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# F L O O R

FINANCIAL ASSISTANCE, LAND POLICY, AND GLOBAL SOCIAL RIGHTS

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## **Land rights formalization in India** **Examining de Soto through the lens** **of Rawls' theory of justice**

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## Abstract

One of the biggest problems which the Global South faces is poverty and the struggle to bring millions of people out of it. Many countries have adopted land policy to deal with this crisis. India is one of many such nations of the Global South, which has initiated land reforms from the time of independence. Meanwhile, a newer breed of land reform (via land rights formalization) propounded by de Soto (2000) became more attractive to a country like India than traditional land reform. De Soto's policy suggested that it is possible to make the poor rich by simply formalizing informal (or extra-legal) property rights. Thus it is important to know how far de Soto's land reform is similar to or different from than traditional land reforms if India wants to move to de Soto's path. On the other hand, it is also essential to put de Soto's policy through the litmus test of pro-poorness. We not only want a policy which is capable of producing more efficient outcomes (than the previous one, read traditional land reform) but also at the same time want it to be pro-poor. In the process of conducting said litmus test the research has also produced a comprehensive but not a complete review if Indian land reform is pro-poor. Each of these questions of pro-poorness had to be tested against some standard. One of the rational ways to assess if a policy is pro-poor or not, is by analysing the policy through Rawls' theory of justice, because in Rawls' just society each policy must be designed in such a way that it benefits the least-advantaged (or poor in the Global South) members of the society. The provisions of Indian land reform are largely found to be advantageous for the least-advantaged member of the society. Comparative analysis of traditional land reform and de Soto's policy suggested that he has to a great extent served an old wine (theory of land reform) in a new bottle (formalizing the extra-legal). On the other hand, de Soto's formalization – which asks to bring changes in the property regime – is permitted within Rawls just society if distribution of land is unreasonably skewed.

## Key words:

de Soto; India; justice; land reform; land rights; ownership; property; Rawls; social policy; title formalization

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# 1 The Frågeställning

One of the biggest problems which the Global South faces is poverty and a struggle to bring millions of people out of it. Apart from industrialization countries have brought changes in their land policy to deal with this crisis. India, one of the nations in the Global South, initiated land reforms from the time of her independence as one of the means of empowering poor. It has enacted the largest number of legislations (more than 80) with this regard. Lately, land reform initiative (via land rights formalization) throughout the Global South is influenced by a new breed of reform theorized by de Soto<sup>1</sup> (2000) and promoted by the World Bank (and other multilateral institutions). De Soto's policy suggests that it is possible to make the poor rich by formalizing property rights. This prescribed policy is a very attractive one not only for India but also for other countries of the Global South because of its pro-poor rhetoric. Thus it is important to know how far de Soto's land reform is similar to or different from than traditional land reforms. On the other hand, it is also imperative to know if de Soto's policy is pro-poor and just. One of the rational way to assess if a policy is pro-poor (or not), is by analyzing the policy through Rawls' theory of justice because in Rawls just society each policy must be designed in such a way that benefits the least-advantaged (or poor in Global South) members of the society.

## *Rationale of the Study*

Land is not just the soil of the Earth or two-dimensional spaces, but also a social construction. The social construction binds stakeholders with land in different ways. A real estate developer may consider a piece of land as a commodity, a space of economic exchange and development which has its capital value. A farmer considers the land as the source of her livelihood, as her home, her place of identity, her relation to the village and her influence over known individuals. Social constructions of land as environment, on the other hand, emphasize the moral perspectives of existence (Davy 2012). Therefore, depending on an individual's social, economic, and cultural relation, land has its own meaning for an individual. Legal theories consider land vis-à-vis property as a „bundle of rights“ which includes right to possess, right to use, right to convey, and right to bequeath land (Clarke & Kohler 2005, Klein and Robinson 2011). As per constitutional laws and human rights doctrine property defines the relationship between the individual and the state which orders protection against arbitrary confiscation along with other things. According to the common or codified private law, it ensures land owners rights „in rem.“ Property rights are binding for everybody and protect the owners' right to go to court against any interference by outsiders.

Land has been a domain of study for Social Policy, Public Policy and Economics to name a few. Why and how land policy became so important in Public Policy and Social Policy doctrine has never been discussed extensively. Land Policy is a deliberate choice and actions by policy makers who plan land use, public interests and rights. It is always a public policy because it involves collective decision making (Davy 2012, 31) and stakes. It is not a different field of study within public policy doctrine, rather, it includes, agrarian policy, environmental policy, economic policy, tax policy, social policy, foreign policy (Davy 2012, 33), inheritance practices, law and politics. These policies and their mutual

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<sup>1</sup> Throughout the study de Soto's policy, de Soto's land reform and de Soto's formalization have been used interchangeably.

dependence (Davy 2012, 33) and struggles constitute land policy. If there is a need to conserve a river, we may need to change the land use policy near the riverbed, plus demand changes in the environmental policy, economic policy, tax policy and obvious involvement of politics. Mutual dependency always remains among such policies, at the same time exist conflicts over jurisdictions. Different choices of policy makers result in the establishment of different property regimes. Country specific priorities mingle with the ideological alignments and create different set of rules, balancing burdens and benefits across different sections of the population. Pro-poor land policy among international community was considered as political taboo for long. It was only in 1990–2000 that the United Nations rediscovered importance and significance of pro-poor land policy (Davy 2012, 32). Undoubtedly, in the recent era land policy has become a powerful anti-poverty tool at the global and local level.

This study is more centralized around the pro-poor land policy which is considerably popular in the Global South. What is the core idea that distinguishes pro-poor land policy from other blend of land policy? In my own<sup>2</sup> understanding, the main differences have their roots grounded in the very old efficiency and justice debate. The very idea that land after going through a conversion process, transforms invisible capital to visible capital ignites the debates further (for poor residing in the Global South). Was de Soto very much concerned about the efficient use of resources or was he more concerned about ensuring justice? I will touch upon this debate throughout my research.

This resurgence of transferability of land into capital for the favour of the poor<sup>3</sup> is pioneered by de Soto (2000). De Soto's main work can be delineated by this single sentence, "make the poor rich by formalizing<sup>4</sup> private property rights" (de Soto 2000). He argues

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<sup>2</sup> Here, I want to acknowledge Davy's contribution in exposing me to this vital question and suggesting this possible area for further explorations.

<sup>3</sup> De Soto apparently hypothesized that informal settlements or extra-legal arrangements are only employed by the poor since they have weak or no access to land; however, that may not be always true. In such cases identifying the poor from non-poor is an implementation challenge which I will not explore in this study.

<sup>4</sup> De Soto calls this procedure the *capitalization process* which involves four successive strategies. Each step again involves several small steps. The first step is called the *discovery strategy* which can be again divided in to five parts. The process begins with identifying, locating and classifying the extra-legal assets. Then the massive task of quantifying the real and impending value of extra-legal assets, followed by the analysis of the interaction of the extra-legal sector with the formal part of society, identifying the extra-legal regime governing property and determining the burden of maintaining extra legality within a country. The second step is the *political and legal strategy* which is again subdivided in six consecutive steps. These are to ensure that the highest political level committed to bring appropriate change in the system. It is followed by administrative and legal reforms to build a bridge between legality and extra-legality. There should be some mechanism which will incentivize holding assets legally by reducing costs in comparison with the costs of holding assets extra legally. Lastly there should be mechanisms to reduce risks associated with private investment in newly formalized property. The third step is the *operational strategy* which involves three basic phases. These are setting up field operation strategies (which will have very involved social, political and economic inference with the grassroots level), personal, equipment and offices will be at place as well as adequate computer knowledge for the registration process, and dissemination of clear information to the participating community. The last step involves linking newly created formal property with the formal financial system. (de Soto 2000: 160-161; the part is highly influenced by Kolocek 2012, 15). Having discussed this, I must not forget to point out that de Soto has never argued a one-size-fits-all solution. This I have touched upon at the later stage of my analysis.

that land rights formalization<sup>5</sup> will actually empower the poor (de Soto 2000, 240-241). Capitalism worked in the West (in contrast, it failed in the East and perhaps in the Global South) because of absence of clear title deeds. It is the ability or system to transform resources into capital (de Soto 2000, 240-241). However, it is worth mentioning here that he is not the first person to argue that, in fact; Hayek (1944) and Coase (1960) mentioned the importance of private property (as quoted by Davy 2012). De Soto (2000) points that nowadays, after the demise of other political ideologies (read as communism and the fall of the Berlin wall and Soviet Russia) – capitalism is the only realistic way to rationally organize a society (de Soto 2000, 1).

Many countries which attempted to introduce a capitalist policy subsequently, apparently failed (de Soto 2000, 3), because they could not tackle the biggest obstacle, which is the „inability to produce capital“ (de Soto 2000, 5). In the western world, where capitalism works, the process of describing possessions on “paper” allows an asset to be linked with the rest of the economy (de Soto 2000, 6). Developing and transition countries don’t have this paper world (representational process)<sup>6</sup>, which makes them undercapitalized (de Soto 2000, 6), such as houses without titles, crops without deeds, or companies which cannot create securities, making them unable to generate capital stock (de Soto 2000, 7). No citizens in those countries, who surely have possessions, have the access to such a representational process to generate capital (de Soto 2000, 7). The conversion process makes the invisible capital (what others see as junk) visible. The ability to create capital is deeply imbedded in the legal infrastructure with a system of property rights in the west (de Soto 2000, 9).

Many developing countries were excited about this idea and afterwards provided 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. India followed the same path albeit through various schemes and programme. Even before de Soto, India began with the abolition of intermediaries, settlement and regulation of tenancy, and regulation of the size of holdings as a part of greater land reform in the post- independence era<sup>7</sup> (Appu 1996) and later through different provincial circulations and a *new approach* such as „Bhumi“ of Karnataka province (Binswanger et al. 2009, 253). The incentives behind such a large number of land reform programmes are multi-fold (Appu 1996, Basu 2008)<sup>8</sup>. The rhetoric of economic arguments mingles with political and constitutional compulsion of social justice.

Once de Soto became phenomenal, wide range of debates took place both within the academic world and also among the policy makers; such debate exists even today with

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<sup>5</sup> De Soto’s formalization process and de Soto’s reform have been interchangeably used throughout this study.

<sup>6</sup> These representational processes are very legal in nature. Lanjouw and Levy (2002, 897) wrote: “There are two main systems of title registration. Land recordation involves the registration of deeds. Under this system, transactions are recorded as they occur to keep an accurate historical picture of transfers related to each plot. In contrast, the Torrens system involves the registration of title. This system provides a current record of parcel ownership with a State guarantee of registry information. People can (and do) transfer their property or receive formal legal titles without registering the transactions. Accordingly, maintaining registry information has proven to be very difficult and expensive in developing countries.”

<sup>7</sup> Henceforth will be referred as traditional land reform(s)/traditional Indian land reform(s) in order to differentiate between post de Soto and pre-de Soto land reforms.

<sup>8</sup> Some of the economic incentives are that small farms found to be more productive than large farms, and when owner is cultivated plots of land it is more productive than any other mode of production.



similar intensity. Is he talking about efficiency or about just distribution of resources? Is it something new that he is talking about? One of the most rational ways to assess similarities and differences between de Soto's reform and traditional land reform (since we know its objectivities) is through reviewing the literatures. I have decided to include in my analysis a selection of traditional Indian land reform legislations using my best judgment to present a comprehensive, yet not complete view so that I can be more focussed and provide concrete evidence with first-hand analysis. Analysis of traditional Indian legislations (along with other literature review) demonstrates the potentiality of land been seen as capital in the post-reform regime and then they are compared with de Soto's reform. At the end of the exercise of comparison, the research climbed to the next level which is an assessment of de Soto's policy and how just it is. Questions may arise at this point, such as (i) why should we consider title formalization from the perspective of Rawls' theory of justice? (ii) Why should anybody be concerned about „justice“ if title formalization works effectively and achieves economic progress? Before answering such critical questions Rawls' theory of justice must be well understood.

John Rawls' theory of justice is based on social contract theories. Rawls contends that the principle of justice decided from the original position would only consider a strategy which would maximize the prospects of considering the least-advantaged. The original position is a purely hypothetical situation which leads to certain conceptions of justice (Rawls 1971/1999). Kant was very clear about this hypothetical situation and he argued that it does not apply in practice (Sandel 2010). The essential condition of the situation is „no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like... the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance“, (Rawls 1971/1999, 11).

Originally the concept of the veil of ignorance and original position<sup>9</sup> were first introduced by John Harsanyi (1953) but later taken up by John Rawls. The veil of ignorance blocks off the knowledge of burdens (e.g. can be progressive taxes or other preferable norms) and benefits (e.g. can be betterment of quality of life which includes nutrition, quality of housing, educational opportunities etc.) of social cooperation which might not be so beneficial for individuals deciding for themselves on issues such as distribution of rights, positions and resources in their society. Rawls believed that if all individuals are unaware of their relative position in the society, then no one is able to design principle to favour their particular positions, thus they can develop a scheme of justice which treats all fairly. By saying this, Rawls propounded the First Principle of Justice which says, „each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others (Rawls 1971/1999, 53).“ The basic liberties of citizens are the political liberty to vote and run for office, freedom of speech and assembly, liberty of conscience, freedom of personal property and freedom from arbitrary arrest. However, the first principle could not be violated for the sake of the second principle. In case the basic liberties are found to be conflicting in nature, then they can be balanced with a fair agreement or bargained.

The second principle of justice states that social and economic inequalities are to be arranged so that (a) they are to be of the greatest benefit for the least-advantaged members

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<sup>9</sup> Original position or natural position was also used by Thomas Hobbes, John Locke, and Jean-Jacques Rousseau.



of society, consistent with the just savings principle (the difference principle), (b) offices and positions must be open to everyone under conditions of fair equality of opportunity (Rawls 1971/1999, 53). The first part of the second principle talks about the distribution of income and the second part deals with the design of the organization. Rawls mentions that while distribution of wealth and income need not be equal, it must be advantageous for everyone, and never the less, positions of authority and offices of command must be accessible to all. The principles must be ordered with the first principle prior to the second. The ordering would ensure that any departure from the first principle cannot be justified by or compensated for equal citizenship and equality of opportunity (Rawls 1971/1999, 54-117).

After gaining a clear understanding of Rawls, I realised it would be worthwhile to go back to Indian traditional land reforms and ask this series of questions; (a) how such legislations have identified the least-advantaged member for land distribution, if welfare of the least-advantaged was one of the objectives within the traditional Indian land reforms? (b) which component of the each legislation is for the least-advantaged? (c) which part of the each legislation is harmful for the least-advantaged? and (d) which part of the each legislation has nothing to do with the least-advantaged? These questions have the potency to answer if Indian land reforms are just at all. I will therefore analyse a single Indian land reform legislation to find the answer to these questions. Such analysis may not be sufficient to conclude if land policy in India is pro-poor and just but may build some understanding of the intentions of the land reform legislation in India. I understand that many of the land reform legislations contain similar provisions because many of the acts were actually state/provincial acts inspired by each other. Therefore even analysing a single act which is comprehensive, path-breaking and very influential in India may be a justified way to gain a partially complete picture of nature of the land policy in India.

Coming back to de Soto, if we ideologically align with liberty principle to the extreme end, then we cannot, or perhaps never follow de Soto's path (or even any land reform legislations) because in many cases legalizing illegal land rights would naturally dispossess some individuals. Often, such redistribution<sup>10</sup> is followed by the abolition of land rights of the few because of existing feudal land ownership tradition in those countries. In some other cases collective land rights are converted into individual land ownership rights or semi-ownership rights are given (e.g. to a sharecropper). De Soto, however, has asked not to compromise the formal existing property rights (de Soto 2000, 160).

Many titling schemes have taken into account this problem of compromising existing formal rights and compensate<sup>11</sup> the owner: in Turkey, for example, titling is associated with public building of multi-story apartments. But does Rawls idea of "a fair agreement or bargained" give us sufficient elbow room to deal with encroachment of other's rights? Here I would like to make an attempt to answer such questions (i) and (ii) which were raised earlier. In cases of informal settlements on private land (or state or common land,

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<sup>10</sup> ...there is a thin line between redistribution and formalization in this context as it would depend upon how we are looking at the issue.

<sup>11</sup> Country wise differences in terms of compensation partially arise out of differential degrees of constitutional protection of property with wide range of variations often with contradicting arrangements. For example in France, there exist strong constitutional property rights but relative weak compensation provisioning (Alterman 2010). Similar study was conducted to understand the United States of America's tradition (see Miceli, Thomas J. 2007 for more). However, there is a need for conducting cross national study on the same ground among developing country since there exit non according to my knowledge.

sometimes against the will of the landowner) the question is, is title formalization a taking of property? The question is not only about how the property rights of the original owner are dealt in the process of transformation, but also what the ideal law should be and also perhaps more importantly about how society should be organized. Will such a decision maximize welfare or it will disrespect individual freedom (Sandel 2009, 6)? Is it morally right and fair to abolish some rights to establish new regime? Each of these ideas will lead to different ways of thinking about the word “justice.” Rawls’ theory of justice outline means to provide the greatest benefit to the least-advantaged members of society, which is also one of the mottos of de Soto’s land formalization theory. Like Rawls, who balances between his first principle and second principle with specific conditions, it would be interesting to assess how de Soto balances the rights of the stake holders or if he balances them at all. These questions are vital and demand an in-depth analysis, which is the main focus of this thesis.

### *Objectives of the Study*

1. To explore Indian legislations related to formalization of property, in order to understand their distance or closeness to de Soto’s land reform.
2. To analyse formalization of property as proposed by Hernando de Soto through the lens of Rawls’ theory of justice?

### *Research Questions*

In order to answer objective of the study, the following research questions were framed;

**Question 1:** How far Indian Land Reforms as traditional land reform are similar or different than de Soto’s land reform?

The underlying quest is to find out legally and in terms of process, where are the similarities and differences between the traditional Indian Land Reform and the proposed idea of de Soto.

**Question 2:** Does formalizing private property rights argued by de Soto suggest pro-poor land policy when we see through the lenses of Rawls’ theory of justice?

De Soto’s formalization process initiates significant changes in property regime. The idea of ownership and possession goes through social and legal challenges. The question is how far those changes are accepted in Rawls just society.

## **2 Methodology**

### *Methods Applied In This Study*

The study is qualitative in nature. It applies both literature review (secondary data) and analysis of bare acts (primary data). The literature review has involved research articles, books and Indian legislations related to land right formalization. The primary analysis included Indian land reform legislations to find how they have provisioned mortgage rights since mortgaging and transfer are the ways in which land can be transformed into capital.

The literature review has encompassed all relevant works by de Soto and Rawls. Using EBSCO host, Jstore.org, the Oslo University College library, and Google Scholar,

I have found relevant literature to review by searching the following keywords within various journal databases: *de Soto formalization*, *de Soto land capital*, *land reform*, *land Rawls justice*, *Policy analysis Rawls justice*, *de Soto justice*, *land reform India*, *India mortgage agricultural land*, and *India land bank*. Online resources have proved very useful to my work.

I have analysed de Soto's policy through a Rawlsian theory of justice. As far as I know, no such analysis has been made in the past. However, this is not the first time land policy has been analysed through Rawls' theory of justice. Fernández and Schwarze (2013) analysed large-scale land acquisitions of least-developed countries through Rawls' theory of justice. In their analysis they used background institutions (Rawls separates into the four branches: allocation, stabilization, transfer, and distribution) as their framework to assess if such acquisitions fulfill the conditions of justice proposed by Rawls. My main motivation behind analysing de Soto through Rawls is Sandel (2010), where he has discussed different theories of justice and how those theories envisioned their just society. I could not attempt to analyse de Soto to see which blend of justice (utilitarian, liberalism, or such others) he wants to serve due to the constraints of time. If I look at areas other than land policy, then there are many attempts to formulate an economic model of intergenerational justice and possible distributive equilibrium in a just society (such as Michelbac et al, 2003). Like Rawls, I was more concerned about the question of justice. Therefore, in my analysis of de Soto, I was more concerned about design of de Soto's reform and process involved in it rather than making any economic modeling. However, this does not necessarily mean economic model cannot or shall not be included to assess if de Soto's theory is just or not. But that demands the study of the implementation of de Soto's reform, which I avoided because of the transnational variety in the implementations of de Soto's policy.

I have selectively chosen literature written by de Soto, Rawls (their two main books describing their theories) and other important writings by various authors which have critically looked at the works of the two theorists. The importance of the literature was determined through the number of citations, and fortunately database search engines do this by default. The part of the thesis which employs the literature review as the methodological approach is qualitative and interpretative in nature, and is based on meaning, rather than on statistics (Chambliss and Schutt 2010). The rationale of choosing well-established, important writing is firstly, that it has saved time and secondly, it has exposed the researcher to previously established logic, without leaving any scope of misunderstanding. Since both Rawls' and de Soto's theories are well-discussed and often debated from an ideological point of view, it is wise to say that it was not easy to determine which book or research should be given more importance than others. Therefore, following the criteria of including articles with larger numbers of citation was found to be a useful strategy. This danger of any biases related to a selection of literature was largely averted because I was rather interested analysing one theory through the eyes of another. Therefore, if biases are there, they are the result of my ideological alignments. Such biases were kept largely at bay by ensuring that the logic was supreme in scientific analysis rather than emotion. Another important criterion for inclusion of literature is that articles, papers and books should be to cover the research objectives of this study.

I have used Grounded Theory from time to time to analyse the Indian legislations and analyse literature when it is needed for developing my own understanding about the interplay between the Rawls' theory of justice and de Soto's land reform. However, Grounded Theory is not the broad theoretical framework on which this research stands. Analysis of

traditional Indian land reform legislations is based on the work of Besley and Burgess (2000). I have used their work on Indian land reform legislations as foundation and analysed legislations to specify how the provisioning of mortgage or transfer are attached (which was absent in Besley and Burgess, 2000). Thus the literature produced by Besley and Burgess (2000) has been updated considerably. This has been ignored by the research conducted afterwards. Even in the most recent work on similar issues, Chakravorty (2013) has used Besley and Burgess (2000) and has never attempted to dig more into such large number of legislations. Apart from working on the legislation related to land reform in India, I have spent considerable energy in understanding land policy of India. It begins with pre-colonial understanding of land to independent India's drive towards forming land reform policies.

### *Ethical Considerations*

Since my study was completely based on a literature review and analysis of legal texts, therefore, I did not require any clearance from ethical committee. The researcher throughout this research followed ethics of proper citations, representation of facts and analysis of original texts.

### *Study Limitations and Assumptions*

The research has analysed two important things. Firstly, if de Soto's reform is different from Indian land reform and secondly, if de Soto's land rights formalization suggests pro-poor land policy when seen through Rawls' theory of justice. The assumption of the study is that whatever is written in Indian legal codes (assuming there can be more than one legislation on this issue as land is subject to provincial legislations) is followed totally in practice. However, there are a great number of literatures which indicates otherwise. Another limitation of studying bare acts is that they do not explain how they should be implemented (for which ruling is circulated at the later stage by the state) or even different explanations of the laws. It is the case rulings of the higher courts or precedents (in India's High Courts and Supreme Court of India) which provide interpretation of the bare acts. Also, notifications are issued by states to explain different provisos in the law by the appropriate authorities. The limitation of the study at this point is that we cannot extrapolate from the theoretical to the practical: because I am not analysing the actual implementation of land reform laws, I cannot conclude if the theoretical understandings suggest that India follows de Soto's land reform and de Soto's theory is just (Rawls Justice) pro-poor land policy.

## **3 Land Policy in India**

### *Land and Land Rights in India*

„Land“ in the modern-European sense of the concept did not exist in India. The question of ownership was considered less important. Rather, how different people (artisans, village record keepers, cultivators and intermediaries) shared a right to valued resources was the key concern. Access to land had greater importance to the people than full ownership in the modern legal sense. Often, consolidation of local strengths determined how multiple rights were distributed across different stakeholders over a piece of land. Before entering into a comparison between traditional land reform and de Soto's land reform, a

historical analysis of the land policy is necessary<sup>12</sup>.

The modern (European) land policy entered into the Indian domains through a series of enactment of laws during British colonial times regarding land, which to some extent helped to break shackles of traditionalism. The British interest had primarily been about receiving taxes from the title holders. It all started when the East India Company took control over Bengal's revenue collection and limitless authority to conduct business from Calcutta in 1757. The issues related to taxation became subject to prerogatives of Company administrators, inextricably linked with ownership rights, and therefore they tried to create a new system. They felt the need for the creation of a judicial system that would, among other things, protect the rights of owners and punish tax defaulters. It abolished the fixed rent system and instead created a new landlord class through Permanent Settlement in Bengal 1793 (Swamy 2010, 8). Local money lenders and businessmen were given Zamindar<sup>13</sup> rights (feudal control) with the hope that their investment and local knowledge would boost agricultural productivity and hence generate additional revenue.

The Permanent Settlement found to be ineffective in meeting the desired goals and after a long bureaucratic struggle, Thomas Munro, originally a military officer who moved into an administrative position in the 1790s, introduced a competing system called "The Raiyatwari System,"<sup>14</sup> which was introduced first in Madras and then in Mumbai<sup>15</sup>. However, all these reforms did not bear fruit and ownership issues remained a matter of great concerns.

The agrarian system was hierarchic and between Zamindars and farmers there was another class of tenants, or *Jotedars*. *Jotedars* had secured occupancy rights to their land at customary rents (Sinha 1962, 18 and 27) and were responsible for agricultural productions and the generation of revenue<sup>16</sup>. Thus, apart from land tax<sup>17</sup> to Zamindars arrays of additional taxes were applicable to the peasants, such as *Motorana* (to pay for Zamindra's new car) and *Hathiana* (to pay for Zamindar's elephant). Just two weeks before independence, a weekly from Madras noted that 25000 kilograms of paddy was needed for a Zamindar's seven elephants whereas his own tenants used to get three day's ration for the whole week.

The newer tenancy system neither increased productivity nor increased revenue, be-

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<sup>12</sup> To understand emerging property regimes in India, see Pellissery and Dey Biswas (2012).

<sup>13</sup> The system was in operation in the provinces such as Bengal, Uttar Pradesh, Bihar, Rajasthan, Bengal, and Orissa, and parts of Assam, Andhra Pradesh, and Madhya Pradesh.

<sup>14</sup> Was in operation in the provinces such as present-day Maharashtra, Karnataka, Tamil Nadu, as well as most of Andhra Pradesh and Madhya Pradesh and parts of Assam, Bihar, and Rajasthan.

<sup>15</sup> A tiny section of British India's cultivated land was under a third type of land tenure scheme which is the mahalwari system. Within this system, land revenue had to pay by entire village units. Farmers contributed shares of the total amount of land revenue owned by the village in proportion to their holdings within the village territory. This system existed in most part of present-day the provinces such as Punjab and Haryana, parts of Madhya Pradesh, Orissa, and Uttar Pradesh (Hanstad 2005, 4).

<sup>16</sup> In some areas, several layers - there were as many as 50 of intermediary rights separated the Zamindars from the actual cultivator in West Bengal province, with the Zamindars seated at the top level, at the feet of the state (Kotosky, G. 1964. *Agrarian Reforms in India* (New Delhi: People's Publishing House), at 19. as quoted by Hanstad, 2005, 3).

<sup>17</sup> Under the Haftam regulation of 1799 and the Panjam regulation of 1812 Zamindar was permitted to tax any amount that they will feel appropriate (Banerjee and Iyer 2005).



cause of multiple reasons of which the most significant one was perhaps the absence of steadfast ownership policy. Subcontracting and the creation of various intermediates ended up with legal litigations (such as the infamous James Hills *vs.* Iswar Ghose case in the High Court) and civil unrest. In Pabna of Central Bengal in 1873, a well-organized Agrarian League was formed, and rents were withheld. Zamindars were also challenged in court. In response, a Rent Law Commission was formed, but its pro-tenant recommendations were abolished by the Bengal Tenancy Act of 1885 (Swamy 2010, 9-10).

One very important clause of the Bengal Tenancy Act of 1885 ensured occupancy rights of a tenant when he/she had held land anywhere in the village for twelve years. This can be termed as the reintroduction of the doctrine of adverse possession in the legal sense on top of traditional Indian land governance system by British in India. Seemingly, the association with the land or relationships with the land gave birth to the legal titling of land at the bottom of the British-introduced land ownership pyramid. It is said that history repeats itself, de Soto (2000), while discussing the evolution of property rights has noted the early United States of America (US) tradition of squatting. Although by English Common Law, it is illegal, in the US where land was abundant<sup>18</sup> it became a popular practice. Later on, „Tomahawk Rights“, „Cabin Rights“ and „Corn Rights“ are found to be extra-legal ways to own a land. Even states like North Carolina (in 1777) and two years later Virginia allowed settlers the right to own land on the presumption that they had improved it. Thus the doctrine of adverse possession evolved to transfer property to one who was initially a trespasser if the trespasser’s presence was known to everyone and continued for a considerable period of time according to common law. In the West, particularly in the US and also to some extent in India, through adverse possession most of the land title is owned or rather distributed among people, based on a return to labour principle.

## *Land Reforms in Independent India*

In Independent India, land is a subject within the legislative and administrative jurisdiction of the states (or provincial government<sup>19</sup> of India) as per the 7th Schedule of the Constitution<sup>20</sup>; it is within states’ jurisdiction to develop policies and enact laws (by the Gov-

<sup>18</sup> One may argue otherwise; those land was under the possession of American Indians in many cases.

<sup>19</sup> Often throughout the study province and state are used interchangeably.

<sup>20</sup> The Constitution of India originally provided the right to property (which includes land) under Articles 19 and 31. Article 19 guaranteed that all citizens have the right to acquire, hold and dispose of property. Article 31 stated that “no person shall be deprived of his property save by authority of law.” It also indicated that compensation would be paid to a person whose property has been taken for public purposes (often subject to wide range of meaning). The Forty-Forth Amendment of 1978 deleted the right to property from the list of fundamental rights with an introduction of a new provision, Article 300-A, which provided that “no person shall be deprived of his property saved by authority of law” (Constitution 44<sup>th</sup> Amendment, w.e.f. 10.6.1979). The amendment ensured that the right to property” is no more a fundamental right but rather a constitutional/legal right/as a statutory right and in the event of breach, the remedy available to an aggrieved person is through the High Court under Article 226 of the Indian Constitution and not the Supreme Court under Article 32 of the Constitution. However, fascination to equate compensation with market value continues to exist. State must pay compensation at the market value for such land, building or structure acquired (Inserted by Constitution, Seventeenth Amendment) Act, 1964), the same can be found in the earlier rulings when property right was a fundamental right (such as 1954 AIR 170, 1954 SCR 558, which propounded that the word “Compensation” deployed in Article 31(2) implied full compensation, that is the market value of the property at the time of the acquisition. The Legislature must “ensure that what is determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of”). Elsewhere, Justice, Reddy, O Chinnappa ruled (State Of Maharashtra v. Chandrabhan Tale on 7 July, 1983) that the fundamental right to



ernment of India in 1935). This means that the union/national government can legislate guidance, but the specification and implementation are the responsibility of different provinces (Appu 1996). This makes land reform in India a complex legislative framework, spread across horizontally and vertically.

Indian reform process has been the largest body of land reform (Thorner 1976). There are three Central/Union Ministries responsible for the conservation and management of land resources: the Ministry of Rural Development, Ministry of Agriculture, and the Ministry of Environment and Forests. At the union level, the Department of Land Resources under Ministry of Rural Development is the nodal agency for coordinating different land resource development and management programmes. Locally, *Panchayats* and Municipality have the responsibility to manage land resource after the enactment of 73rd and the 74th Constitutional Amendment Act. These amendments of the Constitution bestowed power and authority to local bodies in the management of natural resources including land, water and forests. Subsequently, almost all states and union territories have enacted their legislations to give local self-governing bodies a form of devolution of power. Thus, *Panchayats* (lowest strata of governance constituted by the elected representatives) at the village, intermediate and district levels were constituted in many states, ensuring stakeholder participation in enforcing local control over land. The provisions of the *Panchayats* (Extension to the Scheduled Areas) Act in 1996 ensured that tribal societies can effectively contribute to the preservation and conservation of their traditional rights over natural resources.

Land title formalization<sup>21</sup> has been part of India's state policy from the very beginning. Independent India's most revolutionary land policy was perhaps the abolition of the Zamindari system (feudal land holding practices). Land-reform policy<sup>22</sup> in India had two specific objectives:

„The first is to remove such impediments to increase in agricultural production as arise from the agrarian structure inherited from the past...The second object, which is closely related to the first, is to eliminate all elements of exploitation and social injustice within the agrarian system, to provide security for the tiller of soil and assure equality of status and opportunity to all sections of the rural population.” (Government of India 1961 as quoted by Appu 1996)

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property has been abolished because of its incompatibility with the goals of “justice” social, economic and political and “equality of status and of opportunity” and with the establishment of “a socialist democratic republic, as contemplated by the Constitution. There is no reason why a new concept of property should be introduced in the place of the old so as to bring in its wake the vestiges of the doctrine of Laissez Faire and create, in the name of efficiency, a new oligarchy. Efficiency has many facets and one is yet to discover an infallible test of efficiency to suit the widely differing needs of a developing society such as ours” (1983 AIR 803, 1983 SCR (3) 327) (influenced by Singhal 1995). The concept of efficiency has been introduced by Justice Reddy, O Chinnappa, very interestingly coupled with the condition of infallibility.

<sup>21</sup> Which is rarely seen in the history as title formalization but rather as “land reform” with multiple objectives.

<sup>22</sup> Other than these state sponsored attempts of reforming land ownership and control, there was another attempt to bring changes in the regime which achieved limited success; this initiative is famously known as Bhoodan (land gift) movement. Government of India, Ministry of Rural Development 2003, Annex XXXIX. Some other research has shown that during the movement, in Vidarbha region, 14 percent of the land records had incomplete thus prohibiting transfer to the poor. A considerable amount of land which is 24 percent of the land promised had never actually become part of the movement. The Gramdan which arguably took place in 160,000 pockets did not legalize the process under the state laws (Committee on Land Reform 2009, 77, Ministry of Rural Development).

A closer look at the legislations<sup>23</sup> suggests that there are at least four main categories of reforms: abolition of intermediaries (rent collectors under the pre-Independence land revenue system); tenancy regulation (to improve the contractual terms including security of tenure); a ceiling on landholdings (to redistributing surplus land to the landless); and attempts to consolidate disparate landholdings. The idea of increasing efficiency was at the heart of the debate by removing disorders in agricultural production. While it is understandable that the objectivity importantly incorporate elements of distribution<sup>24</sup> of land among the landless, the efficiency part has been given a proper weight.

The possible question, which would have paramount interest in the context, is why land was not distributed to anyone else. Why not among the teachers or carpenters or someone who is either not related to the agricultural profession or has no willingness to join the profession or has no/limited prior knowledge about agriculture or the allied sector? Often lawmakers overlook the unintentional consequences of the legislations passed and ignore the effect of the overall economy by single-mindedly driving to achieve a particular goal or a set of goals. But in the case of land reform, it may not be so. The lawmakers were conscious about the future use of land and its productivity thus transferred the rights to people with knowledge of farming. However, the analysis of only legislative impacts on economics has not always been considered prudent. The question arises, should we not look at output from the reformed land to assess if any improvement is made through land regime change? The answer is yes, but that does not necessarily demand a calculation of output within the next few years of reform and a comparison with pre-reform. If we do this, then we visualize efficiency in its narrowest form within the whole scheme of justice.

The heart of the reform, “land to the tiller” motto was undoubtedly inspired by the principles of social justice. Different legislations were passed across many states but unfortunately they were not simultaneously supported by legislation related to land ceiling. The law(s) vaguely defined „self-cultivator”, thus giving opportunity for the landlords to keep as much land they want, and effectively prohibited transferring legal right to original tillers. Overnight landlords became cultivators, and the law also provided no bar on how much land a family can own. Practically, land ownership was distributed among

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<sup>23</sup> In fact various provincial laws as I have mentioned before land is strictly speaking a state/provincial subject as stipulated by constitution of India.

<sup>24</sup> The “scarcity principle” of Ricardo (Principles of Political Economy and Taxation, 1817 as quoted by Piketty 2014) suggests that certain prices might rise to very high levels and remain high over many decades. Such arrangement could have enough strength to destabilize entire societies. Because it is the price system inevitably plays a key role in coordinating the activities of millions of individuals—indeed, this even true in today's, world of interconnected globalized economy. The problem is that unfortunately the price system knows neither limits nor morality (Piketty 2014, 14). The rules of economics do not follow rule of motions of celestial objects but rather they are human with unpredictable animal instincts. What is happening in developing countries such as in India is that explosion of population which inevitably has created greater demand for land, for purpose of cultivation and habitation. Redistribution of land in a way counter balanced the unequal distribution of land thus containing the price rise of land (if we believe in the theory of Ricardo). Though the inbuilt mechanism of demand and supply should shift the equilibrium to the other direction (from the higher value of land to the lower) since they will be lesser number of willing buyers in the market. But in the process of rebalancing, which may take considerable period of time, a certain group of population may accumulate claims over the rest of the population which could become so much overwhelming that the alternatives to owning a land (which can vary from alternative employability to community housing to different mode of contracts meeting the needs from the land on supplementary basis) may not be available (for the landless) (Piketty 2014, 15).

family members, effectively evading the law's intent. It should also be noted that laws were passed across different states quite lately and with varied enforcement. In Gujarat, the law *Devasthan inams* was passed in 1969, whereas in Kerala *Sreepandaravalla* was passed in 1971. In Kerala, still the intermediary known as *Knom* land, *Oodupally* lands and service *Inam* lands are still in existence. Subsequently, in the later years Abolition or Regulation of tenancy laws were adopted by various states (Appu 1996). Tenancy reforms were developed in between to legalize ownership rights of occupancy by tenants, prohibit or restrict future leasing or sub-leasing of land and regulate rents on leased land<sup>25</sup>.

West Bengal and Jammu and Kashmir were the earliest states to impose a ceiling on landholding with legislation related to abolition of intermediates, thus effectively transferring land rights to the tiller. Other states have enacted the same legislation throughout the 1960s and early 1970s which was later on amended in 1972 after adaptation of national guidelines. The objectives were to reduce inequality in land holding so that employment in rural India could be generated; therefore I will argue that the policies were more aimed to change the power relationship in the rural area because the land is considered an object of power (Davy 2012). There was a strong efficiency argument which linked how ownership incentivises higher production (Shaban 1987) and also how larger pieces of land holding often decrease agricultural production per unit of land. The ceiling level across different provinces ranges between 3.68 hectares to 28.33 hectares for various categories of land. By September 2006 about 4.9 million acres of ceiling surplus land were distributed among 5.4 million farmers of which 2.1 million belongs to Schedule Caste, 0.9 million are Schedule Tribe and 2.4 million to other castes. In West Bengal itself, which is considered to be one of the few states where land reforms were implemented very rigorously, about 139 million acres of land have been acquired by the state (18 percent of the total land acquired in India) of which 1.04 million acres were distributed (20 percent of the total land distributed in India). The pattern of land distribution also favoured the Schedule Caste and Schedule Tribes to some extent (Roy 2013).

Various authors have suggested (Appu 1996, Bardhan 1970, Banerjee et. al. 2002) that land reforms did not have much effect on the distribution of land, but mainly have altered the contractual relations in agriculture. Land reform was the most successful intervention which rationalized imperfect property distribution subject to state-wise diverse policy implementation and political will of the ruling parties (Basu 2008). Basu (2008) has discussed briefly but with much conviction that there is not ample evidence to link land reform and increased agricultural output. Many social, cultural and political issues have also significantly influenced land reform.

### *Lease and Mortgage: Evidence from India*

Given the regulated nature of the lease-mortgage provisioning in India<sup>26</sup>, various authors have suspected that the lease market plays an important role in linking land, labour and capital endowments (Bell 1990, Melmed-Sanjak 1998). This is a special area of interest for this research as these very combinations (land, labour, and capital) are the factors of production considered by classical economics or in this case should be considered as factors

<sup>25</sup> Now the nature of this formalization rights differ from what de Soto had proposed. A chapter of this thesis (pp. 28) has been devoted to understanding the similarities and differences.

<sup>26</sup> Please read appendix A to find analysis of the legislations of India and what provisioning they provide with regard to lease and mortgage.

that generate employment, revenue, and income. Since this research is more concerned with transforming land as capital, which is the core idea of de Soto, I shall concentrate on land as capital (or in the absence of paper or legal rights, a dead capital). Here, I have to note that traditional land reform, although it changes the ownership structure of the land (tiller who received land title from the state or in other cases the landless labourer received land from the state), does not always give the new owner the right to sell the land. Therefore the only window of opportunity to raise capital is either through mortgage or lease/sub-lease.

The nature of land-lease<sup>27</sup> markets vary widely among the states and regions of India. There are two groups of states which account for the highest tenancy rates (Singh et al. 1991). One group includes the less agriculturally developed states such as the former Zamindari states of North and East India (Uttar Pradesh, Bihar, Orissa and West Bengal), and the second group includes the agriculturally progressive states of Punjab, Haryana and Tamil Nadu. In the absence of legal restrictions, sharecropping tends to give way to the leasing of land in exchange of cash, as it is found in agriculturally more progressive states (Parthasarthy 1991, A-33).

Credit tied to the land (mortgage) depends on the legislative provisioning of the concerned state, but also on access to credit for smaller operators (Faruqee and Carey 1997, 8). However, existing vast network of credit provisioning for agriculture rarely reached small farmer (Binswanger et. al. 1993). The underlying reason that they found is surprisingly similar to what de Soto explained was missing in countries like India, i.e. difficulties in collateralising holdings with insecure title. As early as in 1952, Dantwala (1952, 353) found that, of 674 loans advanced by land-mortgage banks in the Bombay Karnataka in 1949-50, only 2.8 per cent had been made to farmers owning five acres or less. This raises the question, how far have the land reform(s) in India successfully provided formal titles to newly established farming communities? This question, however, does not fall under the ambit of my research. A significant number of studies concluded that land reforms have successfully redistributed titles and an almost similarly large number studies have shown otherwise. Since legislations have empowered new title-holders with the right to (sub) lease<sup>28</sup>, some window of capital formalization is open, thus partially fulfilling the opportunities created by de Soto's title formalization process. However, the character of the agency responsible for capital formalization often comes under scrutiny within the Indian context.

There have been long-standing efforts to develop a formal rural credit system in independent India since British colonial rule; however, it is the civil courts which strengthened the position of local moneylenders (Binswanger and Shahidur 1992, 5). History is full of evidence of how moneylenders exploited their villages (Walker and Ryan 1990). In order to safeguard the farmers, during the early 1900s, the first batch of primary agricultural cooperative credit societies (Primary Agricultural Credit Societies, PAC) was established.

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<sup>27</sup> Lease market is an important mean to raise capital for the rural poor (Sadoulet et al. 1998). Previous estimates suggests that estimated among the 19 per cent of rural households that lease-in land, over 90 per cent are landless or marginal owners (Parthasarthy 1991, A31-32). Small owners are leasing-out land either because they have too little family labour or lack power to operate the land, or because they have access to alternative, non-land-based livelihood opportunities where leasing out land provide capital. However, Parthasarthy (1991, A31) found that the numbers of willing candidates far outweigh lease-out land resulting in market distortion. Therefore, leasing out by larger operators remains the dominant pattern even in those states that legally prohibit leasing or tenancy (Uttar Pradesh and Madhya Pradesh).

<sup>28</sup> Lease is not by all the legislations and that is being indicated in Appendix A.



These were specialized rural credit institutions, which can be found in individual villages or groups of villages even today. They developed a vast network of societies and by 1981/82, 21 percent of cultivators borrowed from PACs (Rath 1987 as quoted in Binswanger and Shahidur 1992, 10). Though many dormant or illicit societies were dissolved or merged into larger societies in 1970s, the PACs mobilized little resources of their own and their outstanding credit exceeds their deposit mobilization by a factor of nearly ten; thus a new agency – the National Bank for Agriculture and Rural Development (NABARD) – came to cover the needs of the system (Binswanger and Khandker 1992, 06). Subsequently PACs were followed by the state land mortgage banks, which later became the Land Development Banks<sup>29</sup> (LDBs).

The cooperative movement in India did not become as much of success as in Europe (Shah et al. 2007, 4). The sharp socioeconomic disparities in rural India appeared to be too much against the very principle of *cooperation*. The cooperative credit societies were in fact „run in most cases by rich landlords and moneylenders“ (Baker 1984, 229). These societies became the embodiment of local power politics and caste system. According to a witness testifying before the Royal Commission on Agriculture, in these societies „outcast men will not get a loan unless they promise to sell their labour to the caste man who is a member of the Panchayat at a lower rate than he can get in the market“ (RCA Report, 1929, Vol. III, 410 as quoted in Shah et al. 2007, 4; similar references can be found in Appu 1996). The witness described how caste continues to control the nature of cooperation in an Annual General Meeting of a cooperative credit society where „the Director sat on one side of the street and the outcaste sat on the other“ (loc. cit.).

Even after independence, to a greater extent the formal credit system did not reach the needy farmers. The All-India Rural Investment Survey showed that cash borrowing of less than nine percent of farmers in 1951-52 was from the formal sector (Binswanger and Shahidur 1992, 6). Moneylenders still provided about 83 percent of cash loans whereas the cooperative sector accounted for only three percent. By 1971, the institutional sources provided nearly 32 percent of all cash credit. The All-India Debt and Investment Survey<sup>30</sup> of 1981/82 captured the substitution of informal credit by formal credit programmes and continued to take place. However, even with so much effort, the institutional rural credits served only 57 percent of the rural credit at the end of 2002. A recent report on informal credit-related issues, „The Report of the Task Force on “Credit Related Issues of Farmers“ (as said by Chairman U. C. Sarangi) pointed out to the Ministry of Agriculture that the „... most disquieting feature of the trend was the increase in the share of moneylenders in the total debt of cultivators. There was an inverse relationship between land-size and the share of debt from informal sources (GOI 2010).“ Thus the small holders continue to suffer

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<sup>29</sup> Land development banks (LDB originally called Land Mortgage Banks) are mostly cooperative institutions that lend primarily for long-term purposes. A careful look at the data will reveal that legislations empowered legal tenants or sharecroppers were given the right to mortgage their land with such banks and institution with similar legal backgrounds or institutions owned by the state. In some states, the land development banks lend to farmers through branches of the central land development bank (the unitary system) whereas in other states, primarily land development banks are independent credit societies federated at the state level. The typical land development bank or bank branch serves a wider area than a village, such as a district or tehsil (a subdivision of a district). As a tradition, the state land development banks raise resources by issuing bonds, which are held by NABARD, the Government of India, the Life Insurance Company of India, and various other financial Institutions. (Source: [http://www.agritech.tnau.ac.in/banking/crbank\\_land\\_dvpt\\_bank.html](http://www.agritech.tnau.ac.in/banking/crbank_land_dvpt_bank.html) accessed on 2 December, 2013.)

<sup>30</sup> Source: <http://www.rbi.org.in/scripts/PublicationsView.aspx?id=14986> (accessed on 12 December 2013).

with the never-ending debt cycle, nullifying the positive efficiency gains from small land holding as it was envisioned. Therefore the conclusion is land mortgage provisioning in India has neither evolved into a protectionist mortgage regime nor has it linked land to liberal market based regime.

### *How Far Has Indian Legislation Empowered Agricultural Land To Be Transformed Into Capital?*

The goal of this section is first to explore the gap between the existing formal property system (legalized lease and mortgage provisioning) and the full potentiality of agricultural land as capital. Here, I shall demonstrate how lower translatability of property rights reduces the value of reform-induced rights, and conversely, greater translatability increases the value of those rights. Also, I will demonstrate how far Indian land reforms and de Soto's land reform are similar and different.

Consider (Telengana Area) Tenancy and Agricultural Lands Act, 1950, one of the earliest land reform legislation, where leasing and mortgaging rights were only legal among the member of Cooperative Society (Section 30 (2)). As a consequence, the rights holders can transfer the rights to someone if only by sheer luck both of them are members of a cooperative society. Considering Cooperative banks were more of a representation of a caste-based society and there is limited chance of getting a loan, the transformability of land as capital is limited (by using the arguments of Binswanger and Shahidur 1993). Such limitations on the property's use and its transferability reduces the value of the property right and makes the de facto rights of the holder more limited than comparable rights that are recognized formally by newer legislations enacted.<sup>31</sup>

In some legislations, conditionality attached with transfer of land has constituted a long list of "ifs," such as Bombay Tenancy and Agricultural Lands Act 1948 (Maharashtra). The legislation empowers collectors to grant permission for transfer of land in certain circumstances. For example, if the land is required for agricultural purpose by industrial or commercial undertaking or the transfer is for the benefit of any educational or charitable institution or will be used for cooperative farming society or to execute a decree of a Civil Court; if the owner is permanently giving up agriculture or incapable of cultivating personally; if land is gifted to someone of the owner's family or mentioned institution in Section 88A and 88B, clause a and b; or if land is being exchanged. More importantly, the transfer of land use is also restricted by the legislation. The legislation prohibits sale, gifts,

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<sup>31</sup> The following legislations have legally empowered right holder to lease and mortgage (in most of the cases) across different provinces of India: Andhra Pradesh: Tenancy Act 1956 (amended 1974)(Section 10); Gujarat: Bombay Tenancy and Agricultural Lands Act 1948 (amended 1955 and 1960); Karnataka: Land Reforms Act 1961; Kerala: Land Reforms Act 1963 (window for mortgaging but silent on leasing); Maharashtra: Bombay Tenancy And Agricultural Lands Act 1948 (mortgage not possible but possible to sell off the land but under certain conditions (Section 43 and section 63), Agricultural Land (Ceiling on Holdings)Act 1961; Odisha: The Orissa Consolidation Of Holdings And Prevention Of Fragmentation Of Land Act 1972 (mortgage not possible with an exception for orchards, groves or homestead lands; for agricultural land it is only possible with the permission of Consolidation Officer, silent on lease), Land Reforms Act 1960 (amended 1973 and 1976) (mortgage not possible and lease is void (section 6 (2))); Punjab: Pepsu Tenancy and Agricultural Land Act 1955 (Not possible to mortgage, with an exception if mortgaged with the State Government or the Punjab State Co-operative Land Mortgage Bank, Ltd. Established under the Punjab Co-operative Land Mortgage Banks Act,1957 (section 31 (1) whereas lease is not possible); West Bengal: Land Reforms Act 1955 (amended 1970, 1971, 1977)(mortgage is possible with some conditionality as specified in section 7 (1) whereas silent on lease).



exchange or lease of any land to a non-agriculturist. Though the collector is empowered to grant transfer of land for a non-agriculture purpose under certain conditions such as when a person bona fide requires the land for a non-agricultural purpose or for the benefit of an industrial or commercial undertaking or an educational or charitable institution, or he intends to take the profession of an agriculturist and agrees to cultivate the land personally, required by a cooperative society, or to execute a decree of a civil court.

Lanjouw and Levy (2002, 987) have showed that stronger rights which are non-transferable may make more difficult for a household to engage in property transactions because it will come under close regulation of state making even informal transaction unviable. Excessive restrictions imposed by legislations organize socio-legal situations on the ground similar to what Lanjouw and Levy (2002) have suggested. There are several land reform legislations in India, which are silent on the provisioning of mortgaging or leasing of land<sup>32</sup>. Such legislations on the one hand encourages informality, but also paves the way in formalizing separate legislations to provide mortgage and leasing opportunities.

There exists a skewed power relationship between the state and the user of a piece of land. The state enjoys the power of “eminent domain”<sup>33</sup> which of course the user of the land is not immune to. Even if I exclude the extreme nature of the state’s power of eminent domain, the state can decide on land use, taxation, and ownership of land. In India, Chakravorty (2013, 65) argues that there have been two important developments in the history of land policy in India. First is the gradual creation of land markets and establishment of private property rights and more and as we move into the past, we find weaker and weaker legal property rights exist in India. Secondly, there has been a constant power struggle between citizens and state on the rights attached to ownership. The records-of-

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<sup>32</sup> Such legislations are, Andhra Pradesh: The Hyderabad Abolition Of Inams And Cash Grants Act 1964, Andhra Pradesh (Andhra Area) Inams (Assessment) Act 1955, The Andhra Pradesh (Andhra Area) Inams (Abolition And Conversion Into Ryotwari) Act 1956, Andhra Pradesh (Telangana Area) Abolition Of Cash Grants Act 1959, Andhra Pradesh (Telangana Area) Abolition Of Inams (Amendment) Act 1986, Andhra Pradesh (Telangana Area) Abolition Of Inams (Amendment) Act 2011; Gujarat: The Gujarat Slum Areas (Improvement, Clearance and Redevelopment) Act 1973, Gujarat Tenancy and Agricultural Lands Laws (amendment) act 1997; Haryana: Punjab Security of Land Tenures Act 1953; Karnataka: The Karnataka Inams Abolition Laws (Amendment) Act 1969, The Mysore (Religious And Charitable) Inams Abolition (Karnataka Amendment) Act 1984, The Karnataka Inams Abolition Laws (Amendment) Act 1985, The Karnataka Land Reforms (Amendment) Act 2010, The Mysore (Religious And Charitable) Inams Abolition (Karnataka Amendment) Act 2011; Kerala: The Kerala Land Relinquishment Rules 1958, Agricultural Workers Act 1974; Madhya Pradesh: The Abolition Of Jagirs And Land Reforms Act (Vindhya Pradesh) 1952, The Abolition Of Jagirs And Land Reforms Act (Bhopal) 1953, Ceiling on Agricultural Holdings Act 1960, The Abolition Of Jagirs And Land Reforms (Vindhya Pradesh) (Madhya Pradesh Amendment And Validation) Act 1965; Odisha: Estate Abolition Act 1951, The Orissa Prevention of Land Encroachment Act 1972; Punjab: Punjab Security of Land Tenures Act (1953), Land Reforms Act 1972; Rajasthan: Bombay Merged Territories and Area (Jagir Abolition) Act 1953; Tripura: Tripura Land Revenue And Land Reforms Act 1960; Uttar Pradesh: Agra Tenancy (Amendment) Act 1934; West Bengal: Estates Acquisition Act 1953, Bargadars Act 1953.

<sup>33</sup> The power to take property from the individual rooted in the idea of eminent domain. The doctrine of eminent domain states, the sovereign can do anything, if the act of sovereign involves public interest. The doctrine empowers the sovereign to acquire private land for a public use, provided the public nature of the usage can be demonstrated beyond doubt. Within the present structure of India constitution Article 300 (A) imposes one limitation on this power which is it should be by the Authority of Law. The doctrine is based on the following two Latin maxims, (1) *Salus populi suprema lex* (Welfare of the People Is the Paramount Law) and (2) *Necessitas publica major est quam* (Public Necessity Is Greater Than Private Necessity) (Chandrachur, Y. V. 2009). In the history of modern India, this doctrine was challenged twice (broadly speaking) once when land reform was initiated and another time when Banks were nationalized (Tripathi 1980).

rights in independent India reflect a diverse set of rights; (i) ownership rights, (ii) homestead rights, (iii) right of vested land assignees (*patta* right), (iv) *dakhalkar* right, (v) share croppers' right, (vi) lease right, (vii) hold over right, (viii) right regarding forcible possession and (ix) permissive possession right. The first six rights are regulated by various State/provincial enactments, whereas the seventh is a part of the Transfer of Property Act 1882 and last two rights are regulated by the Indian Limitation Act 2005. The coexistence of these different tenure systems and submarkets creates a complex series of relationships between the citizens, state and market. It is because of such complexities in the Land Record System<sup>34</sup>, P S Appu Committee on Revitalization of Land Revenue Administration had suggested a standardized record format (1996). Unfortunately, it has not been adopted at the national level. Such a standardized format would have calibrated the process of mortgaging or selling land and saved time and energy in legal litigations.

### *Indian Land Reform: How Just Is It?*

In this section, I will attempt to analyse a single land reform legislation of an Indian province with four specific questions in mind. Those questions are: (a) How have such legislations identified the least-advantaged member for land distribution, if welfare of the least-advantaged was one of the objectives within the traditional Indian land reforms? (b) Which component of the legislation is for the least-advantaged? (c) Which part of the legislation is harmful for the least-advantaged? and (d) Which part of the legislation has nothing to do with the least-advantaged? These questions have the potency to answer if Indian land reform is in alignment with pro-poor land policy according to Rawls' theory of justice.

The West Bengal Land Reform Act 1955 is one of the most detailed land reform act enacted by any province in India. Also the province of West Bengal is one of the most successful provinces in implementing land reform in India (Hanstad and Brown 2001). Therefore it will be interesting to assess how a most successful province has framed land reform legislation to make it advantageous for the least-advantaged members of the society.

The Land Reform Act (LRA) 1955 covers plethora of land-related issues, but among them the most important are: (1) it defines the rights and regulations surrounding ownership rights (*raiyat*) and *bargadars*; (2) prohibits fixed-rent leasing of land; (3) places a ceiling on the size of landholdings; (4) defines how land taken by the state should be distributed; and (5) limits the transferability of land held by Scheduled Tribe members as well as much of the land obtained through redistribution. Selection of the least-advantaged is one of the trickiest parts of any pro-poor policy, subject to plethora of debates. Which group has been left aside by a policy and which should have been included, not only invite a great policy debate but also necessarily a political debate. LRA surely employ selective

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<sup>34</sup> There are two categories of land registration systems which exist in modern world: registration of deeds and registration of title. Registration of deeds developed first, in Europe (several hundred years ago) and America followed by Europe. With registration or recordation of the deeds with the state, the events of double selling were effectively reduced theoretically. The second system is registration of title. This system was first introduced by Sir Robert Torrens in Australia, in the year 1858. Torrens introduced a system where a land register should state the actual state of ownership, where the guaranteed all rights shown in the land register. The system "cadastre" developed over a period of time. A cadastre is a systematic database of property data, based on a comprehensive survey of a property indicating boundaries of land, within a specified jurisdiction. Cadastres were originally developed for better functioning of land taxation system, in many countries (the author used examples from Europe mainly) later were used in land registration purposes." (Hanstad 1998, 650-652).

policy and it is means tested. The least-advantaged according to this act are the *bargadar* and land less agricultural labourers. *Bargadar* is a person who is also known as *adhi barga*, or *bhag* cultivates the land of another person (owner) on condition of delivering a share of the produced from such land with the owner and it also includes a person who under the system commonly known as *kisani* (or by any other similar description) cultivates the land of second person (owner) on condition of receiving a share of the produce of such land (LAR § 1(2)).

## The parts of the West Bengal Land Reform Act 1955 which are beneficial to the least-advantaged population

The act defines „landowner“ as „raiyat.“ The act dictates that the land owner (1) cannot lease any part of their land<sup>35</sup>; (2) cannot change the use of the land other than the purpose for which the land is held or was settled unless they receive written permission from the District Collector<sup>36</sup>; and (3) must “personally cultivate” their land. Here, “personal cultivation” is defined as farming by the landowner’s own effort, the labour of his or her family<sup>37</sup>, or the labour of any servants or labourers remunerated in cash or in kind. The servants or labourers cannot be employed if the landowner is aiming to take re-possession of *bargadar* (sharecropper) land. The personal cultivation requires the landowner or a member of the landowner’s family to reside for the greater period of a year in the locality where the land is situated and substantiate that produce from the land is the principal source of the income<sup>38</sup>. Unless these requirements are satisfied for three consecutive years, the land will be vested to the state in exchange for compensation<sup>39</sup> which is well below the land’s market value<sup>40</sup>. Such arrangement is for the benefit of the least-advantaged because such a proviso prohibits an illegal holding by a large land holder with some pathetic excuses and dubious agricultural land holding by people with no farming background. The provision empowers the state to take control over lands which have violated said conditions and distribute such land to the least-advantaged at a later stage.

The LRA grants special protection to *bargadars*, including the right to continued cultivation. These rights are to be recorded in the record-of-rights<sup>41</sup> (but exist and can be asserted even if not recorded, though subject to judicial proof). Such rights are heritable, but are not necessarily transferable<sup>42</sup>. A person lawfully cultivating any land belonging to

<sup>35</sup> LAR § 4(4). There is a distinction between a lease (can be defined as to include all fixed-rent tenancies) and a sharecropping arrangement. Sharecropping is permissive, but is subject to the anti-eviction and rent-control provisions of the act.

<sup>36</sup> LRA § 4(4). The purpose, as stipulated by the law, the transfer or settlement can take place only for these purposes: “agriculture, horticulture, animal husbandry, trade, manufacture, entertainment, recreation, sport and such other purposes” Id. § 5(1).

<sup>37</sup> LRA § 14K defines the term “family” which only include the landowner’s immediate family and sets conditions when adult children are considered as “family” for purposes of the Act.

<sup>38</sup> LRA §2(8).

<sup>39</sup> LRA § 4(4).

<sup>40</sup> Compensation is 15 times the land revenue assessed for the land or 135 rupees per acre where land revenue has not been assessed. LRA § 14V.

<sup>41</sup> LRA. § 21D.

<sup>42</sup> Id. § 15(2).

another person is presumed to be a *bargadar* unless he is not landowner's family<sup>43</sup> member. This puts the least-advantaged sharecroppers in a stronger position in exercising their rights. It is the landowner's responsibility to prove that a person cultivating his or her land is not a *bargadar*.

The act ensures that *bargadars* have the first pre-emptive right to purchase the land under his or her cultivation planned to be sold<sup>44</sup> by the owner. The state establishes a "state land corporation" and/or one or more "regional land corporations," which provides funds to *bargadars* to purchase such land while using such pre-emptive purchase right. If the *bargadar* and landowner fails to agree on the price, the "state land corporation" and/or one or more "regional land corporations,"<sup>45</sup> sets the price based on the market value of the land. When a *bargadar* does not wish to purchase an owner's land, the state land corporation may, upon the owner's request, offer the land to a person eligible to buy land under Section 49, who is generally a landless or near-landless person.<sup>46</sup> Where the landowner is a Scheduled Tribe member, the land is protected from any adverse or forceful possession by ensuring that on a Scheduled Tribe member<sup>47</sup> person can only become a *bargadar* but not someone from a dominant caste or class which places an important check on the historical practice of coercively, illegally or forcefully taking the land rights of tribals (scheduled tribe) and dalits (scheduled caste).

A *bargadar's* right to cultivate land can only be terminated by an order made by a state-appointed authority<sup>48</sup> that too when it falls under the four said categories described by the law. A landowner cannot terminate the *bargadar's* cultivation right if the termination would leave the landowner with more than 17.29 acres (restricting the upper limit of the land holding or land ceiling<sup>49</sup>) or would leave the *bargadar* with less than 1 acre (ensuring the poor have access to minimum area of land). The *bargadar* can apply to have his or her right restored if the landowner uses illegal means to take control over the land.

The restriction of land holding is not only enforced on the owner but also on *bargadar*; a *bargadar* is not permitted to cultivate more than a total of 9.88 acres, including both owned and *barga* land<sup>50</sup>. If a *bargadar* cultivates more than the restricted amount, his or her share of the produce on the excess land is to be taken by the state<sup>51</sup>. The landowner who owns such land that the particular *bargadar* cultivates, can arrange another person who is willing to cultivate the land as a *bargadar*<sup>52</sup>. This provision does not apply to transfers by exchange or partition, bequest, gift, mortgage, transfers for charitable or religious purposes,

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<sup>43</sup> Id, § 21B.

<sup>44</sup> Id. § 8(1).

<sup>45</sup> Id. § 21C.

<sup>46</sup> Id. A person who purchases land under this provision must mortgage the land to the Corporation as security for the loan advanced. Id. § 21C(7).

<sup>47</sup> Id. § 15(3).

<sup>48</sup> Ibid.

<sup>49</sup> Land ceilings can be an effective method for redistributing land resources. § 14J-Z.

<sup>50</sup> LRA. § 17(4).

<sup>51</sup> Id. § 17(5).

<sup>52</sup> Id. § 17(6).

or transfers in favour of a *bargadar* (if after the transfer the *bargadar* does not hold as owner more than one acre of land in the aggregate)<sup>53</sup>.

There is a ceiling on landholding, with some minor exceptions<sup>54</sup>. The act specifically defines “land” in such a way that it includes non-agricultural land<sup>55</sup>. Such provision prevents landowners from evading the law by re-classifying agricultural land as non-agricultural land and continues to hold the land. The ceiling limit applies only to owned land and not to tenanted (*barga*) land therefore creating a regime of equitable distribution. The ceiling area is fixed by the law for an owner with a nine-member family<sup>56</sup>. Anticipatory transfers of land have been prevented by the act to stop those trying to escape ceiling measure; any land transferred after August 7, 1969 but before the publication of the 1971 amendment (lowering the ceiling) is included in the calculation of the size of the landowner and accordingly the ceiling will be enforced<sup>57</sup> and any excess land vests in the state<sup>58</sup>. The ceiling surplus land when being cultivated by a *bargadar*, the *bargadar*’s right to cultivation is terminated at the first place on any land in excess of one acre<sup>59</sup>. Such provision empowers the state to take control over the excess land without any challenge from the *bargadar* and however leaves *bargadar* with land under one acre which is the legal minimum area of land under possession and control of the *bargadar*.

Section 49 of the act sets forth the principles under which the state is going to distribute land that was vested in the state, either as the result of imposition of land ceiling or because it was inappropriately used. The genuine nature of the distributive pro-poor nature of the policy is that the state distributes land free of charge to persons residing where the land is available and who (together with their family) own either no land or own less than one acre of agricultural land<sup>60</sup>. The act was amended in 1980 for the benefit of the landless and smallest landowners by replacing the “one-hectare” (2.47 acres) limit with a “one-acre” limit. With this proviso the act comfortably positions itself as being “pro-least-advantaged”. While distributing land to the landless or near landless, the state has given preference to allocate vested land for public purposes or for the establishment, maintenance or preservation of any educational or research institution or industry.

Special preference is given to landless households, to members of Scheduled Castes and Scheduled Tribes, and to persons willing to form a cooperative society. Section 49 has

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<sup>53</sup> Id. § 8(2).

<sup>54</sup> Id. § 14L.

<sup>55</sup> Id. § 2(7). The Act was amended in 1981 to broaden the definition of land from agricultural land to all land.

<sup>56</sup> Id. § 14M (1). In the case of a co-operative society, for Hindu undivided family (a family consisting of all lineal male descendants of a common ancestor and their wives and unmarried daughters), or for a firm, the ceiling area constitutes the sum total of the ceiling area for each member Id. §14 Q (1) and (3). The land ceiling is applicable on the individual, rather than the family in such a way that families with less than five members have lower ceilings.

<sup>57</sup> Id. § 14P. Landowners owning more land than that of a ceiling cannot transfer any land until the state has determined the excess amount and taken possession of it and transfer it as vested land. § 14U(1).

<sup>58</sup> Id. § 14Y.

<sup>59</sup> Id. § 14S.

<sup>60</sup> LRA § 49. West Bengal is one of only a few states that do not require payment from the grantees (the others include Orissa, Bihar, and Uttar Pradesh). The legislation of most states requires some payment from the land reform beneficiaries, usually to be paid in installments.



prohibited land to be distributed among those who have a family member “engaged or employed in any business, trade, undertaking, manufacture, calling, service or industrial occupation<sup>61</sup>.” Such proviso ensures that land is used for any speculation by the non-agriculture community and also reemphasise land to the tiller motto.

The act also ensures that land remains with the agricultural family to whom land is handed over through distribution by placing limitations on the ability of an owner of the distributed land to transfer the land. This owner cannot transfer such land by sale, gift, exchange, or lease other than transfers by inheritance, such an individual can only transfer his or her land: (1) by simple mortgage, or (2) by mortgage by way of deposit of title deeds in favour of banks or co-operative societies specified in the act. Such mortgages can only be placed for the purpose of obtaining credit for the development of land, for the improvement of the agricultural productivity, or for the construction of housing<sup>62</sup>. Therefore even the mortgaging proviso has ensured that loaned amount is used in productive purpose only and as increasing efficiency mechanism.

The one-acre limit comes into force and redistributed land will not be available for those who already own up to that limit (§ 49[1])<sup>63</sup>. Such proviso has ensured that availability of the vested land to a larger number of beneficiaries for redistribution also has acted as a gatekeeper in the process of land reform to ensure that benefits reaches only to the poorest segment of society. The act stipulates rules for the creation and management of a land rights record-keeping system. The act has noted the information that has to be included in the land record. The set of information which the law has demanded to be recorded can be considered as the tools to ensure the least-advantaged are taken care of<sup>64</sup>.

## The parts of the West Bengal Land Reform Act 1955 which are against the least-advantaged

Even though it is a reality in West Bengal, the act broadly prohibits fixed-rent tenancy (§4(4d)). There is also permanent prohibition on sales imposed on land reform beneficiaries (§49(1A)). Such Provisos encourage extra-legal transactions, which may contradict the principles of justice as discussed in the later chapters. When there is more than one applicant, the *bargadar* who cultivated the land for the longest is permitted to resume cultivation<sup>65</sup>, but such arrangement does not necessarily take care of the least-advantaged, rather, it provides justice depending on control rather than need. In a case when *bargadar* fails to cultivate land personally or uses it for any purpose other than agriculture or fails

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<sup>61</sup> Id. § 49(1).

<sup>62</sup> Id. § 49(1A).

<sup>63</sup> Andhra Pradesh allows up to 5 acres of agricultural (non-irrigated) land; Haryana allows person owning up to 4.94 acres; Jammu and Kashmir allows for allotting land to person owning up to 5 acres; Maharashtra's ceiling is up to 4.94 acres of dry land; Punjab's ceiling 4.94 acres of first-class land; and Uttar Pradesh allows holding of a person's holding up to 3.1 acres.

<sup>64</sup> LRA § 50. The following information must be recorded: (1) change of ownership as the result of transfer or inheritance; (2) partition, exchange, or consolidation of land; (3) establishment of co-operative farming societies; (4) new settlement of lands or holdings; (5) variation of revenue; (6) alteration in the mode of cultivation, for example, if a *bargadar* begins or ceases to cultivate land; and (7) such other causes as necessitate a change in the record of rights.

<sup>65</sup> Id. § 19B.



to share produced grains, the *bargadar* may be punished (up to 6 months imprisonment after due administrative process and if failed then followed by judicial proceeding) if he or she fails to provide sufficient and convincing reason<sup>66</sup>.

The act does not always do justice to the least-advantaged section of the society. The Act does not command the land to be distributed in the joint names of husband and wife. Such arrangement ignore gender justice in a country which is very much patriarchy in nature and women have less saying in the matters of her own freedom, family and wealth. On the other hand, Scheduled Tribe members do not have pre-emptory purchase rights when local land owned by another Scheduled Tribe member is being sold to a non-Scheduled Tribe member. In cases when land is transferred to a non-Scheduled Tribe member with misrepresentation or fraud the Revenue Officer has the authority to eject the transferee and restore it to the original owner<sup>67</sup>. Often because the least amount of transactions take place in a tribal area, it is difficult to figure out the circle rate and thus difficult to conclude if the tribal areas have failed to pay the market rate. Revenue officers cannot sell homestead holding of a *raiyat* who is a Scheduled Tribe member for realization of certificate dues<sup>68</sup>.

West Bengal is one of the two Indian states (Tripura is the other) where the ceiling area is reduced if the number of family members is less than five. Because the number of people which the state think can depend on a piece of land is much less given the absence of very advanced farming technique in employment, such arrangements can go against the least-advantaged. Some of the conditions in the mortgage provisions may go against the least-advantaged member of the society. Restricted mortgaging provisions (only state approved banks, cooperative societies and financial institutions can be approached), as Lanjouw and Levy (2002) have showed that non-transferrable stronger rights may make it more difficult for a *Bargadar* to engage in property transactions because it will come under close regulation of state making even informal transactions unviable.

## The parts of the West Bengal Land Reform Act 1955 that have nothing to do with the least-advantaged

There are few provisions which have nothing to do with the least-advantaged. Having said that, one may argue that such provisions are to counteract the losses suffered by those who had the control over the land before reform, thus they are part of the justice. Therefore it will be unwise to strongly say that they have nothing to do with justice.

The act asks the state to compensate landowners whose excess land vests in the state for further redistribution. Such owners are entitled to an amount equal to 15 times the land revenue if it has been assessed<sup>69</sup>. In case the land revenue has not been assessed for unforeseeable time, they are entitled to Rupees 135 per acre. If the *bargadar* does not purchase the land from such an owner in case the owner wants to sell because he is not using it, adjoining landowners have a pre-emptive right of purchase, with priority given to the landowner with the longest common boundary. On the other hand, in case of failure to

<sup>66</sup> Id. § 19(A).

<sup>67</sup> Id. § 14(E).

<sup>68</sup> Id. § 14G(1).

<sup>69</sup> Id. § 14V.

pay revenue to the state for a stipulated period, the state may sell off the holding to recover the arrear revenue. However, as a first preference the state should look for a Scheduled Tribe member who is willing to buy the land in the first place<sup>70</sup>. Such provision has nothing to do with the advancement of the least-advantaged, rather it encourages localization of land holding. Moreover the longest boundary may suggest to the point that it is encouraging the bigger land holder to buy some more land. However, this is prohibited because of the land ceiling laws are in place, therefore in some sense it is self-contradictory.

There are in fact several limited exceptions to the overall ceiling limit. Such limit again has nothing to do with the advantage of the poor. First, for the use of charitable or religious purposes<sup>71</sup> second, if used as a tea-garden, mill, factory or workshop, livestock-breeding farm, poultry farm, dairy, or township<sup>72</sup>. Lastly, the ceiling will not be enforced if land owned by a local authority or land in the hills near Darjeeling (*Id.* § 14R). In case when land is lost by diluvion, the owner can only expect to get the land back if the land alleviate within 20 years of time<sup>73</sup>. These above discussed provisions have really nothing to do with least-advantaged members of the society.

Religious society may arguably work for the betterment of the conditions of the least-advantaged but not always. The list of exceptions includes activities which generate newer employment opportunities and can be loosely argued as pro-least-advantaged policy. Such analogy is based on the argument that an increase in the number of employment opportunity available will bring tightness in the economy (that is the tightness between the demand and supply of labour). Thus any employment generating activities will eventually ensure the betterment of the least-advantaged with increasing wages. This employment generating land policy assumes that generated additional employment will absorb people who have no other skills than traditional farming techniques. However, in practice, it may often happen that newer employments demand certain other skills and fails to absorb people with farming skills. The analysis of the Land Reform Act 1955 suggests that it has built-in provisions to ensure that interests of the least-advantaged are taken care of. There are, however, some areas which could have been framed differently to include the concern of the least-advantaged *Bargadar* and near-landless individuals and families.

The conclusion is that the provisions of Land Reform Acts are broadly advantageous to the least-advantaged member of the society. But we should accept this conclusion with some reservations. The law has encouraged extra-legal transactions, positioned *bargadar* in difficult situations when there are disputes with owners, and is insensitive to gender parity. I want to also caution the readers that we must look at the other land reform legislations, tax rules, inheritance laws, zoning laws, and perhaps many others areas related to land before concluding if Indian land policy is just or not. By saying this, I conclude a comprehensive but not complete view on land reforms of India.

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<sup>70</sup> *Id.* § 14G(1).

<sup>71</sup> LRA § 14Q(3).

<sup>72</sup> *Id.* § 14Y.

<sup>73</sup> § 11 & 12.

## 4 Old Wine in a New Bottle?

The property rights literature over the last 20 years has voiced diverse views on the effect of the titling of land (see, e.g. Bruce and Migot-Adholla 1994 as Quoted in Sjaastad and Cousins (2008) and Pinckney and Kimuyu 1994, Platteau 1996, Deininger 2003). De Soto's work as titling of land in some sense is seen as *old wine in a new bottle*, with definitive alignment with Thomas (1973, as Quoted in Sjaastad and Cousins 2008). What differentiates de Soto from its predecessor is his attempt to include non-agricultural land in the scheme of reform and emphasizing in formalization of existing informal possession (Sjaastad and Cousins 2008). His triumph (according to my understanding) is seen in the idea of linking the property to the existing formal economy and make land as capital more fluid.

De Soto's work has been hailed by many authors (also otherwise) and it is really a challenging task to do justice while reviewing all those diverse views. I have rather discussed some distinctive views on his work which I believe more related to my study. Rather than being totally based on those distinctive and comprehensives literature, I have taken peaks of certain arguments and have attempted to put in socio-legal and economic paradigm. I began by stating three very important positive inference of de Soto policy in three single sentences. There is some evidence suggesting that property formalization and issuing of title deeds in particular, may have persuaded people to invest and increase their ability to secure financing from formal sources (see, e.g. Feder and Onchan 1987, Johnson et al. 2002, and Smith 2004 as quoted in Sjaastad and Cousins 2008). There is also evidence on how formalized assets increase value substantially (Woodruff 2001; Benjaminsen and Sjaastad 2002 as quoted in Sjaastad and Cousins, 2008). Finally and most importantly, within many poor communities, there is a demand for property formalization at a grass-root level (Benjaminsen and Lund 2002 as quoted in Sjaastad and Cousins, 2008). These pro-de Soto evidence should not raise our pulse in pro-de Soto triumph, there are great many articles pointing out the limitations of the de Soto's arguments.

De Soto's work has often been blamed for over-simplification. His emphasis on title formalization as the only reason behind American (United States of America) growth has been criticized by many, including Madrick (2001). Property formalization in America may have happened as a result of a range of different reasons which include establishment of law and order, increased state control, greater institutional integration, increased economic efficiency, increased tax revenue, and greater equality (Sjaastad and Cousins, 2008). The argument of Sjaastad and Cousins is valid, often a closer look at the de Soto's text I find similar arguments are noted. For example, de Soto (2002, 350) writes, "As a result, we are now beginning to realize that you cannot carry out macroeconomic reforms on sand. Capitalism requires the bedrock of the rule of law, beginning with that of property." Therefore the bedrock is rule of law and among which property right should be the heart. He continues by emphasizing that the property system is much more than ownership. Therefore, he has indicated that a web of supporting legislations and efforts are needed to build the foundation of a reasonably successful capitalist society<sup>74</sup>. Some even

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<sup>74</sup> Hanstad (1998, 653-657) has noted circumstances which make registration desirable are; (1) where land title insecurity, uncertainty, or inadequacy restrains development, (2) where there is early development of a market in land, (3) where there is a high incidence of disputes concerning land, and (4) Where a redistributive land reform is contemplated. Whereas conditions essential for success are; (1) landowners and others must

go further (such as Scott, 1998 as quoted by Benjaminsen, Tor A. et al. 2006) by saying that formalization of property has played a key role in the creation of the modern state.

De Soto's formalization process is somewhat different than the traditional land reform process. "De Soto's proposal is not wealth transfer, but wealth legalization. The poor of the world already possess trillions in assets now. De Soto is not distributing capital to anyone. By making them liquid, everyone's capital pool grows dramatically" (Schaefer 2003, 316 as quoted in Roy 2005, 152). While analysing Schaefer's arguments, Roy writes, "de Soto's ideas are seductive precisely because they only guarantee the latter, but in doing so promise the former" (Roy 2005, 152).

Let me accept at this stage that there is a difference between wealth transfer and wealth legalization. Schaefer (2003) might have the intention to indicate the process of land confiscation<sup>75</sup> followed by redistribution as wealth transfer. What is/was done through traditional legislations is transferring the land title to the tiller which is same in the case of land to the informal owner (without a formal title, as de Soto used the term). Therefore the ownership changed because of these policies<sup>76</sup>. Before transferring to the tiller, the state took control over the land<sup>77</sup> in question. However, the nature of transferring title before the reform was different than what de Soto has thought of.

In India, as I have mentioned earlier, there exist a number of titling methods, ensuring varied degree of land holding. Not all such types of title can be equated as "ownership" in the legal sense. Ownership in legal sense means "a right over a determinate thing indefinite in points of user, unrestricted in point of dispossession and unlimited in point of duration" (Saha 1994, Legal and Commercial Dictionary). Ownership includes a number of rights over property which includes, "rights of exclusive enjoyment, of destruction, alteration and alienation, and of maintaining and recovering possession of property from all other persons." These bundles of rights are not perceived to have separate existence but are merged in one general right of ownership (Halsbury's Laws of England, 4<sup>th</sup> Ed. Vol 17, para 36, p. 28 as quoted in Saha 1994). When looking at history, the Permanent Settlement Act 1793 did not hand over a total legal ownership to any individuals (and neither in case of *Raiyat*). Even after the redistribution, in many instances such title does not allow the landholder to mortgage freely whomsoever they want, prohibit sale to anyone they wish, or change the nature of land use. In de Soto's land reform such restrictions are non-existing. Once the possessor is given legal ownership rights, he/she is free to do whatever he/she wants. The informal owner in traditional land reform (some cases) and de Soto's land reform (always) either possesses a state-owned land, community-owned land or individually-owned land. In each case, in varied fashion, land is being possessed by someone other than the legal owner (legal owner as defined by the Indian legal system).

The concept of possession and the relationship between these two should be under-

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generally understand and support the system's introduction, (2) state must appreciate the expense and duration of the operation, (3) property rights and property boundaries must be clearly recognizable and definable, (4) qualified survey and registry staff must be available and (5) a developed system of property rights must exist.

<sup>75</sup> Traditional land reform is very clear about its aim to redistribute land by imposing land ceiling but de Soto is apparently against it.

<sup>76</sup> Some of the evidences have been documented by Baharoglu, Deniz. 2002.

<sup>77</sup> The power to take property from the individual rooted in the idea of eminent domain. I have discussed before how in India, the idea of eminent domain is grounded in the constitution.

stood before looking critically at the varied nature of ownership. There has been some amount of debate if the idea of possession came into practice in our society even before ownership. Individuals began to take possession<sup>78</sup> of some objects which they were not ready to share with others. They determine control over the object and exclude others from uninvited interference. There are three requisites for possession. Firstly, there should be actual or potential physical control; secondly, unless accompanied by intentions, physical control is not possession, thirdly possession must be visible with external signs with evidence. In both the land reforms, possessors fulfill such legal conditions subject to judicial proof (Saha 1994). However, traditional land reform does not always necessarily involve possession of any kind. It only comes into the picture when there is some legal dispute between the original land owner and possessor of any type (in the legal sense). Traditional land reform is distribution mediated through the state, where claims of possession may come only if the claimant wants to project himself/herself landless in the absence of such possession. In case of de Soto's land reform, possession is a precondition for any kind of change in ownership right or in other words legal ownership has to be transferred to the poor who are in possession.

There are two more ideas related to possession which should be explored in order to discuss the differences (if any) between the statuses of the possessor described by both the policies. In case of traditional land reform, possession can be both; possession *in fact* and in few cases possession *in law*. Possession *in fact* refers to actual and physical possession (Mahajan 1962). This is true even when there is a written contract between the landlord (of various kinds) and tiller or otherwise and even when there is a contract in case of *Rayats*. De Soto's land reform is clear about the status of possession which is possession in fact but not in law. Though it is very difficult to clearly argue that one type of land reform process includes very distinctively one type of (or a few types of) possession and the other one differently because of the polymorphic nature of the term possession. The meaning of possession is contextual and English law has never worked out a completely clear-cut, logical and comprehensive definition of possession (Towers and Co. Ltd. V Gary (1961) as quoted by Saha 1990). However, the idea of permissive possession, adverse possession, tenancy rights and unauthorized occupants can be clearly identified in varied context.

De Soto's land reform can be termed as adverse possession in many cases. It is an invasion of the ownership of another person's/common or state land, continuous, actual, exclusive but without stealth and permission. Adverse Possession in India comes into force if the land is under possession for more than thirty years in the case of a state land and twelve years in case of private land (Section 27 of the Limitation Act 1963; Schedule; article 65). When land is formalized through such means (it extinguishes the title of the original owner and creates a title in the favour of the adverse possessor), are we not changing the land ownership pattern in a society or, in other words redistributing land (from state/community/ individual owner to informal ownership)? On the other hand, informal contract did exist in both of the cases, before traditional land reform and also in de Soto's land reform context and this should be looked at too.

Prior to traditional land reform, the widely practiced oral, informal contract which existed can be termed as a permissive possession (context specific since permissive posses-

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<sup>78</sup> In legal doctrine there is a distinction between *ius possessionis* is or the right to possession and *ius possessidendi* or the right to possess. *Ius possessionis* is the right to continue to possess except against a person who has a better title. On the other hand *ius possessidendi* is where someone else could have corpus of possession but not the animus or the intention to exercise control over it (Mahajan, 1962).



sion can be by conduct, orally or by written instrument) which is revocable at any time. It is only irrevocable when any development is made upon the land in question within the knowledge of the owner without objection (Easement Act 1882, Sec 60). In such cases the owner is estopped from claiming his right. The consent from the owner was always attached with conditionality (with some exception); such as some rent is paid by the tiller either in terms of currency of money or labour. Other than an informal contract between landlords (Zamindars) and farmers, sometimes there were formal contracts as well. The exact number of formal contract holders is not known. The contract between the Zamindar-cultivator, *Rayat* and many other forms of midlevel contract had different terms and conditions (Ref, Bengal Tenancy Act 1886 and Acts regulating *Rayats*) which themselves can be the main issue of a full-fledged research project. Not to mention that such contracts did not take place within Rawls' just society where there are contracts between parties of equal power and knowledge (Sandel 2010).

There is always the danger of mixing the meaning of a single idea from different schools, the difference between legal and social contracts should also be considered while talking about these two. In case of traditional land reform some of them were following customary laws and conventional laws, and some also followed a valid legal contract under civil law. Legal concepts for such possession can be either permissive possession, adverse possession, unauthorized occupancies, or Tenancy rights (subject to judicial proceedings). Thus the nature of contract between land user and owner (of any kind among the varied difference in the legal sense) in the case of traditional land reform is a combination of legal and verbal contracts with social implications (this is not same as social contract on theory).

In the case of de Soto's reform, informal land owners may have a conventional law based contract (contextual and subject to judicial proof) with the original owner of the land. At this point, in order to determine the legal principle on which de Soto's land reform might lay its legal foundation, I looked at a judgment by the European Court of Human Rights. In Mr. Öneriyıldız's case against Turkey at The Grand Chamber of the European Court of Human Rights (ECHR), the court found that "the enduring tolerance towards an informal settlement eventually creates a "proprietary interest" in the informal housing" (as quoted in Davy and Pellissery 2013, 69). In the Indian context, a similar legal angle can be termed "permissive possession." My argument is that "enduring tolerance towards an informal settlement" is also an unsigned social contract. Interestingly, de Soto has attempted to build his argument of "bring[ing] the poor into social contract through title formalization" at a later stage of development of his theory (de Soto 2010). However, if such principle has ever been applied by the Indian judicial system it will be a subject for another research.

Coming back to this debate of the difference between wealth legalization and wealth transfer, the meaning of wealth should be well understood along with difference between traditional and de Soto's land reform. Adam Smith (1976/1999) found the ability to efficiently transform resources (factor inputs) into desired goods and services represents the true source of wealth. Therefore, according to him, it is not the land which should be seen as either wealth transfer or distribution. Land can be seen as one of the means of production or thereby the possibility of generating wealth but not wealth itself. However, the modern notion of wealth goes beyond what Smith has proposed. The United Nations defines *inclusive wealth* in terms of a monetary measure which includes the sum of natural, human and physical assets. Natural capital includes land, forests, fossil fuels, and minerals. Human capital is the population's education and skills. Physical (or manufactured)

capital includes such things as machinery, buildings, and infrastructure (United Nations 2012). Conceptually, the difference between wealth formalization and wealth transfer, I argue, are blurred and the state often ends up doing both. In fact, a causality link between formalization and the transfer of wealth exists. Any kind of wealth transfer requires formalization and formalization makes possible the transfer of wealth.

Criticism of de Soto's work does not stop at the wealth transfer and formalization debate. Sjaastad and Cousins (2008) questions de Soto's assumption that states possess the willingness and capacity to create institutions in pro-poor and democratic way and to effectively enforce the rights once they are formally established. As Bromley (2008) found in rural areas, such introduction of formalized property systems may alter well-established and effective local systems and end up with chaos. Even a well-intended policy can bring unintended consequences, and a democratic formalization process can soon become the playground of a powerful individual (Lesorogol 2003). However, de Soto found some intellectual support when Atuahene (2006) argued for transfers of state land to private ownership, emphasizing that transfers to the poor actually strengthen democracy<sup>79</sup>. Despite several imperfections within the de Soto's prescribed land titling procedure there are some strengths in it which can be hardly ignored (Atuahene 2006). The most important one is that state is not allowed to determine deserving candidates during the process of ensuring titles to the present occupant. This in turn reduces the chance of corruption.

At the end I must say that this discussion is inconclusive and moot; and we need deeper search of the meaning and the process. However, I will not hesitate to say that to a great extent, de Soto has served very old wine in a new bottle. The bottle (the whole packaging and the idea of property transformed into capital) and the serving table (web of suitable legislation about which de Soto has been blamed to be less vocal) can suit the guests (the state and the citizens) if such overall packaging suits the ambiance (cultural-social-political-economic needs). The discussions have nevertheless raised many important issues which have been used to analyse de Soto through Rawls' theory of justice in the next chapter.

## 5 De Soto's Land Reform through the lens of Rawls' Theory of Justice

The world is unfair. Some are born into families which can provide a better starting point in life than others. They eat far more nutritious food than others, they receive comprehensive immunization, they are well-attended to by parents (or in many cases, people are employed to take care of them), they receive pre-school, they start formal schooling at the right time, they study in schools that provide better education than most of the other schools, they are advantageous in thousands of occasions in social life along with their genetic advantage. Some argued that such advantages are unjust in and of themselves;

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<sup>79</sup> In the history there is a pattern. In ancient time, when the Greek cities developed for the first time, there were dictators and kings. Business prospered so the wealth of some people. In those days land was a principle source of asset. What happened next, is when sufficient number of people in a city earned a lot of wealth, they started to question the prerogative of the kings. From a one man rule it triggered ruling by large number of people. Property became criteria for citizenships. A famous example is *Magna Charta* (1215) where the rulers were restrained by the law. One of the things that were agreed that a King cannot do is to take property from others without due process.

others thought they are inevitable like death and against them no action should be taken. Rawls believed in neither. Rawls was against the popular belief that the “distribution of natural talents and the contingencies of social circumstances are unjust” (Rawls 1971/1999, 87). Such natural distribution and being born in certain social circumstances are neither just nor unjust.

In terms of distribution of land, Cahil (2007, 22) shows that 85% of the population on earth does not own land when ownership is defined as western legal full ownership. Such social imbalances are the result of historic land-holding patterns which may have followed a survival of the fittest argument in terms of land-holding; such social circumstances which are the result of a whatsoever organic process cannot be just. In Rawls’s just society, it is only unjust when institutions fail to deal with disadvantageous land-holding patterns which support natural talents and the contingencies of social circumstances. One such effort in the developing world is land redistribution, which has been seen as efforts to change not only the distribution of land per se, but also to break up the age-old feudal tiller and landlord relationship (Appu 1996). De Soto has shied away from the word “redistribution” though his policy consequences have redistributive features (Sjaastad and Cousins 2008).

The condition of poverty has been seen as a natural fact by Rawls (1974). De Soto saw the part of the reason of why the poor are poor is that they lack something which the institutions are not providing to the poor, i.e. formal ownership. This can be the result of the nature of the state system, societal value and various issues related to governance. If land ownership is transferred to the individual (read: poor who has the possession *in fact*) then the question that remains unanswered is what will happen to the original owner? De Soto argued for formalization of *possession in fact* by the institutions (read: state) as the best way to give opportunities to the poor people to test their entrepreneurship capabilities. In his rhetoric, we do not find him much concerned about injustices to the original owner in the process of implementing this new policy. His formalization argument finds its strength from the extra-legal practices of the people. The idea is if the state fails to create an arrangement which in turn adequately shelters human potentialities (here entrepreneurial capacity) the people will find ways to fulfill their needs. Here, an institution’s inability to incorporate ever-changing conventional law encourages people to employ extra-legal means.

The question arises again; does the state’s effort to provide a legal blanket on extra-legal activities ultimately create a just society? Does this encourage more extra-legal practices, because the state will legalize them eventually? What if some sections of society try to formalize child marriage through such means<sup>80</sup>? The answer to this question is tricky enough if I try to indulge myself into the tracks of various versions of just society (egalitarian, libertarian, utilitarian, etc.). However, as I have mentioned before the theoretical framework of Rawls has given me a lens through which I can decide such legalizing extra-legal if always just.

The first Principle of Justice says, “each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others” (Rawls 1971/1999, 53). The basic liberties of citizens are the political liberties to vote and run for office, freedom of speech and assembly, liberty of conscience, freedom of personal property and freedom from arbitrary arrest. When basic liberties are found to be conflicting in nature, then it is

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<sup>80</sup> Similar questions were raised by Sjaastad and Cousins 2008.

suggested that they can be balanced with a fair agreement or bargained. Now the question is how to balance them? Rawls (1971/1999, 247) suggests the following:

In practice we must usually choose between several unjust, or second best arrangements; and then we look to non-ideal theory to find the least unjust scheme. Sometimes these schemes will include measures and policies that a perfectly just system would reject. Two wrongs can make a right in the sense that the best available arrangements may contain a balance of imperfections; an adjustment of compensating injustices.

The first principle which in fact turns out to be the principle of utility, acts as a standard of efficiency which urge us to produce as large a total (wealth) as we can, while keeping other things equal (Rawls 1971/1999, 32). In doing so, we choose the best available arrangement that balances imperfections by compensating injustices. So what are the issues of justice that de Soto's land reforms are trying to balance? De Soto balances original owners' property rights with protection against arbitrary eviction for poor, the insecurity of the poor which always accompanies informality, a less troublesome system for doing business for poor and lastly provide poor people with a similar starting point as the privileged class through the access to formal credit and bundle of rights which comes with ownership of land.

The second principle is the difference principle, which asks that the socioeconomic effects of de Soto's land reform must (1) not discriminate against any groups within a society and (2) favour the least-advantaged the most. Rawls believes if the distribution of wealth and income is unequal, it must be to everyone's advantage (Rawls 1971/1999, 53). This second principle comes into force while framing legislations. It asks policies to be designed in such a way that it maximizes long term welfare of the least-advantaged in society, provided equal liberties are being maintained across all the members of the society. Rawls found liberty to be a system of complex rights and duties (Rawls 1971/1999, 177). Liberties should be balanced with each other and also at the same time ensure no individual or class enjoys greater liberty than others. Since Rawls did not suggest one-size-fits-all solutions and is rather more concerned with the principle of our society, let me argue how Rawls' principles can be a benchmark of pro-poor land policy.

Existence of unequal distribution of land can be the biggest hindrance in ensuring a balanced liberty in a given society because land is not merely a property or even a bundle of rights but rather land has a plural meaning. Plural meaning of land enables us to understand the essential role that land has in realizing the capabilities of life. Nussbaum's strength capability (among the ten central human capabilities she talked about) deals with "control of one's environment." This includes the capability to "hold property and having property rights on an equal basis with others" (Nussbaum 2006, 77). When land is used for development of central capabilities (more centrally the tenth capability), the use value of land<sup>81</sup> has a multiplier effect and increases the exchange value of land. How can such changes be made when control over land is concentrated in the hands of the few, and the marginal utility of land does not increase substantially as a result of such concentration? Here, Smith's (1776/1999) diamond-water paradox explains the multiplier effect.

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<sup>81</sup> The use value includes a "mix of social needs and requirements" and "life support system for the individual" (Harvey 1973). Use value is not an inherent feature of the land; it is defined by the purpose for which individual uses land (Davy, 2012). It is also influenced by the use of surrounding land (Fennell, 2009).

Most of the slums seen in the developing world are located in the area which has no exchange or use value either to the city dwellers or village community before informality took control over land. Those areas which have insignificant exchange value to the city or village dwellers, have higher use value and utility to the informal dwellers in a similar way that water has to thirsty people. Like abundantly spacious apartments has reducing marginal utility and use value to the owner, large portions of land will similarly affect the owner. Very little use value or even the exchange value of such land all of a sudden through informality (value added through increased realization of control over the land) has achieved high use value for the informal dwellers but still no value for the rest. Legalizing the ownership of such informal settlement arguably raises the exchange value and use value for both informal dwellers and rest. Such development shows the differential outcome in post-de Soto reform land regime along with the realization of central capabilities of life. Formalization acts as a catalyst to enable individuals to realize their capabilities or in other words, gives least-advantaged people a similar starting point compared to those who are well off. This process in many cases not only increases the exchange value of land but also inject conditions to realize central capabilities by strengthening the pillars of use value of land. That is why it is not unjust to formalize land (even if it is not distribution of land) even by quashing another person's ownership rights or control because the marginal utility of such land increases substantially with the formalization; such policy arrangements look after the least-advantaged member of the society.

By taking the property, it maybe retract the capabilities of the well-off to some extent. This argument, however, assumes that land is being taken from another individual who already has a lot and handed over to someone who has nothing. Such conditionality should not be broken at any circumstance because a change in the property regime is only acceptable to facilitate the least-advantaged but not someone who is already well-off. Rawls did not say that we need to take land from the rich and give it to the poor; rather he was more concerned about what the principles are on which a society is organized. His yardstick was maximizing the worth of the least-advantaged within the complete system of equal liberty shared by all, and this defines the end of justice (Rawls 1971/1999, 197). It is the society which will be deciding the means of justice based on principles of justice.

Rawls idea of "a fair agreement or bargained" gives us sufficient elbow room to deal with the encroachment of other's rights. This just system does not only take care of the present state of individual or system's desire, but also shapes future arrangements (Rawls 1971/1999, 229). This argument can lead us to other levels of just future arrangements than merely savings for future generations. When a decision has been taken not only on the moral ground but also on political and economic grounds, changing distribution of wealth and assets does not account for injustice. The question raised by me is: in cases of informal settlements on private land (or state or common land, sometimes against the will of the landowner) does title formalization amount to a taking of property? The answer may be yes (in many circumstances) but that does not label a policy unjust. The question which has been asked in Rawls' just society is not about how the original property is treated when a land right is taken and given to another. Some modest reimbursement might be *politically astute*<sup>82</sup>. The extent of reimbursement should in turn depend on the relative position of the formal owners.

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<sup>82</sup> "...modest reimbursement might be *politically astute*, but that full reimbursement is not required. The extent of reimbursement should in turn depend on the relative position of the formal owners. This approach strikes me as very much in line with the greatest good of the greatest number" (Joseph Persky, e-mailed to author, 23 February 2014).



De Soto's policy is morally right if such an instrument ultimately benefits the least-advantaged section of the society. This conception of benefit for the least-advantaged population of the society differs from the utilitarian idea of benefit. This is a very important argument to look into because de Soto has been often criticized because of failure of his policy to bring desirable change in the society for various reasons which include de Soto's reliance on the supporting institutions which can strengthen and shape formalization process (Sjaastadt and Cousins 2008).

Rawls considers if we have to make a choice between competing policies, for each policy, we determine the impact that action would have on the utility of every person who would be affected by it (the original owner, the new owner and the new social order), sum the results, and pick the action that would lead to the highest utility<sup>83</sup> in total. He found that the extreme inequalities of wealth are unjust, because they provide a fundamentally unequal base for different groups of people for the exercise of their political and democratic liberties. De Soto's policy is just if it aims to bring the distributive changes, but not by single-mindedly aiming for wealth legalization.

Rawls framed two principles of justice while introducing just society. The entire exercise of deriving these principles is to choose a system of just institutional arrangements. Rawls debated over five regimes: "state socialism with a command economy," "liberal (democratic) socialism," "laissez-faire capitalism," "welfare state capitalism," and "property-owning democracies." Rawls put forward four questions, the "question of right," the "question of design," the question of "incentive compatibility," and the "question of competence." Among these questions he was more concerned about the question of right or just (Persky 2010). He found "property-owning democracy" will meet his basic principles, however, it did not stop him to latch a high degree of conditionality. Private property is highly problematic when left to laissez-faire mechanisms as means to ensure justice as Justice Chinnappa (1983 AIR 803, 1983 SCR (3) 327) has mentioned in his judgment. It leads to powerful concentrations of property that violate Rawls's principles of justice.

A high material standard of life is not central to justice. Rawls went on to state, "great wealth (read property) ... beyond some point is more likely to be a positive hindrance, a meaningless distraction at best if not a temptation to indulgence and emptiness" (Rawls 1971/1999, 258). A right to personal property is "basic" of a just society to the extent to which it allows "a sufficient material basis for personal independence and a sense of self-respect, both of which are essential for the adequate development and exercise of the moral powers" (Rawls 1971/1999, 114). Therefore, from the point of view of self-respect, de Soto's empowering, enabling protection against eviction elements of the policy is in alignment with Rawls' theory of justice. He argued that choice of land law regimes must depend on "the traditions, institutions, and social forces of each country, and its particular historical circumstances" (Rawls 1971/1999, 242). When de Soto's formalization drive ignores the context, the process will cross the thin line between justice/injustice. Many criticize de Soto on similar grounds (Gilbert 2002, Lesorogol 2003, Roy 2005). There is no clear-cut, one-size-fits-all solution to include local and contextual conditions given by Rawls, nor by de Soto. Rawls said,

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<sup>83</sup> When policy implementation affects a large number of the population, then two competing versions of utilitarianism will indicate different impact. The average utilitarianism will choose the act which maximizes utility per person; on the other hand aggregate utilitarianism will say choose the act that maximizes the sum of utility across persons. In a given population, utilitarianism will pick the act which leads to the highest sum of utility regardless of how evenly (irrespective of) this utility is distributed across the population.

The allocation branch is also charged with identifying and correcting, say by suitable taxes and subsidies and by changes in the definition of property rights, the more obvious departures from efficiency caused by the failure of prices to measure accurately social benefits and costs. To this end suitable taxes and subsidies may be used, or the scope and definition of property rights may be revised (Rawls 1971/1999, 244).

Here, Rawls ended up arguing to choose the best one among the lot, which is not unjust, but more interestingly he allowed changing the definition of property rights. Therefore, the change in the property ownership is just according to Rawls' theory of justice. Rawls even envisioned inheritance tax as the principal mechanism by which large accumulations of capital will be impossible over time (Rawls 1971/1999, 245). De Soto's effort to distance himself from redistribution (given the kind of skewed property distribution that is present and persistent) puts his theory little less than how the Rawls ideal property regime is envisioned. However, even doing so, de Soto kept a window open to a further set of policies to ensure the poor are empowered. This escape route does not necessarily convince me that actually de Soto wanted to propose Rawls' just property regime.

Rawls found supports on just "institutions and implementations" (Persky 2010) to organize land regime like de Soto. Since free choice of occupation and the availability of finance are elements of a just society, if de Soto's formalization can stimulate easy and accessible credit market to attain reasonably full employment in a given society (Rawls 1971/1999, 244), then again, it satisfies Rawls proposition of a just society. De Soto's assertion that the extra-legal always finds its way out if the legal framework fails to incorporate informality compel me to rethink about de Soto's idea. Is de Soto's policy customized for societies where a weak state exists? The answer to this question is 'yes.' De Soto's *Mystery of Capital* actually suggests a way forward for developing a weak state to a stronger state which will ensure that the least-advantaged are empowered. However, if the extra-legal always tends to find a way, then such development should be termed a threat towards a just society.

The questions raised by me earlier is, does this encourage more extra-legal practices, because anyway, the state will legalize it eventually? Rawls did not suggest that legislations should not change over the period of time, but he emphasized intergenerational justice. This intergenerational justice will ensure the changing nature of legislations which is on par with the principle of justice over the period of time. De Soto was not explicit about intergenerational justice in Rawls sense, but he believed such formalization would have a long-term developmental effect. Once the new system is in place and further change becomes the need of an evolving society of the future then such changes based on principle of justice are acceptable through democratic process.

The underlying assumption is that formal property rights will solve the majority of the injustices and inequalities in a given society. Such a hypothesis is very convincing and appealing if we understand property in its plural meaning. In a society where de Soto can ensure that a bundle of rights restored surely and rigorously for the poor, the society would become more just than it ever was before. The question of formalizing child marriage is out of the question since not only would it violate the first and second principal, it would also neglect the overarching meaning of intergenerational justice (Rawls 1971/1999 284-293 and Rawls 2001, 159). Deviation such as child marriage or some extreme one has been left to be answered by the theory of punishment, doctrine of just war and other theories to justify various ways to oppose unjust regime.

Here, the question which still remains is what if alternatives to provide justice are proven to be adequately more suitable than de Soto's idea? This question was also raised by Justice Chinnappa (1983 AIR 803, 1983 SCR (3) 327) and he argued that any change in the property regime, which of course he supports in order to ensure social justice, should pass the test of infallibility before being implemented. Rawls saw the selection among alternatives will be determined on the scale of efficiency. The most efficient arrangement within a given society and a particular point of time is one (Rawls 1971/1999, 61). If there are other arrangements available (all of them obviously just as their basic criteria) which is efficient than the present one then such arrangement is not the just arrangement that we will choose.

In a worst possible social order, what if a dominant group (not necessarily the majority group in terms of the actual number of people) actively goes against de Soto's land reform? There is evidence to show that it actually can happen and things can go terribly wrong (Gilbert 2002). The academic world is widely divided, firstly on if de Soto's policy is the best among alternatives, and secondly, some even argue that de Soto has not given us anything new (Sjaastadt and Cousins 2008)! Therefore, if de Soto's policy is found to be more efficient (in terms of use of resources) than alternatives then we have arguably achieved the most just and efficient society. The answer to the question if de Soto's reform is the most efficient one, demands a comparative analysis of different means of titling process which can be the central theme of a new research. Having said, I do not want to escape from answering this vital question. There is solid research-based evidence which supports that private property ownership may not be the best solution where cultural and traditional backgrounds support collective livings (Lesorogo 2003). The argument for private and often individualist property regime comes under the question of societal legitimacy, may not be justified even if de Soto eyes to bring unified system in a state or unification with the global economy.

The conclusions do not though end here; they raise more questions than they solve. Does the institution's genuine intention to ensure justice constitute a just society because it intends to take care of the least-advantaged? The difficulties lie in the choice of the policy because of the infallibility attached with the means of justice. Practically, while framing, the policy weighs between different procedures of justice and also at the same time reconcile diverse political views (Rawls 1971/1999, 147-8). The debates move around speculative political and economic outcomes and how we want to organize our society (Rawls 1971/1999, Sandel 2010). The aim is to frame a just procedure which produces just outcome too. Therefore, it is not about the intentions only, but at the same time the outcome also. De Soto's land reform might have the intention to empower the poor but that does not necessarily mean it is a just policy if the procedural hindrances produces unjust outcomes. De Soto has been criticized for being too simplistic in prescribing solutions and often prescribing limited supporting institutional arrangements to ensure a just procedure being followed. Though the implementation of the de Soto's policy is something not under the periphery of this research, it would have been highly inappropriate if the research did not acknowledge the importance of implementation in the scheme of justice.

## 6 Conclusions

Conclusions from this study can be drawn on multiple levels. Firstly, I have analysed the nature of traditional land reform policies in India to assess the mortgaging provisioning to compare them with de Soto's land reform. Secondly, I have analysed a path-breaking Indian land reform legislation to understand how just Indian land reforms were. Lastly, I have looked at de Soto's land reform policy through the eyes of Rawls' theory of justice. Because of some limitations embedded within the design of the thesis and also the restricted nature of search, the conclusion will lose some of its strength and some questions will remain unanswered (especially the implementation of policies part). However, having said that, I must say that conclusions are not unscientific just because the research has not looked at the implementation of the policy, but rather looked at the overall design of de Soto's land reform through Rawls' theory of justice. Like Rawls, my defense of choosing to look into the policy design is that I am more concerned about the design of our society and the values on which it stands rather on the details of implementation within transnational variations<sup>84</sup>.

As I have mentioned earlier, the conclusion is multi-fold. Within Indian traditional land reform, the only window of opportunity to raise capital is through either mortgage or sub-lease or selling. The legislations have empowered new title-holders the right to (sub) lease and some window of opportunity where capital formalization can take place; thus falls thinly under de Soto's title formalization process. However, the difference between traditional and de Soto's land reform can be as wide as imagined because of the conditionality attached with the provisioning of mortgages. Such legislations empowered legal tenants or sharecroppers and they were given the right to mortgage their land with such banks and institution with similar legal backgrounds or institutions owned by the state. As a consequence, the right holders cannot transfer the rights to anyone but to a member of a cooperative society/bank. Since Cooperative banks were (also to some extent "are") more of a representation of a caste-based society and it was (and "is") difficult to get loans from LDB, the transformability of land as capital is limited. These limitations on the property's use reduce the value of the property right and makes the de facto rights of the holder more limited than comparable rights that are recognized formally by such newer breed of legislations (those which are roughly motivated by de Soto's land reform, such as Karnataka's *Bhumi* project).

There are several land reform legislations which are silent on the provisioning of mortgaging or leasing of land. On the one hand, such legislation encourages informality at first look, but it also paves the way in formalizing separate legislations to provide mortgage and leasing opportunities. Therefore, in terms of transforming land into capital, Indian traditional land reform performs poorly compared to de Soto's land reform. On the other hand, the nature of ownership rights handed over to the newer owners is often diluted and weak in the case of traditional Indian land reform than the de Soto's prescription. Analysing one path-breaking land reform legislation through Rawls' theory of justice has helped me to produce a comprehensive but not complete picture of how just land reform policy in India is. The analysis found that the provisions are broadly advantageous to the least-advantaged member of the society. Such exercise indicates the need to analyse the

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<sup>84</sup> I will also take the liberty to refer de Soto, who in the middle of all criticism has argued to look at the contextual adjustment of his theory rather than imposing a concrete policy framework fit for all sizes and weather.

entire bundle of land reform legislations in India and many other associated issues<sup>85</sup> through Rawls' theory of justice.

Analysing de Soto through Rawls' theory of justice has been an exciting journey. I have looked at various levels to assess how de Soto's formalization performs as a just policy. According to Rawls, any natural distribution and being born in certain social circumstances are neither just nor unjust. It is the institution's dealing with these arrangements which are just or unjust. De Soto saw a part of the reason why the poor are poor is that they lack something which the institutions are not providing to them, i.e. formal ownership. He did not care much about if such arrangements are the result of historical injustice or otherwise. He inherited some problems in the existing system which he wanted to ameliorate. In de Soto's rhetoric, he was not much concerned about injustices to the original owner in the process of implementing this new policy. He in fact never argued that in order to formalize the land other's land rights should be quashed (de Soto 2000, 160; asks not to compromise the existing formal property rights). Quashing of other's rights often comes under the fury of the liberty question, Rawls argued; liberty should be balanced with each other and also make sure that no individual or class enjoys greater liberty than others. The existence of such unequal distribution of land is the biggest hindrance in ensuring a balanced liberty in a given society because land is not merely a property or even a bundle of rights but has, rather, a plural meaning.

De Soto's formalization is silent on distributive justice, but his policy consequences have redistributive features (Sjaastad and Cousins 2008). De Soto's effort to distance himself from redistribution<sup>86</sup> puts his theory less than how the Rawls ideal property regime is envisioned. In doing so, de Soto kept a window open to a further set of policies to ensure the poor are empowered. This escape route does not necessarily convince me that de Soto actually wanted to propose a just property regime.

De Soto's policy is, however, morally right if such an instrument ultimately benefits the least-advantaged section of the society (and does not facilitate illegal housings of well-to-do sections) but not single-mindedly aim for wealth legalization. When a decision has been taken not only on the moral ground, but also on political and economic efficiency grounds, changing the distribution of wealth and assets does not account to injustice. Rawls was confident that when distribution of land is unreasonably skewed, the definition of "property rights may be revised"<sup>87</sup> (Rawls 1971/1999, 244). He, who always dis-

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<sup>85</sup> E.g., tax rules, inheritance laws, zoning laws, and other related areas.

<sup>86</sup> Given the kind of skewed property distribution is present and persistent, Madrick 2001.

<sup>87</sup> I had a very interesting conversation with Benjamin Lockwood (a PhD Candidate of Business Economics at Harvard University and Harvard Business School). He encouraged me, "to think seriously about the fundamental distinction between taxation and adverse possession. One possibility: if public policy about adverse possession is well known and publicized, then undertaking an action that results in adverse possession may not be so different from undertaking an action that results in taxation (2014, 12 March, pers. comm.)." The issues of public/overlapping consensus (when well publicized) have been discussed by Rawls 1971/1999 (340) but have been criticized by many. Even though critiquing Rawls's work is beyond the scope of this research, I would like to discuss a few things with regard to taxation and adverse possession. If we consider earned income as personal property (influenced by John Locke, Second Treatise of Civil Government, § 27, 1689) then tax is state's forceful taking of property (Lockwood, e-mail dated on 11 March, 2014), in the same manner adverse possession includes the component of hostility. Overlapping consensus may work in the fever of land formalization than otherwise and effectively rule out such hostility. Such overlapping area can be governability, protection of civil rights among a newer group of population who previously did not enjoying same rights as others therefore potentially increasing the vote bank for the ruling class, to the desire of the opposition group to sharing only portion of land (from the possession, arguably, those who will lose land in



tanced himself from specifying details of public policy, could not escape the temptation of suggesting this radical measure. At the same time, control over land when concentrated in the hands of the few, the marginal utility of land to satisfy central capabilities of human life, does not increase substantially. Thus newly introduced property regimes should not only take care of the present state of the individual or system but also shape future arrangements (Rawls 1971/1999, 259). De Soto was not explicit about intergenerational justice in a Rawlsian sense, but he believed such formalization would have a long-term developmental effect. Free choice of occupation and the availability of finance are also elements of a just society. If de Soto's formalization can create easy and accessible credit markets to attain reasonably full employment in a given society (Rawls 1971/1999, 244) then again, it satisfies Rawls' proposition of a just society.

In Rawls' just world, we choose the best available arrangement that balances imperfections by compensating injustices. De Soto's land reform is trying to balance between protections against arbitrary eviction, the insecurity which always accompanies informality with the introduction of a less troublesome system for doing business for poor. De Soto's reform provides poor people a similar starting point as the privileged class through the access to formal credit and bundle of rights which comes with formal legal ownership. Legalizing the ownership of informal settlement arguably raises the exchange value and shows the differential outcome in a post-de Soto reform regime along with stimulating realization of the central capabilities of life. From the point of view of self-respect, de Soto's empowering, enabling, protection-of-eviction elements of the policy is in alignment with Rawls' theory of justice. His argument that property regimes must consider 'the traditions, institutions, and social forces of each country and its particular historical circumstances' shows a decent amount of flexibility in his policy framework (de Soto 2010, 274) like Rawls. However, there is no clear-cut, one-size-fits-for-all solution to include local and contextual conditions, according to Rawls, not according to de Soto. In a society where de Soto can ensure a bundle of rights restored surely and rigorously for the poor, the society would become more just than ever before.

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this formalization process will be opposing such policy) in exchange of political stability, security of their life (often desperate landless people can create bigger regional conflicts where often land is potentially dangerous catalyst, such as present day conflicts around central Indian states) and etc. Also principle of justice asks us to consider intergenerational justice and to ensure that "unequal society with absent landowners may nevertheless be largely benefitted by permitting takings (property) in some cases" (Lockwood, 11th March pers. Comm). Rawls was sure that "there is no reason in principle why the greater gains of some should not compensate for the lesser losses of others; or more importantly, why the violation of the liberty of a few might not be made right by the greater good shared by many" (Rawls 1999, 23). Therefore, even if formalization does not have greater effect private investment rather on social investment (Lanjouw and Levy 2004, 902), bare short term economic cost-benefit calculation is not appealing in Rawls just society.

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## Annexe A: Provincial legislations analysed

No.	State or Province	Year	Title	Description	Right to mortgage/ Right to lease
1	Andhra Pradesh	1950 (as amended 1954)	(Telengana Area) Tenancy and Agricultural Lands Act <sup>1</sup>	Tenancy is protected for Tenants; minimum term of lease; right of purchase of non resumable lands; transfer of ownership to protected tenants in respect of non-resumable lands is described.	Yes, only when he/she is a member of a Co-operative Farming Society in favour of such society(Section 30 (2))/ Yes, only when he/she is a member of a Co-operative Farming Society in favour of such society(Section 30 (2))
2		1954	The Hyderabad Abolition Of Inams And Cash Grants Act, 1964 <sup>2</sup>	Abolition of all the Jagirs in Telengana.	NA/NA <sup>3</sup>
3		1955	Andhra Pradesh (Andhra Area) Inams (Assessment) Act <sup>4</sup>	Full assessment on certain Inam lands in the State of Andhra.	NA/NA
4		1956	The Andhra Pradesh (Andhra Area) Inams (Abolition And Conversion Into Ryotwari) Act <sup>5</sup>	Acquisition of estates and abolition of Inams.	NA/ provision of lease (section 10) but silent on details
5		1956 (as amended 1974)	Tenancy Act <sup>6</sup>	Tenancy is permitted up to 2/3 of ceiling area; law does not provide for conferment of ownership right; confers continuous right of resumption on landowners.	Yes, only when he/she is a member of a Co-operative Farming Society in favour of such society/ Yes, only when he/she is a member of a Co-operative Farming Society in favour of such society (section 10(4))
6		1959	Andhra Pradesh (Telangana Area) Abolition Of Cash Grants Act <sup>7</sup>	An Act to discontinue certain classes of cash grants	NA/NA
7		1986	Andhra Pradesh (Telangana Area) Abolition Of Inams (Amendment) Act <sup>8</sup>	Abolition of Inams	NA/NA
8		2011	Andhra Pradesh (Telangana Area) Abolition Of Inams (Amendment) Act <sup>9</sup>	An Act to discontinue certain classes of cash grants	NA/NA
9	Gujarat	1948 (as amended 1955 and 1960)	Bombay Tenancy and Agricultural Lands Act	Tenants entitled to acquire right of ownership after expiry of one year up to ceiling area; confers ownership right on tenants in possession of dwelling site on payment of 20 times annual rent; law does not confer any rights on subtenants.	Yes, only when he/she is a member of a Co-operative Farming Society in favour of such society or in favour of state for obtaining loans under few other acts (Section 63 (1) (c) (3))/ Yes, only when he/she is a member of a Co-operative Farming Society in favour of such society (section 10(4))
10		1960	Agricultural Lands Ceiling Act	Imposed ceiling on landholdings.	No, not without permission from the collector (GUJ. GOVT. GAZ., EX.; MARCH 2, 1974/PHALGUNA 11, 1895: Act 5 (2) (D1)(4).

11		1969	Inams Abolition Act	An Act to abolish Inams held by religious or charitable institutions within the area of Bombay of the State of Gujarat	NA/NA
12		1973	The Gujarat Slum Areas (Improvement, Clearance and Redevelopment) Act	Clearance of designated slum area.	NA/NA
13	<b>Haryana</b>	1953	Punjab Security of Land Tenures Act	Provides complete security of tenure for tenants in continuous possession (<15 acres) for 12 years; grants tenants optional right of purchase of ownership of non-resumable land; no bar on future leasing.	NA/NA
14		1955	Pepsu Tenancy and Agricultural Land Act <sup>10</sup>	Same as above.	No, with an exception if mortgaged with the State Government or the Punjab State Co-operative Land Mortgage Bank, Ltd. Established under the Punjab Co-operative Land Mortgage Banks Act, 1957 (section 31 (1)/NA
15	<b>Karnataka</b>	1958	Mysore (Personal and Miscellaneous) Inams Abolition Act	Abolition of Inams	NA/NA
16		1960	The Karnataka Inams Abolition Laws (Amendment) Act	Same as above with some amendments.	NA/NA
17		1961	Land Reforms Act	Provides for fixity of tenure subject to landlord's right to resume 1/2 leased area; grants tenants optional right to purchase ownership on payment of 15-20 times the net rent; imposition of ceiling on landholdings.	Yes, if only mortgage or create a charge on his/her interest in the land in favour of the State government, [a financial institution, a co-operative land development bank, a co-operative society] (act 19 (2) & Act 21 (3))/Yes, only for the armed force serviceman or a sailor (Act 21 (e) (2)).
18		1984	The Mysore (Religious And Charitable) Inams Abolition (Karnataka Amendment) Act	Abolition of Inams	NA/NA
19		2011	The Mysore (Religious And Charitable) Inams Abolition (Karnataka Amendment) Act	Same as above	NA/NA
20	<b>Kerala</b>	1960	Agrarian Relations Act	Abolishes intermediaries, but law struck down by Supreme Court.	-
21		1958	The Kerala Land Relinquishment Rules	Rules for relinquishment of registered land.	NA/NA

22		1963	Land Reforms Act <sup>11</sup>	Concedes tenant's right to purchase the land from landowners.	NA/Yes, there are regulation on how to deal with land sub-leased, however silent on sub-leasing provisions.
23		1974	Agricultural Workers Act <sup>12</sup>	Called for employment security, fixed hours, minimum wages, etc.	NA/NA
24	<b>Madhya Pradesh</b>	1952	The Abolition Of Jagirs And Land Reforms Act (Vindhya Pradesh)	Resumption of all Jagir-lands in the State and for certain other measures of land reforms.	NA/NA
25		1953	The Abolition Of Jagirs And Land Reforms Act, (Bhopal)	Resumption of all Jagir-lands	NA/NA
26		1960	Ceiling on Agricultural Holdings Act	Imposed ceiling on landholdings of 10.12 hectares (1960-1972) and of 4.05-21.85 hectares (after 1972).	NA/NA
27		1965	The Abolition Of Jagirs And Land Reforms (Vindhya Pradesh) (Madhya Pradesh Amendment And Validation) Act	An Act to amend the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952 and to validate the appointments of Additional Tahsildars	NA/NA
28	<b>Maharashtra</b>	1948	Bombay Tenancy And Agricultural Lands Act <sup>13</sup>	Regulation of tenancy of agricultural land.	No/ Yes, possible to sell off the land but under certain conditions (Section 43 and section 63)
29		1961	Agricultural Land (Ceiling on Holdings)Act <sup>14</sup>	Imposition of ceiling on landholdings.	Yes, by the joint farming society for the improvement of land with approval of the collector (section 29 (1) (a)/((b) with an exception for armed force personnel/ same conditions as for the mortgage
30		1965	The Hyderabad Tenancy And Agricultural Lands (Amendment) Act	Amendment to the original law.	Except mortgages in favor of Co-Operative Bank, other mortgages of any land delivered to a non-agriculturalist or a non-agricultural labour or a land holder or tenant having excess ceiling area shall not be valid (Section 47 (b)). If a person is willing to sell any land already leased to tenants should apply to the Tribunal (Section 48).
31	<b>Odisha</b>	1951	Estate Abolition Act <sup>15</sup>	Aimed at abolishing all intermediary interests.	NA/NA/NA
32		1972	The Orissa Consolidation Of Holdings And Prevention Of Fragmentation Of Land Act <sup>16</sup>	An Act to provide for consolidation of holdings and prevention of fragmentation of land for development of agriculture in the state of Orissa.	No, with an exception for orchards, groves or homestead lands; for agricultural land it is only possible with the permission of Consolidation Officer (Section 4

					(2)/NA
33		1960 (as amended 1973 and 1976)	Land Reforms Act <sup>17</sup>	Provides for fixity of tenure of nonresumable area; prohibits subletting; financial help for purchase of ownership right lacking; imposition of ceiling on landholdings of 8.09-32.37 hectares (1960-1972) and of 4.05-18.21 hectares (after 1972).	No/lease void (section 6 (2))
34		1972	The Orissa Prevention of Land Encroachment Act <sup>18</sup>	Prevention of unauthorized occupation of lands which are the property of Government	NA/NA
35	<b>Punjab</b>	1953	Punjab Security of Land Tenures Act <sup>19</sup>	Provides complete security of tenure for tenants in continuous possession of land (<15 acres) for 12 years; grants tenants optional right of purchase of ownership of non-resumable land; no bar on future leasing. Of land (< 15 acres) for 12 years; grants tenants optional right of purchase of ownership of non-resumable land; no bar on future leasing.	NA/NA
36		1955	Pepsu Tenancy and Agricultural Land Act <sup>20</sup>	Same as above.	No, with an exception if mortgaged with the State Government or the Punjab State Co-operative Land Mortgage Bank, Ltd. Established under the Punjab Co-operative Land Mortgage Banks Act, 1957 (section 31 (1))/NA
37		1972	Land Reforms Act <sup>21</sup>	Permissible limit (ceiling) is 7 hectares; 5 acres of land are secured; optional right of purchase of ownership; share-cropping not considered tenancy; land leases not registered under provision of tenancy laws.	NA/NA
38	<b>Rajasthan</b>	1953	Bombay Merged Territories and Area (Jagir Abolition) Act <sup>22</sup>	Same as above.	NA/NA
39	<b>Tripura</b>	1960	Tripura Land Revenue And Land Reforms Act	An Act to consolidate and amend the law relating to land revenue in the Union territory of Tripura and to provide for the acquisition of estates and for certain other measures of land reform.	NA/NA



40	West Bengal	1953	Estates Acquisition Act	Landholders limited to a ceiling; provided for abolition of all intermediary tenures. <sup>23</sup>	NA/NA
41		1955 (as amended 1970, 1971, 1977)	Land Reforms Act	Ceiling on land holding for owners and tenants, protection against eviction, provision of mortgaging, protection land rights of vulnerable section of population. . <sup>24</sup>	Yes, with some conditionality as specified in section 7 (1)/NA
42		1956	<i>Bargadars</i> Act <sup>25</sup>	Stipulated that the <i>bargadar</i> and the landowner could choose any proportion acceptable to them.	NA/NA
43		1972	Acquisition and Settlement of Homestead Land (Amendment) Act <sup>26</sup>	Tenants of homestead lands are given full rights.	NA/NA
44		1975	Acquisition of Homestead Land for Agricultural Laborers, Artisans and Fishermen Act	Over 250,000 people were given homestead land (about eight cents each) up to January 1991.	NA/NA

<sup>1</sup> <http://www.manupatrafast.com/ba/fulldisp.aspx?iactid=7984#>

<sup>2</sup> <http://bombayhighcourt.nic.in/libweb/acts/1955.08.pdf>

<sup>3</sup> NA denotes here as silent in the bare act.

<sup>4</sup> <http://www.manupatrafast.com/ba/fulldisp.aspx?iactid=11368>

<sup>5</sup> <http://www.manupatrafast.com/ba/fulldisp.aspx?iactid=11367>

<sup>6</sup> <http://www.apard.gov.in/tenancyact.pdf>

<sup>7</sup> <http://www.manupatrafast.com/ba/fulldisp.aspx?iactid=1201>

<sup>8</sup> <http://www.manupatrafast.com/ba/fulldisp.aspx?iactid=4992>

<sup>9</sup> <http://www.manupatrafast.com/ba/fulldisp.aspx?iactid=10131>

<sup>10</sup> [http://punjabrevenue.nic.in/pepsu\\_tanact55\(1\).htm](http://punjabrevenue.nic.in/pepsu_tanact55(1).htm)

<sup>11</sup> [http://www.kerala.gov.in/docs/pdf/land\\_reforms.pdf](http://www.kerala.gov.in/docs/pdf/land_reforms.pdf)

<sup>12</sup> [http://www.old.kerala.gov.in/dept\\_lab/act5.pdf](http://www.old.kerala.gov.in/dept_lab/act5.pdf)

<sup>13</sup> <http://landsofmaharashtra.com/Forms/Bombay%20Tenancy%20and%20Agricultural%20Lands%20Act%201948.pdf>

<sup>14</sup> <http://bombayhighcourt.nic.in/libweb/acts/1961.27.pdf>

<sup>15</sup> [http://www.odisha.gov.in/revenue/Acts\\_Rules/Acts/OEA\\_Act.pdf](http://www.odisha.gov.in/revenue/Acts_Rules/Acts/OEA_Act.pdf)

<sup>16</sup> [http://www.odisha.gov.in/revenue/Acts\\_Rules/Acts/OPLE\\_Act.htm](http://www.odisha.gov.in/revenue/Acts_Rules/Acts/OPLE_Act.htm)

<sup>17</sup> [http://www.odisha.gov.in/revenue/Acts\\_Rules/Acts/OLR\\_Act.pdf](http://www.odisha.gov.in/revenue/Acts_Rules/Acts/OLR_Act.pdf)

<sup>18</sup> [http://www.orissa.gov.in/law/acts/pdf\\_files/1972/OCHPFLA\\_1972.pdf](http://www.orissa.gov.in/law/acts/pdf_files/1972/OCHPFLA_1972.pdf)

<sup>19</sup> [http://punjabrevenue.nic.in/security\\_land\\_tenact1.htm](http://punjabrevenue.nic.in/security_land_tenact1.htm)

<sup>20</sup> [http://punjabrevenue.nic.in/pepsu\\_tanact55\(1\).htm](http://punjabrevenue.nic.in/pepsu_tanact55(1).htm)

<sup>21</sup> <http://punjabrevenue.nic.in/Lrefact72i.htm>

<sup>22</sup> <http://bombayhighcourt.nic.in/libweb/acts/1954.39.pdf>

<sup>23</sup> [http://banglarbhumi.gov.in/banglarbhumi/\(S\(w13c1fuhqwiaybuvaeh3fhyt\)\)/Download/West%20Bengal%20Estate%20Acquisition%20Act,%201953.pdf](http://banglarbhumi.gov.in/banglarbhumi/(S(w13c1fuhqwiaybuvaeh3fhyt))/Download/West%20Bengal%20Estate%20Acquisition%20Act,%201953.pdf)

<sup>24</sup> [http://www.wbrsra.org/exam\\_pdf/West%20Bengal%20Land%20Reforms%20Act,%201955.pdf](http://www.wbrsra.org/exam_pdf/West%20Bengal%20Land%20Reforms%20Act,%201955.pdf)

<sup>25</sup> [http://www.lawsofindia.org/pdf/west\\_bengal/1956/1956WB19.pdf](http://www.lawsofindia.org/pdf/west_bengal/1956/1956WB19.pdf)

<sup>26</sup> <http://www.commonlii.org/in/legis/wb/act/wbaasohla1969511.pdf>