmandu Guthi Tahasil Office, Order of the Land Revenue Department Regarding Commutation Rates for Guthi Revenue Collections, Marga 25, 2019 (December 10, 1962). These rates have since remained unchanged.

⁷⁰"Notification of the Guthi Corporation," Gorkhapatra, Baisakh 31, 2023 (May 13, 1966).

⁷¹Report of the Land Reform Commission, op. cit., p. 26.

CHAPTER VI

¹Cf. Land Survey Regulations for Jumla, Jetha Sudi 14, 1862 (June, 1805); Land Survey Regulations for Majhkirat, Bhadra Badi 1, 1863 (August, 1806).

²Itihas Prakas Mandal, Itihas Prakash (Light on History), Vol. 2, Book 3, p. 291.

³The term Nepal was then used to denote only Kathmandu Valley.

⁴King Girban's great-grandfather was King Prithvi Narayan Shah.

⁵Confirmation of Guthi Lands of Chandeshwari Temple in Banepa, East No. 1 District, Bhadra Badi 6, 1861 (August, 1804).

⁶The land was later restored to the Guthi. Restoration of Guthi Lands of Mukti Das Bairagi, Marga Sudi 11, 1874 (December, 1817).

⁷Birta Confiscation Regulations, Poush Sudi 5, 1855 (December, 1798).

⁸Land Survey Regulations for Majhkirat, Bhadra Badi 1, 1863 (August, 1806).

⁹Land Administration Regulations for Kathmandu Valley, Aswin Badi 5, 1856 (September, 1799), Section 18.

¹⁰Cf. Judicial Regulations for Morang District, Jestha Sudi 14, 1861 (June, 1804).

¹¹Cf. Guthi Lagat Janch Office, Guthi Endowment by King Bhupalendra Malla for Taleju Temple in Kathmandu, Falgun, 1974 (February, 1918).

¹²Chittaranjan Nepali, General Bhimsen Thapa Ra Tatkalin Nepal (General Bhimsen Thapa and Contemporary Nepal), pp. 84-85; see also Volume II, pp. 88-89.

¹³Land Survey Regulations for Majhkirat Bhadra Badi 1, 1863 (August, 1806).

¹⁴Order to Subedar Dhokal Khawas Regarding Scrutiny of Birta and Guthi Lands, Marga Sudi 13, 1863 (December, 1806).

¹⁵"Guthi Land of Guru Prasad Giri and Others," Sindhupalchok (East No. 1) Guthi Records, 1952 (1895).

¹⁶"Guthi Land of Suvam Devi Brahmani," Bhaktapur Guthi Records, 1953 (1896).

¹⁷"Guthi Land of Jit Bahadur Raghuvamshi," Bhaktapur Guthi Records, 1953 (1896). In 1849, Prime Minister Jang Bahadur gave land in Bhaktapur in exchange for the confiscated holding.

¹⁸Miscellaneous entries in the Bhaktapur Birta and Guthi records of 1953 (1896).

¹⁹I.e., the royal dynasty which ruled Jumla prior to Gorkha's conquest of that area.

²⁰Light on History, op. cit., Vol. 2, Book 2, p. 90.

²¹Ibid., p. 255.

²²Government of Nepal, Land Tenure Conditions in the Western Hill Districts, 1953, p. 8.

²³Cf. Confirmation of Guthi Lands of Chandeshwari Temple in Banepa, Poush Badi 11, 1863 (December, 1806).

²⁴Restoration of Confiscated Guthi Land of Durlabh Jaisi, Shrawan 11, 1868 (July 26, 1811).

²⁵Government of Nepal, "Guthi Ko" (On Guthi), Ain (Legal Code), Part I (1870 ed.), Section 3, p. 1.

²⁶General Bhimsen Thapa and Contemporary Nepal, op. cit., pp. 283-284.

²⁷Loc. cit.

²⁸Loc. cit.

²⁹Birta Abolition Office, Birta Restoration Order, 1939 (1882). For further details on the restoration program, see Volume II, pp. 88-91.

³⁰Government of Nepal, "Guthi Ko" (On Guthi), Ain (Legal Code) (1870 ed.), Section 12, p. 7. For an example of such take-over, see Bakas Birta Grant to Buddhi Bahadur and Ratna Man Jyapu, Bhadra 11, 1967 (August 27, 1910).

³¹Government of Nepal, "Jagga Michne Ko" (On Encroachment on Land), Ain (Legal Code (1870 ed.)), Section 31, p. 32.

³²Government of Nepal, "Guthi Ko" (On Guthi), Ain (Legal Code), Part I (1870 ed.), Section 4, p. 2.

³³The orders promulgated by Prime Minister Jang Bahadur in 1852 are not available. References to these measures are contained in Order Regarding Compilation of Guthi Records, Magh Badi 11, 1918 (January, 1862).

³⁴Revenue and Expenditure of the Government of Nepal, 1909 (1852-53) and 1918 (1861-62).

³⁵The amount has been given in the 64-pice rupee unit.

³⁶The title mentioned in the document is Shri 3 Maharaj.

³⁷Foreign Ministry Records, Order Regarding Surplus Revenue of Guthi Land Endowments of Bhairav Temple in Nuwakot, 1920 (1863).

³⁸Law Ministry Records, Shri Panch Sarkar Guthi Lagat Janch Office Regulations, Bhadra 10, 1992 (August 25, 1935), Section 18.

³⁹Ibid., Section 6.

⁴⁰Guthi Lagat Janch Office, Nilbarahi Temple Guthi Lands in Bhaktapur, Ashadh 17, 1994 (July 1, 1937).

⁴¹Order promulgated on Kartik 24, 1971 (November 9, 1914). Cited in Guthi Lagat Janch Office, Mahalaxmi and Thakali Guthi Lands in Balambu, Lalitpur District, Baisakh 22, 1974 (May 4, 1917).

⁴²Law Ministry Records, Shri Panch Sarkar Guthi Kharcha Office Regulations, Bhadra 24, 1991 (September 8, 1934), Section 40.

⁴³Revenue and Expenditure of the Government of Nepal, 1918 (1860-61).

⁴⁴Government of Nepal, "Guthi Bare Ko" (On Guthi Matters), Muluki Sawal (Administrative Code) (1917 ed.), Section 77, pp. 79-83.

⁴⁵Government of Nepal, "Guthi Bare Ko" (On Guthi Matters), Muluki Sawal (Administrative Code) (1936 ed.), Section 13.

⁴⁶Government of Nepal, "Guthi Bare Ko" (On Guthi Matters), Muluki Sawal (Administrative Code) (1953 ed.), Section 13, pp. 197-198.

⁴⁷Bal Chandra Sharma, Nepal Ko Aitihāsik Ruprekha (Outlines of Nepali History), pp. 178-179.

⁴⁸Ibid., p. 354.

⁴⁹Foreign Ministry Records, Memorandum Regarding Loans Obtained from Digutaleju Temple at Kathmandu, 1855 (1798).

⁵⁰His Majesty's Government, The Constitution of Nepal (English Translation), Article 59, pp. 35-36.

⁵¹Ministry of Law and Justice, Guthi Samsthan Ain, 2021 (Guthi Corporation Act, 1964), Nepal Gazette, Vol. 14, No. 17 (Extraordinary), Aswin 17, 2021 (October 2, 1964), Section 12(2).

CHAPTER VII

¹Cf. Dismissal of Kantu Padhya as Priest of Narayaneshwar Temple in Phatakshila, East No. 1 District, Falgun Badi 6, 1890 (February, 1834).

²Cf. Bholanath Poudel, "Yakesheshwar Mandir" (The Temple of Yaksheshwar), Purnima, 5, Baisakh 1, 2022 (April 13, 1965), pp. 20-21.

³Law Ministry Records, Pashupatinath Temple Regulations, 1989 (1932), Section 36.

⁴ Cf. Tax Concessions to Musicians at Adiganesh Temple in Dhulikhel, East No. 1 District, Poush 28, 1976 (January 15, 1920).

⁵ Cf. Law Ministry Records, Order Regarding Appointment of Mahant at Pipra Monastery in Bara District, Shrawan 16, 2001 (July 31, 1944).

⁶ Royal Order to Mahant Buddhi Ram Das Regarding Confirmation of Birta Lands of Simardahi Asthan in Mahottari District, Marga Badi 12, 1863 (November, 1806).

⁷ Naya Nath Poudel, "Pachali Ko Shri Nani Saheb Laxmi Devi Ko Vikram Samvat 1870 Ko Abhilekh Ra Tyasko Aitihasik Vyakhya" (1813 Inscription of Nani Saheb Laxmi Devi at Pachali and Its Historical Interpretation), Purnima, 6, Shrawan, 2022 (July, 1965), p. 59.

⁸ Cf. Confirmation of Anant Jaisi Arjyal and Other as Priests of Vishnu Temple in Gorkha District, Poush Sudi 7, 1860 (January, 1804).

⁹ Guthi Land Endowment by King Girban for Guhyeshwari Temple in Kathmandu, Ashadh Sudi 11, 1862 (July, 1805).

¹⁰ Cf. Appointment of Divyodhan Upadhyaya as Priest-Guthiyar at Pateshwari Temple in Salyan District, Shrawan Sudi 4, 1884 (July, 1837).

¹¹ Cf. Relinquishment of Position of Guthiyar of Indrajatra Guthi by Bhajudhan Newar, Poush Sudi 10, 1882 (January, 1826).

¹² Law Ministry Records, Shri Panch Sarkar Guthi Bandobast Office Regulations, Bhadra 30, 1992 (September 14, 1935), Section 28.

¹³ Cf. "Notification of the Pashupati Goshwara Office," Gorkhapatra, Shrawan 19, 2021 (August 3, 1964).

¹⁴ Cf. Royal Order to Mahant Buddhi Ram Das Regarding Birta Lands of Simardahi Asthan in Mahottari District, Marga Badi 12, 1863 (November, 1806).

¹⁵ Christoph von Furer-Haimendorf, The Sherpas of Nepal, pp. 156-161.

¹⁶ Bhandar Tahabil Office, King Jagajjaya Malla's Order Regarding Appointment of Priests and Other Functionaries at Pashupatinath Temple, Jestha Badi 6, 855 Nepal Samvat (May, 1735). This order, issued on a palm-leaf, claims to repeat the contents of an earlier palm-leaf document issued in 700 Nepal Samvat (1580). See also Daniel Wright, ed., History of Nepal, pp. 137, 143, and 149.

¹⁷ Cf. Jagir Land Assignment to Priest Hari Krishna Bhatta of Tankeshwar Temple in Lalitpur, Shrawan Badi 10, 1867 (July, 1810).

¹⁸ Cf. "Notification of the Kathmandu Magistrate's Office," Gorkhapatra, Aswin 9, 2020 (September 25, 1963).

¹⁹ Cf. "Notification of the Guthi Rakami Kitab Darta Office," Gorkhapatra, Chaitra 16, 2019 (March 29, 1963).

²⁰ Cf. Bhandar Tahabil Office, Order Regarding Revenue Collection on Duka Birta Lands of Pashupatinath Temple, Jestha 1, 1985 (May 14, 1928); Nayanath Poudel, "Pachali Ko Nani Saheb Laxmi Devi Ko Bi. Sam. 1870 Ko Abhilekh Ra Tyasko Aitihāsik Vyakhya" (1813 Inscription of Nani Saheb Laxmi Devi at Pachali and Its Historical Interpretation), Purnima, 6, Shrawan 1, 2022 (July 16, 1965), p. 60.

²¹ Cf. Guthi Lagat Janch Office, Seba Birta Lands of Caretakers at Taleju Temple in Bhaktapur, Marga, 1994 (November, 1937).

²² Cf. Guthi Lagat Janch Office, Confirmation of Jagir Land Assignment of Rup Champa Damai at Manakamana Temple in Gorkha, 1847 (1790).

²³ Cf. Guthi Lagat Janch Office, Khangi Guthi Land of Priest of Gopalji Temple at Hanumandhoka Palace in Kathmandu, Falgun 13, 1989 (February 24, 1933).

²⁴ Bhandar Tahabil Office, Royal Order Regarding Management of Pashupatinath Temple, Marga Badi 7, 1867 (October, 1810).

²⁵ Land Assignments and Other Privileges of Kushle Musicians at Suryavinayak Temple in Bhaktapur, 1894 (1837).

²⁶ Jagir Land Assignments to Kushle Musicians at Nilbarahi Temple in Bhaktapur, Chaitra Badi 7, 1893 (March, 1837).

²⁷ Cf. Tax Concessions to Kushle Musicians at Adiganesh Temple in Dhulikhel, East No. 1 District, Poush 28, 1976 (January 15, 1920)

²⁸ Shankarman Rajvamshi, Puratattwa-Patrasangraha (A Collection of Ancient Documents), Vol. 2, p. 49.

²⁹ Itihas Prakash Mandal, Itihas Prakash (Light on History), Vol. 2, Book 2, pp. 139-140.

³⁰ Cf. Land Assignments and Other Privileges of Kushle Musicians at Suryavinayak Temple in Bhaktapur, 1894 (1837); Law Ministry Records, Shri Panch Sarkar Guthi Bandobast Office Regulations, Bhadra 30, 1992 (September 14, 1935), Section 59.

³¹Guthi Lagat Janch Office, Pouwa Guthi Land Endowment Near Bhairav Temple in Gulmi, Jestha 31, 1991 (June 14, 1934).

³²Cf. "Notification of the Pashupati Goshwara Office," Gorkhapatra, Baisakh 15, 2021 (April 27, 1964).

³³Amalkot Kachahari Office, Order Regarding Management of Pashupatinath Temple, Falgun 6, 1974 (February 17, 1918).

³⁴Guthi Endowment by King Girban in Nagarkot, Kangra District, Aswin Badi 8, 1866 (October, 1809). Kangra is now Indian territory.

³⁵Pashupati Goshwara Office, Royal Order Regarding Revenues of Pashupati Temple, Chaitra Badi 30, 1870 (April, 1814).

³⁶Royal Order to Ranjit Pande Regarding Management of Raijguthi Lands in Kathmandu Valley, Jestha Badi 30, 1861 (May, 1804).

³⁷Cf. Guthi Lagat Janch Office, Guthi Land Endowment for Gokarneshwar Mahadev Temple at Kathmandu, Magh Badi 12, 1884 (January, 1838).

³⁸Guthi Land Endowment by King Girban for Guhyeshwari Temple in Kathmandu, Ashadh Sudi 11, 1862 (July, 1805).

³⁹Dismissal of Guthiyar Hutadhwaj Shahi of Mahakali Temple in Arghakot, 1891 (1834).

⁴⁰Guthi Land Endowment by King Girban for Guhyeshwari Temple in Kathmandu, Ashadh Sudi 11, 1862 (July, 1805).

⁴¹Chittaranjan Nepali, Shri 5 Ran Bahadur Shah (King Ran Bahadur Shah), p. 130.

⁴²Government of Nepal, "Guthi Ko" (On Guthi), Muluki Ain (Legal Code) (1870 ed.), Sections 4 and 12.

⁴³Guthi Lagat Janch Office, Kumbheshwar Mahadev Temple Lands in Lalitpur, Falgun 12, 1989 (February 23, 1933).

⁴⁴Law Ministry Records, Guthi Amanat Regulations, Chaitra 24, 1976 (April 6, 1920), Preamble.

⁴⁵Law Ministry Records, Shri Panch Sarkar Guthi Tahabil Phant Regulations, Falgun 9, 1997 (February 20, 1941).

⁴⁶Law Ministry Records, Shri Panch Sarkar Guthi Kharcha Office Regulations, Bhadra 24, 1991 (September 8, 1934), Section 13.

⁴⁷Law Ministry Records, Shri Tin Sarkar Guthi Tahasil Bakyauta Office Regulations, Baisakh 29, 1977 (May 11, 1920), Section 15;

Shri Panch Sarkar Guthi Tahasil Office Regulations, Chaitra 24, 1976 (April 6, 1920), Section 17.

⁴⁸Law Ministry Records, Mahottari District Guthi Revenue Office Regulations, Ashadh 30, 1992 (July 14, 1935).

⁴⁹Ibid., Section 15.

⁵⁰Collection of Rents on Duniya Guthi Land of Khardar Purna Narain, Bhadra 6, 1995 (August 21, 1938).

⁵¹Law Ministry Records, Okhaldhunga Revenue Regulations, Shrawan 28, 1991 (August 12, 1934), Section 20.

⁵²Cf. Guthi Lagat Janch Office, Kumbheshwar Mahadev Temple Lands in Lalitpur, Falgun 12, 1989 (February 23, 1933).

⁵³Law Ministry Records, Guthi Bandobast Office Regulations, Bhadra 30, 1992 (September 14, 1935), Section 135.

⁵⁴Law Ministry Records, Order Regarding Introduction of Tirja System on Lands Held by Functionaries in Chhut Guthi Temples, Marga 5, 1995 (November 20, 1938).

⁵⁵"Notification of the Ministry of Finance and Economic Affairs," Gorkhapatra, Jestha 9, 2018 (May 22, 1961).

⁵⁶"Notification of the Pashupatinath Temple Amalkot Office," Gorkhapatra, Aswin 11, 2018 (September 26, 1961).

CHAPTER VIII

¹Ministry of Law and Justice, Guthi Samsthan Ain, 2021 (Guthi Corporation Act, 1964), Nepal Gazette, Vol. 14, No. 15, Aswin 17, 2021 (October 2, 1964). A full translation of this law is given in Appendix C.

²His Majesty's Government, The Budget Speech, 1961, p. 4.

³Eric Himsworth, The Fiscal System of Nepal: A Report to His Majesty's Government, p. 54.

⁴Guthi Corporation Act, 1964, op. cit., Preamble.

⁵Ministry of Law and Justice, Jilla Panchayat Ain, 2019 (District Panchayat Act, 1962), Nepal Gazette, Vol. 12, No. 24 (Extraordinary), Marga 14, 2019 (November 29, 1962), Section 23(22).

⁶Guthi Corporation Act, 1964, op. cit., Section 29.

- ⁷Guthi Lagat Janch Office, Guthi Land Endowment for Bridge on Bagmati River in Kathmandu, Kartik 15, 2001 (October 31, 1944).
- ⁸Guthi Lagat Janch Office, Guthi Lands of Bhadrakali Temple in Kathmandu, Chaitra 30, 1987 (April 12, 1931).
- ⁹"Notification of the Guthi Corporation," Gorkhapatra, Jestha 10, 2022 (May 23, 1965).
- ¹⁰Cf. Gorkhapatra, Baisakh 22, 2022 (May 4, 1965).
- ¹¹Gorkhapatra, Falgun 2, 2022 (February 13, 1966).
- ¹²Guthi Lagat Janch Office, Order of the Guthi Corporation Regarding Income and Expenditure Schedules, Baisakh 18, 2023 (April 30, 1966).
- ¹³Law Ministry Records, Mahottari District Guthi Revenue Office Regulations, Ashadh 30, 1992 (July 13, 1935), Section 8.
- ¹⁴Guthi Lagat Janch Office, Order of the Guthi Corporation Regarding Income and Expenditure Schedules, Baisakh 18, 2023 (April 30, 1966).
- ¹⁵Guthi Lagat Janch Office, Order of the Guthi Corporation Regarding Income and Expenditure Schedule of Tarahi Monastery in Mahottari District, Magh 10, 2022 (January 23, 1966).
- ¹⁶Samiksha Weekly, Magh 28, 2022 (February 10, 1966).
- ¹⁷Gorkhapatra, Falgun 2, 2022 (February 13, 1966).
- ¹⁸Gorkhapatra, Chaitra 23, 2022 (April 5, 1966).
- ¹⁹"Notification of the Guthi Corporation," Gorkhapatra, Chaitra 10, 2021 (March 23, 1965).
- ²⁰Amalkot Kachahari Office, Order of the Guthi Corporation Regarding Vacant Lands in the Pashupatinath Temple Area, Baisakh 6, 2022 (April 19, 1965).
- ²¹Guthi Lagat Janch Office, Order of the Guthi Corporation Regarding Construction of Buildings on Chhut Guthi Lands, Kartik 22, 2022 (November 7, 1965).
- ²²Ministry of Law and Parliamentary Affairs, Prachin Smarak Samrakahan Ain, 2013 (Ancient Monuments Protection Act, 1956), Nepal Gazette, Vol. 6, No. 28, Kartik 27, 2013 (November 12, 1956), Section 7.

²³Ramesh Jang Thapa, "Rashtriya Smarak Ko Samrakshan" (Protection of National Monuments), Ruprekha, 62, Jestha 29, 2023 (June 11, 1966), pp. 76-77.

²⁴Ministry of Law and Justice, Rashtriya Nirdeshan Ain, 2018 (National Guidance Act, 1961), Nepal Gazette, Vol. 11, No. 32, (Extraordinary), Poush 13, 2018 (December 27, 1961), Preamble.

²⁵Ministry of Education, Dudh Khane Balak (Palan Poshan Vyavastha) Niyam Haru, 2020 (Infants [Maintenance] Rules, 1964), Nepal Gazette, Vol. 14, No. 10, Ashadh 2, 2021 (June 15, 1964).

²⁶Kathmandu Guthi Tahasil Office, Revenue Collections on Shradha Guthi of the Commanding-General (Western Zone), 2019 (1962).

CHAPTER IX

¹Gerald Clauson, Communal Land Tenure, pp. 49-50.

²Cf. Guthi Lagat Janch Office, Pouwa Guthi Lands Endowment Near Bhairav Temple in Gulmi, Jestha 31, 1991 (June 14, 1934).

³Cf. Guthi Lagat Janch Office, Tarahi Asthan Guthi Lands in Koradi, Mahottari District, 2004 (1947).

⁴Government of Nepal, "Mohi Talsing Ko" (On Tenants and Landlords), Muluki Ain (Legal Code) (1866-67 ed.) (1965 reprint), Section 3, p. 38.

⁵Royal Order to Thakur Singh and Other Guthiyars in Handigaun, Kathmandu, Magh Sudi 6, 1903 (February, 1847).

⁶Government of Nepal, "Mohi Talsing Ko" (On Tenants and Landlords), Muluki Ain (Legal Code) (1866-67 ed.) (1965 reprint), Section 5, p. 39.

⁷Government of Nepal, "Jagga Jamin Ko" (On Land), Muluki Ain (Legal Code) (1866-67 ed.) (1965 reprint), Section 22, p. 24.

⁸Cf. Confirmation of Transfer of Guthi Lands of Kumari Temple in Kathmandu in the Name of Chobdar Devi Prasad Lamichhane, Falgun Badi 5, 1939 (February, 1883).

⁹Government of Nepal, "Jagga Pajani Ko" (On Land Evictions), Ain (Legal Code) (1888 ed.), Part III, Section 7, p. 26.

¹⁰Government of Nepal, "Jagga Pajani Ko" (On Land Evictions),

Muluki Ain (Legal Code), Part III (1952 ed.), Section 1, p. 27; see Volume II, pp. 72-77.

¹¹Ibid., Section 5, p. 29.

¹²Ministry of Law and Parliamentary Affairs, Bhumi Sambandhi Ain, 2014 (Lands Act, 1957), Nepal Gazette, Vol. 7, No. 5 (Extraordinary), Shrawan 22, 2014 (August 18, 1957), Section 3.

¹³Ministry of Law, Bhumi Sambandhi (Samshodhan) Ain, 2016 (Lands [Amendment] Act, 1959), Nepal Gazette, Vol. 9, No. 19 (Extraordinary), Poush 1, 2016 (December 15, 1959), Section 3, p. 228.

¹⁴Ministry of Law and Justice, Bhumi Sambandhi Ain, 2021 (Lands Act, 1964), Nepal Gazette, Vol. 14, No. 18 (Extraordinary), Marga 1, 2021 (November 16, 1964), Section 2.

¹⁵Ibid., Section 25.

¹⁶Ministry of Law and Justice, Guthi Samsthan Ain, 2021 (Guthi Corporation Act, 1964), Nepal Gazette, Vol. 14, No. 15 (Extraordinary), Aswin 17, 2021 (October 2, 1964), Section 17.

¹⁷Kathmandu Revenue Office Records, Clarification of the Guthi Corporation Regarding Transactions in Rajguthi Landholding Rights, Jestha 10, 2022 (May 23, 1965).

¹⁸Nepal Gazette, Vol. 16, No. 13A (Extraordinary), Ashadh 26, 2023 (July 10, 1966), p. 126.

¹⁹"Chairman Surya Bahadur Thapa Addresses Peasant Rally in Lalitpur," Gorkhapatra, Shrawan 31, 2023 (August 15, 1966).

²⁰Ibid.

²¹"Notification of the Guthi Corporation," Gorkhapatra, Magh 5, 2022 (January 18, 1966).

²²Gorkhapatra, Chaitra 17, 2022 (March 30, 1966).

CHAPTER X

¹His Majesty's Government, Shri Panch Maharajadhiraj Bata Bakseka Ghoshana, Bhashan Ra Sandesh Haru (Proclamations, Speeches, and Messages of His Majesty the King), 1962, Part V, pp. 35-39.

²Government of Nepal, Reports of the Land Reform Commission, 1953, pp. 25-27.

³Ibid.

⁴Government of Nepal, Land Tenure Conditions in the Western Hill Region, Kathmandu: Land Reform Commission, 1953, p. 13.

⁵Ibid., p. 16.

⁶Speech delivered by Dr. Tulsi Giri, then Chairman of the Council of Ministers, at a peasants' meeting in Bhaktapur on January 16, 1965. Gorkhapatra, Magh 4, 2021 (January 17, 1965).

⁷D. R. Regmi, Ancient Nepal, p. 96.

⁸Law Ministry Records, Kathmandu Assessment Order, Aswin 8, 2007 (September 8, 1950).

⁹H. B. Workman, "Monasticism," Encyclopaedia of the Social Sciences, IX-X (1963), p. 589.

¹⁰Ministry of Law and Parliamentary Affairs, Birta Unmulan Ain, 2016 (Birta Abolition Act, 1959), Nepal Gazette, Vol. 9, No. 19 (Extraordinary), Poush 1, 2016 (December 15, 1959), Section 11(1).

¹¹See Appendix B.

¹²Cf. United Nations, Land Reform, Defects in Agrarian Structure as Obstacles to Economic Development, 1951, p. 18.

¹³H. B. Workman, op. cit. p. 589.

¹⁴Ministry of Law and Justice, Bhumi Sambandhi Ain, 2021 (Lands Act, 1964), Nepal Gazette, Vol. 14, No. 18 (Extraordinary), Marga 1, 2021 (November 16, 1964), Sections 7-8.

¹⁵Ibid., Section 12(b).

¹⁶H. B. Workman, op. cit., pp. 589-590.

CHAPTER XI

¹Kenneth H. Parsons, "The Tenure of Farms, Motivation and Productivity," Science, Technology and Development, Vol. III: Agriculture (United States Papers Prepared for the United Nations Conference on the Application of Science and Technology for the Benefit of the Less Developed Areas), p. 28.

²Cf. Judicial Regulations of the Government of Nepal, Marga Sudi 5, 1864 (December, 1807), Section 11.

³Government of Nepal, "Jagga Pajani Ko" (On Land Evictions), Ain (Legal Code) (1870 ed.), Section 20.

⁴Ibid., Section 96.

⁵Cf. Chautaria Fatte Jang Shah's Order to Dware Maghavarna Karki, Magh Sudi 13, 1902 (February, 1846).

⁶Government of Nepal, "Jagga Pajani Ko" (On Land Evictions), Ain (Legal Code) (1870 ed.), Section 51.

⁷Ibid., Section 36.

⁸Government of Nepal, "Jagga Pajani Ko" (On Land Evictions), Ain (Legal Code), Part III (1888 ed.), Section 7, p. 26.

⁹See Volume III, p. 49.

¹⁰Cf. Law Ministry Records, Order Regarding Registration of Land Transactions, Bhadra 24, 1978 (September 9, 1921).

¹¹Law Ministry Records, Notification Regarding Extension of Registration System in Bajhang District, 1982 (1926).

¹²Government of Nepal, "Jagga Pajani Ko" (On Land Evictions), Muluki Ain (Legal Code), Part III (1935 ed.), Section 4(1).

¹³Kenneth H. Parsons, "Agrarian Reform Policy as a Field of Research," U.S. Department of Agriculture, Agrarian Reform and Economic Growth in Developing Countries, p. 191.

¹⁴Cf. Raj Krishna, "Land Reform and Development in South Asia," Walter Froehlich, ed., Land Tenure, Industrialization and Social Stability; Experience and Prospects in Asia, 1961, pp. 217-218.

¹⁵National Planning Council, Tesro Yojana, 2022-27 (Third Plan, 1965-70), p. 73.

¹⁶United Nations, Progress in Land Reform, 1954, p. 49.

¹⁷Cf. Overseas Consultants, Inc., Report on Seven-Year Development Plan for the Plan Organization of the Imperial Government of Iran, New York: Overseas Consultants, Inc., Vol. I, p. 4, quoted in Eugene Staley, The Future of Under-Developed Countries, New York: Council of Foreign Relations, 1954, p. 207.

¹⁸Ministry of Law, Bhumi Sambandhi Ain, 2021 (Lands Act, 1964), Nepal Gazette, Vol. 14, No. 18 (Extraordinary), Marga 1, 2021 (November 16, 1964), Preamble.

¹⁹Ministries of Land Reform, Panchayat, and Economic Planning, Report on the Successful First Year of Land Reform in Budabari, Jhapa, p. 1.

²⁰Mahesh Chandra Regmi, A Note on the Land Tenure System in Nepal, p. 10.

²¹James B. Hunt, Jr., "The Effects of Land Reform on Achieving the Agricultural Production Targets of the Third Plan," Economic Affairs Report, Vol. III, No. 3, August, 1965, p. 3.

²²Ibid., p. 7.

²³See Volume II, p. 76.

²⁴Cf. Department of Publicity, "Bhumi Sambandhi Ain, 2021 Ma Bhayeko Jagga Ko Hadbandi Sambandhi Byabastha Bare Kei Spastikaran Haru" (Some Clarifications on the Provisions of the Lands Act Concerning Ceilings on Land Holdings), Gorkhapatra, Poush 6, 2021 (December 20, 1964).

²⁵Report on the Successful First Year of Land Reform in Budhabare, Jhapa, op. cit., pp. 7-8.

²⁶Wolf Ledejinsky, "Agrarian Reform," Times of India, September 10, 1964 (reprinted from Foreign Affairs).

²⁷Roland R. Renne, Land Economics, New York: Harper & Brothers, 1958 (revised ed.), p. 365.

²⁸Cf. Ministry of Planning and Development, Pradeshik Vikas Yojana (Rapti Dun Ko Jamin Vikrivitaran) Niyam 2013 (Regional Development Projects [Rapti Valley Land Sale and Distribution] Rules, 1957), Nepal Gazette, Vol. 6, No. 37, Magh 8, 2013 (January 21, 1957), Sections 9(2) and (3).

²⁹Third Plan, 1965-70, op. cit., p. 73.

³⁰M. S. Perera, "Peasant Participation in Land Reform in Nepal," in Department of Land Reform, Nepal Ma Bhumi Sudhar (Land Reform in Nepal), pp. 1-2 (English Section).

³¹Quentin W. Lindsey, op. cit., pp. 39-40.

³²Gorkhapatra, Chaitra 15, 2022 (March 28, 1966).

³³Daniel Thorner, The Agrarian Prospect in India, p. 82.

³⁴Graham Hallett, The Economics of Agricultural Land Tenure, pp. 16-17.

³⁵Cf. Mahesh Chandra Regmi, "Bhumi Sudhar Kina" (Why Land Reform), Gorkhapatra, Bhadra 16, 2018 (September 1, 1961).

APPENDIX A

¹His Majesty's Government, Arthik Sarvekshan, 2022-23 (Economic Survey Report, 1965-66), p. 3. One hectare is equal to 2.471 acres or 78.62 muris.

²The figures contained in the "Total Area" and "Total Production" columns have been obtained from Economic Survey Report, 1965-66, op. cit., Tables I and II. Statistics of yields contained in the last column have been obtained from His Majesty's Government, Nepal Adhirajya Ko Rashtriya Krishi Ganana, 2018, Pramukh Bali Ko Utpadan Dar (1962 National Agricultural Census for the Kingdom of Nepal: Costs of Production of Main Crops), Tables 2(a) and 2(b).

³Economic Survey Report, 1965-66, op. cit., p. 6.

⁴Source: His Majesty's Government, Sample Census of Agriculture, Nepal, 1962, Table 2.

⁵31.81 muris are equal to 1 acre.

⁶Ibid.

⁷Ibid., Preface.

⁸Ibid., Table 3.

⁹Economic Survey Report, 1965-66, op. cit., p. 4.

¹⁰His Majesty's Government, Nepal Adhirajya Ko Rashtriya Krishi Ganana 2018 Ko Parinam: Jhapa (Results of the 1962 National Agricultural Census of the Kingdom of Nepal for Jhapa District), Table I.

¹¹His Majesty's Government, Nepal Adhirajya Ko Rashtriya Krishi Ganana 2018 Ko Parinam: Palpa (Results of the 1962 National Agricultural Census of the Kingdom of Nepal for Palpa District), Table I.

¹²His Majesty's Government, Nepal Adhirajya Ko Rashtriya Krishi Ganana 2018 Ko Parinam: Kathmandu (Results of the 1962 National Agricultural Census of the Kingdom of Nepal for Kathmandu District) Table I.

¹³Economic Survey Report, 1965-66, op. cit., p. 4.

¹⁴Ibid., pp. 5-6.

APPENDIX B

¹Cf. Ministry of Law and Justice, "Jagga Michne Ko" (On Land Encroachment), Muluki Ain (Legal Code) (1963 ed.), Section 6, p. 123.

²Ministry of Law and Justice, Jagga (Nap Janch) Ain, 2019 (Land Survey and Measurement Act, 1963), Nepal Gazette, Vol. 12, No. 44A (Extraordinary), Chaitra 30, 2019 (April 12, 1963), Section 2(e) and (f).

³Ministry of Law and Justice, Gaun Panchayat Ain, 2018 (Village Panchayat Act, 1962), Nepal Gazette, Vol. 11, No. 39 (Extraordinary), Magh 11, 2018 (January 24, 1962), Section 13(b), (c), and (d).

⁴Ministry of Law, Justice and Parliamentary Affairs, Ban Ain, 2018 (Forest Act, 1961), Nepal Gazette, Vol. 11, No. 32 (Extraordinary), Poush 13, 2018 (December 27, 1961), Chapter V.

⁵Ministry of Law and Justice, Nagar Panchayat Ain, 2019 (Town Panchayat Act, 1962), Nepal Gazette, Vol. 12, No. 14 (Extraordinary), Bhadra 5, 2019 (August 21, 1962). The words "and stones, sands, and fish in streams" were added on November 16, 1964. Ministry of Law and Justice, Nagar Panchayat (Samshodhan) Ain, 2021 (Town Panchayat [Amendment] Act, 1964), Nepal Gazette, Vol. 14, No. 18C (Extraordinary), Marga 1, 2021 (November 16, 1964)

⁶See Volume I, pp. 58-59.

⁷Ministry of Law and Justice, Arthik Ain, 2020 (Finance Act, 1963), Nepal Gazette, Vol. 13, No. 10 (Extraordinary), Shrawan 32, 2020 (August 16, 1963), Section 6.

⁸Ministry of Law and Justice, Arthik Ain, 2021 (Finance Act, 1964), Nepal Gazette, Vol. 14, No. 15 (Extraordinary), Aswin 17, 2021 (October 2, 1964), Section 6.

⁹1963 Finance Act, op. cit., Section 6.

¹⁰Ibid.

¹¹1964 Finance Act, op. cit., Section 6.

¹²Ministry of Law and Justice, Arthik Ain, 2023 (Finance Act, 1966), Nepal Gazette, Vol. 16, No. 17A (Extraordinary), Shrawan 31, 2023 (August 15, 1966), Section 4.

¹³Ibid., Section 6.

- ¹⁴ 1964 Finance Act, op. cit., Section 6.
- ¹⁵ 1966 Finance Act, op. cit., Section 4.
- ¹⁶ 1963 Finance Act, op. cit., Section 6.
- ¹⁷ 1966 Finance Act, op. cit., Section 4.
- ¹⁸ 1961 Forest Act, op. cit., Schedule. This provision repeals Sections 388-389, 405, 406, and 407 of the Tarai Revenue Regulations which provided for imposition of the Chari Rakam.
- ¹⁹ 1963 Finance Act, op. cit., Section 6.
- ²⁰ 1966 Finance Act, op. cit., Section 8.
- ²¹ Nepal Gazette, Vol. 16, No. 13A (Extraordinary), Ashadh 16, 2023 (July 10, 1966).
- ²² Nepal Gazette, Vol. 12, No. 11 (Extraordinary), Shrawan 9, 2019 (July 24, 1962), pp. 43-44.
- ²³ Eric Himsworth, The Fiscal System of Nepal, Appendix XXIII. This includes Guthi revenue amounting to Rs 1,633,340.
- ²⁴ Nepal Gazette, Vol. 15, No. 9B (Extraordinary), Ashadh 20, 2022 (July 4, 1965), pp. 83-84.
- ²⁵ Nepal Gazette, Vol. 16, No. 13A (Extraordinary), Ashadh 26, 2023 (July 10, 1966).
- ²⁶ Ministry of Law and Justice, Arthik Ain, 2019 (Finance Act, 1962), Nepal Gazette, Vol. 12, No. 17 (Extraordinary), Aswin 5, 2019 (September 21, 1962), Section 7.
- ²⁷ His Majesty's Government, The Budget Speech, 1962-63, p. 14.
- ²⁸ Ministry of Law and Justice, Nepal Ayakar Ain, 2019 (Nepal Income Tax Act, 1963), Nepal Gazette, Vol. 12, No. 44B (Extraordinary), Chaitra 30, 2019 (April 12, 1963), Sections 2(b) and (h).
- ²⁹ Nepal Gazette, Vol. 13, No. 41, Magh 13, 2020 (January 27, 1964).
- ³⁰ Nepal Income Tax Act, 1963, op. cit., Section 14.
- ³¹ Nepal Gazette, Vol. 16, No. 13A (Extraordinary), Ashadh 26, 2023 (July 10, 1966).

³²Nepal Gazette, Vol. 14, No. 28D (Extraordinary), Magh 18, 2021 (January 31, 1965).

³³Nepal Gazette, Vol. 15, No. 12 (Extraordinary), Shrawan 10, 2022 (July 25, 1965).

³⁴Quentin W. Lindsey, "Budabari Panchayat: The Second Year After Reform," Department of Land Reform, Nepal Ma Bhumi Sudhar (Land Reform in Nepal), Kathmandu: the Department, June 11, 1966 (English Section), p. 52.

³⁵A. S. Altekar, State and Government in Ancient India, p. 264.

³⁶See Volume I, pp. 54-55.

³⁷The tax was introduced in the Dhulahari and Topgachhi Village Panchayat areas of this district on February 13, 1967. Nepal Gazette, Vol. 16, No. 47 (Extraordinary), Magh 24, 2023 (February 6, 1967).

³⁸Ministry of Law and Justice, Jilla Panchayat Ain, 2019 (District Panchayat Act, 1962), Nepal Gazette, Vol. 12, No. 24 (Extraordinary), Marga 24, 2019 (November 9, 1962), Section 35(4).

³⁹Town Panchayat (Amendment) Act, 1964, op. cit.

⁴⁰1964 Village Panchayat (Amendment) Act, op. cit., Section 15(d).

⁴¹1964 Town Panchayat (Amendment) Act, op. cit., Section 39(10)

⁴²1964 Village Panchayat (Amendment) Act, op. cit., Section 15(2).

⁴³1964 Town Panchayat (Amendment) Act, op. cit., Section 39(3).

⁴⁴See Volume I, pp. 141-142.

⁴⁵Ministry of Finance, Thek Thiti Ka Jagga Ma Kholo Pairo Nadikat Balaburj Minha Dine Ra Badheko Badh Darta Garne Niyam Haru, 2021 (Remission of [Tax on] Lands Damaged by Riverine Action, Washouts, Landslides, and Influx of Sands, and Registration of Increments in Thekka Thiti Areas Rules, 1964), Nepal Gazette, Vol. 14, No. 9, Jetha 26, 2021 (June 8, 1964).

⁴⁶However, this measure appears to have met with strong opposition in the Kipat districts, where it was consequently withdrawn three months later. See Volume III, p. 111.

⁴⁷See Volume I, p. 175.

⁴⁸"Notification of the Ministry of Finance," Nepal Gazette, Vol. 16, No. 10, Ashadh 6, 2023 (June 20, 1966).

⁴⁹Ministry of Law and Justice, Krishi Sambandhi (Naya Vyavastha) Ain, 2019 (Agricultural [New Arrangements] Act, 1963), Nepal Gazette, Vol. 12, No. 44A (Extraordinary), Chaitra 30, 2019 (April 12, 1963), Sections 10-12.

⁵⁰1964 Lands Act, op. cit., Section 3.

⁵¹Ibid., Section 5.

⁵²Ministry of Law and Justice, Malpot (Bishesh Byabastha) (Samshodhan) Ain, 2019 (Land Tax [Special Arrangements] [Amendment] Act, 1962), Nepal Gazette, Vol. 12, No. 12 (Extraordinary), Aswin 11, 2019 (September 27, 1962).

⁵³Ministry of Law, Justice and Parliamentary Affairs, Malpot (Bishesh Byabastha) Ain, 2018 (Land Tax [Special Arrangements] Act, 1961), Nepal Gazette, Vol. 11, No. 13 (Extraordinary), Shrawan 11, 2018 (July 26, 1961).

⁵⁴Gorkhapatra, Falgun 26, 2020 (March 9, 1964).

⁵⁵There are 442,000 acres of agricultural holdings in this region, according to the 1961 Agricultural Census. Economic Data Papers, Vol. 5, No. 4, December, 1963, p. 41. According to one estimate, approximately 25 percent of the cultivated area in this region is under Ukhada land tenure. See "Report of the Butaul Agrarian Inquiry Commission," Nepali Congress Le Kisan Haru Ko Nimti Ke Garyo? (What Has the Nepali Congress Done for the Peasants?), Kathmandu: Nepali Congress, n.d., p. 22.

⁵⁶See Volume I, p. 111.

⁵⁷Government of Nepal, Report on Land Tenure Conditions in the Western Tarai, Kathmandu: Land Reform Commission, 1953, p. 2. Rent and tax assessments in Indian currency have been converted into Nepali currency at Rs 100: Rs 150. See Volume I, p. 192.

⁵⁸Law Ministry Records, Order Regarding Rents on Ukhada Lands, Jestha 23, 1989 (June 5, 1932).

⁵⁹Ministry of Law, Jagga Kar Ain, 2017 (Land Taxation Act, 1960), Nepal Gazette, Vol. 10, No. 3 (Extraordinary), Jestha 2, 2017 (May 15, 1960), Section 12(2), p. 37. This law was repealed on March 13, 1966.

⁶⁰Ibid., Section 9, p. 37.

⁶¹Cf. Lumbini, Nepali Weekly, Chaitra 16, 2020 (March 29, 1964).

⁶²See Volume I, p. 133.

⁶³Law Ministry Records, Order to the Jimidars and Patuwaris of Butaul District, 1978 (1921).

⁶⁴Tek Bahadur Panthi, "Ukhada Byabastha Bare Ek Adhyayan," (A Study of the Ukhada System), Naya Samaj, Shrawan 17, 2020 (August 1, 1963).

⁶⁵Ibid.

⁶⁶Cf. Report on Land Tenure Conditions in the Western Tarai, op. cit., pp. 2-3.

⁶⁷Law Ministry Records, Order to the Jimidars and Patuwaris of Butaul District, 1978 (1921)

⁶⁸Law Ministry Records, Ukhada Inquiry Order, Marga, 1987 (November, 1930).

⁶⁹Cf. Report on Land Tenure Conditions in the Western Tarai, op. cit., p. 3.

⁷⁰Tek Bahadur Panthi, op. cit.

⁷¹Cf. Tek Bahadur Panthi, op. cit.

⁷²Ministry of Law and Justice, Ukhada Sambandhi Ain, 2021 (Ukhada Land Tenure Act, 1964), Nepal Gazette, Vol. 14, No. 15 (Extraordinary), Aswin 17, 2021 (October 2, 1964), Sections 3-4.

⁷³Ibid., Section 3(1).

⁷⁴Ministry of Law and Justice, Ukhada Sambandhi (Pratham Samshodhan) Ain, 2022 (Ukhada Land Tenure [First Amendment] Act, 1965), Nepal Gazette, Vol. 15, No. 11 (Extraordinary), Ashadh 30, 2022 (July 14, 1965), Section 2.

⁷⁵Ministry of Finance, Ukhada Sambandhi Niyam Haru, 2021 (Ukhada Land Tenure Rules, 1965), Nepal Gazette, Vol. 14, No. 41, Magh 12, 2021 (January 25, 1965), Rule 7.

⁷⁶See Volume III, p. 128.

⁷⁷The 1964 Lands Act was enforced in these areas on December 16, 1966. Nepal Gazette, Vol. 16, No. 38A (Extraordinary), Marga 29, 2023 (December 14, 1966).

⁷⁸Speech made by Rudra Prasad Acharya, Chairman of the Nepal Peasants' Organization, while inaugurating the Koshi Zonal

Conference on land reform at Dharan on December 13, 1966. Jana Awaz, Poush 10, 2023 (December 25, 1966).

⁷⁹Speech made by Narendra Kumar Pradhan, Vice-Chairman of the National Panchayat, while inaugurating the Panchthar district land reform conference at Phidim on January 9, 1967. Gorkhapatra, Poush 26, 2023 (January 10, 1967).

⁸⁰Ministry of Law and Justice, Bhumi Sambandhi Ain, 2021 (Lands Act, 1964), Nepal Gazette, Vol. 14, No. 18 (Extraordinary), Marga 1, 2021 (November 16, 1964), Section 45(d).

⁸¹Ibid., Section 45(a).

⁸²Section 45 of the Act clearly distinguishes between unsecured agricultural loans and mortgages. Clause (b) prescribes that in case a creditor has realized interest at more than 10 percent in cash or in kind, such amount of interest as exceeds this percentage shall be deemed to have been deducted from the principal. Separate but similar provisions have been made in Clause (d) with regard to mortgages. From this, it follows that Clauses (a), (b), and (c), which make no reference to mortgages, do not apply to them.

APPENDIX C

¹His Majesty's Government, "Mahal 7, Guthi Ko" (Law No. 7, On Guthi), Muluki Ain (Legal Code), Part III (1963 ed.), pp. 112-115.

²Murda Guthi is a Guthi endowment in which the members who belong to the same family or clan are required to perform or attend the funeral ceremony of any deceased member. This system is prevalent only among the Newar Community. Murda Guthi endowments are primarily intended to insure that such ceremonies are not held up through lack of means and that they are not performed by members of lower castes.

³Heads of monasteries.

⁴Ministry of Law and Justice, Guthi Samsthan Ain, 2021 (Guthi Corporation Act, 1964), Nepal Gazette, Vol. 14, No. 15 (Extraordinary), Aswin 17, 2021 (October 2, 1964).

⁵Chief Ecclesiastical Authority of the Kingdom.

⁶The fiscal year commences on Shrawan 1 (July 16).

APPENDIX D

¹Source: Land Records Office (Lagat Phant).

²Jaya Jagat Jyoti Malla (1613-1637) was King of Bhaktapur.

³Jaya Jitmitra Malla (1673-1696) was King of Bhaktapur.

⁴Source: Pashupati Goshwara Office of the Pashupatinath temple at Deopatan, Kathmandu. This is an abstract of the text, not a literal translation.

⁵The birthday of God Mahadev, celebrated on the 14th day of the dark half of the moon in the month of Falgun (February-March) is known as Shivaratri.

⁶Chabahil, Kotubahil, and Deopatan are villages situated around Pashupatinath temple in Kathmandu.

⁷Darsani Mahsul is a tax levied on temple functionaries. It is also called Salami.

⁸All figures in the documents quoted in this appendix refer to 64-pice rupees. These have been converted into 100-pice rupees in the translation.

⁹Laxmipuja is a festival celebrated in honor of Goddess Laxmi on the new moon day in Kartik (October-November).

¹⁰Asmani means the proceeds of judicial fines.

¹¹Source: Land Records Office (Lagat Phant).

¹²Rawal Bhatta: Chief Priest. Bhatta: Priest. Biset: temple steward. Bhadel: a temple functionary. Jaishi: a caste. Bhandari: storekeeper. Mohinaike: revenue collector.

¹³Ghadi is equal to 24 minutes.

¹⁴Source: Land Records Office (Lagat Phant).

¹⁵Source: Land Records Office (Lagat Phant).

¹⁶Source: Copper Plate Inscription at the Guthi Lagat Janch Office at Makhan Tol, Kathmandu.

¹⁷King Girban.

¹⁸Source: Land Records Office (Lagat Phant).

GLOSSARY OF NEPALI TERMS

ABAL	First grade of land for purposes of tax assessment
AMANAT	Direct administration and management by the government, now by the Guthi Corporation
AMANAT GUTHI	Guthi endowments taken up for direct administration and management by the government, now placed under the Guthi Corporation
ASMANI	Miscellaneous levies, including the proceeds of judicial fines
BAKAS-GUTHI	Rajguthi endowments entrusted to private individuals for operation and management with the surplus revenue as their emoluments; obsolete since 1920
BAL-BITHAURI	Tax on residential sites in market areas in the Tarai district
BEGAR	Unpaid labor
BETH	Unpaid labor rendered on a customary basis, generally for agricultural purposes
BHANDAR	Temple treasure or store
BHANDARE	Storekeeper or treasurer of a temple
BHANDEL	A temple functionary
BHATTA	A temple priest
BHUBAHAL	Rent on residential sites in the Pashupatinath temple area in Deopatan, Kathmandu
BIGHA	A unit of area (used in the Tarai) equal to 8100 square yards or 1.6 acres
BIJAN	A system of tax assessment based on the quantity of seeds of maize estimated to be needed for sowing

BIRTA	Land grants made by the State to individuals, often taxable and conditional
BISET	Temple steward
BITALAB-BIRTA	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
CHUMAWAN	A levy imposed to cover the expenses of the sacred thread investiture ceremony of a prince of the royal family
CHHUT-GUTHI	Rajguthi endowments assigned to private individuals for operation and management
DAJE	A commission of 5 percent of the revenue collected paid to the revenue collection functionary on Guthi lands in certain cases
DAMAI	Tailor (untouchable caste)
DOYAM	Second grade of land for purposes of tax assessment
DUKA-BIRTA	Birta lands owned by the Pashupatinath and other temples
DUNIYA-GUTHI	Birta lands endowed as Guthi by private individuals without government approval
FAKIRANA	Land grants made to members of religious orders during the eighteenth and nineteenth centuries
GADIMUBARAK	A levy imposed to cover the expenses of a coronation
GHADI	A measure of time equal to 24 minutes
GHAR-GUTHI	A Guthi endowment made in the family without relinquishment of title to the land endowed
GHYANG	A Buddhist monastery; a Gumba

GODAN	Gift of a cow; a levy imposed to meet the expenses incurred in giving cows as gifts
GODDHUWA	A levy imposed to cover the expenses of the marriage of a princess of the royal family
GULPHUL	Lands granted to temples and monasteries for growing flowers required for religious performances
GUMBA	A Buddhist monastery; a ghyang
GUTHI	Land alienated by the State or by individuals for the performance of religious or charitable functions
GUTHI-BIRTA	Birta lands used or granted for use as Guthi
GUTHIYAR	The trustee of a Guthi
HANDI	A quantity of rice, lentils, vegetables, spices, salt, etc., required for a full meal for an adult person
JAGERA	Raikar lands other than those assigned as Jagir
JAGIR	Land assignments made to government employees or Guthi functionaries as emoluments of office
JAGIRDAR	Beneficiary of Jagir land assignments; a government employee
JAISI	Issue of an informal alliance between a man of Brahman caste and a Brahman girl or widow; also a Newar caste
JHARA	Forced and unpaid labor
JIMIDAR	Non-official tax-collecting functionary in the Tarai
JIMIDARI	The holding of a Jimidar
JIRAYAT	Taxable land attached to a Jimidari holding as part of the remuneration of the Jimidar

KASAR	Surplus income of a Chhut Guthi
KHANGI-GUTHI	Guthi lands assigned as emoluments to functionaries employed in temples
KHATAMI-SALAMI	Surplus income of a Chhut Guthi payable to the Guthi Corporation
KHET	(1) A measure of land equal to 25 ropanis or 100 muris (2) Irrigated land on which paddy and wheat can be cultivated
KIPAT	Communal land tenure system prevalent among the Limbu and other Mongoloid communities in Nepal
KOT-MAMULI	Assignment of land or revenue for the performance of State religious functions
KUSH-BIRTA	Birta grants made to Brahmans with religious motives
KUSHLE	A caste; players of wind instruments
LAMA	A Buddhist monk or priest
LOHA-GUTHI	Guthi endowments presumably made for the supply of stones to temples
MAHANT	The head of a Hindu monastery (Math)
MAHSUL	A tax levied on Guthi lands in the eleventh century
MANKHAB	Assessment of rents in kind on a contractual basis per unit of area (in the eastern Tarai districts)
MATH	A Hindu monastery
MOHI-BOTI	The share of the crop accruing to the cultivator
MOHINAIKE	A land tax collection functionary
MURI	(1) A volumetric measure for grains, equivalent to 2.40 bushels (2) A unit of area equal to 1,369 square feet

PAKHO	Unirrigated land on which only maize, millet, and other dry crops can be grown
PANCH SARKAR GUTHI	Guthi lands endowed by members of the royal family
PATHI	1/20th of a muri
PODE	Scavenger (untouchable caste)
POTA	A tax levied on certain categories of Birta lands in Kathmandu Valley and the hill districts
RAIBANDI	Redistribution of land on the basis of size of family and physical capacity
RAJGUTHI	Guthi lands formerly under the control of the government, now under the control of the Guthi Corporation
RAJA-ANKA	A generic term used to denote such levies as Chuman, Goddhwa, Gadimubarak, and Godan, the proceeds of which were appropriated by the royal family
RAKAM	Compulsory labor obligation
RAWAL-BHATTA	Chief Priest of a temple
ROPANI	A unit of area equal to 5,476 square feet or 0.13 acres
SADAVARTA	A charity kitchen; a place where raw or cooked food is supplied free to poor people and pilgrims
SALAMI	(1) A levy imposed on temple functionaries (2) A nominal payment due on certain Chhut Guthi endowments
SANAGUTHI	A funeral society, among the Newar Community
SARBANGAMAFI (SARBA-KAR-AKAR-SARBANGAMAFI)	A category of Guthi endowments (for Birta grants) which were usually exempt from all taxes and levies

SERMA	Tax on unmeasured Pakho lands (in the hill districts and Kathmandu Valley)
SIM	Third grade of land for purposes of tax assessment
SUNAGUTHI	A Guthi endowment presumably made on Suna Birta lands, i.e., lands sold by the State to private individuals
TAHALUWA	A temple attendant
TULSING-BOTI	Rent, or the portion of the crop accruing to the landowner
TALUKDAR	A generic term used to denote land tax collecting functionaries
THEKKA GUTHI	Guthi endowments on which revenue was collected through contract
THEKKA	Contract
TIN SARKAR GUTHI	Guthi endowments made by members of the Rana family
TIRJA	A transferable and negotiable draft entitling a Guthi functionary or a Jagirdar to collect rents on the lands assigned to him as emoluments

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