

## REPORT NO. 1

### MUNDKARS LEGISLATION

1 Mundkar is a peculiar institution in the State of Goa. The origin of this term is lost in antiquity. In common parlance the word used is mundkar. It is said that the word Mundkar is from the language of the “Kols” and ‘mundaris” who were reportedly the original settlers of Goa. “Mund “refers to the vernacular word “ Mul” which means the root of the tree. It also means the Mund or the head of an individual. If it means root of a tree it may refer to a person whose primary job is to plant a tree and nurture it. The term mundkar refers to a person who works in the property of another, plants trees, raises plantations and protects it. In return, he gets a dwelling house to live and remuneration in kind or cash or both for the work done in the property. The owner of the property in colloquial terms is called a Bhatkar and the word Bhat means the property of the owner. The term Bhatkar and Mundkar therefore establish a relationship between land holder bhatkar and the person staying in his property to raise and protect his plantation and the term mundkarship refers to the relationship between the two.

1.1 The mundkar and bhatkar are interdependent. Therefore, one suffered the other as long as the relationship was mutually beneficial. However, the bhatkar being the boss and the mundkar, sort of a servant, the relationship continued at the pleasure of the Bhatkar. In other words, the mundkar never enjoyed the security of the tenure and could be kicked out of the property at the whim and fancy of the bhatkar. The mundkar was a kind of bonded labourer.

1.2 The Portuguese decided to give protection to the mundkar and thus, a law called “lei do mundcarato –legislative diploma no. 1952” was enacted. This law defined the term mundkar and prescribed his duties and rights. For the first time in history the mundkar could not now be evicted, whimsically by the landlord except in terms of the said “lei do mundcarato”.

1.3 After liberation of Goa, the Goa, Daman and Diu Mundkar (Protection from Eviction) Act 1975 was enacted in place of the old Legislative Diploma.

The scope of the word mundkar was widened. Any person living in the property of another with the consent of the original owner of the property and having a fixed habitation now became a mundkar whether or not he rendered any services to the owner of the property. Persons paying rent for the occupation of the house, domestic servants or chowkidars, and industrial and commercial workers staying in the house provided by the owner of the property were excluded from this definition. The Act also provides that a mundkar could purchase his dwelling house by paying the market value of the house. There is however no compulsion upon the mundkar to purchase his dwelling house. The mundkar can continue to occupy the dwelling house indefinitely without any obligation to the owner of the property. He has a right to repair and reconstruct the house, to take water connection, telephone connection, and electricity connection and obtain other facilities. An attempt was made to restrict the price of the dwelling house as existing on 12<sup>th</sup> March 1976 whenever a mundkar decided to purchase it. This Amendment Act was challenged as ultra vires in the writ petition Vasudev Deshprabhu v/s State of Goa 2004(2) Goa L.R 134 and was struck down by the High Court. However this judgement was set aside by the Supreme Court. The mundkar therefore has to pay the value of the dwelling house as on the 12<sup>th</sup> March 1976 whenever he decides to purchase it from the landlord. The Commission is of the opinion that this perpetuates relationship between bhatkar and mundkar which has its origin in the old feudal system. The Mundkar Act is a social welfare legislation. Since there is no obligation upon mundkar to buy his dwelling house or to render any services to the landholder in return for the favour of having been allowed to reside in the property and the uncertainty of the mundkar ever wishing to purchase the dwelling house some sort of hostility continues to simmer between the parties. A similar situation existed in the Agricultural Tenancy act until an Amendment was enacted to vest ownership rights of the agricultural lands upon the cultivating tenants at a predetermined price.

1.4 The Commission feel that a similar provision may be inserted in the Mundkar Act vesting ownership rights of dwelling house upon the mundkars . Once the mundkar becomes the owner of the dwelling house

the relationship between the mundkar and the bhatkar would end once and for ever. More ever, once all the mundkars become the owners of the dwelling houses the mundkar law should exit from the statute book.

1.5 The Commission also feels that once the mundkar becomes the deemed purchaser of the house the bhatkar should be entitled to get the purchase price within a reasonable period. Since purchase price will be a measly amount compared to the present market value of real estate, it should not be difficult for the Mundkar to pay the price in one lumpsum except in a few cases of abject poverty. In any case we propose that the purchase price be paid by the Government if the Mundkar fails to pay it within a period of three months from the determination of purchase price. This amount may either be treated as housing loan by the government to the mundkar and be recovered within such period as may be prescribed under a special scheme to be prepared by the government for the benefit of the mundkar. The arrears of the purchase price can be recovered as arrears of revenue.

1.6 The Commission is of the opinion that the legislation of this nature should have a sunset clause. We feel that the mundkar law itself should go away from the statute book within a specified period. We therefore propose to recommend that all mundkars should be given a time limit to apply for declaration of mundkarship and purchase of dwelling house. This period should be notified to the public at large in every possible way. A special drive could be launched throughout State of Goa to identify mundkars and to assist them to file their applications for declaration as mundkars. The last day of receiving application for Mundkar registration, declaration and purchase of dwelling house may ideally be 19<sup>th</sup> December, 2011 which is the Golden Jubilee Day of our liberation from Portuguese rule.

1.7 In these circumstances, the Commission feels constrained to recommend Amendments on the following lines

- 1) Vesting of ownership right to the dwelling house upon the mundkars as on 12/3/1976 that being the appointed date for the purpose of determining the market value of the dwelling house.

- 2) A special Mundkar housing scheme be prepared to make funds available to the Mundkar to buy the dwelling house.
- 3) A special drive be launched for registration, declaration and vesting of ownership rights. The last day for receiving application may be 19<sup>th</sup> December 2011, Golden Jubilee Day of liberation of Goa from the Portuguese rule.

1.8 This is in compliance with the terms of reference to the Commission to suggest amendments to the existing legislation in the spirit of information to fulfil the need of the time.

## **2 RECOMMENDATIONS**

**2.1 It is therefore suggested that the Goa, Daman and Diu Mundkars (Protection from Eviction) Bill 2009 may be introduced in the forthcoming Assembly Session as proposed.**

**2.2 We recommend accordingly.**

**Sd/-**

**(Ramakant D. Khalap)  
Chairman**

**Sd/-**

**(Cleofato Coutinho)  
Almeida)  
Member**

**Sd/-**

**(Mario Pinto  
Member**