



India: Land Governance Country Narrative (Full Report)

1. INTRODUCTION

Land is an important source of identity and a precious asset with significant emotional connection in India. It is also the main source of rural and feudal power structure for most of India's history. Land is a symbol of social status, cultural identity and an expression of political power. The value of land is deeply ingrained in the consciousness and well-being of the poor farmers and indigenous communities who make up a substantial portion of India's total population. With the changing climate in nation's development agenda, starting with agricultural expansion and of late tending towards industrialization, urban expansion, irrigation and mining projects, demands for land have increased. At the same time, the welfare-mandate of the state has also worked towards fulfilling the land reforms agenda by distributing land to landless and homesteadless.

India's land governance¹ system has evolved over the nation's history. Three major phases are clearly discernable—the first during the Gupta Empire in 200-600AD,² followed by 1550-1600 during the reins of Emperor Akbar,³ and thereafter in 1793 by the British.⁴ The present land governance system has been shaped by India's diverse geo-politics and cultural contexts. This system presents a complex administration, an embedded legal plurality, emerging sporadic innovations and also an expanding mosaics of increasing competitions and conflicts.

Land governance in India, in the post independent period has evolved as a state-subject, with land-revenue department as the main custodian, while the actual responsibility of land governance is shared by number of departments and agencies at the state and local level, with overlapping jurisdictions and influenced by the policies and practices of the relevant union ministries. It is to be noted that administration of forest land rested on Forest Department beginning in 1878, while many states continued to have a dual governance regime with forest department managing forests while revenue department controlling land under some legal classes of forests (e.g., protected and village forests). Post-independent urban development departments were created which started managing urban land, while

abodes of higher indigenous communities were put under control of the State Governors with different set of legal protection.

Land governance reforms in India have been low in priority and slow in progress. Land revenue departments now get less of a priority because land is no longer as much a source of revenue than that was in colonial rules. Apart from the complexities of rules and procedures, additional tasks (like relief, census operation, maintaining of law and order etc.) overburden the work of these departments, often run with inadequate human resources in terms of number and capacity. Of late, in response to the demand and in line with global changes, with support from national government, states have brought in sporadic innovations around Information and Communication Technology (ICT) in land record management along with institutional reforms around tenancy, land to landless, women land rights, dispute resolutions, and other issues.

Contemporary land governance in India faces a key challenge: meeting the demand of land required for investment and urbanization to implement ambitious growth plans, while ensuring respect and protection of the rights of small farmers, women and indigenous communities as well as the environment. The land use has changed significantly from agriculture production to manufacturing and later to services, with lands getting transferred from forests to agriculture and now to industry and cities. India had a legacy of higher proportion of common lands in its rural and tribal areas because of cultural heritage, geomorphology, colonial policies and also limitations of survey process in post-independent India. The common lands often governed through traditional community institutions and customary tenure, have been mostly converted and continue to be transformed to private control for investment, challenging local livelihoods, culture, ecology and fuelling conflicts. Demands for land and for more profitable land for investments in development projects are rapidly transforming agricultural, rural and peri-urban land uses, threatening local food and small farmer security. Land reform, which largely remains unfinished with tenancies often concealed and unattended, has increased the growth rate of rural-migration taking place in cities.

The movement towards digitizing land records for conclusive titling, adopting of the mirror and curtain principle, linking land records and encumbrances, building multiple cadastre, improving institutional innovations around land-related service delivery and dispute resolution, and increasing access to transparent, reliable information have augmented the efficiency of land administration while raising implementation challenges. While there have been sporadic success and highlighted innovations, overall land record modernization program faces the challenges of inclusion, transparency, access, reliability and legal

acceptability. Notwithstanding the challenges, new centralized and decentralized initiatives are unfolding around use of information and GIS technology to augment participation, equity and sustainability in land governance.

The obligation of welfare states and its responsibility towards its citizens have made land (homestead and cultivated) grant initiatives for the landless and women with preference to disadvantaged groups. These mandates often entail using or reforming existing legal frameworks. Women land rights have been strengthened in many states through such programs, provision of joint titling and amendments to religious acts. While the issue of gender equity contributed to sporadic progress and innovations, substantive legal and institutional efforts are required to address landlessness and gender-equity in societies entrenched with strong patriarchy.

2. Land Legislation and Regulations

2.1 Land Governance in Indian Federal System

In the Constitution of India, "Land" is included in the "State" list⁵ and "Forests" under concurrent list (both state and Centre list).⁶ Land and land reforms are under the exclusive legislative and administrative jurisdiction of the States (provinces), while both the union and the state governments have jurisdiction over "forests". To achieve an egalitarian society, Part IV of the *Directive Principles of State Policy* also indirectly mandates the state government to take measures for land reforms.⁷ The Indian Constitution provides equal rights to men and women, which is also applicable to land. However, the realization of women's land rights continues to be an issue in terms of implementation. Similarly the legal protection of land and resources held by indigenous communities has not been effectively implemented on the ground.

2.2 Land Legislation and Regulations

The last seventy years of land governance can be broadly divided into four phases

- 1) Land reform shifts land to cultivators by abolishing intermediaries and carrying out of survey and settlements and land consolidation operations during 1960s-80s;
- 2) Attempts towards involving local self governance institutions and decentralization in 1990s;
- 3) Digitization of land records aiming at conclusive titling in the early 21st century; and
- 4) Reforms around forest rights, land acquisition, and tenancy

While the achievements and impacts of these governance initiatives have been geographically and institutionally different, overall they have been and are influencing land tenure in India substantially.

Until 1977, "the right to acquire, hold and dispose of property" was recognized as a fundamental right under article 19(1)(f) of the Constitution of India. However, the 44th Constitution amendment in 1978 made it a legal right. Article 300A inserted, "no person shall be deprived of his property save by authority of law."⁸ Hence, right to property is no more a fundamental right but is only a legal right and in the breach of which an aggrieved person can approach the High Court under Article 226 of the Constitution India.⁹

The Constitution of India has made special provisions for the land tenure and governance systems in tribal regions and communities in the Fifth (tribal habitations in mainland India) and Sixth Scheduled areas (tribal habitations in northeastern India).¹⁰ No Act of Parliament shall affect the customary law and procedure and ownership and transfer of land in the sixth scheduled States¹¹ without the decision of the State Assembly with a resolution.

To make laws for abolition of estate or *Zamindaris*¹² and intermediaries unchallengeable in the courts, the law enacted by 13 States¹³ listed under Ninth schedule,¹⁴ was inserted (alongwith article 31A and 31B) in 1st Constitution Amendment in 1951. This was done to prevent the landlords challenge in court for protection of their fundamental right to property. Alongwith Article 31A and 31B, the laws under this Schedule are beyond the purview of judicial review. Soon after Independence in 1947, these steps were felt necessary to carry out land reforms in accordance with the economic philosophy of the state to distribute the land among the land-workers or cultivators, by taking away such lands earlier vested under the control of the intermediary landlords during colonial period.

The major objective¹⁵ of post-independence land reforms consist of re-ordering agrarian relations to achieve an egalitarian social structure, eliminating exploitative land relationships by achieving the national development goal of "Land to Actual Tiller", enlarging the land base of rural poor, increasing agricultural production and diversifying the agricultural economy. The major components of land reforms strategy have been:

- the abolition of *Zamindari* and intermediary tenures;
- tenancy reforms;
- ceiling ownership of agricultural holdings;
- consolidation of holdings;
- distribution of Government Wastelands, ceiling surplus land including *Bhoodan* (voluntarily donated land as per a post-independent socialist movement) land to landless rural poor;
- modernization and updating of land records system;
- special measures for prevention of alienation and restoration of alienated tribal lands; and

- improving empowerment of women to ensure greater access to land and abolishing gender-bias in land legislation.

2.3 Brief description of important National laws and Typologies of state laws

Two important pieces of legislation were passed recently in the 21st century that followed a reformist approach and had a substantive impact on land governance in India. *The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* has five important elements:¹⁶

- (1) Land Acquisition and Rehabilitation & Resettlement to be seen as two sides of the same coin making rehabilitation and resettlement of evicted from their lands compulsory.
- (2) Increased compensation for farmers, expanded coverage of compensation to non-owners facing loss of livelihood
- (3) The Free Prior Inform Consent (FPIC) of Gram Sabha (Village Assembly as per Panchayati Raj legislations) is mandatory for acquisitions in Scheduled Areas under the Fifth Schedule under section 41(3) of the Act.
- (4) Taking prior consent under section 2(2) of the Act¹⁷ of affected families when the acquisition is for private sector involvement;
- (5) Social impact assessments to determine a project's impact on people's lands and livelihoods, which has to be carried out in consultation with the Panchayati Raj Institution.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (in short called FRA)

The FRA 2006 is viewed as a progressive forest tenure reform, which recognizes the customary rights of forest dwellers over forestlands and forest resources for livelihood needs. It provides a legal framework¹⁸ for recording and vesting forest rights and occupation in forestland to forest dwellers whose rights were not recorded earlier and referred as 'historical injustice'¹⁹ in the act. The law *recognizes* the right to hold forestland for individual or common occupation for self-cultivation or habitation for livelihood and "the "community forest rights"²⁰ and rights over "community forest resources."²¹ As the most historic part of reform, FRA recognises and empowers the *Gram Sabha (Village Assembly)* and village level institutions with the right to protect, conserve and manage "community forest resources (CFR)" for sustainable use as a paradigm shift in conservation governance. To protect the rights of vulnerable tribal groups, the Act also recognises the customary tenure of "habitat and habitations" of particularly vulnerable tribal groups and pre-agricultural communities. For the need of infrastructure for development facilities managed

by Government, the village assembly can recommend for diversion of forestland for 13 purposes²² under FRA, without applicability of Forest Conservation Act, 1980, upto 1 hectare for each purpose.

Protection of Rights of Ownership over Land in State Laws

The legal rights of ownership over land of persons are protected and regulated in accordance with the state laws enacted to implement the constitutional rights to property. Besides the constitutional protection, the land reforms legislations enacted by different states²³ have protective provisions to check and restore any illegal transfer of land of socially vulnerable groups. The Fifth Schedule of the Constitution provides protection to the tribal land in Schedule Areas and empowers the Governor of the State to make regulations. Almost every State with Scheduled Areas have enacted legislations relating to prevention/prohibition of land transfer in Scheduled Areas by tribal to non-tribal, and in some cases, even the transfer of land between tribal inter-se is restricted.²⁴

The Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956 under its 2002 amendment completely bans transfer of immovable property (land) of Scheduled Tribes to non-tribal in the Scheduled Areas. The Andhra Pradesh Scheduled Areas Land Transfer Regulation (APSALTR) Act in 1959 prescribes that tribal lands shall not be transferred to non-tribal and also has a provision for retrieval of tribal lands illegally acquired by the non-tribal before 1959. The APSALT Regulation 1 of 1970 explicitly prohibits any person in a Scheduled Area from transferring lands to anyone other than a Scheduled Tribe. To protect and secure land of disadvantaged groups, the Karnataka Scheduled Castes & Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 enacted to ban on the transfer of lands allotted to landless, agricultural labourers belonging to SC/STs and for any transaction without the knowledge of the grantee, shall be void and the land will be returned to the original holder, without any compensation to the purchaser. In most of the cases, the provisions of these laws are enforced in practices when situation turned into conflicting mode linger with prolonged period. However, *suo moto* cognizance is not taken with time bound delivery of justice. As on 31.12.2015, Odisha State has instituted number of 13268 cases of illegal transfer involving an area of 18645 acres and restored 12293 individual cases involving an area of 13445 acres in favour of tribal.²⁵

*Typologies of state laws (viz. laws related to land reforms, land consolidation, protection to tribal/indigenous communities, survey and settlements provided in **Annexure-Legislation typologies***

3. LAND TENURE CLASSIFICATIONS

In India, the land tenure system has a long history of its origin and contribution in the creation, consolidation and expansion of State. Three land tenure systems found in India were mainly based on system of revenue collection such as -*zamindari*²⁶ (permanent settlement), *ryotwari*²⁷ (peasant-settlement) and the *Mahalwari*²⁸ (communal) system. Since Independence, only the ryotwari type of system continued as the title holders were in direct relationships with the State including land rent. Subsequently, land rent system was abolished with only provision of payment of a nominal cess.²⁹ There are also a system of tenure around common land in India villages, which is mostly linked to access and user rights and limited management rights. However, common land per se are not defined clearly in land revenue administration. The tribal regions of north eastern states have unique and diverse practices of communal land tenure systems. With the introduction of new land revenue system, private property in land has been strengthened in concurrence with enforcement of various land reform measures.

Land tenure and typologies are very complex in India due to adoption of historical legacy, compulsions of welfare state and emerging economic development. There are three main types of tenure in India that govern land ownership and use: these are private land, government land and common land.

3.1 Private Land Tenure

The private land ownership prescribed various types of tenures, including

- (i) land owned on inheritance with transferable and heritable rights;
 - (ii) land granted to cultivator on lease by government or others with permanent right of possession with or without right of transfer;
 - (iii) land leased in tenure without any permanent right of possession classified in terms of fixed money, fixed produce, share of produce and usufructory mortgage;
 - (iv) usufructory mortgage: land mortgaged for the temporary period of possession to accrue the income from the property mortgaged with to repay the debt till the full amount is realized and;
 - (v) allotment of government wastelands for cultivation to the landless tenant, and house-site to homesteadless³⁰ families under Government land distribution scheme.
- The rights of women over land in general and women's rights over land with joint title in the name of both the spouse is also included as part of private land tenure.

Private individuals also include religious institutions/ endowment, land in the name of deities and religious trusts, temple, Waqf board, Church, Madarasas, *Debottar*³¹ and *Bramhottar*³²

land etc. Some of these are called service tenures as the land ownership are linked to services offered by some individuals (e.g., priests) to the deities. Though purposes are different, these tenures are treated as private. There are examples of deity being treated as Individual ryot viz. Lord Jagannath of Odisha.³³

In India, in the context of alienability or transferability, two types of private land ownership right exists- freehold and leasehold, which are relevant both in urban and rural areas. Freehold land is the most common form of tenure, and can be freely transferable and heritable. The buyer has complete legal ownership rights over the property and can stay, sell or transfer the ownership to another party. Leaseholds are stipulated for a set period, after expiry of which the land reverts back to the original owner. It cannot be transferred easily like freehold property, which always requires a Power of Attorney for conducting transactions and ceases to exist with the death of the freehold owner or the seller. Freehold property rights give complete legal ownership of the property to the buyer in perpetuity, whereas with leasehold rights the buyer is only a lessee with limited rights. However, varied leaseholds grants also exist in different states with both heritable and non-heritable ownerships. Tenancy or share cropping can be interpreted as a leasehold right, often without any documentation and legal backing. Government of India is now pushing tenancy to be converted to formal leases for enhancing farm productivity and opening up of land lease market.

3.2 Government Land Tenure

Any land under the direct ownership and control of the Government and its institutions or departments and not recorded in the name of a private individual or a party are treated as Government land. Government land³⁴ in terms of ownership includes common land of various types classified for the specific purposes and usages of the villages. The tenure on government land is distributed and defined around ownership, control, management and use between various departments and users including central ministries, state governments, or local bodies, sometimes occupying substantial acreage in high value urban areas,³⁵ around major ports as well as in rural and tribal area.³⁶ The Union Government departments and organizations are reported as the largest landowners in the country, though there is no definitive publicly available data or information on central and state government land holdings.³⁷

In India, tenure holders on government land are (1) Central Ministries and agencies (2) State Revenue (Land) Department, (3) State Forest Department, (4) Railways and Defense, (5) Other State Department or Govt institutions, and (4) Institutions of local self-governance

at urban and rural areas. The forestlands reserved or protected (for wildlife)³⁸ are under the ownership and management of Forest Department. However, after enactment of FRA, the legal rights of individual Scheduled Tribes and Other Traditional Forest Dwellers over forestland and Community Rights of the Gram Sabha overlap around these forestlands. This has brought a new and additional typology and regime of forest tenure and forest resource governance in India. Along with non-forest land, the forestland within the revenue boundary is under ownership of revenue department whereas management is entrusted with forest department. There are also variations found in various states across India in relation to defining tenure over forestland between forest and revenue administration. Some states use the term public land (e.g., Karnataka) for Government land and have instituted agencies (i.e., Karnataka Public Lands Corporation Ltd -KPLC³⁹) to manage these lands.

Government lands, though mapped, are not demarcated on the ground, and in most cases maps are no longer in line with reality. There is lack of land registry databases for public lands both in urban and rural areas, and there is little information on the extent to which public lands have been transferred to private interests. (LGAF India Report, 2016)

3.3 Common land tenure

There is no commonly agreed or standard legal definition⁴⁰ of common land in India, though many types of common lands are recognized locally. Common property land resources (CPLR), as per National Sample Survey Organisation (NSSO) (1998)⁴¹ are the lands situated within the boundary of the village and are formally (i.e. by legal sanction or official assignment) held by village panchayat or community of the village including Village panchayat grazing land/pasture land,⁴² Village forest and Woodlot,⁴³ village sites and threshing floor.⁴⁴ Commons are not defined in terms of ownership, though based on classifications under legal framework⁴⁵ they can be inferred to include village pasture,⁴⁶ village forest⁴⁷ and community land. They form a subset under the more clearly defined term 'Government Land', which also include cultivable wasteland, uncultivable wasteland and reserved land,⁴⁸ excluding lands under other departments (including lands under Forest Department).

The Draft National land Reform Policy, 2013 did not provide a uniform national definition of common land. At a broader level, however, it defined common land in terms of its *inalienable use rights* exercised by all members of an identifiable community. The Draft Policy emphasized the importance common land because of their *large area* and their *contribution to people's sustenance*. Based on standard 9-fold land use classification, it prescribed Cultivable Wastes and Fallows other than Current, Common Pastures and Grazing land, Protected and Unclassified Forests and Barren, Uncultivable and other Government

Wastelands that are being used for common purposes as legal common property land resources.

Technically village commons lands are part of Government land set aside for specific purpose of common use by the village community. Lands are actually recorded in the name of the government in the registry. States have different names and institutional mechanisms for management of village commons under their law. Punjab, Himachal Pradesh, Rajasthan, and other States have enacted use and management of grazing lands among others and endowed with Gram Panchayat the responsibility of management and protection.

In the Sixth Scheduled States⁴⁹, except the land under "reserve forests", almost all land is under community ownerships with customary legal and institutional mechanisms for their management and governance. In Fifth Scheduled⁵⁰ Areas, under the Panchayat Extension to Schedule Area Act (PESA), 1996⁵¹, every Gram Sabha is competent to safeguard and preserve the community resources, but the Act is not yet fully implemented in most states. Availability of CPRs to villagers declined substantially over the years, following the expansion of state control but resulting in open access situations as well as due to individualisation/privatisation, industrialisation, urbanisation, unauthorised encroachments and illegal regularisation, etc. Besides, the over-use and over exploitation of existing common resources has led to deterioration in its quality.⁵²

Common property resources, which constitute 15 per cent of the country's total area, are shrinking at the rate of 1.9 per cent every five years due to encroachment, as per the National Sample Survey Organisation. Since Independence, more than 834,000 hectares of village commons have been encroached. In January, 2011, Supreme Court of India (Civil Appeal No.1132/2011 @ SLP (C) No.3109/2011) directed all state governments to prepare schemes for the eviction of those occupying village commons and restore⁵³ them to the community, with an order to submit compliance reports. But there has not been much progress on implementing this decision.

3.4 Customary Tenure

In India, the systems of customary tenures have been existing both in codified/written as well as oral/unwritten laws. They are more prominent in the tribal dominated regions than among non-tribal societies across the regions. In the North Eastern states under Sixth Scheduled areas of the Constitution and other special provisions including article 371 (a) and (c), local customary as well as community land tenure systems are respected. Diversities of tribal communities in their ethnic origin, culture, languages and customs, are also reflected

in their customary laws and land management systems. However, amid diversity, common to them all is their customary laws that govern individual land ownership.

3.5 Tenure types in relevant laws

"Affected families" under *the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*, included agricultural labourers (those who do not own land but cultivate other's land in exchange for a wage), tenants of any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of land, whose primary source of livelihood stand affected by the acquisition of land, and the ST & OTFDs who have lost any of their forest rights recognized under FRA 2006 due to acquisition of land. Besides Rehabilitation & Resettlement package, SC/ST families are entitled to the additional benefits including land to each family in every project even in case of irrigation projects, one time financial assistance of Rs. 50,000 per family, additional 25% R&R benefits for families settled outside the district, payment of one third of the compensation amount at very outset, preference in relocation and resettlement in area in same compact block, free land for community and social gatherings, continuation of reservation and other Schedule V and Schedule VI area benefits from displaced area to resettlement area.

The FRA 2006 recognises more than 13 types of rights which may be categorised into four broad tenure types, as already mentioned in previous section. There are several important features of the rights granted under this Act:

1. Rights are heritable but not alienable or transferable
2. Rights are registered jointly in the name of both the spouses in case of married persons and in the name of the single head in case of a single headed woman household.
3. In the absence of a direct heir, rights shall be passed on to the next-of-kin.
4. The Gram Sabhas must give their Free Prior and Informed Consent in writing to the proposed resettlement and package before relocation and resettlement of families for creating inviolate areas for wildlife conservation.
5. The rights recognised on forestland under occupation of an individual or family or community shall in no case exceed an area of four hectares.
6. No member of a forest dwelling ST or OTFD shall be evicted or removed from forest land under his occupation until the recognition and verification procedure is complete⁵⁴.

Land reforms in general and tenancy reforms in particular aim at redistributing ownership holding from the view point of social justice, and reorganizing operational holdings for

optimum utilization of land. Apart from this, the problem of tenancy (the rights and conditions of holding land as a tenant) also comes under the scope of land reforms. The scope of land reforms entails abolishing intermediaries and passing tenancy reforms, such as regulation of rent, security of tenure for tenants and conferment of ownership on them.⁵⁵ Other elements of land reform laws include conferment of occupancy right in homestead lands, imposition of ceilings on agricultural land holdings, distribution and settlement of government lands, and handing over of ceiling surplus land to the landless and weaker sections of the population. Furthermore, these reforms guarantee protection of the SCs and ST *ryots* from illegal alienation of land, special protection of land of the STs in the Scheduled Areas, and the determination of non-resumable areas of tenants.

In practice it was found that banning or restricting tenancy through reform laws did not help the poor and, in fact, harmed them to a large extent.⁵⁶ The government admitted that the reforms initiatives were half-hearted with regard to the imposition of ceiling and security of tenure. In spite of that, the government brought about a significant change in agrarian structure. Some 92% of the holdings are now wholly owned and self-operative in the country, though various studies indicate higher tenancies which remain concealed and under-reported. The work on other aspects of land reforms is continuing and the major achievements⁵⁷ are:

- (i) Intermediaries were abolished on 6 million ha and 20 million tillers were granted ownership rights.
- (ii) 2.1 million ha of ceiling surplus land has been distributed to 5.50 million rural poor.
- (iii) 5.9 million ha of Govt. Wastelands and 0.9 million ha of *Bhoodan* land has also been distributed among the eligible rural poor.
- (iv) 65 million ha has been consolidated in the country.
- (v) 12.42 million tenants have their rights protected over an area of 6.25 million ha of land

A paradigm shift with regard to perspective on land leasing and tenancy reform has come since Tenth Five Year Plan (2002-07), which felt that it had helped neither agriculture nor the tenants.⁵⁸ The Eleventh Five-Year Plan (2007-12) recommended legalizing tenancy to allow tenants to apply for credit from formal sources and to provide them with enough incentives to develop their land. It pointed out that security of tenure should not be confused with ownership rights. In 2015, the Government of India's premier policy think tank, National Institute for Transforming India (NITI Aayog), constituted an Expert Group to legalize land leasing in India for agricultural efficiency, equity, poverty reduction, agriculture productivity and rapid rural change. The group has submitted its recommendations, however; no decision has been taken so far by the government.

Under the Hindu Succession Act, 1956, a religious act, the son had complete rights over their father's property while daughter enjoyed such rights only until she got married. After the amendment in 2005, every daughter, as member of Hindu Joint family, whether married or unmarried, has the same rights to her father's property as the son. Daughters are also, subject to the same rights, duties and liabilities that were earlier limited to sons.⁵⁹ However, Supreme Court has said that a daughter's right to ancestral property does not arise if the father died before the force of Amendment Act 2005 since the amended provisions do not have retroactive effect.⁶⁰

3.6 Legal security of indigenous and community land

PESA,⁶¹ enacted in 1997, directs the State governments to bring their existing Panchayati laws into conformity and ensure primacy to existing customary law and traditional mechanisms. It also requires state governments to give primacy to the Gram Sabha or village community in the management of community resources. The provision under 4(i) provides that the Gram Sabha or the Panchayats at appropriate levels shall be consulted before acquisition of land in the Scheduled Area for development projects and re-settling or rehabilitating persons affected by such projects in the Scheduled Areas. This practically allowed the State to take unilateral decision through District Panchayats. Various states also enacted their State panchayat laws with further dilution.

*Fifth Schedule*⁶² Area of the States are required to make regulations that prohibit or restrict the transfer of land by or among members of STs and regulate the allotment of land to members of STs. Almost all the States with Scheduled Areas have enacted laws relating to the prevention of land transfer in Scheduled Areas by tribals to non-tribals, and in some cases, even the transfer of land between tribals *inter-se* is restricted.⁶³ However, in large part, the State Governors have failed to use their powers⁶⁴, while PESA remain largely unimplemented.

*Sixth Schedule*⁶⁵ empowers the Regional Council for an autonomous region (ARC) for different scheduled tribes and the District Council for an autonomous district (ADC) in North Eastern states, to make laws related to land allotment, occupation or use, or the setting apart of land, other than reserved forest, for various uses and for the regulation of the practice of shifting cultivation including the inheritance of property. The Indian Constitution⁶⁶ also provides substantial autonomy to some states and regions in North Eastern India to maintain the cultural identity of the indigenous communities and their customary natural resources governance, which includes protection of community land ownership and customary tenure.

However tribal land alienation⁶⁷ continues through transfer to non-tribals, encroachment by the immigrants, acquisition for development projects without recognising community rights, and monopolization by the tribal elites in Northeast.

4. LAND USE TRENDS

4.1 Change in rural and urban land use

India has adopted a nine-fold land use classification⁶⁸ post-independence. As per the Land Utilization Statistics 2011, the total geographical area of the country is 329 million hectares and the reported area is 306 million hectares. Since 1950, the area of non-agriculture use (usually urban land) has been steadily increasing with decreasing of cultivable wastelands. It now constitutes 8% of the geographical area, almost trebling in 60 years. Area under rural (excluding non-agric. use and forests) has decreased from 72% to 64%⁶⁹. Separate urban registry is not maintained in most states and there is lack of reporting of urban land information separately in absence of availability and maintenance of cadastre or base map. Census 2011⁷⁰ reports 7,935 towns in the country, with an increase of 2,774 since last Census in 2001. The total number of Urban Agglomerations/Towns, which constitutes the urban frame, is 6166 in the country. Total urban population is rising and it was 31% in 2011, with 2.38% rate of urbanization (2010-15). Satellite-based analysis⁷¹ available indicates that majority of the urbanization has primarily occurred in the cropland areas (0.7 million ha) while only 0.12 million ha of the forest areas were cleared for urban development during 1880–2010. The built-up area (or urban area) has increased by 5-fold from 0.46 million ha to 2.04 million ha during 1880–2010. The urban population is expected to increase by more than 200 million by 2030, requiring about 8 million hectares of additional land for residential use alone.(India LGAF Report, 2016)

4.2 Change in forest and agricultural land

The forestland land area has been showing a very slow and steady increase post-independent, primarily due to declaration of more areas as reserved and protected forests by state. Until 1980, there was also large scale diversion of forest land for non-forestry purposes including agriculture, multi-purpose river valley projects and mining alongwith urbanization and industrialization at a rate of about 150,000 ha per year. The rate of deforestation under British rule and until 1950 after independence was relatively greater but decreased after 1980s due to government policies and laws to protect the forests. India brought in stringent Forest Conservation Act (FCA) in 1980 to curb and control diversion of forest land by concentrating power with central forest bureaucracy.

The total area of forestland diverted for non-forest use since October 1980 to July 2016 is 0.9 million hectares, the average approximately 25,000 hectares per year⁷² in addition to the internal officials infrastructure and small uses around forest areas and the forestland recognized under FRA 2006 for individual forest rights as on April 2017 over areas of 1.6 million mha in India.⁷³ Although the actual land use of these areas has changed into non-forest uses, their legal status remained as forest land.

Agricultural land (Net sown area, fallow land and miscellaneous trees, crops and groves) has almost remained constant with 51% share in 1950 and 52% share in 2010, though net sown area has increased by 20%. Since 1961 the area of grazing and permanent pasture has been continuously declining including fallow and uncultivable wastes, which are mostly comes under village common land categories. There is a slow declining of land under miscellaneous tree, crops and groves. However, satellite based analysis⁷⁴ indicate that majority of the cropland expansion has been resulted from conversion of forest (16.9 million ha), grasslands/shrublands (14.8 million ha) as well as other types that primarily include fallow lands. A total of 26 million ha forest areas (from 89 million ha in 1880 to 63 million ha in 2010) and 20 million ha of grasslands/shrublands (from 45 million ha to 25 million ha) has decreased in India. In contrast, total cropland area has increased by 48 million ha (from 92 million ha in 1880 to 140 million ha in 2010).

4.2 Post-liberalization Change

Post-liberalization initiatives begun in 1990s in India have increased the requirements of large land areas for investments of various kinds of development projects including mining. While there has been no change in agricultural land, area under non-agricultural uses (urban and industrial land) has increased by 25% during the last two decades. Simultaneously, the declining area of cultivable wasteland, barren & uncultivable land, pasture & other grazing land, misc. trees, crops & groves, may also be one of the reasons for the increasing need for public land for to serve investment demands.

LGAF India Report (2016) identifies the absence of a Rural Land Use Board, unclear identification and legal categorization of common lands, and ambiguous allocation of management responsibility and procedures behind such changes. According to the LGAF report, rural land use planning is virtually absent and ad hoc diversion of common land for housing and commercial purposes are usually common.

4.3 Household Ownership Holdings of Land in India

As on 2013, around 156 million households lived in rural areas among them 7.41 percent households were landless (either no land or less than 0.002 hectares)⁷⁵. The estimated total

area owned by the households was 92.369 million hectares with an average size of 0.592 hectare land per holding. Of the total land owning households 75.41 percent, the highest, belong to *marginal* owners owning 29.75 % of the total area. The social groups' wise share of land owned was 13.06% for *Scheduled Tribe*, 9.23% for *Scheduled Caste*, 45.68% for *Other Backward Class* and 32.03% for *others* with per household average area land owned respectively 0.650 hectare for *ST*, 0.272 hectare for *SC*, 0.603 hectares for *OBC* and 0.816 hectares for *others*.⁷⁶ Between 1996 and 2006, average holding size in India has reduced by 13%.

5. LAND RECORD MANAGEMENT

The LGAF India Report (2016) remarks that authoritative land records—including up-to-date textual information and spatial identification of boundaries—are either completely missing or poorly maintained. Land record management in India focuses more on presumptive titling rather than following conclusive.⁷⁷ Adoption of comprehensive methods and involving multiple agencies, account for more time lag between land transactions and updating land records. Other issues include opaqueness in maintenance of land records, high degree of inaccessibility of the records by common citizen, it not being citizen centric, inadequate use of IT application and more human interface for service deliveries, often adding to transaction cost.

The land record management system in India has mainly depended on manual methods. With diverse and complex land tenure systems in the States and within the regions have created huge challenge to maintain an accurate and updated land record management systems. Accurate land records are crucial for effective enforcement of well-defined property rights as they reduce the scope of disputes and aid in dispute resolution. Thus, with the advancement of technology and digitization and the failure of state institutions to deliver on time-efficient service to its citizens, the need for a better and modernized land record management system was realized.

To develop a modern, comprehensive and transparent land records management system in India for 'conclusive land-titling'⁷⁸ system, the government of India launched National Land Records Modernization Programme (NLRMP) in 2008 merging two previous central sponsored scheme.⁷⁹ The processes of digitizing land records started in 1988 and accelerated from 2008 with NLRMP.

Now renamed as Digital India Land Records Modernization Programme (DILRMP), this scheme has three major components: Computerization of land record, Survey/re-survey and Computerization of Registration.⁸⁰ Although it began as Centrally-sponsored Scheme (with

joint Central and state government funding), since 2016-17, the programme has evolved into a Centre Sector Scheme (entailing 100 per cent Central funding for all components). It aims to usher in a system of updated land records, automated and automatic mutation, integration between textual and spatial records, inter-connectivity between revenue and registration, a replacement of the present deeds, registration and presumptive title system with that of conclusive titling with title guarantee. Its core principles are⁸¹ (i) a single window to handle land records,⁸² (ii) the mirror principle,⁸³ (iii) the curtain principle⁸⁴ - and (iv) title insurance.⁸⁵

DILRMP envisions a transparent comprehensive land information management systems, which would include (1) computerization of Land records and associate processes (2) Seamless flow of information between different government entities (3) Web enabled services to common citizen (4) Integration of different processes including computerization of Land records, registration process, Aadhaar number seeding to Revenue records and between Sub registrar office (SRO) and Revenue office (Tehsil) (5) Multiple Agencies for various service deliveries to curb corruption viz. CSC as a center for services, Revenue offices, Kiosks and Cyber café and (6) ensure adequate accountability of revenue officials by ensuring authentication using aadhaar number, biometric authentication and password protected process.

The implementation of DILRMP now covers all the 29 States and 6 Union territories of the countries, but with differential progress. As on 23 January 2014, 23 States had computerized their registration process, 21 had completed computerization of Record of Rights (RoRs), 17 stopped manual issue of RoRs, 21 States accorded legal sanctity to computerized copy of RoRs, 21 States have started mutation using computers, 9 States introduced E-Stamping and integrated their land records with Registration process.⁸⁶ Across India, 18 States and one UT now issue RoR from Tehsils Computer Centres, 12 States issue RoR at Town/Village level Kiosks or Common Service Centres and 6 States issue Digitally Signed RoRs.⁸⁷

As a success story, in the State of Himachal Pradesh, 98 per cent of the RoRs are available in the highest category wherein the records can be accessed and their copies obtained anytime on state level servers housed in a secure facility that is not susceptible to a shut-down or break-down.⁸⁸ Himachal Pradesh has digitized Cadastral Maps in traditional methods and online copies made available in 3797 revenue estates (18 per cent) may accelerate the process in coming year.

The Integration of Land Records Computerization in the State is expected to bring in systemic changes by making public delivery systems efficient, corruption free and beneficial to citizens by:

- (i) Reducing delivery times for registration/ mutation/ issuance of RoR copies,
- (ii) Allowing access to certified copies of RoR (Jamabandi) and ShajraNasb (Family tree) anytime-anywhere from authorized LokMitra Kendra (Citizen Service Centers) at Panchayat level
- (iii) Providing an option of instant mutation at the time of registration itself
- (iv) Eliminating the fees applicable to searching land records by putting the land records data in the public domain.

The implementation of DILRPM is a very challenging task and seriously time consuming process. States have different languages and terminologies for property records, including different methodologies for preparing textual and spatial land records. Within a State followed more than one method of preparing and maintaining land records, depending upon historical factors in the creation of the State. Updating the vast complexities and diversities of situations in different states and within the regions consume much of the time as prerequisites for digitization and computerization of land records and their subsequent integration. Few of these challenges are:

- (i) Computerization of land records as primary activity is a herculean task and is seen as secondary activity compared to election, census, disaster etc. by Revenue Department
- (ii) Digitization of legacy data of 20 million records was a real challenge
- (iii) Phenomenal task for preparing the records for data entry and different ways of maintaining land records different regions of the states.
- (iv) Verification of digitized records was a real challenge; certification of correctness of data entry is pre-requisite for any electronic system to become operational.
- (v) Complete verification and certification is extraordinary task for field level functionary.

After recognition of individual forest rights and community forest rights title under FRA 2006, the land records need to be integrated. However, many of the land titles issued have not been demarcated and proper sketch maps are not prepared. As has been mentioned elsewhere FRA has created another category of forestland overlapping the areas within forest and revenue boundary. Although the process of RoR correction FRA land is ongoing in few States, they are struggling with serious challenges at practical level.

An ongoing evaluation⁸⁹ of DILRMP in three states of India indicates significant progress on computerization of the land records, differential progress in computerization of registration, patchy access to secure comprehensive land records, while the progress on Cadastral Maps and the registration process has been somewhat limited. Preliminary observations indicate

limited state participation in achieving the stated objectives of the DILRMP. It is also alleged that DILRMP may be more helpful to handful of rich land owners who more frequently transact land properties and are able to access such a system. As per one estimate, only 5% of agriculture land are transacted every year.

6. RIGHTS TO FOREST LANDS IN INDIA

6.1 Forest land Governance trends

Indian legal framework makes the Government a trustee of the forest resources and land. Legal framework for forest management and administration in India was influenced by the policies of the colonial period that treated forest as a source of national revenue through scientific forest management, considering human interaction as biotic interference. The Indian Forest Act, 1927 enacted to consolidate laws relating to forests and declaration of areas as reserve and protected forests. Most States after independence framed their acts along this line. Rapid degradation of forests changed the context of forest management and has led to increasing concern for environmental function of forests and recognition of role of local people in conservation of forests, leading to enactment of Wildlife Protection Act, 1972, Forest Conservation Act, 1980 and National Forest Policy (NFP), 1988. NFP, 1988 laid emphasis on local needs fulfilment and the need to involve local people in protection and management of forests. National and state governments started promoting concept of Joint Forest Management from nineties, providing community a stake in management and usufructs. But the right over forestland was never shared with communities living in and around forests.

6.2 Enactment of FRA, 2006, Implementation, Progress and Issues

A national peoples' movement led to enactment of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, popularly known as FRA. It is a unique law, which recognizes and formalizes the occupancy rights of hundreds of millions of forest-dependent people on forestland. In addition to the recognition of individual household-based rights, the FRA also provides for community rights over forest lands. The most important rights are rights over community forest resources (CFR) which empowered communities to protect and manage their customary forests. It is felt that these provisions can effectively strengthen the democratization of forest governance in India by vesting legal powers to village council Gram Sabhas to govern and manage CFRs. In the history of codification and recording of rights, FRA is the only legislation, which adopted a bottom-up approach authorizing for recording, determination and deciding on the forest rights to *Gram-Sabha*.

The recognition of CFR rights empowers forest dwellers with the authority over decision-making and forest governance (Section 5 of FRA) with access to and use of funds available under various government programs for management of their CFRs. Community forest governance also has the potential to enhance adaptation to climate change by managing forests sustainably for meeting food and livelihoods needs and ecosystem services. The districts with the largest potential for CFR rights recognition overlap with the country's tribal population and poorest areas. Recognition of CFR rights and community forest governance has the potential to ensure improvement in food security and livelihood of forest dwellers, while sustaining forests as the examples in Pachgaon⁹⁰ and Mendhalekha in Maharashtra and Jamuguda in Odisha⁹¹ indicate.

Regarded as the largest land reform in contemporary world, FRA has huge potential to transform forestland governance in India. At least 40 million hectare (mha) of forest lands are eligible for CFR rights recognition across the country which includes 32.198 mha of forest land identified by the FSI 1999 as located within village boundaries and at least 8 mha of community forests in North-Eastern States, excluding forest areas customarily used by forest-dwelling communities lying outside revenue village boundaries.⁹² At least one fourth of the villages across India (170,000) are eligible to claim CFR rights, having forestland within their revenue village boundaries. Nine states have more than one-third of their total villages eligible for CFR recognition.⁹³

Districts with a high number of villages having forest lands are located in regions that have a tribal majority, are conflict prone areas and strongly overlap with left-wing extremism affected areas. In Odisha, at least, 32,711 villages are eligible for CFR rights having forest land within their boundaries for an area of 23,000 sq. kms of forests mostly concentrated in tribal, upland districts.

Ministry of Tribal Affairs, GOI updates the status of rights recognition monthly in its website. Until April 2017⁹⁴, 1.73 million IFR were recognized covering area of 1.6 million ha (0.95 ha per individual) out of 4 million claims made (42% recognition). Similarly, about 63 thousand CFRs recognized covering area of 3.8 m ha (61 ha average) out of 0.14 million claims (45% recognition). This translates to about 14% realization of claim of 40 mha potential area estimated by RRI. As per the Census and the Forest Survey of India data, at least half of India's forests fall within the definition of CFR on which the villagers have the right to control and manage these forests.

The task of documentation and codification of forest rights under FRA is not an easy task. The tribal forest dwellers, being not much acquainted with the mainstream legal and technical

processes find it hard and difficult to lead and speed up the process. The rights recognized under FRA, though heritable, are not alienable and permanent. Though there is a clause (Section 4(5)), which provides security from removal/eviction till the process rights recognition is completed, FRA would fail to secure this tenure in perpetuity against threat of acquisition for development and conservation purpose. However, for the time being the development projects mostly focused in the forest rights tribal areas cannot move smoothly without completion of the process of recognition of forest rights.

Realization of the objective of FRA is constrained with implementation bottlenecks, including non-adherence of prescribed procedures, lower percentage of claim recognition, inadequate mapping efforts, suboptimal possession and lack of recording of rights into the registry⁹⁵. There are also procedural manipulations reported, including manipulation of Gram Sabha, forceful eviction without compensation under conservation acts etc.

7. LAND INVESTMENTS AND ACQUISITION IN INDIA

7.1 Indian Context

Demands for urbanization, infrastructure and rapid expansion of industry would require an estimated 10 percent of the land area (152 million hectares) currently used for agricultural production (India LGAF Report, 2016).

In the decentralized federal system of government in India, the states possess extensive regulatory powers. Regulatory decisions governing important issues such as zoning, land-use, and the environment vary between states. In many states, the right to own, transfer, or convert agricultural land to non-agricultural uses is subject to restrictions⁹⁶. Opposition from labour unions and political constituencies slows the pace of land acquisition, environmental clearances, and investment policy.⁹⁷

Most states prioritize industrialization and, to promote it, aim to attract investment. As land acquisition is often a major stumbling block, industrial area development boards or corporations⁹⁸ are often in charge of acquiring and transferring land to private industrial use. In addition, the revenue department may directly acquire land for some private or public purposes such as setting up of educational institutions etc., while Urban Development Authorities and Housing Boards acquire lands and transfer them to private individuals as housing sites. In order to facilitate quick availability of land for industrial projects, states are now launching Land Bank Scheme by earmarking government land or by acquiring private land in different locations and maintaining them at online GIS portals⁹⁹.

Acquiring land in India continues to be a complicated process and businesses feel that the new law (LARR Act 2013) to determine adequate compensation for acquired land and the lack of time stipulation to take care of rehabilitation and resettlement of displaced populations will create hurdles, especially when businesses have to get approvals from 70% of the landowners (as per LARR, 2013) along with many other elaborate and complicated time-consuming procedures.

7.2 Legal framework of Land acquisition and expropriation

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (RFCTLARR), 2013 is enacted by Parliament as an elaborate and comprehensive law by repealing the old the Land Acquisition Act, 1894 which was continued as a British draconian law observed by Honorable Supreme Court of India. RFCTLARR is the first Central law that combined together the Rehabilitation & Resettlement and acquisition of land, while elaborating due process for acquisition of land for “public purpose”¹⁰⁰. The Department of Land Resources (DoLR) is administering RFCTLARR, which came into force on 01.01.2014 by repealing the Land Acquisition Act, 1894. The Act inter-alia provided for compensation up to four times the market value in rural areas and twice the market value of land in urban areas; rehabilitation and resettlement benefits not only for land losers but also for livelihood losers. There are also other 13 central enactments related to acquisition for different purposes brought in during 1948 to 2003, where in the beneficial provisions of Section 105 of the RFCTLARR Act relating to the determination of compensation, rehabilitation and resettlement would be henceforth applicable in the interest of the land owners. Many argue that the elaborate procedures and processes are very seriously time-consuming and complicated which makes it very difficult to acquire land in a timely manner. The other relevant laws for the land acquisition process are the State Panchayat Act, PESA, and FRA 2006.

Processes

The processes of land acquisition need to follow the Social Impact Assessment (SIA)¹⁰¹ in consultation with the representatives of the Panchayati Raj Institutions and to be shared with these individuals in their local language. The Expert Group has to have two members belonging to the Panchayati Raj Institutions, as a powerful body that has the power to reject a project. The SIA requirement stipulated in RFCTLARR obliges acquiring bodies to study extent of lands, public and private, houses, settlements and other common properties likely to be affected due to acquisition. Public hearings must occur in every Gram Sabha if an affected area involves more than one Gram Panchayat or Municipality, where more than twenty five per cent of land to be acquired belonging to that Gram Sabha.¹⁰² The Consent of

Gram Sabha is mandatory for acquisitions in the Fifth Schedule Area.¹⁰³ Under compensation clause, there are additional entitlements¹⁰⁴ prescribed for Scheduled caste and tribe families, including continuation of reservation and other Schedule V and Schedule VI area benefits from displaced area to resettlement area.

7.3 Protection of small holders

Between 2000-01 and 2010-11, area under land holdings in all size have shrunk by 0.16% (to 159 million ha) while number of operational holdings increased by 14.8% (to 138 million).¹⁰⁵ While there has been a 7.5% decrease in the total operating area of large holdings (10-20 hectares, and above 20 hectares), total operating area of marginal holdings (below one hectare) has increased by 18.7%. There were 95.8 million cultivators as per Census, 2001, with farming as their main occupation, down from 103 million in 2001 and 110 million in 1991. Thus, the small holding character of Indian agriculture is much more prominent today than even before¹⁰⁶ and there are significant land inequalities in India. The labour ratio, which is the ratio of agricultural labourers to agricultural workforce (cultivators + labourers) has risen from about 25-30% in the 1950s, to 40% by 1991, and to 55% in 2011,¹⁰⁷ indicating more and more small farmers are leaving farming and becoming landless. Land acquisition can be one of the reasons behind this, as the rise was 28% (from 40%-55%) during post-liberalization (1991-2011) in comparison to 43 % (from 28% to 40%) between 1901 to 1991.

RCFTLARR Act, 2013, prescribes compensation to all farmers in rural areas up to 4 times the highest sales prices in a given area. The acquisition of agricultural land and multi-crop land has to be carried out as a last resort. Return of unutilized land to the original owners if the State decides and share of increased land value of to be distributed amongst farmers (if the acquired land is sold to another party) has been set at 40%. All amounts accruing under this act have been exempted from Income tax and from Stamp duty. In case of double displacement of any individual, an additional compensation will be paid of up to 75% of the compensation already provided.

8. LAND CONFLICT IN INDIA

India's private and public sectors, which need land for their industry, infrastructure, and service sector operations, as well as its financial sector, are bearing the brunt of project delays and non-performing assets¹⁰⁸ linked to land conflicts.¹⁰⁹ Its growing energy, industry, and development needs require a substantial transformation in land use, impacting millions of customary users of land and vast stretches of common lands. Land conflicts in India have deep implications on the wellbeing of its people, institutions, investments, and long-term

development. Since independence, more than 50 million acres of land - about 6% of India's total land - were acquired or converted, and more than 50 million people affected. India reports highest number of displaced people annually as a result of development projects¹¹⁰. Land conflicts reveal structural weaknesses in the social, agrarian and institutional structures, and expose the ambiguities in property rights regimes.

8.1 Impact on Investment

Capital investments worth 3% of India's gross domestic product (GDP) were stalled due to land acquisition problems in 2011.¹¹¹ Across India over 3.2 million people and 1.2 million hectares of land over investment of Rs 12 trillion (US\$179billion) are at risk¹¹². As a RRI study¹¹³ documented, infrastructure projects like airports, townships, roads, railways, multipurpose dams, canals and SEZs, industrial corridors, and investment zones among others, account for almost half of all of the land related conflicts. Around 48 per cent of all conflicts and 56 per cent of all the people are affected due to infrastructure projects. Land acquisition by the government is a major cause of land conflict, involving 60 percent of all reported cases.

The role of land-related conflicts in stalling investment projects and the magnitude of the cost imposed by such conflicts on the economy and society has started to draw attention lately. As on 2015, some 8%¹¹⁴-14%¹¹⁵ of the projects those were stalled were related to land conflict. Out of 80 high-value stalled projects, more than 25% of projects are stalled due to land disputes risking the total investment of INR 1926 billion. Land Conflict Watch¹¹⁶, a recently launched initiative, tracks and reports land conflicts in India, reports 385 conflicts covering 5.62 million people affecting INR 12853 billion and 1.8 million ha of land as on 1st July 2017.

Districts affected by left-wing extremism have 1.5 times greater number of land conflicts compared to the national average, as per the RRI study. The intensity of conflicts in Schedule V Areas—tribal districts in Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Chhattisgarh, Odisha and Rajasthan are 1.5 times greater the national average number of conflicts. They account for almost one-third of the total number of people affected by conflicts.

8.2 Land Conflict typologies

Land acquisition of both common and private lands is a major cause of projects delays. Contrary to the common perception of disputes being limited to private lands, at least 15 percent of the stalled projects were on common lands, the total investment value of which was INR 1188 billion. Two-thirds of stalled projects cite acquisition of private land as the root of the dispute. Among the causes of disputes and conflicts important ones are threat to

the commons, dissatisfaction with compensation offered for valued lands¹¹⁷. Due to land acquisition conflicts 5, 780 (14%) of the more than 40,000 projects announced between January 2000 and October 2016 were stalled¹¹⁸.

Infrastructure projects accounts for almost half of all the land related conflict documented by the study. Airports, townships, roads, railways, multipurpose dams, canals and SEZs, industrial corridors, and investment zones fall under the infrastructure sector. Around 48 per cent of all conflicts were due to infrastructure sector, accounting for 56 per cent of all the people affected.

Almost two-thirds (63.4%) of the 805 land acquisition related cases in Supreme Court of India during 1950-2016, as analyzed by an Indian think tank, are related to claims by land losers seeking enhanced compensation under the Land Acquisition Act or applicable land acquisition statute¹¹⁹.

8.3 Land Conflicts around Customary lands

Customary lands have been significant causes of disputes and stalling of investments, but have evoked little or no debate or policy response. Cadastral systems, which formalize ownership through legal entitlement, hardly mention customary arrangements. Lack of such legal recognition neither eliminates customary claims nor makes the lands “empty” to be assigned to new parties. When such lands are treated as public lands, enabling the governments to assign them for a new purpose, conflicts erupt because such assignments curtail access to food, water, energy, and other vital resources that are essential for the survival of local communities with customary claims.

Neglect of customary claims of communities is even more problematic in forestland and Schedule V Areas. Constitutional provisions such as the Forest Rights Act (2006) and the Panchayati Raj Extension to Scheduled Areas should be applied while dealing with acquisition of customary lands. While implementations of these provisions have begun, the situation demands vast improvements in law enforcement. The fate of communities outside these two categories of customary lands is even worse, as they rarely receive formal legal protection.

9. WOMEN’S LAND RIGHTS

The Constitution of India provides equal rights to both men and women.¹²⁰ Following Independence, many progressive laws around land reforms and policies were enacted with focus on redistributive justice and gender equity. As land is a state subject, many states have gone ahead with positive initiatives to ensure gender justice in land governance framework. Despite several policy initiatives the growing disparity in land ownership is a

cause of concern for many. There are various property rights regimes prevailing in different parts of the state and the succession Acts of various religious groups like Hindu, Muslim and Christian Succession laws on determining woman's right to property and inheritance. The Sixth Scheduled areas of north-east have different customary tribal laws on women property rights and inheritance which also varies with specific indigenous community laws. Similarly, in Fifth Scheduled and other tribal areas like the tribal customary laws determines rules of woman's rights to property and inheritance. In India, 75 percent of female workforce depends on agriculture for food and livelihoods are largely marginal or landless.

9.1 Measure various states in India taking to ensure gender equality with respect to land rights

In India, almost a third of cultivator is a woman, who own less than 13 percent of land. Women in India, operates 12.8 percent of total operational holdings that includes an area of 10.34 percent of the total area of operational holdings as per Agriculture Census, 2011. The average size of women land holding is 0.93 ha, in comparison to 1.18 ha for male and 1.15 ha for all. Variability exist in different States e.g. in Odisha women own under 3 percent of marginal holdings (1 ha. or less) while in Chhattisgarh they own more than 13 percent of marginal holdings¹²¹. Women's access to land is largely through inheritance,¹²² and inheritance is governed by customs which are highly biased against women though there are regional variations within the States. There is also wide gap between ownership and actual managerial control over the land¹²³; provisions of the law and actual practice. A 1985 policy directive had recommended that States give joint titles to husband and wife in transfer of assets like land and house sites through Government programmes.

The southern states like Andhra Pradesh, Karnataka, Tamil Nadu, Maharashtra have comparatively better situation in granting land rights to women holding land in more ryotwari areas by amending Hindu Succession Act 1956 prior to 2005¹²⁴ and including daughters as coparceners. In these States women are allowed to inherit agricultural land, whether owned or under tenancy.¹²⁵

Reduction of stamp duty, for the lands registered in the name of women, has encouraged women's property ownership rights in some states like Himachal Pradesh, Uttar Pradesh, Madhya Pradesh, Haryana and Delhi. The stamp duties are applied differently in states, regions in which a sale is executed and nature of registration. A study by Landesa (2013)¹²⁶ in three states reported that women have benefited significantly (one out of four women interviewed had benefited) from this incentive in Madhya Pradesh, where the state provides a 2 percent incentive for properties registered in the name of women.

Odisha land reforms Act 1960 has provision to allot ceiling surplus land in the name of 'person under disability' means widow, or an unmarried woman, divorced or separated from her husband by a decree or order of a Court or under any custom or usage having the force of law.¹²⁷

In Tripura, patriarchy influences in government land allotment, however purchase followed by inheritance are the major contributors to enhanced women's land rights with about 34.6 percent of holdings and 34 percent area operated by women. Muslim women have better land rights due to the customary practice of *den mohar*. Tribal women were not conferred land rights when government granted plain lands to tribals to wean them away from shifting cultivation because the customary rights of tribals in Tripura are heavily biased against land rights of women.¹²⁸

The State of Odisha allowed co-ownership of woman over homestead land with joint title since 1989 in the name of husband and wife, widow and single woman with joint application binding.¹²⁹ A wife becomes a joint shareholder of the deceased husband's land, along with her children. The ceiling surplus land is recorded in the name of the wife/daughter to avoid ceiling restrictions. In case of no male heir in the family, daughters get the RoR transferred to their names.

Though intestate succession laws are in place, Karnataka grants Hindu and Christian (but not all Muslim) widows and daughters the right to inherit land, these laws are mostly ignored or unknown¹³⁰, and in any case can be circumvented by drafting a will.

9.2 Major barriers for women in terms of achieving legal rights to land

The barriers to women's secure land rights result from an overlapping web of legal, structural, socio-economic, and cultural factors.¹³¹ However, reforms initiatives have been taken including the Constitution of India and long before and after the Hindu Succession Amendment Act, 2005 for conferring property rights of woman. The open space available for using "persons" without any gender tag in the existing state revenue laws and land record formats¹³² are also there to grant land rights to woman but are manipulated or over sighted causing their exclusion. The fact that the definition of 'family' is not uniformly applied and interpreted across state land laws, and the provisions and application of land ceiling laws in various states, are different, have also affected the women land rights scenario.

While laws or policies are available in several States, their true spirits are not adhered to or not properly enforced at the ground level. The mainstream patriarchy and the social

customs relating to the women's location gender social matrix are the real barriers against "writing rights of the woman" over land.

Land institutions often discriminate against women in access and ownership of land resources. Agarwal (2003) found that this bias is especially prevalent in recording the daughter's inheritance shares by the patwari (village land records official) in north India. Mearns and Sinha (1998) also found that conventional land survey and settlement operations in Odisha discriminate systematically against the rural poor and other socially excluded groups. Gupta (1993) has reported that Operation Barga in West Bengal was biased towards the registration of male rather than female tenant farmers in spite of its success in other respects.

The social matrix continues to be tilted in favour of men to singularly make decisions about land transfers with increased domestic violence in a joint patta framework. Although the legal relationships have changed in favour of women, the societal perception of women's rights to land remained almost conservative.

The inheritance laws provide for daughters and daughters-in-law to receive rights over property, effective legal actions are not made on behalf of these disadvantaged women. The local level land administration officials are weak and reluctant to take up such partition cases to ensure due share of inheritance. Therefore, Government directions are available to record land jointly in the name of both spouses but such recording is limited only to government land distribution.

The Hindu Succession Amendment Act, 2005 brought Hindu women's inheritance laws on agricultural land on par with men, overriding State laws that discriminated against women. It conferred daughters including married daughters, birthright over joint family property.

10.CONCLUSION

With a long history of settlements, farming and governance aligned around and sustained through land, post-independent India inherits a complex land governance systems, thanks to temporal evolutions and geographic variations, it has encountered over more than thousand years. Traditionally a dominant communal land governance regime, the policy and priorities of kings, emperors, colonial and post-independent state, has steered it more towards individual and private tenure systems, now aiming at conclusive titling. However a large landscape in Central India (Schedule V) and North East India, dominated by indigenous communities, still practice community land ownership and a considerably big forested geography (about 40 m ha) is moving towards community governance as per FRA, 2006. Plurality is the essence of India and legal pluralism is evident in land governance with

simultaneous existence of state-wide diversity, customary tenure and religious tenures. Common lands continue to be natural elements of Indian villages and source of rural livelihoods, though their definition and field demarcation remain unattended, regulations and management fraught with deficiencies, their area significantly encroached upon and the ambiguities turning them to conflict hotspots. Land governance in India has to adapt to its culture, tradition and geography, respecting and sustaining community ownership, customary tenure, legal pluralism and common lands, while embarking on privatization and individualization.

Land is a state subject, but powerful central influence, through policy, legal and financial allocation, has shaped various phases of land reforms in India. Starting with land reforms for land-to-tillers in sixties till the more recent reforms in this century, through Hindu Succession Act Amendments (2005), FRA, 2006, RFCTLARR, 2013 and DILRMP, 2016, land governance in India, has evolved through a complex interactions between the center, state and regional considerations. The waves of social, environmental and economic movements, ideologies and global influences, have also contributed to changes in policy and practice. While land reform in the sixties, FRA and RFCTLARR were manifestation of socialist agenda, Forest and wildlife conservation in last century were environmental agenda. The ongoing tenancy reform seems to be more market influenced so as the land bank scheme aggressively expanded under 'doing business' and 'make in India' campaign. Future of land governance lie in sensitively balancing these triple bottomline of equity, sustainability and profitability.

Multiplicity of land governance departments, complex legal framework buttressed with inherited voluminous laws and poor capacity make the land record management, service delivery, access and efficiency subject to limitations and high transaction costs that fuel disputes and conflicts. Land disputes form more than half of the cases in Indian civil courts and a substantial percentage in the criminal courts, responsible for draining billions of GDP. One of the principal problems related to land conflicts is that poor people are generally unaware of their rights to land and property and rarely have access to redress in court. With demand and competition for land increasing and investments coming thick and fast, conflicts are also increasingly leading to the blocked investments and bottlenecked growth. Land uses are changing fast since the economy started opening up in nineties last century. In absence of land use planning and regulations, balancing future food production and conservation goals with expanding urbanization and industrialization will be tricky. Institutional reform of land administration, enhanced capacity, better coordination along with simplification of legal framework to make services accountable and accessible will be key.

Land is a socio-cultural identity and the main stratum of livelihoods of the world's largest concentration of poor and disadvantaged population, residing in villages and urban slums in India, as landless, small and marginal farmers, tribal and dalits. Series of land reforms have adequately or optimally benefitted these populations, though many of them were clearly targeted by the reforms, largely due to institutional and implementation bottlenecks. On the contrary, they had to bear the burnt of developmental burdens including displacements, exclusions and marginalizations. Important land issues before India today are land acquisition for development projects in the name of public purposes, escalating tensions and violence in tribal areas due to mining and non-recognition of local traditional/customary rights. This is catalyzing the growth leftwing extremism, declared as third largest terror target in the globe as per a recent report by US state department. Women, though revered in Indian culture and provided equal status as per constitution of India, suffer from exclusion and marginalization around land rights, inspite of numerous gender-equitable central and state initiatives, allegedly due to poor implementation, monitoring and entrenched patriarchy. The challenge before future land governance is to include these excluded and ensure equity and justice in terms of their rightful access and control on land for their habitation and livelihoods.

Indian land governance is now at transition, caught with challenges of addressing confronting objectives. In order to make land governance a tool for shared prosperity inclusion, justice, sustainability, cultural identity have to be blended with concerns of efficiency and growth. In this context, among others, open access to land information, decentralization and participation of communities and stakeholders and use of institutional and technological innovations will be critical, drawing from emerging global experiences.

Acknowledgement

This report was written by Pranab Ranjan Choudhury, Sricharan Behera, Navin Kumar Amang, Manoj Kumar Behera

The authors wish to thank Dr. Ashok Kumar Sircar (Professor, School of Development, Azmi Premji University, Bangalore, India) and Nicholas Tagliarino (Research Analyst, Land Portal Foundation) for their peer review of this publication.

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¹ Land governance is about the policies, processes and institutions by which land, property and natural resources are managed. This includes decisions on access to land, land rights, land use, and land development. It is the process by which decisions are made regarding access to and use of land, the manner in which those decisions are implemented and the way that conflicting interests are reconciled. Whereas land administration means the implementation responsibility of the administrative institutions to operationalise those policies and decisions. In

otherwords, land administration is the way in which the rules of land tenure are applied and made operational. (Enemark, S. et. al. 2009; <https://www.siteresources.worldbank.org%2FINTARD%2FResources%2F335807-1194987153844%2FUNHABITATFricska.ppt&usg=AFQjCNFjJ6Ax76vSk56ZU-dkSOCsKsfJVA>)

2 Right from the time of Manu, the Land Revenue has been a major source of income of the sovereign. During the Mauryan and Gupta periods, the revenue was collected by the paid officials, which resembles the present day Revenue Administration system. During the Post Mauryan and Gupta periods, the State revenue was collected by donees of Brahmadeya, Devadana, and Agrahara Lands. The donees were feudal intermediaries who passed on a part of the revenue they collected to the King. Later, in place of the above Revenue Collectors, the Jagirdars, Subedars and Inamdars who were intermediaries passed on the revenue to the kings during the rule of Sultanates which extended for more than 300 years. During their rule the source of Revenue was two fold, religious and secular. The former called Zaker was due from the Muslims and Jigya which the non-Muslims had to pay. http://tsipard.gov.in/land_revenue_administration-a_historicaloutlookfinal.pdf

3 The process of Revenue Administration was started by Sher Shah Suri (1540-45). It was continued and improved upon under the reign of the Mughal Emperor Akber (1556-1605). Todar Mal - greatest revenue expert who started his career under Sher Shah Suri joined in the service of Akbar, is remembered even to this day for evolving a system of revenue assessment and survey, a system which drew a balance between the demands of the State and needs of the subjects. The Revenue Administration during the regime of Mughals consisted of a heterogeneous class of persons, which included direct officials of the imperial administration, like the provincial governors, amils, or the qanungos, jagirdars (revenue -assignees) and their officials and agents, and representatives of the peasants like the village headmen (muqaddams) and the chaudhris. http://tsipard.gov.in/land_revenue_administration-a_historicaloutlookfinal.pdf

4 With the advent of the British in India, the political and economic scenario underwent far reaching changes. The Revenue Administration was systematized scientifically during British rule by introducing permanent settlement (by Corn Wallis - 1793) and Ryotwari system by Sir Thomas Munro - 1802). The colonial Government out of its interest to administer the country effectively, did not make any substantial changes in the land - revenue systems but promoted the class of non-cultivating intermediaries. The British inherited the institutional form of agrarian system from the Mughals. The British superimposed a system over the existing pattern in tune with British customs and laws relating to land. During the British times the Revenue Department was the pivot of Administration. The Collector was the virtual monarch at the district, around whom the entire administration revolved. http://tsipard.gov.in/land_revenue_administration-a_historicaloutlookfinal.pdf

5 The Entry 18 of the State List made to deal with 'right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans.' Article 323B (d, e, h) of the Constitution, the State legislature *inter alia* has given the power to enact laws over matters related to land reforms, ceiling on urban property, regulation of rent, tenancy including the right, title and interest of landlords and tenants. The Constitution of India, (As on 9th November, 2015), Ministry of Law and Justice, Government of India, <http://lawmin.nic.in/olwing/coi/coi-english/coi-4March2016.pdf> (access on 29.06.2017)

6 As per 42nd constitution amendment in 1976

7 The Directive Principles of State Policy in Part IV (Article 36 to 51) of the Constitution of India contained broad directives or guidelines to be followed by the State while framing laws for the welfare of its citizens and good governance. It shall not be enforceable by any court, but the principles laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Under article 39(a) the State shall, in particular, direct its policy towards securing the citizens, men and women equally, have the right to an adequate means of livelihood.

8 Inserted by the Constitution (44th Amendment) Act, 1978, (w.e.f. 20-6-1979) in Chapter IV-Right To Property

9 Under the amendment two exceptions are made that (1) the rights of minorities to establish and administer educational institutions of their choice would not be affected, and (2) the right of persons holding land for personal cultivation and within ceiling limit or any building or structure standing thereon to receive compensation at a rate shall not be less than the market value, the proviso made under Article 31A of the Constitution of India.

10 Areas having higher concentration of tribal communities, which have been formally declared as so; Article 244(1) Part B paragraph 5(2) of Fifth Schedule of the Constitution, bestows power to the Governor (of a state) to make regulations to (a) prohibit or restrict the transfer of land by or among members of Scheduled Tribes (ST) and (b) regulate the allotment of land to members of STs.

11 The Sixth Schedule under Article 244 (2) of the Constitution relates to those areas in the States of Assam, Meghalaya, Tripura and Mizoram which are declared as "tribal areas" and provides for District or Regional Autonomous Councils (ADC) for such areas with having wide ranging legislative, judicial and executive powers around all types of land except for reserve forests. These councils are given power to make law, inter alia, for (a)

the allotment, occupation or use, or the setting apart, of land, other than reserve forest, for agriculture or grazing or for residential or other non-agricultural or any other purpose likely to promote the interests of the inhabitants of any village or town only except the compulsory acquisition of any land for public purposes by the Government of the State; (b) the management of any forest not being a reserved forest; (c) the regulation of the practice of jhum or other forms of shifting cultivation; (d) the inheritance of property.”

12 A zamindar in the Indian subcontinent was an aristocrat. The term means "land owner" in Persian. Typically hereditary, zamindars held enormous tracts of land and control over their peasants, from whom they reserved the right to collect tax on behalf of imperial courts or for military purposes.

13 Viz. The Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 was enacted first to abolish intermediaries. The Orissa Estates Abolition Act was passed in 1951 and by 1955 almost all the states enacted law on abolition of estates /intermediaries.

14 The Ninth Schedule of the Constitution of India added in 1st Constitution Amendment and any law come under this Schedule could not be challenged in courts and beyond the scope of judicial review. Hence, Article 31-B inserted in Ninth Schedule to avoid any challenge in courts (by landlords / intermediaries) and taken away right to property as fundamental rights for carrying out the land reforms agenda of the state smoothly. Article 31A Saves laws providing for acquisition of estates, etc.

15 The tenancy reform laws adopted by most Indian states after Independence aimed at both: (1) strengthening the rights of existing tenants – sometimes through conferring ownership or occupancy rights to tenants; and (2) either prohibiting or restricting future tenancy relationships in order to prevent exploitation of tenants.

16 BBC New. 2015. Why is India facing growing conflict over land. Available at:
<http://www.bbc.com/news/world-asia-india-31705131>.

17 The consent of 70% of affected families is required where land is sought to be acquired for public-private partnership projects, and 80% for private projects.

18 It also strengthens forest-conservation regime by ensuring their livelihood and food security, including the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance.

19 It is an attempt to undo historical injustice done to the forest dwellers on their ancestral lands and their habitat, which were not adequately recognized during consolidation of State forests in colonial as well as in independent India.

20 including rights of ownership over minor forest produce, rights of uses or entitlements such as fish and other products of water bodies, access to grazing and traditional seasonal resource access of nomadic or pastoralist communities, nistar rights, traditional knowledge and intellectual property rights, rights of worship, cultural diversity, etc.

21 Under section 2(a) of FRA 2006 "community forest resource" means customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access. Rights over "community forest resources" u/s 3(1)(i) means "rights to protect, regenerate or conserve or manage any community forest resource which the community (gram sabha) have been traditionally protecting and conserving for sustainable use.

22 Such as schools, dispensary or hospital, anganwadis, fair price shops, electric and telecommunication lines, tanks and other minor water bodies, drinking water supply and water pipelines, water or rain water harvesting structures, minor irrigation canals, non-conventional source of energy, skill up-gradation or vocational training centers, roads and community centers under section 3(2) of FRA 2006.

23 For example, Section 22 of Odisha Land Reforms Act, 1960 declared the transfer of land belonging to STs and SCs to non-STs and Non-SCs without the prior permission of the competent authority is void and illegal which need to be restored.

24 Land and Governance under the Fifth Schedule: An Overview of the Law, Ministry of Tribal Affairs, Government of India & United Nations Development Programme (UNDP).

25 Government of Odisha, Report on the Activities of Revenue and Disaster Management Department for the Financial Year 2015-2016, Revenue & Disaster Management Department,
http://revenue.odisha.gov.in/activity_rep/2015_16.pdf.

26 Under *zamindari system* "property rights in land were conferred upon the landlord, subject to the punctual payment of revenue to the government at a fixed rate". It annulled all existing customary rights of tenants on land and shattered their age-old spirit of mutual dependence between landlords. The land settled in the name of landlords, not with the cultivators, which made the land revenue 'fixed in perpetuity' on March 22, 1793, was introduced in Bengal, Bihar, Orissa, parts of Uttar Pradesh, and North Madras.

27 Under the *ryotwari system*, the *ryot* or cultivators were recognized as the proprietors of land who could sublet, mortgage or transfer by gift or sale, in direct contact with the state bypassing intermediaries. From the *ryots'* point of view it was a better system apparently favoured 'peasant proprietorship' in contrast to zamindari tenure.

28 The *Mahalwari* or communal system was introduced in 1833 and was first adopted in Agra and Oudh and later extended to the Punjab in North India. The whole village was treated as a unit and the village lands were held jointly by the village communities' means that ownership of property was communal or joint.

29 This may be the only reason that why revenue administration system is suffering.

30 "homesteadless person" means a person who, together with all the members of his family who are living with him in common mess, does not have any homestead land anywhere in the State and owns less than one standard acre of land other than homestead and whose total annual income together with income of all the members of his family, does not exceed more than Rs. 40, 000/- under section 3 (2)(a-2) of The Orissa Prevention of Land Encroachment Act, 1972.

31 Kind of property that has been dedicated or appropriated to God or temple.

32 Land granted to priest and learned people

33 Listed as a landlord in the Orissa government's revenue records, Lord Jagannath He reportedly owns 56,000 acres, of which at least 25,711 acres is registered against the name of "Sri Jagannath Mahaprabhu Bije, Puri" in the state's land revenue records.

34 For example, the Odisha Government Land Settlement, Act 1962 defined u/s 2(b) that "Government land means any waste land belonging to Government, whether cultivable or not, recorded as House-site, *Anabadi*, *Chhot Jungle*, *Puratan Patit*, *Nutan Patit*, *Parityakta Bedakhali*, *Gochar* or by any other description, whatsoever"; which include (i) Khasmahal lands, treated as Government estates (ii) Nazul lands situated in the State; (iii) Gramakantha Parambok lands in the ex-Madras areas; and (iv) Abadi lands situated in the State." The State of Odisha made fourfold classification of government land as: *Abada Jogya Anabadi* (near English cultivable wasteland), *Abada Ajogya Anabadi* (uncultivable wasteland) *Rakshita* (Reserve) and *Sarba Sadharana* (common/public land).

35 A pilot inventory of public lands in the Ahmedabad Municipal Corporation indicates that 32 per cent of all developed and developable land — excluding road network, water bodies, and railway lines — is public land. <http://ciiblog.in/managing-publicly-held-land-as-an-asset-and-for-public-interest/>.

36 For example in the state of Odisha, Government owns almost two thirds of land, which even goes up to 86% in some tribal districts. <http://siteresources.worldbank.org/INTINDIA/Resources/Kumar1.pdf>.

37 Ministry of Railways, Ministry of Defence, Airport Authority of India, Port Trusts are some of the big land owners.

38 Reserve Forests, Wildlife Sanctuary, National Parks, Tiger Reserve, etc. under direct control of Forest Department.

39 It is a fully Government owned Company established in 2008, to deal with the matters relating to lands belonging to Government of Karnataka or statutory bodies. The mandate of the company is to secure thousands of acres of government land, recovered from encroachers and ensure its proper utilization, http://kplc.kar.nic.in/about_us.asp

40 As per Supreme Court of India (Civil Appeal No.1132/2011 @ SLP (C) No.3109/2011) since time immemorial there have been common lands inhering in the village communities in India variously called 'Gram Sabha Land', Gram Panchayat Land (in many North Indian States) (sic), which were for centuries used for common benefit of villagers of the village for various purposes, for e.g. for their cattle to drink and bathe, for storing the harvested grain, for grazing ground, as a maidan for their children to play, threshing floor, carnivals, circuses, ramlila, cart stands, water-bodies, passages, cremation ground, graveyards etc.

41 NSSO (1998) has defined common property resources as all such resources that are meant for common use of the villagers including village pastures and grazing grounds, village forest and woodlots, protected and un-classed government forests, waste land, common threshing grounds, watershed drainage, ponds and tanks, rivers, rivulets, water reservoirs, canals and irrigation channels. Communal in respect to a land means a land

which is used by any village community or any section thereof for a communal purpose like burying and cremating dead bodies, celebrating public festivals, common worship and the like without any interference from anybody or paying any fees for the purpose as per Orissa Government Land Settlement Acts, 1962 and Rules, 1983.

42 This is a well-defined category of land in the classification used in official land-use records. Traditionally, grazing and pasture land has been the most important constituents of CPR land. Many villages have land earmarked as permanent pasture land/grazing land. These are variously known as gauchar, gochar, gairan, gomol, etc. Villagers have user right on permanent pasture by legal sanction.

43 This item includes all land under village forest and woodlots. This also includes the area notified as forest within the village, which may belong to the forest department, or any other government department (like Revenue or PWD.) but is formally under the management of village panchayat or a community of the village.

44 They include village sites and all area of land which is earmarked for common use of the villagers for economic activities, such as (a) processing of agricultural produce, (b) storing of grains, other agricultural produce, firewood, etc., (c) use for other household enterprise. Report No. 452: Common Property Resources in India, Jan - June 1998, National Sample Survey 54th Round.

45 Especially Orissa Government Land Settlement Acts, 1962 and Rules, 1983.

46 As per OGLS Rules 4 (2) (i) in every surveyed village which is not included within the limits of an urban area, five per cent of the effective area of the village shall be set apart for pasturage (Gochar) subject to availability of suitable Government land; (ii) in every un-surveyed village, land for pasturage shall be set apart at the rate of one acre for every fourteen inhabitants of the village, and if the village is un-inhabited ; reservation for pasturage, shall be made at the rate of one acre for every three persons having land in the village, subject to availability of suitable Government land.

47 Also known as Gramya Jungle, this is owned by the Revenue Department, but the provisions of Forest Conservation Act (FCA), 1980, apply on these lands, prohibiting their diversion for non-forestry purpose.

48 Rakshit (Reserved) lands or include acquired lands (under Land Acquisition Act, 1894) but not transferred, irrigation works, lands transferred to Gram Panchayats, Gochar lands (grazing land), land for village settlement, poramboke land, Gramya jungle etc.

49 Those States coming under the Sixth Schedule of the Constitution of India. The Sixth Schedule under Article 244 (2) of the Constitution relates to those areas in the States of Assam, Meghalaya, Tripura and Mizoram which are declared as "tribal areas" and provides for District or Regional Autonomous Councils for such areas. These councils have wide ranging legislative, judicial and executive powers.

50 The Fifth Schedule under Article 244(1) of Constitution defines "Scheduled Areas" as such areas as the President may by order declare to be Scheduled Areas after consultation with the Governor of that State. The criteria for declaring any area as a "Scheduled Area under the Fifth Schedule are Preponderance of tribal population (more than 50%) , Compactness and reasonable size of the area, a viable administrative entity such as a district, block or taluk, and Economic backwardness of the area as compared to the neighboring areas.

51 <http://pesadarpan.gov.in/en>

52 Reportable in the Supreme Court of India Civil Appellate Jurisdiction, Civil Appeal No.1132 /2011 @ Slp(C) No.3109/2011 Jagpal Singh & Ors. .Appellant (s) -versus-State of Punjab & Ors. .. Respondent (s).

53 Ibid.

54 Section 4 of FRA 2006 for Recognition, Restoration and Vesting of Forest Rights and Related Matters.

55 "Tenancy Reforms in India" in Legal Service India - Tenancy Reforms in India by Jayant Bhatt-Amity Law School, New Delhi http://www.legalserviceindia.com/articles/tena_agr.htm.

56 When these legislations were passed in the 1960s and 70s, almost one-third of the rural households who were operating as tenants were evicted.

57 <http://dolr.nic.in/page4.htm>.

58 The prohibition of tenancy has not really ended the practice. On the other hand, it has resulted in agricultural practices that are not conducive to increased production. This, in turn, also depresses employment opportunities for the landless agricultural laborers." It also mentioned "the ban on tenancy, which was meant to protect tenants, has only ended up hurting the economic interests of the tenants as they are not even recognized as tenants. As a result, they are denied the benefits of laws that provide security of tenure and regulate rent.

59 The Hindu Succession (Amendment) Act, 2005, [Act No. 39 of Year 2005, dated 5th September 2005], http://www.hrln.org/admin/issue/subpdf/HSA_Amendment_2005.pdf/.

60 Where's My Share: Understanding Daughters' Right To Property, by Anshul Agarwal, May 11, 2016, <https://www.makaan.com/iq/legal-taxes-laws/what-are-property-rights-of-daughters-in-hufs>.

61 Under Section 4 (a) & (d) of the Provisions of the Panchayat (Extension to the Scheduled Areas) Act, 1996.

62 Article 244(1) Part B of paragraph 5 (2) of the Constitution of India.

63 Land and Governance under the Fifth Schedule: An Overview of the Law, MOTA, Government of India & UNDP.

64 As an official committee found that 'The Governors, on their part, remained oblivious about the state of the tribal people. Even the mandatory annual Reports by the Governors to the President regarding the administration of Scheduled Areas under Para 3 of the Fifth Schedule are irregular. They comprise largely state narrative of departmental programmes without even a reference to the crucial issues in administration, the main thrust of the Fifth Schedule in *Land and Governance under the Fifth Schedule: An Overview of the Law*.

65 Under Articles 244(2) and 275(1) the Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram under Paragraph 3 (1).

66 Article 371A deals with special provisions for the State of Nagaland without applicability of the Constitution, no Act of Parliament shall apply to the customary law and procedure and the ownership and transfer of land and its resources of Nagas by the State of Nagaland unless decided by Legislative Assembly of Nagaland by a resolution.

Article 371 C made special provision for the State of Manipur regarding the administration of the Hill Areas of Manipur and extend the executive power of the Union for giving of directions to the State for administration of the said areas. Under paragraph 3A (1) of the North Cachar Hills Autonomous Council and the Karbi Anglong Autonomous Council have the additional power to make laws inter alia include alienation of land. Similarly 3B (1) the Bodoland Territorial Council shall have additional power to make laws, inter alia, on Land and Revenue.

67 Nongkynrih, A. K. (2008) "Privatisation of Communal Land of the Tribes of North East India: A Sociological Viewpoint" in Walter Fernandes & Sanjay Barbor (ed.) Land, People and Politics: Contest over Tribal Land in Northeast India, North Eastern Social Research Centre, Guwahati, India.

68 The statistical system of the erstwhile British era identified 5 board indicators like (1) forest, (2) area not available for cultivation, (3) other uncultivated land excluding current fallows, (4) fallow land and (5) net area sown. A Technical Committee on Coordination of Agricultural Statistics constituted by the Ministry of Agriculture in 1949 identified major gaps in the existing data collection on agriculture and suggested to add four more categories to make it a 9-fold classification of the total land available. The following are the 9-fold classification followed in India since independence: (1) Forests, (2) Area under non-agricultural uses, (3) Barren and uncultivable land, (4) Permanent pastures & other grazing land, (5) Land under miscellaneous tree crops, (6) Culturable waste land (7) Fallow land other than current fallows, (8) Current fallows and (9) Net area sown. The land use statistics in India was developed as a source of information for planning of agricultural production. Around 93 percent of the agricultural land is covered in the agricultural statistics since 1972, which was again enhanced to 94 percent in 1998. The agricultural statistics is captured through complete enumeration for 80 percent of the geographical area and the rest by sample surveys and conventional estimates.

69 *Compendium of Environment Statistics India, 2011*, Central Statistics Office, Ministry of Statistics and Programme Implementation, Government of India; *Agricultural Statistics at a Glance, 2012*, Ministry of Agriculture, Government of India, http://eands.dacnet.nic.in/latest_2006.htm, accessed on 5 July 2013.

*Provisional; Net sown area represents the total area sown with crops and orchards, with the area sown more than once in the same year counted only once; Barren and uncultivable land includes all land covered by mountains and deserts, which cannot be brought under cultivation except at an exorbitant cost; Cultivable wasteland includes land available for cultivation, but not cultivated for the last 5 or more years.

70 http://censusindia.gov.in/2011-prov-results/paper2/data_files/India2/1.%20Data%20Highlight.pdf.

71 History of land use in India during 1880–2010: Large-scale land transformations reconstructed from satellite data and historical archives" by Hanqin Tian, Kamaljit Banger, Tao Boa, Vinay K. Dadhwal, in *Global and Planetary Change* 121 (2014) 78–88, <http://www.sciencedirect.com/science/article/pii/S0921818114001283> access on 23 June 2017.

- 72 Category wise details of the extent of forest land finally diverted for non-forest purpose under Forest (Conservation) Act, 1980, Statement referred to in reply to parts (a) to (d) of the Lok Sabha starred question no. 334 asked by Shri Janardan Singh Sigiwal 'Ecological Impact of Mining' due for reply on 09.08.2016.
- 73 Status report on implementation of the Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (ending 30.04.2017), Ministry of Tribal Affairs, Government of India <http://www.tribal.nic.in/FRA/data/MPRAPR2017.pdf>
- 74 History of land use in India during 1880–2010: Large-scale land transformations reconstructed from satellite data and historical archives, <http://www.sciencedirect.com/science/article/pii/S0921818114001283> access on 23 June 2017
- 75 NSS Report No. 571: Household Ownership and Operational Holdings in India (January – December, 2013) Ministry of Statistics and Programme Implementation, Government of India, National Sample Survey Office, 70th Round (2013) India.
- 76 Ibid.
- 77 The Registration Act does not require the Sub-Registrar to verify ownership details of the land. Without an automatic link between registry and records and with other institutions such courts, Government departments, and banks would ensure a basic examination of title before registration, the act of registering adds little value, and fraudulent or duplicate documents abound opening the door for fraudulent transfers and litigation.
- 78 A Conclusive Title may be defined as an unassailable and conclusive proof of ownership of property in contrast to the presumptive land title. Four basic principles need to be followed in order to reach the stage of conferring conclusive Titles are: a single window (agency) to handle land records, the mirror principle, the curtain principle and the insurance principle. in "Moving Towards Clear Land Titles In India: Potential Benefits, A Road-Map And Remaining Challenges" by Rita Sinha, Department of Land Resources, Ministry of Rural Development, Government of India, http://siteresources.worldbank.org/INTIE/Resources/R_Sinha.docx
- 79 Two centrally sponsored schemes (1) Strengthening of Revenue Administration & Updating of Land Records (SRA&ULR)' in 1987-88 and '(2) Computerisation of Land Records (CLR)' in 1988-89 merged in 2008 under NLRMP which later renamed as Digital India Land Records Modernization Programme (DILRMP).
- 80 http://dolr.nic.in/dolr/land_reforms1.asp
- 81 The National Land Records Modernization Programme (NLRMP), "Guidelines, Technical Manuals and MIS 2008-09," DoLR, MoRD, Government of India
- 82 This includes the maintenance and updating of textual records, maps, survey and settlement operations and registration of immovable property.
- 83 The register or cadastral records reflects (mirrors) accurately and completely all current facts about a person's title.
- 84 Means the true depiction of record of title of ownership status, automated and automatic mutation, without following the need of past records.
- 85 To guarantee the title for its correctness and indemnifies the title holder against loss arising on account of any defect.
- 86 <http://dolr.nic.in/dolr/downloads/PDFs/CLR%20Physical%20Progress%20-%20Status%20on%2023-Jan-2014.pdf>
- 87 Ibid.
- 88 A Pilot Impact Assessment of the Digital-India Land Records Modernisation Programme-State Assessment Report – Himachal Pradesh (First Draft), National Council of Applied Economic Research supported by Omidyar Network, March 2017.
- 89 In Maharashtra, Rajasthan and Himachal Pradesh being conducted by National Council of Applied Economic Research, New Delhi, Indira Gandhi Institute of Development Research, Mumbai, National Institute of Finance and Public Policy, New Delhi.
- 90 <http://www.vikalpsangam.org/article/balancing-rights-and-responsibilities-community-based-forest-governance-in-maharashtra/#.WVdgncaB2Rs>.
- 91 <http://ccs.in/sites/default/files/research/research-forest-based-bamboo-trade.pdf>.

92 Potential for Recognition of Community Forest Resource Rights Under India's Forest Rights Act- A Preliminary Assessment, RRI & NRM, July 2015, www.rightsandresources.org, p.5.

93 At least 150 million people, including almost 90 million tribals, living in these villages would benefit from CFR rights recognition. There are 120 districts, mostly located in the tribal areas of central India, where more than 40 percent of the population live in villages that have forest land and are eligible for CFR rights.

94 <http://www.tribal.nic.in/FRA/data/MPRAPR2017.pdf>.

95 For example in Odisha, 46% of the claims recognized have been mapped and 12% are entered in the registry as on March 2017 <http://www.newindianexpress.com/states/odisha/2017/jun/15/chief-minister-naveen-patnaik-takes-up-other-forest-dwellers-rights-with-centre-1616851.html>.

96 Including (i) the need for self-cultivation so that anybody who does not cultivate land personally is not entitled to hold agricultural land; (ii) a requirement to be an agriculturist or an agricultural worker by profession; (iii) a maximum non-agricultural income; (iv) and a ceiling on the amount of land owned (India LGAF Report, 2016).

97 India -Transparency of the Regulatory System, <https://www.export.gov/article?id=India-Transparency-of-the-Regulatory-System>.

98 As an example, Odisha Industrial Infrastructure Development Corporation (IDCO) was established in the year 1981 with the specific objective of creating infrastructure facilities in the identified Industrial Estate/Areas for rapid and orderly establishment and growth of Industries, trade and commerce. It has been declared as the Nodal Agency for providing industrial infrastructure in the State of Odisha. Major industrial projects require large stretches of land at specific locations based upon project requirements. As nodal agency of Government, it provides land to large projects; identification of Project Site and alienation / acquisition of land on behalf of the project, R&R Facilitation and Forest Clearance in Profile of Odisha Industrial Infrastructure Development Corporation, <http://www.idco.in/2009/organizationtest.aspx?content=profile>.

99 GOi PLUS (Govt. of Odisha Industrial portal for Land use and Services) is a GIS based industrial land use and infrastructure information system developed by the Industries Department, Government of Odisha. Odisha has created a land bank of 1, 00,000 acres for industrial use. GOi PLUS is a web enabled platform to display real time information with regards to all the industrial land available in the State <http://gis.investodisha.org>

100 The defined "public purpose" include land for strategic purposes, infrastructures (excluding private hospitals, private educational institutions and private hotels), for project affected people, planned development or improvement of village or urban sites or for residential purpose to weaker sections and for persons residing in areas affected by natural calamities or displaced.

101 CHAPTER II of LARR Act 2013 deals with Determination of Social Impact and Public Purpose in two parts. Part A deals with Preliminary Investigation for Determination of Social Impact & Public Purpose under section-4, 5 and 6 respectively for preparation of Social Impact Assessment (SIA) study, public hearing for SIA and publication of SIA study, whereas Part-B deals with appraisal of SIA report by an Expert Group under section 7 and 8 respectively for appraisal of SIA report by an Expert Group and Examination of proposals for land acquisition and Social Impact report by appropriate Government.

102 Proviso under section 16 (5) of LARR Act on preparation of Rehabilitation and Resettlement Scheme by the Administrator.

103 Special provision for Scheduled Castes and Scheduled Tribes under section 41(3) of LARR Act 2013.

104 Land to each family in every project even in case of irrigation projects, one time financial assistance of Rs. 50,000 per family, additional 25% R&R benefits for families settled outside the district, payment of one third of the compensation amount at very outset, preference in relocation and resettlement in area in same compact block, free land for community and social gatherings.

105 Rahul Goswami, "What Census 2011 Reveals about Our Growers and Their Land," http://www.macroscan.org/anl/jun13/Census_2011.pdf.

106 Small Farmers in India: Challenges and Opportunities by S. Mahendra Dev, Indira Gandhi Institute of Development Research (IGIDR), <http://www.igidr.ac.in/pdf/publication/WP-2012-014.pdf>.

107 As a result of farmers losing their status as main cultivators, dropping out of agriculture and becoming landless farm labourers, the country was experiencing the "biggest human displacement in history", said Mr. Sainath." (The Hindu, 2013). http://www.nird.org.in/nird_docs/srsc/srsc261016-30.pdf.

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- 108 A Non-performing asset (NPA) is defined as a credit facility in respect of which the interest and/or installment of principal has remained 'past due' for a specified period of time. In simple terms, an asset is tagged as non performing when it ceases to generate income for the lender (Glossary of Reserve Bank of India).
- 109 Unclear Property Rights and Records put Investment in India's Manufacturing and Infrastructure Sectors, and its Financial Sector at Risk <http://rightsandresources.org/en/land-conflict-and-investment-risks-in-india/#.WSQHNOuGPIU>.
- 110 <http://www.manupatra.co.in/newslines/articles/Upload/F53A15A1-A97D-4BF2-9BDD-A10DA4ED7B44.pdf>.
- 111 <http://krieger.jhu.edu/arrighi/wp-content/uploads/sites/29/2015/03/Theses-on-Indias-Land-Question-3.4.pdf>, quoted in CMIE, 2012.
- 112 <http://rightsandresources.org/en/blog/manufacturing-and-infrastructure-investment-and-the-financial-sector-in-india-at-risk-due-to-unclear-property-rights-and-records/#sthash.NKxiVeWW.dpbs>.
- 113 Land Conflicts in India-An Interim Analysis, http://rightsandresources.org/wp-content/uploads/2016/11/Land-Conflicts-in-India-An-Interim-Analysis_November-2016.pdf.
- 114 8% (66 nos.) of the 804 projects are stalled due to land acquisition problems across 24 States and two Union Territories, as per a list supplied by Finance Ministry to a Right to Information query, in February 2015. <http://www.countercurrents.org/nayak050515.htm> ; <http://economictimes.indiatimes.com/news/politics-and-nation/cant-blame-upa-land-acquisition-bill-for-stalled-projects-rti/articleshow/47077042.cms>.
- 115 Land Disputes and Stalled Investments in India, Bharti Institute of Public Policy, Indian School of Business and The Rights and Resources Initiative, November 2016.
- 116 It is a research-based data journalism project that maps and analyzes ongoing land conflicts in India. It is put together by researchers and journalists who are spread across the country <http://www.landconflictwatch.org>.
- 117 Farmers are unhappy with the compensation offered or fear of losing economic value of the productivity of their lands.
- 118 The forestland or commons in Schedule V Areas are being diverted projects without consent of village council as required by law. Legal procedures are often not followed or subverted. Widespread concerns are raised on environmental impact of these projects including forest clearance.
- 119 <http://www.cprindia.org/research/reports/land-acquisition-india-review-supreme-court-cases-1950-2016>.
- 120 Article 300A said No person shall be deprived of his property save by authority of law, hence does not discriminate on the basis of gender. Article 39 of the Directive Principles of State Policy of the Constitution of India directs the States in particular to make policy towards securing the rights of the citizens, men and women equally for adequate means of livelihood and to the ownership and control of the material resources of the community, best distribute to subserve the common good.
- 121 The Agricultural Census of India, 2005
- 122 There are three ways that a woman can acquire rights over land: (a) from government allocation, (b) through inheritance and (c) by purchase.
- 123 Women's Land Rights Mapping in India in the context of the SDGs, submitted to The World Bank, New Delhi by Center for Land Governance, N R Management Consultants India Pvt. Ltd, Bhubaneswar, www.nrmc.co.
- 124 The amendment made by Andhra Pradesh in 1986, Tamil Nadu in 1989, Karnataka in 1994 and Maharashtra in 1994.
- 125 "Combining Administrative and Open Source Data for Monitoring Land Governance: Mapping Women Land Rights in the Context of UN's SDG in India", by PR Choudhury, MK Behera, S. Sharma, T. Haque, Centre for Land Governance, NRM, India Paper presented at the "2017 World Bank Conference On Land And Poverty" The World Bank-Washington DC, March 20-24, 2017.
- 126 Landesa, December 2013. Report on The Formal and Informal Barriers in the Implementation of the Hindu Succession (Amendment) Act 2005 in the context of Women Agricultural Producers of Andhra Pradesh, Bihar and Madhya Pradesh, <http://www.landesia.org/wp-content/uploads/hsaa-study-report.pdf>.
- 127 Odisha land reforms Act 1960 as amended from time to time.

128 Women's Land Rights Mapping in India in the context of the SDGs, submitted to The World Bank, New Delhi by Center for Land Governance, N R Management Consultants India Pvt. Ltd, Bhubaneswar, www.nrmc.co.

129 Odisha LGAF Report 2014.

130 "Women's Access and Rights to Land in Karnataka, RDI Reports on Foreign Aid & Development #114, by J Brown, K Ananthpur & R Giovarelli, May 2002, http://www.landesia.org/wp-content/uploads/2011/01/RDI_114.pdf.

131 Smallholder Women Farmers in India: A Research Study, Natural Resources Management Consultant, <http://nrmc.co/index.php/resources/research-papers>.

132 NLRMP program has asked the states to introduce a "gender" field for landowners in their property records. Given the prospective nature of this move, it may, however, ignore all old land records, which are substantial in number, thereby defeating the whole purpose. Southern states particularly Andhra Pradesh and Karnataka have introduced a 'gender' field for landowners in their property records.