



PROPERTY LAWS AND PROPERTY PRACTICES IN INDIA

KAVERI THARA & AJEY SANGAI

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PROPERTY LAWS AND PROPERTY PRACTICES IN INDIA*

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Abbreviations	
AIR	All India Reporter
All	Allahabad
EWS	Economically Weaker Sections
HIG	High Income Groups
KTCPA	Karnataka Town and Country Planning Act, 1961
LAA	The Land Acquisition Act, 1894
LARR	Land Acquisition Rehabilitation and Resettlement Act, 2013
LIG	Low Income Groups
PAT	Patna
PESA	Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA).
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reports
Supl:	Supplement

Abstract

Land and property has been governed by the Indian state in rather conflicting ways in the past. While the first amendments to the Indian Constitution were purportedly to enable the State to redistribute land more equitably, this was followed by land acquisition that displaced Adivasis, Dalits and other vulnerable groups for developmental projects. Recently, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Rehabilitation Act, 2013 was enacted to restrain this power of eminent domain. However, this law has been amended and subverted as land acquisitions continue unabated. In stark contrast to this image of the powerful State, that can take away its citizens' rights to property through acquisition, are the routine contraventions of property laws, that has resulted in the chaotic Indian city, replete with unauthorized constructions and occupations that some propose is due to the failure of urban planning. If the State is as powerful as it appears to be, how do we explain these everyday contraventions of property laws? This paper examines these two sets of evidence available in the vast literature on property rights, acquisition and urban planning, to decrypt the stance of the Indian State vis-a-vis land and property within its territory. Our quest is to understand how the State postures itself with respect to the property rights of its citizens, by examining the property laws and practices of the Indian State as well as the practices of Indian citizens, that shape laws and their implementation. The first part of this paper engages with the literature and case law on the State's power of eminent domain under land reform laws, general land acquisition laws and laws pertaining to common property resources. The second part of this paper looks at evidence on the implementation of property laws in urban governance, widening the debate on property rights from the narrow confines of eminent domain, land acquisition, displacement and resettlement. In this part we examine the everyday subversion of municipal laws on building and construction and planning laws that govern land use, by citizens and the State's response to these subversions. We propose that a closer look at the State's own practices in both these fields of praxis—eminent domain and urban governance, reveals a complex terrain of land and property governance in India, with the State positioning itself as a patron, thus relegating property rights to a field of negotiations.

1. Introduction

This paper uses the vast and vibrant literature on property laws and property practices (of the State and citizens) in India to examine how the Indian State positions itself vis-a-vis land and property within its territory. While we focus on the State, our objective is to examine the effects of the State's approach in the everyday lives of Indian citizens. We have limited our focus to immovable property in this paper and adopted a broad definition of property rights as a bundle of rights¹ “against other persons” within specific social relations (Hann, 2015), where rights to use, regulate and control may be distributed between different persons or institutions. This approach therefore allows us to deal with common property rights and collective rights as well as include different modes of dealing with property such as tenure systems (von Benda-Beckmann, Benda-Beckmann & Wiber, 2006).² Instead of focussing on the totality of rights, we prefer to view property rights and relations as a complex space in which rights are not always neatly segregated in practice (Humphrey & Verdery, 2004) into individual/collective or public/private, thus including partial rights such as the rights to possess, occupy, exclude, use, exploit, extract from, transfer, etc. (Turner, 2017).³ In our quest to propose a conceptual lens to understand the State's approach to property rights, we examine the laws it enacts and its practices at several levels—from the local governance level to the parliament—as well as the rich and vibrant literature on property laws, rights and practices in India. The objective of this paper is to glean how the State positions itself in terms of the land and property within its territory and how this impacts the property rights of Indian citizens.

The first part of the paper examines the State's power of eminent domain under land reform legislations, general land acquisition laws, and laws pertaining to common property resources. We contrast these laws with State practices under (as also departing from) these laws. In our analysis, we rely on a vast and rich literature⁴ on the confrontation between the State and citizens as the State attempts to acquire and/or takeover control of land over which citizens have had rights (ownership, use, possession, etc.) and control. Our objective is to examine the laws as well as State practices to suggest a common approach of the State on property rights and relations. Rather than to see these domains as distinct and embedded in different sets of laws, our analysis examines how they are, in many ways, mutually shaped, with paradoxes emerging as the assertion of rights under one set of laws and State practices are undone by another domain of law and practice. When seen together, these conflicts between the State and citizens have largely shaped our views on rights to property and property relations in India.

We also examine some unusual terrains of law and regulation, relating to urban housing and governance to include the everyday governance of land and housing that impacts citizens' enjoyment of property rights.⁵ We do so to extend discussions on property laws and rights beyond the confines of the legislature and the judiciary, to the everyday practices of citizens that in turn shape law. Therefore, rather than examining the workings of laws, which may produce no more than a lamentation over their inadequate implementation, we choose to examine how citizens subvert

¹ Maine, Henry James Sumner (1861) *The Ancient Law*. J. Murray, London.

² Using the notion of bundle of rights can allow us “to capture the different roles that property may play as well as the complexities and manifold variations of property in different societies and in different periods of history” (von Benda-Beckmann, von Benda-Beckmann & Wiber, 2006).

³ For instance, we discuss common property rights, rights of slum dwellers and illegal occupants, in this paper. This complexity in the rights status of various groups is evident in the manner in which certain previously unrecognised rights were, later through social movements, included in the law (for instance the rights of Scheduled Tribes to forests) and certain rights outside the purview of law were recognised through customary recognition and executive actions (Wahi, 2019).

⁴ Austin, 1966, 1999; Chakravorty, 2013, 2015; Das, 2000; Nielsen & Nilsen, 2015; Roy Barman, 2006; Sonak & Singh 2018; Wahi, 2015, 2019.

⁵ We limit ourselves to urban housing due to rich literature available on urban India. Studies of rural land have focused primarily on agricultural land and land redistribution with rural schemes of housing referred to almost anecdotally (Hanstad, Haque, & Nielsen, 2008).

these laws and what these subversions produce in terms of property rights. In the second part of the paper, while dealing with laws pertaining to encroachment, land use, and buildings, our approach has been to follow the State's response to these practices to better understand its purport and intent as the primary custodian of land and property in its territory.

While laws and judicial interpretations of laws allow us to decipher how the State positions itself in terms of laws and rights, property practices of citizens enable us to view how citizens respond to laws and rights. However, we do not see these terms as insulated from one another. Laws and the rights encoded in them as well as the lack of such rights (as discussed in Annex A, which examines the right to housing and shelter) shape people's practices. These practices shape laws and their implementation. Therefore, the first part of this paper which examines eminent domain and the land acquisition laws, also details certain practices of both the State and citizens, in response to these laws.

The second part of this paper also discusses how property practices are in contravention of existing laws and how they shape implementation and often result in the promulgation of new laws. This analysis integrates several levels of government, beginning at the national-level: the tussle between the legislature and the judiciary; moving to the state level: at laws made by state legislatures in response to demands by certain citizen groups; and finally to the local level: at interactions between citizens and officials, ward level political representatives and bureaucrats. However, we do not organise our analysis on the basis of a central or state/local responses. Instead, the discussions on eminent domain also examine State responses to recent land acquisition laws, while the discussion on property practices also refers to central schemes and judicial decisions of the Supreme Court on the right to housing and shelter. While we do not segregate our analysis in terms of the hierarchies between State institutions, our analysis conforms with sociological literature on the State as disaggregated (Sharma & Gupta, 2009) and we therefore pay attention to the levels at which decisions are taken.

The first part of the paper examines the exercise of eminent domain to acquire land from citizens: (i) the land and agrarian reform legislations enacted with an intent to abolish intermediate estates, fix the limits of land holdings, and redistribute surplus lands to landless farmers and tillers; (ii) the general land acquisition law through which lands were acquired for the purposes of industrialisation and infrastructural development; and (iii) laws governing the "commons" focusing on land inhabited by forest dwellers and the Scheduled Tribes. Based on this analysis we suggest that the Indian State and judiciary have largely viewed the question of property rights through the lens of compensation without having to defend "public purpose" for which the land was acquired. This first part will elucidate the issue of compensation as complex, since it tries to pursue different objectives, from distributive justice to deterrence, depending on the circumstances of land acquisition. We examine how the State, through corruption, political unwillingness, and/or legally devised exit options actively undermines legislations that seek to bestow some rights and therefore some power in the hands of citizens. In effect, citizens do not possess any natural right to property, with their constitutional and statutory rights contingent and negotiated.

The second part of this paper examines three sets of State practices: (i) political support to property law contraventions; (ii) the suspension of property laws through exceptions and exemptions; and (iii) the transformation of contraventions into legal property rights. It therefore details the ways in which the State undoes its own laws regulating property relations, with local State officials and elected representatives using law and plans in a flexible manner or suspending them altogether, replacing law with context-dependent and politically motivated favours, be it in the form of converting illegal housing into legal housing, suspending urban planning laws, or passing laws to legalise illegal encroachments. It reveals the manner in which this mode of "flexible governance" or "informality", as theorised within the literature on urban planning and governance, transforms property relations on the field, moving the signpost from laws and rights to patron-client relations in which citizens are entrapped as dependents rather than rights holders.

2. Property laws

In this part, we focus on the power of the State to acquire property for public purposes. In the first segment on eminent domain and land reforms, we look at the constitutional debates over land reforms, the tussle between the government and judiciary and the eventual removal of the right to property as a fundamental right. We find that the general narrative of an egalitarian government impeded by a rights-protecting judiciary is vastly exaggerated even though there could arguably be an ethical basis for treating property rights of *zamindars* less sacrosanct for the benefit of vulnerable tillers. The next segment, on eminent domain and land acquisition, discusses expropriations under general land acquisition laws for development and infrastructure purposes where, in a complete and tragic departure from this ethical basis, millions of impoverished people including Scheduled Castes and Scheduled Tribes⁶ (hereinafter referred to as *Adivasis*) and thousands of villages were displaced. We also discuss how a seemingly more egalitarian Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (LARR) passed in 2013 has strengthened the power of the State rather than reversing it. The third segment on commons examines how the State has undermined rights of tribal and forest-dwelling communities to common property resources in a more flagrant manner by not even adopting any legal instrument to do so.

We deploy notions of “personal” and “fungible” property (Radin, 1982), rules of inalienability, property and liability (Calabresi & Melamed, 1972) to examine differences among property holders and thereby, property rights. Gleaning from the experience of land acquisition in India, we find that while in some cases, particularly land reforms, the rhetoric of social justice brings these normative concepts to life, in practice, the exercise of eminent domain presents a starkly different reality revealing a crudely pragmatic State perpetuating its control over these lands and often at the expense of vulnerable and marginalised communities.

a. Eminent Domain and Land Reforms

“Eminent domain” is an integral attribute of the sovereignty of the State. Simply put, it is “the power that the State may exercise over all land within its territory” (Ramanathan, 2009). In 1625, Grotius, perhaps the first to theorise on eminent domain, noted:

“The property of subject is under the eminent domain of the State, so that the State or he who acts for it may use and even alienate and destroy such property, not only in cases of extreme necessity... but for ends of public utility, to which ends those who found civil society must be supposed to have intended that private ends should give way. But it is to be added that when this is done the State is bound to make good the loss to those who lose their property” (Ramanathan, 2009).

We may notice certain essential elements: (i) the justification of appropriation on the basis of “public utility”; (ii) superiority of public purpose over private ones; and (iii) compensation for the loss of property (Desai, 2011). Laws have been instrumental in defining not only the contours of eminent domain but also the idea of property. Property rights are granted, legitimised, and protected through laws. These laws generate expectations of exclusive use and enjoyment of a tangible resource. Bentham (1882) adds:

“The legislator owes the greatest respect to these expectations to which he has given birth: when he does not interfere with them, he does all that is essential to the happiness of society; when he injures them, he always produces a proportionate sum of evil.”

⁶ Scheduled Tribes is the official term for the tribes considered as the indigenous people of India and commonly referred to as *Adivasis*.

As eminent domain authorises the State to deprive citizens of property rights, it needs to be balanced with the right of citizens to lawfully hold, possess and enjoy their private property. In the Indian context, the inherent tension between guaranteeing property rights to citizens, ushering land reforms through redistribution and initiating rapid industrialisation was evident in the constituent assembly debates. The property rights clauses, particularly those concerning the demands of “due process” and “just compensation” in the event of acquisition were immensely contentious.⁷ For example, while Aiyar argued that compensation necessarily implied just compensation, Pant opined that for land acquired for social purposes, “compensation should not even be compulsory”. Other members like Patel, Rajagopalachari, and Panikkar believed that the word “just” should be dropped to prevent litigations by making this issue non-justiciable (Austin, 1966). The final text of the Constitution accommodated diverse views. It included the fundamental right of all citizens to “acquire, hold and dispose of property” under Article 19(1)(f) of the Constitution. This right was subject to reasonable restrictions under Article 19(5) permitting the State to legally acquire property “in the interests of the general public or for the protection of the interests of any Scheduled Tribe”. The State was empowered by Article 31 to acquire any land, for public purpose, upon payment of compensation⁸ and in consonance with the laws enacted for this purpose.⁹ The justification or “public purpose” for, and compensation upon, acquisition, are essential to the legitimacy of this power through which the State forcibly deprives its citizens of their rights (Bhattacharyya, 2015).

Even before the Constitution was adopted, several state assemblies had passed land reform laws abolishing zamindari. Unsurprisingly, they were immediately challenged by *zamindars* in the high courts of Allahabad, Bhopal, and Patna. They argued that these laws were discriminatory and neither served any “public purpose” nor provided “adequate compensation”.¹⁰ Though only the Patna High Court struck the legislation down,¹¹ it prompted the Parliament to amend the Constitution for the first time, even before the Supreme Court could hear appeals from the three judgments. This amendment inserted Article 31A and 31B along with the controversial Ninth Schedule (Singh, 2020). While Article 31A insulated laws relating to the abolition of estates from judicial scrutiny, the Ninth Schedule listed legislations (that kept expanding till 1978) that were protected from judicial review, even retrospectively through Article 31B. Nehru famously wrote to all chief ministers that although the judiciary’s role was not challenged, “if the Constitution itself comes in our way, then surely it is time to change that Constitution.” (Austin, 1999).

The government seems to have regarded the swathes of lands held by the *zamindars* to be ‘fungible’ property, or commodities which may be redistributed to vast majority of landless tillers, without notable existential harm to their owners (Radin, 1982). In defence of these laws, the State furthered the notion of distributive justice, where non-concentration of wealth and redistribution of lands from *zamindars* to marginalised farmers was seen to ultimately serve the common good. The courts,

⁷ Granville Austin notes that it took the assembly nearly three years to ultimately decide how these questions would be settled in the text of the Constitution (Austin, 1966, p. 106).

⁸ The law could either provide for fixed compensation or the principles for fixing it under Article 31(2). The bills pending before provincial legislature at the time and those that had been passed under 18 months before the enactment of the Constitution could not be legally challenged for violating this clause, after receiving the President’s assent. Further, acquisitions carried out under public health laws or for preventing danger to life and property were also protected from judicial scrutiny under this clause.

⁹ Article 31(1)

¹⁰ *Raja Suryapal Singh v. State of Uttar Pradesh*, AIR 1951 All 674; *Raja Rajendra Shitole v. State of Madhya Bharat*, AIR 1952 MP 97; and *Maharaja Kameshwar Singh v. State of Bihar*, AIR 1951 Pat 91. While the Allahabad and Madhya Pradesh high courts upheld the laws, the Patna High Court struck them down despite Article 31(4) which saved them from judicial scrutiny. To this, the court had observed that Article 31(4) only precluded judicial review on the question of compensation. However, it was held that the legislation violated Article 14 for it provided different rates of compensation to different categories of *zamindars*, and thus struck down. Appeals were filed against these judgments before the Supreme Court by the respective aggrieved parties.

¹¹ There were other litigations pending before other high courts, notably the Bombay High Court (*Sholapur Spinning Mills*) and Calcutta High Court (*Bela Banerji*).

however, regarded these laws as an infringement of property rights that must pass the muster of constitutional scrutiny. Thus in the *Kameshwar Singh* case, the court¹² struck these laws down as they neither explained the “public purpose” nor provided principles for compensating owners.

In 1953, the court passed three judgements, of which two were against the government. In the *Bela Banerjee* case,¹³ a law was challenged which enabled acquisition of private urban lands for the rehabilitation of refugees from East Pakistan (now Bangladesh) had fixed compensation at a date much anterior to acquisition, without considering shifts in the market value. In the *Subodh Bose* case,¹⁴ the petitioner had purchased urban land under the Bengal Revenue Sales Act, subsequently annulling all under-tenures connected to that land. As this would have evicted many families, the government objected (although nothing in the law restricted the owner from evicting tenants at will), prompting the petitioner to approach the Calcutta High Court. As the case was being heard, the state government amended the Act to cancel such powers of the purchaser. In the *Sholapur Mills* case,¹⁵ a shareholder challenged the government’s takeover of the management of his non-functional mill depriving him of his right to property. In the *Subodh Bose* case, the court decided against the petitioner while in the other two, it ruled against the government. While none of these cases involved land reform, the court deferred to the Parliament on the question of “public purpose” and observed that this term is “elastic and could only be developed through a process of judicial inclusion and exclusion in keeping with the changes in time, the state of society and its needs.”¹⁶

However, there were three conceptual questions: (i) what kind of restrictions on a citizen’s right to property in Article 19 would amount to “deprivation”? The interference with property rights must cross this threshold to be deemed an acquisition, only after that, could a claim for compensation be sensibly raised.¹⁷ (ii) Whether these legislations being outside the purview of Article 31A are amenable to judicial review? (iii) Whether the adequacy of the compensation is justiciable in such cases? In *Bela Banerjee*, the court struck down the law as the compensation was not in consonance with the market value of the land. In *Subodh Bose*, the amendment was upheld as being only a reasonable restriction and not deprivation under Article 19(5), while the takeover of *Sholapur Mills* was held as deprivation of property rights, necessitating fair compensation.

Putting these challenges to rest, the Parliament, in 1955, passed the Fourth Amendment to the Constitution adding seven more legislations to the Ninth Schedule. While four dealt with non-agricultural property, three were concerned with the regulation of business (Austin, 1999, p. 107).¹⁸ Revising a threshold for acquisition, it added clauses 2 and 2A to Article 31 providing that if a law did not entail transfer of ownership or possession of a property to the State, it cannot be considered a “compulsory acquisition,” even though it deprived the owner of the property. The State was thus no longer bound to pay compensation in such cases, including the takeover of companies. With this new threshold, total deprivation of ownership was prioritised over the denial of control and use of the acquired property, which further diluted an already watered-down liability rule under which owners were recompensed.¹⁹ When an entitlement is protected by a property rule, a seller can fix its value in a market. However, under the liability rule, the value is fixed by an organ of the State (Calabresi & Melamed, 1972).

¹² When the appeals were finally heard by the apex court, the first amendment had already been declared constitutionally valid in *Shankari Prasad v. Union of India*, AIR 1951 SC 458.

¹³ *State of West Bengal v. Bela Banerjee*, AIR 1954 SC 170.

¹⁴ *State of West Bengal v. Subodh Gopal Bose*, AIR 1954 SC 92.

¹⁵ *Dwarkadas Srinivas v. Sholapur Spinning and Weaving Co.*, AIR 1954 SC 199. In 1954, bus operators in Uttar Pradesh filed a petition against nationalisation of bus routes, see *Saghir Ahmed v. State of Uttar Pradesh*, AIR 1954 SC 728.

¹⁶ *Surya Pal Singh v. State of UP*, (1952) 1 SCR 1056.

¹⁷ The loss may be assessed subjectively (from the point of view of the owner, which a market rate may arguably allow for) or objectively (an external entity could determine monetary worth of apparent loss) (Wyman, 2007). Later, it would appear that the court would accept that loss may be objectively evaluated but insisted on clear principles for such assessments.

¹⁸ Including the West Bengal Land Development and Planning Act, 1948, in *Bela Banerjee* (Austin, 1999).

¹⁹ This property was never protected by liability or inalienability rules. Importantly, the amendment also denies any commitment to corrective justice for any acquisition that would not meet its threshold.

The judiciary now adopted another test—judicial review on the issue of compensation was ousted only when the law was enacted in pursuance of the land reforms programme.²⁰ In 1961, the Supreme Court in *Karimbil Kunhikoman*²¹ held that since a *ryot* was only a tenant and not the proprietor, the lands held under the ryotwari system in the states did not fall within the definition of “estates” under Article 31A(2)(b). Therefore, the Kerala Agrarian Relations Act, 1961, despite the Fourth Amendment and Article 31A, was subjected to judicial scrutiny and struck down, even though the judgment could be seen as splitting hairs (Austin, 1999, p. 111; Wahi, 2015, p. 15). The Parliament thought these judgments impeded land reforms and responded with the Seventeenth Constitutional Amendment Act in 1964 allowing the state to acquire land in excess of the ceiling limit in each state without paying compensation at market value. Further, the definition of estates was changed to include ryotwari land holdings and agricultural lands. It also covered waste land, forest land, pastures and buildings/structures occupied by cultivators, agricultural labourers and village artisans.²² While it changes the threshold for acquisition to allow the State to expropriate more lands,²³ it also reveals that the intent behind these acquisitions was no longer restricted to agrarian reforms, but was instead an exertion of eminent domain over all lands including those enjoyed in common such as forests and pastures.

With the judiciary ceding on the issue of public purpose and adequacy of compensation outside the purview of review, the attention shifted to the “principle of compensation”. In 1965 in the *Vajravelu Mudaliar* case²⁴ concerning the acquisition of land for slum clearance and housing under the Land Acquisition (Madras Amendment) Act, 1961, the court held that while it would not intervene on the issue of adequacy, an illusory compensation is a fraudulent and colourable exercise of power. Comparing the original and amended Act, the court observed that the compensation for land acquired for the housing scheme was lesser when compared to acquisitions for other public purposes. The court thus declared the law discriminatory under Article 14.²⁵ The judiciary importantly shifted from a market-based evaluation for compensation (which allows owners to negotiate the price) to the “relevant” principle (where the State as a buyer unilaterally fixes the price according to a principle).²⁶ It represents a shift from property to liability rule where the State

²⁰ *K.K. Kochuni v. State of Madras*, AIR 1960 SC 1080. The Madras Marumakathayam (Removal of Doubts) Act, 1955 was challenged as depriving the *sthanam* of its property to vest it in the *tarwad* (joint family). A *tarwad* is a matrilineal joint family. This system, also known as *Marumakathayam*, is prevalent among Nairs in Kerala. *Sthanam* was the rank of military chieftain created by the King along with certain properties vested in that office. Property rights over *sthanam* devolve among the heirs who have the rights to the income and benefits arising from that property. This law held that under certain conditions the *sthanam* property could be deemed as *tarwad* property, thereby depriving the *sthanee* (administrator of *sthanam*) of sole title. The government argued that this law was protected from judicial scrutiny because it abolishes an estate. The court disagreed since this law had nothing to do with agrarian reforms.

²¹ *Karimbil Kunhikoman v. State of Kerala*, AIR 1962 SC 723.

²² Article 31A(2)(a) as amended by the Constitution (Seventeenth) Amendment Act, 1964.

²³ Additionally, taking over the managerial control of corporate entities, however, would not qualify as “deprivation” thereby allowing the government to not pay any compensation.

²⁴ *Vajravelu Mudaliar v. Special Deputy Collector*. AIR 1965 SC 1017.

²⁵ The test of illusory compensation in *Vajravelu Mudaliar* was followed in *Union of India v. Metal Corporation of India Ltd.*, AIR 1967 SC 637, (nationalisation of Metal Corporation of India) but rejected in *State of Gujarat v. Shantilal Mangaldas*, AIR 1969 SC 634 (land acquired under the town-planning scheme of Ahmedabad Municipality) as the adequacy question was no longer justiciable after the Fourth Amendment. These precedents were ultimately reconciled in *R.C. Cooper v. Union of India*, AIR 1970 SC 564 where 14 commercial banks were acquired through the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969, which included a Schedule outlining the scheme of compensation. On compensation issue, it reiterated the *Vajravelu Mudaliar* test—the principle specified by the law for determining compensation cannot be challenged provided it is a recognised and a relevant principle for fixing compensation of the property sought to be acquired.

²⁶ Justice Subba Rao in the *Vajravelu Mudaliar* case provides illustrations of irrelevant principles and illusory compensation: “If a law says that though a house is acquired it shall be valued as a land or that though a house site is acquired it shall be valued as an agricultural land or that though it is acquired in 1950 its value in 1930 should be given, or though 100 acres are acquired compensation shall be given only for 50 acres, the principles do not pertain to the domain of adequacy but are principles unconnected to the value of the property acquired. In such cases the validity of the principles can be scrutinised. The law may also prescribe a compensation which is illusory; it may provide for the acquisition of a property worth lakhs of rupees for a paltry sum of INR. 100. The question in that context does not relate to the adequacy of the compensation, for it is no compensation at all.”

intervenes to assess the loss due to acquisition unilaterally rather than from the owner's perspective (Calabresi & Melamed, 1972; Wyman, 2007).

In response, the Parliament in 1971, passed the Twenty-fifth Constitutional Amendment replacing the word "compensation" with "amount" (which could be provided in forms other than cash) and precluded judicial review on adequacy of compensation. Further, it made Article 19(1)(f) inapplicable to laws purporting to acquire or requisition property for a public purpose. It added Article 31C wherein a law expressly declared to give effect to directive principles enunciated in clauses (b) and (c) of Article 39 (distribution of ownership and control of resources for subservience of common good and operation of economic system towards non-concentration of wealth) shall not be questioned on the basis that it infringes upon any of the rights contained in Articles 14, 19, or 31.²⁷ This amendment extends the State's power to acquire property beyond the justification of land reforms under the cover of general policy goals like non-concentration of resources and common good. The Fourth, Seventeenth and Twenty-fifth Amendments were *inter alia* challenged in the *Kesavananda Bharati* case,²⁸ in which a 13-judge bench of the apex court held that the Parliament could amend any part of the Constitution without altering its "basic structure". Although, the right to property was not included as part of the basic structure, it observed that despite the Twenty-fifth Amendment, courts must inquire into whether the compensation provided is illusory or arbitrary (though what counts as illusory was not defined) (Wahi, 2015, p. 27).

All pretenses of the fundamental right to property were finally dropped in 1978 when the Parliament enacted the Forty-fourth Amendment and deleted Articles 19(1)(f) and Article 31, thereby stripping the right to property of its status as a fundamental right. Instead, it was now tucked away in Article 300-A. Scholars like Tripathi (1980) and Sathe (1980) opined that this should make little difference as the courts would likely read "public purpose" and "compensation" into the right to property under this Article. These views were confirmed in the *Jilubhai Khachar*²⁹ and *K.T. Plantations*³⁰ cases.

Although the constituent assembly chose not to prefix the compensation clause with "just", the judiciary carved a space for judicial review on the principle of compensation despite the series of constitutional amendments that ousted its jurisdiction on the question of quantum. However, this could be inversed when seen from the lens of distributive justice (Lenhoff, 1942; Dagan, 1999). Nehru, for instance, said that though normally land acquisition should entail compensation, in "schemes of social engineering, we cannot give full compensation, for if this is done the "haves" remain the "haves" and the "have-nots" the "have-nots" (Austin, 1999, p. 108). Therefore, as far as the State narrative was concerned, treating fungible property and its owners differently from those whose property was bound up with their existence and sustenance broadly affirms Radin's (1982) thesis.

In reality, however, the land reforms were, at best, a limited success. There are, broadly, four categories of land reforms: abolition of intermediaries like *zamindars*; land ceilings and redistribution of surplus lands; land consolidation; and tenancy reforms. Significant success has been achieved only with respect to the abolition of intermediaries through laws and constitutional amendments, and, to some extent,³¹ tenancy reforms. (Ghatak & Roy, 2007) Corruption, poor quality of land records, and lack of political will resulted in a lackadaisical implementation of these laws (Radhakrishnan, 1990). On the other hand, landowners themselves circumvented ceiling laws by using their clout or registering their lands in the names of their relatives, or coercing tillers to "voluntarily" surrender their rights in a bid to evade redistribution of surplus lands. Consequently, only 1.7% of the total

²⁷ Statement of Objects and Reasons, the Constitution (Twenty-fifth Amendment) Act, 1971.

²⁸ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

²⁹ *Jilubhai Nanbhai Khachar v. State of Gujarat* AIR 1995 SC 142.

³⁰ *K. T. Plantations v. State of Karnataka* (2011) 9 SCC 1.

³¹ Although, about 30 million got freehold rights over tenure-land as part of land reforms as well as denying the owners the power to evict them at will, Das (2000) notes that concealed tenancy continues. Additionally, only a small proportion of cultivable land was actually redistributed.

cultivated land was declared surplus and only 1% of that redistributed (Ghatak & Roy, 2007) and that too of poor quality with limited State assistance to the allottees to develop the land (Das, 2000). Nearly 50% of the land acquired through voluntary transfers in the “Bhoodan Movement” (before ceiling laws were enacted) could not be redistributed because donation papers went missing, heirs disputed the donations, or the land was unfit for farming, or encroached upon.³² Perhaps, the answer lies in the “apathy of the governmental machinery” (Das, 2000). Despite the promise of land reforms and abolition of the fundamental right to property, the number of landless farmers in India, recognised as “poorest of the poor” has steadily grown since 1951—by the 2011 census, they constituted 55% of the total agricultural workforce. In most cases, the beneficiaries of land reforms only got 0.3 hectares of land. Landholding patterns have progressively become skewed. Now, landless, marginal, and small farmers constitute 93.7% of the agricultural workforce (Mohanty, 2020). Moreover, in the last decade or so, 11 states have amended their laws to benefit industries, despite the draft National Land Reforms Policy which recommended that states reduce their ceilings to benefit landless farmers (Lopes & Chari, 2021).

b. Eminent Domain and Land Acquisition

Paradoxically, while the State justified expropriating surplus lands of *zamindars* on the grounds of distributive justice and common good, it simultaneously displaced large sections of marginalised communities, like *Adivasis* and Scheduled Castes for developmental projects. The Land Acquisition Act, 1894 (LAA) enabled acquisition for development and infrastructure projects including dams, mining and industrialisation. This law was replaced in 2013 by LARR. This segment analyses expropriations under these laws.

Under LAA, to expropriate private lands, the State only required a subjective satisfaction that public purpose would be served by acquisition.³³ Besides, eminent domain, Desai (2011) notes certain other core tenets of this law: it imagines an individual as the subject whose land is acquired; compensation is monetary and is awarded to legal owners or tenants. LAA provided for a detailed process of acquisition: a notification in an official gazette (Section 4), a hearing of objection within 30 days (section 5A), a declaration of acquisition which provides details of the land and declares the public purpose for which it is acquired (Section 6); demarcation and survey; and the issuing of public notice to those interested in the land to raise claim for compensation (Section 9). The collector fixes the compensation as per market value on the day of the first notification and estimates the crop or tree damage or the diminution of profits since the declaration, before taking possession of the land. The law provided for an additional solatium³⁴ of 15% of the market value, perhaps acknowledging the coercion inherent in this exercise (Sections 23 & 24). There is also a “highly misused”³⁵ urgency clause (Desai, 2011) which empowers the collector to take possession of the land within 15 days of publication of the declaration under Section 9 though compensation may not have been awarded yet (Section 17). Although, a claimant dissatisfied with the award may request the collector to refer it to court, the entitlement is only protected by a liability rule because instead of the seller, it is the buyer (the State) who fixes the value of the property (despite the qualified mandate of market value) and loss due to expropriation.

³² Moreover, the actual redistribution of the expropriated land itself was carried out much later and sluggishly.

³³ Section 4, Land Acquisition Act, 1894.

³⁴ Solatium is the compensation provided to the victims as consolation for the injury or suffering resulting from the deprivation of property. In other words, it is an acknowledgement on the part of the state that the land acquisition would have caused emotional distress to the evictees.

³⁵ The courts have also chided the government for the misuse of the urgency clause. In *Sahara India Commercial Corporation v. State of Uttar Pradesh*, (2017) 11 SCC 339, the court admonished the government for improperly invoking this clause. However, since substantial work had already been completed post-acquisition, the court did not order the government to return the land on practical grounds.

Though, the act provided a definition of what counts as public purpose, its interpretation has come up before the courts a few times. In the *Gulam Mustafa*³⁶ case, lands were acquired for running a country fair and subsequently excess parcels were sold to build a housing colony. The Supreme Court held that a housing colony is a “public necessity” and the “uses of excess land is no concern of the original owner”. And so, it allowed the government to hold on to the land, even though its public purpose had ceased to exist. Interestingly, the public purpose of acquisition was challenged only in 6.2% of cases involving land acquisition laws, while more than two-thirds pertained to compensation (Wahi et al, 2017). However, even when public purpose was challenged, the courts often deferred to the government. In *Bajirao Kote*³⁷ which challenged the public purpose of land acquired for the construction of a road to join two temples, the court upheld the authority of the “state government to decide whether there exists a public purpose,” while refusing to stand in judgment unless it considers it “a *mala fide* or colourable exercise of the power”.³⁸

The judiciary’s reluctance and refusal to weigh public purpose against the displacement and impoverishment of vulnerable communities who are dependent on land which they neither own nor have documents to support claims to (Ramanathan, 2009), strikes at the legitimacy of land acquisition and strengthens the State further by rendering eminent domain somewhat “unexceptional” (Bhattacharyya, 2015). Chakravorty (2016) classifies people affected from land acquisition into three categories: (i) land losers (or, title holders); (ii) livelihood losers (not the owners but those displaced and deprived of their livelihoods, for instance, farm labourers); and (iii) common property resource (CPR) users (users, not the owners, of commonly-held forests, pastures, or water resources, for instance, forest-dwelling tribes). Livelihood losers and CPR users were excluded from claiming compensation. As CPRs are not privately owned, they were not considered “acquired” under LAA (Chakravorty, 2016), although it deprived its users of something intimately bound up with their existence and identity (Radin, 1982). It forbade any claim for either distributive or corrective justice.

In a little over 50 years since independence, Fernandes (2008) estimated that more than 50 million acres of land had been acquired for public purposes — building of dams, setting up steel plants, mining minerals etc., displacing or severely affecting around 60 million people. Chakravorty (2016) notes that arguably 90% of them were impacted by State projects. *Adivasis*, Scheduled Caste groups, and other marginalised groups were the most severely impacted losing their livelihoods largely due to conversions of CPRs. Since these groups did not own any converted or acquired land, they received little or no compensation (Chakravorty, 2016, p. 53). Landowners were not adequately compensated either. Generally, a land acquisition officer would fix a paltry sum for compensation. Then, the matter would be argued before a court which, after protracted litigation, would revise it to a substantially higher sum (Chakravorty, 2013).³⁹ As the principles for awarding compensation were well settled under the act, courts were concerned with issues of adequacy or quantum, unlike the constitutional cases (discussed above) where the Constitution was amended to bar judicial review.

The State regarded surplus lands held by *zamindars* as “fungible” and thus liable to be redistributed to landless tillers on the ground of distributive justice, notwithstanding the gap between reality and rhetoric. However, land acquisition for developmental projects displaced millions of tribal families and destroyed thousands of homes and habitats that had sustained them for generations. Given

³⁶ *Gulam Mustafa v. State of Maharashtra*, (1976) 1 SCC 800.

³⁷ *Bajirao Kote v. State of Maharashtra*, (1995) 2 SCC 442.

³⁸ In *Rameshwar v. State of Haryana* (2018) 6 SCC 215, the court held that, issuing of notification and subsequent withdrawal was held to be “fraud on the power” by the state government, calculated to benefit the private builders and middle-men at the expense of public interest.

³⁹ For example, Singh (2012) notes that in 86% of the cases the district courts in Delhi awarded bigger compensation award than the government and in 63% cases this trend was noted in the Punjab and Haryana High Court. In *R.B. Dealers v. Metro Railway, Kolkata*, AIR 2019 SC 3447, the court increased the compensation by over nine times the original sum, although the litigation took over five years.

how land acquisitions impact people, the claimants deprived of their personal property should, in fairness, have a stronger claim for reparation (Gaba, 2007). However, post-acquisition compensation belies these considerations. Despite the limited reach of land reforms, the State paid more than 6,000 million rupees to erstwhile *zamindars* (Das, 2000), even as those evicted by the Bhakra and Hirakud dams continued to wait for their compensation and rehabilitation (Barik, 2020; Manav, 2014).

The fact that people displaced by these projects have neither benefitted from them nor been enabled to “get back on their feet” (Chakravorty, 2016, p. 54-55), reveals the failure of the state to meet the claims of corrective justice. It also raises questions on the politics of “public purpose” enshrined in the law. Given the deliberate under-inclusion in terms of compensation, lack of rehabilitation, priority of individual rights over community interests, and a bias towards titled landholders, Nielsen and Nielsen (2015) argue that the Act was designed for “promoting the interests of the State rather than protecting the rights of citizens.” The experience of land acquisition, whether under general law or even land reforms, reveals a pattern where the State expanded its control over the lands through discretion whether inherent in the law (LAA) or by legal mandates and insulating them from judicial review (land reforms). The judiciary with its reluctance to question the State on its justifications for expropriating lands strengthened that control. Radin’s distinction (1982) between personal and fungible property provides an ethical basis for discriminating the owners and purposes for which their land is taken away. These suggestions could be found in the rhetoric of land reform, yet the tragic dispossession and displacement of the most vulnerable communities inverts it completely. The hierarchical, contingent and discretionary ways in which acquisitions have worked strengthens the suggestions of a patron State that prioritised its own interests than those of its people.

c. The 2013 Law: The New Dawn?

Since 1991, India has witnessed a massive surge in land acquisition with greater involvement of private and multinational companies. Yet, it lacked a coherent mandate for rehabilitation and resettlement, which led to massive public protests and land conflicts. This was accompanied with a steep increase in land prices. LARR⁴⁰ was enacted in the backdrop of long-standing demands for limiting the State’s power of eminent domain (Ramanathan, 2011; Chakravorty, 2016).⁴¹ LARR, uses the language of rights for fair compensation and informed consent and unlike the 1894 Act, it provides for rehabilitation and resettlement of displaced and project-affected persons. This is remarkable as after the Forty-fourth Amendment to the Constitution, it was felt that the right to property was seriously weakened after being demoted from a fundamental right to only a constitutional right under Article 300-A.⁴²

Given when it was enacted, the 1894 Act did not classify the beneficiaries of land acquisition. However, due to the growth of private sector after the economic reforms and the intense land conflicts like Nandigram and Singur, LARR classified the beneficiaries of land acquisition. While the provisions of acquisition, compensation, resettlement and rehabilitation apply to all acquisitions unless exempted, a distinction is made with respect to consent thresholds. In case land is acquired by the government for itself or public-sector undertakings, there is no requirement for consent.

⁴⁰ The LARR applies retrospectively in cases where (i) land acquisition is pending and compensation has not been awarded, or (ii) compensation was awarded more than five years before the LARR came into force but has not been paid and possession of land has also not been obtained.

⁴¹ For instance, Section 10 of LARR which places restrictions on expropriation of irrigated multi-cropped land.

⁴² In *Jilubhai Kachar* (supra) and *K.T. Plantations* (supra), the Supreme Court read both the public purpose and compensation requirements into Article 300-A. Still, in 2009, a public interest litigation was filed (*Sanjiv Agarwal v. Union of India*) to reverse the Forty-Fourth Amendment and restore the right to property back to fundamental rights in the light of acquisitions where the land had been transferred to private entities whether under the Special Economic Zones Act or otherwise. Without going into the merits, the court dismissed the petition suggesting that the petitioner was not an affected party (Wahi, 2015).

But when acquired for public-private partnership (PPP) projects (even when ownership vests with the government), at least 70% of the affected families must give their consent. Private companies require consent from 80% of the affected families.⁴³ This classification is puzzling. Why should the State not be obligated to obtain consent from affected parties when it acquires land for itself? Therefore, while LARR differed from LAA and recognised the growing presence of private sector, it continued to perpetuate the State's disregard for the autonomy of groups affected by acquisition. Comprehensively though, LARR includes land losers, livelihood losers, and CPR users who were not recognized under the LAA.⁴⁴

Consent should be obtained with a Social Impact Assessment (SIA) which involves consultations with affected communities and local administration. This would include questions on the legitimacy of public purpose; estimate of lands, houses, and families that could be impacted; and the necessity of the acquisition of those parcels of land.⁴⁵ Under LARR, the preliminary notification for acquisition of land can only be published after the report is shared with the public and assessed by a group of experts.⁴⁶ The notification is followed by a draft time-bound rehabilitation and resettlement scheme⁴⁷ which has to be approved by the district collector who would identify a resettlement area in the declaration⁴⁸ and issue a notice inviting objections and claims regarding compensation, rehabilitation, and resettlement from interested persons.⁴⁹ Here, LARR seeks to determine the objective value of loss and restoration while taking note of the subjective estimation of affected people by providing them an opportunity to reject the compensation proposal.

LARR makes an important departure on the issue of compensation: (i) it provides a scheme for the computation of market value;⁵⁰ (ii) this sum is to be multiplied by two in case of urban land and, depending on their proximity to urban areas,⁵¹ in the range of two to four for rural land; (iii) to this, the value of things attached to the land and/or buildings is added; (iv) a solatium, equivalent to the sum of these three components is the comprehensive compensation package. This reverses the minimal compensation approach of the 1894 Act in favour of one where the size of the compensation could, in addition to corrective justice, also act as deterrent to land acquisition as such. This can have unintended consequences in case of land market boom where the pricing under LARR will "severely constrain urban development, the provision of public goods, and industrialisation" with a disproportionate burden on land-poor states (Chakravorty, 2016, p. 56-57).

Depending on the vantage point, the compensation, which seems like windfall, may appear meagre if the value of the land soars after a few decades of industrialisation.⁵² This raises a further question for

⁴³ Sections 2(1) and 2(2).

⁴⁴ Section 3(c) and Section 4(5). Section 16 requires collectors to include these losses along with the extent of land acquired to prepare a rehabilitation scheme.

⁴⁵ Section 4 outlines the scheme of SIA. The first notification specifies the date and the process for SIA. The provision also states that in case an Environmental Impact Assessment (EIA) is required, it shall be carried out along with the SIA. The prior EIA is an important improvement over the 1894 Act. For example, in *Hyderabad Urban Development Authority v. S.B. Kirloskar*, Civil Appeal No. 8888/2015, acquisitions for constructing a part of the Outer Ring Road were made under the 1894 Act. Besides other improprieties, no prior environmental clearances were obtained. After 13 years in litigation when the project was almost functional, the court allowed the government to complete it. The court took three years to pass the final order.

⁴⁶ Section 11, LARR. Compare this with Section 4 of the Land Acquisition Act, 1894 where the process began with a notification for acquisition from the appropriate government.

⁴⁷ Section 16, LARR. This report is required to be publicised and a public hearing conducted with the affected communities to invite their objections.

⁴⁸ Section 19, LARR.

⁴⁹ Section 21, LARR.

⁵⁰ Section 26, LARR.

⁵¹ Section 30(2) read with the First Schedule of LARR. The multiplier, although seems to set a bench-mark is essentially a recommendation to appropriate governments.

⁵² Chakravorty notes that in Saidapet (Tamil Nadu) the LAO had set the acquisition price at Rs. 12,000 per acre for the land on which Madras Export Processing Zone was finally built. In 2016 Chakravorty estimates the price to be around Rs. 1,500 lakh per acre (Chakravorty, 2016).

policy makers: how should compensation, even with objective assessment, restore affected people? Should it restore the person to the status quo *ex ante* or *post* the acquisition? LARR's multiplier to market-value approach tries to provide a middle ground.

On the other hand, it has also been argued that by preferring compensation over restricting eminent domain,⁵³ the Act rather than heralding a revolution, performs a balancing exercise (Nielsen & Nielsen, 2015, p. 210-14; Ramanathan, 2011, p. 11-13). Section 105, which declares that the provisions of this Act (primarily concerning SIA and consent threshold) would not apply to statutes enlisted in the Fourth Schedule as long as compensation and rehabilitation is provided. This Schedule lists 13 statutes and empowers the central government to add more.⁵⁴ The overall experience of LARR, as demonstrated in the following sections, emphasises willful undermining of the law by the State, nullifying its welfare objectives.

Practices Undermining the Law:

Although SIA and consent provisions intend to democratise land acquisition by making it open and participatory, these laudable objectives are marred by time-consuming bureaucratic processes, red-tape, and a lack of resources and political will to make them real and transformative (Sonak & Singh, 2018). Despite its promise to raise the stakes for eminent domain and protect property rights better, LARR provides exit options. Additionally, the law has been diluted by state governments through legislations and conceptual innovations (discussed later in this paper). States have been using constitutional authority under Article 254(2) to enact laws to acquire and requisition property (under Entry 42 of the Concurrent List). These laws that amend LARR actually bypass it after securing Presidential assent. Maharashtra,⁵⁵ Gujarat,⁵⁶ Andhra Pradesh,⁵⁷ and Telangana⁵⁸ amended LARR (essentially replicating the now-lapsed 2015 central Bill) to empower the government to exempt projects related to national security, rural infrastructure, affordable housing, industrial corridors, and infrastructure (this includes PPP projects where the government retains ownership of the lands) from SIA requirements. The Jharkhand amendment practically exempts all infrastructure projects. The disregard for core objectives of LARR was so brazen that when the assembly first passed this amendment, it was turned down by the President of India (Sonak & Singh, 2018). Besides discarding SIA, it even excluded chapter 3 of LARR which restricts the State from acquiring irrigated multi-crop agricultural land.⁵⁹ Tamil Nadu added a Fifth Schedule in its amendment listing out statutes exempted from the purview of LARR, paving way for approximately three-fourths of the total land acquisition in the state. To operationalise LARR, the central government notified certain rules in 2015. Most states have even amended these central rules (Sonak & Singh, 2018).

⁵³ However, as argued before, compensation itself could deter. Yet, notably, LARR retains the urgency clause in Section 40 and acquisitions under that clause are exempted from SIA. The Act under Section 46 also exempts acquisition of land through private negotiations from substantial rehabilitation and resettlement requirements, provided the area acquired is below the limits prescribed by the state government. Also, remember, Section 2(1) and 2(2) require consent threshold only when the acquisition is made either for a public-private partnership project or for a private company.

⁵⁴ Section 106, LARR.

⁵⁵ The Right of Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act (Maharashtra Amendment), 2018. Insertion of a new Section 10A in Act 30 of 2013. Maharashtra has also incorporated Fifth Schedule to the Act to list certain state laws to exempt the land acquisitions carried out under them.

⁵⁶ The Right of Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act (Gujarat Amendment), 2016 (see Insertion of a new Section 10A in Act 30 of 2013).

⁵⁷ The Right of Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act (Andhra Pradesh Amendment), 2018 (see Insertion of a new Section 10A in Act 30 of 2013).

⁵⁸ The Right of Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act (Telangana Amendment), 2016 (see Insertion of a new Section 10A in Act 30 of 2013).

⁵⁹ The Right of Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act (Telangana Amendment), 2017.

Several states found SIA and informed consent to be a stumbling block and have largely done away with them, thereby reducing the legal protection to only a liability rule (Calabresi & Melamed, 1972). The Ahmedabad-Mumbai bullet train project that acquired fertile lands of about 192 villages in Gujarat is a site of protests for this reason (Sonak & Singh, 2018). In Uttarakhand, the SIA committee is populated by revenue officials instead of independent SIA units required by LARR. Similarly, several other states, also in direct violation of the objective to set up independent functioning units, have instead deployed personnel from government departments as nodal officers (Sonak & Singh, 2018). However, states like Assam, Kerala, Jharkhand, Andhra Pradesh, and Himachal Pradesh have appointed local independent agencies (comprising think-tanks and NGOs) as SIA Units.

Unsurprisingly, the multipliers for compensation have also been reduced by different states.⁶⁰ The states that amended LARR to exempt linear infrastructure projects like highways, railways, and irrigation, have also limited the scope of rehabilitation and resettlement for such projects. Most of them provide for a lump sum payment to the extent of 50% of the compensation amount, as determined under Section 27 of LARR, in lieu of rehabilitation and resettlement. Telangana and Andhra Pradesh, interestingly, adopt a vague formulation that compensation “shall not be abnormally at variance to the disadvantage of affected families” without specifying the amount.

LARR mandates⁶¹ that if the land is not used within five years from the date of possession, it should either be returned to the original landowners or pooled into the land bank of the state government to put it to productive use.⁶² Therefore, a land may, legitimately, not be put to the same public purpose for which it was acquired and for which consent was given after SIA was conducted. Some states have used the option of land banks instead of reverting the land to its original owners.⁶³ Maharashtra and Gujarat require that a notice be sent to all government departments regarding such unused lands to invite an expression of interest, failing which the land is either returned to land banks (Gujarat) or to landowners and their heirs (Maharashtra). Transferring land to land banks makes clearances easy for subsequent use but it also deprives people of their rights and cultural identity, particularly the Scheduled Tribes (Sonak & Singh, 2018).

LARR nearly makes multi-crop irrigated lands inalienable save for exceptional circumstances. However, recently, Karnataka amended its law to allow non-agriculturists to buy agricultural lands and remove income-based limitations on the buyers.⁶⁴ Interestingly, the Act allows the purchase of land for industrial development, albeit under specified conditions.⁶⁵ While the state government claims that this will improve efficiency and reduce litigation and corruption, the opposition argued that it would lead to the corporatisation of farm lands, dilution of rights, and aggravation of farm distress that has already claimed thousands of lives (The Hindu, 2020b).⁶⁶ This suspicion

⁶⁰ CSE report provides a table which lists the multipliers used by different states. While some states use the same multiplier as recommended by the LARR 2013, a few like Assam actually have a higher multiplier in urban areas. On the other hand, states like, Andhra Pradesh, Maharashtra, Madhya Pradesh, and Chhatisgarh have reduced the multiplier significantly. (Sonak & Singh, 2018).

⁶¹ Section 101, LARR.

⁶² Explanation to Section 101, LARR.

⁶³ For instance, Odisha, Tamil Nadu, Meghalaya, and Jharkhand (Sonak & Singh, 2018).

⁶⁴ The Karnataka amendment deletes Section 80 of Karnataka Land Reforms Act, 1961. That Section absolutely barred any transfer of agricultural land to non-agriculturists through sale, gift, exchange, lease or mortgages. The Karnataka Land Reforms (Second Amendment) Act, 2020. Retrieved from [https://dpal.karnataka.gov.in/storage/pdf-files/ao2020/09%20of%202020%20\(E\).pdf](https://dpal.karnataka.gov.in/storage/pdf-files/ao2020/09%20of%202020%20(E).pdf). The Karnataka amendment repeals Section 79A which prescribed an income limit of Rs. 25 lakh from non-agricultural sources in order to be eligible for acquiring agricultural land (although the limit was raised to this level only in 2015). It also deletes Section 79B that prohibited non-agriculturist from buying agricultural land).

⁶⁵ Karnataka Amendment (supra). Industrial development under the amendment includes mining of minor minerals and stone crushing. For this, permission needs to be obtained from the State High Level Clearance Committee. Thereafter, these lands will be exempted from Sections relating to transfer of agricultural lands (63, 79A, 79B, 80).

⁶⁶ Initially, the Bill had also proposed to raise the ceiling limits for a person or family owning an agricultural land, but the same was not incorporated in the Act.

is strengthened as these reforms accompany other recent farming reforms including a law which regulates contract farming in India.⁶⁷

A subtler, though significant change, however, was recently made with the amendment of the Specific Relief Act, 1963, by adding a provision which disallows courts to grant injunction to lawsuits relating to infrastructure project contracts including those for roadways, waterways, airports, seaports, dams, telecom towers, educational institutions, and hospitals.⁶⁸ This denies perhaps the most logical interim remedy that any court, assailed with land acquisition litigations for infrastructural projects on any ground under LARR, could order. Practically, these changes expand the power of eminent domain, reduce the compensation award, and thwart any opportunity for people to voice the estimation of their loss and halt the proceedings till their concerns are addressed. It seems almost a complete reversal of the promise of LARR.

Innovative Techniques of Acquisition

This segment examines the exit options provided by LARR and the ways in which they have been used by the states. Section 46 of LARR allows voluntary acquisitions through private negotiations between a willing seller and the State. The state government may prescribe the maximum area of land that can be acquired through negotiations. For example, Odisha has allowed direct purchase of up to 10 hectares in a village. Other states have managed to obtain land beyond the purview of LARR altogether through innovations like land pooling, private purchase, and direct negotiations (Sonak & Singh, 2018). The rationale seems to be to expedite land acquisition. In Uttar Pradesh, most of the land acquired for the construction of Purvanchal Expressway is through these direct purchases and lump sum compensation without any mention of rehabilitation and resettlement. Maharashtra and Chandigarh have even incentivised direct purchases by offering enhanced compensation and waiving taxes (Sonak & Singh, 2018, p. 48). These acquisition, though, have been largely peaceful.

Another innovative method, land pooling,⁶⁹ was used by the Andhra Pradesh government for building the future capital city of Amaravati (Ravi & Mahadevan, 2018). The state government promised landowners smaller but developed plots of land in the future in lieu of their existing landholdings, thus emphasising the reciprocal advantage to affected families without any diminution of the value of their land (Dagan, 1999). As it technically did not amount to acquisition, LARR was bypassed. Most of these lands were well irrigated fertile lands and some of them were located in Scheduled Areas. The farmers were consulted regarding the facilities they would require at these future developed plots to give them some stake in the future city. The scheme was initially met with considerable support.⁷⁰ The environmental challenges to this proposal were dismissed by both the National Green Tribunal and the Supreme Court. But under the three-capital model of the new government, Amaravati was to be the only legislative capital. And so, with the plan for city shrinking (fearing sharp decline in land prices) and urbanisation still a fair distance away, while partial construction rendered fertile lands unfit for farming, the farmers now feel shortchanged (Yamunan, 2021).

⁶⁷ Section 8 of the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, prohibits transfer of land or premises or control over the land beyond the scope of the contract (prohibiting raising permanent structure or making modifications on land). This is one amongst 3 laws that elicited sustained protests from farmers in India. Section 14 (7) provides for recovery of dues as arrears of land revenue. Under the revenue codes, arrears of land revenue when not paid by farmers is recoverable against the land. However, this is contradicted by Section 15 which explicitly provides that recovery of any amount due will not be initiated against the agricultural land of the farmer. This creates conflicts between this 2020 law and the revenue codes. Retrieved from <http://egazette.nic.in/WriteReadData/2020/222040.pdf>. After sustained protests, these laws were repealed in 2021.

⁶⁸ Section 20A inserted by The Specific Relief (Amendment) Act, 2018 read with the Schedule that enlists the infrastructure projects covered by the Section.

⁶⁹ Land pools must not be confused with land banks in the LARR. In the former, landowners are given a smaller but developed plot in future in the same area. The rationale is that it saves the need for resettlement and rehabilitation while giving them a present stake in future capital.

⁷⁰ Ibid at 4-6.

LARR enables states to take land on lease (long term rental) instead of acquisition.⁷¹ Since, leasing, technically, does not amount to an acquisition, provisions like SIA, compensation, and rehabilitation and resettlement would not apply. The only caveat is that land obtained through leasing can only be used for public purposes. This also appears to provide reciprocal advantage to the landowner (although it may still entail dispossession) who will continue to retain ownership while also receiving a stable income. The scheme could also be incentivised. The CSE report concludes with optimism that land leasing could “make land losers partners in development and mark an end to compulsory acquisitions” (Sonak & Singh, 2018, p. 49). Both land pooling and leasing effectively change the threshold for what may count as acquisition to necessitate procedural compliances and compensation as mandated by LARR. Hence, even if people are displaced and dispossessed, they may not be entitled to any compensation if they had consented to these policies.

The demands of the industry and the costly and cumbersome acquisition procedures of an otherwise well-meaning LARR seem to be driving these innovations. These exit options as well as large-scale pooling have been used by states to undermine it. LARR makes a utilitarian choice by compensating and rehabilitating the vast majority of “have-nots” (recalling Nehru’s argument against compensating *zamindars* under the land reforms programme) more generously than the 1894 Act ever did. Yet, despite its laudable objectives, LARR actually furthers the idea of a patron State. The consent requirements are waived off when the government acquires land for its purposes. While the Constitution allows state governments to override it, LARR itself allows its own undermining through provisions like land banks, acquisition through negotiations, land leasing, emergency clause and authorising central government to enlist laws that will be exempted from LARR. Moreover, a policy like land pooling suggests that the State need not even take recourse to either of these routes and yet bypass LARR. The outcome, therefore, is that the State assumes absolute control over these lands and decides, as per its exigencies, if the law needs to be adhered to or ignored.

d. Governance of Commons

Commons are lands that are collectively used by groups of people, including pastures and grazing lands and forests on which indigenous people and forest-dwelling communities have not only been dependent for a living since many generations and but are also culturally intrinsic to their identities. This close relation to property is in line with what Radin (1982) calls personal property. Commons are therefore, protected by different sets of laws.

As a category of property relations, commons roughly combine features of private and public goods. They are subtract-able (or rivalrous, like private goods) but also non-excludable (like public goods). They may also exist as a limited common property only to be used by the members of communities which have an old and distinct connection to goods (Rose, 1998)⁷² such as pastures, community lakes and fields. The commons, lacking the concept of exclusivity, could be tragically overexploited (Hardin, 1968). This exploitation could be avoided if non-excludable goods are transformed into excludable (e.g., emission quotas and mining leases) and then governed through the interplay of property rights and market forces. Alternatively, they may be governed through public regulations and taxation (to provide for their maintenance, e.g., cleansing of waterbodies through emissions restrictions and cesses). This binary, however, ignores communal ways through which commons have been sustainably governed by private yet collective actions of ordinary people through an indigenous system of shared norms (McKean, 1992; Ostrom, 1990). In the following sections, we briefly explore the governance of the commons, specifically in Scheduled Areas.⁷³ Although, the

⁷¹ Section 104, LARR.

⁷² “In limited commons property both unconventional communal claims and unrecognised social status- overlap and conspire against property recognition” (Rose, 1998, p. 141).

⁷³ The open access commons have largely been governed through environmental law or tort law. Space precludes us to discuss these resources here.

Constitution recognises the cultural distinctiveness of tribal communities through the Fifth and Sixth Schedule,⁷⁴ property relations between Scheduled Tribes and the State are largely mediated through legislation.

Land Rights in Scheduled Areas

A survey of the Constituent Assembly Debates on the fifth and sixth Schedules of the Constitution suggests that it was a top-down compromise between the assimilationist project (motivated by the national security-development paradigm) of the Union and the demand for tribal self-rule/autonomy (Suan, 2007).⁷⁵ The Sixth Schedule set up autonomous district councils (ADCs) in autonomous districts and invested them with revenue collection and lawmaking powers in matters like marriage, customs, religion and land.⁷⁶ However, studies show that ADCs did not pass many significant laws, plus, they were susceptible to corruption and capture by the political and business elite (Barbora, 2005). While the focus of the Sixth Schedule is towards self-management, the Fifth Schedule tends to be paternalistic (Roy-Burman, 2006). For example, Paragraph 2 of the Fifth Schedule subjects the Scheduled Areas subject to the executive power of the State and Paragraph 3 mandates the governor to regularly submit reports to the President regarding the administration of these areas. Paragraph 4 establishes the Tribes Advisory Council (TAC). The Governor may refer certain matters on the issues of “welfare and advancement” of tribes to the TAC for advice. Thus, the Governor, who is appointed by the Central Government, prepares the brief for the TAC without any specification on the binding nature of TAC’s advice or any remedy in case the governor ignores the advice. Unlike ADCs in the Sixth Schedule, here the Governor decides whether a central or state legislation may be applied to certain Scheduled Areas. Roy-Burman (2006) argues that this practically denies any tribal self-rule. If the Fifth Schedule is in fact paternalistic, one would imagine that great caution is exercised in acquiring lands in these areas. Yet, by the government’s own report, “[nowhere] is the distress more evident than in the tribal areas, particularly those falling within the Schedule V” (Government of India, 2017).

After the Seventy-third and Seventy-fourth Amendments to the Constitution enabling decentralisation, certain powers including revenue collection were conferred to the panchayats in Part IX of the Constitution.⁷⁷ Article 243M(4)(b) allows the Parliament to extend the provisions of this part to the Scheduled Areas. It was under this clause and on the recommendations of the Bhuria Committee that the Parliament enacted the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA). Gram Sabhas were imagined to develop into an organic self-governing institution⁷⁸ to protect the rights of tribal communities with respect to their culture, traditions, cultural identity, and community resources. The law mandates that Gram Sabhas are to be consulted before (i) acquiring land in Scheduled Areas and rehabilitating and resettling any affected person;⁷⁹ (ii) granting mining leases;⁸⁰ and (iii) managing water bodies.⁸¹ When the law was enacted, it was seen as revolutionary

⁷⁴ Article 244, Constitution of India. Clause (1) of the Article says that provisions of the Fifth Schedule apply to the administration and control of all Scheduled Areas and Scheduled Tribes except those located in Assam, Meghalaya, Tripura, and Mizoram. To tribal areas in these states, as per clause (2), the Sixth Schedule applies.

⁷⁵ Suan also discusses certain other design flaws in the administrative model. For example, the hierarchy between the village council (based on kinship and lineage) and district councils (based on democratic processes) also fuelled disaffection among certain tribes like Khasis (Suan, 2007, p. 9).

⁷⁶ The laws passed by the state assemblies would not be applicable in autonomous districts unless approved by the ADCs and later signed by the Governor. This “state-within-state” was always a source of anxiety that culminated into North-Eastern Areas (Reorganisation) Act, 1971 which held the laws enacted by the Assembly to be superior to those of ADCs in case there is any conflict (Suan, 2007).

⁷⁷ See also, Article 40, Constitution of India, that enjoins the state to promote village panchayats and enable them for self-governance.

⁷⁸ Section 4(m), PESA.

⁷⁹ Section 4(i), PESA.

⁸⁰ Section 4(k), PESA.

⁸¹ Section 4(j), PESA.

for restoring dignity to Scheduled Tribes by making a promise of autonomy. However, the experience of PESA is also characterised by the same apathy as was seen in land reforms and LARR. Even after 25 years of its enactment, four out of the 10 states (Chhatisgarh, Jharkhand, Odisha, and Madhya Pradesh) under its purview have not even formulated necessary rules to implement it, and Gujarat has only re-enacted the rules of the Panchayati Raj Act for governing Scheduled Areas, disregarding the history and uniqueness of these areas (Pandey, 2021). State governments have been dubiously acquiring land without consulting the affected *Adivasi* population (e.g., Khunti in Jharkhand where the Pathalgadi movement originated) (Angad, 2020) or despite their protests (e.g. Korba in Chhatisgarh).⁸² This puts question marks on the efficacy of PESA in meeting its objectives despite rights sensitive judgments like *Samatha*⁸³ and *Niyamgiri Hills*⁸⁴ where the Supreme Court poignantly observed:

“Land is their most important natural and valuable asset and imperishable endowment from which the tribal derive their sustenance, social status, economic and social equality, permanent place of abode, work and living.”

In 2002, the Bhuria Committee called out the assimilationist and mainstreaming narrative with respect to Scheduled Tribes as “not paternalistic but patronising” (Wahi & Bhatia, 2018, p. 19). The industrialisation and urbanisation processes, it said, assaulted the two basic resources of tribal life—land and forests. *Adivasis* are bound to their land and environment through a culturally, historically, and spiritually “distinct connection” which justifies their special claims to natural resources and cultural habitats (Dannenmaier, 2008) like the personal property in Radin’s (1982) framework.

Despite state laws against alienation of tribal lands, the State has alienated more than 50% of these lands, displacing millions of *Adivasi* families and their villages (Das, 2000). The National Policy for Tribals notes that by 1990, 85.39 lakh *Adivasis* had been displaced on account of developmental projects or forest conservation amounting to over 55% of total people displaced in India since independence (Government of India, n.d.). In fact, by almost adopting an inalienability rule (Calabresi & Melamed, 1972), LARR stipulates that “as far as possible”, lands in Scheduled Areas should not be acquired.⁸⁵ Further, it says that any illegal land acquisition in these areas shall be “null and void.” Yet, none of this could prevent large scale expropriation of tribal village lands for the Polavaram Dam project in Andhra Pradesh (Sridhar, 2014).

Section 42 of LARR refers to the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA). The provision declares that⁸⁶ the displacement of any individual belonging to one of the communities whose rights have been settled under FRA due to land acquisition should be compensated in proportion to the monetary value of these rights. FRA was enacted with the object of correcting the injustice that the *Adivasis* had suffered at the hands of both the colonial government and successive governments of independent India. For example, under the Forest Conservation Act, 1980 the forest department deprived *Adivasis* from collecting minor forest produce and cultivating some lands. The National Forest Policy, 1988 sought to reverse this by considering *Adivasis* as close associates for the protection and development of

⁸² Chaubey (2015) discusses a land acquisition case in Bastar, Chhatisgarh where Section 144 of the Code for Criminal Procedure, 1973 was imposed to quell gatherings and protests by local tribal people. *Pathalgadi*, meaning engraved in stone, was a movement in response to dubious land acquisition proposals by the Jharkhand government. The protests comprising mainly of members of local tribes erected large stones and inscribed containing excerpts from PESA and declaring that their Gram Sabha was the supreme decision-making bodies with respect to their “*jal* (water), *jungle* (forests), *jameen* (land)” (Tewary, 2018). In Korba, the protests were triggered by the illegal land acquisition for a coal mining project and growing dissatisfaction with compensation, rehabilitation and resettlement. There was no compliance with LARR (Nath, 2016).

⁸³ *Samatha v. State of Andhra Pradesh and Ors*, AIR 1997 SC 3297. The court held the grant of mining leases to non-tribals as void.

⁸⁴ *Orissa Mining Corporation v. Ministry of Environment & Forests and Ors*, 6 SCC 476 (2013).

⁸⁵ Section 41, LARR.

⁸⁶ Section 6, FRA.

forests (Government of India, 1988) but the “joint forest management” in pursuance of this was met with only limited success (Guha, 1993). The FRA represents culmination of these efforts. FRA, though, respects the rights of the forest-dwelling Scheduled Tribes and other forest dwellers to access forest resources (including intellectual property and traditional knowledge) and occupy forest land (including an opportunity to obtain title for it) to ensure residence, food, security, and livelihood for these communities.⁸⁷ However, the fact that the state government, in the Polavaram dam project, could acquire the ecologically-sensitive lands displacing thousands of forest-dwelling tribes without settling their rights under the FRA (Goswami, 2018) is another instance of State complicity—not only in denial of rights but possibly, the rule of law itself. In the case of LARR, state governments were able to pass legislations (under the Constitution, land is a state subject) or use the exit options within the Act to circumvent it. However, in the case of PESA, the law was never acted upon and was therefore undermined by wilful neglect. Ultimately by disregarding any legal protection offered by legislations, the State has taken control over these lands and what remains of tribal autonomy and their property rights is rendered contingent and transactional.

e. Decrypting the State’s Approach to Property Rights and Property Relations

In this section we examine inter alia, agrarian reforms and the question of compensating *zamindars* and private owners, critically looking into the State’s purported intent of distributive justice that was used to justify appropriation without compensation. Although the judiciary did intervene on behalf of property rights, these interventions were largely limited to the issue of compensation, thus reinforcing the State’s power to determine “public purpose.” We therefore move past this traditional narrative of egalitarian government and rights-respecting judiciary to detail how this was vastly exaggerated. Not only did the land reforms result in a meagre proportion of lands being redistributed, the inequalities, that the land reforms sought to reverse, exacerbated progressively. Granted that intermediary estates were abolished through law and millions of tenants received freehold interests. Nonetheless by 2011, about 5% of farmers owned 32% of total agricultural land and a “large” farmer earned 45 times more than a marginal farmer and over 56% of rural households had no agricultural land (Chaturvedi, 2016). Moreover, the Constitution was amended to expand the purview of expropriation from land reforms to general ideas of non-concentration of resources and common good revealing an intention to further State control over lands.

Even assuming that the State was well-intentioned in redistributing lands to the tillers and end their exploitation, yet we notice that millions of *Adivasis*, Scheduled Castes and other marginalised communities were displaced from their homes and habitats to provide lands for multipurpose and industrial projects. They were not even properly compensated and resettled even though the law provided for market-rate compensation to the evictees. Even in the reformed LARR, the rules regarding consent of affected families apply when the State acquires lands for private entities or public-private partnership but not apply when it acquires them for itself. Not only the Constitution, LARR itself provides options to governments to whittle its own guarantees down. Thus, both granting property rights and enacting laws facilitating land acquisitions are aspects of broader State-control over land and property.

Clearly, the ethical distinction that Radin (1982) draws between “fungible property” and “personal property”, justifying greater protection for the latter, seems to have been lost in the working of the eminent domain in India. In failing to compensate and rehabilitate the weak and impoverished

⁸⁷ Section 3 read with Section 4(a) of the FRA. Interestingly, the British colonial government responding to resistance by the tribal communities had also enacted laws like the Chhotanagpur Tenancy (CNT) Act, 1908 and amended the Santhal Pargana Tenancy Act, 1855 that provided community rights in forest lands which were also protected by an inalienability rule. On the other hand, it may be argued that FRA actually enables the state to exercise greater control over the land (Kumar, 2020). It is not surprising therefore, that the tribal communities of Jharkhand resisted against the recent attempts to make the CNT Act ineffective through amendments (Jitendra, 2016).

communities, the State has also failed in its reciprocal duties towards the affected families. Despite these realities of displacement, the courts have strengthened the power of the State by readily ceding the question of “public purpose” and reducing the issue of deprivation of property rights to simply that of compensation. Thus, the State is acquitted from having to justify expropriation on the promise of compensatory remedy. Even here, people’s entitlements were protected not by property rules, but only by fragile liability rules where compensation was mostly considered to be a question of corrective justice whose terms will be decided by the State and not the owner. It is another matter that in practice even that promise was flagrantly breached. Granted that in situations of land acquisitions quantification of loss and bargaining for price might not be always possible yet, disturbingly, where the law did promise autonomy and local democracy on these issues, it simultaneously provided legal options to set them aside. Unsurprisingly, state governments have been too willing to exercise those options. This was noticed in the diluting of LARR through legislative and executive actions and in the abject disregard of PESA (by just completely ignoring its mandate) which has ensured the displacement of millions of *Adivasis* and their villages.

The working of property rights in India reveals that it is the State that defines when these rights exist, when they may be denied and when denying them would not even count as denial. When these rights are withdrawn, there are no consistent principles applied to compensate the owner. The justifications for acquisition are incoherent and contradictory when we move from one site to another, or perhaps they are assimilated in these larger, vague and capriciously contextual rationales of “common good” and “public purpose” that are most often unquestioned, although critical to the legitimacy of eminent domain. Indeed, a post-colonial State embracing democratic governance would have numerous, and often contradictory claims and claimants. Still, the active undermining through amendments or deliberate neglect of laws provides the State immense powers to legitimate the extra-legal acquisitions and render property rights contingent and transactional (Bhattacharrya, 2015). In a modicum of continuity of colonial governance, such an exercise of eminent domain derives not from a principle of law but from patron client relations.

3. Property Practices

While the earlier part of this paper engaged with legislative and judicial action that has shaped the realm of property rights, this part examines the other side of law, the everyday subversions of property law,⁸⁸ the everyday practices of the State that turns a blind eye to these subversions to explain why we see such generalised defiance to property laws. Is this subversion of formal land planning laws and policies due to the “inherent unruliness of people and places” (Baviskar 2003) and the refusal of ordinary citizens to conform to the law? Or are these violations symptomatic of land inequalities that motivate the defiance of property law? Or, does the State, as some suggest, produce this “informality” (Ananya Roy, 2009) and therefore, in a manner, intend for these subversions to proliferate?

India has been moving to better secure the property rights of its citizens through a series of measures including the digitisation of land records (Indian Institute for Human Settlements, 2015), clarification of rural land titles⁸⁹ (Thara, forthcoming) through property mapping (Indian Institute for Human Settlements, 2020), improving administration of land (Damle & Burman, 2020), enabling easy access to records (National Council of Applied Economic Research, 2020), etc. The State has also expressed its intention to move towards conclusive titling as a means of securing land titles to enable the market (MoRD, 2008). These measures, which indicate a commitment to formalise property transactions and a commitment to the rule of law in general, stand in stark contrast to the larger domain of informal property transactions. As Lawrence Durrell (2006) notes:

⁸⁸ For example, Transfer of Property Act, 1882; Indian Easements Act, 1882; and Indian Succession Act, 1925. Laws on property passed post-independence include the Hindu Succession Act, 1956.

⁸⁹ The SVAMITVA scheme provides for the clarification of rural residential titles.

“At the same time, and here is where the paradox appears to lie, many of these very same postcolonies seem to make a fetish of the rule of law, of its language and its practices, its ways and means. Even where they are mocked and mimicked, suspended or sequestered, those ways and means are often central to the politics of everyday engagement, to discourses of authority and citizenship, to the interaction of States and subjects, to the enactments, displacements, and usurpations of power.” (Comaroff & Comaroff, 2006, Preface)

The State’s authority to govern property relations is routinely undone by citizens who usurp or encroach on land they do not own, deviate from building bylaws or planning instruments, use property for purposes other than those authorised by the State, etc. These contraventions are often supported by local State actors who have much to gain, in terms of vote banks, corruption and bribes. While deviances from and contraventions of laws take place in both urban and rural India, it is more visible in cities, with dense construction, occupation of streets, crowding of public spaces, etc. Therefore much of the sociological study of such “illegalities” have focused on slums in urban areas (Das, 2011; Das & Walton, 2015; Payne, 1996; Ramanathan, 1996, 2006), and more recently, slightly better-off low income groups in unauthorised colonies⁹⁰ (Bhide, 1980; Dupont, 2004, 2005; Zimmer, 2012), though wealthier sections too resort to these practices gaining far more access to land than poorer groups, as detailed in this paper.

Sociologists studying urban planning have ascribed this to “planning incompetency” (Ananya Roy, 2009) or the “failure of planning” (Bhan, 2013). They point to the inability of local governments to catch up with the needs of cities that are growing exponentially, with rural-urban migration stretching the boundaries of cities, thus calling to “future-proof” Indian cities (Ananya Roy, 2009). However, this strand of scholarship that proposes the lens of “informality” (Ananya Roy, 2005, 2009) while uncovering the State’s complicity in such “flexible planning” does little to explain the chasm between the State’s objective to achieve stable property relations and titles (conducive to the market) and its normative practices that undermine this project. What does this chasm say about the Indian State’s approach to property rights and property laws? What can one glean from these everyday practices and what can they tell us about how the State positions itself vis-a-vis property?

With these questions in mind, this part examines three forms of State practices: political support to contraventions of property law; laws and urban planning processes that suspend property laws in certain spaces; and laws that transform contraventions into legal rights to property. These practices reveal a more complex terrain of property rights that goes beyond the mere binary of legal/illegal revealing the ways in practices that are strictly illegal can over time gain legality with the active support of various State actors. Drawing from these practices and the State’s response to these practices which has been context dependent and politically situated, this part proposes that the State, rather than positioning itself as the guarantor of property rights, considers itself a patron entering into patron-client relations with citizens and doling out property rights and reliefs based on political propensities, rather than on principles of law, justice and equity. This approach of the State contradicts its purported objectives of own market-oriented reforms of property laws and titles.

a. Political Support to Property Law Contraventions

Slums and settlements housing the urban poor are the most visible contraventions of property laws and thus have been the subject of sociological study. However, property law contraventions are not limited to the housing practices of the poor but as detailed here is practiced across different classes in India and are made possible through the political support extended by the State. While the practices of the poor are motivated by necessity, those of the wealthy are often accumulative, with each set of practices receiving political support and legitimacy from different levels of governance.

⁹⁰ The discussions here are therefore limited due to available research. Efforts have been made however to bring in discussions of practices of other citizens. The urban bias in the study of “informality” or “illegality” however remains.

Since Indian citizens do not have a fundamental right to housing or shelter (Annexure A), states are not obliged to provide housing. States have therefore been distributing land and housing, not as per needs but according to political considerations. As Annexure A details, despite the fact that economically weaker sections (EWS) and low income groups (LIG) suffer the highest shortage of housing (95.62%) (Kundu, 2012),⁹¹ states have prioritised middle and high-income groups (MIG and HIG) by providing far greater amounts of land for housing them (Chamaraj, 2017). It is therefore no surprise that we see the proliferation of slums and settlements, with the poor taking to squatting and self-constructed housing for their needs. In a sense, this lack of legal entitlement has resulted in contraventions of law. Rather than addressing the cause, which is the lack of affordable housing, the State instead uses the scarce housing provided to the urban-poor under various central and state schemes to displace the poor and resettle them in “rehabilitation housing” on the peripheries of cities (Haritas, 2021). Established slums are therefore removed and resettled in this poor housing, even as more slums mushroom in the city with no substantive addressal of the lack of affordable housing.

The lack of affordable housing forces the poor to live in slums and settlements, on public or privately-owned land that they do not own.⁹² Under the law, this “encroachment” of land is prohibited and penalised under state laws whether or not the land is public or privately owned. Encroachment is defined under these laws to include construction of structures that are not in accordance with construction or building laws.⁹³ Laws also specifically prohibit encroachment of public lands.⁹⁴ Encroachment is not only of privately owned or public land, but also includes commons (Robinson, 2008) that are increasingly disappearing in India, with lakes being replaced by built structures (Unnikrishnan et al, 2016). Encroachment is only one example of contraventions of property law; building law violations, land use violations, non-payment of taxes, etc. are other examples detailed later in this part of the paper.

Despite these rather stringent laws, slums and settlements are an inevitable reality in India, given the housing crisis caused by the State’s reluctance to provide for affordable housing to poorer groups (Chamaraj, 2017).⁹⁵ Slums therefore emerge out of “sheer necessity”⁹⁶ and are symptoms of

⁹¹ Data provided in the Report of the Technical Groups for Urban Housing Shortage (2011-12) is based on Census 2011 data (with 2010 as reference year for house listing operations) and NSS 65th round (2008-09).

⁹² See Annexure A for a discussion of the crisis in housing.

⁹³ Encroachment on private land is actionable under the Civil Procedure Code, 1908. Encroachment of public land is regulated by municipal laws. For instance, Section 312 of the Mumbai Municipal Corporation Act, 1888, prohibits structures or fixtures that cause obstruction of streets, Section 313 prohibits the deposit of objects things on the street, and Section 314 provides for the municipality the power to remove such structures/fixtures/things, without notice. Section 314 was used by the Mumbai Municipal Corporation to remove pavement dwellers in *Olga Tellis and Ors v. Bombay Municipal Corporation and Ors*, AIR 1986 180, 1985 SCR Supl. (2) 51. States also have laws to prevent “unauthorised occupation” of “vacant lands”, such as the Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) Act, LXVI of 1975, which applies to vacant land in urban areas within the limits of the municipal council. Section 2 (f) defines vacant land as including both public and privately-owned vacant land: (a) vacant land which is not built upon, whether agricultural or not; (b) land on which structures have been or are being constructed otherwise than in accordance with any law regulating construction of such structures (which may be declared vacant by the competent authority); lands specified in the Schedule of the Act. Section 2 (f) (b) therefore applies to slums and settlements on vacant lands, whether located on public and private land. Section 3 (1) prohibits the occupation of vacant land without the express permission of the municipal commissioner. Section 3 (2) prohibits the abetment of the occupation of vacant land or the receipt or collection of rent or compensation. The proviso to Section 3 (2) provides the State government authority to collect penal charges for unauthorised occupation. And Section 4 provides the State the authority to order the vacation of such land within a period of time, failing which the municipal corporation is authorised to summarily evict such occupants. These provisions therefore define unauthorised occupation to include privately owned land that may be rented by the owner to poor groups who construct structures that are not in accordance with construction laws. Retrieved from <https://lj.maharashtra.gov.in/Site/Upload/Acts/MAHARASHTRA%20ACT%20No.%20LXVI%20OF%201975.pdf>.

⁹⁴ For instance, Section 53 of the Maharashtra Revenue Code provides for the summary eviction of unauthorised occupants of land belonging to the state government. The provision provides for an opportunity to be heard (according to the principles of natural justice) and a summary enquiry after which notice may be served requiring the occupant to vacate within a reasonable time (sub clause 2) and if the occupant does not vacate, authorises the Collector to recover a penalty.

⁹⁵ India suffered a shortage of 18.78 million houses in 2012, with 99% of this shortage experienced by EWS and LIG groups. (Kundu, 2012). See Annexure A.

⁹⁶ *Olga Tellis* judgement (Annexure A).

political inequalities and the inequitable distribution of land. Yet the poor are perceived under law as “encroachers” and penalised for homelessness thus resulting in their displacement through slum evictions (Ramanathan, 1996) with many displaced many times. This has motivated poor groups to document their displacements in time and space providing an alternative map of the city.⁹⁷ Supreme Court judgements have further made homelessness “illegal”, thus transforming the State’s failure to provide housing for all sections of society, into the personal failure of the poor (Ramanathan, 2006). Given the legal and judicial position on the right to shelter as detailed in Annexure A, the poor resort to political means to lay claims to land and housing in cities.⁹⁸ These political struggles for housing and access to basic services (Haritas, 2008) have been studied by sociologists and anthropologists as “citizenship practices” (Bayat, 1997; Das, 2011; Eckert, 2006; Holston, 2008, 2009).

As the poor vote in large numbers, they are able to apply considerable political influence at the local level, trading votes for political support. Benjamin (2008) points out that vote-bank politics is perceived as a “patron-client” relationship, fostering the dependence of the urban poor on local politicians. He instead proposes that vote-bank politics denotes “poor groups laying claim to public investments in basic infrastructure and services via a ground-up process focused on land and economy in return for guaranteed access to voter lists in municipal elections.” Relying on a study of the technology-dominated areas of Bangalore (south and east), he details the localised political negotiations that enable squatters to take space within these master planned territories, and the role played by lower caste movements, village and town councils as well as occupant groups engaged in the real-estate market. Another study in north Mumbai showed similar occupancy on land belonging to the forest department that was supported by state bureaucrats, political party workers, and a member of parliament. He thus suggests that we view the politics of the poor, not as a “dark world of property dealings” but as constituting one of “multiple political spaces inscribed in complex local histories” that enable the poor to access land. He views these struggles for land as one amongst many other struggles for land and property⁹⁹ including those by wealthier sections of society (the corporate sector, real estate lobby and financial institutions) that enjoy political support of higher echelons of government and the judiciary (Benjamin, 2008).

These property practices are not limited to housing but also used to sustain the informal economy, which provides employment to the majority of India’s population. Informal housing cannot therefore be segregated from the informal economy, not only as those working in the informal economy live in informal housing, but also because informal housing is often also the site of production (Patel & Arputham, 2007). Similarly, the use of public spaces such as roads and pavements for hawking is politically supported, with bureaucratic corruption enabling violations of laws pertaining to the use of pavements and streets (Anjaria, 2011). The sustenance of local economies is largely hinged on the localised negotiations of property laws, as the master planning processes in cities do not address their needs. These “local economies”, as Benjamin (2008) calls them, comprise of interconnected “tiny and small enterprises” that are able to consolidate political networks and alliances in their favour. Benjamin describes clusters of such production in Bangalore that are enabled through the physical proximity of various types of housing (formal and informal), work spaces and markets, with political networks enabling their functioning. As Benjamin and Raman (2011) note, these local economies are characterised by “illegible titles”. Benjamin distinguishes between these local economies that employ the poor and are able to navigate local governance to sustain their economy and corporate economies of wealthier groups that have access to politics at higher levels (state and national). The latter are therefore able to influence planning processes and thus allocated vast tracts

⁹⁷ See Paper visibility and Proof Making, Chapter 5, (Haritas, 2021).

⁹⁸ As Payne (1996) notes, these practices are dependent on various factors including the type of land occupied. For instance, land belonging to the central government or allocated towards public amenities are cleared and slum dwellers are not allowed to stay on such lands for a very long time.

⁹⁹ Benjamin (2008) draws on Moore’s concept of “semi-autonomous social fields” in proposing this plurality of political spaces (Moore, 1973).

of land and infrastructure for corporate economies through master planning processes. While both these groups resort to politics, the gains from their political connections are grossly unequal. Benjamin's work therefore provides a political analysis of the governance of land and infrastructure and inequalities in access to formal planning processes (Benjamin, 2000).

Moreover, upper-class citizens also engage in encroachment and are rewarded with greater legitimacy from the higher echelons of the State. For instance, Ghertner (2011) points to the Delhi Akshardham temple's encroachment of the Yamuna river bank¹⁰⁰ and the construction of shopping malls in a forest area in Vasant Kunj in New Delhi (Bhaskar & Bhan, 2013; Hashmi, 2019), both of which were aided by the Delhi government. Additionally, the various State institutions themselves violate property laws. In 2015, the Bangalore Development Authority was exposed for encroaching on lake beds to issue 60,000 residential plots in the city. A report on lake encroachment pointed out that the biggest encroachers were, in fact, government agencies, with the Bangalore Development Authority topping the list with 484 acres on 41 lakes encroached (Business Standard, 2016). While considerable research and writing focuses on the illegalities of the poor, there is little available on the illegalities of wealthier groups and the State. The only evidence of these illegalities are those that emerge when the matter is taken up by a court.

Doshi and Ranganathan (2017) point out that land dispossession is often couched in terms of corruption. While the contraventions of the poor are made possible by vote banking and 'negotiations' with the police and bureaucrats, often involving the exchange of money,¹⁰¹ the contraventions of upper-class citizens is smoothed through corruption not limited to money, but frequently also through political influence. However, the core difference between the property practices of the poor and the wealthy, is the legitimacy conferred on these practices by the State. While the State takes decades to confer legitimacy to slums and settlements, thus keeping the poor in continual dependence on local political and bureaucratic benefactors, wealthier groups have to expend much less time and effort to gain legitimacy for their contraventions. Furthermore, the poor are also governed and controlled during this process, as discussed in the following section, unlike their wealthier counterparts.

b. Laws and Planning Instruments that Suspend Property Laws in Certain Spaces

The State creates zones of "exception" or "gray spaces" (Yiftachel, 2006) which are exempt from the operation of property laws. Ong (1999) notes, the nation-state asserts territorial sovereignty in regulating spaces through "a system of graduated zones" with zones of exception subject to a "different deployment of State power". Certain zones are allocated "superior privileges" while in other zones such as economic zones, it suspends laws to take away worker rights (Ong, 1999). The planning of zones of exception is made possible by laws such as the Special Economic Zones (SEZ) Act, 2005, which authorises exceptions to certain laws. Thus in Veena Das' words "the State undoes its own legal standing in the most quotidian of manners" (Das 2011).¹⁰² This part examines laws and urban planning processes that suspend law in certain spaces—exempting certain zones from the application of property laws. Our objective here is to reveal how law and planning at the local level contributes to the suspension of property laws in certain spaces.

¹⁰⁰ In 2004, a petition was filed before the Supreme Court against the Akshardham temple's encroachment of the Yamuna river bank of land belonging to the Uttar Pradesh irrigation department (Times News Network, 2004). The contraventions of the Akshardham temple were "legalized" in 2010 by the state environment impact assessment authority (SEIAA) which provided a 'post-facto clearance' to the temple's illegal encroachment measuring 25,497 square metres (Hindustan Times, 2013).

¹⁰¹ See Anjaria's study of hawkers, where he details the economy of bribes that enables hawkers to occupy public spaces. (Anjaria, 2011)

¹⁰² She notes for example how 'ration cards' that enable the poor to access food at subsidised prices carry a note that states "this is not a ration card".

Slum laws provide for the recognition of a certain land/property as a “slum” through “slum declaration” or “slum notification” thus conferring legal recognition to an encroachment. Slums and settlements notified under slum laws are subject to State control and scrutiny, with a view to control further construction or densification of the area. Homes within notified slums are often provided possession certificates with a detailed description of their homes, and fines are levied in case of unauthorised construction. Urban poor groups struggle for many years to have their slum “declared” under the local slum law as it provides them with limited protection against eviction. Declared slums can be evicted only according to due process of law, and only after a notice period. States declare only a fraction of the slums and settlements because declaration also makes them responsible for the provision of basic services in slums.

Notified slums and settlements are exempt from property laws and are closely governed by the State.¹⁰³ Whether situated on public or private land,¹⁰⁴ their notification suspends ownership rights, bringing these areas under the operation of local slum and municipal laws enabling the State to provide services to improve the lives of residents¹⁰⁵ and regulate construction activity to avoid overcrowding. Even as local slum laws are enforced in these areas, these spaces do not conform to property laws as homes are bought, sold, and rented outside the framework of dominant law (Chatterji & Mehta, 2007; Srivastava, 2012; Tarlo, 2003) often mimicking legal processes. These informal property transactions (Srirangan, 1997) that run in parallel with the dominant law are in fact what motivated De Soto’s (2000) call to formalise the informal. Recent research on rehabilitation housing provided by the State also points to a similar suspension of law in these new zones of poverty and flexible governance in these areas that foster informal property transactions, with both elected representatives and bureaucrats feeding off the resulting uncertainty experienced by the poor (Haritas, 2021).

Another instance of the suspension of law is in urban planning processes. The State strategically employs exceptions or exemptions from formal law in its management of urban land. As Gururani (2013) notes in her study of the planning and development of Gurgaon as a suburban node of Delhi in its outskirts, urban planning is itself “fluid and unpredictable” with the development of new areas marked by a “carefully orchestrated flexibility” through “flexible planning” steeped in local politics. She details how plans “create zones of exemption” including exemptions from taxes and certain laws, sanctified and legitimised through plans, to “opportunistically facilitate or hinder urban development, overlook deviations from plans, create room for concessions, or in critical moments show compassion and allocate subsidies to some and not others”. Through these exemptions, the State deals with different groups in different ways contextually (Gururani, 2013). Gururani argues therefore that Gurgaon, when viewed in terms of laws and urban planning, is an “illegal settlement” that unlike the slums discussed earlier are sanctioned by the State as “emblems of modernity”.

Giorgio Agamben (2005) notes, law enables an exception to itself, with the State preserving its power to use or not use the law. Ananya Roy (2005, p. 149) argues that these exceptions affirm the State’s power to decide when to suspend law, to demarcate what is formal and therefore what is

¹⁰³ For instance, Section 11 of the Karnataka Slum Areas (Improvement and Clearance) Act, 1973, provides for the declaration of an area as slum clearance after duly notifying the owner and on consideration of objections to the notification of declaration. Section 14 provides for a specific process of authorisation for redevelopment of the land by the owner. Retrieved from [http://dpal.kar.nic.in/pdf_files/33%20of%201974%20\(E\).pdf](http://dpal.kar.nic.in/pdf_files/33%20of%201974%20(E).pdf).

¹⁰⁴ A note must be made here that slums located on lands belonging to the Central Government or lands allocated for public amenities (parks, roads, etc) are generally not notified, nor are they provided tenure security.

¹⁰⁵ For instance, the proviso to Section 3 (2) of the Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) Act, LXVI of 1975, provides the state government authority to collect penal charges for unauthorised occupation, recoverable as arrears of land revenue, without conferring a right of occupation and such amount may be utilised for eviction, rehabilitation and improvement of conditions of unauthorised occupants of vacant lands. Similarly see Section 6 of the Karnataka Slum Areas (Improvement and Clearance) Act, 1973, which provides the slum board authority to carry out improvement works, which includes access to water, lighting, sanitation, etc (see Section 2.p).

informal, and further to decide what forms of informality are acceptable and what are not. She uses the metaphor of mapping to delineate mapped and unmapped spaces, characterised by regulation and deregulation. This suspension of laws or deregulation, as she calls it, has fostered “insurgent claims” which, as they are not rights but just claims, enable “obedience to populist patronage” (Roy, 2009b, p. 82). Roy and AlSayyad (2004) argue that exception to laws is strategically used by the State to “mitigate some of the vulnerabilities of the urban poor”. However, the very fact that the poor depend on the State’s contextual and contingent recognition of these informal transactions, deepens relations of patronage and a certain sense of bondage to the State. As Haritas (2021) reveals in her longitudinal ethnography of rehabilitation housing in Bangalore, the suspension of formal laws and the contextual negotiations of rights with State authorities results in keeping the poor in a permanent state of limbo, continually dependent on the favours of officials and elected representatives.

c. The Transformation of Contraventions of Property Law to Legal Rights to Property

Property laws in India while prohibiting violations and specifying penalties, also provide for the legalisation of these violations. This part of the paper will examine two sets of practices by the State—the State’s recognition of tenure security of poor groups living in slums and settlements and “regularisation” laws that legalise the property contraventions of wealthier groups. Urban sociologists have been long studying the processes through which poor groups settled on land they do not own and vulnerable to quick and often violent evictions, over time gain a sense of security of tenure and obtain legal recognition from the State of their right to continue residing on the land they had encroached on. Most prominent in this literature is that of tenure security, with development specialists proposing tenure security as a mode of ensuring housing for the poor (Mahadevia, 2010; Mahadevia, Joshi, & Sharma, 2009; Payne 1996, 2001; Payne, Durand-Lasserve, & Rakodi, 2009). Rather than a narrow focus on individual exclusive ownership, tenure status takes into account existing practices around property as giving rise to diverse claims around it. The notion of tenure draws from different forms and basis of land tenure practiced in various parts of the world (other than public land ownership and private ownership) which includes customary rights (such as those of tribals or indigenous groups), religious systems of tenure and non-formal/informal tenure (such as those of slum dwellers) (Payne, 1996, 2001).

Tenure is further divided into two broad systems of rights: de-facto tenure which are rights enjoyed in fact and de-jure tenure rights, which are recognised by law. People therefore are said to move from de-facto tenure security to de-jure tenure security, from weak rights to strong rights. For instance, slum dwellers in India on migrating to the city and squatting on land have weak de-facto tenure security which, over time, transitions into strong de-facto tenure security, and then weak de-jure tenure and finally, strong de-jure tenure security.¹⁰⁶ The transition of poor groups from weak de-facto tenure to strong de-jure tenure, is smoothed through documents of various sorts, that can prove the duration of residence and therefore rights that spring from possession/occupation; and access to basic amenities and therefore the recognition of occupation/residence by the State. Possession or occupation of property over a long duration provides certain rights, incrementally increasing security of tenure. This may be further strengthened as homes are improved and made more permanent and services are provided by the State. Law recognises rights to possession through adverse possession, which is possession for a given duration of time that is adversarial to the owner. This is recognised in many countries including India, the United States, and Egypt, and can also provide security of tenure (Doebele, 1983). This legal recognition of possession is reflected in local slum laws that provide for rehabilitation of the poor evicted from slums and settlements. It is also recognised in housing policies for the poor that allocate either in-situ or resettlement housing to slum and settlement dwellers.

¹⁰⁶ Tenure security is dependent on various factors including the type of land. For instance, slums situated on land belonging to the central government or land allocated for public amenities (such as parks, roads, etc.) are not allowed to gain tenure, and such groups are evicted.

Veena Das (2011) details the processes through which the urban poor “deepen their claims” to housing through occupation of land, residence for long periods of time, negotiations with local government officials, use of legal mechanisms, bargaining with local police officials, etc. She suggests that the “legal notion that you either have rights (ownership rights) or you do not, would not make sense within these strategies of *creating rights*.” (italics mine). She proposes the notion of “incremental rights” instead of a legalistic approach of rights as encoded in laws. Though “unauthorised colonies” are not entitled to water or electricity as civic rights, communal taps are provided by local authorities to contain epidemics, often with the support of local politicians in exchange for votes (Das, 2011). Political leadership of urban poor settlements largely determines the ability of slum dwellers to stay put. Das and Walton (2015) suggest that the success of slum leaders to ensure the survival of the slum depends on their ability to engage with State institutions, the law, and bureaucracy. Democratic politics, internal unity and solidarity within settlements and mobilisations or struggles enable the poor in their negotiations with the State (Das & Walton, 2015). While poor groups tend to gain security of tenure even without the intervention of the State, this takes several decades to accomplish, plunging the poor into limbo for long periods of time, a phenomenon Haritas (2021) calls “citizenship in limbo.” Thus, the transformation of property law contraventions by the poor into legal rights to property, though a reality, is slow and arduous necessitating everyday struggles for long periods of time. It is also fraught with uncertainty as groups can be evicted at any point of their progression from weak de-facto to strong de-jure tenure security, until they obtain ownership.

Property laws are subverted not only by the poor but by citizens of all classes. The scale of contraventions of property laws is important in this regard. Nair (2013) points out that as of 2007, 700,000 illegal constructions in Bengaluru (out of 1.2 million constructions overall) and 500,000 in other cities in Karnataka were expected to benefit from laws legalising illegal constructions. She points out that rather than being a “failure of planning,” the “systemic nature” of illegal construction “suggests that this is the norm, namely, the very way in which housing stock is being added.” This is reflected in the language used by the State to define property law contraventions, calling them unauthorised construction or unauthorised occupation instead of illegal, and using the term regularisation instead of legalisation. This use of language is not innocent as it diminishes what is essentially an illegal act into an irregular one, that can be made good through the devices of law and paper, with the exchange of money enabling the production of documents to make legal, what is otherwise an illegality. This stark contrast in the State’s responses to the illegalities of the non-poor, has been recently studied by sociologists in various parts of India. Zimmer (2012) and Dupont (2005) have studied the regularisation of lower middle-class unauthorised colonies in Delhi; Bhide (1980) details the regularisation of *gunthewaris* in Maharashtra and Nair (2013) examines the Akrama Sakrama laws in Karnataka. This part will examine efforts of the state to regularise illegalities.

The Karnataka government in 1991 passed a law¹⁰⁷ to regularise (legalise) constructions that were in violation of building laws.¹⁰⁸ This law which was meant to operate for 30 days from the date of coming into force (to regularise unauthorised constructions prior to the enactment of the law) was extended till October 1995. This meant that property owners could take advantage of the law to contravene local building laws between 1991 and 1995, with the opportunity to “regularise” them. The government justified this law on the grounds that city development authorities are unable to meet “the increasing demand for residential sites, due to disproportionately high number of unauthorised constructions,” that cannot be demolished as it would “amount to wastage of national wealth” and “create law and order problems.”¹⁰⁹ This reveals the State’s pragmatic acceptance of its

¹⁰⁷ The Karnataka Regularisation of Unauthorised Construction in Urban Areas Act, 1991. Retrieved from [https://dpal.karnataka.gov.in/storage/pdf-files/29%20of%201991%20\(E\).pdf](https://dpal.karnataka.gov.in/storage/pdf-files/29%20of%201991%20(E).pdf)

¹⁰⁸ The law which initially provided for regularisation of all urban constructions was later amended in 1994 to exclude commercial constructions and constructions on land belonging to the State or Central Government.

¹⁰⁹ See statement of objects and reasons in the law.

inability to be the sole providers of land and housing. The legal recognition to constructions until 1995 allowed the State to shift some of its burden onto citizens by providing legal recognition to self-help housing. Unlike the 1991 law which limited regularisation up to a certain date, later laws have made this a regular feature.

In 2007, an amendment was made to the Karnataka Town and Country Planning Act, 1961 (KTCPA), providing for the regularisation of “all unauthorised constructions as on the date of passing the Amendment Act.”¹¹⁰ This was popularly known as the Akrama-Sakrama (literally translated as wrongs-rights) Scheme. This amendment was stayed by the Karnataka High Court in 2007 after which the government passed another amendment act in 2013, permitting the regularisation of buildings constructed prior to December 3, 2009 and reducing the fee for regularisation (Idiculla, 2016).¹¹¹ Regularisation was further extended to 2013 through another amendment (Srivatsa, 2013),¹¹² which was upheld by the Karnataka High Court in 2016 (Economic Times, 2016)¹¹³ and stayed by the Supreme Court in 2018 (Times News Network, 2019). Despite this stay order, the chief minister of Karnataka announced the revival of the scheme in 2020 in a bid to generate revenues for the state through taxes and regularisation fees and promised to ensure there would be no corruption in the process (TV5 Kannada, 2020).¹¹⁴ The revenue minister, in a newspaper report, promised that this time the guidelines to the scheme would be drafted so as to ensure that it benefits only the poor and the middle-class and not the rich or builders—to ensure there would be no objections from the apex court (The Hindu, 2020a).

In 2020 the government passed an amendment Act to the Bangalore Development Authority Act, 1961 and Karnataka Town and Country Planning Act, 1961 to regularise constructions on private plots, which had been notified by the Bangalore Development Authority for acquisition but could not be acquired (Mohammad, 2020). This amendment was expected to regularise 75,000 encroachments measuring up to 4,000 square feet on payment of a penalty and submission of proof of residence for at least 12 years prior to the amendment.¹¹⁵ But this was also challenged before the Karnataka High Court (Ambarish, 2021). However, the regularisation of these illegal constructions on government land continues, with the State justifying it on the ground that owners, purchasers and encroachers of this land cannot sell these properties as it belongs to the government (Lalitha, 2020).

The State has not just regularised unauthorised constructions (i.e. constructions in violation of local building laws on legally owned property) but has also regularised unauthorised occupations (encroachment). For instance, the 1991 amendment to the Karnataka Land Revenue Act, 1954, regularised unauthorised occupations of land belonging to the government until 1988 on the payment of steep regularisation charges and subject to certain limitations in terms of the extent of unauthorised holdings, the location of such land and category of land. In 1985, an amendment to this law regularised the unauthorised “diversion of agricultural land to non-agricultural use” (change in land use).¹¹⁶ In 2007, the government again passed the Karnataka Town and Country Planning

¹¹⁰ This amendment (Amendment Act 1 of 2007) introduced Section 76FF which provides for the regularisation of development and change of land use (from residential to commercial or vice versa).

¹¹¹ Amendment Act 57 of 2013, Karnataka Town and Country Planning Act, 1961.

¹¹² Amendment Act 67 of 2013, Karnataka Town and Country Planning Act, 1961.

¹¹³ Immediately after the High Court order upholding the scheme in 2016, the government expressed the intention to further extend the scheme beyond October 2013 to a more recent date (Times News Network, 2016).

¹¹⁴ These contraventions of law have always provided local level officials a source of income in the form of bribes paid to stave off government inquiry. The regularisation of these illegalities would thus in a sense take away this corruption that is otherwise rampant amongst municipal officers and those dealing with property matters.

¹¹⁵ This was achieved through the insertion of Section 38 D to the Bangalore Development Authority Act, 1961. This amendment excluded land reserved for parks, playgrounds or civic amenities, land affecting roads or proposed roads, land abutting drains, tank beds, river beds or high tension electric lines, and land under litigation or interrupted due to an interim court order.

¹¹⁶ Amendment 10 of 1985, to the Karnataka Land Revenue Act, 1964. Retrieved from [http://dpal.kar.nic.in/.%5C12%20of%201964%20\(E\).pdf](http://dpal.kar.nic.in/.%5C12%20of%201964%20(E).pdf). This amendment enabled conversions of land use that conform to building laws and rules subject to levy of a conversion fine along with a compounded payment for diversion.

(Regularisation of Unauthorised Development or Constructions) Rules 2007 and amended the Karnataka Town and Country Planning Act, 1961 to enable regularisation. These transformations in property laws are not limited to Karnataka but can be witnessed across the country. For instance, in 2019, the Parliament passed a Bill to provide ownership rights to residents of unauthorised colonies in Delhi (Press Trust of India, 2019) and a year later exempted these properties from income tax (Press Trust of India, 2020).

These laws that transform the illegal to legal, through the device of regularisation laws are problematic on several levels. First, they openly discriminate between citizens, favouring those who can afford the fee/penalty charged by the State to regularise their illegalities, and excluding the poor and marginalised who cannot afford to legalise their property.¹¹⁷ These “second class citizens” are subjected to the law of tenure as detailed above. Therefore, it brings into existence two separate legal orders, and a differentiated status in terms of both property rights and obedience to property laws. This differential treatment may perhaps reflect the degree of legality rather than a distinction of class. As Payne (1996) notes, across the world, there exists a wide range of positions between the legal and illegal possession of property and therefore to distinguish property into two types—formal/informal or legal/illegal would miss the wide spectrum of legalities, in progression from illegal to legal possession of property. As Zimmer (2012) details, unauthorised colonies in Delhi possess some documents and are categorised as semi-legal distinguishing them from those *sans papiers*. Furthermore, illegalities differ in terms of the nature of contravention of law. Encroachment of land thus differs from unauthorised construction or change in land use with varying degrees of legality in terms of the degree of contravention involved.

While the State may rationalise differing approaches to illegalities of different sorts, the effect of these regularisations on formal law as well as on urban planning should not be underestimated. Regularisation laws and schemes undermine formal laws on property, and would have the effect of encouraging contraventions thus making urban planning a futile exercise. Bhide (1980), in her study of the regularisation of *gunthewaris* in Maharashtra, notes how this provided an impetus for the development of new *gunthewaris* that followed a “quasi-formal process” mimicking formal planning processes. She also notes how these *gunthewaris*, which provided affordable housing to low-income groups began to attract middle and high-income groups. Regularisation would thus also potentially result in the sale of lower-class housing to upper-class residents, increasing inequalities of access to land. Regularisation of unauthorised constructions, which contravene safety requirements under building laws, would also compromise the safety of residents.

Nair (2013) argues that what is most problematic is that the State offers regularisation as a “favour bestowed on violators” which results in the “production of dependence of citizens on the State rather than independence from its strictures” (Nair, 2013, p. 54). It therefore undermines the notion of property rights—something citizens can demand from the State, instead, installing in its place, continued and constant political negotiations which, instead of levelling the playing field, creates more inequalities in access to land.

¹¹⁷ The 1991 laws provided for regularisation charges at 500 times the assessment of land, reducing it to 1/20th the amount in case of Scheduled Castes and Scheduled Tribes. Successive regularisation schemes have not provided for such reductions to marginalised groups.

d. Parallel Property Regime and the Redefinition of Property Relations

In all three State practices discussed above, we see the State emerge as a patron in the governance of property, with elected representatives and local level bureaucracy entering into negotiations with groups, providing political support for contraventions; exceptions and exemptions from laws and transforming illegalities to legalities. In all these three instances we see a flexible, contextual and contingent mode of dealing with property, responding to claims rather than rights. Nair (2013) traces the localised and flexible governance of land to the colonial times when local informal authority was fostered by the colonial government on the grounds of the impossibility of taming the “incorrigibly ‘illegal’ Indian whose capacity to resist or escape the law (or indeed escape modernity itself) was a cultural trait, or at least a form of resistance.” She details how “local power networks were buttressed, and rules continually bent to accommodate them even within new institutional spaces such as municipalities” (Nair, 2013, p. 57).

These property practices of both the State and citizens, have normatively redefined property law in India, overshadowing formal laws on property. Much like the “shadow state” that Harriss-White (2003) details in her analysis of the informal economy, these practices have erected a “parallel property regime” deriving from patron-client relations, that while intricately connected to the formal law, feeds off its defiance. Even though these practices seem instrumental, with groups working the system to their own advantage, in reality as Chatterjee (2004) suggests, they lead “over time to substantial re-definitions of property and law within the actually existing modern state” (Chatterjee, 2004, p. 75).¹¹⁸ What effect would this redefinition of property and law have on the current efforts of the Indian State to transform these informalities into a formal system of property rights and titles, amenable to the market? Would such efforts not be undermined? We leave these questions open as we conclude this part of the paper.

Conclusion: The Patron State and the Recasting of Rights as Claims

Based on how the State has dealt with land and property in the context of land acquisition and urban governance, we propose two specific contributions to understanding property rights in the Indian context. The analysis in both parts of this paper, which deals with different sets of laws and practices, allows us to suggest that the State positions itself as a patron, usurping absolute rights over land and property within its terrain, using laws selectively to bestow rights where it wishes to, and departing from laws by promulgating other laws or subverting them where it wishes to remain in control. It therefore refuses to accept natural rights to property and instead prefers to respond to claims¹¹⁹ in a contextual and contingent manner. It deals with individuals and groups as subjects dependent on its patronage rather than rights-bearing citizens with recourse to a court of law. We propose that a legalistic approach to property rights solely through laws and judicial precedents is insufficient for this analysis because the State’s on-ground practices and subversions of laws do not just hinder implementation but actively shape property rights and relations in the everyday lives of citizens. A second proposition therefore is to take more seriously the domain of property practices, both those of the State and citizens, in theorising property rights in India. Laws and practices as we examine here are shaped by each other and therefore are in close relation to each other with laws motivating practices and vice versa. We propose that property practices are not deviations from formal State regulations as we normally think of them, rather they are produced by the State which is not only complicit in supporting and encouraging these practices, but also participates in these modes of dealing with property. Property rights are therefore the product of both laws and practices.

¹¹⁸ While Chatterjee (2004) contrasts the politics of the poor (political society) with those of propertied citizens (civil society), tethering these practices to the poor, Menon (2010) suggests that this be read as a “mode of political communication” open to all, irrespective of class.

¹¹⁹ We use the term “claims” drawing from political science and political anthropology approaches that examine claims making processes (Chatterjee, 2004). We do not use this term as used in legal studies literature as deriving from rights.

Annex A

a. Right to Shelter and Housing

First and foremost, India does not recognise the right to housing. As Chaudhry and Kothari (2019) point out, India has ratified international laws including the “International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities,” all of which recognise the right to housing as a human right. Though the Indian government is legally bound to implement these obligations under international law, there is no law that explicitly safeguards for the right to adequate housing (Chaudhry & Kothari 2019).

The right to shelter is not a fundamental right under the Constitution. Article 39(a) of the directive principles of state policy under Part IV of the Constitution provides that “the State will direct policy towards securing for Indian citizens the right to an adequate means of livelihood and the distribution of ownership and control over material resources of the community to serve common good.” However, directive principles are non-enforceable directives meant to guide state policy, and thus are not actionable rights like the fundamental rights. These directives are “reminders or directives for law-making to usher in conditions in which the rights enumerated in the previous section (fundamental rights) become more meaningful” (Anupama Roy, 2010, p. 19). The government of India thus cannot be held accountable for the enforcement of a wide range of basic economic and social rights including the right to shelter. While laws provide for rights of home to landowners as well as tenants, they do not specifically provide citizens with an actionable right to decent housing.

This lack of legal commitment to decent housing has serious implications on state policies concerning affordable housing. India suffers from a crisis of affordable housing. The 10th Five Year Plan document assessed the shortage in urban housing at 8.89 million units, with 90% of the shortfall in homes for the urban poor (Ramanathan, 2006). As per the Report of the Technical Group on Urban Housing Shortage (TG-12) (2012-2017), the shortage in urban housing is estimated at 18.78 million houses and 95.62% of this shortage affects the EWS and LIG groups.¹²⁰ The Working Group on Rural Housing for the 12th Five Year Plan put the shortage of rural housing at 43.13 million units (Kumar, 2014).¹²¹ This crisis in housing is due to lack of investment by states in affordable housing for EWS and LIG groups. With no legal commitment to provide affordable housing for all, state policies on housing have fuelled this crisis.

For instance, Karnataka, as of 2015, had a shortage of one million homes, against the construction of only 24000 homes per year (Bhan, 2015). Chamaraj (2017), an activist focussed on the urban poor in Bengaluru, points out that the State’s provision of homes is inequitable. Despite the highest demand amongst poor and low-income groups, the State allocates more land for middle and higher-income groups. She provides an example of the allocation of sites by the Bangalore Development Authority in one of its residential layouts, where the EWS and LIG groups were allocated 1,500 plots measuring 600 and 1,200 square feet, respectively. In contrast, middle-income groups and high-income groups were allotted five times as much—1,500 plots measuring 2,400 and 4,000 square feet, respectively. This shows that the State’s alibi of lack of land is unacceptable when it chooses to allocate most of the available land to middle income and high-income groups (MIG and HIG) who not only have surplus housing but also keep 150,000 homes vacant in the city. States conveniently disregard mandates in central government schemes to reserve 15%–25% of dwellings in public housing projects for EWS and LIG groups, let alone provide for such housing in private housing projects (Chamaraj, 2017). As

¹²⁰ EWS groups comprise 56.18% of those facing shortage and LIG groups comprise 39.44% of those facing shortage of housing.

¹²¹ This data is based on the 11th Five Year Plan.

the law does not make it mandatory for states to provide affordable housing, poor and marginalised groups cannot depend on the State for housing and the housing crisis is thus bound to persist.

This leaves the poor without affordable housing in cities, thus resulting in slums and settlements, vulnerable to forced evictions, displacement and homelessness. While the Indian government does not maintain records on forced evictions, the Housing and Land Rights Network (HLRN), a Delhi-based NGO has been collating information on forced evictions in India since 2017 through partnerships with NGOs across India. This data though is not exhaustive. It indicates both, the extent of and the causes for eviction. In 2017, a total of 213 evictions led to the destruction of 53,700 homes, affecting 260,000 people. Of these 213 evictions, 99 were for city beautification projects to create slum-free and smart cities, 53 were for development projects including transportation, and 30 were for wildlife/environmental conservation projects. The report details that though rehabilitation housing was provided, it was restricted to a small subgroup who fit the State's eligibility criteria—most displaced were left homeless. The 2017 study reports that in one of the evictions along Mumbai's Tansa pipeline where 16,717 families lived, only 7,674 were considered eligible for rehabilitation (Chaudhry et al, 2018).¹²² In 2018, in the 218 evictions studied, 41,700 homes were uprooted and 202,000 people were rendered homeless. Of these 218 evictions, 47% were for slum-clearance, anti-encroachment, or city-beautification drives; 26% were for infrastructure and development projects including road widening, highway/road construction, housing, and smart city projects; 20% were for environmental projects, forest protection, and wildlife conservation; 8% were for disaster management (Chaudhry et al, 2019).¹²³ With evictions becoming a normal part of urban land governance, the poor have resorted to approaching the court to uphold their rights to housing.

b. Case Law on the Right to Shelter and Housing

The Supreme Court in 1981 interpreted the right to life as including:

“The right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow beings.”¹²⁴

The court provided a broad interpretation to the right to shelter in its judgements. In 1995, it held that the right to shelter would include the right to livelihood,¹²⁵ affirming that it “springs from the right to residence assured in Article 19 (1) (e) and right to life under Article 21 of the Constitution.”¹²⁶ It has gone so far as to say that it is the State's constitutional duty to provide facilities and opportunities to build a house and called upon the government to acquire land to provide house sites to the

¹²² The state makes provision of rehabilitation subject to production of proof of residence for a given period of time, and therefore many who do not possess such proof, either due to lack of documents or due to residence shorter than the prescribed number of years, are not eligible to rehabilitation.

¹²³ In its 2019 report on forced evictions in 2018, HLRN's partner organisations were: Adarsh Seva Sansthan, Jharkhand; Affected Citizens of Teesta, Sikkim; Association of Urban and Tribal Development, Vishakapatnam; Beghar Adhikar Abhiyan, Mumbai; Campaign for Housing and Tenurial Rights (CHATRI), Hyderabad; Centre for Research and Advocacy, Manipur; Centre for the Sustainable Use of Natural and Social Resources, Bhubaneswar; Ghar Bachao Ghar Banao Andolan (GBGBA), Mumbai; Habitat and Livelihood Welfare Association, New Delhi; Information and Resource Centre for the Deprived Urban Communities (IRCDUC), Chennai; Land Conflict Watch, New Delhi; Madhya Pradesh Nav Nirman Manch (MPNNM), Indore; Montfort Social Institute, Hyderabad; Nagrik Sangharsh Morcha, Bhagalpur; Narmada Bachao Andolan, Mumbai; NIDAN, New Delhi, Bihar & Jharkhand; Paryavaran Mitra, Ahmedabad; Paryavaran Suraksha Samiti, Uttarakhand; Pehchaan, Ghaziabad; Prakriti Resource Centre for Women, Nagpur; Rahethan Adhikar Manch (Housing Rights and Human Rights Group), Gujarat; Save Mon Region Federation, Arunachal Pradesh; Shahri Gareeb Sangharsh Morcha; Slum Jagatthu, Bangalore; Video Volunteers, Goa; and Vigyan Foundation, Lucknow.

¹²⁴ *Francis Coralie v. Union Territory of Delhi* (1981) AIR SC 746 753.

¹²⁵ *Consumer Education and Research Centre v. Union of India*, 1995 (3) SCC 42.

¹²⁶ *U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd.*, (1996) AIR 114 1995 SCC.

homeless as a public purpose.¹²⁷ The Supreme Court also defined the right to shelter to include the right to housing without restricting it to the mere provision of shelter from the elements. In *Chameli Singh v. State of Uttar Pradesh* (1996)¹²⁸, the court, upholding the acquisition of land for provision of housing to Scheduled Caste groups, opined:

“Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc., so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one’s head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting.”

Even while asserting the right to shelter, the court carefully brought it under the directive principles of state policy subject to economic considerations, thus clearly placing it out of the ambit of fundamental rights. Even in cases where it has upheld the right to resettlement/alternative housing, it has backed the State’s discretionary power. For instance, in 1996, in the Ahmedabad Municipal Corporation case¹²⁹ concerning the eviction of pavement dwellers, the court, while ordering rehabilitation for those being evicted, opined:

“It is true that in all cases it may not be necessary, as a condition for ejection of the encroacher, that he should be provided with an alternative accommodation at the expense of the State which if given due credence, is likely to result in abuse of the judicial process. But no absolute principle of universal application would be laid in this behalf. Each case is required to be examined on the given set of facts and appropriate to the facts of the case.”

These judgements strike a fine balance between upholding the right to shelter and the discretionary power of the State to implement it. A similar approach can be found in the Supreme Court’s judgements concerning urban slum and settlement eviction. The 1985 judgement in the pavement dweller’s case (*Olga Tellis and Ors v. Bombay Municipal Corporation*, 1986) is often quoted as one that upheld the rights of the urban poor. Olga Tellis, a journalist, had filed a public interest litigation on behalf of pavement dwellers evicted by the Mumbai municipal corporation. The court prescribed a just and fair procedure be followed to evict the pavement dwellers as it would take away their livelihood. While upholding the right to livelihood, the court noted that “the Constitution does not put an absolute embargo on the deprivation of life and personal liberty” and “such deprivation has to be according to procedure established by law”. While directing that evictions be stalled until the end of the monsoon season, it ordered that “steps may be taken to offer alternative pitches” without making it a “condition precedent to the removal.”¹³⁰ This case set into motion the machinery of eviction, resettlement and rehabilitation now normalised in urban governance. Tellis (2015) points out that this judgement resulted in the eviction of the pavement dwellers and has come to be interpreted by the judiciary as prescribing a just and fair procedure of eviction. It has thus enabled rather than curtail evictions.

Tracing the Supreme Court’s pronouncements between 1985 and 2006, Ramanathan (2006) reveals how the judiciary has progressively weakened the right to housing, evicting poor groups and

¹²⁷ *State of Karnataka v. Narasimhamurthy*, AIR 1996 SC 90.

¹²⁸ (1996) 2 SCC 549.

¹²⁹ *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan* (1997) 11 SCC 121.

¹³⁰ *Olga Tellis and Ors vs. Bombay Municipal Corporation and Ors*, AIR (1986) 180, 1985 SCR Supl. (2) 51.

absolving the State of any responsibility to provide even rehabilitation, let alone affordable housing. In *Lawyers' Cooperative Group Housing Society v. Union of India* (1993), the Supreme Court opened the floodgates to a spate of judgements that delegitimised the urban poor, making homelessness illegal. Justice B. N. Kirpal's comment on behalf of the bench is here noteworthy:

"It appears that the public exchequer has to be burdened with crores of rupees for providing alternative accommodation to *jhuggi* dwellers who are trespassers on public land."

Paradoxically, Justice B.N. Kirpal was also one of the three judges who upheld the right to shelter in *Chameli Singh v. State of Uttar Pradesh*.¹³¹ This judgement in *Lawyers' Cooperative Group Housing Society* case marked a departure in the manner in which the court perceived the urban poor. In one swift swish of the pen, the urban poor went from being homeless, living "in slums and on pavements because they have small jobs to nurse in the city" to "trespassers" encroaching on public land. The court directed that in case of resettlement, rather than to provide the land on leasehold as was the practice, it was to be provided on licence so as to prevent the rehabilitated poor from transferring with land allotted for housing. This step to stall the resettled poor from gaining property rights was adopted administratively in Delhi since this decision. The situation is similar in other parts of India. Allotments provide the rehabilitated poor the rights to possess land or homes, but no rights to transfer or inherit property for a given period of time, after they may obtain full legal rights.

In *Almitra Patel v. Union of India* (2001),¹³² which dealt with solid waste disposal, a three-judge bench echoed the administrative concerns of cleaning up Delhi of its unhygienic slums that were multiplying by "geometrical proportion". It depicted slums as "well organised" and "good business" that usurped "large areas of public land" for "private use free of cost" at the tax payers' cost. The court opined that "rewarding an encroacher on public land with an alternative free site is like giving a reward to a pickpocket" (Ramanathan, 2006, p. 3195).

In its 1996 judgement in the Industries Relocation case (*MC Mehta v. Union of India*, 1996),¹³³ the court, while ordering the relocation of industries to the Northern Capital Region (NCR) area, also commented on the city having become a "vast and unmanageable conglomeration of commercial, industrial, unauthorised colonies, resettlement colonies and unplanned housing" with no open or green spaces, needed to be de-concentrated both in terms of industries and population. The court, in the final part of its judgements, also mentioned that the labour working in the relocated industries "can either shift to the new sites or at least keep commuting till they finally shift to the new place," thereby providing municipal authorities approval to alienate both the industries as well as the people working in them.

As Ramanathan (2006) observes, the opinion of the Supreme Court in these two cases marks a departure from the judicial perception of the urban poor as homeless to a view of slum dwellers as "illegal" and liable to be removed by city municipal authorities. In *Almitra Patel*, the court elevated the use of land for solid waste disposal over and above its use for housing the poor. In the 2002 judgement in the Okhla Factory Owners Association case¹³⁴ concerning the eviction of poor groups living along the Delhi railway lines, the court quashed the policy guidelines of Delhi for the resettlement of slums and settlements. The court, while acknowledging State failure to provide housing for EWS groups, held that this cannot be made up for by providing rehabilitation housing to encroachers on public land as "it encourages dishonesty and violation of law." It held that rehabilitation cannot be an indefinite process as land is limited and encroachments would "inconvenience" propertied citizens. The court directed that in future evictions, no alternative sites

¹³¹ (1996) 2 SCC 549.

¹³² (2000) 2 SCC 679.

¹³³ *MC Mehta vs. Union of India* (1996) 4 SCC 750. This case dealt with the relocation of hazardous industries outside Delhi.

¹³⁴ *Okhla Factory Owners' Association vs. GNCTD* 2003 (108) DLT 517, Delhi High Court.

should be provided. Ramanathan (2006) points out that by striking down the resettlement policy, the court made resettlement and rehabilitation illegal. While these blatantly anti-poor judgements continue to be used as case law in the Supreme Courts to evict poor groups without rehabilitation or resettlement, more recent judgements seem to reflect a more genuine concern for the plight of the homeless poor (Ramanathan, 2006).

The decisions of the court since 2006 have while asserting the right to property, continued to relegate it to the directive principles of state policy. The court has been innovative in its decisions drawing on the human rights framework and the commitment of the Indian State under various international conventions. For instance, in *Tukaram Kana Joshi v. Maharashtra Industrial Development Corporation* (2012),¹³⁵ the Supreme Court brought the right to shelter within the framework of the right to property by linking it with human rights. It held:

“The right to property is now considered to be, not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right, human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multifaceted dimension. The right to property is considered, very much to be a part of such new dimension.”

In *Karma Dorjee v. Union of India* (2016),¹³⁶ examining the issue of racial discrimination against citizens from northeastern states, the court noted that India is a signatory to the International Convention for the Elimination of All Forms of Racial Discrimination (CERD), 1965, and ratified it in 1968. Going through the provisions of the CERD, including article 5 which provides for the right of housing, the court held that India is obliged to adhere to its commitments. Referring to the decision in *Vishaka v. State of Rajasthan*,¹³⁷ the court held that a “consensus in the international community of nations, in which India is a vibrant participant, must infuse the content of our own constitutional guarantees.”

The Supreme Court has in some instances set up committees to investigate into the State’s inaction. For instance, in the case of *E.R. Kumar and Another v. Union Of India and Ors* (2016),¹³⁸ on the issue of shelter homes, the court observed that despite several directions by the court, the government has not provided necessary infrastructure for shelter homes for the homeless urban poor. Despite a scheme and the release of funds to state governments, the money was not utilised with no explanation. Observing that another winter was approaching and nothing much had been done to protect the homeless in towns and cities, it set up a committee to investigate the matter. However, the trend of reading the right to shelter as a right under the directive principles of state policy continues to hold. Recently, in *Ashwani Kumar v. Union of India* (2019),¹³⁹ in a petition seeking housing for the aged, the court held the right to shelter as an important constitutional right the State is obliged to provide “subject to its economic budgeting.”

¹³⁵ (2013) 1 SCC 353.

¹³⁶ (2017) 1 SCC 799.

¹³⁷ IR (1997) SC 3011.

¹³⁸ Writ Petition (Civil) No. 55 of 2003, Retrieved from <https://indiankanoon.org/doc/157970699/>

¹³⁹ (2019) 2 SCC 636.

c. Two Distinct Approaches

An analysis of these judgements reveals two distinct approaches to the right to housing. The approach in *Olga Tellis* and other judgements that emphasise the right to housing or shelter has been that of a measured leaning towards the notion of welfare state, in which the State is called upon to ensure basic human rights, without taking away the right of the State to refuse rehabilitation on grounds of economic constraints. The second approach that can be gleaned from the *Lawyers Cooperative Housing Society* and *Almitra Patel* cases, is to deny the poor any rights whatsoever. This approach refuses to take into account rights other than those that arise from absolute exclusive ownership and thereby denies the poor the security of tenure they gain through residence. In effect, what is otherwise accepted by local administration as de-facto security is treated as “illegal occupation” by the court. The problem with this latter approach is that it also makes illegal the provision of rehabilitation or resettlement to the evicted poor, therefore, in a certain sense, outlawing forms of tenure security normatively practiced and accepted in local governance (see Part 2 of this paper). While these two approaches may be distinct in the manner in which they view the poor and their rights, they share a common view of the power of the State as absolute, therefore upholding the discretion of local authorities in decisions on rehabilitation.

Despite the lack of a legal right to rehabilitation housing, local state governments and slum boards have provided rehabilitation housing to those evicted from slums and settlement, often using central funds allocated for urban development under various schemes (Jawaharlal Nehru National Urban Renewal Mission, Rajiv Awas Yojana, and Prime Minister’s Awas Yojana). The practice of rehabilitation housing has served several purposes including the easy displacement of the urban poor, the fragmentation of poor groups who compete for scarce subsidised housing thus thwarting radical protest, rent-seeking amongst local bureaucrats and vote banking that keeps the poor dependent on political patrons (Haritas, 2021).

Bibliography

- Agamben, G., (2005). *State of exception*, (K. Attell, Trans.). Chicago & London: University of Chicago Press.
- A, Kundu., (2012). *Report of the technical group (TG-12) on urban housing shortage (TG-12)*. Ministry of Housing and Urban Poverty Alleviation.
- Anjaria, J. S., (2011). Ordinary states: Everyday corruption and the politics of space in mumbai. *American Ethnologist*, 38(1), 58–72.
- Baviskar, A., (2003). Between violence and desire: Space, power, and identity in the making of metropolitan Delhi. *International Social Science Journal*, 55(175), 89–98.
- Bayat, A., (1997). Un-Civil society: The politics of the “informal people”. *Third World Quarterly*, 18(1), 53-72.
- Solomon, B., (2000). Governance , economic settings and poverty in Bangalore. *Environment and Urbanisation*, 12(1), 35-56.
- Solomon, B., (2008). Occupancy urbanism: Radicalising politics and economy beyond policy and programmes. *International Journal of Urban and Regional Research*, 32(3), 719–29. Retrieved from <http://doi.wiley.com/10.1111/j.1468-2427.2008.00809.x>.
- Solomon, B., & Bhuvanewari, R., (2011). Illegible claims, legal titles, and the worlding of Bangalore. *Revue Tiers Monde*, 206(2), 37–54. Retrieved from <http://www.cairn.info/revue-tiers-monde-2011-2-page-37.htm>.
- Bhan, G., (2013). Planned illegalities, housing and the “failure” of planning in Delhi: 1947-2010. *Economic & Political Weekly*, xlviii(24), 58–70.
- Bhide, A., (1980). The regularising state. *Economic and Political Weekly*, 49(22), 92–100. Retrieved from <https://books.google.com/books?hl=en&lr=&id=HHVIU-HsMswC&oi=fnd&pg=PP16&dq=%22city+network%22%7C%22urban+network%22%7C%22network+of+cities%22+population%7Csize+centrality%7Cbetweenness%7Ccloseness%7Ceigenvector+correlation&ots=1oOCM7mbJr&sig=P-u3dUJDVp073>.
- Chamaraj, K., (2017). Urban poor lack a roof over their head. *India Together*, 1–5. Retrieved from <http://www.indiatogether.org/urban-poor-lack-a-roof-over-their-head-poverty>.
- Chatterjee, P., (2004). *The politics of the governed: Reflections on popular politics in most of the world*. New York: Columbia University Press.
- Chatterji, R., & Mehta, D., (2007). *Living with violence: An anthropology of events and everyday life*. New Delhi: Routledge.
- Chaudhry, S. et al. (2018). *Forced evictions in India in 2017: An alarming national crisis*, Housing and Land Rights Network, New Delhi. Retrieved from https://www.hlrn.org.in/documents/Forced_Evictions_2017.pdf
- Chaudhry, S., & Kothari, M., (2019). *Adjudicating the human right to adequate housing: Analysis of important judgments from Indian high courts*. Housing and Land Rights Network, New Delhi. Retrieved from https://www.hlrn.org.in/documents/Housing_Judgments_India.pdf
- Comaroff, J., & Comaroff, J.L., (2006). *Law and disorder in the colony*. Chicago: University of Chicago Press.
- Damle, D., & Burman, A., (2020). *The challenge of building state capacity in the land administration in Rajasthan: Creating a regulatory administration in land*. National Institute of Public Finance and Policy.
- Das, S. (2000). A critical evaluation of land reforms in India (1950–1995). In B.K. Sinha, & Pushpendra (Ed.). *Land reform in India: An unfinished agenda*. New Delhi: SAGE India.

- Das, V., (2011). State, citizenship and the urban poor. *Citizenship Studies*, 15(3–4), 319–33.
- Das, V., & Walton, M., (2015). Political leadership and the urban poor. *Current Anthropology*, 56(S11), S44–54. Retrieved from <http://www.jstor.org/stable/10.1086/682420>.
- De Soto, H. (2000). *The Mystery of capital*. New York: Basic Books.
- Doebele, W. A., (1983). Concepts of urban land tenure. In H. B. Dunkerley (Ed.). *Urban land policy: Issues and opportunities*. Oxford: Oxford University Press.
- Doshi, S., & Ranganathan, M., (2017). Contesting the unethical city: Land dispossession and corruption narratives in urban India. *Annals of the American Association of Geographers*, 107(1), 183–99.
- Dupont, V., (2004). Socio-spatial differentiation and residential segregation in Delhi: A question of scale?. *Geoforum*, 35(2), 157–75.
- Dupont, V., (2005). Residential practices, creation and use of urban space: Unauthorised colonies in Delhi. *Urbanisation and governance in India*, 311–41. Retrieved from http://horizon.documentation.ird.fr/exl-doc/pleins_textes/divers17-07/010046727.pdf.
- Eckert, J., (2006). From subjects to citizens: Legalism from below and the homogenisation of the legal sphere. *Journal of Legal Pluralism*, 38(53–54), 45–75.
- Ghertner, D.A. (2011). Rule by aesthetics : World-class city making in Delhi. *Worlding Cities: Asian Experiments and the Art of Being Global*, , 279–306.
- Government of India. (n.d.) National Policy for Tribals. Retrieved from http://www.mcrhrdi.gov.in/87fc/policies/NATIONAL_POLICY_ON_TRIBALS.pdf.
- Government of India. (1988). National Forest Policy. Retrieved from <http://asbb.gov.in/Downloads/National%20Forest%20Policy.pdf>
- Government of India. (2017). The Report of Committee on State Agrarian Relations and the Unfinished Task in Land Reforms. New Delhi. Retrieved from https://dolr.gov.in/sites/default/files/Committee_Report.pdf.
- Gururani, S. (2013). Flexible planning: The making of India’s “millennium city,” Gurgaon. In Rademacher, A. M., & Sivaramakrishnan, K. (Ed.). *Ecologies of urbanism in India: metropolitan civility and sustainability* (pp. 119–43). Hong Kong: Hong Kong University Press.
- Hann, C., (2015). Property: Anthropological aspects. *International Encyclopedia of the Social and Behavioural Sciences*, 19, 153–59.
- Hanstad, T., Haque, T., & Nielsen, R., (2008). Improving land access for India’s rural poor. *Economic and Political Weekly*, 43(10), 49–56.
- Haritas, K., (2021). *In search of home: Citizenship, law and the politics of the poor*. Cambridge: Cambridge University Press.
- Harriss-White, B., (2003). *India working: Essays on society and economy*. Cambridge: Cambridge University Press.
- Holston, J., (2008). *Insurgent citizenship: Disjunctions of democracy and modernity in Brazil*. Princeton: Princeton University Press.
- Holston, J., (2009). Insurgent citizenship in an era of global urban peripheries. *City & Society*, 21(2), 245–67.
- Humphrey, C., & Verdery, K., (2004). Introduction: Raising questions about property. In (Ed.). *Property in question: Value transformation in the global economy* (pp. 1–28). New York: Berg Publishers.
- Haritas, K.I., (2008). *Citizenship, law and urban poverty: An analysis of the legal and political status of the urban poor in India*. Graduate Institute of International and Development Studies.
- Indian Institute for Human Settlements. (2020). *Property mapping in Maharashtra: Selecting a suitable survey technology*.

- Indian Institute for Human Settlements. (2015). *Land records modernisation technology transitions*. Retrieved from <http://iihs.co.in/knowledge-gateway/wp-content/uploads/2017/11/5.-Technology-Transitions.pdf>.
- Kumar, A., (2014). Estimating rural housing shortage. *Economic & Political Weekly*, 49 (26/27), 74–79.
- Kumar, S. (2020). Forest Rights Act Enables State Control of Land and Denies Most Adivasis and Forest Dwellers Land Rights. *EPW Engage*. Retrieved from <https://www.epw.in/engage/article/forest-rights-act-state-appropriation-land-rights> (January 19, 2022).
- Mahadevia, D., (2010). Tenure security and urban social protection links: India. *IDS Bulletin*, 41(4), 52–62. Retrieved from <http://doi.wiley.com/10.1111/j.1759-5436.2010.00152.x>.
- Mahadevia, D., Joshi, R., & Sharma, R., (2009). *Approaches to the lands for the urban poor*.
- Menon, N. (2010). Introduction. In (Ed.). *Empire and nation: Selected essays* (pp. 1–20). New York, Chichester, & West Sussex: Columbia University Press.
- Moore, S.F., (1973). Law and social change: The semi-autonomous social field as an appropriate subject of study. *Law & Society Review*, 7, 719–46.
- Ministry of Rural Development. (2008). *The national land records modernisation programme (NLRMP): Guidelines, technical manuals and MIS*.
- Nair, J., (2013). Is there an Indian urbanism?. In Rademacher, A. M., & Sivaramakrishnan, K. (Ed.). *Ecologies of urbanism in India: Metropolitan civility and sustainability* (pp. 43–70). Hong Kong: Hong Kong University Press.
- Rademacher, A. M., & Sivaramakrishnan, K. (2013). *Ecologies of urbanism in India: Metropolitan civility and sustainability* (Vol. 1). Hong Kong University Press.
- National Council of Applied Economic Research. (2020). *The NCAER land records and services index*.
- Nielsen, K.B., & Alf G.N., (2015). Law struggles and hegemonic processes in neoliberal India: Gramscian reflections on land acquisition legislation. *Globalisations*, 12(2), 203–16. Retrieved from <http://dx.doi.org/10.1080/14747731.2014.937084>.
- Patel, S., & Arputham, J., (2007). An offer of partnership or a promise of conflict in Dharavi, Mumbai?. *Environment and urbanisation*, 19(2), 501–8. Retrieved from <http://eau.sagepub.com/cgi/doi/10.1177/0956247807082832>
- Payne, G., (1996). *Urban land tenure and property rights in developing countries: A review of literature*.
- Payne, G., (2001). Urban land tenure policy options: Titles or rights?. *Habitat International*, 25(3), 415–29.
- Payne, G., Durand-Lasserve, A., & Rakodi, C., (2009). The limits of land titling and home ownership. *Environment and Urbanisation*, 21(2), 443–62.
- Ramanathan, U., (1996). Displacement and the law. *Economic and Political Weekly*, 31(24), 1486–91.
- Ramanathan, U., (2006). Illegality and the urban poor. *Economic and Political Weekly*, 41(29), 3193–97.
- Ramanathan, U., (2009). A word on eminent domain. In L. Mehta (Ed.) *Displaced by development: Confronting marginalisation and gender injustice* (pp. 133–45). New Delhi: Sage Publications.
- Ravi, R.R., & Mahadevan, S., 2018. Pooling Land for Development in Andhra Pradesh. *Urban Solutions* (13), 72–77. Retrieved from <https://smartnet.niua.org/sites/default/files/resources/urban-solutions-13-final.pdf>
- Robinson, E.J.Z., (2008). India's disappearing common lands: Fuzzy boundaries, encroachment, and evolving property rights, *Land Economics*, 84(3), 409–22.
- Roy, A., (2005). Urban informality: Toward an epistemology of planning. *Journal of the American Planning Association*, 71(2), 147–58. Retrieved from <http://www.tandfonline.com/doi/abs/10.1080/01944360508976689>.

- Roy, A., (2009). Why India cannot plan its cities: Informality, insurgence and the idiom of urbanisation. *Planning Theory*, 8(1), 76–87. Retrieved from <http://plt.sagepub.com/cgi/doi/10.1177/1473095208099299>.
- Roy, A., & AlSayyad, N., (2004). *Urban informality: Transnational perspectives from the Middle East, Latin America and South Asia*. Lanham, Boulder, New York, Toronto & Oxford: Lexington books.
- Roy, A. (2010). *Mapping citizenship in India*. New Delhi: Oxford University Press.
- Roy-Burman, B.K., (2006). Fifth Schedule of the Constitution and the Tribal Self Rule. *Indian Journal of Social Work*, 67(3) 315–325.
- Sharma, A., & Gupta, A. (2009). Introduction: Rethinking theories of the state in an age of globalisation. In A. Sharma, & A. Gupta (Ed.) *The Anthropology of the state: A reader* (pp. 1–42). Malden, Oxford, & Victoria: Blackwell Publishing.
- Srirangan, K., (1997). *Land policies in Delhi: Their contribution to unauthorised land development*. London: University College London.
- Srivastava, S., (2012). Duplicity, intimacy, community: An ethnography of ID cards, permits and other fake documents in Delhi. *Thesis Eleven*, 113(1), 78–93.
- Tarlo, E., (2003). *Unsettling memories: Narratives of the Emergency in Delhi*. London: Hurst and Company.
- Tellis, O., (2015). The right to home and hearth. *Sabrang*, 1–4. Retrieved from <https://www.sabrangindia.in/article/right-home-and-hearth>.
- Thara, K. (2022). SVAMITVA: A Socio-Legal Analysis (CSEP Working Paper 26). New Delhi: Centre for Social and Economic Progress.
- Turner, B. (2017). The anthropology of property.” In M. Graziadei, & L. Smith (Ed.). *Comparative property law* (pp. 26–48). Cheltenham & Northampton: Edward Elgar Publishing.
- Unnikrishnan, H., Mundoli S., Manjunatha B., & Nagendra, H., (2016). Down the drain: The tragedy of the disappearing urban commons of Bengaluru. *South Asian Water Studies*, 5(3), 7–11.
- von Benda-Beckmann, F., von Benda-Beckmann, K., & Wiber, M. (2006). The properties of property. In F. Benda-Beckmann, K. von Benda-Beckmann, & M. Wiber (Ed.). *Changing properties of property* (pp. 1–39). New York & Oxford: Berghahn Books.
- Wahi, N., (2015). The fundamental right to property in the Indian constitution. *SSRN Electronic Journal*, (2661212).
- Wahi, N., (2019). *Understanding land conflict in India and suggestions for reform*, Centre for Policy Research.
- Yiftachel, O., (2006). Re-engaging planning theory? Towards ‘South-Eastern’ perspectives. *Planning Theory*, 5(3), 211–22.
- Zimmer, A., (2012). Enumerating the semi-visible: The politics of regularising Delhi’s unauthorised colonies. *Review of Urban Affairs*, xlvii(30), 89–97.
- Ambarish, B. (2021, January 05). RTI Activist Challenges BDA Amendment Act. *Deccan Herald*. Retrieved from <https://www.deccanherald.com/city/top-bengaluru-stories/rti-activist-challenges-bda-amendment-act-in-hc-935294.html>.
- Angad, A. (2020, December 23). Explained: What Is the Pathalgadi Movement, and What Is JMM Govt’s Stand on It? *The Indian Express*. Retrieved from <https://indianexpress.com/article/explained/explained-what-is-pathalgadi-movement-and-what-is-the-jmm-govts-stand-on-this-7114979/>.
- Barik, S., (2020, October 29). NHRC Asks Odisha to Submit Report on Rehabilitation of Hirakud Dam Oustees. *The Hindu*. Retrieved from <https://www.thehindu.com/news/national/other-states/nhrc-asks-odisha-to-submit-report-on-rehabilitation-of-hirakud-dam-oustees/article32973522.ece>.

- Bhaskar, U., & Bhan. I. (2013, June 14). Ridge Projects under Scanner: MP to MoEF. *Business Standard*. Retrieved from https://www.business-standard.com/article/economy-policy/ridge-projects-under-scanner-mp-to-moef-106063001057_1.html.
- Business Standard. (2016, January 08). Karnataka Panel Confirms 11,000 Acres Lake Land Encroached in Bengaluru. *Business Standard*. Retrieved from https://www.business-standard.com/article/current-affairs/karnataka-panel-confirms-11-000-acres-lake-land-encroached-in-bengaluru-116010800849_1.html#:~:text=The Lakebed Encroachment Committee%2C a,was formed in September 2014.
- Chaturvedi, S. (2016, May 04). Land Reforms Fail, 5% Of India's Farmers Control 32% Land. *IndiaSpend*. Retrieved from <https://www.indiaspend.com/land-reforms-fail-5-of-indias-farmers-control-32-land-31897/>.
- Economic Times. (2016, December 14). HC Upholds Akrama Sakrama Scheme. *Economic Times*, Retrieved from <https://economictimes.indiatimes.com/news/politics-and-nation/hc-upholds-akrama-sakrama-scheme/articleshow/55974313.cms?from=mdr>.
- Hashmi, S. (2019, July 29). Delhi Matters: When Authorities Aid Encroachers. *The Wire*. Retrieved from <https://thewire.in/urban/delhi-matters-when-authorities-aid-encroachers>.
- (2013, October 28). Govt Aids Delhi Akshadham Temple's Illegal Sprawl. *Hindustan Times*. Retrieved from <https://www.hindustantimes.com/delhi/govt-aids-delhi-akshardham-temple-s-illegal-sprawl/story-SOkEWsjtJRbh1RaEWymrgP.html>.
- Idiculla, M.P. (2016, November 15). Multiple Faces of Akrama Sakrama Argument. *Citizen Matters*. Retrieved from <https://bengaluru.citizenmatters.in/scheme-unconstitutional-petitioners-against-akrama-sakrama-bangalore-8820>.
- Jitendra. (2016, November 24). Amendments to Century-Old Laws on Tribal Rights Spark Protests in Jharkhand. *DownToEarth*. Retrieved from <https://www.downtoearth.org.in/news/governance/amendments-to-century-old-tribal-rights-laws-spark-protests-in-jharkhand-56411>.
- Lalitha, S. (2020, August 21). "BDA Identifies 1,200 plus Illegal Structures." *New Indian Express*. Retrieved from <https://www.newindianexpress.com/cities/bengaluru/2020/aug/01/bda-identifies-1200-plus-illegal-structures-2177487.html>.
- Lopes, F., & Chari, M. (2021, February 10). In 12 Years, 11 States Changed Land Ceiling Laws, In Favour of Industry Over Farmers." *IndiaSpend*. Retrieved from <https://www.indiaspend.com/land-rights/in-12-years-11-states-changed-land-ceiling-laws-in-favour-of-industry-over-farmers-724650>.
- Manav, S. (2014, January 19). 55 Years on Bhakra Dam Oustees Await Resettlement. *Tribune India*. Retrieved from <https://www.tribuneindia.com/2014/20140120/haryana.htm#10>.
- Mohammad, A. (2020, May 29). Notification to Regularise Illegal Buildings on BDA Land. *Deccan Herald*. Retrieved from <https://www.deccanherald.com/city/notification-to-regularise-illegal-buildings-on-bda-land-843018.html>.
- Mohanty, P. (2020, December 14). Rebooting Economy 52: The Unfinished Agenda of Land Reforms Nobody Talks About. *Business Today*. Retrieved from <https://www.businesstoday.in/opinion/columns/story/indian-economy-the-unfinished-agenda-of-land-reforms-nobody-talks-about-landless-agricultural-labour-281494-2020-12-14>.
- Nath, S. R. (2016, June 29). Illegal and Unfair Acquisition of Mining Land in Korba. *DownToEarth*. Retrieved from <https://www.downtoearth.org.in/news/mining/illegal-and-unfair-acquisition-of-mining-land-in-korba-54627>.
- Pandey, K. (2021, April 14). 25 Years on, Many Indian States Haven't Implemented a Law That Empowers Adivasi Communities. *Scroll.in*. Retrieved from <https://scroll.in/article/988729/25-years-on-many-indian-states-havent-implemented-the-law-that-empowers-adivasi-communities>.

Press Trust of India. (2019, December 05). Parliament Passes Bill to Give Ownership Rights to Unauthorised Colonies' Residents in Delhi. *Economic Times*. Retrieved from <https://reality.economictimes.indiatimes.com/news/regulatory/parliament-passes-bill-to-give-ownership-rights-to-unauthorised-colonies-residents-in-delhi/72380535>.

Press Trust of India. (2020, June 30). Government Exempts Properties in Delhi's Unauthorised Colonies from Income Tax. *Economic Times*. Retrieved from <https://reality.economictimes.indiatimes.com/news/residential/government-exempts-properties-in-delhis-unauthorised-colonies-from-income-tax/76715054>.

Sridhar, P. (2014, February 11). Polavaram Project to Hit Konda Reddi Tribe the Most. *The Hindu*. Retrieved from <https://www.thehindu.com/news/national/andhra-pradesh/polavaram-project-to-hit-konda-reddi-tribals-the-most/article5676784.ece>.

Srivatsa, S.S. (2013, October 15). Akrama-Sakrama Setback for Law-Abiding Citizens? *The Hindu*. Retrieved from <https://www.thehindu.com/news/cities/bangalore/akramasakrama-setback-for-lawabiding-citizens/article5237839.ece>.

Tewary, A. (2018, April 14). The Pathalgadi Rebellion. *The Hindu*. Retrieved from <https://www.thehindu.com/news/national/other-states/the-pathalgadi-rebellion/article23530998.ece>.

The Hindu. (2020a, April 17). Cash-Strapped Karnataka Government Revives Akrama- Sakrama Scheme. *The Hindu*. Retrieved from <https://www.thehindu.com/news/national/karnataka/cash-strapped-karnataka-government-revives-akrama-sakrama-scheme/article31369327.ece>.

The Hindu, (2020b, September 26). Assembly Passes Land Reforms Bill for Removing Restrictions on Purchase of Land by Non-Agriculturists. *The Hindu*. Retrieved from <https://www.thehindu.com/news/national/karnataka/assembly-passes-land-reforms-bill-for-removing-restrictions-on-purchase-of-land-by-non-agriculturists/article32703574.ece>.

(2004, August 10). SC Rings Alarm Bells on Akshardham. *Times of India*. Retrieved from <https://timesofindia.indiatimes.com/india/sc-rings-alarm-bells-on-akshardham/articleshow/808853.cms>.

Times News Network. (2016, December 14). Akrama Sakrama May Now Cover Properties Built after October 2013. *Times of India*. Retrieved from <https://timesofindia.indiatimes.com/city/bengaluru/akrama-sakrama-may-now-cover-properties-built-after-october-13/articleshow/55971117.cms>.

(2019, December 14). Bengaluru: New Akrama-Sakrama Scheme Faces Legal Hurdles. *Times of India*. Retrieved from <https://timesofindia.indiatimes.com/city/bengaluru/bengaluru-new-akrama-sakrama-scheme-faces-legal-hurdles/articleshow/72580804.cms>

Yamunan, S. (2021, March 28). They Gave up Farmland for New Andhra Capital. Now They Are Crippled with Uncertainty. *Scroll.in*. Retrieved from <https://scroll.in/article/951454/they-gave-up-farmland-for-new-andhra-capital-now-they-are-crippled-with-uncertainty#:~:text=The land pooling scheme was,become high-value real estate>.

TV5 Kannada. (2020, January 28) . "BS Yeddyurappa Speech At Akrama Sakrama 2020 Event." Retrieved from <https://www.youtube.com/watch?v=K35n4mVSypQ>.

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