LAND IN INDIA

Issues and Debates

India Land and Development Conference- 2020

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About the Report

Land in India: Issues and Debates

Of late, land has increasingly been figuring in the global and local development paradigms, for positive as well as negative reasons. Land rights' champions, in particular, as well as development communities in general, are now seeing the signs of a global land-rights revolution brewing. More inclusive development now seems possible, with new hope of improving land records of excluded communities or rebooting green revolutions with women land rights or for that matter acknowledging and furthering the rights of indigenous communities for more effective conservation. This growing acknowledgement of the importance of land at global and local levels is also evident with concerns of land rights figuring prominently in some of the targets and indicators of the Sustainable Development Goals (SDGs)

In India, after the first wave of land-reforms during the 1950s and 1960s, land bounced back on the development agenda in a big way in the past two decades, with the Forest RightsAct 2006 (FRA), the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act-2013(LARR), Land leasing reforms, women's inheritance rights (HSA Amendments, 2005) and a revamped Digital India Land Records Modernization Program (DILRMP), all underlining and reiterating the centrality of land for development. A number of State Governments have also come out with various policies and programs to address the land question. Time seems to be now ripe to leverage upon these triggers and build a greater momentum and integrate it into the contemporary development policy, practice and research. Any such effort would be helped immensely from a systematic documentation of the key initiatives and a dispassionate analysis of their strengths and weaknesses both in design and implementation.

This report titled Land in India: Issues and Debates is part of an initiative under the aegis of India Land & Development Conference (ILDC) which has a long-term objective of bringing out an annual Status of Land in India volume. This report is a modest beginning in that direction by drawing on the works of ILDC partners to present a quick over view of some of the key developments and debates in India's land sector. The report brings together 11key issues which currently engage the minds of the policy makers and researchers in India. The themes covered in the report are: the status of land records computerization, dynamics of land conflicts, forced evictions and displacement, challenges of implementing the LARR and the Forest Rights Act, emergence of land pooling as an alternative to the acquisition of land, under-utilization of land acquired for Special Economic Zones (SEZ), progress in urban housing, liberalization of land leasing laws, status of women's land rights and tenure complexities of pastoral land. These themes are by no means exhaustive but we hope they do provide a quick overview of some of the key concerns around land as we enter the third decade of the 21st century. Chapters in the report underline the fact that some of the major concerns that plagued the land sector in India at the end of the last century have

continued unabated. While the Land Acquisition Act-2013 and the Forest Rights Act of 2006 had raised the expectations of bringing in much needed inclusion and equity in land distribution and acquisition, now we learn that these laws have encountered formidable challenges on the ground and objectives behind the legislative changes are far from being fully realized. Land conflicts and resultant litigation continue to bog down India's already over-burdened judicial system. This is the result of legal and procedural complexities, lack of state capacity and opaque records – the same old problems which continue to distort the land sector despite several reform initiatives. The Ease of Doing Business Index of the World Bank has repeatedly pointed to the poor land registration system in India as a cause of avoidable delays in starting new business. This, despite massive information-technology aided modernization of land registration system across the Indian States. Recently released NCAER Land Records and Services Index while recording impressive improvements in land records management in several of the states also reveals that nearly 25 years after the States began to deploy information and digital technologies for reforming land records management, 10 states and eight union territories have not yet been able to ensure even the minimum ease for citizens in obtaining basic land records such as record of rights and cadaster maps. The NCAER study says that these states and union territories still insist on a citizen visiting the offices of the revenue department to obtain a legally usable copy of the record of rights and cadaster maps. Another paradox of sorts in the land sector is that cases of land grabbing have increased tremendously during the same period which sawthe large scale modernization of land records management and land administration. This has forced States such as Karnataka to start Land Grabbing Prohibition Special Courts.

Continued problems in land sector despite legal and technological interventions to improve the system once again suggests, as the World Bank's Land Governance Assessment Framework report on India (2014) has noted, that the 'focus (of reform initiatives) has been on addressing specific gaps, often in an ad hoc manner, than on dealing with systemic issues and cutting across traditional institutional boundaries.'

The overall context and specific developments in land sector, therefore, call for a deeper understanding of the issues involved. The range of reform initiatives undertaken and the lessons learnt need to be systematically reviewed and shared not only for better policy responses but also to draw substantive theoretical insights. We hope that this report will make a beginning in promoting such a deeper and more comprehensive understanding of the entire gamut of issues that affect land and development in India.

Editors:

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Status of Land Records Digitization in India: NCAER's Land Records and Services Index

- Prerna Prabhakar
- Charu Jain
- Anika Kapoor
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- Somnath Sen

Making land available for large-scale investment opportunities as well as for its use as a productive asset by the poor in a dispute-free environment is essential for development. This in turn is critically dependent on access to accurate and up-to-date land and property records. The Government of India has been making efforts in this direction since the launch of the Computerisation of Land Records (CLR) scheme in 1987-88. However, despite three decades of successive programmes, studies indicate a mixed record of the digitisation of land records and the registration process across States/UTs. In this context, the National Council of Applied Economic Research has come up with the NCAER Land Records and Services Index (N-LRSI 2019-20) to assess the status of land records digitisation across the country. The assessment is based on the following specific questions for all the States and Union Territories (UTs): (i) What is the actual extent of digitisation of land records and the registration process? (ii) What is the improvement in key citizen services brought about by this digitisation process? (iii) What is the improvement in the quality of land record brought about by the digitisation process?

Digitisation of Textual and Spatial Records

The starting point was to understand the extent to which land records exist in relation to the total geographical area of a State/UT. The data collected for this revealed that in four States, land records in a written or digitised form are only available for a negligible proportion of their respective areas. These states are Mizoram, Nagaland, Meghalaya, and Arunachal Pradesh. The land records of Jammu & Kashmir and Ladakh are yet to be digitised and made available on the web. Sikkim, Chandigarh and Kerala have not made the digitised land records available on the web. As a result, these nine States/UTs were not assessed on the parameters relating to digitisation of land records.

Out of the 28 States/UTs that made digitised textual records available for the entire area or some area of the State/UT on the web, digitised cadastral maps were available for 13 States/UTs. In addition, Kerala had cadastral maps on the web that were test-checked.

Availability of Legally Usable Copies

A basic service that a digitised land record facilitates is the citizen's ability to obtain copies of

the record for various purposes. The information obtained through Knowledge Correspondents (KCs) about the extent to which legally usable copies of the Record of Rights (RoRs) and Cadastral Maps (CM) can be accessed with ease, yielded the following information: (i) Nine States and three UTs make available a legally usable digitally signed copy of the RoR and CM respectively to anyone accessing the record on the web; (ii) Ten States and three UTs make available a legally usable digitally signed copy of the RoR and CM respectively through e-service centres; and (iii) Ten States and eight UTs still insist on a person visiting a departmental office for a legally usable copy of the RoR and CM respectively.

Computerisation of Registration:

An increase in the computerisation of the registration process is itself taken to be an indicator of improvement in the level of services available to clients since it both cuts down time entailed in availing of the service, and enhances transparency in the process. The N-LRSI measured the computerisation of the registration process with respect to digital availability of the following five stages: (i) facility for online entry of data with regard to the proposed registration; (ii) online updated circle rates; (iii) facility for online payment of stamp duty/registration fee/ e-stamp; (iv) online verification of payment/ scrutiny of requisite details and completion of the registration process with digital signature; and (v) immediate delivery of the digitally-signed registered document.

Quality of Land Records:

In assessing the quality of the land records, the following five elements were analysed: Updating ownership, extent of joint ownership, land use, land area or extent, and recording encumbrances. All these elements bear a relationship with the incidence of dispute and the ease with which transactions in land are effected.

Ease of Access to Land Records and Services:

The digitisation of land records is of value only if those whom it is meant to serve can access the record with ease. An exercise was undertaken to assess the ease with which records can be accessed on various parameters. The exercise revealed that repeated attempts were required to retrieve RoRs in seven States/UTs, and to retrieve CMs in three States/UTs. In 12 States/UTs, there were instances of mismatches in the spellings of village names in the land records portals. Only four States/ UTs had an on-screen 'Help/Frequently Asked Questions (FAQs)' facility to assist the users. The balance 25 States/UTs did not have any such on-screen aid, making it potentially difficult for users to figure out which tab to click, and where/how to look for information they wanted to obtain. Site translations (or bilingual, typically in the local State/UT language and English) were available on the portals of West Bengal, Telangana, and Tamil Nadu only (Delhi had a portal with a mix of English and Hindi). Overall, a number of quick improvements for improving user access are possible in all the States/UTs.

Prospects for Improvements:

The N-LRSI 2019-20 results highlight the following areas of possible improvement in performance

(i) States and UTs can make quantum improvements by quickly surveying the unmapped inhabited areas and creating a record for these areas. This must include urban lands, a hitherto neglected category, which records a high intensity of transactions.

(ii) The Government of India needs to consider ways of standardizing the terms and indicators against which the States and UTs can upload authenticated data, and whence a central portal like that of the DoLR can pick up real-time data for collation and reporting.

(iii) Other areas where States and UTs can rapidly improve their digitisation include real-time attestation of mutations; linking databases like birth and death registers and genealogical tables (attached to RoRs in some States/ UTs); recording tenant possession of rented built-up properties; noting civil court litigation; and reflecting changes in land use or start of acquisition or planned changes in land use.

(iv) Some States and UTs provide leadership in the specific dimensions that others can profitably follow without having to go through the whole process again. These include easily navigable websites and up-to-date portals to assist clients; virtual registration (for example, as started by Maharashtra); the linkage between RoRs and registration databases to generate a note in the textual records on the registration of a property transaction; recording all ownership in built-up vertical spaces like apartment blocks; and linking records of cooperative societies or drawing on municipal property tax records. States/

UTs need to hasten digitisation of the spatial record and giving legal legitimacy to the area actually recorded where it shows greater congruence with the on-ground situation than the area noted in the RoR. Some States and UTs appear to have made progress in linking the institution of revenue court cases with the textual records and other States/UTs can follow this lead. States/UTs that have digitised records and are yet to make these available on the web, need to do this on a priority basis.

(v) For the Government of India, the N-LRSI offers a great opportunity in many aspects. At the minimum, it can help the Government seek better quality while attempting the up-dation of information on the DoLR websites by States/UTs. The States/UTs can be requested to make up-dation a real-time exercise by standardising the links to relevant databases. States/UTs can also be requested to carry out more quality checks of their records. Most important, the Government of India can explore approaches for rewarding and recognising States/UTs that perform better on this Index so that the others are incentivised to improve and race beyond the front-runners.

The first round (2019-20) of construction of the N-LRSI primarily used supply-side data (and proxies for measuring the access for preliminary citizens) for assessing the extent of digitisation and gauging the quality of land-records- related services offered. For the second round (N-LRSI 2020-21), a demand-side survey of citizens is proposed to be added to gauge the level of public awareness and appreciation of the digitisation process, and the services it has enabled, as elicited by a primary survey of users. This may also occasion a change in weightage of the components of the Index since many States/UTs will be able to show rapid progress in increasing coverage and improving accuracy.

The Index is timely and now poised to attract the attention of the relevant stakeholders. If it gains traction from the Government of India, States/UTs and citizens at large, the Index could become a bellwether of improved land governance in India.

New Land Acquisition Act and Its Discontents

❖ Shashi Singh

Introduction:

Making land acquisition work in a way that is transparent and fair has become a key development issue, and there is growing concern that current development processes are undermining people's associations to their land and livelihood. However, the social and economic progress of many developing countries depends on resolving land conflicts, converting customary rights into statutory law and making compensation mechanisms work in the interests of project affected people.

Unresolved conflicts over land tenure significantly augment the financial risk for projects, as well as their overall potential to contribute to local and national development. Many large-scale land acquisition projects in resource rich economies in Asia, Africa and Latin America are stalled or have been withdrawn due to delays in land acquisition, social conflicts, ecological concerns, and cost overruns among other issues. Although, tenure issues are too complex for individual project developers to resolve independently, mitigating social and financial risks provides a strong incentive for the governments to contribute to clarifying and securing tenure rights, improving compensation policies and addressing the overall impact of land acquisition on locally affected communities.

Environmental justice atlas, a FP-7 European Commission funded project in its first phase between 2011 & 16, documented the land and ecological conflicts across the world. And in this survey India was ranked one in having the maximum number of land conflicts in the world followed by Colombia, Brazil and China. EjAtlas survey maps the category of project and nature of conflict in particular region. The overall global data also provide a sense of growing community's concerns over land and natural resources that is affecting their lives and livelihoods. India recorded 296 land conflicts spread across various states and categories of projects. These projects range from mining, dams, thermal power plants, industrial corridors, highways, nuclear power etc. The data clearly reflects the scale of social unrest around land acquisition projects and level of awareness among people to assert their rights and represents their concerns. Undoubtedly, the vibrant functional democracy and presence of active civil societies in India has contributed in reporting these cases and highlighting these issues to the media, legislatures and the judiciary.

The Rights and Resources Initiative (RRI), a Washington based advocacy group along with Tata Institute of Social Sciences (TISS, Mumbai) and Indian School of Business (ISB, Hyderabad) conducted a vast study between 2016-18, to get clarity on number of stalled projects across India and the industrial investments at risk. The RRI study used the data from Centre for Monitoring Indian Economy (CMIE) and used the CAPEX data of infrastructure projects signed at the time of MoU with the Govt. of India. The RRI (2018) report analysed the 331 ongoing land conflicts across various states, involving acquisition of 12 lakhs hectares of land, displacing 32 lakh people across the country. Infrastructure projects account

for almost half of the land related conflicts and these projects range from thermal power plants, mining, highways, industrial corridors, dams etc. Another significant finding from the study was three quarters of these land related conflicts involved common lands either forest or non-forest. That indicates the consciousness among non-titled holders to assert their land claims and entitlements that are often ignored during the land acquisition process.

Among 331 projects, 40 percent of the land-related conflicts involved forest lands, regions were customary rights of the indigenous communities are not recognized. That provides an understanding that even after 10 years of enactment of Recognition of Forest rights Act 2006, the transfer of land titles (patta) to forest dwellers is still an unfulfilled agenda. In 60 percent of the reported land conflict cases, the land acquisition by the government has been seen as the major reason behind land conflicts. And lastly, the districts affected by left wing extremism and schedule V areas (that are also rich in minerals) have 1.5 times greater number of land conflicts compared to the national average and together they account for one third of the total number of people affected by conflicts. These conflicts are geographically spread across the country, even in the newly formed Telangana. My own previous and ongoing research and associated work with other institutions would like to highlight that there are three major reasons recorded around land disputes have been 'dissatisfaction with the compensation amount', 'environmental impact of the projects' and 'expropriation of public lands' (common land). Our ongoing IDRC study reflects that there are several challenges at the institutional and administrative levels, and considering the awareness among people it will be difficult to realise these investments on the ground until their concerns are settled.

The Journey:

Land Law:

In India, the colonial Land Acquisition Act of 1894 was used by the state for over 120 years to acquire land for 'public purposes.' The colonial law was challenged several times in the court of law due to its inadequacies and its detrimental social and economic implications on the project-affected communities. The very definition of 'public purpose' to determination of 'fair compensation' and its being inhumane on the issues of resettlement and rehabilitation (R&R) were among the grounds on which the law was legally challenged. The Act nowhere mentioned R&R to be a legal obligation on the land acquiring body. The colonial government was under no obligation to justify its acts, and the very purpose of land acquisition was to create business opportunity for the colonial government and extract profits out of India.

The UPA government during its second term (2009-14) started deliberating on a new land acquisition law and after long parliamentary deliberations the 'Right to Fair Compensation and Transparency in Land Acquisition Resettlement and Rehabilitation Act (RFCTLARR Act 2013) was passed in 2013.

Conceptualization of 'Just' & 'Fair' Land Acquisition Act:

The title of the new Act itself signifies the rationale of the Act and it attempts to create a robust legal framework to ensure that the project affected families are provided with enough 'social safeguards' to protect their socio-economic interests and they are not deprived off in the post displacement period. The act has a detailed pre-land acquisition notification procedure and starts with a mandatory execution of Social Impact Assessment (SIA) study (to be conducted by an independent agency appointed by the district administration), and reviewed by an independent 'expert committee' (EC) at the State government level. Only after the detailed evaluation of the 'social implications' of the project and overall 'cost-benefit analysis' of the potential project the EC can decide to 'decline' or 'approve' further land acquisition procedures. The act also has a mandatory provision of 'free prior informed consent' (FPIC) of the landowners and R&R provisions for 'livelihood losers'. In order to address the issues of 'inadequate compensation' the act increases the solatium to 100 percent (which was 30 percent in the colonial law) and introduces a multiplication factor of 1-2 to be applied on the prevailing government circle land rate (1 for Urban and up to 2 for Rural land acquisition projects). Section 11 (5) of the act requires administrator to update the land records after preliminary notification in the project-notified area within a period of 2 months, so that potential affected families with unclear land tenure becomes eligible for compensation and rehabilitation benefits. Overall; the act touches on all the prominent issues that has been the major reasons behind land conflicts across the country and then government anticipated that the central act will be implemented in its true spirit to address the historic injustice embedded in the colonial act.

In 2014, the BJP government came into power and attempted bringing two ordinances to dilute the provisions of SIA and the consent clause to exempt certain categories of projects. Undoubtedly, the pressure to introduce these

ordinances came from the industry as there was an unanimous position that such 'impractical' 'over ambitious' act will create unnecessary hurdles and will delay land acquisition process. The ordinances allowed the government to exempt five categories of projects from provisions such as SIA, prior consent and limits on acquisition of irrigated multi crop agricultural land. These five categories are: (1) national security or defense (2) rural infrastructure (3) affordable housing (4) industrial corridors (5) infrastructure projects including PPP projects where the central government owns the land. One significant amendment as part of ordinance, promulgated on December 31, 2014, brought 13 central acts in conformity with the land acquisition legislation of 2013 only in terms of the rehabilitation and resettlement package. However, the actual rigors laid down by the land acquisition legislation, including survey of land, identification of beneficiaries and social impact assessment, were not made mandatory under the 13 central acts.

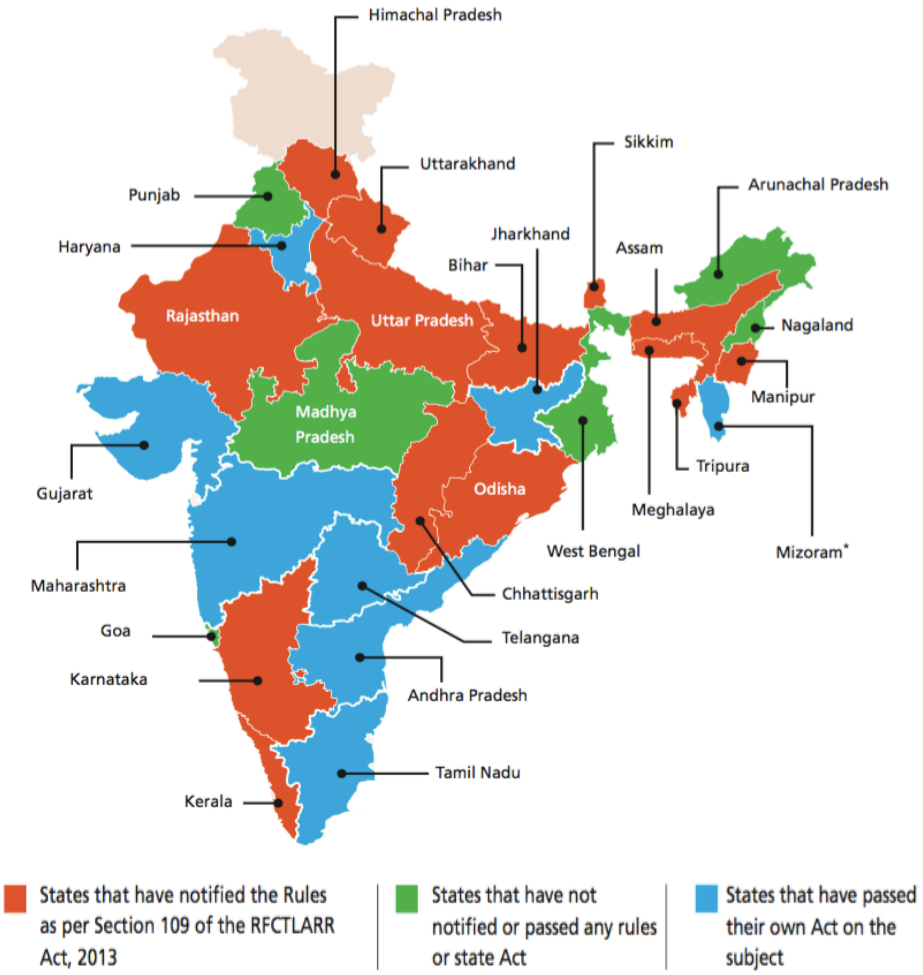
These ordinances faced massive opposition from the political parties including BJP's own allies, forcing the Centre to withdraw the ordinances.

The government also decided to leave it to the discretion of the state governments to make their own land acquisition rules.

Since then several state governments came up with their own state specific laws. These state laws primarily revolve around the issues of exemption of certain projects from various provisions of the original Act including SIA compliance.

In 2015, central rules were notified to develop a guiding framework for RFCTLARR Act. Since then 14 State Governments have notified their own rules under Section 109 of the Central Act. These Rules have adopted certain provisions of the 2015 Land Ordinance too, thereby circumventing the scope of the 2013 Act. Four States (Goa, Madhya Pradesh, Punjab and West Bengal) have not notified any rules or state act.

Figure 1: Approach of State Governments



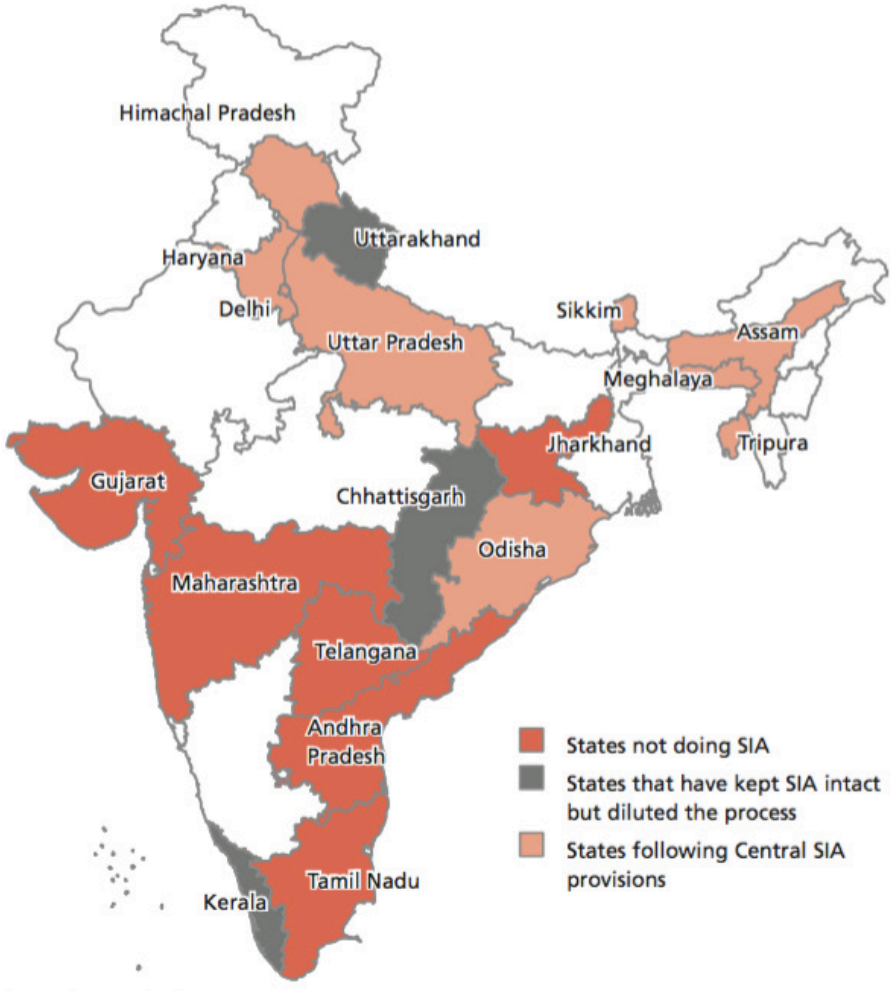
Source: CSE 2018 (Details Obtained Through RTI)

Social Impact Assessment (SIA) - Stumbling Block or a Useful Tool?

The execution of SIA study is a standard practice across the world. SIA is a critical tool to assess the potential impact of the project on the local community and to develop a plan in advance to mitigate adverse effects of the project. It helps in developing a realistic plan for successful resettlement and rehabilitation of the project-affected families. Since its introduction in the central law, SIA has been perceived as a stumbling block in the process of land acquisition. Sates like Andhra Pradesh, Gujarat, Maharashtra, Telangana, Tamil Nadu and Jharkhand have removed the requirement of conducting SIA for those five categories of projects. Maharashtra government has moved further and exempted projects under industrial areas and estates. The Tamil Nadu government has also exempted three more laws from SIA and the consent clause by amending the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997, The Tamil Nadu Highways Act, 2001 and Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978. A significant number of land acquisitions is carried out under these three acts.

The Government of Gujarat in order to keep its image of 'industry friendly state' has incorporated all the provisions of the ordinance into its State Act of 2016. The statement of objects and reasons of Gujarat's amended Act, makes it clear that its aim is to dilute the stringent provisions of the existing law and make the lengthy and difficult process of land acquisition 'smooth and easy'. The amendment exempts projects under national security, rural infrastructure, affordable housing, industrial corridors and other infrastructure projects, including projects under public private partnerships from the provisions related to SIA, and consent.

Figure: Status of SIA in the States



Source: Down to Earth 2018

Compensation

To address the injustice embedded in the colonial Act, the RFCTLARR Act introduced the principles of developing fair compensation models through application of multiplier factors to the government circle rate (i.e., 1 for urban and 1-2 for rural areas). The rationality behind keeping a range of 1-2 was to apply multiplier on case-to-case basis so that geographically isolated villages can benefit out of the enhanced compensation and do not suffer due to suppressed land rate prevailing due to imperfect land market and low land transactions in such areas. In order to simplify the land acquisition procedure primarily from the administration point of view, Madhya Pradesh introduced the multiplier factor of 1 for the entire state. But the circle rate prevailing near Jabalpur, Bhopal or Indore might be very different from the circle rate of Sidhi, Singrauli and Chattarpur. The state should not be seen in a homogenous manner as the socio-economic-cultural conditions prevailing in districts might be very different from each other. It should be the responsibility of the land acquisition officer to analyze projects on case-to-case basis and apply multiplier factor accordingly to design compensation package suited to respective locations. The Act does not specify the guidelines behind applicability of the multiplication factor. Mere distance of the project sites from the closest urban center is a generic understanding to address the issue of 'inadequacy of compensation'. The multiplier factor should be used to tackle the complexities of loss of livelihood along with the depressed circle land rate due to land market imperfections or regional backwardness. The loss of common property resources or the dependency on forest resources on which the local community heavily depends is never accounted in the model of compensation. The enhancement of monetary compensation by some calculations is not going to resolve the issue of loss of livelihoods of the displaced communities. The moot question still remains to be answered: Can compensation prevent impoverishment? Unless the model of compensation addresses the question of loss of livelihoods, no amount of enhanced monetary compensation can improve the socio-economic conditions of the project displaced families.

Institutions and Reality Check

The land acquisition procedure at district level is carried out by officials of the State Revenue Department (Patwari, Revenue Inspector or Circle Officer, Tehsildar) and further administered by the Sub-Divisional Magistrate and District Magistrate. The Revenue Department is primarily responsible for land acquisition notification procedures and necessary approvals to carry forward the work at the district level. So primarily, it remains the prerogative of the district administration to 'successfully' or 'unsuccessfully' carry forward the land acquisition activities. The RFCTLARR Act 2013 is highly ambitious in its expectations from district administration to conduct activities such as updating of land records in a period of two months, identification of livelihood losers, sharecroppers, conducting SIA, obtaining free prior informed consent etc. Undoubtedly, both the Land Acquisition Act and the Mining Act emphasize fair identification of beneficiaries and distribution of benefits to the local people. However, to realize the objectives of these Acts and achieve their implementation in true spirit, the local institutions need to be oriented and strengthened. It is easier at the state level to make strategic amendments and get rid of the progressive provisions of the central Act, but that does not resolve the reasons for land conflicts on the ground. The challenge is to work with these institutions and prepare them to take up new roles for the betterment of the local community, and regional development.

Conclusion:

Land has been and will continue to be a central fault line in near future and have the potential to radically alter the existing fault lines in politics and also development policies. As discussed earlier, almost all Maoist violence is sourced and concentrated in the land especially forestland or mining land where compensation and rehabilitation has become a shame. No amount of compensation is enough when a robust and inalienable right to livelihood is not inbuilt in the quantified models of compensation. Some would prefer 'monetary compensation' based on 'informed consent' whereas many would still prefer to transvalue the compensation in terms of "who they are, where they are coming from and what they will be in future"—the classical communitarian questions are not amenable to easy resolution. This shows why democracies are often vulnerable to pressures from land struggles whereas authoritarian political systems (Our Chinese Cousins) often offer swift answers. The classical political economy question of "land" thus still remains unresolved; perhaps modernity's future rests on the resolution of this question, though the proponents of neo-age economy would not like to believe that land still matters!

Understanding Land Conflicts in India

❖ Namita Wahi

An estimated 7.7 million people in India are affected by conflict over 2.5 million hectares of land, threatening investments worth $ 200 billion. [1] Land disputes clog all levels of courts in India, and account for the largest set of cases in terms of both absolute numbers and judicial pendency. About 25% of all cases decided by the Supreme Court involve land disputes, of which 30% concern disputes relating to land acquisition.[2] Again, 66% of all civil cases in India are related to land/property disputes. [3] The average pendency of a land acquisition dispute, from creation of the dispute to resolution by the Supreme Court, is 20 years.[4] Since land is central to India's developmental trajectory, finding a solution to land conflict is one of the foremost policy challenges for India.

Incidence and Pendency of Land Conflicts

Legislative and administrative factors are responsible for the high incidence of legal and extralegal conflicts over land, and judicial factors are behind the pendency of land disputes. Competing historical and current policy narratives of property rights over land, have resulted in the coexistence of numerous, conflicting laws leading to legal disputes over land. This is the legislative factor. This problem is compounded by administrative failure to comply with the rule of law. This is the administrative factor. The pendency of conflict, in turn, is a result of legal and evidentiary barriers in bringing land disputes to court, largely due to administrative and judicial incapacity; this prevents expeditious resolution of land disputes. This is the judicial factor.

Conflicting narratives, policies and land laws:

There are two conflicting narratives about ownership and management of land in India. The first narrative – inherited from the British colonial state[5] – views common land, or land that is not privately owned, as merely a commodity, no different from labour and capital, with the state as the ultimate owner.[6] This claim to ultimate ownership gives the state the power to redistribute land at will, as largesse to selected beneficiaries.[7] Such state acquisition of land has historically been the source of considerable dispute. According to estimates by CPR's Land Rights Initiative (LRI), these disputes constitute 30% of all land litigation in the Supreme Court over the past 70 years. LRI's comprehensive study of land acquisition litigation before the Supreme Court over a 66-year period, from 1950 to 2016, reveals that all litigation is with respect to privately held land. In contrast, data from the Land Conflict Watch project reveals that the vast majority of current, on-ground, extralegal conflict over land is with respect to common lands.[8] Thus, it is clear that in the face of state acquisition of land, when people have legally recognized land rights, they go to court. Where their rights are insufficiently recognized by law, they protest on the ground.

The second narrative – articulated by the 'people', including farmers, both landowners and tenants; and other traditional communities,

such as cattle grazers, forest dwellers, tribals and fisherfolk – views land as an economic, social and cultural resource over which multiple groups exercise property rights. Usually, after intense on-ground contestation, the property rights of certain groups like Scheduled Tribes (STs)and tenants have been protected by the Constitution[9] and statute,[10] while in case of other groups like fisherfolk,[11] their rights are protected by custom and, often, executive action.

As a consequence of these two historically competing policy narratives, the constitutional, legislative and administrative framework governing land is as fragmented as the land holdings in India.[12] Enacted at different points of time, land laws clash with each other, because they seek to articulate in law these two competing narratives. For instance, the provisions of the Forest Rights Act, 2006, are in conflict with those of the Indian Forest Act, 1927, and the Forest Conservation Act, 1980, and are also threatened by proposed amendments to the Indian Forest Act.[13] Legal conflicts also arise when laws are enacted or amended at different times to appease different stakeholders. For instance, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act has, in the five years since it came into force, been amended by seven state legislatures.[14] This will likely create more legal disputes with respect to land acquisition, because the original RFCTLARR Act provisions had been included with a view to addressing growing conflict over land acquisition.[15] Moreover, in many states, we find laws that provide for eviction of unauthorized occupants over public lands coexisting with laws that provide for regularization of unauthorized occupation, thereby creating potential for dispute/conflict at the level of law itself.[16]

Finally, the legislative landscape is complicated by the fact that many subjects pertaining to 'land' are in the 'state' and 'concurrent' lists of the Constitution, leading to a multiplicity of original and active land laws.[17] Yet, there is no official comprehensive database of all land laws in India. A first of its kind, ongoing LRI study estimates that India has over a thousand original and active central and state land laws.[18]

The problem of 'multiple laws' is exacerbated by the fact that these laws are administered by numerous government ministries at the central level, and departments at the state level. These include, for instance, the ministries of Law and Justice, Rural Development, Mining, Industries, Infrastructure, Urban Development, Tribal Affairs, Home Affairs and Defense.

Administrative non-compliance:

Where laws are clear, disputes and conflicts arise because of administrative non-compliance with the rule of law due to both unwillingness and incapacity. The LRI study of all Supreme Court cases on land acquisition during 1950-2016 shows that 95% of the disputes arose because of administrative non-compliance with the legal procedure for acquisition of land, including the process of computation of market value compensation for land acquired.[19] Around 34% of the disputes involved irregularities in completion of the procedure for acquisition. Almost half of such cases concerned with procedural irregularities involved administrative unwillingness to comply with the rule of law. The remaining half of the cases involved administrative incapacity to comply with the rule of law, in part because of governmental failure to regularly update administrative manuals based on changes in the law. Moreover, the government was more likely to lose than win these land disputes before the Supreme Court.[20]

Additionally, since colonial times, land in India has been broadly administered by the revenue and forest departments. But there have also always existed disputes between both departments as to which land belongs to which department. This in turn creates and prolongs land disputes.

Finally, legal disputes over land are also created by evidentiary barriers for establishing rights over land in the absence of documentary proof[21] because of outdated/no land surveys[22] and inaccurate/outdated land records[23] in most states. The Department of Land Resources has sought to resolve the problem of inaccurate land records through the 'Digitisation of Land Records Modernisation Programme'. However, unless the government makes a serious attempt to update land records on the ground to reflect the property rights of all landowners, digitizing them would not eliminate the problem of inaccurate land records.

Judicial incapacity

Once a land dispute goes to court, serious judicial incapacity leads to pendency of disputes. First, a major cause for pendency of all disputes is India's low judge-to-people ratio.[24] Land cases form more than half of all civil cases and constitute over a quarter of cases before the Supreme Court; they also have the longest pendency compared to other cases. Hence low judge-to-people ratio particularly prolongs resolution of land disputes. Second, the judiciary, particularly at its lowest levels, lacks the financial, technical and infrastuctural capacity necessary to resolve disputes quickly.[25] Finally, poor enforcement

of court decisions by the government, and limited judicial capacity to follow up on such enforcement, especially when such decisions go against the government, also lead to prolonging of land disputes.

Policy Recommendations:

Eliminate legal conflicts. No government has ever attempted an exercise to rationalize existing land laws. But this is the need of the hour. The Law Ministry and Law Commission are best positioned to conduct or commission such an exercise. This would involve, first, the creation of an exhaustive database of all land laws in India. Once such a database of laws is created, the Law Ministry and Law Commission must identify, and Parliament must repeal, laws that deny rights of certain groups of people, particularly women,[26] and eliminate genuine conflicts between laws.

Improve administrative willingness and capacity to implement the rule of law: The government must take steps to ensure greater administrative capacity and willingness to implement the rule of law. In addition, we need greater coordination between government departments dealing with land, transparency of land administration, and better access to land data. This can be achieved by undertaking the following measures.

- The Department of Land Resources, currently under the Ministry of Rural Development, is the nodal agency for coordination of land policy across states. But land is not merely a rural concern. As India becomes increasingly urbanized, the government needs to have a more comprehensive imagination of land requirements for rural and urban populations. The creation of a separate Ministry of Land to serve as the nodal agency for coordinating land policy across different types of land is critical.
- There needs to be a coordinated effort between the Ministry of Law and Justice, Department of Land Records, Ministry of Environment and Forest, Ministry of Tribal Affairs, state boards of revenue, and state forest departments to resolve conflicting land laws and streamline land administration.
- All government departments dealing with land, and particularly those involved in land acquisition, must update administrative manuals in accordance with changes in legislation and judicial precedent.
- Through dedicated interdepartmental meetings and other coordination, government must resolve land boundary disputes between the revenue and forest departments.
- The government must devote financial and technical resources to conduct land surveys and update paper records to reflect property rights of all the people, as opposed to digitization of existing records that are substantially inaccurate.
- The government must ensure better skills training so that officials dealing with land have both the knowledge and the capacity to implement the rule of law. Institutional mechanisms should be designed to incentivize compliance with, not defiance of, the rule of law.
- Given the low success rate of government appeals, the government must carefully evaluate the likelihood of success of an appeal before pursuing it. Government officials must be incentivized to not appeal cases that have little likelihood of success following such an evaluation. This would go a long way in reducing pendency of land disputes.
- The government must wholly commit to transparent land administration and comply with its obligations under the Right to Information Act, 2005, to make digitally accessible all land laws, executive notifications, rules, circulars, etc. pertaining to land administration. In addition, the government must open up to public scrutiny departmental data on compliance with land laws.
- In addition to legislative and administrative reforms, judicial reforms can go a long way towards reducing the pendency of land litigation in India. The first step in this direction would be the implementation of key recommendations of the Law Commission. [27] These include:
- Changing the base for determining sanctioned posts for judges from 'Judge: Population Ratio' to 'Rate of Disposal Method[28]
- Filling up all existing vacancies
- Increasing the retirement age of subordinate judges to 62; and those of High Court and Supreme Court judges to 65 and 68 years respectively.
- Greater financial allocations to the lower and higher judiciary, to enable infrastructure, technical and skills upgradation

Some states like Bihar have created separate land tribunals for expeditious resolution of land revenue cases. This model should be studied, and if found effective, should be replicated in other states.

Conclusion

Land conflict in India, both legal and extralegal, has existed from colonial times because of the imposition by the British state of the notion that

all land not privately held belongs to the 'state'. This concept has been continuously resisted by the 'people' who were disempowered by the colonial state's deprivation of their legal property rights under precolonial administration. Over time, competing 'state' and 'people' narratives over land have led to conflicting policy and legal interventions. This has, in turn, led to legal disputes over land. Even when laws are clear, administrative failure to comply with the rule of law, due to unwillingness and incapacity, contributes to the incidence and pendency of land disputes. Serious judicial incapacity in turn prolongs pendency of land disputes.

Due to the increasing population pressure on land, and the corresponding demand for land to fuel the development engine, the scale and scope of land conflict today has assumed gigantic proportions, stalling development projects and threatening livelihoods and investments. Equitable and efficient intergenerational management of land is necessary not just for India's economic development, but also for its political and social stability. Therefore, working towards resolving land conflict, in light of the above policy recommendations, is an imperative agenda for the new government.

[1] Land Conflict Watch, https://www.landconflictwatch.org/.

[2] This is based on preliminary findings from a CPR Land Rights Initiative study, and is also consistent with findings from a comprehensive quantitative study of the Supreme Court's caseload between 1993 and 2011. See Nick Robinson, 'A Quantitative Analysis of the Indian Supreme Court's Workload', Journal of Empirical Legal Studies,10(3) (2003): 570-601.

[3] Daksh, 'Access to Justice Survey, 2016', http://dakshindia.org/wp-content/uploads/2016/05/Daksh-access-to-justice-survey.pdf.

[4] Namita Wahi et al., 'Land Acquisition in India: A Review of Supreme Court Cases from 1950 to 2016' (New Delhi: CPR, 2017).

[5] Articles 294 and 295 of the Indian Constitution stipulate that the Indian state succeeds to all property, claims and assets of the British state.

[6] B.H. Baden Powell, The Land Systems of British India (Oxford University Press: 1892); B.H. Baden Powell, A Manual of Jurisprudence for Forest Officers Being a Treatise on Forest Laws (Calcutta, 1882).

[7] An LRI study estimates that there are 102 laws of land acquisition alone, including state amendments to the Land Acquisition Act, 1894. Supra note 4.

[8] 'Land Conflicts in India: An Interim Analysis', https://rightsandresources.org/en/publication/land-conflicts-india-interim-analysis/.

[9] Article 244(1) and Article 244(2), read with the Fifth and Sixth Schedules respectively, create special protections for land rights of Scheduled Tribes in geographically demarcated areas, known as Scheduled Areas.

[10] Starting with the Bengal Tenancy Act, 1885, almost each agrarian state has laws protecting tenancy rights. Similarly, the Forest Rights Act, 2006, recognizes land rights of Scheduled Tribes and other forest dwelling communities.

[11] A prolonged movement has sought the enactment of a Fishing Rights Act, along the lines of the Forest Rights Act.

[12] 86.21% of all land holdings in India are small and marginal holdings taken together (0.00-2.00 ha). See Census of India.

[13] Nitin Sethi et al., 'Modi government plans more draconian version of colonial-era Indian Forest

Act', The Wire, 21 March 2019, https://thewire.in/rights/modi-government-plans-more-draconian-version-of-colonial-era-indian-forest-act

[14] These include the states of Tamil Nadu, Gujarat, Rajasthan, Maharashtra, Telangana, Andhra Pradesh and Jharkhand. See Namita Wahi, 'How central and state governments diluted the historic land legislation of 2013', The Economic Times https://economictimes.indiatimes.com/news/politics-and-nation/how-central-and-state-governments-have-diluted-the-historic-land-legislation-of-2013/articleshow/63764378.cms.

[15] Jairam Ramesh et al., Legislating for Justice: The Making of the 2013 Land Acquisition Law (New Delhi: Oxford University Press, 2015); Namita Wahi, 'The Story of Jairam Rajya' India Today, June 2015, https://www.indiatoday.in/magazine/books/story/20150622-jairam-ramesh-land-acquisition-law-book-819874-2015-06-11.

[16] Ongoing LRI study on 'One Thousand Land Laws'.

[17] Article 246 read with the Seventh Schedule of the Constitution of India.

[18] CPR 'Land Laws' Database; see: https://www.cnbctv18.com/legal/hundreds-of-indian-land-laws-cause-confusion-conflict-researchers-2640041.htm.

[19] Wahi et al., 'Land Acquisition in India'.

[20] Ibid. p. 28.

[21] Sections 61-64 of the Indian Evidence Act, 1872, emphasize that documents must be proved by primary evidence, that is, presentation of the document itself. However, many people with legally recognized land rights do not have documentary proof for the same. This makes judicial resolution of land disputes extremely difficult.

[22] Much of the northeastern part of India, including the state of Assam, has never been fully surveyed. The last full land survey for the state of Bihar happened in 1950s-1960s.

[23] Former Minister for Rural Development notes that the state's failure to fairly compensate those who lost land under the 1894 Act arose due to inaccurate land records, rampant undervaluation of sale deeds, and absence of land markets in many rural areas. See Ramesh et al., Legislating for Justice.

[24] Two reports – the 245th Law Commission Report on 'Arrears and Backlog: Creating Additional Judicial (Wo)man) power' (2014), http://lawcommissionofindia.nic.in/reports/Report_No.245.pdf, and the 230th Law Commission Report on 'Reforms in the Judiciary: Some Suggestions', http://lawcommissionofindia.nic.in/reports/report230.pdf – highlight this as a major cause for disputes.

[25] Ibid.

[26] Bina Agarwal, 'Gender and Legal Rights in Agricultural Land in India', Economic and Political Weekly A39 30(12) (March 1995).

[27] Supra note 24. (Q: Pl give direct source)

[28] 245th Law Commission Report, 29.

Land For Housing: Forced Evictions and Displacement

❖ Shivani Chaudhry

Radha, a single mother, found herself homeless and out on the roadside with her five young children, after government authorities demolished her small home without any notice or provision of alternative housing. She lives alongside a drain, still awaiting resettlement that she is entitled to from the state. Vijaya, the mother of a nine-year-old, lost her job as a domestic worker after being evicted from the banks of Cooum River in Chennai. Gulabi, an older woman from the Gadia Lohar community, has to bathe in the open with her clothes on, ever since authorities demolished her settlement in Mansarovar Park, Delhi. Razia,* has had to drop out of school after being relocated to the remote site of Perumbakkam in Chennai. These are just four of the over 460,000 people forcefully evicted from their homes, across India, in 2017 and 2018. The unheard voices hold countless stories of pain, devastation, and insecurity but the underlying thread that binds these narratives—the root cause for their inadequate living conditions and eviction from their homes—is the failure of the state to provide them with tenure security and recognize their human rights to adequate housing and land.

Inadequate Housing and Living Conditions

Despite a plethora of housing-related schemes at the central and state levels and the government's rhetoric of providing 'Housing for All by 2022,' India is faced with a housing and land crisis. This is largely characterized by the complex politics around land; an acute shortage of low-cost housing, manifesting in rising homelessness and the prevalence of a large number of inadequate settlements with tenure insecurity and abysmal living conditions; forced evictions and displacement; and, increased financialization of housing and land, including through property speculation.

Distress migration to urban areas and natural urban population growth coupled with the severe shortage of affordable housing options have led to at least 65–70 million people[1] living in inadequate settlements ('slums' in official discourse) without access to essential services. Over 71 per cent of these settlements are considered 'unrecognized' by the state while over 65 per cent of them are 'not notified' [2] even though they have existed for decades and their residents hold official government documents recognizing their habitation. The inability to afford any form of shelter has resulted in an estimated one per cent of the urban population or about four million homeless urban dwellers, living in abject poverty and extreme vulnerability.

The actions of the state along with economic policies and market-based approaches that consider housing and land as commodities not human rights, continue to cause and exacerbate homelessness evictions, displacement, landlessness, gentrification, and the denial of housing and land rights, especially for women. Property speculation furthers the unaffordability crisis, while climate change and disasters increase risks, vulnerability, loss of housing, and displacement. The continued occurrence of home demolitions and evictions—through direct and

indirect means—is also fueling the housing crisis, including rising homelessness across the country.

Evictions and Displacement: A Crisis

Housing and Land Rights Network, India (HLRN)[3] has been documenting forced evictions in India through its National Eviction and Displacement Observatory. The absence of social housing policies forces millions of people to live in inadequate conditions, generally on state-owned land, without security of tenure. However, such housing of the poor continues to be considered "illegal" or an "encroachment" and thus demolished arbitrarily and often with state impunity. While there is no official data on evictions or displaced persons in India, HLRN's primary and secondary research reveals that central and state government authorities across India demolished over 95,400 houses of low-income communities in 2017 and 2018, implying that at least 132 homes were demolished every day or over five homes destroyed every hour, with about 26 people being forcefully evicted every hour[4] These figures, though deeply disturbing, only reflects cases known to us, and thus present a partial picture of this burgeoning but unreported national crisis. Furthermore, we have documented that at least 11.3 million people, across the country, live under the threat of displacement[5].

The majority of evictions occur without due process, including notice, consultation, and adequate resettlement. They result in increased impoverishment; loss of livelihoods; a rise in homelessness; violence against women and children; and, the loss of education of thousands of children whose only dream is to study and escape the cycle of entrenched poverty that they were born into. The act of forced eviction has severe long-term impacts, some which last a lifetime. But regretfully, it is not recognized as a human rights violation in India.

Though the phenomenon of evictions is ubiquitous across the country, data is not easily available. An analysis by HLRN reveals four broad reasons for government-led home demolitions: 'City beautification' and 'slum-clearance' [affecting 46–47 per cent of evicted persons]; infrastructure and ostensible 'development' projects [25–26 per cent]; environmental projects, wildlife protection, and conservation [about 17 per cent]; and, disaster management efforts [eight per cent][6].

Most of the evictions in the country are not carried out for "exceptional circumstances" as required by the United Nations (UN) Basic Principles and Guidelines on Development-based Evictions and Displacement[7] This is evident in the demolition of homes of over 216,000 people for 'city beautification' and 'slum-clearance' drives in 2017 and 2018. The perception that 'beautification' involves removing the poor and 'slum-free city' implies destroying homes of low-income groups is indicative of a disquieting discrimination against the most marginalized. Furthermore, the notion that the poor should suffer for the perpetuation of a certain vision of national growth continues to be at the forefront of many evictions. Infrastructure and ostensible 'development' projects, including expansion of roads, resulted in at least 130,000 people losing their homes in 2017 and 2018. While such evictions are justified on the grounds of 'public purpose,' the term is ill-defined, even in law, and widely misused. Also, the population that benefits from such projects is different from the one that pays the price for them. Affected persons are seldom compensated for their losses or rehabilitated, especially when they are not recognized as legal landholders.

In most instances, affected communities are not provided advance notice of the eviction or sufficient time to remove their belongings from their homes and thus incur extensive losses. Forced evictions occur throughout the year, including in harsh weather conditions. The majority of evictions in 2017 and 2018 took place in the extreme temperatures of summer and winter. In many instances, authorities carry out evictions prior to school examinations or during the academic year, thereby greatly impeding children's ability to continue with their education.

Research by HLRN indicates that the vast majority of those evicted by the state in the last few years have not been resettled. Some form of resettlement/alternative housing was provided in only about 30 per cent of the documented cases of eviction in 2018. Affected persons, thus, have to generally make their own provisions for alternative housing or are rendered homeless. Where state resettlement policies exist, unconstitutional tools of 'eligibility criteria' and 'cut-off date' exclude affected families. For the minority that passes the test of 'eligibility,' the sites where they are resettled are generally situated on city margins and devoid of adequate housing and basic services, including access to livelihoods, healthcare, water, and education. Moreover, relocated persons normally do not receive security of tenure over the land or housing provided to them and thus live in great insecurity.

In Chennai, communities living along water bodies were evicted, allegedly for disaster mitigation purposes, while over 70,000 more families face the threat of imminent eviction. The relocation sites, however, are in low-lying, flood-prone areas, raising questions about the motive

for these mass evictions[8].

The processes followed before, during, and after evictions generally result in the violation of multiple human rights of affected persons, including their human rights to life, health, adequate housing, land, work/livelihood, food, water, sanitation, education, security of the person and home, information, participation, and freedom of movement and residence. Often, people get injured during demolitions, and in a few instances, people have died in the aftermath of evictions, as a result of being forced to live out in the open in the cold or heat. Women and children are the worst affected by the impacts of forced eviction, displacement, and failed resettlement, and suffer loss of education, health, and livelihoods. In the absence of secure housing, women and girls also become increasingly vulnerable to gender-based violence, including sexual violence and trafficking.

Though India has ratified international law guaranteeing housing as a human right, and while the Supreme Court of India and several High Courts have upheld the right to housing as an inalienable component of the fundamental right to life, successive governments have not complied with this legal and moral obligation. Ironically, court orders resulted in over 52,000 people losing their homes in the year 2018.

Inequality in Access to Land

India's housing crisis, including the pervasive prevalence of forced evictions, is linked to the politics of land as well as issues of access to, control over, and use of land. The different application of laws and processes for the rich and poor is most evident in the way the state approaches the issue of land. Private ownership is the only legally recognized system and those unable to afford property or live within formal arrangements are considered 'illegal,' even though they are responsible for the stewardship, development, and enhanced productivity of land resources in urban and rural areas, and contribute to the economy with their productive work. It is only the absence of low-cost housing options that forces the poor to build homes on state land. But as a custodian of land for the people, the government has a legal and moral responsibility to protect people and their habitats, not to demolish houses built incrementally over years of hard work and hard-earned income.

Examples from Chennai, Delhi, Mumbai and even smaller cities like Bhopal and Indore show how the state is increasingly usurping public land on which the majority of the urban poor live for profitable enterprises. In addition to evictions, 'redevelopment' policies, including of agencies such as the Delhi Development Authority and Mumbai's Slum Rehabilitation Authority, have pursued public private partnerships (PPP) to develop land under low-income settlements by forcibly moving residents into dense, poorly-constructed, high-rise structures. This frees up the area for commercial interests that benefit more affluent residents and real estate developers. Such models, however, promote the privatization of public land and further reduce the land area occupied by the poor, who already live on a very small proportion of the city's land. For instance, in Delhi, 'informal'/peoples' settlements—comprising over thirty per cent of the city's population—are estimated to be situated on less than five per cent of the land. Instead of helping to improve living conditions of the poor, this model of redevelopment merely entrenches poverty, without leading to an improvement in the standard of living of residents. Such schemes also directly increase homelessness, as those who cannot fulfil the stringent and often impractical eligibility requirements are denied housing. Very often, such housing is located on city peripheries, which again denies relocated people their rights to work, education, and healthcare, and adequate housing. While state governments use the excuse of land shortage as the reason for such 'peripheralization' of the urban poor, information on land use, land availability, and land-based planning is not available in the public domain.

Several national constitutions as well as the New Urban Agenda 2016, which India has committed to implement, have upheld the principle of the 'social function of land' that recognizes the role of land in promoting equality and justice in society. For instance, **Article 183 of** the Brazilian constitution requires land to fulfil its social purpose and permits redistribution if it fails to do so. If used without interruption or opposition for five years as a home for a family in urban areas, land is considered to be serving a social function and residents' rights over that land are legally recognized. The City Statute of Brazil also recognizes this right to land for housing. In contrast, in India, the statutory period of limitation for possession of immovable property is 30 years in the case of government/state/public property. However, even when communities have been living at a site for over 30 years, they are not accorded legal rights over that land, and often witness arbitrary evictions. Integrating the principle of 'social function of land' and revising norms for 'adverse possession' for housing in India would help prevent violations of rights of the poor, while also protecting them from evictions.

In rural areas, according to the Socio-economic Caste Census of 2011, 56.4 per cent of households or 101.4 million households do not own land while 53.7 million (30 per cent) households consist of landless labourers[9], who face the worst deprivation. Though land ownership is highly inequitable, land reform has not been a priority across the country, with the average land given to rural landless families falling from 0.95 acres in 2002 to 0.88 acres in 2015[10]. The draft National Land Reforms Policy 2013[11] has still not been finalized by the central government. Instead, forced land acquisition and land pooling policies are being promoted, which result in loss of tenure, and in many instances, displacement and increased marginalization of landless agricultural labourers[12].

Financialization of Housing and Land

The growing reliance on the private sector to meet India's housing shortage has promoted greater financialization, reducing housing and land from human rights to marketable commodities for those who can afford them. This trend is not unique to India; it has manifested as a major global crisis meriting urgent attention[13]. Such market-based approaches also result in evictions and displacement, including from the inability of affected persons to afford rental housing and from the modification of leasing arrangements.

Though the Indian government has set ambitious targets under the Pradhan Mantri Awas Yojana (PMAY) or 'Housing for All by 2022' scheme, the favoured model of the government is that of PPP, which aims to facilitate private sector participation in housing construction and delivery. In September 2017, the Ministry of Housing and Urban Affairs announced a PPP Policy for Affordable Housing, [14] which constitutes six different PPP models for private investment in 'affordable housing' projects on government land in urban areas. The continued lack of an adequate and income-based definition of 'affordable housing', however, has fuelled misuse. The real estate sector leverages the notion of "affordability" to fund housing developments for the middle class instead of low-income groups who are in dire need of adequate, low-cost housing. This is reflected in a recent report that reveals that almost 50 per cent of unsold housing stock in nine cities in India is in the 'affordable housing' segment, [15] thus further raising questions about affordability for whom?

The current focus on creation of land banks and aggrandization of land and other natural resources of local communities by the corporate sector and the state highlights increased privatization and the resultant loss of land and displacement. Increasingly, climate change mitigation projects and 'renewable energy' projects, including dams, are also resulting in displacement of indigenous/tribal and other local communities from their homes and lands.

The continued practice of eviction and displacement in urban and rural areas without due process, including adequate rehabilitation, not only contravenes India's national and international legal obligations, it also moves the country further away from any attempts to implement the Sustainable Development Goals, especially the goal of "leaving no one behind" and its corollary of "pushing no one behind."

Recommendations

Given the magnitude of the housing and land crisis and the resultant human rights violations, there is an urgent need for the Indian government to promulgate right to housing legislation as well as a right to homestead law that would guarantee landless persons some land for housing and subsistence livelihood purposes. In a positive move, Madhya Pradesh adopted such a law in 2017, which could be replicated in other parts of the country. The government also needs to impose a national moratorium on evictions, investigate incidents of forced eviction, and take action against officials found guilty of violating legal processes. As stipulated by the UN eviction guidelines, [16] 'eviction impact assessments' should be carried out prior to the implementation of projects and plans involving relocation/displacement.

A major shift in housing and land policy is required in order to integrate a human rights approach focusing on the most marginalized. Policies must not be restricted to numerical targets but should be about housing and land justice, about enabling the realization of an adequate standard of living for all, including the human rights to adequate housing, food, water, and land. The government should invest sufficiently in adequate low-cost housing, with a focus on social rental housing[17]. Evicted, displaced, and homeless/landless families must be prioritized in all state housing schemes, including PMAY. The 'Housing First' approach followed in several countries could be adopted in India, as it has proven successful in reducing the incidence of homelessness by focusing on the provision of permanent housing to homeless persons.

Housing and land can no longer be addressed in disparate policies; they should be upheld as human rights and the inalienable link between them must be recognized and reflected through a cohesive and integrated policy response.

Similarly, urban and rural issues must be addressed along the same habitat continuum and not in isolation by different ministries with little coordination and overlap. In addition, there is an urgent need for human rights-based land reform in urban and rural areas, including for gender-based agrarian reform.

People across India are demanding recognition of their rights over the land on which they live along with access to finance and technical assistance to build their homes and invest in their livelihoods. They require legal security of tenure, especially women, which includes not only freehold ownership but also models of rental housing, cooperative housing, collective tenure, and community land trusts[18]. Such tenure options could help address the housing and land crisis by developing durable, people-centred solutions along a continuum; preventing arbitrary evictions; and, facilitating a shift away from the market-driven model of home ownership, which has failed to meet the needs of the most marginalized. The Odisha Land Rights to Slum-dwellers Act 2017, is a step in the right direction, as it aims to provide tenure security to the urban poor. Similar legislation could be adopted across the country, ensuring that the most marginalized individuals, groups, and communities are able to benefit.

Indian laws should incorporate the principle of the 'social function of land', which implies recognizing the importance of equality in land distribution and use as a means to promote social justice. Finally, India should implement recommendations of UN human rights mechanisms and fulfil its national and international legal obligations. The adoption of a human rights approach through the guarantee of secure rights over housing and land, especially for women, would help promote gender equality, mitigate impacts of climate change, and advance India's implementation of the Sustainable Development Goals, while ensuring the realization of an adequate standard of living for all, which would enable everyone to live in peace, security, safety, and dignity.

[1] The Census of India 2011 recorded 13.7 million 'slum' households in urban areas.

[2] Census of India 2011.

[3] For more information, see: www.hlrn.org.in

[4] See, Forced Evictions in India in 2017: An Alarming National Crisis, Housing and Land Rights Network, New Delhi, 2018. Available at: https://www.hlrn.org.in/documents/Forced_Evictions_2018.pdf

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Housing the Urban Poor:Understanding Policy Shifts

❖ Atanu Chatterjee

Introduction

India is facing the challenge of providing affordable and adequate housing toits growing urban population, especially the urban poor (Sen Gupta 2015). In 2011,the estimated housing shortagein urban India was 18.78 million which has reduced to 10 million unitsin 2017(Table 1). To meet this shortage thePradhan Mantri AwasYojana (PMAY) was introducedin 2015 (Kanwar 2019, GOI 2015). PMAY is the recent addition to the long list of schemes and programs aimed at addressing the housing problems of the urban poor.Earlier, the urban housing policies and programswere shaped by specific and ad hoc interventions like environmental improvement and provision of basic services to alleviate urban poverty (Mathur 2009).However, since the 1990s as the country adopted market-oriented economic reforms,there was a shift in the approach which envisagedarolefor the state and local governments to create an enabling environment for the market and other actors including NGOs and CBOs in the provision of housing to the urban poor (Tiwari and Rao 2016, Hingorani 2011, Sengutpta 2015, Wadhwa 2009).. PMAY is the continuation of the recent shift in the national urban housing policy in India started with the introduction of Jawaharlal Nehru National Urban Renewal Mission (JnNURM) in 2005. This shift is articulated through the provision of affordable housing to the urban poorhouseholds created a 'new urban grammar' in the progressive development and housing provision in India (Bhan 2017).

Table 1: Scenario of Housing Shortage in India	
Category of Households	**Number (in Millions)**
Households living in non-serviceable katcha houses	0.99
Households living in obsolescent houses	2.27
Households living in congested	14.99
Households in homeless condition	0.53
Total	18.78
Distribution of Housing Shortage among Different Economic Categories	
Economically Weaker Sections (EWS)	10.55(56.18)
Lower Income Groups (LIG)	7.41(39.4)
Middle Income Groups and Above (MIG and above)	0.82(4.38)
Total	18.78(100)
Source: Report of the Technical Group on Urban Housing shortage (TG-12) 2012-17	

This paper explores how the urban housing policy approaches and priorities have changed over time with changing actors and institutional mechanisms.moreimportantly;the paper describes how the housing needs and aspirations of the urban poorhave been internalized in these policy approaches. The changing policy discourse and increasing reliance on the market for the provision of housing has implicationsfor the role of the State in the provision of housing for the urban poor.

The paper is structured as follows: the first section of the paper revisits the major housing policies and programin the initial years of independence when the provision of housing to the urban poor households was interlinked with the broader the political and economic ideology of thewelfare state. The second section discussed the housing policy shiftduring seventies. The third section provides an overview of the shift in the housing policiesin the liberalization era when the role of the government in housing provision shifted to become enablers and facilitators rather direct providers. In the fourth section, therecent approach to housing the urban poor is discussed. The Introduction of JnNURM marks the clear shift in the urban housing policyin India when the government initiates policy reformsand legislations in the provision of affordable land,housing and basic infrastructure to the urban poor households. Ultimately, tracing the historical trajectories of housing policies and program, it is possible to generate some useful insights towards the prospect of housing for all in in urban India.

Early Policy Initiatives

The initial years of housing policy in India was shaped by the commitment of a strong state to providing housing to the socially and economically disadvantaged population (Hingorani 2011, Sengupta 2015, Weakley 2016,Table 2). During this phase, housing problem was linked to the(un)affordability and the government focus was on bridging the gap between the need and the demand by reducing cost and price of housing (reducing construction cost and building materials), making available subsidized housing (through slum clearance and relocation schemes and public housing), and making credit available for housing (setting up HUDCO for this purpose) and through direct price control through instruments such as Rent Control Act (Wadhwa 1988, Hingorani 2011, Sengupta 2015, Tiwari and Rao 2016). Although the initial phase had set the path for institution building and public intervention in land and housing market,the approach met with limited success because a majority of the housesconstructed under public housing projectswas not delivered to the intended beneficiaries and also because of the lack of community participationin such projects(Sivan and Karupannann 2002, Hingorani 2011, Wadhwa 1988).

Table 2: Changing Housing Polices and Program for urban poor in India
1950-60s
Slum and squatters were seen as nuisance and welfare state intervened in the direct provision of housing to the low income households
Major Initiatives • Subsidized Housing Scheme for Industrial Workers and Economically Weaker Sections(1952) • Low Income Housing Scheme(1954) • Slum Clearance and Improvement Scheme (1956) • Rental Housing for the State Government Employees(1959) • Rent Control Act(1961)
1970-90
Slum was seen as solution andGovernment focused on environmental improvement and up gradation of existing settlement and the provision of land, infrastructure and services within the holistic 'shelter' approach
Major Initiatives • Site and Service Scheme (1970-80) • Slum Upgradation Program(1980) • Environment Improvement for Urban Slums (1972) • Urban Basic Services(1986) • Establishment of Housing finance industry (Housing and Urban Development Corporation in 1970; National Housing Bank in 1987, Housing Development Finance Corporation in 1977) • First Draft National Housing Policy (1988) • Urban Land Ceiling and Regulation Act (1976) • Tenure regularization Program in different states (Madhya Pradesh Patta Act 1984; Rajasthan Regularization of katchibastis1971; Andhra Pradesh Slum Improvement (Land Acquisition) Act, 1956)
1991-2005
Government role in housing and urban development shifted to become enablers and facilitators rather than being direct providers. on the focus was fostering partnership between different actors including market in the provision of housing
Major Initiatives • 74th CA provided constitutional status to ULBs and devolved various functions including urban poverty alleviation and economic development • Final National Housing Policy(1994) • National Housing and Habitat Policy (1998) • Urban Basic Services for the Poor(UBSP) • National Slum Development Program(1996) • ValmikiAmbedkarAwasYojana (2001) • SwarnajayantiShahriRozgarYojana(1997) • Various innovative city level interventions like Slum Rehabilitation Scheme in Mumbai and Slum Networking program in Ahmedabad
2005-2020
Cities are engine of growth; to unlock the potential of slum land;The government initiates policy reforms and legislations to encourage private sector to invest in the housing sector and in the provision of affordable land and housing to the urban poor households
Major Initiatives • Jawaharlal Nehru National Urban Renewal Mission(2007) • National Urban Housing and Habitat policy (2007) • Rajiv AwasYojana(2009) • Affordable Housing in partnership (2013) • Pradhan Mantri AwasYojana (2015) • National Rental Housing Policy (2015) • Various state-level affordable housing policies(like Rajasthan Affordable Housing policy,2009, Gujarat Affordable Housing Policy 2014)
Sources: Compiled from Hingorani, 2011, Mathur, 2009, Acharya and Parikh, 2002, Tiwari and Rao, 2016

Policy Shifts during 1970s

During 1950s and 60s the slums were seen as a problem and strategies had been adopted to remove them and tohouse slum dwellers in public housing projects often in the periphery of the city. However, due to the changing economic and political circumstances and the limited success of public housing projects, the governmentemphasized improving the living condition of existing slums and the provision of basic infrastructure and services(Hingorani, 2011). During 1970s and 1980s, thegovernment introduced schemes and programs such as slum upgrading scheme and environmental improvement scheme which not only reflected the changing perception on slums but also took into consideration the housing needs and priorities of the urban poor(Wirlin,1999, Wadhwa 1988, Table 2).Most importantly, there was a growing concern for reducing urban poverty and a multi-pronged approach was adopted to improve the living condition of the urban poor (Mathur 2009, Table 2). At the same time, many states like Andhra Pradesh, Madhya Pradesh,Rajasthan implemented land tenure regularization programs where Pattahad been issuedto the urban poor households (Banerjee 2002). State Housing Boards were set up during this period. Housing and Urban Development Corporation was set up in 1970.The urban land Ceiling and Regulation act was also introduced during this time and theextra land was then redistributed amongst the poor.

However with the introduction of Draft National Housing Policy in 1988 (Second draft in 1990 and finally National Housing Policy in 1994) made an important shift in the policy towards housing sector in India. There was no housing policy until then. Housing was neither a Constitutional right nor a priority concern; rather the housing need of the urban poor was addressed through various fragmented policy approaches (Tiwari and Rao 2016, Table 2). The National Housing policy for the first time recognized "shelter ranks next to food and clothing as basic human need" and acknowledged the role of the state in securing "adequate and affordable shelter" and facilitated other actors to play a role in housing provision (Kumar 1989, Also cited in Hingorani, 2011). In 1990, the National Housing Board was also established to promote and regulate housing finance and to mobilize larger resources for housing (SivamandKaruppannan, 2002).

Housing in the Era of Liberalization

A significant shift in housing policy discoursesin India happened in the 1990s with the growing importance of urban centres in the national economy and the reorientation of urban policy and programs to the macroeconomic context (Mathur 2009, Table 2).This particular housing policy regime speaks the language of decentralization, privatization and partnership, participation, community empowerment. Various state governments pursued housing policies and programswith the active involvement of diverse actors including private sector and NGOs in housing provision(Sengupta 2007). Notable, the slum rehabilitation scheme in Mumbai and Slum Networking Programme in Ahmedabad was two significant initiatives demonstrate how the planning, managing, implementing and financing of urban development and housing project has been shared by various actors including the urban poor households. However, Acharya and Parikh noted that although the new approach acknowledged the role of community and fostered partnership,it made urban poor more vulnerable to market forces (Acharya and Parikh, 2002, p. 312).

Recent Shift in housing Policy Approaches in India

Jawaharlal Nehru National Urban Renewal Mission (JNNURM), an investmentcentric and reform-driven program was introduced in 2005 to enable cities to meet the contemporary urban challenges and addressing urban poverty (Mathur 2009, Tiwari and Rao 2016,Hingorani 2011). JNNURM with its two separate sub-missions - Urban Infrastructure and Governance (UIG) and Basic Services for the Urban Poor (BSUP) -was unique in the sense that it combined provision of grant and financial assistance to the mission cities with the urban sector reform like elimination of laws that constrained the functioning of the land and housing market; elimination of the pricing regime that impedes the flows of investment into urban infrastructure, undertaking tax reforms particularly property taxation so as to bring about fiscal viability among municipalities, increasing accountability and efficiency of the local government and safeguarding the interest of the urban poor (Mathur 2009, p. 33).

The second sub-Mission Basic Services to Urban Poor (BSUP) brought various major themes for urban poverty alleviation and addressing housing problem for the low income households:Firstly, the integrated development of slums including the provision of security of tenure and affordable housing and basic services. More importantly, in the provision of housing and basic services, the sub-mission emphasized on slum up-gradation over relocation to minimize the effects on livelihood and community social network .Secondly, Internal earmarking within local body

budgets for basic service to urban poor; Thirdly, Earmarking at least 20-25 percent of developed land in all housing projects (both public and private agencies) for EWS and LIG category with a system of cross subsidization((Mathur 2009, GoI 2009). However, the implementation of JnNURM brought limited success. It was criticized for fragmented, project-driven approach, the lack of community participation and emphasis on new construction over slum upgradation severely impacted the lives of the urban poor households (Hingorani 2011, Patel 2013).

The National Urban Housing and Habitat Policy introduced in 2007 focuses on the provision of "Affordable Housing for All" with special emphasis on the vulnerable sections of society such as Scheduled Castes/Scheduled Tribes, Backward Classes, Minorities and the Urban Poor" (GOI 2007, P.11).Further, the habitat policy emphasizes "Public Private Partnership" for housing delivery through the cross-subsidy mechanism (GOI 2007, Sengupta 2015). Many state governments devised their own affordable housing policies to meet the housing shortage especially for the urban poor households (Box 1). For example, Rajasthan is one of the first states to formulate affordable housing policy in 2009 to reduce housing shortage in the states through Public-Private Partnership. The policy encourage private developer to construct housing especially for the EWS/LIG by providing them various incentives like TDR/ FSR/FSI (Government of Rajasthan, 2009).One of the innovative schemes implemented by the West Bengal Government during this phase was Rajarhat New township scheme (famously known as Sukhobristi Model), a larger hybrid mass housing project providing housing to the lower and middle income group(Sengupta, 2015)

The announcement of Rajiv AwasYojana (RAY) in 2009 is also an important step at the national level to deal with urban poverty and slums. The scheme run from 2010-2013 aimed for a "Slum Free India" by encouraging the States and the Urban Local Bodies(ULBs) to bring existing slums within the formal system, to provide basic amenities and infrastructure and tackle the shortages of urban land and housing that keep shelter out-of-reach of the urban poor (MHPA, 2009a).RAY promoted the strategies of in-situ slum redevelopment (development of slums after the demolition of the existing slums) and slum upgradation (development of the entire slum by filling gaps in housing and infrastructure) with granting of 'Property right' to the urban poor to achieve the vision of "inclusive and equitable cities" (GoI 2013, p.9, Mathur 2009). Since its inception, 120,000 houses were approved in 116 cities but only 1154 units have been built which is only 16% of the project. In the present context, various cities like Behrampur, Odisha and Ahmedabad, Gujarat implemented in-situ slum redevelopment and rehabilitation project under RAYand the results were mixed.In 2015, the Government of Indiaannounced the closure of JNNURM and RAY and initiated "PMAY at the national level (Housing and Land Rights Networks 2016).

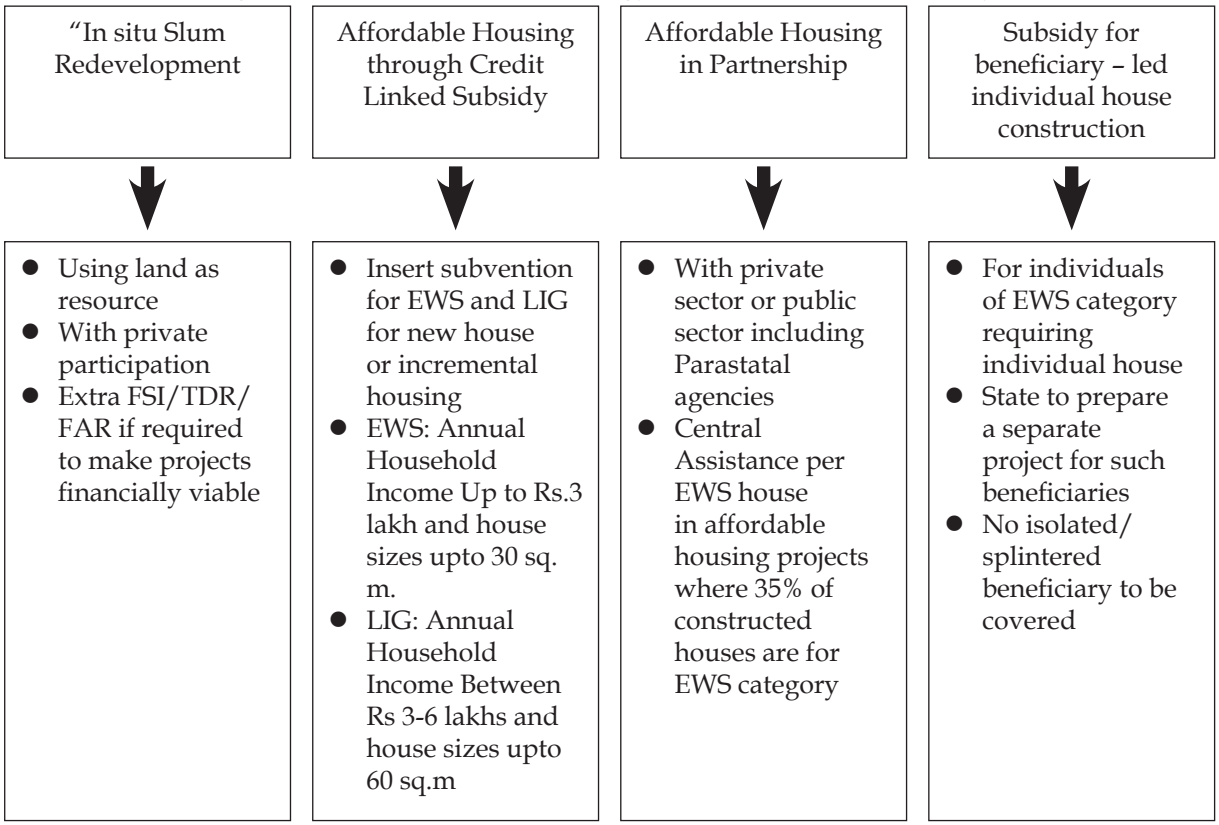
Pradhan Mantri Awas Yojana is mainly the supersession of Rajiv Awas Yojona with certain modifications in its objectives and approaches to address housing problem of the urban poor. PMAY's tagline is 'Housing for All. It was launched along with various other urban development schemes and Programs such as Swachh Bharat Ahbiyaan (SBA), HRIDOY, Smart Cities Mission and AMRUT. It started as a centrally Sponsored Scheme (CSS) and it focuses on addressing the housing requirement of the urban poor for the period 2015-22 (GOI 2015). The missionis getting implemented through four vertical (GOI 2015, Fig 1) and the states have flexibility in projectformulation and approval (Mishra 2017).

One of the important components of PMAY is the "Slum rehabilitation of the slum dwellers with 'participation of private developers using land as a resource" (GoI 2016, p.1). The program "leverage the locked potential of urban land" while rehabilitating the slum dwellers through in-situ slum redevelopment with the active involvement of the private developers (GoI 2015). In contrast to RAY, PMAY adopted quite different approach in the provision of housing to the urban poor. Although, the sole emphasis on 'In-situ Slum redevelopment' under PMAY echoes the RAY's imagination of 'New housing' but PMAY removed the 'slum upgradation' as viable housing intervention which was favored under the Rajiv Awas Yojana (GoI 2015, ,Bhan 2017, p. 4). The scheme welcomed private partner for slum redevelopment. The state government will provide various incentives like additional FAR/FSI and TDR to attract private developers to invest in slum redevelopment scheme. As per the latest Government data, 103.23 lakh house have been approved out of which 32.03 lakh have been completed and 28.61 lakh have been occupied (Table 3). The government released central assistance Rs 63676 crore for the construction of the houses.

Table 3: Comparison of Housing for all with Earlier Scheme		
Urban Housing scheme indicators	2004-2014 House under JNNURM (BUSP/IHSDP)	2014-20 House under PMAY(U)
Investment in projects	38303 Cr.	6.13 Lakh Cr.
Central assistance approved	20303 Cr.	1.6 lakh Cr.
Central assistance released	17,989 Cr.	64,000 Cr.
House approved for construction	13.46 Lakhs	103 Lakh
House grounded for construction	8.58 Lakhs	60 Lakh
Construction of houses occupied	8.04 Lakhs	32 lakh
Source: GoI (2019). Urban Transformation through Housing for all (Access https://pmaymis.gov.in/assets/pdf/book.pdf)		

Many state like Gujarat, Rajasthan and Odisha are in the forefront in implementing affordable housing scheme through the active participation of the private developers.Many states has also go little further to recognize the existence of the urban poor in the city. Notable, Odisha state government hasintroduced "The Odisha Land Rights to Slum Dwellers Act, 2017 to extend land rights to the urban poor households.. The certificate will be given in joint ownership and the right is non-transferable, heritable and mortgageable. It will also be considered as a valid proof of residence. One can read this initiative as a mere act of populism or a wise attempt to acknowledge the slum dwellers right's to the city. But, this initiative is important not only because it is the right of the slum dwellers to live in the city with dignity and without fear of threat and eviction but it will also improves the overall living condition and thus create an inclusive city (Reuters News Service, 2017).However, the detail appreciation of the implication ofthese interventions in the life of the urban poor is requires to understand the deeper ideological ground of current discourse of housing policies and practices in India.

Fig 1: Implementation Methodology of PradhanMantri AwasYojona



Source: GoI(2015)

Conclusion

Pradhan MantriAwasYojana marks an important policy shift in the housing policy. The greater involvement of the private sector in slum redevelopment and the emphasis onslum redevelopment over slum upgradation that this policy provides forcan potentiallyimpactthe lives of the urban poor(HLRN 2016, Johari, 2018).

However, these features have also led to some skepticism. Firstly, the greater reliance of private sector questions the role and responsibility of the state in meeting the need of the urban poor. Many states are leveraging private sectors to play an active role in the implementation of various housing schemes. In the past there were various conflicts and institutional challenges arising from the involvement of private sector in the housing delivery. The various issues like forced consent, fake allotment and no proper community consultation further questioned the honesty and intention of the developers. In the case of Mumbai slum redevelopment project, the implementation was affected because of multi-stakeholder involvement in rehabilitation of the project-affected people and interest gain from property value (Mukhija 2003). As a result, the need and interest of the slum dwellers did not receive required attention (Bhide 2009). Therefore, it is important to go beyond state aim and objectives to identify the intended and unintended outcome of the policy implementation. It is essential to disentangle the whole process of any particular housing intervention like slum redevelopment and necessary to answer: How does politics of inclusion played out in the whole process of housing policy implementation? What role does state and non-state actors played in the provision of housing? How does community concern embedded into the whole rehabilitation process?

Secondly, we also need to understand that the needs and priorities of the low income households are different from the middle and higher income group as for them living in close proximity to their employment site, access to basic services, and living without fear of eviction is more important than a readymade house. In the past, houses build under various schemes Like JnNURM and RAY often does not meet the need and aspiration of the urban poor households. Like Nagpur Municipal Corporation has built houses under slum redevelopment schemes but the urban poor were unwilling to move to the new houses because it was located in distant locations and far from their livelihood activities (Yuvaolie 2018). Similarly in Berhampur, many houses built under the Rajiv Awas Yojana were in remote locations distorting the livelihood of the urban poor households. Thus, one should look at the deeper implication of the policy invariably emphasis on construction of new housing as for the urban poor households it has a significant effect on their life's and well-being.

Lastly, the greater reliance on private developers does not always imply a substantially reduced role of the state in this sector. It is the state which will be responsible for monitoring the quality of housing provided by the private sector and for facilitating the participation of the urban poor communities in the project design so that their needs and aspirations can be incorporated in the implementation process.

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Model Land Leasing Act and its Aftermath

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Land reforms have played an important role in agricultural development and rural transformation of many Asian countries in the past few decades. The role of land reform in bringing about structural change and spectacular growth in agriculture after the Second World War in Japan, South Korea, Taiwan and more recently in the Peoples' Republic of China and Vietnam is well documented. In India too, several measures of land reforms have been undertaken by various State Governments since Independence, including (i) abolition of Zamindari, (ii) abolition or regulation of agricultural tenancy and (iii) imposition of ceiling on land holding and redistribution of ceiling surplus land among landless and semi-landless families. The abolition of Zamindari helped to a great extent in removing the feudal character of India's agrarian economy and pushing agricultural development. Other aspects of the land reforms were only partially implemented.

While the agenda of land reforms itself remained unfinished, the restrictive land leasing laws that were legislated as part of land reforms began to distort the land relations with the changing times. The resultant concealed tenancy, over the years, has affected agricultural growth, poverty reduction and occupational mobility of rural people adversely. It is in such a context that the NITI Aayog in 2016 put out a Model Agricultural Land Leasing Act. This paper reviews the major provisions of the model act as well as those of some states that followed cue and enacted leasing reform legislation. It also touches upon what some of these provisions would mean for the rural agricultural and economic landscape.

The Case for Land Leasing Reform

First, legal restrictions on land leasing have led to concealed, albeit informal tenancy in almost all parts of the country. Informal tenants are most insecure and have no incentive to make investment in land improvement for productivity enhancement. Second, due to the informal nature of agreements, tenants do not have access to institutional credit, insurance and other support services, which affect productivity of land cultivated by them. According to 70th Round of NSSO about 21 million households in the country cultivate about 10 to 11 million hectares of land on informal lease basis, without any security of tenure and access to institutional credit and other support services which constrain productivity growth. Third, due to legal restrictions, many landowners prefer to keep their land fallow due to the fear of losing land right if they lease out. Presently, as of 2013-14, about 25 million hectare of agricultural land is kept fallow comprising 11 million hectare of permanent fallow and 14 million hectare of current fallow land. Legalization of leasing would remove the fear of landowners to lease out land, thereby creating an enabling environment for utilization of fallow land for agricultural production. Fourth, legal restrictions on land leasing have reduced the extent of land available in the lease market and consequently the welfare of marginal and small farmers. About 92 percent of informal tenants to-

day are marginal farmers and landless labourers. Lifting of legal restrictions and the growth of an active land lease market would help them further to access land by way of leasing and improve livelihoods. This is important especially when the scope of any redistributive land reform is limited in the present situation and access to land by way of leasing offers the only hope. Lastly, the high dependence of population on agriculture is one of the main reasons for low size of land holding and low per-capita income as well as high incidence of poverty among agricultural workers in India. The share of agriculture in India's Gross Domestic Product is only about 14 percent, while agriculture employs or under employs 49 percent of the total workforce and 64 percent of the rural workforce. It is therefore absolutely necessary that there is a transfer of population from agriculture to non-agriculture. Legalization of land leasing could be important in this process. It would encourage large landowners to lease out land without fear of losing their land ownership right and take up non-farm enterprises. Also many small and marginal farmers would be better off leasing out their land to more viable farmers for rent, while seeking paid employment within or outside agriculture. Thus, legalization of land leasing will not only help in reducing the pressure of population on agriculture, but also in maximizing the incomes of all categories of farmers.

NITI Aayog's Model Agricultural Land Leasing Act, 2016

The NITI Aayog's Model Agricultural Land Leasing Act, 2016 was prepared, after examining tenancy laws of all the Indian States, and after consultation with various stakeholders in different states. Some of its major features are listed below.

- It provides a legal framework for leasing in and leasing out of land for agriculture and allied activities, including agro-processing by farmers and farmers groups.
- It explicitly provides for complete security of land ownership of the landowner- lessor and security of tenure for the lessee cultivator for the agreed lease period, as provided in the lease agreement.
- The terms and conditions of lease shall be mutually decided by the landowner-lessor and lessee cultivator and Government will have no role in this matter.

The NITI Aayog's Model Agricultural Land Leasing Act clearly lays down that on the expiry of lease period, the land shall automatically revert to the landowner, without involvement of revenue or any other Government department. The following stipulations enable this.

- The lease should not be recorded in ROR, as leasing of land shall not create any protected tenancy or permanent occupancy right, irrespective of any duration of lease. This helps in removing the fear of landowners leasing out land. The lessee cultivator is entitled to undistributed possession and use of the agricultural land for the agreed period as per the lease agreement. But the lessee cultivators' right is not heritable, though renewable with mutual consent.
- The model law also provides that in case of dispute, the landowner- lessor and lessee cultivator shall make all efforts to amicably settle it, using third party mediation or Gram Sabha or Gram Panchayat.

An important dimension of the Model Act is that it covers not only crop farming, but also all other allied agricultural activities such as dairy, animal husbandry, poultry, agro-forestry, agro-processing etc. Further, in scheduled areas, only scheduled tribes shall be eligible to lease in agricultural land.

As outlined above, the implications of this reform are immense. If land leasing is made legal, tenant farmers, engaged in agriculture and allied activities can also access institutional credit, insurance, disaster relief and other support services, using written lease agreement, with attestation by any responsible officer, including Panchayat Pradhan, Block Development Officer or Bank Officer etc.

State Government Initiatives - Taking Cues from the NITI Aayog Model Act

Following NITI Aayog's Model Agricultural Land Leasing Act, several states including Uttarakhand during Congress rule in 2016, Uttar Pradesh under Samajwadi rule in 2016, Madhya Pradesh under BJP rule have amended their tenancy laws, the main objective of which is to legalize and liberalize agricultural land leasing. The state of Maharashtra under BJP rule recently has passed a bill on agricultural land leasing (on the lines of NITI Aayog's Model Act), which has been sent for President's assent. In addition, Punjab under Congress rule, Odisha under BJD rule, Karnataka under Congress rule and Rajasthan under BJP rule have taken initiative to work on it. The state specific basic features of the recent reforms undertaken are as follows:

Uttarakhand

The Uttarakhand Zamindari and Land Reforms (Amendment) Act, 2016 (Act. No25

of 2016) provides that without prejudice to the restriction contained in Section 157 (a) and 157 (b) of the Principal Act, the land for the purpose of agriculture, horticulture, herbs, animal husbandry and milk production, poultry farming and livestock procreation, agriculture, pisciculture and agricultural processing may be leased for a maximum period of 30 years with fixed terms and conditions and to any person, institution, trust and self-help groups. Cash, crops or any part of the produce may be included in lease rent (Section 156 1 ©). It further lays down that on the expiry of the term of the lease, lease may be renewed on fresh terms and conditions. The lessee shall obtain a maximum of 30 acres of land on lease according to needs. The lease agreement may be registered without any fee. Lessee will have no right over the land other than those set forth in the lease agreement. The lessee shall be entitled to obtain any agricultural loan, disaster assistance and any other facility provided by the central and state government.

The new Uttarakhand law is largely on the line of the NITI Aayog's Model Land Leasing Act, excepting that 30 year maximum lease period, which is renewable and 30 acre limit on lease, as provided in Uttarakhand law, was not to be prescribed by the State, according to NITI Aayog's Model Act. Any terms and conditions of lease should be mutually decided and agreed by the land owner lessor and lessee cultivator, as per the Model Act.

Uttar Pradesh

The Uttar Pradesh Government has passed a comprehensive amendment in the agricultural tenancy law of the state. Section 98 of the UP revenue Code Rules, 2016 add that any person under disability as mentioned in clauses (a) to (h) and clause (j) of Section 95 of the Revenue Code, as originally mentioned, or any person who is because of being in any public or private service , business trade or profession or being elected or nominated member of Parliament or State legislature, unable to cultivate his holding, may let out the whole or part of his holding for a period, not exceeding three years at a time. Besides, the UP Zamindari and Land Reforms (Amendment) Act, 2016 abolished the clause of occupancy right accruing to a tenant due to adverse possession of land continuously for 12 years.

The amended land leasing law of Uttar Pradesh is a step forward in the right direction. It legalizes and liberalizes land leasing. But it needs further changes on the line of Uttarakhand law or NITI Aayog's Model Agricultural Land Leasing Act, to provide not only the protection of land right of those who lease out, but also ensure security of tenure for those who lease in , along with their entitlements to access institutional credit, insurance, disaster relief and other support services.

Madhya Pradesh

The Madhya Pradesh Bhumiswami Evam Bataidar Ke Hito ka Samrakshan Vidhayak, 2016 (which received the President of India's assent in May, 2018 and became a new law) provide that an agreement between the bhumiswami and bataidar shall be executed on plain paper and a copy of the agreement shall be kept by both the parties and one copy may be provided to the tehsildar, provided that no entry in revenue record shall be made on the basis of such agreement.

Unlike the NITI Aayog's Model Act which provides for all terms and condition of lease to be mutually decided and agreed by the landowner and the lessee cultivator, the term of agreement provided in the MP Act is a maximum of 5 years at a time, which is of course renewable with mutual consent. It also provides that notwithstanding anything contained in any other law for the time being in force, the bataidar will have no right to create charge of any kind on the leased land. The MP Act also provides for a fine of Rs. 10000 per hectare or confinement in civil imprisonment of three months if the bataidar does not hand over the possession of land to the landowner on the expiry of the lease period. Unlike this, there is no penal provision in NITI Aayog's Model Agricultural Land Leasing Act.

Besides, the MP Act provides that in case of damage of crop due to natural calamity, the right to receive the relief to be given by State Government or insurance company, shall be in accordance with the agreement executed between bhumiswami and bataidar. The MP law does not explicitly say anything about lessee cultivators' eligibility of institutional credit. But as there is a written lease agreement, the bank and other financial institutions will advance short term loans to lessee cultivators based on the written lease agreement. The NITI Aayog's Model Act as well as Maharashtra and Uttarakhand law explicitly provide that lessee cultivators shall be eligible for institutional credit, disaster relief, insurance and other support services.

Maharashtra

Maharashtra Agricultural Land Leasing Bill, 2017 (duly passed by the State legislature and waiting for President's assent) is very similar to NITI Aayog's Model Agricultural Land Leasing Act, 2016. The Act clearly mentions that notwithstanding anything contained in any other

law on commencement of this Act, every person who is competent to transfer agricultural land under Section-7 of the Transfer of the Property Act, and who intends to lease in or lease out agricultural land for agriculture and allied activities, shall be entitled to enter into a lease agreement. The definition of agriculture and allied activities as well as the rights and obligations of landowner-lessor and lessee cultivator are the same as in NITI Aayog's Model Act, excepting that the Maharashtra Bill provides for penal action including use of force, in case the lessee cultivator does not hand over the possession of leased in land on the expiry of agreed lease period.

Initiatives by other states

As per the latest available information, Punjab and Odisha under Congress and BJD rule respectively, have prepared draft bills for amendments in their tenancy laws, on the line of NITI Aayog's Model Agricultural Land Leasing Act, while Karnataka under Congress and Bihar under JDU-BJP have initiated discussions on this.

Conclusion

The NITI Aayog's Model Agricultural Land Leasing Act as well as those of Uttar Pradesh, Uttarakhand, MP and Maharashtra are absolutely famer friendly. The adoption of the Model Act by States would help improve the economic condition of both landowners (lessor) and tenants (lessee). It can be an effective instrument of accelerated agricultural transformation, and poverty reduction in rural areas. In fact, agricultural land leasing reform can provide a win-win situation for land owner-lessor, lessee-cultivator as well as any state government that implements it. Importantly, land leasing reform is not at all a politically sensitive issue, and can be safely spearheaded by political parties of various leanings, as has been done and adopted by some State Governments under various political parties.

Women and land in India: Connects and Disconnects

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Gender parity has a fundamental bearing on thriving of societies and communities. Despite major efforts in advancing gender equality and equity over the last decades, a gender gap plagues India in all walks of life. Among the 153 countries studied India ranked 112th in the Global Gender Gap Index 2020 (WEF 2020). The report notes that India is the only country where the economic gender gap is larger than the political gender gap. Several scholars have asserted that the gender gap in effective ownership of land is the single most important economic factor that explains gender inequalities in South Asia (Agarwal 1994; Kelkar 2013).

There is increasing evidence from around the world that access and ownership of land can radically transform a woman's life, in rural and urban areas alike. Owning land strengthens a woman's sense of identity as an equal citizen in society and provides a basis for economic security and stability. It gives her the strength necessary to exercise her agency and increases her participation in household decision making. It also acts as a foundational building block for agricultural productivity, household food and nutrition security, education, and poverty reduction and promote more inclusive and stable societies.

A host of international treaties, including the International Declaration of Human Rights, the International Covenant on Economic Social and Cultural Rights, and the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), acknowledge the centrality of land to fulfilling human rights. CEDAW requires that State Parties "shall ensure women the right to . . . equal treatment in land and agrarian reform as well as in land resettlement schemes. . . ." CEDAW also provides that both spouses must enjoy "[t]he same rights . . . in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property" in marriage (CEDAW, articles 14 and 16).

Statements by treaty monitoring bodies, international rapporteurs and working groups have also interpreted women's rights to land as fundamental to fulfilling rights to livelihood, housing and food, as well as rights to an adequate standard of living, self-determination and cultural participation.[1]

The Sustainable Development Goals (SDGs), adopted by all United Nation member states, including India, are a universal call to action towards peace and prosperity. Goal 5 aims to eliminate all forms of discrimination and violence against women in the public and private spheres and to undertake reforms to give women equal rights to economic resources and access to ownership of property. The inclusion of gender equitable and secure land rights of vulnerable groups in the Sustainable Development Goals is a reiteration of their increasing importance and urgency in the global context.

Despite a host of international and national commitments, ownership of land continues to be an area with appalling disparities between men

Box 1. That land belongs to household: A powerful myth

A key factor determining men and women's land ownership in India and elsewhere are four presumptions: that land belongs to the household, that household heads are men, that the interests of all household members are aligned and that household resources are shared equitably within the household. Policies of land governance – including government distribution, inheritance and government acquisition – typically presume these things, which may not be accurate. In India, these presumptions were reflected in the policies of colonial times and have been carried forward into the land reforms enacted post-independence.

In practice, most land titles are issued to one or more individuals – perhaps not wives or daughters. It matters greatly who holds legal rights to the property when the household dissolves for any reason, including death, divorce, alcoholism, violence or migration. A woman whose land rights are unrecognized is more susceptible to a lifecycle of marginalization, humiliation and abuse.

and women. Lack of consistent data has made it difficult to establish firm figures, but UN women estimates that less than 20% of the world's landholders are women (UN Women, 2012).

It becomes all the more important to talk of women ownership of land in the current times because increasing large-scale land acquisitions, encroachment of extractive industries on indigenous and communal lands, unplanned – or poorly planned – urbanization and infrastructure development, impacts of climate change and natural disasters – all impact women more starkly owing to women's insecure relationship with land tenure.

Gender gap in land ownership:

The extent of land ownership by women is primarily estimated in two ways. First, by estimating the number (or area) of plots owned by women, and second, by estimating the number of women who own land. So far, the data available in India on ownership of land by women are severely inadequate and lack coherence, primarily because for years land records have not kept sex-disaggregated data of land ownership. The closest data (of all the existing sources) comes from the Agriculture Census, which is conducted every five years. The major limitation with this census is that it gives information on management rights instead of ownership rights. Per the latest agriculture census data in 2015-16, 13.96% of agricultural land holders are women, which is a marginal increase from 12.79% in 2010-11. These women operate 11.72% of agricultural lands as against 10.36% in 2010-11. (Agriculture Census 2015-16). The data show increasing participation of women in the management and operation of agricultural lands.

Analyzing available land data for India, Pranab, et al. (2017) note that in most cases women operational holders are not the land owners, and this is partially evident from analysis of IHDS [2] and Population census, which shows that only 4% of rural adult women have land records in their name. The socio-economic caste census done in 2011 provides data on land ownership, but the data are not disaggregated by gender, and thus not helpful to estimate women's land ownership. The data reveal, however, that of the total households engaged in cultivation (which cannot be equated with ownership rights), only 10.18% are women headed households.

While doing the interstate analysis of women's land holdings in 2010-11, Pranab et al., note that a larger number of women's holding are in the southern states (Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra), notably, because these States had more areas governed by ryotwari system [3] pre-independence, and each of these states adopted women-friendly amendments to the Hindu Succession Act, 1956 before the Centre adopted similar amendments to the law in 2005. Reduced stamp duty for registration of property in the name of women (in the States of Himachal Pradesh, Punjab, Uttar Pradesh, Madhya Pradesh, Haryana and Delhi) and increased male out-migration may also have contributed to higher numbers of women landholders in some other States.

There are at least two indicators as part of SDG framework that are directly related to land ownership by women.

Indicator 5.a.1: *(a) percentage of people with ownership or secure rights over agricultural land (out of total agricultural population), by sex; and (b) share of women among owners or rights-bearers of agricultural land, by type of tenure*

Indicator 5.a.2: Proportion of countries where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control

Box 2. The "Land to the Tiller" principle of land reforms

The land reform principle popular at the time of independence was 'Land to the Tiller,' and law makers – then and now - continue to see the tiller as male. This attitude causes women's independent identity to be subsumed in the identity of the (male-headed) household.

Policy makers need to recognize that women in fact are tillers. Yet, despite their extensive involvement with agriculture work women are still not accommodated as owners of land. Women constitute 65% of all agricultural workers but only 13.9% of all landholders.

Importantly, because women typically do not own land, they are not identified as farmers and are usually excluded from extension and agricultural support programmes. This has productivity as well as equity implications as the Food and Agriculture Organization (FAO, 2011) estimates that if women had the same access to productive resources as men, they could increase yields on their farms by 20–30 %. These gains in agricultural production could lift some 100–150 million people out of hunger.

To report against these indicators there is a need for a robust system of data collection at the country level. The United Nations Statistics Division (UNSTAT), the nodal agency for monitoring the SDGs, has also highlighted the key role of reliable data sets with adequate disaggregation and granularity in measuring progress around SDG targets.

Being a signatory to major international treaties, India has considerably improved data production, accessibility and availability over the years. However, there is much that the country needs to do to have reliable measures of women's ownership of all land types. The Government of India has now asked states to introduce a 'gender' field for landowners in their property records. The move has been undertaken as part of the Central Government's National Land Records Modernization Programme and will presumably take some time to effectively implement.

Land equity: a long-standing issue

In contrast to the ongoing discrimination and exclusion faced by women in so many areas of public life, recognition of equal land rights for women can be traced to policy dialogues that occurred before Independence. In 1938, a National Sub-Committee on Women's Role in Planned Economy proposed that 'So long as the system of private property remains the system of social structure; women shall have the same rights as men to hold, acquire, inherit and dispose of property' (Kasturi 2004). The committee also proposed that the daughters should be entitled to the same rights to succession or inheritance and acquiring property as if she is a son.

The 1950 Constitution of India, the supreme law of the country, is among the most modern and progressive constitutions in the world, guaranteeing equality and justice to all citizens irrespective of religion, caste, sex, colour, etc. However, statutory laws as well as traditional practices related to inheritance and women's land rights are examples that put on display the huge gap between the ideals enshrined in the Constitution and lived realities which continue to be ruled by customs, religion and traditions.

With global discourses around women's rights gaining momentum, Indian policy makers have also been taking initiatives to improve the land rights of women. This is conspicuous over the successive five year plans. The 6th Five Year Plan (1985-1990) was the first to talk about women's rights to economic resources and a policy for joint titles to husband and wife in transfer of assets. Over time it was felt that the joint titles initiative has not worked as expected, and so the 12th Five Year Plan (2012), advocated considering 'individual titles in women's names only rather than joint titles with husbands' in the regularization and distribution of new land. The plan emphasized increasing women's access to land from three sources: direct government transfers, purchase or lease from the market and inheritance. The draft National Land Reforms Policy (2013) reiterated the same.

Likewise, the 2016 Draft National Policy for Women explicitly states: 'Regarding resource rights of women, efforts will be made to prioritize women in all government land redistribution, land purchase and land lease schemes to enable women to own and control land through issue of individual or joint land pattas.' In the case of private land, the policy encourages joint registration with spouses or registration solely in the name of women, and measures to incentivize land transfers to women.

Recently, NITI Ayog (2018) also emphasized the need for improved asset ownership and economic security of women and suggested encouraging joint registration with spouses or sole registration of land in the name of the woman through

registration fee and stamp duty concessions.

Progress and challenges ahead

In the three-fold distribution of legislative powers in India, land is a State subject, and responses to the policy commitments for land rights of women in India varies across States.

In 2005, the Government of India amended the Hindu Succession Act, 1956. The Hindu Succession Amendment Act, 2005, is considered a revolutionary legal reform to women's inheritance rights as it provides that daughter and sons shall have coparcener rights (coparceners being those who have the right at birth to an inheritance share of joint family land and property). The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (called FRA) also provides that tribal women have rights equal to those of men, though the data monitoring system doesn't record sex disaggregated data. Further, unlike the earlier law on land acquisition, which ignored the daughter's right to be included among the household members, the new Land Acquisition Act of 2013 removed the male bias, and provides that girls qualify as separate units for rehabilitation of household members displaced as a result of governmental acquisition of land (Trivedi 2016).

Several States have also adopted policy measure to improve women's ability to own land. For example, the Vasundhara Scheme in Orissa and the Nijo Griha Nijo Bhumi in West Bengal mandate that homestead plots allocated to landless households shall be distributed in the name of women, either individually or jointly. The southern States of Karnataka, Andhra Pradesh, Telangana and Andhra Pradesh gave equal coparcenary rights to daughters long before the 2005 amendment in The Hindu Succession Act, 1956. Kerala has abolished the joint family property altogether. The Civil Code of the State of Goa has provisions ensuring that married couples enjoy joint ownership and equal shares in each other's property. Gujarat enacted a gender equity policy in 2005 with specific provisions governing women's entitlements to immovable property, both at the individual level and as co-partners in common property resources. Several States, such as Himachal Pradesh, Punjab, Uttar Pradesh, Madhya Pradesh, Haryana and Delhi, have provided some stamp duty exemption for land registration in the names of women.

More recent changes include West Bengal's abolition of the mutation fee for all inherited property. Bihar has fixed a fee of Rs. 100 (Rs. 50 each as registration fee and stamp duty) applicable uniformly, irrespective of the size and value of property, to encourage registration of property after division of family's immovable assets. The State of Uttar Pradesh has made an effort to improve the inheritance rights of unmarried daughters to make them equal to sons.

The Department of Women and Child Development in West Bengal has realized the value of empowering women themselves and has prioritized land rights training to be imparted to adolescent girls. The State also conducted a sensitization programme for elected panchayat representatives on 'women land rights' after the panchayat election in 2018. Rural Livelihood Missions in the States of West Bengal and Odisha have also included land rights curriculum as part of the training courses for women members, reaching more than half a million women in West Bengal to date.

Owing to land being a State subject, a complex web of laws governs women's land ownership and access. The complications are much more pronounced in the case of inheritance because inheritance falls under the "Concurrent list" of the Constitution, and thus both Center and States can legislate on issues related to inheritance. While inheritance of property is largely governed by the religious laws – Hindu Succession Amendment Act 2005 for Hindus, Sikhs, Buddhists and Jains, the Muslim Personal Law (Sharia) Application Act, 1937 for Muslims and the India Succession Act for Christian and Parsi communities – inheritance of agricultural land is governed by the tenurial laws in different States [4]. Some States have also made amendments to the religious laws that apply on property other than agricultural land. In addition, tribal regions that fall within Schedule V or VI of the Constitution have their own laws approved by district councils. With such an intense maze of laws and often overlapping regulations, women's rights differ largely among States, religions and tribes. However, one striking similarity in all these laws is that – barring a few tribal laws - all of them have some preference for male lines of heirs and grant inferior rights to women and girls.

Chaudhary (2009) notes that the fact that States are empowered to enact land laws which they deem necessary for their respective regions has had the effect of promoting rather than negating gender discriminatory land practices. Laws dealing with fixation of land holding ceilings, forfeiture of surplus land above the ceiling limit, and fragmentation of agricultural holdings – all of which are State subjects – have been used to strengthen men's claims at the cost of women. Except for a few states like West Bengal, Karnataka and Kerala, unmarried adult daughters receive no recognition at all and they do not count as part of the family unit or as separate unit. Chaudhary also notes that, interestingly, the State of Haryana

has made several attempts to abolish or amend the progressive inheritance rights granted to women through the Hindu Succession Act, 1956.

Because of the country's commitments to equality and justice through the global instruments and our own Constitution, but also because of the demands from the women's rights groups, the policy sphere has shown some progressive changes over the years. However, these legal frameworks and policies have not been able to bring significant changes on the ground, primarily because those in charge of designing and implementing the policies on ground are themselves subject to gender specific biases that arise from thinking embedded in discriminatory social norms and harmful customary practices. Women's marginal representation in policy making and the state institutional structures contributes to the continuation of patriarchal norms in all spheres.

Need for stakeholders' efforts

Unfortunately, today most of land and inheritance laws cannot pass the test of gender equality and justice; we find that even the progressive changes that are made are undercut by legal loopholes, gaps in implementation, lax enforcement, and sex-discriminatory mindsets and practices. For an effective change, steps need to be taken to plug all these gaps.

Amending laws to remove overt and covert discrimination. At the policy level there is a need to review all land laws with a gender lens and identify areas where there is either overt or covert discrimination against women. Working with appropriate authorities it will be important to look at these gaps and propose and implement necessary amendments so that the legal instruments are not gender biased. The States' response to discrimination in inheritance laws – specially in northwestern States - needs urgent and focused attention given that inheritance is the most important way for women to receive property as individuals.

Establishing social legitimacy of women's claims to property. To ensure that women's land rights are enshrined not only in law, but are upheld in practice, legal legitimacy has to be essentially accompanied with efforts to establish the social legitimacy of women's claims. Concerted efforts are required to shift patriarchal attitudes and gendered norms expressed by government officials and elected leaders. Sensitizing officials and communities on the role of women in agriculture, their equal rights under the law and government's commitments to enforce law, shall help officials and communities to understand the legitimacy of women's claims.

Improving data, monitoring and accountability. There also is a need to strengthen collection of sex-disaggregated data related to landholding, fortify monitoring systems and fix accountability for the implementation of existing laws. Appointment of more women functionaries at all levels in the revenue and agriculture departments will also help the system be more accessible to women and responsive to women's needs. -

Investing in women's capacity to participate in local governance. The 73rd and 74th Constitutional amendments ensured women of all strata a role in local governance institutions. These women can advocate for women's rights to a great extent and this advocacy can have important implications for agenda setting. It is crucial to recognize women's capacities build their leadership and help them voice their concerns.

Helping women understand their rights. Women are overwhelmingly ignorant in terms of the legal rights they hold. This is especially true in rural areas. Even when they are aware of their rights, women rarely assert them for fear of being ostracized or for the challenges of navigating a complex legal system. Some aspects which need attention here are – enhancing women's legal knowledge, providing them with legal aid and services, providing support structures for women and increasing their individual and collective agency.

Improving research to inform public strategies. Across all these areas, rigorous research, including policy and social analysis, is needed to inform strategies to address ongoing challenges.

The collective attempt of government, NGOs, research institutions, international organizations towards the above can help build fairer and more equitable land ecosystem for women in India at the dawn of the 2020s. Women's right to land and other productive assets consequentially have the potential to strengthen country's inclusive growth through increased agricultural productivity, social equality and gender justice.

[1] Concluding observations and statements by treaty monitoring bodies, as well as other United Nations mechanisms (e.g., special rapporteurs and working groups) have interpreted land as fundamental to fulfilling rights to livelihood, housing, food, and adequate standard of living, self-determination, and cultural participation. The FAO's Voluntary Guidelines on the

Responsible Governance of Tenure (VGGT) of Land, Fisheries and Forests in the Context of National Food Security (the "Guidelines"; FAO 2012) list gender equality as one of ten core principles for implementation.

[2] The India Human Development Survey (IHDS) is a nationally representative, multi-topic panel survey of 41,554 households in 1503 villages and 971 urban neighborhoods conducted in 2004-5 across India. HDS has been jointly organized by researchers from the University of Maryland and the National Council of Applied Economic Research (NCAER), New Delhi.

[3] During the pre-independence era, agricultural land was administered under three broad types of land tenure systems: zamindari, ryotwari and mahalwari. Among the three systems, it was found that in the ryotwari areas (mainly in the southern states) women operated a greater number of agricultural land holdings due presumably to land ownership by peasants and a better land record management system.

[4] Different princely states in India had historically had different systems of land governance, partly owing to the varying climates and agricultural patterns. At the time of independence, it was difficult to converge all of them under one pattern, and thus land administration and governance was included as a State subject.

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Acquisition and Utilization of Land for Special Economic Zones

❖ Ramaa Arun Kumar

Special Economic Zones (SEZs) are regions in India where economic activity is concentrated enabled by policy rather than market forces. Thus, the development and realisation of benefits from co-location of industries in an SEZ can be maximized if the right mix of policies are put in place. The literature on co-location of industrial activities dates back to 1890 when Marshall (1890), followed by Myrdal (1957) discussed the factors why industries would cluster/agglomerate generating several economies based on three sources: labour market interactions, linkages between intermediate and final good suppliers and knowledge spillovers. Further, the New Economic Geography literature by Krugman (1991), Fujita and Krugman (2004), Venables (1996) etc. further throws light on deeper understanding of the process and effects of industrial agglomeration. Krugman (1991) discusses the core-periphery pattern of agglomeration and initial factors that trigger the process of industrial activity choosing to locate itself are transportation costs, economies of scale and the share of expenditure on non-agricultural commodities.

In this context, special economic zones (SEZs) are one kind of industrial agglomeration of firms that are mostly export oriented. The state provides incentives to firms to locate their processing or operations to such zones with an objective of increasing employment opportunities and investments and enhancing country's exports. World over economic zones known by different names have proliferated as a part of countries' industrial development.

The development of special economic zones or industrial zones is, therefore, a policy-led industrial agglomeration that countries have established world over. Such industrial zones have contributed significantly to their respective industrial as well as economic development. The World Investment Report (2019) has specially highlighted the importance of SEZs in contributing to growth and development of a country by attracting investments, creating job opportunities, boosting exports etc. The role of SEZs in reducing trade costs has enabled many countries to support and establish themselves in global value chains (GVCs).

India's first export processing zone was set up in 1965 in Kandla, Gujarat, followed by opening up of several other export processing zones (EPZs) in the 1970s and 1980s. Till 2000 India did not have any SEZ as it followed the approach of facilitating export processing through various EPZs. The SEZ policy in India gained momentum in 2005 when the SEZ Act, 2005 was implemented "..for the establishment, development and management of the Special Economic Zones for the promotion of exports and for matters connected…" (SEZ Act, 2005). After this enactment, the total investments increased manifold from Rs. 134 billion in state/private SEZs set up before 2005 to Rs. 4.7 trillion after 2005 till June 2019. The number of formal approvals also rose significantly after 2005. However, the easing of regulations and norms to set up shops in SEZs has not seen the expected fallout in terms of expansion and growth.

One of the major deterrents to the growth of SEZs in India is the issue of land acquisition. There are two facets of the issues related to land affecting the setting up and development of the SEZs in India:

1. Land acquisition which is the major challenge for the setting up of SEZs as it entails the local level factors such as loss of agricultural lands, compensation to land owners from the supply side. On the demand side, acquiring land individually for developers becomes a time taking and costly process.

2. Under-utilization of sanctioned land for SEZs is a challenging issue in the case of SEZs. As per official estimates, by 2014, only 37 per cent of total notified area under SEZs across India was utilized for processing. Apart from the under-utilisation of land in these zones, there is misuse of land by real estate developers wherein the land sanctioned for manufacturing or trading/ warehousing is being put to other use.

This paper would, therefore, delve deeper into these issues in addition to other factors important for the development of SEZs in India..

I. Background and Performance of SEZs

Following the announcement of the SEZ policy in 2000, the previous seven Export Processing Zones (EPZs) set up by the Central Government were converted to Special Economic Zones (SEZs) which were, Kandla (Gujarat), Santa Cruz (Maharashtra), Cochin (Kerala), Noida (U.P.), Chennai (Tamil Nadu), Falta (West Bengal) and Visakhapatnam (Andhra Pradesh). In addition, an EPZ in the private sector in Surat, Gujarat was also converted to SEZs. In the interim period between 2000 and 2005 (when the SEZ Act was formulated), several state level SEZs were formed either by the government or private players.

In terms of area, a total of 48054 hectares of land is currently under SEZs in the form of notified as well as formally approved zones as in 2019. Table 1 provides an overview of the trend in the notified, operational SEZs and the total land area notified under SEZs.

Table 1: Number of Operational SEZs and Area Under Notified SEZs

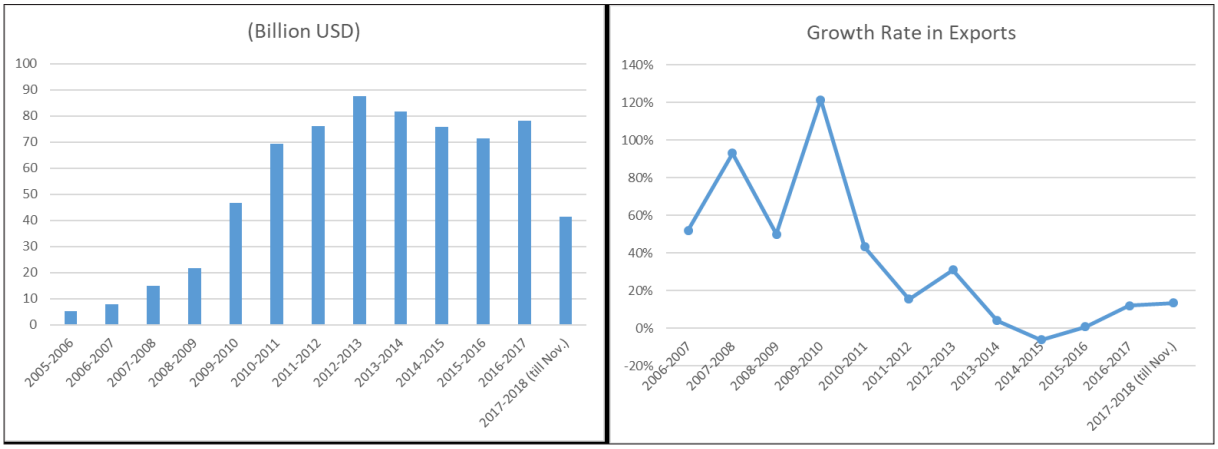
Year	No. of Operational SEZs	No. of Notified SEZs	Area under notified and/or formally approved SEZs (in Hectares)
2012	154	380	44966
2016	206	328	48742.77
2019	238	349	48053.53

Source: Various Annual Reports published by Ministry of Commerce.

Although the number of SEZs in operation has risen over the years, the number of SEZs notified has fluctuated, with a reduction in the number of notified SEZs from 380 in 2012 to 349 in 2019. Among the states, Telangana (56 notified SEZs) accounted for the highest share of notified SEZs followed by Karnataka (51) and Tamil Nadu (50). Across sectors, 234 out of 349 notified SEZs were formed under IT/ITES/electronic hardware/ semiconductor/telecom equipment sector. This is followed by multi-product and pharmaceuticals/ chemicals sectors that received 17 notifications each.

The area under the notified and formally approved SEZs has reduced from 2016 to 2019 (Table 1). If the notified SEZs fail to set up business in the given area, SEZs can be de-notified due to which the total number of notified SEZs as well as area under SEZs tends to fluctuate. One of the oft repeated factors that has slowed the growth of SEZs is delays due to land acquisition (Levien, 2012; Aggarwal, 2011). The next section discusses the difficulty in pursuing the SEZ development model in India owing to the issues of land acquisition and its judicious utilization.

The SEZs are agglomerated mostly by units that are export oriented. The hitherto export processing zones were established only to enable export oriented units to take advantage of the incentives provided to them in such zones. With the enforcement of the SEZ Act, 2005, exports from the SEZs have increased manifolds, however, recent growth has been tardy (Figure 1). The trend in export value shows an inverted U-shaped trend, where exports from SEZs were at their peak in 2012-13 at $ 87 billion, and fell consistently thereafter. In terms of growth rate, exports from SEZs witnessed fluctuation in growth till 2009-10 and fell continuously. A negative growth was noted in 2014-15after which growth has picked up. In terms of growth rate, exports from SEZs witnessed fluctuation in growth till 2009-10 and fell continuously. A negative growth was noted in 2014-15after which growth has picked up.



The latest data on SEZs shows that the exports have risen from Rs. 5.8 billion in 2017-18 to Rs. 7.0 billion in 2018-19. However, in terms of share in total production, it has reduced from 18 per cent to 14 per cent in 2018-19.

On the employment side, the SEZs that were notified after the SEZ Act came into force in 2006 has provided employment to 1.86 million persons cumulatively till 2019. The employment in the government/private SEZs set up before 2006 generated a total employment of 3.3 lakh till 2019. Mukherjee et al. (2016) note that the distribution of employment across states is not in correspondence with the state-wise contribution to exports. For example, in case of Maharashtra the share in total SEZ exports was 11 per cent in 2013-14, while the state provided one-fourth of total jobs. On the other hand, Gujarat that accounted for almost half the exports from SEZs created only 6 per cent of total SEZ employment. The sectoral distribution of SEZs also indicates that 60 per cent of total operational SEZs are dominated by the relatively skill intensive industries in IT/ITES.

Although, the data on exports, employment and the number of notified SEZs indicates growth, the underlying potential of SEZs still seems to be under-utilised when the utilization of land is examined. The issues of land acquisition and under-utilisation are discussed in the following section.

II. Issues of Land Acquisition and Utilization

As discussed above, the growth of SEZs and exports therein, has not been remarkable as envisaged in while framing the SEZ Act. These objectives were creation of additional economic activity and employment, promotion of exports, promotion of investments and development of infrastructure. Although the Act provides for simplified procedures on development and creation of SEZs and single window clearance on all levels of State and Central government related procedures in setting up an SEZ and units therein, the unimpressive performance in terms of land utilization and the complications in land acquisition in some regions call for a strong review of the various stages wherein the SEZs are lagging.

One of the oft repeated factors that has slowed the growth of SEZs is delays due to land acquisition (Levien, 2012; Aggarwal, 2011). In a number of cases, the non-conformation to the clause of contiguity of land was the reason behind denotification of whole or part of the land notified for SEZs. As per the SEZ Act, a piece of land is notified as SEZ only when it is contiguous and the developer is required to have irrevocable rights over the land. However, acquiring land from land owners who are mostly farmers has posed a great deal of challenge for the developers to conform to the clause of contiguity of land.

Therefore, acquiring land individually for developers becomes a time taking and costly process. There have been several incidents wherein the rural land owners/farmers have raised concerns and protested against land acquisition for the following reasons:

1. Unfair compensation for land (Kakinada SEZ, Appendix (1))
2. Non-rehabilitation of displaced families (Gopaldas SEZ, Appendix (2))
3. Misuse of unutilized land for speculative purposes (Sricity SEZ [Appendix (3)], Lepakshi Knowledge Hub, Andhra Pradesh)
4. Fertile land acquired that was the main source of livelihood for farmers (Kakinada SEZ)

One of the reasons why SEZ Act, 2005 has had a limited effect on the growth of exports and employment was lack of foresight regarding the sensitivities involved in acquisition of land. The application of the Land Acquisition Act, 1894

gave the States to conduct compulsory land acquisition in the garb of the condition of "public purpose" and pay compensation at a government-determined rate to land owners. The states, in order to attract investments could, therefore, use this policy to acquire larger than required land but failed heavily in attracting investments that could translate into economic activity to boost exports as well as provide employment.

In this context, the work of Levien (2012) points to the nature of land acquisition under SEZ as one form of "arbitrage through which capitalists receive artificially cheap land acquired by the state and then re-sell it at many times that value". The pace with which the acquisitions took place post-liberalisation in general for industry expansion and between 2005-2008 and the resultant under-utilisation of land had brought up many cases of protests starting from the outrage shown by farmers in Nandigram and Singur that raised concerns with the Central government to rethink the policy on land acquisition.

Consequently, the Land Acquisition Act was amended in 2013 and implemented in 2014 that primarily set the rules for future acquisition and fair compensation. However, the time lost in rectifying the land acquisition problem and the failure of industries to locate to the SEZs led to vast tracts of land lying vacant in the notified SEZS which is core of discussion of this paper.

The utilization of land under SEZs has been a major challenge even though the SEZ Act eased the rules in creation of SEZs and units therein. As indicated above, the unorganized and hasty land acquisition, along with limited tax and infrastructural incentives resulted in gross under-utilisation of land notified for several SEZs for more than 5-7 years. The data in Table 2 shows the extent of land lying vacant across zones notified. The table provides the share of unutilized area for processing under the notified SEZs across the Central, State and Private SEZs. The SEZs under the Central government were formed before 2005 as Export Processing Zones that were later converted to SEZs. Therefore, the incidence of unutilized land in Central SEZs is insignificant at 2.3 per cent as the SEZ Act delinked the direct role of Central Government in setting up SEZs.

The extent of unutilized land was highest at the level of State government SEZs to the tune of 52 per cent in total land notified under state SEZs. The Santa Cruz Electronic EPZ (SEEPZ) not only accounted for the largest area notified in SEZs, but also had the largest area unutilized at approximately 73.4 per cent. This was followed by Falta SEZ covering West Bengal, Odisha, Jharkhand and Nagaland, accounting for 51 per cent of total land notified lying vacant. These two zones, namely, Falta SEZ and SEEPZ also display a dismal picture in terms of the growth of private SEZs where close to 70 per cent of the total land area allotted in Falta and 60 per cent in SEEPZ has not been put to use for processing. Ironically, these zones cover states that are industrially well developed such as Maharashtra and West Bengal., therefore, the under-utilization of land in these states had much to owe to the uneven and unplanned ways of both the developers and the state governments .

Table 2: Distribution of Land Across Zones by Notified and Area Lying Vacant till 2014 (in Hectares)										
		Central Govt.			State Govt.			Private		
	State	Total Notified Area	Vacant Land in Processing Area	Share of Land Unused (%)	Total Notified Area	Vacant Land in Processing Area	Share of Land Unused (%)	Total Notified Area	Vacant Land in Processing Area	Share of Land Unused (%)
Cochin SEZ	Kerala, Karnataka	41.69	0.62	1.5	1385.7	687.4	49.6	1806.8	846.8	46.9
Falta SEZ	West Bengal, Nagaland, Jharkhand, Odisha	110.48	7.79	7.1	167.3	86.8	51.8	986.8	679.7	68.9
Noida SEZ	UP, MP, Haryana, Rajasthan	125.00	0.00	0.0	1660.7	643.6	38.8	2619.0	644.5	24.6
Kandla SEZ	Gujarat	400.00	4.94	1.2	56.6	0.0	0.0	12433.3	5168.0	41.6
Madras SEZ	Tamil Nadu	109.00	0.00	0.0	1561.1	602.0	38.6	3710.3	2136.6	57.6
Vizag SEZ	Andhra Pr	146.00	8.90	6.1	3522.3	1519.9	43.2	8500.4	2897.1	34.1
SEEPZ	Maharashtra	44.93	0	0.0	3779.0	2774.4	73.4	4401.8	2591.6	58.9
Total		977.10	22.25	2.3	12132.7	6314.0	52.04	34458.5	14964.2	43.4

The Comptroller and Auditor General Report on the SEZs in 2014 revealed various loopholes in the allotment as well as the use that the notified land for SEZs was being put to. The following observations were made in relation to the land allotment, utilization and mis-use under the SEZs:

a. Land transfer from government to developers was mostly on ownership basis that has given rise to developers acquiring large tracts of land in the name of SEZs and keeping them idle for years as noted in Table 2 above. Ownership generates the risk of land being used for the economic interests of the developers rather than achieving the macro objectives.
b. Even after the lapse of 2 to 7 years the major tracts of land allotted for SEZs remained vacant without any creation of economic activity envisaged in the Act.
c. The extent of non-SEZ land with the developer in case of four SEZs was found to be alarmingly high. For example, in case of Andhra Pradesh Industrial Infrastructure Corporation Ltd. (APIIC), of the total area of 3760.2 hectares transferred to the developer, 2459.38 hectares remained non-SEZ under the developer.

Underutilization of land for economic activity under the SEZs can be regarded as a fallout of the mismatch between the land acquired and the actual takers of the same owing to the lackluster policies of the local governments. Land and its development are State subjects, but acquisition of land is on the Concurrent List. Substantial tracts of land are required by the SEZ developer which was acquired through government machinery under the "public purpose" clause of Land Acquisition Act, 1894 for establishment of SEZs. Land is allotted by the State Government directly or through Land banks/Agencies on the basis of proposals made by the Developers either on ownership basis or lease.

The major flaw in the policy is that the developer in acquiring the ownership of large tracts of land had the flexibility to utilize the land for intended use. This gave rise to high shares of land being acquired by the developers in the hope that the exporting firms would locate in such zones to take advantage of the special concessions provided by the government under the SEZ policy.

However, the puzzling question is why did the respective governments at Centre and State levels increasingly granted permission for further notifications of SEZs when large tracts of land remain unutilized or is being misused? In order to make SEZs more attractive, in 2013, the SEZ rules for minimum land requirements were reduced to make it easy for creating new SEZs. IT/ITES SEZ was exempt of any minimum threshold for land, however, built up area requirements prevailed. For example, 1 lakh square meters for the top-7 cities, 50,000 square meters for the next 15 cities and 25,000 square meters for the rest of the cities. Multi-product SEZ's minimum land requirement was cut to 500 hectares from 1,000 hectares while single product SEZ's requirement was reduced to 50 hectares from 100 hectares. Multi-services SEZs were to be treated at par with single-product SEZs.

The various incentives given for ease of setting up the SEZs have still not created a stir in the industries, especially manufacturing sector. There are other factors that need to be taken into consideration to understand, in totality, why SEZs have not realized much of the well-intended objectives.

III. Policy Direction and Conclusion

The benefits of industrial agglomeration are realized with deeper production linkages and the spillover effects are transmitted to firms operating therein in the form of knowledge spillovers, pool of skilled labour, labour market interactions and linkages between intermediate and final good suppliers. However, the development of an SEZ as a policy-led process of agglomeration in India has not caught up to the expectations. The various shortcomings in the SEZ policy and the allied Acts along with the fragmented approach of the State and Central government policies has substantially undermined the potential of these zones to generate economic activity and employment.

The study has delved deeper in to the aspect of land acquisition and utilisation that has been ignored in the discussions in literature (Aggarwal, 2015, 2011; Mukherjee et al, 2016, Tantri, 2016). The issues relating to fair compensation, acquisition of farmers' land under the hitherto Land Acquisition Act, 1894 and the consequent under-utilisation and misuse of acquired land for speculative purposes by the SEZ developers are identified as the main factors for the sluggish growth of SEZs.

The need of the hour is to bring the existing un-utilised land into use as much of the land would entail a huge cost to convert it back to cultivable land wherever it applies. The SEZ Act Amendment of 2019 allows trusts to set up units within SEZs which has broadened the scope of economic activities that can operate from the SEZs. This can curtail the non-utilisation of vast tracts of land lying vacant since many years.

Since land is a state subject, the state governments and the Development Commissioners need to

regulate the use of the acquired land and set a minimum threshold in terms of number of years that the land notified should be put to use. There have been recent moves by State governments in Maharashtra and Tamil Nadu where innovative policy mix has been implemented to ensure that land acquisition is smoother and that the industrialisation process through SEZs leads to creation of employment and growth in exports. For example, recently Maharashtra government made changes to its SEZ policy whereby the condition of contiguous land for SEZ project would be diluted, if the total land parcel of a developer is more than 200 hectares or 494 acres. In such a case, the project can be segregated as long as every parcel is more than 100 acres and within a 5-km radius .

On the demand side, there is a need for identifying the location of the proposed SEZ in tandem with the infrastructural requirements such as supply of water, electricity, roads, linkage with ports etc. well before the land is acquired. Building common infrastructure for industries is a "land-saving" option. Also, industrial concentration through policy should take into considerations regional dynamics such as local skills, culture, geographical influences such as climate etc., in addition to economic factors like infrastructure and market demand. Thus, the state governments should understand the importance of region specific SEZ formation and take dynamic initiatives for the industries to develop therein.

Appendix

1. Kakinada SEZ: Starting from 2006, farmers in East Godavari District, Andhra Pradesh have resisted the forced acquisition of land under the LAA, 1894 and non-utilisation of land for any economic activity. Consequently, due to the lack of operations on the tract of fertile land acquired from farmers in 2006 till 2016, the SEZ Farmers' Protection Welfare association filed a petition in Supreme Court of India .

The Rehabilitation and Resettlement (R&R) Act, 2013 has provisions that may help the land owners to get the higher compensation for future land acquisitions.

2. Gopalpur SEZ: The SEZ land in Gopalpur, Ganjam, Odisha has seen a long standing struggle between Tata Steel and local farmers that was initially over the establishment of an integrated steel plant and now on the issue of a Special Economic Zone (SEZ) on the same land. The Tatas had almost abandoned the land for a long period when their steel project did not materialize because of local resistance. The government acquired the land by applying emergency clause of Land Acquisition Act in 1997-98. Farmers have been demanding a higher compensation for their land under the revised R&R package and employment of youths in families affected by the land acquisition in the ferrochrome plant set up on the SEZ land .

3. Sricity SEZ: The Andhra Pradesh government signed a memorandum of agreement (MOA) with Lepakshi Knowledge Hub Pvt Ltd (LKH) in December 2008 for establishment of an Integrated Global Knowledge Hub/ MultiProduct Special Economic Zone in Gorantla and Chilamatturmandals of Anantapur district . The project envisaged generation of employment for up to 1.5 lakh people directly and other indirect employment opportunities in a phased manner.However, the CAG report of 2014 noted that the land involving 2070.12 ha of land of the total allotted land was not used for the intended purpose. It was also noted that the de-notified land was allotted to private DTA industries viz., Alstom, Pepsico, Cadbury, MMD, Unicharm, Colgate, ZTT, IFMR, Kellogg's, S&J Turney Contractors, Tecpro, Sripower, RMC/ WMM, Danjeli, Ayurvet, TII, Godavari Udyog, Thaikikuwa.

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Land Pooling Models in India: Emerging Lessons

- Aparna Soni
- Triveni Prasad Nanda

Irrespective of the nature of states, which themselves cover the whole gamut from people-controlled welfare states toliberal capitalist economies, have got their fair share of agony caused by the seemingly infinite but the painfully limited resource, land. It is a generally accepted fact, that, land-based conflicts have been the crux of every development story since antiquity through the feudal periods till the contemporary times.

As a historically accepted certitude,'the ruthless exploitation'the British meted India does not entail supplementary discussion and validation, the proverbial foundation to this historical injustice (Mulla et al., 1970)was carefully manipulated land governance, taxation and distribution policies. The Land Acquisition Act (LAA), first promulgated in 1894, was the tool with which thegovernment createdan infrastructure for wealth extraction and in turn financed theBritish war efforts(Singh, 2012). As an anti-climax of sorts, the LAA 1894 was retained by the socialist-bent Nehru government. The Act stood as a vestige to the British Raj's atrocious and unscrupulous treatment of the working class and the poor(Levien, 2013). Despite the 1984 amendment (introducing concepts such as direct land purchase), the LAA withstood the decades of public resentment and was only repealed and replaced by a new act in 2013(Gonsalves, 2010)(Chakravorty, 2016). Land Acquisition as a practice for land assembly, as mandated by law, was to be exercised only by the state,empowered by the constitution to exercise its right as the 'eminent domain', but with the superfluous and conflicting clauses (Gonsalves, 2010)(Part II and Part VII) of the LAA 1894 the judiciary furthered the abuse of the Act in the garb of institution-building (Asif, 1999).

A clear bifurcation of land management principles needs to be established to better understand the need and significance of alternate land assembly tools like 'Land Pooling'. Land management as a concept deals with three stages of land function: assembly, development and disposal(Reich and Gregory, 2012). As a principal, acquisition perceives land as a raw resource whereas other models of land management mete equal credence to development and disposal of the said parcel of land.Where mandatory acquisition represents one end of the gradient of state-led land assembly, the other end is absolute voluntary private purchase where the agency of the landowner supersedes all (Mahalingam and Vyas, 2011).

Several models of land assembly exist globally, some of them being:

1. Voluntary agreement amongst owners for achieving land assembly (UK private sector practice)(Falk, 2018)
2. Public authority controlled and compulsorily effected Land Readjustment (LR) (Origins in Germany)(Home, 2007)
3. Voluntary but having recourse to an authorised framework (French model)
4. Authorized framework designed on majority rules (overriding dissenters and enforcing participation) and instigated by a nucleus of

owners (Japanese model)(Connellan, 2002)

As could be gleaned from the above examples, land assembly through compulsory acquisition is not the only viable option that the state can and should use to assemble land for its use or non-state led development(Acharya, 1987). The solicitation of private sector investment by the Indian government (post-1991) came with the imperative obligation of land supply facilitation, as,swift and litigation-free land supply was thekey factor for the success of any private-led project(Asif, 1999). Post-independence, the regional governments were faced with the Herculean task of developing urban centres from existing ones or creating them afresh, which were in turn plagued with a "'leapfrog' style of suburban development" often a result of inefficiencies in the land market (Acharya, 1988). In the absence of any urban land policy at the federal level, it befalls upon the states to innovate land assembly models to facilitate investment from the private sector in urban development projects, as industry-based mega projects were still the obligation of the federal government. Although the proliferation of such land assembly tools can be traced back to the 1991 era, the origins of these alternative land assembly mechanisms lay further in the past, The Bombay Town Planning Act of 1915 was the first instance of a 'Town Planning Scheme' (TPS). As parts of the erstwhile Bombay Presidency, the modern states of Gujarat and Maharashtra benefited most from the use of these land readjustment schemes which was the precursor to most such schemes in India. Collectively referred to as Land Pooling (LP), these schemes are a cogent alternative to compulsory land purchase in India. Land pooling, also known as land readjustment, land reconstitution, land sharing, land consolidation, and, land re-plotting in various state government schemes and notifications, are all variations of the central tenet, where,landowners arrangea contiguous land parcel for a projectand in return they receive a land parcel after it is serviced, thuspromoting a synergetic relationship between the public and private stakeholders in a project.

The sections which follow will list and briefly explore the plethora of these very alternate land assembly tools and mechanisms.

Alternate Land Assembly Models and Policies prior to 2013

Alternatives to land acquisition have been available as land management tools since the British rule in India. Of the myriad applications and variations of the Bombay TPA, The State of Maharashtra was the first to adopt it in 1966 and Gujarat (after its formulation in 1960), under the Gujarat Town Planning and Urban Development Act (GTPUDA), adopted the plot- reconstitution method of Town Planning Schemes (TPS) in 1976 called as the 60:40 model. This typical approach to land development called a DP-TP model, a Development Plan (DP) is detailed into several TP schemes, whereeach TPS area can vary between 100 to 200 hectares in sizeand the concerned Development Authority (of the city/town) implements the scheme and notifies its initiation. 'Participating' landowners did not have a choice to not 'participate' in a TPS. The authority assembled numerous irregular shaped plots, reconstituting them into a regular geometry and returned regularized (final) plots to original landowners, who are returned around 60% of land size pooled originally. The value of the final plot is understood to be more than the original plot value, which is captured by the State by levying 'Betterment' charges. The 40% of land remaining with State is majorly utilized for infrastructure provisioning, providing for EWS housing and re-sale of plots in open market for generating revenue. Effectively, the landowner is dispossessed of land, remaining socially and economically in the proximity of his original neighbourhood. However, this model as a process is critiqued to be time consuming and arduous. There were several other instances of the use of TPSchemes in states such asKerala, Karnataka, Tamil Nadu and Odisha, where they turned out to be the ratherunpopular choice of land assembly.

Even before the Liberalization, Privatization and Globalization (LPG) era of 1990s, there were States which adopted land development schemes that aimed at encouraging private sector participation through state facilitation for urban extension projects, infrastructure building and industrial development(Levien, 2013), the state of Haryana, being one of the early adopters, notified the Joint Development Model in 1975. Under the Haryana Development and Regulation of Urban Area Act (HDRUA) 1975, the Haryana Urban Development Authority (HUDA) in regulated urban towns was mandated to provide for private developers (colonizers) to be licensed by the Department of Town and Country Planner for development of residential layouts and cyber city/parks (with a minimum viable size of 40 hectares to be developed within three years of notification) allowing exemption from the Urban Land Ceiling Act (repealed in 1976) and 'Non-Agricultural Conversion' procedures (NAC). The Act allowed assembly and development (as per norms in the master plan) and disposal of land in the open market. It authorized'direct private purchase' of land from the landowners through negotiated market price. However, 20% of the plots/flats (built units)were to be sold to

Economically Weaker Sections (EWS) and Low-Income Group (LIG) consumers at a state pre-determined fixed price and 25% of the remaining plots/flats were to be sold on a 'no profit no loss basis'. The revenue model of this scheme depended on Development Charges (DC) like Infrastructure Development Charges (IDC) and External Development Charges (EDC) paid by the colonizer to the state.

Another instance of pre-LPG alternate land assembly scheme came to light in 1987 when the State Government of Uttar Pradesh (U.P.) under a Government Order (GO) issued a policy empowering 20 Development Authorities (DAs) of selected cities and towns to issue licenses to private developers to develop residential planned areas as per respective master plan provisions. The model permittedprivate developers to develop and disposeof allotted public landin aPublic-Private Partnership (PPP)/Joint Venture (JV) mode. The private player was required to:

- reimburse the cost of the entire project identified land parcel to the DA
- pay/reimburse the cost of external infrastructure development
- furnish a bank guarantee (performance bond) to the DA in the amount of 25% of the estimated cost of internal development
- reserve 70% of the plots for residential use only
- reserve 40% of the total plots for EWS units and sell them at a pre-determined (often lower than the market)rates to the DA
- sell the remaining stock at market prices

In thecapital city of the State of Uttar Pradesh,the Lucknow Development Authority (LDA) pioneered this experiment followed by the Ghaziabad Development Authority (GDA) in the city of Ghaziabad (U.P.) whichalso adopted the above policy and prepared broad development schemes for residential developments (25 to 50 acres in size) and invited private developers to bid for a joint venture, where GDA and the winningbuilder/developer/co-operative society entered into a 10:90 equity joint venture. However, the government order got cancelled and was re-issued several times, leading to uncertainty and ultimately low popularity of the policy in the state.

Similar residential township development policies, enabled through government orders are many and have been lately promoted as integrated township development models/policies, Hi-tech township policies and mega-project schemes in various states across India viz. Uttar Pradesh, Punjab and Rajasthan to name a few. However, their volatility and ad-hoc avatars have harmed their intent and success even today(Soni and Nanda, 2019).

In 1977, the Guided Land development (GLD) model was introduced in Bombay, Maharashtra. Consequently, in 1988 Tamil Nadu, Madras Metropolitan Development Authority (MMDA) also adopted this model for a World Bank assisted Tamil Nadu Urban Development Project for provisioning affordable housing where the threshold project size was 4 hectares. The objective was to ease private participation in affordable housing supply by overcoming the challenges of land acquisition and Urban Land Ceiling Act (repealed in 1976). The model was designed to ensure the supply of affordable housing stock by reserving approximately 75% of the total plots carved out in a project for EWS and LIG segments. MMDA and private developers were partners and the model recommended a guarantee of a fair return on investment of 20-30% and envisioned private sector participation in affordable housing provisioning. Private developers were responsible for land assembly through private purchase, on-site service provisioning, providing schools for EWS housing, and handing over land for institutional use to MMDA. Private developers were exempted of the land ceiling act restrictions and thus, could sell the remaining 25% stock in open markets. MMDA bought the affordable housing stock at a pre-determined fixed price from the developers and was responsible for allotting them to the rightful beneficiaries. Off-site trunk infrastructure and project plan sanctioning were to be taken care of by the MMDA. However, the model failed to sustain the lengthy land title issues that came along with the project land purchase by private developers.

Alongside the above, numerous parallel land management tools were innovated in Maharashtra, particularly to facilitate new greenfield developments. TPSchemes were not found suitable especially for industrial estates/ township development where the requirement of state-owned land was more for industrial landuse. In 1970, City and Industrial Development Corporation of Maharashtra Limited (CIDCO) a subsidiary of the State Industrial and Investment Corporation of Maharashtra Limited (SICOM) was incorporated, notifying it as the New Town Development Authority (NTDA). This authority in 1990 introduced a land banking scheme popularly known as the 12.5 scheme in an area of 1064 Ha for the development of Navi Mumbai (extension to the burgeoning city of Mumbai). In the notified area under acquisition, all landowners were compensated with two components, one monetary and the other a return of a land parcel

worth 12.5% of their surrendered landholding. However, 30% of this 12.5% was reserved for social facilities and public utility provisioning. Therefore, the landowner received an effective 8.75% of his landholding as the land component of the compensation. This allotted plot had an allowable FSI of 1.5 with 15% permissible for commercial use. Though this model was not voluntary and may not qualify landowners as partners in development, yet allotment of developed land for land as an approach was well received by the project affected persons. On similar lines, CIDCO began the assembly of 8571 hectares of notified land for Waluj Mahanagar in 1992 under its 25:75 scheme. In its first phase of 1715 ha, it included the development of four Nagars(pockets) with one growth centre contained in each pocket. These growth centres were to be developed by CIDCO to foster and bolster development in the rest of the pocket. For land under the growth centre (GC) a 100% compulsory acquisition approach was adopted, however, consideration was provided in two parts, first monetary consideration for 25% land as per LA Act and for the excess of 25% either 'land for land' or Transferrable Development Rights (TDR). For land outside the growth centres, 25% of each landholding was to be acquired against cash consideration (compensation) as per LAA 1894 and the rest 75% land was returned to the landowner (as a reconstituted plot) to be developed at their initiative and expense, subject to reservations for public amenities and internal roads, where for acquired proportions of land, either compensation was granted or TDR/ Development Rights Certificates (TDR/DRC) and L4L(land for land) was additionally provided. The revenue model of this plan depended heavily on Development Charges (DC) levied on the building activity in the 75% 'private' area and, to a lesser extent, on the sale of plots by CIDCO. Noticeably, the Navi Mumbai model reserved the bulk land assembled under its custody for development and disposal, while Waluj model reserved limited land to seed development and allowed the private sector to respond to market forces. The cost of land acquisition to the state was indeed reduced and the risk of project failure was shared between the state, landowner and private sector.

Alternate Land Assembly Models and Policies post-2013

A marked shift was observed in the adoption levels of such innovative land assembly mechanisms after the Land Acquisition Act of 1894was repealed to give way to 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (RFCTLARR) in 2013 after several failed attempts (Levien, 2013)to promulgate a statuteto balance the growth aspirations of a rapidly growing India and the plight of the displaced bottom strata of the affected populace(Banerjee and Banik, 2018). These mechanisms or models were primarily focussed to bypass the stringent rehabilitation and resettlement (R&R) provisions of the RFCTLARR along with which came severalclauses whichstretched the timelines of a project to a minimum of 48 months, if done through the land acquisition route. The role of states transformed from being custodians of land to being project facilitators(Sood, 2015).

A cursory look at the institutional mechanism and the development model of each policy gives a rather clear picture of the intentions of the states and the nodal parastatal agencies.Though disparate in appearance, each policy exhibits certain shared and observable features, viz.

- These polices are not only land assembly models like land acquisition, but additionally have 'land development' and 'disposal' embedded in their basic structures; unlike the acquisition model.
- Consequently, though every tool devised may be broadly categorized into types, each was designed for a specific purpose. As their names suggest, they were not policies, but models/ schemes designed to be 'fit for purpose'.
- Not limiting themselves to be mere land assembly tools, these models warrantthe tag ofbeing 'urban land development and management' tools. The committee report on techno-economic feasibility of Waluj (MIDC) development project 2012, rightlyterms these developments as 'alternative models of New Town Development', that may largely be put together to be called 'self-financing schemes'.
- These models sometimes are specifically designed for specific purpose like industrial area development, township development or urbanization
- In fact, these schemes drew credence from the Town and Country Planning Acts of their respective parent states and are/ were being monitored on-ground by their respective geographical custodians- planning authorities, development authorities, special purpose vehicles, and urban local bodies. Rarely is there a mention of the role of the State revenue machinery playing a vital role in the development model.
- The governance models of these schemes varied from project to project. One state could have more than one such model in application

(like Haryana). Even one planning authority could have more than one such model in practice, Maharashtra beingits most prominent example.

- The agency of the urban local governments in the management of these tools is near to negligible, which effectively veersaway from the decentralisation of urban development, a mandate of the 74thConstitutional amendment.

Way forward

These myriad land pooling models and policies for land assembly now are becoming ubiquitous by the day with an ever-increasing number of states adopting them to bypass the RFCTLARR altogether.If this is to stay, then the need of the hour is a model federal statute (akin to the model RERA Act) or a set of guidelines to formalize the process ofpooling wherein the entitlement matrices and compensation ratios (both monetary and land)remain linked and proportional to the project's financial feasibility and sustainability. This would help eliminate the effect of spatio-temporal contexts and the tumultuous political risks associated with such bureaucratic ventures, in the process,shielding the affected populace from the fallout in case of a potential failure.

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Forest Rights Act and Challenges of its Implementation

- Geetanjoy Sahu
- Tushar Dash

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 seeks to redress the historical injustice that tribal and other traditional forest dwellers have been subjected to due to the denial of their rights over individual and community land, and its very nature demands a level of mobilisation and collective action at the ground level, which in most places did not exist, due to a variety of reasons. This report explains the potential, implementation status and grass-roots challenge in the enforcement of Forest Rights Act. Right from individual activists, grass-roots organisations, regional and national NGOs, international funding agencies, academic institutes to advocacy networks have contributed at various stages of implementation beginning from mobilisation and awareness, initiating claim filing and FRC formation, assisting through the claim recognition process to post recognition integration with development schemes and management through CFRMCs. Over the last 12 years, 18,87,894 individual rights and 76,154 community forest rights claims have been recognised over 41,33,891.33 and 88,04,870.81 acres of forest land respectively. Even this limited success that the Act has seen can be largely attributed to the contribution of these groups and the manner in which they have collaborated for cross learning and addressing roadblocks.

Evolution of the Forest Rights Act

Forests constitute 21.54% of the total geographical area of the country (FSI, 2017). It is well established that the socio-economic, cultural and material interests of the people living close to forest and within the forests are inextricably linked to the forest ecosystem in India. According to a report of the Ministry of Environment & Forests (2006), there are around 1.73 lakh villages located in and around forests of the country. Different studies and reports claim that the forest dependent people in India ranges between 275 million people to 350 million (World Bank, 2006; MoEF, 2009). Forest dwellers of the country are largely dependent on the forest for their livelihood and benefit in a significant way from a variety of forest products for food, minor forest products, fodder, agriculture, housing and collection of a number of profitable minor forest products. However, forest dependent people's right to access and use forestland and resources was controlled and prohibited through various rules and regulations.

The history of rules and regulations to prohibit forest dwellers to access and use forests goes back to colonial period. Prior to the advent of Britishers in India, forest dwellers in many parts of India had used and managed forestland and resources through their customary norms and belief system and in some cases, princely state rulers framed rules to determine the rights of forest dwellers (Tucker, 2011). However, with colonial rule which began in mid-eighteenth century the community-controlled resource management system got completely dismantled and new rules and regulations were framed to determine people's rights over forestland and resources. A

series of legal instruments were introduced to take over the community resource regime under the direct control of British colonial power. The most controversial among them was the Indian Forest Act of 1927. The Indian Forest Act of 1927 categorised all forests into three types- Reserved Forest, Protected Forest and Village Forest. It gave exclusive and absolute power to the forest department to declare any forest land and waste land as reserved forest and prohibited people's access to reserved forests without the prior approval of the forest department.

The colonial legacy continued in the post-independence period. There was no departure from the colonial forest policy and rules and in fact, the independent India reinforced the principles of centralisation, exclusion and extraction of forest resources in an unsustainable manner to justify its nation-building programs. For example, the analysis of forest diversion data for the time period 1980-2018 reveals that a total of 15,08,055 Ha (15,080 sq. km or around 2% of India's total forest cover of 0.7 million sq. km) of forest land has been diverted for a grand total of 26,100 projects under the FCA, averaging around 57 Ha per project.

Similarly, exclusion of people from forest continued in the name of development and conservation projects. According to the Ministry of Tribal Affairs of Government of India nearly 8.5 million tribal people were displaced on account of mega developmental projects like dams, mining, industries and conservation of forests etc. In the absence of recognised rights, only 2.1 million of the displaced indigenous people were rehabilitated, and as many as 6.4 million were not (Wahi and Bhatia 2018: 40). Development-induced involuntary displacement of the tribes takes place in most states, mainly in the tribal concentrated regions of Bihar, Odisha, Andhra Pradesh, Madhya Pradesh, Gujarat and Maharashtra (Maitra 2009). A significant number of tribal people, who are generally dependent on the natural and common resources, are displaced, and their ethos and lifestyle are dismantled and denigrated in the name of development and mining without their participation and consent. The Study by Namita Wahi and Ankit Bhatia (2018) has found that STs have disproportionately borne the burden of economic development because of displacement, caused by their special relation to land which other groups do not have.

Finally, the process of forest management was highly centralised both during the colonial and post-colonial period. There was little space for involvement of forest dwellers in the decision-making process. Though the exclusion of people from their habitation in the name of development and conservation had been protested both during colonial and post-colonial period, it was in the year 2006 the Indian Parliament enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

Forest Rights Act: Key Provisions

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereafter FRA) is crucial to the rights of millions of tribals and other forest dwellers across India as it recognises and vests two broad types of rights in forest land in forest dwelling communities--(1) Individual Forest Rights (IFR) and (2) Community Forest Rights (CFR). While Section 3 (1) of Chapter II of FRA recognises thirteen types of rights, the recognised rights are popularly known and broadly divided into two types of rights: individual forest rights (IFR) and community forest rights (CFR). The provisions for IFR include: right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribes or other traditional forest dwellers. The community forest rights include rights in and over disputed land; rights of settlement and conversion of all forest villages, old habitation, un-surveyed villages and other villages in forests into revenue villages; rights to protect, regenerate or conserve or manage any community forest resource which the communities have been traditionally protecting and conserving for sustainable use; right to intellectual property and traditional knowledge related to biodiversity and cultural diversity; rights of displaced communities, and rights over developmental activities (MoTA, 2014).

Section 6 of Chapter IV of FRA outlines a highly democratic decentralised procedure and institutional arrangement to recognise and vest forest rights in forest dwelling communities. A three-tier institutional arrangement consisting of Gram Sabha, Sub-Divisional Committee and District Level Committee has been prescribed to recognise all types of rights discussed above. The most important and powerful aspect of FRA has been its mandatory clause (Section 4 (1) (e)) that makes Gram Sabha consent a pre-condition before displacement of people in the declaration of protected areas. The enactment of FRA was an appraising effort by the government of India that brought down a paradigm shift in the history of forest governance. This Act is an important turning point in the history of tribal empowerment in India in particular to their livelihood and tenure security on forests.

Implementation Status and Challenges

The status of implementation of the act varies from state to state and also within the state. The database on the status of implementation available at the Ministry of Tribal Affairs till 31st March 2019 is given in table-1 below:

	No. of Claims Received		No. of Titles Recognised		No. of Claims Rejected		No. of Claims Pending		Extent of Forest Land Recognised (in acre)	
	IFR	CFR	IFR	CFR	IFR	CFR	IFR	CFR	IFR	CFR
	40,89,035	1,48,818	18,87,894	76,154	17,08,459	45,045	4,92,682	27,619	41,33,891.33	88,04,870.81
Total	**42,37,853**		**19,64,048**		**17,53,504**		**5,20,301**		**129,38,762.14**	

The implementation of the Act has encountered multiple challenges on the ground. Some of them are:

- There is a huge gap in the recognised and claimed Forest Area by the claimants and Gram Sabha.
- There is no discussion both at the Gram Sabha and SDLC/DLC level to avoid overlapping of IFR and CFR Claimed and Recognised Area and no mapping and demarcation of areas have been undertaken so far.
- Titles are rejected without giving reason and explanation to the claimants and in all villages and complete apathy by the administration towards recognition of OTFDs' titles.
- There is no emphasis on Habitat Rights of Particularly Vulnerable Tribal Group (PVTG) at all levels even by the intervening NGOs.
- The Forest Rights Committees are neither inclusive nor representative of all hamlets. Knowledge about FRA and the process is very low among community members and women participation in the recognition of Forest Rights Claim is limited to attending meeting.
- There is no systematic database of filed, pending and recognised claims both at the village and SDLC and DLC level.
- The process of recognition is largely driven by intervening NGO and no suo moto initiative at the village level.
- Village level collective action is limited to IFR claims and not for CFR
- CFR management plans and harvesting activities in the recognised villages are yet to start
-
- No livelihood enhancement or benefit after the recognition of CFR in the study areas except in Jarandi village in Chhattisgarh and only few IFR title holders benefited due to recognition of their claims over agricultural land.

Ongoing cases in the Supreme Court filed by wildlife NGOs and associations of retired forest officers pose a serious challenge to the implementation of Forest Rights Act. These cases have resulted in interim orders (now put "on hold") that can lead to the eviction of lakhs of tribals and forest dwelling families whose claims have supposedly been rejected. The SC orders have led to protests by tribals and forest dwellers all over India, and a general atmosphere of insecurity in the forest areas.

While the original case in SC challenges the constitutional validity of FRA, in the course of proceedings the petitioners have been raising rejected claims and procedural issues which are not before the court.

Key Constitutional arguments being made by the petitioners against FRA are that:

The Forest Rights Act was outside the legislative competence of Parliament as it is "mainly about land", which is a State subject.

The Forest Rights Act delegates powers to the Gram Sabha that are "excessive" and "arbitrary", and hence a violation of Article 14 of the Constitution. By providing a recent cut-off date of 2005 for claims, and equating OTFDs and STs, it also violates the rights of citizens to equal protection of the law. The higher committees are also not "independent" and hence the entire procedure is "arbitrary."

The Forest Rights Act violates the rights of citizens to a life of dignity, the right to "the environment" and the precautionary principle, and hence is in violation of Article 21 of the Constitution. Various sections of the Act have been challenged on the grounds that they would lead to forest destruction and damage to protected areas.

The Forest Rights Act "damages" the regime created by prior laws such as the Wild Life (Protection) Act, as well as prior orders of the Supreme Court, which the Supreme Court has held to be a part of citizens' constitutional rights.

Strong counter-arguments against the above claims have led to the petitioners avoiding arguments on Constitutional validity and instead focusing on implementation issues. Studies and assessment of FRA implementation by researchers

from reputed research organizations from India and other countries present strong evidence-based counters to the arguments made by the petitioners against FRA. They have raised serious concerns about undermining of FRA by the SC order and its adverse impact on conservation. Many have refuted the arguments made by the petitioners with strong evidence from their research work. Evidence from the ground shows that wherever FRA has been properly implemented remarkable achievements are being observed in livelihoods, employment and forest conservation as in the case of thousands of Gram Sabhas across districts like Gadachiroli, Gondia, Amravati etc. in Maharashtra; Narmada in Gujarat; Rajnandgaon in Chhattisgarh; Mayurbhanj, Kandhmal in Odisha and many other places.

The digression from main arguments on Constitutional validity to issues of implementation of FRA has been attributed to the abject failure by the central government to defend FRA in the court leading to an eviction order in February 2019 which substantially dilutes FRA by equating rejections with evictions. FRA is an Act for recognition of rights and has no provision for eviction.

The interim orders passed by the Supreme Court in February have led to a rushed process of review of rejected claims by the state governments that has further undermined FRA, the process for recognition of rights and the authority of Gram Sabhas. Ongoing studies by forest rights organizations in the states of Chhattisgarh, Madhya Pradesh, Jharkhand, Odisha, Maharashtra and Kerala find large scale violations of due process and arbitrariness in the rejection of FRA claims, where the claimants' rights of appeal were also denied. These findings are also supported by review of rejected claims by various states which found that a large volume of claims had been wrongfully rejected, as acknowledged by the MoTA, Chhattisgarh government, Gujarat High Court, among others.

Many cases of eviction of tribals and forest dwellers by the forest departments are reported from states like Telangana and Madhya Pradesh using the pretext of the SC order. These violations and atrocities are happening even though SC order on evictions is in abeyance. Therefore, large scale eviction of forest dwellers and violation of their rights is an imminent possibility if the SC order is implemented without being challenged. The resultant conflicts will have deep negative impact on conservation in India, while reigniting conflicts in the tribal areas.

In light of this it would be important to once again place before the Court the basic fact that these proceedings must be confined to ruling on whether the Forest Rights Act is constitutional or not. The Central government through the Ministry of Tribal Affairs must make an urgent intervention in the court to get the interim orders of the SC withdrawn and request the Court to hear the original matter relating to constitutional validity of FRA. At the same time the government should make an all-out effort to implement the provisions of the Forest Rights Act on a mission mode; review rejected claims and ensure that individual and community claims are recognized; ensure that Gram Sabhas have the resources to conserve and protect forests and biodiversity while improving their livelihoods and lives. Implementation of CFR rights should be focused.

Way Forward

There is an urgent and critical need for the Tribal Department or Welfare Department at the state level to take ownership of the Act and its implementation by addressing the roadblocks as discussed in this report in the claiming, appeal and post recognition assertion process.

The capacity building and orientation programs for SDLC and DLC members on due process to ensure clarity on provisions of FRA is crucial, and this can help reduce unlawful rejections and other violations, like non-recognition of rights of OTFDs.

State level convergence plans, which aim to integrate various line department schemes with forest rights, need to be consistent and clearly communicated at ground level, so as to allow communities to avail them.

The land recognised under IFR and CFR needs to be demarcated as soon as possible, to enable communities to prepare plans and invest resources to make their forest resources productive. Priority needs to be given to change in Record of Rights.

There is also an urgent need to ensure that claims of OTFDs are addressed with immediate effect and necessary guidelines as issued by the MoTA should be followed.

Forest Rights Committees need to be formed in a democratic manner, and through involvement of people from all hamlets and social groups, especially women, landless and the most vulnerable sections of the society at the village level.

The Forest Rights Committees need orientation and training on their role, responsibility and

authority, to ensure due process for claim filing and avoid delay and omissions at Gram Sabha level.

Current strategies of intervening NGO at the village level, especially in the claim recognition process must be revisited. The emphasis should be given more on the quality of recognition process (number of claims rejected, pending cases, modification in land applied for, OTFD and PVTG rights hamlet wise implementation, robustness of FRCs and CFRMCs, management and conservation planning, etc) and not on number of claims.

The facilitating NGO members should be trained to engage in advocacy activities to upscale and strengthen the process of recognition and more importantly, to address the pending and rejected claims.

Finally, it is important that the complete ownership of the process of recognition by intervening NGOs at the village level should be avoided, and rather strategies should be to form village level or hamlet level empowered citizen groups, so that dependence level on NGOs will come down and community will also feel a sense of ownership of the process. Interventions need some long-term planning – including an entry point activity, the key intervention areas and an exit strategy.

Contours of Pastoral Land Tenure: The case of Gujarat

❖ Anu Verma

Pastoralist community is part of the Indian culture for several centuries. There are several instances, which verifies the fact that pastoralists were part of the kings and kingdoms much prior to the British rule in India. The kings/ rulers of the small kingdoms of ancient India had strong relations with the pastoralists of their respective regions. The pastoralists used to protect the kingdom from enemies and in turn, were gifted/rewarded lands by the king.

Pastoralism is a way of living which is different from the modern 'civilized' society that stand on the history of settled agricultural habitants. Like tribals, the pastoralists chose a separate route of life cycle that does not resemble with that of the so-called mainstream agricultural society. But, unlike tribals, pastoralists are adhering to the mainstream society in terms of their socio-economic interdependence with agricultural society. In India, pastorals (Maldharis) are found in large numbers in the western and northern parts due to favored climate and location and in some pockets in the southern states. Pastoralism is dependent on three resources-livestock, pasture and water and in search of it, they migrate and this is the only way they can survive.

Pastoralism in Gujarat

In Gujarat, Maldhari communities are known as "Ter Tansalia", meaning thirteen communities. The origin of Maldharis is not documented well, however, some people associate the origins of pastorals to the Dravidians who came from Afghanistan. Another mythological story says that Lord Shiva created Sambal, one of his minions, from the dirt of his skin to look after his bullock. Soon, the family grew too numerous and so the lord asked him to go and dwell on the earth.

The various types of Pastoralist communities found in Gujarat are and. Gujarat has a population of around 60.4 million (2011 Census). Around 8-10% of its population belongs to the Maldhari community. Of the 26 districts of Gujarat, 14 districts has a presence of Maldharis. They are heavily concentrated in Saurashtra, Kutch and North Gujarat region.

The social, cultural and political lives of pastoralists prior to the colonial period and after India achieved its independence have undergone tremendous changes owing to several reasons affecting their lives.

The pastoralists had a higher status in the society. They had strong social organization and strictly followed their customs, which facilitated in creating their unique identity in the society. Even though they had good stand in the society, they never misused their power. They were interdependent on other people i.e., they used to give milk and manure to the farmers for developing their lands and in turn were allowed to graze their animals on the farmer's land. Post-independence, the societal status of pastoralists has decreased greatly. Today they fall under the category of marginalized people. They are dependent on others for livelihood options. The social organization has weakened and today, it plays very limited role in the society.

Migration routes and Land Use Patterns of Pastoralists

Maldharis are generally landless as they depend upon village commons for their livestock rearing needs (Mehta, 2013). Their traditional grazing lands are *Bets* / Islands in the desert tracts of Kutch *(Pung, Aaliya, Nada,* and Great Rann border*)*, Grasslands (*Banni, Khadeer, Lakhpat, and Vadhiyar*), Forests (*Gir, Barda, Aalech*), *Vidis & Rakhals* (Saurashtra and Kutch), Wastelands, Ravines, Mangroves (Gulf of Kutch and Khambhat). Many of them possess large herds of camels, goats, sheep, buffalos or cows while some have very little livestock and are extremely poor and marginalised among the rural communities.

There are diverse migration pattern within Gujarat, the range of their migration, choice of the route and location is a result of complex factors like livestock type, rainfall, water and forage availability, market links, outbreak of a major disease in a particular region, their social relations in an area, previous experiences and lately, even the religious identity of migrating group.

With the time, the migration pattern has also witnessed a major change. While until 1980s, the maldharis undergo inter-state migration, the increasing compelling factors, they are forced to restrict to intra-state migration, with an exception of a few groups, who still migrate to Maharashtra.

While on move, the land use pattern of pastorals lies on the principle of 'give and take'. This is a reflection of the coherent relationship of the pastorals and farming communities. The uniqueness of pastoralism is the co-existence with other communities such as farmers, wild animals in the forest, with nature, etc.

Generally, the pastorals use the pasture land of the village, these are grazing lands, and revenue wastelands. Then, they use the large grasslands of the nearby villages, if they are available. Once the grasses are utilized, they began to move out in search of the grasses. The routes are generally decided according to the familiarity of routes, availability of grasses and water. The routes are according to the abovementioned matrix.

The pastorals who migrate longer, prefer the forests and sanctuaries that fall in their route. While on the move, they halt at the farms and village commons. Before halting, they seek permission from the individual agriculture farm owners and/or the leaders of the village or Gram Panchayat, depending on the village.

For the shorter routes, the villages where they stay is fixed. Barter system is still prevailing. The pastorals are invited by the crop farmers to stay on their farms. The livestock graze the straws from the previous crop and produce manure for the next crop. In return, pastorals get farm land to stay and get water. This pattern is most common. These villages and farmers are generally fixed for years. Now a day, there are newer patterns that are emerging, such as pastoral families hire a piece of land from the farmer/village for a particular period for grazing, this may range from a week to a few months. In some cases, pastorals pay to the village for grazing their livestock. This is generally the guarantee that no other pastoral families will be allowed in that land for grazing.

Policy Related Challenges

The land policy discourse around pastoralists need an understanding from the orientation of communal land use, access and rights. Since, the pastoral common property management systems is complex and diversified, it will be elusive to deal with simple concepts of individual or state property. However, this is exactly the case so. In Gujarat, as in India, the commons land belong to the state and except in schedule VI and V areas, the land holding and management arrangements are not clear. There are no clear rules giving security to the people who have used and cared for the land over generations.

The basic reason for the pastoralist families to migrate to other regions is the steady decrease in the grasslands of the village. Grasslands are not managed by the Forest Department whose interest lies mainly in trees, not by the agriculture department who are interested in agriculture crops, nor the veterinary department who are concerned with livestock, but not the grass on which the livestock is dependent. The grasslands are the 'common' lands of the community and are the responsibility of none. They are the most productive ecosystems in the subcontinent, but they belong to all, are controlled by none, and they have no godfathers.

According to a study by JODHA (2000) in the 15 sample villages of Gujarat, decline of CPRs between 1950-52 and 1982-84 has been 44% and the dependency of person per 10 hectare of CPR in 1951 was 82, which gradually increased to 238 in 1982. The driving force behind this development is agriculturally centered development strategies. In course of land reforms in Gujarat, the government allotted village common lands to low caste landless residents. In Saurashtra alone, the majority of village CPRs was converted to cropland, and permanent pastures were reduced to 20% of the level at the time of Independence.

The future of Pastoralism will depend heavily on political decisions made by the state and central Governments. However, working with pastoralists based on a thorough understanding of their traditional production systems,

knowledge, traditional strategies and practices could empower the pastoralists and maintain their capacity to produce food on marginal lands.

Policies and Pastoralists

Pastoralists have different world view, interest and needs than other people and rangelands ecosystem functions and services differ largely with forest and other lands. But they have no recognition - their resource tenures are not recognized by the state parties, despite of their historic stewardship to bio-diversity conservation.

In recent decades, mobility of pastoralists has been curtailed by establishment of political, and administrative boundaries into rangelands, widespread industrialisation, eroding the control of traditional institutions and dismantling local practices. In addition to that the common property resources like land and forest has continuously been alienated from the commons or pastoralists and indigenous communities who heavily rely on these resources to lead their way of life. It is this inherently negative bias towards mobility that has resulted in pastoral policies which instead of recognizing the ecological relevance of this livelihood system in a fragile ecology and focusing on the improvement of their natural resource base, suggest sedentarisation, making all policies ill-balanced towards pastoralists.

In order to reach to the solutions for pastoral resource management, it is essential to legitimize common property systems through land tenure legislation. This allows a broad spectrum of management alternatives, from the transfer of management responsibility to communities. Proper understanding of the ecology of the traditional pastoral production system and the complex customary arrangements for resource management is necessary to formulate appropriate land policies that secure and ensure land tenureship rights and environmental rights of the pastoralists.

There are no proper and Authentic Land Records/Database and the boundaries of commons land/rangelands are not properly demarcated. Moreover, "no official data is available on use of common land wasteland, grazing land) by pastrolist communities in Gujarat.

There is administrative ambiguity over commons land. In some places, it is classified as revenue land under the village panchayats (as with village grazing lands), in others under the forest department (as in the case of vidis2), most often they get clubbed as uncultivable wastelands. In effect, it is no one's responsibility to conserve, maintain or improve the grasslands. Ideally, the land-use classification should reflect the use of lands in a society (Bharwada&Mahajan).

In 2011, the Supreme Court issued a landmark judgment in the case of appeal against the High Court judgment in the case of Jagpal Singh & ors vs State of Punjab and Ors. The SC is directed to protect, conserve and restore the village commons and remove the encroachments. Immediately after the order, there were a number of circulars, notices issues for removal of the encroachments from the village commons. However, the impact was not to the effect at the ground. And it was in 2015, that the Government of Gujarat has formed 'Gauchar Vikas Yojna (Pasture Land Development Scheme)' in April 2015. This was piloted in 100 villages, to be replicated across the state in later stage. While the scheme was the outcome of the SC judgment that was intended to do mainly following:

- Uphold traditional practices in the village commons favouring landless, dependent and marginalized communities
- Take corrective measures to against encroachment with restoration of commons for the use of dependent communities
- No encroachment or allotments will be entertained, irrespective of political connections, long term investments or large sum of investments on the commons

The gauchar vikas yojna in Gujarat doesn't favour the livestock keepers and other dependent communities. One of the major concern is in the very constitution of the committees from village to district mentioned in the scheme. The composition of the committee is of teacher, sarpanch, village/block/district revenue officer. There is no livestock keeper and other dependent community members in the decision making body for the commons land which is ought to be community land. Thus, they won't be part of the planning or implementation process. One hundred village gauchars are taken in the pilot phase. The provisions of the scheme includes wire fencing of the pasture land, land leveling, soil improvement, plantation, storage and sell of grasses. During the rainy season, when the plantation process will happen, the livestock are not allowed to enter. Then, after the rainy season, the grasses will be sold to the grass card holders. This entire scheme ignores the spirit and purpose of village commons that is supposed to be freely available to the dependent communities. Further, rainy season is the only four months when the maldhari return to their villages as the grasses are available to them in their own villages, rest of the eight months they migrate with the livestock in search of the grasses. Thus, the scheme completely

ignores the intertwined lives and livelihoods in rural areas.

First, the fencing of the pasture land takes away the autonomy and rights of the communities over the 'commons' land. Second, the decision of which type of grasses will not be of the livestock keepers who are the best people who know the kind of grasses the livestock needs during that season. Third, the concept of free grazing is totally confiscated and stall feeding is promoted. There are enough studies that proves that quantity and quality of milk has a positive impact with open grazing animals. Further, the idea behind the policy is to regenerate the grazing land by protecting it/fencing it, and selling the grasses. The concept in itself is absolutely against the fact that grazing promotes and regenerates the grasslands. The grasslands is supposed to be free of cost for the dependent communities, but the policy attempts to generate revenue out of it.

Further, as per the Government Resolution of Gujarat Government, 16 hectares (40 acres) of pasture land should be reserved for 100 animals (GR no.1687/3709/37098). Maldhari Rural Action Group (MARAG) undertook a study and took the information from the government records of 836 villages on the availability of pasture land in the districts of Kutch, Surendranagar and Patan. According to the study, there is a shortage of 62.91% of pasture land in these villages. Inspite of the SC order of ensuring the encroachments from the pasture lands are removed, in 2018, the revenue minister of the state of Gujarat has admitted in the legislative assembly that 2754 villages in Gujarat doesn't have any gauchar land.

Policy Recommendations

Despite the crucial contribution of nomadic and transhumant pastoralism to livelihoods and to national economies, and its role in preserving the fragile ecosystems of the planet, pastoralists are not receiving the necessary attention and support and are subject to discrimination and social exclusion. With an experience of over two decades of working with pastorals, we, MARAG believes that a strong political will for systemic, structural changes needs to be done in order to improve the lives of maldharis:

Effective implementation of the SC order 2011, in the case of Jaspal Singh vs Govt of Punjab, and the grazing land policy needs to be ensured in consultation with pastorals in each state.

Policy makers should recognize the crucial role of indigenous knowledge and the capacity of pastoralists to conserve biodiversity in full compatibility with pastoral livelihoods

There is a need to involve communities in planning, regeneration and management of common lands, including distribution of benefits.

There is a need to undertake land mapping on an urgent basis and removing categories such as wasteland in the entire nation (as its not happened since independence)

There is a need to conduct a census of pastoralists and the small ruminants and cattle that pastoralists and formulate development plans for pastoralists

Many varieties of grass, plants and trees grown on commons, consumed in different forms, are on the verge of extinction. These needs to be preserved and protected in consultation with the dependent communities.

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