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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

UNDERSTANDING THE LAND PROBLEMS **IN INDIA**

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INTRODUCTION:

In India, land constitutes 91% of its territory, rendering it the most prized asset for individuals. The necessity for a robust system to maintain land records becomes evident considering the exorbitant land prices in the country, often reaching crores of rupees. Even a minor error in land record management can result in substantial financial losses for involved parties. This article aims to delve into the top five challenges associated with land record maintenance in India and propose solutions to address these issues.

Land records, as commonly understood, extend beyond registered sale deeds to encompass textual documents (such as the 7/12 extract, Record of Rights, and Jamabandi), spatial records (including maps and property diagrams), and registered transactional documents (like sales, gifts, and exchanges). These records are managed by various departments in each state, leading to potential variations from one state to another. Managing all records across departments poses a challenge, as discrepancies between departments can arise, impacting the consistency of information. This inconsistency in land record maintenance adversely affects the Indian real estate market, often resulting in prolonged legal disputes over land ownership. Recognizing the inherent issues in our land record maintenance system, the Parliamentary Standing Committee produced a report on Ease of Doing Business in 2015, identifying key challenges through extensive consultations with stakeholders:

1. Need for Establishment of a central online database for land records.
2. Digitisation of all remaining land records so that the entire data for the past 30 years is available to the public for online search.

3. Integration of land records data base in a manner so that all mortgage data against these lands can be seen online.
4. Creation of a unique property identification code by linking city survey numbers to municipal bodies so that all data in context of a particular property is available on an online basis.
5. Provision for mandatory verification of records before registration and transfer. This would eliminate wrong practices and subsequent litigation.
6. Determining extent of discrepancies and development strategies for bringing a spatial and textual component of all land data through use of technology.
7. Complete ban on manual records and computerisation of Record of Rights (RoR) and making them available online.
8. With specific reference to Delhi, all developmental agencies integrate the database available with all agencies mainly MCD, DDA, NDMC, Gram Panchayats so that all the information is made online.
9. Reduction of stamp duty to 2% so that cost of transfer of property is reduced.

MAIN 5 ISSUES IN MAINTAINING LAND RECORDS

- **CONSTRAINTS OF SPACE**

When considering land records in India, the first image that often comes to mind is of immense piles of paper stacked in dimly lit rooms, leaving little space for movement. If this is the mental picture you conjure, you're precisely correct. All registration departments and offices are mandated to preserve physical records of every original registered document dating back to the inception of the Registration Act, 1908. Managing records spanning over a century is a demanding and labor-intensive endeavor, necessitating significant manpower, expansive storage facilities, large offices, and substantial financial resources.

Thus, in this time where land costs are reaching all time high and real estate is considered as the most valued asset, dedicating such huge spaces to store documents, would not be considered as an optimum utilization of space. Further storing documents in such huge places comes with its own drawbacks like time consuming manual recording requirement, fright of loss or damage to original documents, substantial capital investment.

Digitalization of all documents, data and information and making these digitized information available to the public would go a long way in eliminating all the prevailing hardships in maintaining and accessing the land documents. Furthermore, digitization of land records would free all the space currently occupied to store documents and the space can be utilized for any other capital generating venture.

- **LAND REGISTRY FRAUD**

In India, all real estate deeds and documents are registered according to the Registration Act of 1908. However, it's often overlooked that while this Act mandates the registration of property titles and documents, it doesn't establish a system for registering title or ownership itself. Consequently, reliance on registered deeds and documents only provides presumptive, rather than definitive, evidence of title.

This loophole has significantly increased the risk of fraudulent land registration, as the absence of concrete proof of ownership leaves the registry susceptible to exploitation. Therefore, alongside maintaining land records, efforts must be made to curb instances of fraud within the land registry system.

The government's initiative of computerization of land records is one of the first steps towards eliminating fraud from the land registry. However, a more uniformity in maintaining land records throughout India and a change in the system of maintaining and recording the registered documents would act as a speed breaker to the constantly increasing instances of fraud in the land registry.

- **NO SINGLE WINDOW SYSTEM FOR TITLE VERIFICATION AND INVESTIGATION**

In India, establishing land ownership typically involves consulting numerous documents and records scattered across multiple departments, resulting in a complex and time-consuming title investigation process. For example, the registration department maintains records of all registered property documents, cadastral maps are housed in the survey department, and revenue documents are kept by the tehsildar. Frequently, these departmental records are outdated, incomplete, or illegible, leading to discrepancies. Therefore, conducting a title investigation for a specific property requires reviewing all relevant documents from its inception or at least conducting a 30-year title search. This involves visiting various departments, gathering data, organizing information, tracing the title history, identifying any flaws, and ultimately drawing conclusions, culminating in a laborious and painstaking endeavor.

The only way to eliminate the above hardships is the establishment of a single window title verification and investigation system, easily accessible to the professionals as well to the general public, making the public documents, “public” in real sense.

- **LACK OF UNIFORMITY AND POOR MAINTENANCE OF LAND RECORDS**

Every state in India has its unique methods, procedures, and regulations for maintaining and overseeing land records. Additionally, these records are typically kept in the state's native language. This diversity presents challenges for individuals who do not speak the regional language, as deciphering the contents of these documents becomes arduous. For example, a person from northern India who is unfamiliar with any South Indian languages would struggle to comprehend technical land documents maintained in a South Indian language.

Poor maintenance of land records and a neglect in updating the land records have resulted in discrepancies in the actual land details as compared to the recorded details

To eliminate the above hardship, it would be recommended that if along with digitalizing the land documents, the central and state governments take initiatives to maintain the land documents in one nationwide understood language, for instance English language. Further necessary amendments will have to be brought in the state acts and rules to change the proforma of various documents and forms in which the land records are maintained. For instance, in Maharashtra the village form no. 7 and

village form no. 12, commonly known as the 7/12 extract is maintained in Marathi and is a very technical document to understand.

- **FEAR OF DESTRUCTION OF RECORDS BY FORCE MAJEURE EVENTS**

Keeping physical copies of original land documents always carries the risk of loss, theft, damage, tearing, misplacement, or destruction due to unforeseen events such as fires, storms, floods, or earthquakes. For instance, following the 2005 Mumbai floods, many offices experienced partial destruction of registered documents. Without backup copies stored digitally, the destruction of these documents would result in the complete loss of presumptive evidence of ownership for a specific property.

To avoid the destruction or loss of documents as stipulated above, the first step should be the easy and ready access of all these documents verified as original to be uploaded on the designated software of the registrar's office. Next step is to obtain the relevant insurances and to put adequate security in place, to ensure the safety of the documents.

RETURNS AND REFORMS

Factor market reforms in India are twinned with questions of inequality. India is a labour surplus economy. It is also somewhat land scarce. Both land and labour have been used sub-optimally due to rigid laws governing them. In the Indian constitutional structure, the central and state governments can write labour laws, while land can only be legislated upon by the states. Capital market laws are largely under the central government.

Due to rigidities in using labour, businesses have been forced to substitute labour with capital. As a result, India has far higher capital intensity in production than warranted by the availability of resources. On land, again, businesses have depended almost exclusively on the states for acquisition. The unusual pattern of factor use has impacted returns for each factor. Wages for workers have been stagnant due to the low utilisation of labour, which, in turn, has drawn wrong responses from state governments. State labour laws have become detailed and more inflexible, further narrowing incentives for entrepreneurs to employ labour. Estimates show labour intensity of production has

fallen by a factor of five since 1980, as technological advances have improved capital productivity, while labour productivity has stagnated.^[1]

The returns on land have suffered similarly. Several businesses, particularly large ones, have exploited market imperfections to obtain land by paying less than the fair value. This has been facilitated by their alignment with the state. The state has used the Land Acquisition Act, and the concept of ‘public purpose’, to acquire land at rates that clearly forbade price discovery. If a plot of land was to be acquired, and the value of adjacent plots arose in expectation of future acquisitions, the ‘expected’ rise in land value was discounted in computing the ‘market’ value of land. The returns to land, therefore, were crimped. For landowning small farmers, neither his physical labour nor the owned land were capable of earning decent returns. This was in contrast to the returns on capital, which were determined by market forces and also relatively higher, a difference that widened with respect to both land and labour as the economy expanded.

LARR ACT 2013 AND STATE ACTIONS

Greater protection of land and labour has perversely affected industrial expansion. The most obvious example is the anti-Special Economic Zone agitation of 2008-09. Objections to sale of land by political parties were perceived iniquitous for landholders, particularly small and marginal farmers. In support of the latter, the central government legislated the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (LARR) Act 2013.^[2] The Act mandated the acquisition of land for all private industrial projects, including infrastructure, to incorporate a mandatory Social Impact Assessment and consent of at least 80 per cent existing landowners.^[3]

The LARR Act has since been the baseline legislation for states. The Act was implemented by the centre on the understanding that even though land is a state subject, the acquisition of property, besides the rehabilitation and resettlement of displaced people, is a joint responsibility of the centre and states stipulated by the Constitution. However, Section 107 of the Act confers the states the right to enact “any law to enhance or add to the entitlements enumerated under this Act which confers higher compensation than payable under this Act or make provisions for rehabilitation and resettlement which is more beneficial than provided under this Act”. As a result, 11 states have

subsequently modified its application. Out of these, the modifications by Gujarat, Andhra Pradesh, Telangana, Jharkhand and Tamil Nadu are considered to have changed the basic structure of the Act, leading to challenges currently being reviewed by the Supreme Court of India.^[4]

Karnataka moved to notify the LARR Act in 2017 with amendments. The bill is pending in the state assembly. Meanwhile, the operative law for land management in the state is the Land Reforms Act of 1961. This is the law under which it has recently allowed industry to buy land directly from farmers. It is interesting to note that neighbouring Tamil Nadu has not followed suit. In Tamil Nadu, when the LARR Act was notified, the separate and existing Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997^[5] was made applicable under the LARR Act. The state is, therefore, not bound by the LARR Act and can continue to employ the other legislation. Maharashtra has also followed the Tamil Nadu model.

All three states are heavily industrial and have found it useful to keep at abeyance the restrictive application of the LARR Act. The methods, though, have differed. Most states, especially those which have strong industrial base, have found the means to keep the LARR Act in abeyance.

This is also what was expected after the central government's experience in having taken the initiatives in 2013 and 2015 to reform land laws in India. In 2013, the LARR Act was passed, but in 2015, an ordinance to put the brakes on several sections of the Act could not pass the parliament. It is, therefore, clear that the onus of reforming land laws now rests on the states and they are, therefore, being proactive, such as Karnataka.

DIFFICULTIES IN REFORMING LAND LAWS

The patchy character of policy changes in India's land laws becomes evident when compared with similar changes in the financial sector, which were far more consistent.

Since India began liberalising in 1991, it became clear that financial sector reforms were necessary to ensure the risk-reward ratio is balanced for more supply of capital at reasonable rates. Financial sector laws incorporated this principle, the latest being the Insolvency and Bankruptcy Code, 2016.^[6] The law encourages banks to approach insolvency courts for recovering dues from stalled

projects. With banks being able to recover bad debts as a result, the state has progressively withdrawn from most of the financial sector, leaving market forces to operate unhindered.

For labour and land, there have been noticeable market failures in determining risks and rewards, forcing the state to intervene in both spaces. The principle of risk-reward balance has been unclear, such as in judging if changes in labour laws would enable fair transaction between those offering work and those demanding it. As a result, the changes made have been confusing, creating more uncertainties.^[7]

Land suffers from a similar problem. While it is recognised that land losers need to be compensated post-acquisition and at a far higher scale than provided under the older laws, the process is messy, creating high administrative costs. Rather than the state being the intermediary between buyers and sellers, economic efficiency rationalises the creation of land markets for easy transaction.

While there are no statistics on land acquired since passage of the LARR Act 2013, practically all acquisitions have been under carve outs created by states after modifying the mother Act. States, which have not done so, have not been able to make sizeable acquisitions.^[8]

CONCLUSION

In India, land records have been upheld since the British colonial era, following the methods established during that time. However, as technology advances, literacy rates increase, and automation and computerization become commonplace, it becomes essential for the government and its departments to modernize and adapt to these changes. While the tradition of managing land records in India is ancient and has been tested over time, integrating the aforementioned suggestions would enhance the system's efficiency. This would result in a robust, error-free land record maintenance system, setting a benchmark for other developing nations to follow.

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.

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[7] The central government has been streamlining 40 labour laws into four codes (for example, wages, industrial relations, social security and safety, health and working conditions). Nonetheless, in recent past, and after the outbreak of COVID-19, some states (Uttar Pradesh, Madhya Pradesh and Assam) have suspended more than 40 of their labour laws through administrative notifications or ordinances. These moves, however, rescinds these laws temporarily, and do not assure permanency.

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[15] A pilot public land inventory for Ahmedabad estimates that the small, but very well located Ahmedabad cantonment, occupies around seven per cent of total developed and developable land in the city.

[16] The Supreme Court has shot down most acquisition cases brought before it after the enactment of LARR Act 2013, reflecting a growing strict legal posturing on such cases.

[17] Radheshyam Jadhav, “Land records in 90% of Indian villages have been computerized”, *The Hindu BusinessLine*, 18 December 2019. <https://www.thehindubusinessline.com/economy/land-records-in-90-of-indian-villages-have-been-computerised/article30335779.ece>.

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