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**EMERGING PROPERTY REGIMES IN INDIA:
WHAT IT HOLDS FOR THE FUTURE OF
SOCIO-ECONOMIC RIGHTS?**

Sony Pellissery and Sattwick Dey Biswas

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Institute of Rural Management Anand
Post Box No. 60, Anand, Gujarat (India)
Phones: (02692) 263260, 260246, 260391, 261502
Fax: 02692-260188 • Email: corpas@irma.ac.in
Website: www.irma.ac.in

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EMERGING PROPERTY REGIMES IN INDIA: WHAT IT HOLDS FOR THE FUTURE OF SOCIO-ECONOMIC RIGHTS?

Sony Pellissery¹ and Sattwick Dey Biswas²

Abstract

The paper develops a framework for understanding property regimes with reference to land. The paper identifies the classification for property regimes, primarily inspired by economic theory since Coase (1960), as ‘private vs collective’, to be strait jacketed for comprehending the dynamic nature of the relationship between property rights and socio-economic rights. The framework that the paper develops is that of a two pillar model: 1) how planning, market activities, and societal undertakings change property values. All three dimensions of change - economic, social and ecological – are considered in this pillar. 2) Institutional space for enforcing property rights. The legal and knowledge spaces are considered prominent here along with value orientations in society.

The paper is structured into four sections. After stating the problem, the paper undertakes a conceptual tour of property. Then, the relationship between property rights and socio-economic rights is delineated. The second section of the paper presents 15 archetypical land conflicts occurring in the post-reform period. These conflicts show how the property context in India is changing rapidly and new land regimes are emerging indicating a transformation. The third section of the paper presents how, across the world, the question of property has been addressed in the context of transformation. The fourth section builds on this foregone discussion and develops a framework to understand property regimes.

¹ Associate Professor, Institute of Rural Management, Anand – 388 001, Gujarat, India
Contact: sony.pellissery@stx.oxon.org

² Presently research student at Oslo University College, Norway. This work was completed while he was Research Associate at the Institute of Rural Management, Anand.

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1. INTRODUCTION

The Problématique

“Land” in the modern-European sense did not exist in India. The question of absolute ownership was considered least important (Neale, 1979). Rather, how different people (artisans, village record keepers, cultivators, and intermediaries) shared rights on valued resources was the key concern. Often, consolidation of local strength determined how multiple rights were distributed across different stakeholders over a piece of land (Embree, 1979). Despite the introduction of the Torrens system (formal title registration) during the British colonial era, various traditional laws have prevailed. In an important way, this has helped to sustain local control over land. The principles of decentralised governance and its constitutional validation since 1993 have emphasised the role of the village government (panchayat) in this context. A variety of powers and duties necessary for land improvement, implementation of land reforms, land consolidation, rural housing, and maintenance of community assets are invested in the panchayat. In addition to land as a state subject, this institutionalised local control imposes constraints on land administration and management.

An inherent tension exists between this legacy of local control of land and ‘public purpose’. The very definition of ‘public’ is antagonistic to ‘local’. Throughout the world, planners and policy makers have faced this problem of dealing with local land control (see Jacobs [1989] for theoretical and global review). In India, presently, property regimes³ are getting solidified through

³ Though property is much wider than land, we use the term property in a restricted sense in this paper. The preference for the term property over land is to emphasise the dimension of ‘bundle of rights’, an issue which will become clear in the latter part of the paper.

the interaction of market forces, public policies, and attempts by local communities to assert control. These emerging property regimes have an important significance for what economic and social rights could be enjoyed by human beings. As Dreze (2004: 1729) points out: “The economic and social rights complement and reinforce each other. Taken in isolation, each of them has its limitations, and may not even be realizable within the present structure of property rights”.

One needs to bear in mind, however, that land is not perceived as an asset to be distributed (to achieve economic and social rights) in present day India. Some scholars argue (Mehta, 2010) that this is endemic to all democracies since the very structure of democracy is only able to achieve ‘ameliorative rather than radical’ land reforms. Rather than land being seen as an asset to be distributed (which was the case immediately after independence) regulations around land have been shaping the realisation of socio-economic rights. This movement away from distributive politics to regulatory politics on land and property brings ‘regime’ to the focal point of study. Regulations also increase complexity due to inter-sectoral connections. Identification and classification of regimes become difficult in the Indian context because of the multi-layered nature of regulation as was pointed out in the beginning. It is in this context that the search for a framework has been attempted.

Section I

Conceptual Tour of Property

The term ‘property’ with its meaning of *possession* did not emerge until the 17th Century. Etymological roots of property refer to ‘nature’ or ‘quality’. How this nature is controlled as consented⁴ to by the rest of society through

⁴ This consent around property creation is the underlying meaning of the famous quote by Rousseau: “The first man who, having enclosed a piece of land, bethought himself of saying *this is mine*, and found people simple enough to believe him was the real founder of civil society” (Rousseau, 1754: *Discourse on Inequality*).

the labour of the possessor has come to be known as the central feature of property (Rose, 1985). This social contractarian nature of holding and using property brings the State into the picture while mediating property and the individual (Reich, 1964). This fact is traceable to the earliest known history.

Early Period

The earliest documentation (approximately dating back to the 24th century BC) regarding the protection of property through legislation or doctrine is found in Urukagina, the king of the Sumerian city-state Lagash, which established the first laws forbidding the sale of property. The Jewish holy books of Exodus (20:2-17) and Deuteronomy (5:6-21), reflecting the Ten Commandments, ask people "thou shalt not steal." It needs to be emphasised, though, that the Hebrew translation of the word "steal" is more commonly associated with material possessions like blanket (probably very important private property at the time). Yet this was part of the civil law, the first of its kind, which exhorted people to respect property rights. The Jewish law enumerates 613 Mitzvot specifying "Not to move a boundary marker to steal someone's property" (Deuteronomy 19:14). This is interesting in the sense that a boundary marker not only acts as a sign of ownership but with its absence the rights become obsolete or disputed (Garnsey, 2007).⁵ The sociology of religion informs us today that these divine commandments were institutions of people. This begs the question: does the nature of human beings require the institution of property? Avila (2004) argues that the autonomy of human beings necessitates the institution of property from tribal/communal living.⁶ A larger question is whether autonomy is the defining feature of human beings. While we don't intend answering this philosophical question in this short paper, it is very clear that the question of property leads to 'sociality' of human nature. Religion as an institution (later the state became an institution)

⁵ This helps one to understand why in seventh century America there existed "Tomahawk Rights", "Cabin Rights" and "Corn Rights".

⁶ There are scholars like Reich (1972) or Vaughan (2000) who have argued the relationship between origin of property and patriarchy.

brought a set of values to rules for managing property relations among its members. This early account helps us to understand that “Property is not an object but is instead, a value. When one buys a piece of land (in the vernacular, a “piece of property”), one acquires not merely some physical object but rather control over a benefit stream arising from that setting and circumstances that runs into the future” (Bromley, 2006: 63). The earliest religious commandments around property were about internalising the values around property, which was both a social and political doctrine.

Property’s association with the modern state has to be seen in the context of individuals transforming themselves as citizens in a democratic setting. Classical Greek philosophers lacked agreement regarding the use of property for citizenship. While Plato believed (see Russell for his objections and contractions within that) the absence of private property a blessing for the republic, Aristotle saw property as an object of fair distribution. Property should be private but also allowed for common use. He said, “When everyone has a distinct interest, men will not complain of one another, and they will make more progress, because everyone will be attending to his own business” (Aristotle, *Politics*: 1263a). Aristotle also sensed a strong correlation between property and freedom and also that owning the former makes a person a free man and, thus, suitable for citizenship. Compared to Plato, Aristotelian views reflected the practice around property in ancient Greece where participation in the political process was restricted to property owning groups (not merchants, slaves, or women).

Middle Ages

Aristotle’s ideas on property (over Plato’s) acquired wider practical significance through the middle age philosopher Thomas Aquinas (1225-74). Aquinas’ influence was evident at two levels: on modern philosophy and on the Christian Church. Aquinas argued that not only do the rich have moral obligations to act generously for benefiting the poor but the poor also have natural rights against the rich. He also said, “[a]ccording to the natural order

established by Divine Providence, inferior things are ordained for the purpose of succoring man's needs...’ (Aquinas, *Summum Theologica*:. 72), Aquinas argued that unequal distribution of resources based on human law cannot override the necessities associated with destitution. This is a theme that recurs in Locke's *First Treatise on Government* (Locke 1988 [1689], I, para. 42)—as an essential prerequisite to legitimatise private property (Horne 1990).

Modern Philosophy

In the wake of modern philosophy and enlightenment liberal thinking began to dominate the discussion on property. One exception was Hegel, however.. Hegel (1770-1831) emphasised property as a means of self-expression and his understanding of property as a social entity. Property was not something to be constituted by individuals acting on their own but by individuals who recognised each other. Hegel introduced the distinction between possession and property (Garnsey, 2007). According to him, possession was the "external power" that did not constitute a right whereas property was a legally recognised possession. This had huge implications for economic theory as we will see later.

Classical liberalism embraced individuality over groups, tribes, and nations, because individuality confer the power and authority to control an individual's life. This was a safe choice as it would defuse concentration of power and individuals would not be forced into wars. It also challenged the idea of human beings as being primarily part of a social whole because, arguably, society serves individuals in influential positions in disguise. Rousseau (1755) in his *Discourse on the origins and foundations of inequality* wrote, “it is certain that the right of property is the most sacred of all the rights of the citizens, and more important in certain respects than freedom itself” – he saw the superiority of property to freedom as to its claim that such superiority is even self-evident. Whereas Bentham, the founding father of utilitarianism, found property to be an exception. The goal of the legislator is the happiness of society, which consists of subsistence, abundance, equality, and security.

However these factors are often in conflict and need to be ranked. Subsistence and security are superior to abundance and equality, as abundance cannot exist without subsistence, and equality cannot last without security. Nature compels us to seek subsistence (needs armed with pains and death), so legal motivation is unnecessary. Therefore, security is the most important and thus redistribution of property is unwanted as it involves apart from other complications, absolution of others' property security.

Rousseau saw the superiority of property to freedom as to its claim that such superiority is even self-evident. He also said that property was created prior to government. The aim of the government is the protection of property rights, yet the government as an institution has been created only to protect private property (*l'administration générale n'est établie que pour assurer la propriété particulière*). According to Rousseau “the worst possible condition for free men” is when citizens are deprived of “civil safety” and “their goods, life, or freedom.”

Arguably, the most influential theoretical explanation of the origin of property is John Locke's theory of natural rights however it is also a severely criticised theory. Locke assumed that the world is collectively owned by everyone; individual property would be justified only if significant others are not made worse off by appropriation. When there is scarcity of water or land, an individual's privately owning portion of either does harm to others. Therefore, the significant others have a legitimate objection to such appropriation. Waldron claims that Locke did not take account of a situation in which scarcity is a reality. Sreenivasan argues that “enough and as good” means “enough and as good opportunity for securing one's preservation,” not “enough and as good of the same commodity (such as land).” Sreenivasan concludes that Locke's theory fails to solve the problem of how individuals can obtain property in what is initially owned by all people without consent. According to Simmons Locke argued that labour can generate claims to private property because private property makes individuals more independent and capable of directing their own actions. The Locke theory of natural rights

says that property is that which a man has mixed his labour with. Ownership is the right to use whatever is in the natural environment as per reward to labour principles.

The liberal, utilitarian focused property proponents received two strong responses at a later period. First, by Marx and Engels (Marxian views are well known and its correlates are discussed in section III) who regarded property as an institution by which few enslaved many (Cooter & Uen, 2004). Second, siding with industrialisation and capitalist forces, social citizenship scholars argued for the egalitarian distribution of property. Inequality that came along with industrialisation prompted reformers to look for solutions. T. H. Marshall (1950) argued that "...class differences are legitimate in terms of social justice... are legitimate as soon as social rights are ensured that nobody is left behind." However, while emphasising the importance of rights in citizenship, he argued that no one is really included if they have no right to belong; nobody is really excluded unless they are denied their right to claim some space for themselves. He characterised private property rights as civil rights. "A property right is not a right to possess property, but a right to acquire it, if you can, and protect it, if you can get it" (Marshall 1950). Marshall's argument is drawn from a paradox of Western ownership tradition. Property is even the right of the poor like anyone else, even though he has nothing, with respect to whatever he might own (Baron 2006).

Literature connecting social citizenship and property rights is gaining new ground currently. Davy (2012: 111) has expanded and connected Nussbaum's list of 10 central human capabilities to property rights. Friedmann's (2011) work on insurgencies and planning theory is also present in this genre of work.

Influence of Economic Theories

The last lap of the conceptual tour of property takes us to theorisation attempts by the practitioners of Economics over the last 50 years. Influenced by the

work of Coase (1960)⁷ a flood of work on property rights came from economists. Foss & Foss (2001) have synthesised and summarised this literature into two parts: old property rights approach and new property rights approach. Coase was reluctant to use the concept of ownership; rather, his preference was to emphasise the possession of some vector of use rights over an asset. Subsequent literature attempts to bring in the ownership concept to solve this puzzle that Coase had left open. The emphasis on ownership brought forward the issue of right to exclude (Barzel, 1982; 1997). These two dimensions of use rights and exclusion rights guided two famous works on developing frameworks of property regimes. Hardin's (1968) work on *Tragedy of Commons* and Heller's (1998) work on *Tragedy of Anticommons* have been responsible for expanding the size of ownership groups for developing regimes of 'individual use', 'collective use' and 'open space vs commons'⁸, using these principles of use rights and exclusion rights. Though this genre of work is extremely useful, most of the work by land economists are ignorant of (or have side stepped) this tradition. However, new institutional economics, influenced by Ostrom (1990), since Ostrom's work is a critique of Hardin's tragedy, has picked up this ignored realm.

Section II

The Emerging Property Context in India

Table 1 presents 15 archetypical cases of land related conflicts during the post-reform period in India. 'Archetypical cases' refer to typical cases of a similar nature (in terms of issue of conflict, modus operandi of land acquisition, nature of mobilisation against land take over etc). Annex 1 attempts to

⁷ This economic tradition is influenced by the legal tradition, particularly by the work of Hohfeld (1919). Hohfeld arranged multiple rights in a pair of opposites ('right' – and 'no right') and its pair of legal correlates (right and duty).

⁸ Bromley (1991) classifies it slightly differently as state property, private property, common property and no property.

demonstrate typical cases based on the archetypical cases.⁹ Annex 2 provides a bibliographic note for those who may be interested in studying each of these archetypical cases.¹⁰ A cursory look at the list reveals two things: 1) commonality of issues converging on a set of issues around rural transformation: energy requirement, natural resource extraction, infrastructural development, and urban solid waste management; 2) land as the axis around which conflict occurs has a striking commonality across cases as regards modus operandi in terms of how the state facilitates for industry, land alienation through collusion between politicians and industrialists, strong civil society activism, and demand for livelihood protection by the people opposed to the ruling party's pre-occupation for economic growth. These two dimensions need to be distinguished while understanding the archetypical cases. For example, the Jaitapur Nuclear Plant case and the Janjgir power plant case seem to be similar on the energy issue. However, the modus operandi for acquiring land is drastically different. Often, the acquisition

⁹ The purpose of Annex 1 is not to exhaustively present all the cases which are typical. But, to indicate that archetypical cases have correlates of typical cases.

¹⁰ While preparing these archetypical cases, we relied on this bibliographic source. However, we do not claim that the information provided is accurate. There are huge discrepancies between reported figures as to how many people will be displaced or land required for the work. For instance, fieldwork conducted in Jharkhand reveals that while the Environment Impact Assessment of Chakra Opencast Mines Project in Latehar reports the displacement of only 211 households in the mining project on 900 acres, the village head in the affected area reports displacement of 12,000 people from five villages (Lahiri-Dutt, Krishnan and Ahmad, 2012).

process of land leads to mobilisation of conflict even if the investment plan has been a noble one.

While selecting archetypical cases we have also concentrated on those cases that have been in public discussion and media for some time. This is to help readers connect typical cases (but which have also been discussed in a limited manner) with the archetypical case. Property issues often gain public attention due to agitation by the affected/displaced population from a piece of land or due to a scam that has resulted in the loss of exchequer. Very often, positive stories about property transformation do not gain much public attention. For instance, the last case in the list of archetypical cases is that of the DMK government's land for the poor scheme in Tamil Nadu. There have been similar land distribution schemes in many other states. In Karnataka a scheme called 'Namma Bhoomi – Namma Thota' (My land- My Garden) was introduced for landless labourers in 2005-06. The Indira Kranti Pratham project of the government of Andhra Pradesh (introduced in 2002 and discontinued in 2010) which helped subsidise purchase of land for women too was along similar lines. The Government of Odisha introduced the Vasudhara scheme in 2004 and gave out homestead plots the size of four cents to rural families that did not own homesteads. In 2011 the Government of Kerala announced plots of land for unmarried mothers in the district of Wayanad (see Haque [2012] for various initiatives by different Indian states). These cases indicate that distribution of land resource continues to be very much on top of the political agenda (to gain feedback effect through votes) even today. However, such politics have a limited role compared to the regulatory politics that we are seeing in these 15 archetypical cases.

The key regulatory instrument in question is an outdated Land Acquisition Act (1894) that continues to decide which land may be acquired for 'public purpose'. During the Constituent Assembly debates on land acquisition the then Prime Minister Jawaharlal Nehru elaborately raised this inherent tension between 'individual right' vs 'community right' and argued that settling this tension could not be achieved by legal means alone. Politics was crucial to the

balancing act. At the time, immediately after independence, ‘public purpose’ in the case of land had two connotations: a) effectively reducing the feudal control over land by taking the land from Zamindars and thus ending the system of land inequality that the British administration had created. The key question was whether the Zamindars were to be compensated or not; b) in the context of a nation building projects like roads, railways, dams (such ‘temples of modern India’ in the language of Nehru) required the state to acquire land from private sources; the question was what would be the level of compensation. However, this Act has proved to be tight jacketed in recent times particularly in the post-reform period. In September 2011 a newly drafted land acquisition, resettlement and rehabilitation bill was introduced in the Lok Sabha. Modifications and amendments to this legislation are currently before the Bill is finally adopted. There is a huge amount of literature proposing different alternatives to compensation, which we do not intend to summarise here. The discussions around the new bill have brought the question of ‘fair share’ to the surface again. However, these debates are narrowly focused on the ‘package of compensation’, which is creating tight property regimes by downplaying the question of access to land. We argue that ‘fair share’ narrowly understood in economic terms (as we will show in the next section) neglects the sociality of land. Sociality of land requires acknowledgement of contingency of property rights, primarily through the balancing act of a bundle of rights of concerned stakeholders while exercising the ownership right.

To stress this element of sociality of land, we emphasise three key points that emerge from these 15 archetypical cases. While there could be more commonalities our aim is to advance the emerging nature of property contexts.

Technocracy and Bundle of Rights

A key conflict exists between the bundle of rights that property regimes offer to the people and the manner in which technocracy breaks up this bundle. Often, if the bundle of rights is segregated the property’s value becomes

limited. The analysis of the cases point to how the monorational logic (Davy, 2012) creates a technocratic investment plan for which property is required. People who have been using property polyrationally are seen as reducing the value *v/s-à-vis* this monorationality. Take for instance the use of road or river front for living as well as selling things. The realisation of socio-economic rights has been made possible in moral economy through such polyrational exercises. Most infrastructural plans have been violently opposed by communities exactly because of this. Some scholars call this an emotional value attached with ancestral land. However, such a view does not completely comprehend the polyrational logic.

Bernard S. Cohn (1979) examines the question of what happened to the 'dispossessed' during 1795-1850 when land prices went up. He finds that economically, politically, and socially nothing significantly happened to the dispossessed since dispossession did not mean lack of access. Those who newly acquired access to the land continued to respect the previous access holders without hindering their livelihoods. Therefore, the exclusive right – which is demanded by technocracy - compared to the polyrational use of resources may ensure the realisation of socio-economic rights.

Power-land Regulation Nexus

One striking feature of the emerging property context has been vexing with power in the pursuit of claiming resources. While the real estate developers, industrialists, or investors often collude with state-level politicians (in the case of many tribal communities investors break them up by paying a huge sum to buy the allegiance of a section of people), the disadvantaged section resorts to collectivist strategies of mobilisation. In many conflict contexts Gandhian strategies have been consciously adopted to gain moral strength for the movement. Similar moral strength demonstrations are also adopted by those who intend to invest by explaining and interpreting the 'good' that is going to come. This has been beautifully captured by the Centre for Science and Environment (2011) as 'development against development' or 'green against

green' (investment for windmills displaces farmers). That is, one development strategy (of high investment) poses challenges to the livelihood-focused development strategy of the people.

Big names often get associated with most multi-million projects, adding another dimension to the conflict. In one case, for instance, Sam Pitroda was believed to be the vice chancellor of Vedanta University. In another, Oxford University intended to set up a campus at Lavasa city. Foreign relations are involved in some cases that impinge on bilateral agreements (e.g. on land issue pertaining to nuclear establishments, nuclear investment for fuel import) between countries. Cases involving big names make conflict resolution difficult for obvious reasons. Sometimes the big names pull out when the controversy acquires media attention (sometimes by active advocacy by the affected people), potentially damaging the big names. For instance, Oxford University pulled out from its promise of setting up a campus in Lavasa when the media began to report that the world premier university was involved in global land grabbing.

Rich westerners taking a helicopter ride to an African village and convincing villagers about investing in a private agriculture project there (Mittal, 2011) has the same effect as big names getting associated with big projects.. Most of these big names have no clue about the aspirations of local people and are only aware of general willingness (not differentiated willingness by understanding the context) to help society. Needless to say, in some cases, there is clear profit motivation aligning with that of real-estate developers.

Disappearing Commons

The first prey to land acquisition is commons land as opposed to private land. The prime reason for this is diffused private interest in protecting commons as an opportunity by the government or other parties (outside the boundary of commons) to appropriate the commons. Commons property loss has major implications for the socio-economic rights of poor people in rural areas. The National Sample Survey (1999) pointed out that 45% of rural households in

India depend on commons for firewood collection, another 13% for fodder collection, 20% for grazing land, 30% for water for livestock, and 23% for water for irrigation. The same report pointed out that these vital common property resources were shrinking at the rate of 1.9% every five years. Accelerating this loss is the absence of legal protection for the commons. The British legal system had two separate streams to property rights by 1927: One for private property and another for common property (Roy, 1993).

The Foundation for Ecological Security, which makes policy interventions for protecting the commons, noted that 29 judiciary pronouncements and 29 government orders were passed in different states of India for protecting the commons over the past one year. This development came after the Supreme Court order to the state governments to take steps to clear illegal encroachments on the commons in the year 2011 (Kaur, 2011).

Since land falls into the category of state administration responses have been varied. During 2008-2011 alone the Gujarat government sold off 116,000 square metres of commons land for various purposes. Gujarat has just one-fifth of its required pastoral land. In the wake of protests and demands Rs. 23 crore has already been given away as compensation for creating new pastures (Mahapatra, 2012). The Ministry of Rural Development's Draft Report (2007) of the Committee on State Agrarian Relations and Unfinished Task of Land Reform. New Delhi: Ministry of Rural Development has indicated that the distribution of commons land to the poorest section is not a good solution. The assessment is that the people who received such land had neither the skills nor the resources to improve it. Thus, titles were sold off. Eventually, the commons land was lost and the poor did not get to improve their livelihood either.. The states of Rajasthan and Andhra Pradesh have been utilising the Employment Guarantee Scheme to develop commons lands, which have been allotted to the poorest sections.

In some other contexts, wealth has been made by dissolving the commons. For example, one village in Gujarat which has modern amenities like Wi-Fi

connection or CCTVs in classrooms claims that it became rich after grazing common land was sold off (Yagnik, 2012). The Magarpatta township in Pune is another example of a group of villagers belonging to the scheduled caste having transformed their land into a shareholder company (Magar, 2011). These are examples of sociality being lost when property regimes fall completely into individual ownership rights.

Section III

Property Distribution Models in Transformation Context

The title of Leo Tolstoy's (1828-1910) famous work *How much land does a man need?* summarises the aspirations behind the principle of land distribution. Most of the nation-states had to deal with this question directly at the crucial stage of state formation. The most famous example of this being how the Lockean principle of 'Life, liberty and estate (land/property)' became 'life, liberty and the pursuit of happiness' in the United States of America's Declaration of Independence.

In India too, land distribution gained key importance in the process of becoming a republic from small kingdoms and a foreign-ruled country. In other words, feudal property holding, which deprives a majority of the population from access to land, cannot coexist with 'one- person, one-vote' principle of democracy. Land reform legislations were passed by different state governments in India immediately after independence with the aim of acquiring huge land holdings from *Zamindars* for distributing to the landless population. However, this land reform legislation conflicted with the Fundamental right to property guaranteed by the Indian Constitution (19, 1, f). This led to the first amendment of the Indian Constitution for facilitating land reforms (Article 31 A & Article 31 B). A series of tussles between the Parliament and the judiciary that culminated in the removal of Article 19 (1) (f) – fundamental right to property - during the Janata Government, through

44th amendment, is well documented by Allen (2007).¹¹ There is sufficient literature to show why land distribution failed in some states and succeeded in others. It is impossible to summarise this literature here. However, it is a useful signpost for understanding property regimes and how the relationship between the property owning class and the political class steered land distribution to its failure (or success).

As we had pointed out in the *Problématique* of this paper the focus is not on describing property politics from a distributive point of view. Our aim is to understand regulatory politics around property. Four views that shed light on regulatory regimes are visited in this section. Section I of this paper has undertaken a conceptual tour of property. As we noticed there, liberal notions on how society should be organised (giving paramount importance to the individual) have shaped the understanding of property. However, while societies underwent transformation (and sometimes revolutions), liberal notions were put to test. Human imagination worked at understanding different ways of organising society. Often, how property could be reorganised was at the core of these deliberations. This section will visit different experiments in history in this direction.

Thomas Paine (1737-1809)

Thomas Paine, who was an influential pamphleteer in the beginning of the American Revolution, can be said to have made the earliest articulations on how the distribution of property is to be done in the age of land transformation. His ideas about distributive models of property were clearly articulated in his last pamphlet titled *Agrarian Justice* (1795) which was a development on his earlier pamphlet titled *The Rights of Man*. The historical context provides practical advice on laying the foundation of liberated

¹¹ These legislations were largely about rural land. However, similar developments also occurred on urban land. In 1976 there was a legislation for setting a limit on the possession of urban lands through the Urban Land Ceiling Act. This was repealed by the central government in 1999.

America from England, particularly in terms of balancing the relationship between private property holders and non-property holders. Paine makes a distinct contribution by departing from the ideas of Hobbes, Locke or Hume about property as a 'natural state' by suggesting that private property is at the root of injustice and inequity. Paine, however, did not think private property could be avoided since population explosion required agriculture on private lands. Still, Paine considered the value improvement that a propertier makes on the individual property and not the land itself (Marangos, 2008). His proposal was to find a means to mitigate the inequality arising from this necessity. He suggested that every person who attains adulthood should be given a fixed fund (from a national fund generated from the land rent of private property owners) which becomes the working capital to begin his life with. This fund mitigates the likely poverty that occurs when the natural gift of land property is alienated from the individual.

"It is a position not be controverted that the earth, in its natural, cultivated state was, and ever would have continued to be, *the common property of the human race*. In that state every man would have been born to property. He would have been a joint life proprietor with the rest in the property of the soil, and in all its natural productions, vegetable and animal. But the earth in its natural state, as before said, is capable of supporting but a small number of inhabitants compared with what it is capable of doing in a cultivated state. And it is impossible to separate the improvement made by cultivation from the earth itself, upon which that improvement is made, the idea of landed property arose from that parable connection; but it is nevertheless true, that it is the value of the improvement only, and not the earth itself, that is individual property. Every proprietor, therefore, of cultivated lands, owes to the community *ground-rent* (for I know of no better term to express the idea) for the land which he holds; and it is from this ground-rent that the fund proposed in this plan is to issue" (Paine, 1795: 12-13).

Though this idea was never implemented it was considered a radical idea that laid the foundation stone of various pension programmes based on taxation. Though Paine advocated rent on land, he was a strong believer of society and commerce over state (Dorfman, 1938). His fund plan was to give equality of opportunity at the start of life by engaging in commercial life. Although the idea was radical it was not forceful enough to challenge the market model of economy at the time (Seaman, 1988). ‘Strict equalitarianism’ in Paine’s philosophy led him to succumb to liberalism by admitting natural rights.

Henry George vs Karl Marx

While Marxian views on private property are well known (which itself is an important proposition to deal with *vis-à-vis*, land in the context of transformation) what is less known are the other competing ideas that lost ground in the Marxian wave.¹² Henry George (1839-1897) and Karl Marx (1818-1883) were two intellectuals who lived in the same era opposing each others’ ideas (Holmes, 1947). However, Marxian ideas were much more influential in human society because of the new analytical frames that Marx introduced.¹³ In the wave of Marxian ideas Henry George’s ideas were drowned to be rediscovered now. It is important to look at both comparatively since they had opposing views as to what needed to be done with property in the age of transformation.

Henry George affirmed the ‘ground rent’ that Thomas Paine propounded in a robust economic theoretical frame. A key difference being that while Thomas Paine argued for the rent on improvement made on the land Henry George

¹² In the context of global land grab, the Marxian analytical frame is being revisited under a genre of literature called ‘accumulation by dispossession’, as coined by Harvey (2003). See Levien (2011) for the application in the context of Mahindra SEZ in Jaipur, India.

¹³ With the prominence of Marxism many other competing socialist ideas also became insignificant. Notable is Pierre-Joseph Proudhon’s (1809-1865) ideas of holding property by cooperatives, which was also sidelined like Henry George’s ideas. Proudhon’s famous statement of ‘Property is theft’ had attracted Marx in the early stages of their friendship.

argued for a single tax¹⁴ on the land property. In his famous *Progress and Poverty* he stated: “There must be exclusive right of possession of land, for the man who uses it must have secure possession of land in order to reap the products of his labor (1879: 17).” Instead of rent tax on land was proposed since George feared speculative rent would lead to industrial depression. “Taxes on the value of land not only do not check production as do most other taxes, but they tend to increase production, by destroying speculative rent” (1879: 413). This radical route – called Georgism – was not tried in history, unlike the Marxian experiment.

Although, like Thomas Paine and Adam Smith, Henry George also concluded that wealth created poverty, he did not want to go the radical way of Marx to get rid of this problem. Rather, George despised Marx’s proposal regarding the abolition of private property. He opposed the Marxian approach and warned very early that if any nation tried to implement communism it would get into dictatorship.¹⁵

¹⁴ It was called single tax since the abolishment of all other taxes such as building tax etc was advocated..

¹⁵ Holmes (1947) argues that the key difference between them is due to what they observed. For most of his life, Marx lived in England and saw how the beautiful countryside was undergoing transformation under industrialisation. Henry George lived in Eastern America (California) and observed land monopoly for agricultural production: “Marx saw clearly the menace of capitalistic monopoly; George saw as clearly the menace of land monopoly. Marx focused his attention primarily on the factory, and only incidentally and accidentally on the land on which the factory was built and from which it drew its substance; George focused his attention on the land, and only incidentally and accidentally on the factory which stood upon the land. Marx never penetrated to the land as the ultimate source of all wealth; George did not follow through to the factory, and the whole system of which it was the baleful symbol, as a supplementary and very potent instrument of exploitation. Marx was not fundamental, as George was fundamental. Henry George was really getting down to the bottom of things!” (1947: 162)

Karl Polanyi (1886-9164)

Polanyi's seminal contribution is pointing out how the goods of land, labour and capital are fictitious commodities. In *The Great Transformation* he argues that irreparable damage is done by turning land into a fictitious commodity. Land is another name for natural environment. In the context of the demise of moral economy and emergence of market relations, land price or land rent made property an easily tradable commodity that served the purpose of industrialists. However, these "markets are not institutions functioning mainly within an economy, but without" (p.61). Polanyi's proposal to deal with land is not easy. He argues that commodification of land can be responded to only through a decommodification process. After having reviewed the experiences in history he suggests that freedom in a complex society is possible through "redistribution to enmesh the economic system proper in social relationships" (P.55).

Title Clearances (de Soto)

The fourth proposal to deal with land issues in times of transformation comes from the Latin American Hernando de Soto (*The mystery of capital*). Compared to the three proposals above, the de Soto proposals have gained much acceptance among multilateral agencies like the World Bank because they are founded on neo-liberalism. De Soto (2000) analyses different economies and points out that where property rights' relations are clearly established economic growth occurs. He argues that property titles are unclear in much of the global south; market penetration to facilitate transaction, therefore, is non-existent. De Soto's views, on the one hand, have been projected as empowering the poor who would get clear titles to land (in many countries this proposal has resulted in providing clear titles to dwellers in urban slums) enabling them to keep security as collateral to gain access to loans for starting a business or something similar.. Two forceful criticisms to this proposal are: a) the evidence that common property resources are more helpful to the poor people than individual property - an issue which we have

discussed in section II; and b) market forces would eventually deprive the smaller titles of small land holders compared to large property owners.

Section IV

Conclusion: Framework to Understand Property Regimes

Traditionally, property regimes have been understood through a simple framework of ‘individual rights’, ‘open access vs commons’, ‘collective use’. This framework is hugely influenced by economic theory in a tightly held relationship between individual/citizen and the state. Coase (1960) and subsequent economic literature shaped this classification of property regimes. As we noted in section II, economic theorisation itself moved away to a new property rights’ approach since Grossman and Hart (1986). Such theoretical robustness ignores two key factors while modeling regimes: First, it ignores some of the drivers or pressures forcing the state to adopt certain policies and thus regimes (e.g. population growth, introduction of technology, growth of urban centres, adoption of commercial crop, food prices etc). The second key factor ignores how the state’s policies create different types of market and how this market creates possibilities of change in regimes. In light of discussions in this paper, changes in polity and societal aspirations are crucially connected for shaping property regimes. We propose a two-pillar model property rights’ regimes.¹⁶

¹⁶ This paper is aware of the path dependency of property regimes. For example, the tax collection patterns and land leasing practices dating back to pre-colonial times still have implications for the implementation of various property rights instruments in India (Banerjee & Iyer, 2005). However, to avoid further complexity, we do not bring this path dependency argument into this framework. The framework is focused on what levers may be activated to improve property regimes to advance socio-economic rights. Path dependency needs to be borne in mind, and can be seldom used as a lever, except to accelerate the levers that are already available.

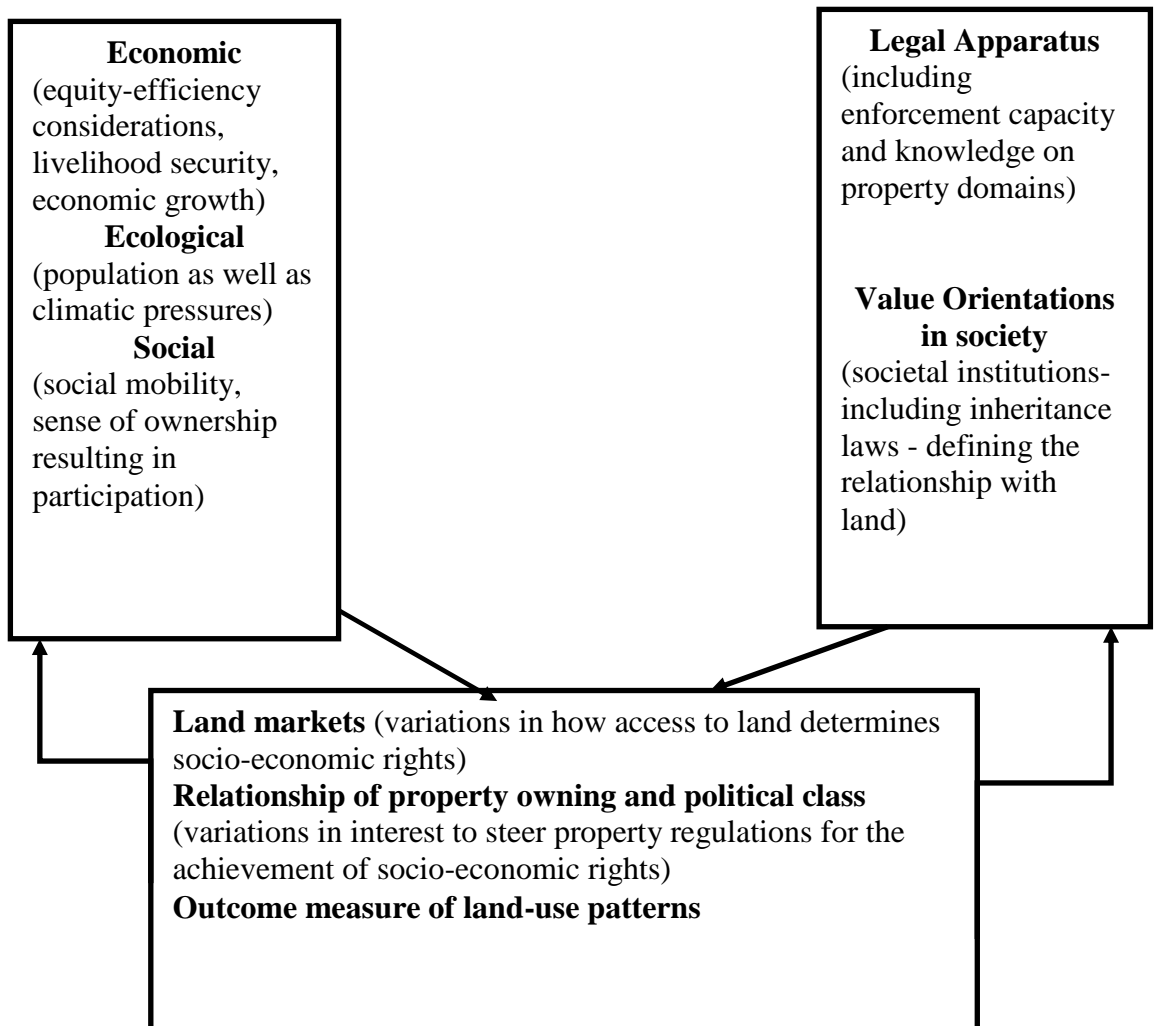
The first pillar is concerned with how, through the instrument of planning and policy related to land and infrastructure, property values are shaped by the state, market, society and individuals. In fact, the planning is focused on three objectives – economic, social and ecological. As an outcome, the land use patterns should be able to show how these objectives are balanced. Annex 3 provides how land use patterns have changed over decades in India. One major caveat for the state to have absolute control over this land use pattern is the ambiguity of land conversion policies (primarily converting land meant for agriculture and forestry for other purposes) that exist.¹⁷ Apart from this is the fact of how different policies interacting with market forces add property values in ways which are difficult to foresee. Serageldin & Steer (1994) and much subsequent literature (for example, McNeill et al, 2012) has shown that all actors while dealing with property address these three dimensions seeing the value trade-off. In the Indian context, for example,¹⁸ agricultural subsidy policy is a good case in point. The Minimum Support Price (MSP) considers various factors including input prices for items such as fertiliser, cost of cultivation, international market shocks on farmers, general price indices etc. Over the years, it has been observed that the MSP policy has often been biased in favour of commercial crops (e.g. cotton, sugarcane, oilseeds, and pulses) crucially altering land use pattern. Similarly, agricultural subsidies for fertilisers, irrigation, and electricity hugely changes land values and land sustainability. In more recent times, Special Economic Zones, which require a huge amount of land, have been shown to be useful for economic growth and for providing employment. None of these policies are guided by economic cost calculation alone. Huge political interference has been reported while fixing MSP, picking up a spot for SEZ, or while choosing credit-needy farmers. This political interference is a clear indication as to why ‘economic’

¹⁷ It is also interesting to note that the Forest Rights Act (2006) has provided various use rights (though not transfer rights) to indigenous communities. Both community rights and individual rights are also allowed under this new act. Data is still emerging as to how many claims are made for such rights and how many such claims are found to be genuine for granting rights.

¹⁸ See Purushothaman et al (2012) for a useful review of how different policies affect economic, social and environmental domains in the context of Indian state of Karnataka.

alone or ‘social’ alone or ‘environmental’ alone does not determine policies. It is a mixture that determines policies. Political bias may raise the land value and rent for some property owners compared to others. This will be one window through which regimes could be viewed.

Figure 1: Two pillar guided framework to understand property regimes



The second pillar is concerned with how institutionalised space is available for creating and respecting rights. Two domains are identified here. The first is the legal apparatus that is available and the effective enforceability of rights. One of the crucial issues given the Indian context is the distortion around land market¹⁹ (Morris, 2009) which pushes land rights into a spiral of litigation. Most development projects involving land acquisition are also enmeshed in such controversies. This legal apparatus is often linked with the presence/absence of property specific knowledge such as clarity of land records and cadastral maps. Here, de Soto's argument is extremely valid. Unsurprisingly, the World Bank's key recommendation to India in the post-reform period concerned improving its land record system (World Bank, 2007). The second domain is society's value orientations with regard to land. For instance, preference to hold land collectively by a joint family and to put labour together was closely linked with kinship-based responsibility-duty arrangements in society. Changes in the kinship structure may see changes in viewing land as a productive asset, thus facilitating the acquisition of skills needed for moving to different production systems completely and changing the value orientation to property. One of the most focused expressions of societal values on property is the inheritance laws. There exists vast literature on how inheritance law and practice has made smaller pieces of agricultural units unviable. In the Indian context particularly, the ways in which patriarchal societies have denied inheritance rights to women is also a burgeoning genre of work (see for example, Agarwal, 1998; Rao, 2002).

¹⁹ Land markets also include the issue of land lease and tenure security. It is very interesting to note the property regime differences that are happening in India in this context. In the 1970s, legalising land tenancy was a hotly debated issue and most often 'land to the tiller' argument prevailed. While economists in the planning commission argued for legalising tenancy (since it provided a framework for efficient use of land without laying the land fallow), civil society activists pressed for 'land to the tiller' emphasising equity dimension (see Alagh, 2012). What gives credence to the argument that property regimes have changed over the years is the near absence of this debate today and, virtually, the argument of legalising tenancy has won over a period of time. Today, even rural folk find secure land tenure to be an attractive option since many small land holders in rural areas rent out land and move to cities to earn livelihood.

These two pillars would act as regulatory forces around property rights. While understanding these pillars would be central to learning what drives a regime, the manifestation of the regime itself would be in the three domains represented in the square below of the figure. The first two domains are about how regimes use levers to regulate while the third one is an outcome measure to judge regimes. These outcomes shape the pillars in turn. In the domain of land market the key factor is how levers are applied by regimes to shape self-regulation.. In the second domain it is the interest guiding the regulatory process that is to be judged for its variation.

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TABLE - 1

| Name of case | Location | Amount of land, Population and Time period | Investment plan | Nature of conflict |
|--------------------------------|--|--|---|--|
| Jaitapur Nuclear Power Project | <p><u>State:</u> Maharashtra</p> <p><u>District:</u> Ratnagiri</p> <p><u>Villages:</u> Madban, Nivel, Karel, Mithgavane and Varliwada.</p> | <p>2391 acres of land</p> <p>2335 households</p> <p>Since 2007</p> | <p>9900 MW power project of Nuclear Power Corporation of India to be established as Inter-governmental investment in public sector mode</p> <p>Rs.112,000 crore +</p> | <p>Local people protest the project and land acquisition on a variety of grounds including nuclear safety issues since Jaitapur is classified as a seismically sensitive area. The conflict has international implications since the French President and Indian Prime Minister signed an agreement in 2010 to avail the services of nuclear power reactors and nuclear supply for 25 years. In 2010, when the government authorities visited Madban for distribution of cheques in lieu of compulsory land acquisition, the villagers refused to accept the cheques. Members and leaders of the Konkan Bachao Samiti (KBS) and the Janahit Seva Samiti (organisations that are spearheading opposition to the project) were also detained. On 18 April 2011 one man was shot and killed by the police while eight were injured after protests against the plant turned violent.</p> <p><u>Farmers' views:</u></p> <p>Ratnagiri has 15,233 hectares under mango cultivation with an estimated annual turnover of Rs 2,200 crore. People fear that a substantial number of mangoes might be lost if the project got off ground. The Jaitapur-Madban area has a sizeable fishing economy. The fisheries will be affected since the plant will release 52,000 million litres of hot water into the sea every day.</p> <p><u>NPCIL views:</u></p> <p>NPCIL officials claim that two-thirds of the land being acquired by the project is “barren” and “unproductive” and will displace no one.</p> <p><u>Local Government views:</u></p> <p>All the five gram panchayats (democratically elected local governing bodies) in the affected area have unanimously passed resolutions opposing the project.</p> |

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| Posco Steel Plant | <u>State: Odisha</u> <u>District:</u> Jagatsinghpur <u>Villages:</u> Dhinkia, Nuagaon and Gadakujang | 4052 acres of land needed for project, of which 3558 acres belong to forest land. 460 households to lose home; All three villages' mainstay livelihood of betel farming to be affected. Since 2005 | Setting up of a 12-MTPA greenfield steel plant involving an investment of \$12 billion. Plans included 1) Mining facilities; 2) Road, rail and port infrastructure; 3. Integrated township; and 4. Water supply infrastructure. Rs. 45,000 crore + | POSCO, the world's fourth largest steel maker, had signed an MoU with the Orissa government on June 22, 2005. Subsequent to this the central government passed Forest Rights Act (2006). Many provisions in the MoU were contradictory to the Forest Rights Act. The main livelihood in the locality is betel farming on forest land, which would be destroyed with forest land going to POSCO. Before 2005, the use of forest land by the local people was seen as encroachment (thus taking it back for POSCO). But the new 2006 Act changed this understanding. A Communist Party of India (CPI)-supported organisation, the Posco Pratirodh Sangram Samiti (PPSS) spearheaded the protest. Its leader Abhay Sahu was arrested in November 2011 on criminal charges unrelated to the POSCO controversy. <u>Central govt views:</u> Two committees were appointed to study the controversy. Following the N. C. Saxena committee (19 members) recommendations in August 2010 the Ministry of Environment and Forest, Govt of India (MoEF) ordered the cessation of all work and return of the acquired land. Another committee of four members headed by Meena Gupta gave a divided report. With this backing, MoEF gave a green signal to the project. <u>Local people/farmers' views:</u> The villagers were vertically divided into two groups some supporting the project and others opposing it. |
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| TATA Singur | <u>State:</u> West Bengal <u>District:</u> Hoogly <u>Villages:</u> Singur | 997 acres Since 2007 | TATA Motors started constructing a factory to manufacture their \$2,500 car, the Tata Nano at Singur in 2007. The small car was scheduled to roll out of the factory by 2008. The project faced massive opposition from displaced farmers, and was forced to move to Gujarat in October 2008. Rs 1,500 crore for the mother plant+ Vendors Rs 500 crore | The state government invited TATA to set up the car plant at Singur. As per the West Bengal Government records Singur's landmass was officially marked as 'single-cropped', non-irrigated and 'barren'. Therefore, utilising it for setting up a factory was not supposed to hamper the development of the region. However, the fact is that it is a major vegetable growing region along with paddy and jute. The land was acquired from local people and given to TATA. The then opposition leader Mamata Banerjee led the movement 'save farmland' which was supported by many environmental activists and Kolkata-based intellectuals. In the state elections of 2011 Mamata Banerjee's Trinamool Congress replaced many decades of Communist Party (CPM) rule. The new state government wanted to redistribute 400 acres of the total 997 acres of TATA's land back to the original title holders. It enacted a law in 2011 for implementing the same. But, this new law was judged to be unconstitutional by the Calcutta High Court in 2012. |
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| Vedanta Mining | <p><u>State:</u> Odisha</p> <p><u>District:</u> Kalahandi</p> <p><u>Villages:</u> Niyamgiri Hills and Lanjigarh</p> | <p>Approximately 3000 acres of land</p> <p>1,453 people of the Dongria Kondh tribe</p> <p>Since 2004</p> | <p>Bauxite mining and aluminum refinery to be established by Vedanta group of London.</p> <p>Approximately 4000 crore</p> | <p>The Niyamgiri Hills is sensitive for two reasons: it is a major hub of wild life habitat in the Eastern Ghats; it also inhabits the Dongria Kondh tribe population. The project has faced conflicts on both these fronts. Environmentalists have rallied against the project on the first reason and human rights' groups on the second one.</p> <p>In 2002, villagers of Lanjigarh were served with a land acquisition notice. In 2003, the administration evicted 64 tribal families of Jaganathpur. In October 2004, the Orissa government signed an agreement with Vedanta Alumina, a subsidiary of Sterlite Industries (India) (SIIL), to mine bauxite deposits from the Niyamgiri hills jointly with the Orissa Mining Corporation (OMC) ignoring environmental and human rights' issues. Protests began almost immediately. In 2010 both state-level pollution control agencies and international agencies reported that the aluminum refinery was doing damage to crops, food, and lives of local people. Investigation committees appointed by the government have cited mining beyond permitted levels as being responsible.</p> |
| Vedanta University | <p><u>State:</u> Odisha</p> <p><u>District:</u> Puri</p> <p><u>Villages:</u> Puri-Konark marine drive between Nuanai and Balighai</p> | <p>6000 acres of land</p> <p>2006-2010</p> | <p>Anil Agarwal, a London-based Indian businessman and Naveen Patnaik, the chief minister of Odisha signed an agreement to establish a world class private university with an investment of Rs.15,000 crore.</p> | <p>Favouring Vedanta University by violating law of the land and handing over temple land without following due procedures. The Jagannath temple trust land has been given to the London-based Vedanta Resources which is setting up a university project at Puri. It is estimated that 1200 acres' land was given to Vedanta at Rs 80 crore; the company paid a pittance i.e. only Rs 8 crore.</p> <p>The Supreme Court (28th Jan, 2011) ordered the Orissa government to maintain status quo on the acquisition of 6,000 hectares of land for setting up an international university by the UK-based Vedanta group in the holy city of Puri. The High Court, while citing 17 reasons, held that land acquisition procedures for the proposed Vedanta University project were illegal. The High Court had also directed Vedanta to return the land to its various owners.</p> |

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| Muthanga agitation | <p><u>State:</u> Kerala</p> <p><u>District:</u> Wayanad</p> <p><u>Village:</u> Muthanga</p> | <p>1.36 lakh tribal population of the district of Wayanad; Interestingly, Wayanad is home to about 76% of the total tribal population of the state of Kerala. Politically, however, , only 1.36 lakh people form 20% of the total Wayanad population.</p> <p>Process of land alienation begins in 1950s but agitation climaxes in 2001</p> | <p>In the post-reform period, problems faced by rich and medium farmers (the highest number of farmer suicides has occurred in the Wayanad district of Kerala) affect wage labourers. They demand their own piece of land as a source of livelihood.</p> | <p>Since independence people from the plain areas of Kerala have been migrating to the hilly district of Wayanad and buying cheap land housing the tribal population. Wayanad transformed to a cash crop hub of products such as coffee and rubber over three decades. As part of a legal measure to curb the situation the Alienated Tribal Land (Restoration) Act of 1975 was passed by the state of Kerala; this came to effect in 1982. It made all transfer of property “possessed, enjoyed or owned” by tribals to non-tribal people between 1960 and January 1, 1982, invalid and ordered restoration of such land to the tribals or Adivasis. But the law remained on paper as successive governments did not implement this Act. In 1993, the Public Interest Litigation to implement this Act was successful. By and by the tribals have given up their claim for restoration of land from settlers. Their demand is for five acres of land per household from the state-owned forest. Farmers began to occupy the Muthanga forest in an organised manner under the leadership of C. K. Janu.</p> <p>In February 2003 police attempted to force tribals from the forest leading to police firing.</p> |
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| Mundra Port | <p><u>State:</u> Gujarat</p> <p><u>District:</u> Kutch</p> | <p>6,893 acres</p> <p>Since 1988</p> | <p>Adani group developing Mundra Port & Mundra Special Economic Zone (SEZ) established under the SEZ Act of 2005, is proposed to come up on about 6,000 acres of land with a total investment of Rs.74 billion.</p> | <p>Land was allotted to the Adani Group at Re1 per sq mtr, grossly lower than the market rate; there were also environmental issues related to the development of Mundra SEZ. Mundra Port has had smooth sailing the land in the region being arid and unoccupied.</p> <p>14 villages - Waghers (fishing community and grazing communities like Rabaris etc affected. Fishing harbours blocked as a result of construction of jetties and other activities over the past six to eight years; destruction of mangroves on revenue land and commons land (pasture land) affecting camel graziers and fish production; old Mundra Port activities disturbed as a result of dredging and heavy shipping vessel movements.</p> <p><u>Central Govt views:</u> In December 2010, the Indian Ministry of Environment and Forest initiated action against the Mundra Port and Special Economic Zone Limited following a complaint lodged by Bharat Patel, General Secretary, Machimar Adhikar Sangharsh Sangathan by issuing show cause notice to Adani's Mundra Port and Special Economic Zone Limited under Section 5 of Environment (Protection) Act, 1986 for violation of the provisions of the Coastal Regulation Zone Notification.</p> <p><u>Farmers/Local people:</u> Mixed opinion: some famers are happy because they have sold their land at exceptionally high prices. Locals, other than those who have not been directly or indirectly receiving some livelihood support from the port, are very unhappy saying this has changed the socio-cultural nature of the region. There is growing hostility against outsiders.</p> |
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| Lavasa Planned City | <u>State:</u> Maharashtra <u>District:</u> Pune <u>Villages:</u> 20 villages of Mulshi and Velhe blocks | 25,000 acres About 5000 indigenous farmers have been forced to leave | A private planned hill city being developed by Hindustan Construction Company. Five towns being planned on seven hills with a population of 200,000 with all modern amenities including theme park of the size of 65 acres. | Three types of allegations formed the basis of conflict between Lavasa and the number of stakeholders: a) original dwellers of this hill were intimidated and forced to accept low prices; b) In 2010 MoEF stopped the Lavasa project which was involved in hill cutting activities. In 2011 permission was given to resume work with conditions; c) much of the permission related to land and construction was obtained by paying bribes. The land acquisition was carried out by three different departments -- the irrigation department (Maharashtra Krishna Valley Development Corporation [MKVDC]), forest department, and revenue department. The department personnel were accused of having a direct stake in the project. |
| Janjgir Power Plant | <u>State:</u> <u>Chattisgarh</u> <u>District:</u> Janjgir-Champa | 960 acres Since 2011 | Videocon to establish a thermal power plant of the capacity of 1200 MW. A similar scam was done by the Avanta group that purchased land in the name of tribal people in 154 locations in Chattisgarh regarding starting industrial units. | Sandeep Kanwar (the son of Chattisgarh home minister Nankiram Kanwar), public relations officer of Videocon, had purchased land from the tribals in Janjgir-Chaampa allegedly on behalf of his employers. The land purchase was reportedly done involving Sandeep, a tribal himself, as laws prohibit non-tribals from buying land in these areas. The laws, however, do not come in the way of agricultural land dealings between the tribals. According to section 165 (6) of Chhattisgarh's land revenue code, tribal land cannot be sold to a non-tribal without the district collector's permission. <u>The farmers' views:</u> The farmers who sold land had been intimidated and coerced into selling the land, since Kanwar was "mantri ka beta" (son of minister) and had been visiting the villages in a "lal batti gaadi" marked with BJP's symbol. <u>Government:</u> The district collector later cancelled the 'benami' transaction and returned the land to original holders. |

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| Manikonda Golf Ground | <u>State:</u> Andhra Pradesh <u>District:</u> Hyderabad <u>Village:</u> Manikonda | 535 acres Since 2002 | Andhra Pradesh Industrial Infrastructure Corporation (APIIC) in collaboration with Dubai-based EMMAR as a joint venture planned to develop a golf course residential properties called Boulder Hill projects in the city of Hyderabad. Approximately Rs.5600 crore | The process of land acquisition done by APIIC is central to the conflict. Under the fractional politics of Congress party of Andhra Pradesh, a few Congress MLAS have taken the lead in exposing the scam of diluting public stake by undervaluing the land. About 500 acres of land was acquired by APIIC in 2002-2003 for the project. Of the 535 acres of land in Manikonda, APIIC sold 285 acres at 27 lakhs per acre whereas the prevailing price was 1 crore per acre in 2003. The remaining 235 acres (and an additional 15 acres of unusable land) were allotted as part of a 66-year lease with 2% share of the golf course revenues. EMAAR sold this project to EMAAR-MGF and diluted the value of APIIC's stake from 26% to 4% by not considering the prevailing market rate for the land in 2009. The state lost huge revenues: Rs 2,500 crores claimed by some Congress MLAs publicly. Multiple claimants (including a Wakf board) to the land and other irregularities also came to light. It has been alleged that a few IAS officers at the helm of APIIC entered into a criminal conspiracy of cheating the APIIC to favour EMMAR without the knowledge or consent of the APIIC board. A few IAS officers have been arrested so far. |
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| Nandagudi SEZ | <p><u>State:</u> Karnataka</p> <p><u>District:</u> Bangaluru Rural</p> <p><u>Villages:</u> 36 villages around Nandagudi in the Hoskote taluka</p> | <p>12,350 acres required: the state government has only 4,745 acres of its own with the remaining 7,605 acres to be acquired from the farmers in those villages; 36 villages</p> <p>Since 2007</p> | <p>Mumbai based SKIL Infrastructure aimed to make an investment of Rs 15,000-crore in this SEZ. Their target industries were: agro and food processing; IT/ITES; automobiles, micro-electronics; diamond processing; bio-technology; knowledge process outsourcing; textiles; healthcare; electronics and logistics.</p> | <p>The SEZ project is seen as the pet brain child of the Janata Dal government headed by Kumaraswamy in 2007. Permission for SEZ was obtained despite the opposition of many government departments. The Congress party has been supporting the farmers' struggle against this project. The area has been occupied by small and medium farmers growing vegetables with farm sizes of no more than five acres. Thus, a large number of farmers make their livelihood through land here. According to some estimates Nandagui produces around 18 tons of fruits and vegetables, 1.25 lakh litres of milk, and 5 tons of mulberry per day (which goes into silk worm rearing).</p> <p>Until 2009 SKIL had not made the required land acquisitions; the widespread view is, therefore, that the project may not take off.</p> |
| Vilappilsala Waste treatment plant ground | <p><u>State:</u> Kerala</p> <p><u>District:</u> Thiruvananthapuram</p> <p><u>Village:</u> Vilappilsala</p> | <p>Violence and stand-off between village council and municipality heightened since 2011</p> | <p>Currently, a plan of 13.58 crore modernized waste treatment plant is on cards.</p> | <p>The village council of Vilappilsala has been demanding the closure of a waste treatment plant in its village for over a decade. In 2011 the panchayat took the decision of locking the treatment plant responsible for causing health issues. The municipal corporation obtained a court order to reopen the plant that had been 'illegally' closed by the villagers. The state government sent police personnel to assist the municipal corporation in reopening the plant in February 2012 and later in July 2012. Villagers resorted to collective protests, which the police failed to break.</p> |

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| Yamuna Expressway | <p><u>State:</u> Uttar Pradesh</p> <p><u>Districts:</u> Gautam Budh Nagar, Bulandshahar, Aligarh, Mahamaya Nagar (Hatrass), Mathura and Agra</p> | <p>1,182 villages in the districts of Gautam Budh Nagar, Agra, Mahamaya Nagar, Aligarh, Mathura and Bulandshahr, all in western Uttar Pradesh; About 1.4 million people, primarily farmers to be affected.</p> <p>Since 2003</p> | <p>The 165-kilometre, six-lane Yamuna Expressway being constructed by Jaypee Infratech Ltd. (JPIN) connecting Greater Noida and Agra.</p> <p>The Yamuna Expressway Industrial Development Authority (YEA); the nodal body overseeing the project, wants to develop 44,000 hectares (ha). Of this only 9.3 per cent is for the expressway and the rest for developing areas around it, also called land parcels.</p> | <p>Ever since land acquisition began in 2007 skirmishes and conflict between officials/policy and local people have been ongoing. They culminated on 07 May 2011 when a few officials were held hostage by villagers in Bhatta and Parasul. Policy trying to save these hostages resorted to gun battle with villagers, which led to the death of two policemen and two civilians and left scores of people injured. A similar conflict occurred at Aligarh in November 2010.</p> <p>Farmer views: Much of the land being taken over by government is fertile land. Resistance has been high from villages valued lower because of factors like distance from city, sewage facilities etc.</p> |
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| Sabarmati Riverfront Development project | <u>State:</u> Gujarat <u>District:</u> Ahmedabad | Plans since 1967 Concrete development takes place since 1997 Struggles for rehabilitation begins in 2003 | 22 km stretch— from the Narmada main canal to Vasna barrage reclaiming the river banks and constructing walls. 1200 crore project; resources generated by selling fraction of land (about 12.5%). | A survey of 1997 showed 10,000 slum dwellers in the river bank would be displaced. About 5000 of them were rehabilitated in the city itself by constructing apartments. Different surveys and claims by slum dwellers has proved rehabilitation to be a difficult proposition despite court battles and organised struggles. The project has been in different forms since 1967 when health threat was reported by city dwellers due to poor maintenance of river, particularly due to sewage water being pumped into the river. The comprehensive plan of river front development came up in 1997. What was previously an open source land regime turned out to be a clearly defined group of users with development. |
| DMK's land for poor scheme | <u>State:</u> Tamil Nadu | In 2006 government announces the scheme | 2 lakh acres of land to be distributed to agricultural labourers | Politically influential people received land while poor people did not. It turned out to be a 200-crore scam. In February 2012 the scheme was scrapped. |

Annex 1

| Archetypical Case | Other cases following the pattern | Key variations from archetypical case |
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| Jaitapur Nuclear power project | 1. Fatehabad Power Plant (Gorakhpur and Kajaheri of Fatehabad, Haryana) | Controversy has existed since 1984 when NPCIL was given permission by state government to set up power plant at the location. Local farmers oppose, besides nuclear safety issue, for the low compensation offered for the fertile land. |
| | 2. Kudankulam Nuclear power plant (Tamilnadau) | Here, primary focus for people's agitation is on safety issues. However, issue is about the land since people claim large number of people cannot be moved to safety zones in case of emergency. |
| Posco Steel Plant | 1. Kalinganagar TATA steel plant | The tribals of Kalinga Nagar in Orissa's Jaypore district have taken a vow not to vacate their land to make space for steel plants or other industries. The killing of 12 tribals in police firing recently has steeled their resolve to fight against displacement and loss of livelihoods. |
| | 2. Arcelor Mittal Steel Plant (in Gulma and Khunti districts of Jharkhand and Keonjhar district Orissa) | In both the states together the company has signed MoU with respective states to establish plants capable of producing 12 million tons of steel. In Jharkhand work plan is on 7000 acres of land, and this is opposed by the organisation Adivasi Moolvaasi Asthitva Raksha Manch (AMARM, Forum for the Protection of Existence of Tribal and Native Population) by mobilising people. In Orissa the plan is on 11000 acres of land, and here the protest is spearheaded by Mittal Pratirodh Mamch (MPM, Mittal Opposition Forum). |
| | 3. Essar Steel (Dhurali, Dantewada, Chattisgarh) | 1500 acres of land to extract iron ore to be sent to Andhra pradesh. |
| | 4. TATA Lohandiguda project (Chattisgarh) | MoU signed with Chattisgarh government to produce five million ton steel per year with the requirement of 5098 acres land. |
| Vedanta Mining | 1. Angul district (Orissa) | Bhusan and Mahaguj coal mines attempting to acquire 2768 acres of land for mining displacing 2500 families. |
| | 2. Jabalpur (Madhya Pradesh) | Congress MLA Sanjay Pathak's mining firm indulged in mining beyond approval date of 2007, and getting the forest land declared as revenue land to facilitate mining. |
| | 3. Chitarpur Coal and Power at Balumath block of Latehar district (Jharkhand) | Abhijeet Group of industries owned 200 acres of land, for developing 1740 MW power plant since 2008. They had been struggling to make progress due to protest. Two of company employees were kidnapped in 2011 and demanded a ransom of Rs. 50 lakh. |
| | 4. Uranium Mining in Meghalaya in 25 villages around Domiasiat in West Khasi Hills | Since the discovery of nine million tonnes of Uranium reserves in 1992, the Uranium Corporation of India Limited (UCIL) has been trying hard to access. In 1996 the project has been stalled by large public protests, triggered by concerns over radiation. All organisations protesting against the uranium project have come together to launch |

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| | | Coordination Committee against Uranium Mining (CCAUM), comprising 11 groups, including key NGOs in the district -- Khasi Student's Union, Western Youth Welfare Organisation, etc. |
| Vedanta University | 1. KushaBhau Thakre Training Institute Trust land scam Bhopal (Madhya Pradesh) | Land worth Rs. 60 crore in prime location of Bhopal measuring 20 acres was given to the trust on rent of Rs.1 per year on lease while Bhopal Magistrate rules the rent should be Rs.27 lakh per month. Many senior BJP leaders are on the board of office bearers of the Trust. The lease was permitted by the BJP chief minister of Madhya Pradesh six months before the registration of the trust in 2004. |
| | 2. Pt Deen Dayal Upadhyaya Trust land scam, Jaipur (Rajasthan) | 7,693 sq mt land was allotted to Deen Dayal Trust during BJP government at a concessional 5% rate of the then prevailing market price in near Civil Lines. The land was sought on behalf of the trust in March 2006 and the trust came into existence after one month on April 14, 2006. Once the scam became public, land was returned. |
| Muthanga agitation | 1. Chengara land struggle (Pathanamthitta, Kerala) | Land alienated dalits and tribals occupied government leased plantation to Harrison Malayalam private company |
| | 2. Sipasarubali (Puri, Orissa) | Since the year 1977 vast area of tourist significant (2,879 acres of land) at Sipasarubali occupied by 66 influential persons of the state including administrative officers, hoteliers and businessmen. A single person had occupied as much as 1,306 acres |
| | 3. Munnar (Idukki) | Munnar being a hill station was attractive to hoteliers and private real estate developers. However, since the region is eco-sensitive permissions for construction is not given. Politician-bureaucrat-business person nexus made it possible to do land transaction illegally and to encroach the land (including Tata Tea occupying 3000 acres of land). |
| Mundra Port | 1. Umbergaon port, (Valsad, Gujarat) | Major fishing zone, categorized as Category I of coastal regulation zone; About 175,000 population would be affected and 21 villages passed resolution against the proposed port. |
| | 2. Dhamra port, (Orissa) | Primarily controversy is over environmental protection. |
| | 3. Machilipatanam port (Andhrapradesh) | Allotment of larger portion of land than recommended by infrastructure department. |
| | 4. Raksha Shakti University Lavad village (Ahmedabad, Gujarat) | Similar to the archetypical case in the issue of allotment of villagers' commons land to state sponsored university. |
| Lavasa Planned City | 1. Essel World (Gorai, Mumbai) | 5000 acres of land needed for another water amusement park displacing local fishermen. This is after the existing amusement park decided to expand after SEZ model. Local people with the support of catholic church in the locality protested this move. As protests became huge, Essel World backed out with an agreement that Tourism department of the state of Maharashtra first purchase the land from local people and later sell to Essel World. |
| Janjgir Pore | 1. Suzlon at tribal land (Attapadi, Palakkad, | Suzlon acquires 85 acres of land belonging to tribal population through associates to develop wind farm mill. |

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| | Kerala) | |
| | 2. Phalodi, Jodhpur, Rajasthan. | An alleged land scam at Phalodi in which thousands of bigha of agricultural land were sold fraudulently without knowledge of the owners. During initial investigations the name of two companies - Mumbai-based M/S Maitraye Services Pvt Ltd and Delhi-based Ashapuri Developers Pvt Ltd - emerged as the buyers of this land, which they allegedly bought with the help of local land mafia using fabricated documents. |
| | 3. Kalpavalli village (Anantpur district, Andhra Pradesh) | Encroachment on commons land by two windfarm mills (Enercon for 20mw project). |
| Manikonda Golf Ground | 1. Amarnath land controversy (Jammu and Kashmir) | Government of India and State government of Jammu & Kashmir reaches an agreement to transfer 99 acres of forest land to Amarnath temple for facilities of pilgrims. Protests in 2008 saw a number of people being killed and injured. Later government revoked the decision to transfer the forest land. |
| | 2. Pratibha Patil (former president of the country) allotted land in Pune | While a president is eligible for 4500 sq ft of land, Pratibha Patil was allotted 2,61,00 sq ft of defence land towards the end of tenure in 2012 to construct a bungalow. After public outrage and defence personnel protesting, the land was surrendered. |
| Nandagudi SEZ | 1. Bulandshahr district, Uttarpradesh | The state government had acquired the land in Junaidnagar, Budhnagar and Saraiya for industrial development in 1998-99 using urgency clause of the Land Acquisition Act 1894. However, the land was not put to use by the UP State Industrial Development Corporation. The villagers filed a petition in the high court questioning use of urgency clause. The land was acquired showing urgency but not used for 12 years. The urgency clause denied villagers opportunity to register their objections. Villagers want their land back or adequate compensation as per new policy. |
| | 2. Mangalore SEZ | The Mangalore SEZ is a joint venture between the Oil and Natural Gas Corporation (ONGC) and the Karnataka Industrial Areas Development Board (KIADB). A special economic zone (SEZ) to be co-developed by investing 35,000 crore. It was objected to by local farmers complaining of forcible acquisition. Farmers complained that the land had been acquired without notifying them During 1984-91, MRPL had acquired 1700 acres of land in five villages viz. Bala, Kalavaru, Thokuru, Kuthethur and Permude, displacing 609 families. In all, as against a total of 609 families displaced, only 18 persons were provided employment, that too in menial positions. |
| | 3. Jhunjhunu, Rajasthan. | Cement factories were given land in cheap price causing massive environmental damage in the locality. 4,600 ha to Ultratech Cement of Aditya Birla Group, 780 ha to Shree Cement of Rajasthan and 825 ha to India Cements of Chennai. |
| | 4. Nandigram SEZ, West Bengal | Indonesian-based Salim group planned to invest Rs.100,000 crore to develop Nandigram as a chemical hub with SEZ status. Farmers unwilling to give up land organised under Bhumi Uchhed Pratirodh Committee ("Committee to Oppose |

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| | | Uprooting from Lands”) resisted this. In March 2007 the resistance broke into violence when more than 4,000 heavily armed police stormed the Nandigram area with the aim of stamping out protests against the West Bengal government’s plans of SEZ. The police shot dead at least 14 villagers and wounded more than 70. It was also alleged that ruling CPM parties cadres wore police uniform and raped village women during police aggression. In 2008 in the local elections, the CPM lost power. |
| | 5. Reliance-promoted Mahamumbai Special Economic Zone (SEZ) at Raigad | 10000 acres of land required for the investment of Rs.50000 crore. A quorum in Gram Sabha meeting, which is unusual and we passed a resolution against the proposed Special Economic Zone (SEZ) |
| Vilappilsala | 1. Laloor (Thrissur, Kerala) Brahmapuram (Kochi, Kerala), Chelora (Kannur, Kerala) and Njeliyamparamba (Kozhikodem, Kerala), Anupinakatte (Shimoga, Karnataka) | In all these places local residents protest against their village being used as waste dumping ground for respective municipalities. |
| | 2. Bhopal Toxic waste disposal | 346 tons of hazardous waste from Bhopal tragedy of 1984 to be dumped in Taloja outside Mumbai and local people protesting same. Previously local people in Madhya Pradesh, Gujarat and Maharashtra (Nagpur) had successfully resisted plans to dump the waste in their locality. |
| Yamuna Expressway | 1. Karunakaracherry Village (Poonamallee Taluk, Tiruvallur District, Tamil Nadu), | 19 dalit families losing land due to construction of 400 feet outer ring road to city. |
| | 2. Bangalore-Mysore Infrastructure Corridor (BMIC), Karnataka | Land needed : 1,21,304 acres, Acquired land : 2,784 acres Consortium of Indian Farmers Association & Karnataka Rajya Rath Sangh (KRRS) protest acquisition that government acquires more than required land and sells it off at high price. |
| Sabarmati Riverfront Development Project | 1. Beautification of Marina beachfront (Chennai, Tamilnadu) | 25 crore project to develop 13 km beach front. During the beautification, clearing of many historical statues and informal businesses gave rise to protests. |
| | 2. Bhopal Redensification project (Madhya Pradesh) | Lokayukta of Madhypradesh government pointed out a scam of Rs.5000 crore as part of Bhopal redensificaion project. 15 acres of land in the prime New Market area was allotted to the private company as part of the project. The state government signed a deal of Rs.335 crore with a private firm Deepmala Infrastructure Private Limited, which was allegedly created overnight and had an asset value of only Rs. 1 lakh, for a |

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| | | project costing over Rs. 20,000 crore. |
| DMK's land for poor | 1. Adarsh housing scheme (Mumbai) | In 2002 government of Maharashtra allots land in the heart of Mumbai for the construction of a housing complex for defense and service personnel. However, top bureaucrats and politicians illegally occupy the constructed apartments. Chief Minister of Maharashtra – Ashok Chavan – was forced to resign in 2011 due to involvement in scam. |
| | 2. Panchami scheme for SC & ST (Tamilnadu) | The British Parliament passed the Depressed Class Land Act in 1892 and 20 lakh acres of land were distributed to people from the Depressed Classes in Tamil Nadu. The lands were called Panchami Lands [also known as Depressed Classes Conditional Lands] and were given away on certain conditions. In 1990s it surfaced that most of these lands were presently with rich landlords. These lands were eventually and forcibly taken over by a rich landlord who claims the original owners' dead parents owed him money. A result of thousands of such illegal encroachments and sales, of the 20 lakh acres that were given to Tamil Nadu's Dalits under the Panchami Scheme, only about 1 lakh acres remain with them. An organised agitation demanding retrieval of the assigned land back to Dalits was staged in 1994 at Karanai near Chengalpet. The agitation was met with a heavy hand, resulting in the death of a couple of Dalits in police firing. |

Annex 2

| Sl No. | Name of the case | References |
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Annex 3
Land Use Patterns in India

| Classification | In Million hectares | | | | | |
|--|---------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| | 1950-51 | 1960-61 | 1970-71 | 1980-81 | 1990-91 | 1999-2000 |
| Reporting Area for land Utilization statistics | 284.32 (100.00) | 298.46 (100.00) | 303.76 (100.00) | 304.15 (100.00) | 304.86 (100.00) | 306.54 (100.00) |
| 1. Forest | 40.48 (14.24) | 54.05 (18.11) | 63.91 (21.04) | 67.47 (22.18) | 67.80 (22.24) | 69.02 (22.52) |
| 2. Not available for cultivation | 47.52 (16.71) | 50.75 (17.00) | 44.64 (14.70) | 39.62 (13.03) | 40.48 (13.28) | 42.40 (13.83) |
| (a) Non Agricultural uses | 9.36 (3.29) | 14.84 (4.97) | 16.48 (5.43) | 19.66 (6.46) | 21.09 (6.92) | 22.40 (7.31) |
| (b) Barren and unculturable land | 38.16 (13.42) | 35.91 (12.03) | 28.16 (9.27) | 19.66 (6.46) | 19.39 (6.36) | 19.31 (6.20) |
| 3. Other uncultivated land (Excluding fallow land) | 49.45 (17.39) | 37.64 (12.61) | 35.06 (11.54) | 32.31 (10.62) | 30.22 (9.91) | 28.47 (9.29) |
| (a) Permanent pastures and other grazing land | 6.68 (2.35) | 13.97 (4.68) | 13.26 (4.37) | 11.97 (3.94) | 11.40 (3.74) | 11.04 (3.60) |
| (b) Land under Miscellaneous tree crops and groves not included in net area sown | 19.38 (6.82) | 4.46 (1.49) | 4.30 (1.42) | 3.60 (1.18) | 3.82 (1.25) | 3.61 (1.18) |
| (c) Culturable Waste land | 22.94 (8.07) | 19.21 (6.44) | 17.50 (5.76) | 16.74 (5.50) | 15.00 (4.92) | 13.82 (4.51) |
| 4. Fallow land | 28.12 (9.89) | 22.82 (7.65) | 19.88 (6.54) | 24.75 (8.14) | 23.36 (7.66) | 24.89 (8.12) |
| (a) Fallow land other than Current fallows | 17.44 (6.13) | 11.18 (3.75) | 8.76 (2.88) | 9.92 (3.26) | 9.66 (3.17) | 10.10 (3.29) |
| (b) Current Fallows | 10.68 (3.76) | 11.68 (3.91) | 11.12 (3.66) | 14.83 (4.88) | 13.70 (4.49) | 14.79 (4.82) |
| 5. Net area sown (6-7) | 118.75 (41.77) | 133.20 (44.63) | 140.27 (46.18) | 140.00 (46.03) | 143.00 (46.91) | 141.23 (46.07) |
| 6. Gross cropped area | 131.89 (46.39) | 152.77 (51.19) | 165.79 (54.58) | 172.63 (56.76) | 185.74 (60.93) | 189.74 (61.90) |
| 7. Area sown more than once | 13.14 (4.62) | 19.57 (6.56) | 25.52 (8.40) | 32.63 (10.73) | 42.74 (14.02) | 48.51 (15.83) |

Note: Figures in parenthesis are percentages.

Source: Statistical Abstract India, 1998 & 2004.