

GOVERNMENT OF GOA

LAW COMMISSION

**Proposed amendments to the Goa Daman and Diu Agriculture Tenancy
Act 1964**

**Report No. 25
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The 3rd Law Commission was constituted by Government Order No. 22-3-2009-LD-Estt/L.C./712 dated the 28th May, 2012 issued by the Law Department, Government of Goa.

The Law Commission consists of the Chairman and the two Members.

Chairman

Shri Narendra Sawaikar

Members

Shri Joaquim D'Souza

Shri Jayant P. Mulgaonkar

The Law Commission is located at Cabin No.019, Secretariat complex, Porvorim – Goa.

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**Any enquiry relating to this Report should be addressed to
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Cabin No. 019, Secretariat Complex, Porvorim – Goa or
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**Proposed amendments to the Goa Daman and Diu Agriculture
Tenancy Act 1964**

REPORT

The Goa Daman and Diu Agricultural Tenancy Act, 1964 (hereinafter referred to as 'Goa Agricultural Tenancy Act' or the 'said act') enacted by the first popularly elected legislative assembly for the erstwhile union territory of Goa, Daman and Diu. The Act was indeed landmark legislation in the field of land reforms. It is for the most part, modeled after similar enactments in some of the neighbouring states and follows the pattern under such laws of giving adjudicating functions to the hierarchy of revenue officers such as the Collector and the Mamlatdar. The original adjudicatory powers are given to the 'Mamlatdar' as defined under section 2(15) of the Act as meaning any person appointed by the Government to perform the duties of a Mamlatdar and the Appellate and the revisional powers are vested in the Collector as defined under section 2(4) of the said Act as meaning any person appointed by the Government to perform the functions of the Collector under the Act. Mamlatdar s and the Collectors as defined under the Act have also to perform functions which are other than adjudicatory.

The Collectors and the Mamlatdars and the persons appointed to perform their functions under the Act are the revenue officers who are part of the executive. How far such revenue officers remain independent and impartial and immune from political interference or the influence of their superiors in service is a question that looms persistently in public perception. Many of such revenue officers may well be performing their judicial functions with commendable impartiality but the doubts are bound to persist and in fact do persist in the mind of the litigants as also the public at large. This is not a desirable situation from the point of view of the administration of justice.

The independence of judiciary is a basic feature of our Constitution. Separation of judiciary from the executive is a necessary concomitant of the independence of judiciary. This has received judicial recognition in many a rulings of the Supreme Court of India.

Krishna Iyer, J. in his concurring judgment in *Shamsher Singh .v. State Of Punjab* 1974 (2) SCC 831 observed as follows:

"The independence of the judiciary is a fighting faith of our founding document. Since the days of Lord Coke, judicial independence from executive control has been accomplished in England. The framers of our constitution, impressed by this example, have fortified the cherished value of the value of the Rule of law by incorporating provisions to insulate the judicature. Justice becomes fair and free only if the institutional immunity and autonomy are guaranteed (Of course there are other dimensions to judicial independence which are important but irrelevant for the present discussion). The exclusion of executive interference with the Sub ordinate Judiciary i.e. grass roots justice , can prove a teasing illusion if the control over them is vested in two masters, viz , the High Court and the Government ,the latter being otherwise stronger".

Separation of powers of the judiciary from the executive has been substantially accomplished not only in the case of the higher judiciary but also as regards the subordinate judiciary. The same cannot be said in respect of the judicial and quasi-judicial functions vested in the revenue officers under various special state enactments, particularly relating to land and land reforms.

The experience of the last almost 50 years of giving adjudicatory functions to the revenue officers is far from encouraging. If the object behind giving adjudicatory functions to the Mamlatdar and the collector was to avoid procedural delays which are supposed to affect and slow down the matters before the civil courts, the experience of the working of the Goa Agricultural Tenancy Act and other similar laws has been totally to the contrary. In fact, taking the plea of tenancy to stall the progress of the civil suit till the final adjudication of the plea has become the usual dilatory ploy employed by dishonest litigants. It has been observed that till July 2013 following cases are pending disposal before the various Mamlatdars in the state:

TALUKA	No. of pending cases
Tiswadi	348
Bardez	846
Pernem	329
Bicholim	212
Sattari	26
Ponda	614
Salcete	382
Mormugao	48
Quepem	132
Sanguem	59
Dharbandora	25
Cancona	80

Final determination of the tenancy cases by exhausting the remedies under the said Act, before hierarchy of authorities and thereafter invoking the writ jurisdiction of the High Court, takes years and at times passes over generations. What we observe here was also noticed by the second Law Commission and we are conscious that the said Commission proposed 'The Goa Revenue Courts Bill 2009' in their Report no. 3 providing for a separate hierarchy of revenue officers solely to discharge judicial work under different laws.

What this Commission proposes is to recommend amendment to the Goa Agricultural Tenancy Act and to give the core adjudicatory functions under the said Act which are presently given to the 'Mamlatdars ' under the said Act to the courts of the Civil Judges appointed under the Goa Civil Courts Act designated as 'Civil Judges' and provide for a single Appellate authority which would be 'Appellate Judge' meaning the District Judges including all the Additional District Judges appointed under the Goa Civil Courts Act. Appellate Judges shall also exercise revisional jurisdiction over the proceedings before the Civil Judges.

This Commission is of the considered opinion that utilization of the Judges of the existing civil courts in the matter of tenancy declaration cases and determination of tenancy issues arising in civil suits and other proceedings should go a long way in expediting the decision-making in tenancy matters.

This brings us to the one other aspect which has not received the attention of the legislature. Almost 20 years after the decision of the Supreme Court in the case of Inacio Martins v/s Narayan Hari Naik reported in AIR 1993 SC 1756, Goa Agricultural Tenancy Act does not have any provision for making reference of the tenancy issue to the competent adjudicatory authority under the Act. Presently, civil courts indeed stay the suit and make reference of the tenancy issue to the Mamlatdar. This is being done following the law laid down in the said case of Inacio Martins v/s Narayan Hari Naik – AIR 1993 SC 1756. However, the legislative lacuna still remains. The Commission therefore proposes suitable amendment to the Act for filling this lacuna as well and providing, as indicated above; that such issue shall be decided by the 'Civil Judge' and the Appellate jurisdiction shall be exercised by the 'Appellate Judge.

The Commission therefore proposes the following to The Goa Agricultural Tenancy Act (Amendment) Bill, 2013.

The Goa Agricultural Tenancy Act (Amendment) Bill, 2013

(Bill no. of 2013)

An Act to amend The Goa, Daman and Diu Agricultural Tenancy Act, 1964. (GDD Act no. 7 of 1964).

1. Short title: This Act may be called Goa Agricultural Tenancy Act (Amendment) Act, 2013.
2. It shall come into force at once.
3. Amendment to short title: The words 'Daman and Diu' shall be deleted.
4. The following sub-sections (3A) and (3B) shall be inserted in section 2 of the Act.

3A. 'Appellate Judge' means every District Judge appointed under section 3 of the Goa Civil Courts Act, 1965 and shall include all the Additional District Judges appointed under Section 9 of the said Act.

3B. 'Civil Judge' means every Senior civil Judge and Junior Civil Judge appointed under the Goa Civil Courts Act, 1965.

Amendment to section 7: The word 'Civil Judge' shall be substituted for the word 'Mamlatdar' in the Section at both places where it occurs in the Section.

Amendment to section 7A: The word 'Civil Judge' shall be substituted for the word 'Mamlatdar' in the Section.

The following sub-section 8B shall be inserted after Section 8A:

8B: All orders passed by the Mamlatdar under section 8 and section 8A shall be subject to the orders passed by the Civil Judge under Sections 7 and 7A of the Act.

Amendment to Section 49:

The following sec 49A shall be inserted after Section 49:

49A: From every final order passed by the Civil Judge under Section 7 or Section 7A or in a reference made in terms of Sec 58(3) of this Act an Appeal shall lie to the Appellate Judge and the decision of the Appellate Judge in such Appeal shall be final.

Amendment to Section 50:

The following proviso be added to Section 50 of the Act:

Proviso: Provided that in case of the orders passed by the Civil Judge the revisional jurisdiction in terms of subsection (1) of this Section shall be exercised exclusively by the Appellate Judge and any orders of the Appellate Judge passed in appeal under Section 49A or in revision under this Section shall not be subject to further revision by the Administrative Tribunal under sub-section (2) of this Section.

The Amendment to Section 51:

The word '(or the Appellate Judge)' shall be added after the words '(or the Administrative Tribunal)' in section 51.

The following subsection (3) along with explanation shall be added to section 58:

(3). If in any suit or proceeding the issue involving the question which is under section 7 or 7A of this Act is required to be decided by the Civil Judge arises, such suit or proceeding shall be stayed and reference of such issue shall be made to the Civil Judge for determination.

Explanation: If the suit in which such issue arises is pending before the court which is presided over by the Civil Judge, the suit shall be stayed and the Civil Judge shall decide such issue before further proceeding with the suit.'

All tenancy cases under section 7 or 7A of this Act pending before the Mamlatdar shall stand transferred to the Civil Judge and all appeals and revisions pending before the Collector shall stand transferred to the Appellate Judge having territorial jurisdiction over such tenancy cases, appeals and revisions on commencement of the Goa Agricultural Tenancy Act (Amendment) Act.

(Narendra K. Sawaikar)
Chairman

(Jayant P. Mulgaonkar)
Member

(Joaquim D' Souza)
Member

