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Social Function of Property (SFP) in India: Is Credibility of Property in Informal Settlements Emerging?

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Abstract

Increasingly inequality in property is beginning to jeopardize social relations. Some of the resultant outcomes from such strains are: inter-household / social conflicts, segregated housing arrangements, over exploitation of natural resources to gain more from limited resources, and challenges to quality of living (for e.g. health) due to dense living. Ownership based property regimes are going to deepen this. We are exploring pathways to reduce this tension. We propose Social Function of Property (SFP) based on the principle of productive use as credibility of property could be the framework towards this. We reanalyze several case laws which has disputes around use of property. Our analysis is keeping in mind the principles of SFP. In addition, we also look at slum eviction cases. In these analyses we aim to understand if credibility of the property – based on functionality – is forming a basis for recognizing the property rights.

Our findings indicate there is very little evidence, currently in property regimes to acknowledge functionality. Yet, we notice prospects for SFP in Indian informal settlements are huge since mutual recognition of property is often much more stronger than what the state can observe and certify. We also noticed that social function is often interpreted as protection of ecology,

when court considers the cases. This is a new dimension that is brought to original SFP framework.

Introduction

Property titling in informal context has often been understood as the ‘Mystery of Capital’ solution (de Soto 2010), i.e., neo-liberal solution to urban landlessness. The credibility hypothesis offers an alternative framework to the slum¹ property titling, where the function of property is valued by easing the clutches of the strong ownership based property regimes. The alternative framework shifts the discourse from the continuum of security-insecurity of tenure (UN Habitat and GLTN 2008) to productive-unproductive property.

The Credibility hypothesis, as applied to the assessment of property tenure arrangements by Peter Ho (2014; 2016; 2020), substitutes the mainstream conceptions of efficiency arguments of formal property titles, and seeks legitimacy in the social practice property institutions. It is a litmus test to understand whether larger principle of Social Function of Property (SFP) is emerging.

The private property model, with the formal title and security, is considered as the starting point for planning theory in the Global North (Fawaz & Moumtaz, 2017; Pellissery & Lødemel 2020). This model has become the dominant model to organize economically efficient and productive property tenure (Ho, 2014). However, advocates of the Credibility hypothesis assert that while such an assumption of the efficiency of a property arrangement based simply on its form may carry a “sensible appeal”, this is not always reflected in reality (Ho, 2016). The empirical investigations on the performance of a range of property arrangements reveal it is the function/s

¹ The equivalent north India terms is “basti”. The original word “basati” from which this shorter term originate from, means residence, habitation or locality, which is less stigmatizing than illegal settlement. However, noble the term’s original meaning, the *basti* area is looked down in everyday lives in India. One of popular mid-70s to 90s slurs was *boys of basti* or *girls of basti* or *your language is like a basti person*, when someone misbehave.

that a property arrangement fulfils, which precedes the impact that the form of the property arrangement may have on its performance (Zheng & Ho, 2020; Liu & Zheng, 2020; Ho & Sun, 2018). Thus, even informal, non-privatised property arrangements are likely to perform well or badly as formal, private property tenure depending on their ability to be tested as credible to fulfil the functional needs of the community they are set in (Ho, 2014).

Indian slums or informal housing accommodate most of the population of Urban India and it will continue to grow even bigger in the coming decades (UN Habitat, 2003). Repeated attempts to deal with this informality, sometimes via “title formalisation”, on other times eviction, have not established better state-sanctioned property regimes on these informal areas, nor public amenities and services reached to ensure equal citizenship for people living in these areas. In attempting to change the informal nature or illegal according to the state, these attempts have ignored everyday use, enjoyment and establishment of spaces of non-state welfare that are organised by an everyday social contract (Davy and Pellissery, 2013).

The paper is organised in three parts. First part of the paper is providing an overview of the concept of the credibility hypothesis and its applications. Apart from global literature, we take special attention to find equivalent ideas in constitutional assembly debates of India and literature of progressive property scholarship in India. Second part of the paper is a note on methodology adopted and the summary of empirical evidence that informs this paper. Third part of the paper is seeking pathways to expand SFP framework in India.

PART 1

A Brief History of Social Function of Property (SFP) in Land

The tension between ‘rights of user’ and ‘rights of owner’ has existed as long as property institution existed. Since credibility hypothesis is rooted in this tension, it is a complex and long exercise to trace its origins. Therefore, rather than attempting to be comprehensive, we will try to sketch the key scholars who germinated the idea. Our aim is to develop a set of principles that inform SFP, which is a key component to methodology of this paper (elaborated in PART II).

Property as understood by the lay person refers to the relationship between the owner and a thing owned by the owner. This is the essence of the understanding of private property. Though property as a socio-legal institution that has evolved responding to changing value systems of human civilization², a widely accepted notion of private property is its quality of being enforced *in rem*, i.e. against the world at large: the power of the owner to move to court against those who are interfering with his/her property³. In the legal context the understanding of property is not just about one owner and his things. To fully appreciate the concept of property relations, we need the approach of ‘bundle of rights’ (Commons 1893; Klein and Robinson 2011). This approach points to each stick in the bundle representing a discrete right⁴. Yet, the stick of ownership in this bundle has been overemphasized throughout the world. Laying the emphasis on ownership rights has been found to be exclusionary. Within liberal framework, those who have control over resources also have access to court and legal systems to enforce the exclusion of other members of society (Allen 2007).

² See Fitzgerald’s (1966) summary of varying conceptualizations of property through Salmond’s definitions in different points of history.

³ Classical expression is William Blackstone’s definition of private property as “that sole and despotic dominion” (1766:2).

⁴ Beyond ownership dimensions (right to possess, right to use, right to convey and the right to bequeath), the dimensions access. Alexander and Penalver (2012) says ‘bundle of rights’ as lawyer’s understanding of property, compared to lay persons understanding of property on the relationship between owner and a thing.

To deal with this challenge, there are two dominant responses: A) ownership is not an absolute concept. Public interest could limit the private rights associated with ownership. In the planning process, the state could take away the private property without consent or compensation (see review of jurisprudence across the world on this idea in Alterman [2010]). B) Private property is only one type of understanding property relations, and several alternative frameworks of property relations exist. Three of them are common property (Hardin 1968; Ostrom 1990), state property (Needham 2001) and non-property (UN Habitat & GLTN 2008)⁵. These general principles of property theories operate within the institutions (social, legal, economic and political) of a nation-state.

Aristotelean and Thomist understandings on the social ownership of property have been commented extensively by property scholars. SFP's origins could be traced to these philosophers as well as Renaissance social contract theorists like Rousseau and Locke (Criticisms of Marx and several other scholars on the private property institution are also well known; Thoma Paine's ideas of the obligations of land users to the future of society are also worth recollecting in this genre). However, credit for attempting to turn these ideas into a legal framework goes to a French legal specialist, León Duguit. Duguit's work, and his influence in Latin America (through lectures and advice to governments in 1911), transformed the way property was understood in the Euro-American world. The expression Social Function of Property (SFP) could be rightly attributed to Duguit, for his emphasis on productive function of property. According to this view, property owners do not have absolute autonomy, rather he has an obligation to make it productive. The social-function doctrine holds that unlike the liberal conception, there are both internal as well as external limits to property. What is important to note is that Duguit and SFP scholars did not oppose private property.

⁵ See Bromley (1991) for the rationale of this classification.

Social obligation on property (or SFP) by owners is an established maxim in western conceptions of property law. SFP is not grounded in welfare theory but is in fact a part of the libertarian ideas of property rights (Foster and Bonilla 2011). SFP theorists seek to distinguish the theory from other theories which “use the idea of ‘the social’ to expand the realm of the objects of property ownership” or other theories of ownership which assert that property rights are not absolute (Alexander 1982). They assert the uniqueness of the SFP as an independent concept of ownership, which is based on the principle of ‘solidarity’. SFP has been conceived as a criticism of the ‘exclusion’ theorists in property theory. Exclusion theorists see individuals as autonomous, rational beings who seek the protection of property rights only to limit the intervention of the State in the use of their property and exclude others from the use of their property. SFP theorists point out that such an understanding of property does not account for a social fact of human society – solidarity. Solidarity, in this case, refers to the interdependence among people. The reliance on the assumption of the isolated individual by exclusion theorists is flawed, since human beings living in society are deeply interconnected. Hence, explain SFP theorists, property owners are obligated to put their property rights to productive use in such a way that it serves the community. It rests on the basic notion that society cannot privilege the rights of property owners if the law does not also guarantee sufficient resources to non-property owners.

Examining the characteristics of social obligation norms in the United States of America, Gregory Alexander (1982) distinguishes between its ‘thicker’ and ‘thinner’ versions. The ‘thinner’ versions of social obligation norms include the exercise of eminent domain, an owner’s obligation to pay property taxes or even negative impositions such as preservation laws. The ‘thinner’ versions of social obligation norms are more stable, since the ‘thicker’ norms entail enforcing a distributive justice. The practical manifestations of social obligation theories, may differ according to the political and social culture of a particular society.

Social obligation theorists emphasize the need for a social vision to direct the manifestations of theory and property law, in general. Alexander explains that the main function of property is to structure social relations and for this, a moral vision of the type of social relationships to be fostered is imperative: “It is not enough that a property law system is clear, formal and well-structured. It must care to do more than delineate owners from non-owners and seek to protect the social relationships that the property laws help structure and nurture”.

Take off for credibility hypothesis directly comes from this launch pad of SFP. More recently, it is Peter Ho (cited in the introduction of this paper) who has taken the planning idea to property relations. In the planning practices, ‘function’ of a plan or design has precedence over the plan/design itself. Applying this in property context, Peter Ho emphasized how the use/production of property operates more in a social relation context, rather than ownership (or title) which may be the driver behind speculative urbanism. Most of the metropolitan cities in the global South have evidence of the co-existence of shortage of housing and vacant apartments (built for investment purposes)⁶. From the point view of SFP, such assets are unproductive, and thus lack the characteristics of credibility.

SFP in Land across the Globe

As we traced the idea of credibility hypothesis, we noted the central role of Diguit and his work in Latin America in the year 1911. Most of the Latin American countries, struggling to achieve social minimum in the context of large estate owners depriving the agricultural labourers from access to livelihood, found the ideas of Diguit and SFP to be suitable to deal with the inequality of property in land. As early as 1925, Chilean constitution mentioned that right to property was subject to the limitations of the “maintenance of the progress of the social order”. But, more radical and

⁶ See Gandhi and Munshi (2017) for Indian scenario.

wide spread changes took place in Latin America through 1970s, when Catholic Church stepped up land reforms (Ondetti 2020).

El Salvador constitution of 1983 provides “the right to property in its social function is recognized and guaranteed”. Bolivian constitution of 1993 subjected fundamental right to “private property, individually or collectively, as long as it fulfils as a social function”.

In Brazil, for instance the social function of property is enforced as a strict application of the ‘rule of productivity’. Property is subject to expropriation by the State when it is unproductive or adheres to a use which has not been prescribed. These expropriations are not necessarily based on considerations of equity (Dos Santos). In Colombia on the other hand, the 1991 Constitution has brought with it a ‘Social State of Law’, with a strong emphasis on an interventionist State. This period had followed from a period from 1936-1991, marked by tension between the Constitution and the Statutory laws. During this period the Constitution had been amended to include the phrase ‘social function’ in the definition of property, but the Civil Code had retained a libertarian reading of property. This contradiction was allowed to exist because the Constitution was thought of as a mere political program and not accorded its traditional status at the top of the legal system. This was only resolved, when the Constitutional Court itself ruled that the State had an explicit “duty to protect associational and collective forms of property.”

Outside Latin America, it is German constitution that has emphasized social function of property. These examples are indicating how SFP is very close to civil law traditions.

Is there an Indian Debate on SFP?

At various points in India’s history, concerted efforts have been made to place limitations on the seemingly unfettered exercise of their ‘rights’ by

landowners in cities. Such restraints first came in the form of property taxation and rent control legislations and finally veered towards the use of corrective urban planning institutions and tools. For instance, the housing crisis in India in the aftermath of the First World War led to skyrocketing land values and house rents in colonial cities. However, the municipal corporations in these cities refused to take reformatory action citing the high values to be a function of the law of demand and supply. Reflecting on the policy response of the corporation, William Heath Phelps the Chairman of the Rent Enquiry Commission of Calcutta in 1919, objected to what he described as “a fetish” to uphold the law of demand and supply. He called upon the corporation to “see the difference in principle between the purchase of a pair of boots and the renting of a house.” The Rent Enquiry Commission was to investigate the rise in land values and house rents in Calcutta after the First World War. It found that land values were being driven up by financial speculations of an ‘unethical’ nature.⁷

The conditions in Calcutta in 1919 were similar to those of a modern Indian city, since it was characterized by a high demand for housing and an unavailability of land – a scarcity which was driven by the physical boundedness of Calcutta, hemmed in by the River Hoogly on one side and salt lakes on the other. However, the Commission pointed to other factors which were creating an artificial scarcity in housing stock, as the main reason behind the rising land values.

They accused the new Marwari landowners in the city of not using their vacant lands to build a new stock of housing, thus easing the demand pressure on the housing market. The Commission put down such reluctance on the part of the Marwaris to their complete ignorance of the economics of the land market. The Commission petitioned that housing was a basic

⁷ Profiteering by speculating on increasing land values had been the norm in colonial cities. However, until then such profiteering was in the hands of only the British and upper-class Bengali landowners. The profiteering from land values in the aftermath of the First World War was entirely in the hands of a new group of landowners- the Marwaris. There was a great resentment against the elevation of the Marwaris from both, the British residents as well as the traditional Bengali landowners. They sought to distinguish themselves from the new class of ‘extortionist landowners’, who were also described as ‘house bullies.’

human right and thus placed an onus on the landowner to put his land to productive use by constructing housing on it and reaping its rental value.

The Commission's attack on the hoarding of land and housing stock, strikes upon a very important aspect of the libertarian conception of private property – the obligation of the owner to put private property to productive use keeping in mind the larger interests of society. This principle is described as the 'rule of productivity' and is at the core of an important, but often ignored aspect of libertarian property rights – the social obligation of private property.

Unlike Latin American constitutions, though SFP was not adopted, it was obliquely discussed in the Indian Constituent Assembly during the debates on the framing of the right to property in the Constitution of India. Jawaharlal Nehru premised this discussion by putting forth what he described as the two main sides to the debate, on the one hand was the libertarian conception of property rights with no internal limits on the exercise of an owner's rights over his own property and on the other hand was a conception of property which was focused on "community's interest or community's right." According to the discussions in the Constituent Assembly, the balancing of these two approaches would culminate in the breadth of the eminent domain provision of the Constitution. Even though a constitutional provision for the exercise of eminent domain is itself a medium which acknowledges the function of property in structuring social relations, there is no clear reference to this aspect of property in the Constitution. However, Jawaharlal Nehru in his address on the eminent domain provision before the Constituent Assembly, did explain that the need for carrying out the compulsory acquisition of property is in furtherance of the desire to effect 'social reform' or 'social engineering'.

Other members of the Constituent Assembly, such as H.V. Kamath and Govind Ballabh Pant advocated the need for a grounding value-framework for property rights in India. H.V. Kamath stressed on dispelling the notion

that private property rights were to be upheld unconditionally, emphasizing their need to be employed to the benefit of wider society. Jawaharlal Nehru also stated the primacy of “rights of the community at large” over individual property rights in the hierarchy of property rights. (Views of K. T. Shah, K. M. Munshi, Harnam Singh & K. M. Panikkar on the limits to private property are also worth noting here). However, much of these debates were between maintaining / abolishing private property in the light of socialism (communitarian interest) and liberalism (individual interest). Substantial discussion also went into whether compensation is required when private property is acquired for public purpose. As we noted in the earlier part of this paper, SFP is focused on the idea of productivity.

Prior to this discussion, in 1946 Dr. B.R. Ambedkar had submitted a memorandum to the Constituent Assembly which emphasized the need to uphold the rule of productivity. Dr. Ambedkar predicted that the government would be unable to regulate the productivity of agricultural land in the hands of private owners and pointed to the large extent of uncultivated agricultural land as evidence of this. He demanded that such uncultivated land be handed over to Dalits for their use. Ambedkar’s emphasis on productivity was also at the core of his opposition to the consolidation of land holdings. He contended that the productivity of the land had only to do with the intensity of the agricultural practices on the land and not the size of the holding (Forward Press).

The expression of these sentiments was aimed at underlining the connection between the economic needs of the wider community and property rights. However, the Constituent Assembly eventually failed to make explicit, a concomitant obligation on the owner of private property to put his land to productive uses which are in line with the interests of the community.

Apart from these constitutional assembly debates, several thinkers and scholars in India have advocated ideas of SFP in different ways. Mahatma Gandhi’s idea on trusteeship is considered as a thicker version of SFP

theory⁸ (Patel 2014). Several social reformers⁹, who demanded equal access to land by all castes emphasized the productive use of property, since they noticed high caste members often were holding up property, deliberately deprive lower caste members.

Several scholars in contemporary times also have articulated how private property institution in India may be diagonally opposed to the realization of human rights (Wahi 2013). The constitutional assembly debates, ideologues of India, and progressive property scholars rooted on the ideas of human rights provide a scope to explore whether the ideas of credibility of property and SFP are feasible in India.

PART II

In this section of the paper, we elaborate the methodology adopted in this paper and provide empirical evidence generated through analysis of case laws.

Methodology

In the light of the survey on the conceptual history of credibility hypothesis, and its possible application in Indian history, we set up two research questions for this paper. Based on the findings from these research questions, we make an attempt to theorise the potential for the recognition of SFP through case law judgements.

⁸ “Supposing I have come by a fair amount of wealth – either by way of legacy, or by means of trade and industry – I must know that all that wealth does not belong to me; what belongs to me is the right to an honourable livelihood by millions of others. The rest of my wealth belongs to the community and must be used for the welfare of the community.” (M. K. Gandhi, Compiled by Ravindra Kelekar, *Trusteeship*, April 1960, Printed and Published by : Jitendra T. Desai Navajivan Mudranalaya, Ahemadabad-380014 India)

⁹ “There shouldn’t be a difference in treatment among people in their public life. Streets are public spaces and people of all communities should have unrestricted access to them. When we achieve the right to pass those streets, we will next demand unrestricted entry to the temples” (Periyar, Vaikam Satyagraha speech, Travancore, 29.11.1925). Similarly, J.P.’s ideas for collective ownership for land was inspired by the quest ofr production (Jayaprakash Narayan [1978] *Towards Total Revolution vol.1: Search for an Ideology* Bombay: Popular Prakashan, p.p. 53.)

First research question we set up is how far Indian judicial pronouncement has taken to consideration the principles of SFP while deciding cases. To answer this question, we look at court cases, where court was called upon to decide on public interest. All the cases we have chosen are where the state has acquired land for public interest (Appendix 1). However, this acquisition has been contested. We apply the principles of social function of property to see if court considers them as a legitimate reason to uphold public interest.

Second research question we set up is whether the evidences that support claim of property title in informal settlements is based on productive use. We select prominent case laws on slum eviction in India (Appendix 2). Our analytical focus is whether proxy records are used to understand SFP in the absence of titles (*patta*). We look at different evidence that claimants (evictees) present in the court and analyse, and whether these evidences bear productive use of property. How far this productive logic is accepted the second tier of analysis (presented to build pathways for SFP in PART III of the paper).

Our analysis is iterative in nature. Based on the literature discussed in Part I, we list core principles of SFP first, and they are kept as axis on the one side. These are eight principles: 1) rule of productivity, 2) prioritise public interest over individual interest, 3) some kind of taxation to fulfil distributional aspect of property, 4) owners obligated to refrain from using their property in ways that harm others, 5) public land is maintained and access to them are barrier free, 6) non owners have certain rights over property (e.g. right to pass through land), 7) the state can force the owner to use property in certain way (e.g. safety norms), and 8) individuals have access to minimum property to realise central human capabilities or human flourishing. On the other side we have a second axis, which are the principles laid out in the judgements of the cases we studied. We read each case in its own merit, and check if there is a scope to apply the principles of SFP. Then, we code what principles are violated and upheld by implication.

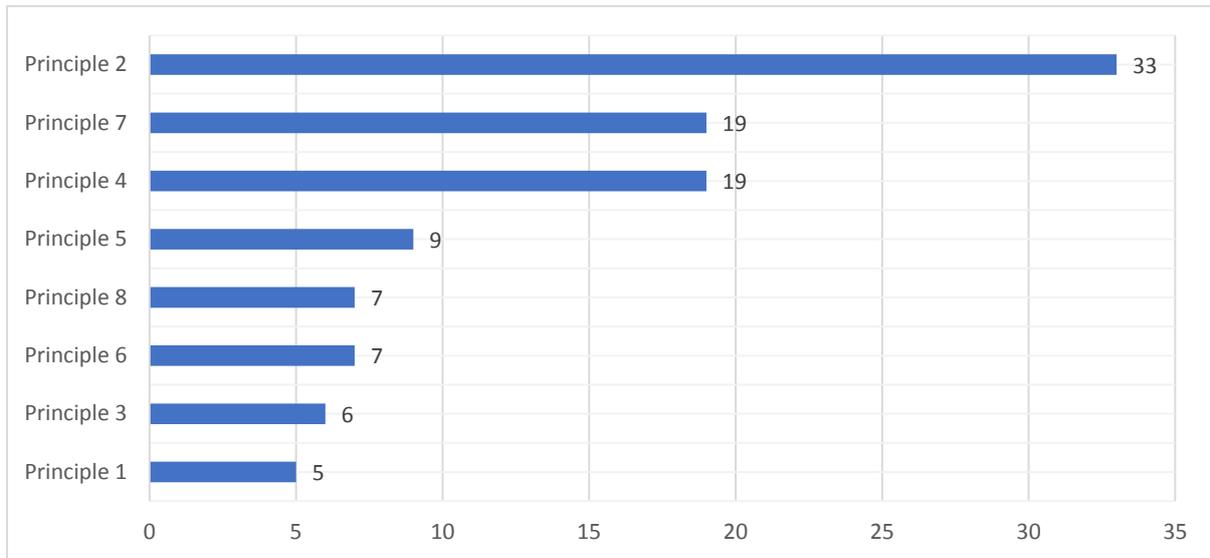
Direct / implicit reference to principles are difficult to observe since, unlike many of the Latin American constitutions (as discussed in PART I) SFP is not a principle in Indian legislation and Constitution.

Using these two dimensions (recognition of property records in informal settlements on the basis of their social function, and condition of productive use for realising public interest) we present empirical evidence from these cases in this section.

Findings

Chart 1 summarises the findings from case analysis and result of iteration between principles of SFP and the judgements of the case. Three principles of SFP that has gained some recognition in the Indian case laws are: Principle 2) prioritise public interest over individual interest, Principle 4) owners obligated to refrain from using their property in ways that harm others, and Principle 7) the state can force the owner to use property in certain way (e.g. safety norms). A pattern that could be deduced from this is the dominant vision of the state about property regimes. Though Principle 2 features significantly (about public purpose), it is doubtful whether it is in the spirit of SFP in the light of case laws we examined. Public purpose is defined by the state, and it is what is often contested in the 'public interest'. Courts, though engage with this subject, several scholars have pointed out decisions on these matters are procedural in nature rather than substantive. It is here, we find it hard to recognise whether thicker version of SFP is observed in Indian case laws.

Chart 1: Principles of SFP observed in Case Laws Examined (ordered according to frequency)



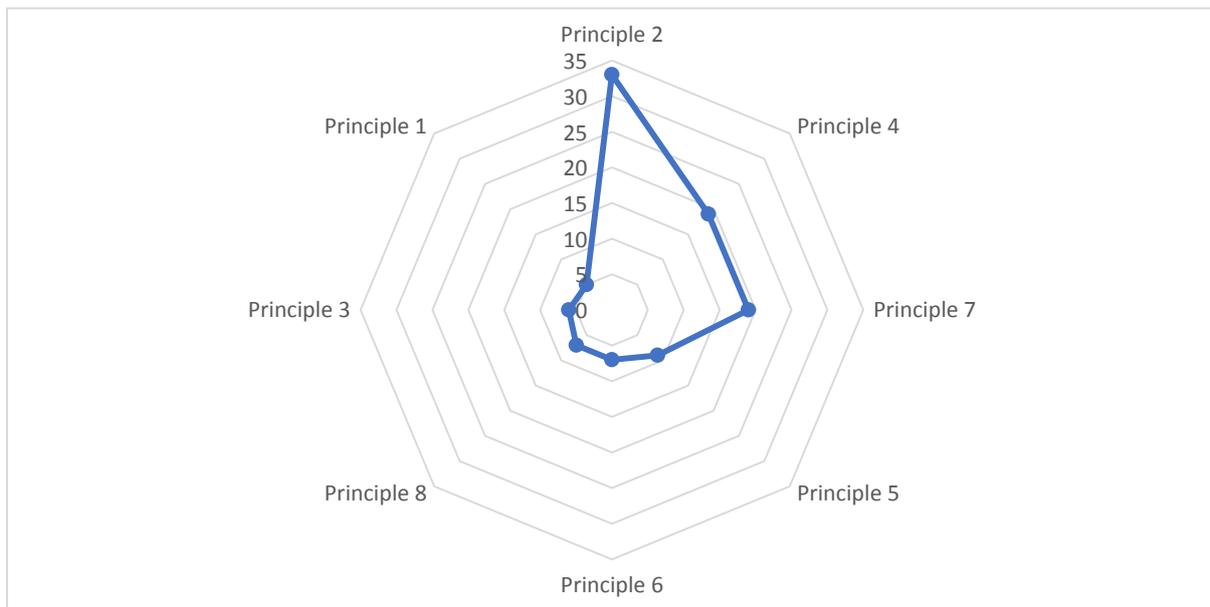
Source: Developed by authors from case laws in Appendix 1

Principles 7 and Principles 4 are appearing in the case laws primarily from the liberal conception of property law – to restrict from harm principles. However, our examination of the content of case laws revealed that several places ‘harm’ is construed as harm to ecology and environment. This is something that was not visualised originally as part of SFP. Indian case laws could be proud of this dimension getting prominence.

Let us turn our attention to Chart 2, which is presenting the interdependencies of principles. Taken in totality, less than quarter of SFP principles are getting recognition in Indian case laws as we can see from the Chart. The cornerstone of SFP principle, to make land productive is getting least attention. Very often, there could be inherent tension between principles. In several cases we studied, we noticed that when a property is acquired for public purpose, different procedures involved in launching a project delays the use of this property. As a result, the parties from whom property is acquired claim back this property on the ground of right to use property (or productivity ground). We found there is significant contradiction between principles as observed in different judgements. Very few

judgements recognise productivity dimension. Undue weight is put on the primacy of public purpose.

Chart 2: Room for improvement for SFP through interdependencies of principles



Source: Developed by authors using the matrix developed in Appendix 1

We find SFP dimensions that strengthen the arm of the state are widely used. The dimension of productivity is least used. We also find, from the cases on slum eviction that proxy records are rarely accepted from the point view of functionality. These findings lead us to the third Part of the paper, where we look at the content of the cases to understand what pathways could be possible to expand the horizon of SFP principles in India.

PART III

In this part of the paper, we attempt to show pathways to strengthen SFP in India. We review how some of the progressive attempts earlier have been reversed, as well as what could be done prospectively, particularly with references to informal settlements. Pathways we identify here are: a) limits to accumulation, b) functional valuations of informal settlements (not conditional), c) recognition of non-state welfare enjoyments, and d) State's ascent to shared recognition. We elaborate these pathways in this section.

Urban Land Ceiling Act

A meaningful attempt in urban areas to expand the idea of SFP was the Urban Land (Ceiling and Regulation) Act, 1976. Union government repealed this Act in 1999, and most of the states adopted the repeal. Singh (2006) has engaged with the deep flaws this episode has paused. The Act was passed with the stated objectives of preventing the concentration of urban land in the hands of a few; to prevent speculation in land values and most importantly, to bring about an equitable distribution of urban land (Singh, 2006). The Act was enforced in 64 cities and the state governments identified a total of 2,20,000 hectares of excess urban land for acquisition from the private owners. However, in reality only about 19,000 hectares was ever acquired by the state governments (India Today, 2003). In Mumbai, the low acquisition rate by the government was accompanied by a blatant subversion of the provisions of the legislation by the government itself. The Act allowed land owned by public sector agencies to be exempt from the ceiling limit. In an open violation of the objectives of the Act, the Mumbai Metropolitan Region Development Authority (MMRDA) made use of the exemption and commissioned the development of the Bandra Kurla Commercial Complex over 730 acres of land. The complex is a premium commercial property in the city and houses offices of several leading corporate houses. The other exemption clause in the Act allowed a private land owner to retain their surplus land if they utilized it to develop housing for weaker sections. However, it was left to the discretion of the local

government to order such an exemption. This led to the exemption provisions becoming a source of great corruption (Singh, 2006). But what really drove the nail in the coffin for the legislation was that it became a regulatory wrangle which in combination with the rent control law and the high stamp duty rates drove up property prices to incredible heights (India Today, 2003). Eventually, the repeal of the legislation became a mandatory conditionality for a state government to receive funds under an urban renewal scheme sponsored by the Union Government (Singh, 2006).

The absence of administrative will to implement legislations attempting to effect equity in the living conditions in cities, in combination with the presence of welfare schemes for the urban poor have resulted in a de facto erosion of the urban poor's claim to the city. From the early 1990s onwards, Indian cities became the first receivers of the effects of economic liberalization and promptly began their attachment to neoliberal ideas of global capital. The urban middle class rose as a technocratic elite which had greater agency in pressuring the government to focus on its demands for raising infrastructure and services to meet global standards. In response governmental policy has now effectively abdicated its role in improving the property rights of the urban poor, choosing instead to focus on the aspirations of the middle class (Chatterjee). The poor are left to participate in redevelopment schemes or receive subsidies to gain access to formal housing in order to legitimize their property rights.

An instance illustrating this approach of the State is the Union Government's Smart Cities Project which unreservedly evicted residents of slums in areas of the city which were chosen for the implementation of local area plans. Under the aegis of 'city beautification' initiatives the 'ugly' slums were summarily banished to the peripheries of the city (HLRN, 2018).

These evictions exemplify a complete abandoning of any values, guiding principles which informed the practice of property rights in Indian cities. Traditional ideas of caste and class have been infused by capital to create cities where the acceptance of a different set of rules for different categories

of people has been completely normalized. As explained by Ananya Roy (2012), the difference in the informal urbanization practices of the wealthy classes and those of the squatters and slum dwellers is in their treatment by the State. The informality displayed by the affluent classes is seen as a display of class power and never considered an 'encroachment' in the same vein as the informality displayed by the poor. Their actions would eventually be designated as 'formal' by the State and would accrue value through their legitimacy. Whereas the spaces designated as 'informal' would be construed to be encroachments, liable to be justifiably reclaimed by the State for 'public interest'.

This dichotomy in the treatment of the 'informal' across divergent class groups is a prominent feature of the property rights discourse in urban India. In addition, the overwhelming preference for the rights of the landowner, the moral acceptance of the actions of the State against the 'encroachments' of the urban poor and the acceptance of unequal living conditions as a derivative of liberalizing 'market forces' have all become entrenched features of property rights in urban India. It is important to bear these features of the property rights framework in mind, if we are to devise any acceptable way of infusing a vision-oriented property theory to the property rights discourse in urban India.

In the discussion on finding the characteristics of credibility by the principle of function taking precedence over form, the 'informal' nature of property poses a challenge. It is where we look whether informality is without any 'form' or without any 'function'.

Informality in land in India

The urban middle class in India first assumed the role of setting the social conventions that dictate access and use of private and public space in the city in the immediate aftermath of India's independence from colonial rule (Kaviraj, 1997). These conventions constituted an improvised mix resulting

from the superimposition of western ideas of private and public uses of space and the middle-class ideas of spatial control dictated by the framing of “apan-par i.e. own-others” (*ibid*, p.93). The conceptual distance between these two framings is captured in the emphasis they each place on exercising control of the outside public. Whereas the western understanding of ‘public’ is premised on exerting a degree of control on permitted uses, the Indian middle-class conception of ‘outside’ is marked by a distinct lack of control over the uses of space outside the confines of what belongs to the ‘self’ (*ibid*, p.94).

In the 1970s and 1980s, the state began recognizing the function of informal settlements of the migrant workers as vote banks, which started an era of the political ascendancy of the urban poor. The newfound political consciousness among the urban poor enabled them to build informal networks with the lower-level bureaucracy of the state and allowed them to secure their use of public space (Chatterjee, 2004: 137). However, despite their ascendancy, the state and middle-class perception of the informal settlements of the poor was dominated by their function as a vote bank. There was still no recognition of the functions that their settlements fulfilled to sustain the everyday existence of the poor in cities (Kaviraj, 1997: 109).

Informality on land and housing, in the form of slum or illegal or adverse possession, has a long history like any other country of the Global South (and the Global North) (Roy, 2009; Tsenkova 2012; Bower 2017; Grashoff 2020). The attempt to formalisation in India was neither smooth nor exceedingly successful. One of the most controversial parts of any formalisation is the “cut off” date, which makes one eligible or ineligible for rehabilitation. Beginning from the mid-1990s the state adopted a policy of changing benchmarks in regulating slums in Mumbai, one of the biggest ones in India and the global south, to suit political interests. When the *Shiv Sena-BJP* coalition formed the state¹⁰ (or provincial) government in Mumbai in 1995 they announced 1st January 1995 as the cut-off date to be eligible

¹⁰ Constitutionally, India has states and India is union of states.

for free housing to all slum dwellers (Suresh et. al., 2005). All slum-dwellers that could provide the documentary proof of residing in the city before the cut-off date would be eligible to avail the offer of free housing.

The offer did not materialize, but the cut-off date itself was made enforceable as the Slum Areas Act was amended in 2002 to include the 1995 cut-off date as an enforceable cut-off on the inclusion of slum-dwellers to city. The amended legislation now offered a greater degree of tenure security to those who could evidence their occupation in the slum before the cut-off date (Section 4, Slum Areas Act). This was made evident when, between November 2004 and February 2005, the State demolished an estimated 90,000 homes which were purportedly built after the 1995 cut-off date. In certain instances, the demolitions were carried out in areas that had been settled before the cut-off date as the residents were unable to provide documentary evidence of their occupation before the cut-off date (Murthy, 2012). However, in some other instances, houses were demolished even as residents possessed documentary evidence of their occupation before the cut-off date.

Similarly, in evictions of a squatter settlement in Delhi in 2004, the state promised resettlement only to those who could provide documentary proof of their residence in the settlement (Menon-Sen & Bhan, 2008). However, despite having the requisite documentation, hundreds of affected families were forced to spend months on the roadside as they waited for their resettlement sites (*ibid* p.14). When the sites were eventually allotted many were disqualified on grounds of being alleged foreign nationals who had bought false documents, others had to pay touts to secure their plots and several others were simply not allocated any sites (*ibid*, p. 16). The lower-level bureaucrats of the local state admitted to deliberately delaying the resettlement process to ensure that “only genuine cases would be left” (*ibid*, p. 42). Even those that were allotted resettlement plots were given those on limited leases of five years only, with no sign of their renewal from the state (*ibid*, p. 44). The cycle of informality modulated through the documentary

proof of their occupation continued for the resettled families as the allotment letter now emerged as the new documentary proof that secured their occupation of the space.

The informal state also exists in regulating the informal settlements of the middle class, but to produce wholly different outcomes. In Delhi, the Delhi Development Authority (DDA) rolled out regularization schemes for the sale of DDA flats carried out using the 'GPA sale'. The 'GPA sale' refers to an informal way of selling DDA flats using a combination of a general power of attorney, an Agreement to Sell and a will (Panickar, 2020). This method was conceived to circumvent the necessity of paying a fee to convert the allotment of DDA flats from a leasehold to freehold ownership. Despite the very deliberate intention to illegally overcome a legal obligation by its use, the GPA sale was accepted as a formal model of selling DDA flats by the government. Subsequently, when the GPA sale was expressly banned by a ruling of the Supreme Court (*Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana and Ors.*, 2009), the DDA rolled out a scheme for regularising the GPA sales which had taken place before the court's order ("Pay stamp duty to regularise GPA deal", 2012).

The informality of the state is realised in its deliberate deregulation of spaces and practices and subsequent attribution of a legal status based on its discretion (Roy, 2009). The conditional acceptance of property documents of the poor is a deliberate exercise meant to retain them in a 'grey' existence (Yiftachel, 2009). The state uses its powers to create exceptions to separate spaces from the formal and legal subjects but at the same time bind these spaces by the law (Das, 2011). Thus, the assumption of informal property arrangements existing 'outside the reaches of the state' entirely discounts how the practices of securing tenure in these spaces is determined completely by the state's powers to either declare it as an exception or to make an exception to regularise it in the fold of formality.

The advent of economic liberalization policies in the early 1990s in India transformed this status quo in Indian cities. As the main beneficiaries of economic liberalization and the main consumer base for the market economy, the middle-class emerged from the political shadow of the urban poor to impose the cultural imprint of the consumer-citizen. This social construct of citizenship was built in line with the ideals of liberalization and promoted elitist visions of a global city (Fernandes, 2004). These visions have adopted aesthetic goals like the ‘world-class’ city or ‘smart’ city which entail the diffusion of spatial markers prompting a narrative of seeing and assessing space (Ghertner, 2015). They are enforced by the informal state engaging simultaneously in a politics of forgetting or rendering invisible the settlements of the urban poor while at the same time engaging with a ‘developmentalist’ vision of the future city shared by the consumerist middle class (Fernandes, 2004). The projects which implemented this vision were aimed at a spatial reconfiguration of the city based on global standards of liveability (Ghertner, 2015). Guided by the visual cues contained in these visions of a future city, the settlements of the urban poor are now perceived as a nuisance and their eradication is perceived to be a reasonable sacrifice to be made to achieve a ‘smart’ city (Ghertner, 2015). In 2017, forced evictions and demolitions of settlements of the poor were carried out in 32 of the 99 cities that were a part of the Union Government’s Smart Cities Mission. These evictions were carried out to meet objectives of ‘city beautification’ and creating ‘slum-free’ cities (Housing and Land Rights Network, 2017).

A summarization of informality in India suggests while the state continues to brand the informal use of land as illegal or informal, pushes to clear the slum or work towards formality, the state has failed to grasp the function of informal land use in most of the cities of India. When the function of informal settlements is reduced to the ‘vision’ of the state, there is huge devalorisation for the micro-productive functions of citizens.

Enjoyment meets Credibility

The credibility thesis shows how the function is better understood via stakeholders' aggregate perceptions and everyday use of the credibility of institutions. Institutions, in this context, are a production of an endogenously grown rule which is socio-economically produced and reproduced. Such a credible arrangement produces, sustains and ensures capabilities of being or doing or nourishment of capabilities of life (Davy 2012; Davy & Pellissery 2013). With item 10 on the list of capabilities needed for the enjoyment of central capabilities of life, Nussbaum (2006) has established a reasonable ground to bridge use value and the capabilities approach. Nussbaum saw the control over one's environment, including but not restricted to the social relationship with, use and function of land to be reasonable conditions.

Applied to informal land use, individuals with permissive or adverse possession, with or without explicit policy mandate, should be able to participate effectively in political choices to enjoy the property in land. Also, individuals have the right of political participation, protection of free speech and association on the use, abuse, misuse and transformation of land he or she has been using over time with or without formal policy approval. Informal use of land contributes to holding informal property rights developed and (re)shaped by everyday use. This property rights produce social recognition, dignity and means to maintain and seek employment like any human being as equal. All these uses and enjoyment enable individuals to enter meaningful relationships with respect and mutual recognition of each other. The enjoyment of conditions that enrich and nourish central capabilities of life extends to law, especially the enjoyment of human rights declarations, covenants and conventions.

Credible informal property in land, contribute to the establishment of the non-state social contract (Davy & Pellissery 2013). Enjoyment is not linked to the formal legal position of the individuals over land or property on it or

the duty of a government for protecting the formal property in question. By law, the human right to housing should be protected by the nation-states, which are a signatory of the International Covenant on Economic, Social and Cultural Rights (ICESCR, Article 11). This legal protection includes, but is not mutually exhaustive, one can live safely and freely under a shelter with access to water for different use, sanitation, energy and other associated infrastructure and services, with no fear of being forcefully evicted without prior notice, court hearing and due process of law. Where law books discuss differently, or the state has the intention but not adequately delivered, no one truly 'has' this right in absence of protection of this right. The enjoyment of the informality is part of an equilibrium where the weakness of one system is compensation by the other.

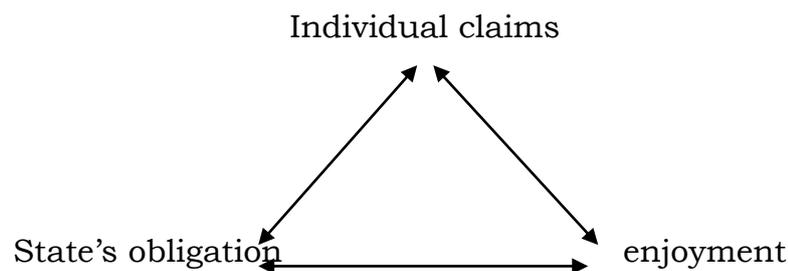


Figure 1: The human rights triangle (Davy and Pellissery 2013)

Enjoyment of central capabilities of life via an equilibrium of state's obligation, individual claims and enjoyments pre-supposes that these elements cannot individually create equilibrium. Davy & Pellissery (2013) have demonstrated how state party reports of United Nations Human Rights Council (UNHRC) overly emphasise state obligation, and in doing so inadvertently ignore the enjoyment dimension of human rights in informal life and living. The enjoyment dimensions of the rights include, 'the opportunity to earn one's livelihood near the good-paying jobs, access to the informal land market, an escape from the bonded labour in villages and economic hardship, the pleasure of living with an extended family in a city (which is unaffordable for a poor person in an apartment) or even the safety

experienced through the societal relations provided by the residents in informal settlements (not by the State)' (Davy & Pellissery 2013, S77). These enjoyment potentialities of informal land are often possible because informal dwellers can be well organised, choose to live informally when there are alternatives, such decisions are economically rational and new arrival of informal settlements are often guided by a strong social-cultural connection with the existing residents (Perlman, 1986; McFarlane, 2012; Richmond, 2018; Kasper, 2021; Dey Biswas, 2022).

Everyday social contract produces a social function of land that recognises entitlement with or without legal protection (Pellissery and Lødemel 2020). The recognition of function meets the standard laid down by the credibility thesis. In this context, the Credibility Thesis' destigmatised approach to assessing informal property arrangements and even advocating for their continuance, completely flips over the state's approach to slum housing in India. The Credibility framework has been shaped by a critical examination of the universal prescription for formal, private and secure property tenure as a mandatory pre-condition for economic growth. Advocates of the Credibility Thesis point out that there is a contradictory reality to this prescription, especially in countries like China and India, where exponential economic growth has taken place despite informal property arrangements. This contradictory growth trajectory is explained by the strong causal links between performing a property arrangement and its ability to fulfil functions in a localised setting (Ho, 2016). Empirical studies supporting the Credibility Thesis have further explained that the fact that informal property arrangements persist despite the sanctions their users face is down to their continuing ability to fulfil functions for that community and reflects a property arrangement that is highly credible (see Zheng, 2018).

State's ascent to shared recognition

Credibility is the all-important indicator to gauge whether a property arrangement is fulfilling a function. Analysing the prevalence of slum

housing in Mumbai and the difficulties that ‘participatory’ processes of slum redevelopment have faced, Yue Zheng (2018) finds that the state has failed to account for the high credibility of slum housing. Credibility here is understood as a collective perception shared amongst a closed group of social actors of an endogenously evolved common arrangement (Ho, 2016). This understanding of credibility deliberately moves away from mainstream planning notions of implementing property reforms in a deliberate, top-down manner.

One postulate of the credibility framework is that property arrangements change is an unintentional and endogenous way to meet the functions of a community. Property arrangements that are exogenously designed and enforced in a top-down manner tend to have lower credibility as local communities may not find them functionally useful (Ho, 2016, p.1124). Also, such exogenously designed arrangements risk imposing a form of property tenure at the expense of interfering with the function of existing property arrangements (Davy, 2018). Therefore, proponents of the credibility framework recommend condoning or co-opting highly credible informal property arrangements. The Credibility Scales and Intervention (CSI) checklist recommends a graded State response to informal property arrangements depending on their credibility. The checklist provides for ‘ordaining’ i.e. ‘commanding what must be done’, as a policy response to informal arrangements only when the property arrangements are deemed to have low credibility (Ho, 2016, p. 1139).

These recommendations of state responses to informal property arrangements are based on several assumptions on the nature of the state that the framework relies on. The framework calls for an assumption of ‘...a benevolent state and not a predatory one...’ and describes the existence of informal property arrangements as ‘...extra-legal arrangements that persist outside of the reaches of the state...’ which are the result of ‘neglect’ or ‘a silent condoning’ (Ho, 2020, p. 8). Credibility is described as the cumulative perception of a property arrangement shared by two or more social actors

(Ho, 2014, p.16). Credible, informal property arrangements are sustained by a shared recognition of the functional abilities of these arrangements between the local community and the state. This understanding of credibility as a dynamic bounded by localized contexts does not account for how the perceptions of the informal settlements of the poor are informed by aesthetic narratives set by other class groups in the city. This is an especially critical aspect in the Indian context as the informal state seeks to secure its political interests by aligning with an economically and culturally dominant urban middle class (Fernandes, 2004).

Credible informal arrangements on land are not only practised among the global poor but often, the rich and well-connected sections of the society. Both are found out to be equally functioning. In these cases, even though the starting point might be informality, by using their own socio-economic and political networks within the urban areas, these elites legitimized their informal land arrangements by manipulating local government (Moatasim 2019). In doing so, what these informal users effectively did was to force the local urban planning authority to accept their informal enjoyment as the formal one, therefore, demonstrating a bottom-up policy formalization against state-imposed top-down formalization. Many of the claims of informal users of land is an act of demanding recognition.

Emphasis on form can stigmatise

The judiciary has often furthered the aesthetic stigmatisation of the settlements of the poor by shifting their assessment of these settlements from their alleged illegality to their purported nuisance value (Ghertner, 2008). The primary implications of categorising the settlements of the poor as a nuisance are that they are now considered being an infringement, adversely affecting the lives of “honest, tax-paying citizens” (“Supreme Court Allows Railways to Proceed with Eviction of Slum Dwellers”, 2021). Our analysis suggests that in several cases, the Supreme Court has raised the interest of “honest, tax-paying citizens”. For example, with Almitra H. Patel

And *Anr. vs Union Of India And Ors.*, the court suggested; “The promise of free land, at the taxpayers’ cost, in place of a jhuggi, is a proposal which attracts more land grabbers. Rewarding an encroacher on public land with the free alternate site is like giving a reward to a pickpocket” (JT 1999 (10) SC 332, 1999 (7) SCALE 376, (1998) 2 SCC 416 B). While taking serious notes on how fruits of taxpayers’ labour should not be allowed to be enjoyed by others via wrong actions, the court has evoked the legal maxim *Allegans suam turpitudinem non est audiendus*.¹¹ With *Purna Chandra Behera vs. Dibakar Behera and Ors.*, the court observed, “If the Petitioners have committed a wrong in occupying the public land, they cannot be permitted to take the benefit of their own wrong” (W.A. No. 120 of 2007 in OJC No. 1320 of 1999).

Secondly, declaring the settlements of the poor as a nuisance has added a new dimension to judging their illegality, one that is based on a code of appearances. In public interest litigation filed by a non-poor citizen group aggrieved by the public nuisance caused by an adjacent settlement of the poor, the Delhi High Court accepted photographs of the settlement as evidence of their squalor. The appearance of the settlement defined its illegality, and the court issued orders for its demolition (Ghertner, 2008, p.17). This ordering by an aesthetic narrative has also transformed the political predominance of the poor. The vote-bank politics of the poor, which is perceived as a plebianisation of democracy (Fernandes, 2004, p. 2426) is being countered by including mandatory ‘citizen participation’ clauses in the city’s governance (Benjamin, 2008; Roy, 2009). Under the guise of participatory governance, exclusive access to the highest levels of the state is being opened to ‘legitimate’ citizens.

The civic reform agendas of these citizen forums function as planned development against the settlements of the poor (Benjamin, 2008). Meanwhile, the voices of the poor in these forums are modulated through NGOs, which are considered being their representatives. As an

¹¹ “A party alleging his own infamy / turpitude is not to be heard.”

“infrastructure of populist mediation,” these NGOs are focused on a more ‘pragmatic’ approach of getting the poor to work with the state rather than against it (Desai, 2012). Thus, these NGOs accept elitist visions of the city while claiming to represent the voices of the urban poor. The pervasiveness of the middle-class aesthetic in assessing spaces in the city means that the credibility of the settlements of the poor in India cannot be limited to a shared recognition of the functions of these settlements between a closed group of social actors. The disciplining capacities of such an aesthetic are so effective that even the poor self-identify themselves as infringements to the planned city (Ghertner, 2015).

Need to go beyond conditional rights

An important aspect of the workings of the informal state in India is how the judiciary has enabled its informality by mirroring the conditional realization of the right to housing as implemented by the state. The judicial review of social rights, like the right to housing or shelter, is limited to an examination of the State’s implementation of a policy but does not examine whether the inherent nature of the State’s approach satisfies the fulfilment of a universal right to housing (Khosla, 2010). In the most significant ruling by the Indian Supreme Court on the right to livelihood of pavement dwellers (*Olga Tellis v. Bombay Municipal Council*, 1985), the Court while announcing its desire to protect the universal right to livelihood extended a guarantee of resettlement to only a limited section of the evicted pavement dwellers. Only those that could show identity cards handed to them as part of an earlier census carried out by the local government were guaranteed resettlement (Khosla, 2010, p. 747).

The court halted the eviction procedure because no notice was served to the evictees, therefore, because of procedural injustice during the monsoon.¹²

¹² In the similar vein, the court prohibited eviction due to cold winter in Delhi (*Ajay Maken & Ors. vs Union Of India & Ors*, 2019).

The court did not elaborate on the right to shelter (as it did in the case of *Ajay Maken & Ors. vs Union Of India & Ors* 2019). On the property rights matters, the court apparently emphasised form of property than function and claimed no one “has the right to make use of a public property for private use. . . [and] it is erroneous to contend that the pavement dwellers have the right to encroach upon pavements by constructing dwellings thereon” (*Olga Tellis v. Bombay Municipal Council*, 1985). As if in the court’s eyes, public property enjoyed the protection of rights and the state has the right to exclude all other activities which are exclusionary private, such as an informal shelter on the pavement. This form, the public nature of the pavement, supersede the function of property produced by everyday social interaction and by extension social contract. The only social contract that provides some legal protection is those who were part of the last census data as pavement dwellers. What this judgement misses on the social function of property, the court rediscovers the same in the case of *Ajay Maken & Ors. vs Union Of India & Ors*, (2019).

In *Ajay Maken & Ors. vs Union Of India & Ors* (2019) the court accepts Indian dualism in the application of ICESCR. It cannot be applied straightaway but because of the enactment of the Protection of Human Rights Act, 1993 (PHRA), the right to housing is enforceable in India. Therefore, in its order dated 14th December 2015, the court acknowledge human tragedies during the eviction and inhuman conditions of the evicted during the winter season, irrespective of the legal status of the *basiti*.

The court did not specify what form of shelter should be provided but used the word “decent shelter.” Moreover, “The Court directed the Government of National Capital Territory of Delhi (GNCTD) and the Railways to pay particular attention to the needs of shelter, health, food and education of the displaced population.” (*ibid*) The court concluded that the right to housing is a bundle of rights and more than bare minimum shelter above the head. The bundle of rights includes “the right to livelihood, right to health, right to education and right to food, including right to clean drinking water,

sewerage and transport facilities.” By citing the Supreme Court of India’s decision on Sudama Singh case (WP (C) 7317 and 8904/2009), the high court too linked the right to housing over apparently illegal land to central capabilities of life, thereby the ‘enjoyment’ component of rights, including but not restricted to, the freedom to live in the city or the right to city.

In this case, the court considered the persons who approached the court against eviction, not as an encroacher but demands the concerned agencies to determine if the dwellers are eligible to receive rehabilitation, according to the law and policies. Therefore, the court gave a clear preference over the conditional right to city, based on state design policy on inclusion or exclusion of eligible, over rights produced by the everyday functional use of land. Neither parties in dispute claimed adverse possession, nor did the court attempt to engage with property rights produced during the everyday social contract. Therefore, the court itself created another dualism where human rights (housing as the bundle of rights) were acknowledged but the right to property produced via enjoyment or everyday social contract or adverse possession kept out of the arguments.

Checking the colluding State with accountability principles

The Credibility framework also calls for assuming a “benevolent state rather than a predatory one” (Ho, 2020, p. 8). While this assumption itself does not reflect the ground realities of the state the more dangerous implication of this assumption is that it reduces the existence of the informal settlements of the urban poor to an act of charity delivered by the state. This entirely discredits the legal and political consciousness that sees the urban poor claim their space in the city as a matter of their incrementally earned right (Das, 2011, p. 320). We found courts have recognised urban poor and forbade the state from eviction without rehabilitation, time and time again, the Indian state is accused of violating the generative case law precedence created by the Supreme Court of India and the plaintiffs are forced to move to the court to enforce their earlier directives. Since appealing to high courts

and the Supreme Court¹³ is a costly business, we observe a more predatory tendency of the state than benevolence.

For the urban poor, the use of documents instead of formal land records to evidence occupation or tenure is an integral aspect of how they can territorialise their space in the city (Benajmin, 2014). They collect all manner of documented recognition of their existence given by the state to incrementally secure their space in the city (Anand, 2017). These documents may include those that are accepted by established circuits of local political interests and lower-level bureaucrats or may even include documents that help qualify them for an exception clause declared by the state. However, even meeting the documentation benchmarks set by the state does not always secure their existence. The courts in their judgements always emphasised the security of the tenure, in the context of housing rights and rights over the rehabilitated houses.

Ajay Maken & Ors. vs Union Of India & Ors (2019) judgement is discussing the security of tenure by citing international laws. In the case of Sudama Singh and Ors. (WP (C) 7317 and 8904/2009), the court asked the state to ensure in case of a cooperative society is formed during the rehabilitation, then the cooperative society should have the security of tenure.

Conclusion

In this paper, we have presented findings of reviewing case laws, in the light of SFP principles. In these case laws, the conflict between the state and citizens has implications for the productivity of the property in question. We also have paid special attention to the property relations in informal settlements through reviewing slum eviction judgements. Our findings show

¹³ The judgement of the Supreme Court in Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan (MANU/SC/0051/1997 : (1997) 11 SCC 121) reads, "though it is correct to say that roadways and pathways should be kept free of encroachers, should it not be held, in cases where the poor have resided in an area for a long time, that the State ought to frame schemes, and allocate land and resources, for resettling and rehabilitating the urban poor."

very little evidence for the recognition of SFP principles, primarily that of rule of productivity. Thin principles of SFP have found credence, since they support holding up property for speculative purposes.

The credibility hypothesis applied to the assessment of property arrangements is a significant development in amending the mainstream understanding of property. The importance of everyday functions of property in sustaining the existence of the urban poor is not recognised by neoliberal planning strategies. Yet, the emphasis on productivity is squarely within the liberal framework. The Credibility framework, with its emphasis on accounting for the functionality of property tenure and drawing a connection between functionality and 'performance', attempts to bridge the gap between the neoliberal priorities of economic growth and the existence of informal property arrangements. The framework provides a planning strategy that can be constructed in a bottom-up manner, taking into consideration highly localised contexts in regulating informal property. However, the conception of a depoliticised and passive state in the sustaining of informality adversely affects the adoption of this framework as an alternative planning perspective.

The functionality of property arrangements embodies what is described as the constitutive view of the law. It emphasises the everyday ways in which impressions of the law affect social relations. While the Credibility framework explicitly defines credibility as perception, distinguishing it from legitimacy, even the perception of functionalities contains an internalised recognition of the 'legal sense' (Das, 2011). For the urban poor, fulfilling their everyday functional needs are only possible by cultivating a legal and political consciousness of the politics of the informal state.

SFP, particularly credibility hypothesis, is calling for recognition (rather than redistribution) responding the claim making of citizens in informal context seeking access to city. The imagination of the state in the Credibility framework does not account for how the state actively perpetuates

hierarchies of informality (through secure-insecure title regime). Instead, it assumes a passive state that examines informality from a distance, intervening only when necessary to ensure the ‘performance’ of credible property arrangements. This raises important questions on what functions of informal property arrangements the state is likely to consider credible and respond to. In urban India, what does it mean if the only function of informal settlements of the poor that the state recognises is their political value as a vote bank? A constructive answer to this question will demand recognition of other socio-economic rights as equal functions of informal settlements.

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References

- Alexander, G. S. (1982) “The Concept of Property in Private and Constitutional Law: The Ideology of the Scientific Turn in Legal Analysis”, *Columbia Law Review* 82 (2) pp.1545-1598.
- Alexander, G. S. & Penavler, E. (2010) *Property and community*. Oxford: Oxford University Press.
- Alexander, G. S. & Penavler, E. (2012) “An introduction to property theory” Cornell Law School Research Paper Nos 12-15.
- Anand, N. (2017). *Hydraulic City: Water and the Infrastructures of Citizenship in Mumbai*. Durham & London: Duke University Press.

- Benjamin, S. (2008). Occupancy Urbanism: Radicalizing Politics and Economy beyond Policy and Programs. *International Journal of Urban and Regional Research*. 32(3), pp. 719-729.
- Benjamin, S. (2014). Occupancy Urbanism as Political Practice. In Parnell, S. & Oldfield, S. (eds.) *The Routledge Handbook on Cities of the Global South*, London: Routledge.
- Bhan, G. (2009). "This is no longer the city I once knew". Evictions, the urban poor and the right to the city in millennial Delhi, India. *Environment and Urbanization*. 21(1), pp. 127-142.
- Bhan, G. (2013). Planned Illegality: Housing and the 'Failure' of Planning in Delhi: 1947-2010. *Economic and Political Weekly*. 48(24), pp. 58-70.
- Bower, R. (2017). Forgotten plotlanders: Learning from the survival of lost informal housing in the UK. *Housing, Theory and Society*, 34(1), 79-105.
- Chatterjee, P. (2004). *The Politics of the Governed*. United States of America: Columbia University Press.
- Crawford, Collin. 2011. "The Social Function of Property and the Human Capacity to Flourish". *Fordham Law Review* 80 (3).
- Das, V. (2011). State, Citizenship and the Urban Poor. *Citizenship Studies*, 3(4), pp. 319-333.
- Davy, B. (2018). The Afterform. The credibility thesis meets property theory. *Land Use Policy*. 79, pp. 854-862.
- Davy, B. and Pellissery, S. (2013). "The Citizenship Promise (Un)fulfilled: The Right To Housing In Informal Settings." *International Journal of Social Welfare* 22: S68- S84
- Desai, R. (2012). Governing the Urban Poor: Riverfront Development, Slum Resettlement and the Politics of Inclusion in Ahmedabad. *Economic and Political Weekly*, 47(2), pp. 49-56.
- Dey Biswas, S. (2022). Lefebvre visits joyful(?) Kolkata: The right to the city & migrant labourers. In Beily, A & Otsuki, K. (Eds.). *Inclusive Cities and Global Urban Transformations*. London: UCL Press. (In Press)
- Fawaz, M. and Moumtaz, N. (2017). Of property and planning: a brief introduction. *Planning Theory and Practice*. 18(3), pp. 345-350.

- Fernandes, L. (2004). The Politics of Forgetting: Class politics, State power and the Restructuring of Urban Space in India. *Urban Studies*, 41(12), pp. 2415-2430.
- Foster, Sheila, and Daniel Bonilla. 2011. "The Social Function of Property: A Comparative Law Perspective." *Fordham Law Review* (Vol. 80) 101-113.
- Gandhi, S. & Munshi, M. (2017) "Housing Paradox " <https://scroll.in/article/836589/housing-paradox-despite-a-severe-shortage-12-of-houses-in-indian-cities-are-lying-vacant> accessed on 19 September 2021.
- Ghertner, D.A. (2008). Analysis of a new legal discourse behind Delhi's slum demolitions. *Economic & Political Weekly*, 43(20), pp. 57-66.
- Ghertner, D.A. (2015). *Rule by Aesthetics: World-Class City Making in Delhi*. Oxford University Press.
- Grashoff, U. (2020). *Comparative approaches to informal housing around the globe* (p. 286). UCL Press.
- Hindustan Times* (2012). "Pay Stamp Duty to Regularise GPA Deal." (May 05). Retrieved from <https://www.hindustantimes.com/delhi/pay-stamp-duty-to-regularise-gpa-deal/story-W087SDqsJdTnzYFKEMeDmM.html>.
- Ho, P. (2014). The credibility thesis and its application to property rights: (In)secure land tenure, conflict and social welfare in China. *Land Use Policy*. 40, pp. 13-27.
- Ho, P. (2016). An endogenous theory of property rights: opening the black box of institutions. *The Journal of Peasant Studies*, 43(6), pp. 1121-1144.
- Ho, P. (2020). The credibility of (in)formality: Or, the irrelevance of institutional form in judging performance. *Cities*, 99, pp. 1-11.
- Ho, P. & Sun, L. (2018). Formalizing informal homes, a bad idea: The credibility thesis applied to China's "extra-legal" housing. *Land Use Policy*, 79, pp. 891-901.
- Housing and Land Rights Network. (2017). "India's Smart Cities Mission: Smart for Whom? Cities for Whom?". (2017). Housing and Land Rights

- Network, New Delhi. Retrieved from https://www.hlrn.org.in/documents/Smart_Cities_Report_2017.pdf.
- Kasper, E. (2021). Seeing change in urban informal settlements with social network analysis. *Environment and Urbanization*, 33(1), 151–172. <https://doi.org/10.1177/0956247820953757>
- Kaviraj, S. (1997). Filth and the Public Sphere: Concepts and practices about space in Calcutta. *Public Culture*, 10(1), pp. 83-113.
- Khosla, M. (2010). Making social rights conditional: Lessons from India. *International Journal of Constitutional Law*, 8(4), pp. 739-765.
- Liu, S. & Zheng, Y. (2020). Cities Without Slums? China's land regime and dual-track urbanization. *Cities*, 101.
- McFarlane, C. (2012). Rethinking informality: Politics, crisis, and the city. *Planning Theory & Practice*, 13(1), 89-108.
- Menon-Sen, K. & Bhan, G. (2008). *Swept Off the Map: Surviving Eviction and Resettlement in Delhi*. New Delhi: Yoda Press.
- Ministry of Housing & Urban Poverty Alleviation. (2012). *Report of the Technical Group on Urban Housing Shortage (TG-12) 2012-17*. Ministry of Housing and Urban Poverty Alleviation, Government of India. Retrieved from <https://smartnet.niua.org/content/e4cad814-ff8d-497b-a5cc-74db29abe318>.
- Moatasim, F. (2019). Entitled urbanism: Elite informality and the reimagining of a planned modern city. *Urban Studies*, 56(5), 1009–1025.
- Mukhija, V. (2012). Cities with Slums. In Crane, R. & Weber, R. (eds.) *Oxford Handbook of Urban Planning*. New York: Oxford University Press.
- Murthy, S. (2012). Land Security and the Challenges of Realizing the Human Right to Water and Sanitation in the Slums of Mumbai, India. *Health and Human Rights*, 14(2), pp. 61-73.
- Nolan, B.L. (2015). Slum Definitions in Urban India: Implications for the Measurement of Health Inequalities. *Population and Development Review*, 41(1), pp. 59-84.
- Patel, Nehal A. (2014) "Mindful Use: Gandhi's Non-Possessive Property Theory." *Seattle Journal of Social Justice* 13: 261-289.

- Parakkal, N., Pellissery, S. & Sampath, R. (2019) “Rawls, Nozick and Dworkin in an India village: Land alienation and multiple versions of distributive justice”, *Transformative Law and Public Policy* (eds. Sony Pellissery, Babu Mathew, Avinash Govindjee & Arvind Narrain), New Delhi: Routledge.
- Panickar, V. (2020). Production of Space in Urban India: Legal and Policy Challenges to Land Assembly. In Pellissery, S., Mathew, B., Govindjee, A. & Narain, A.(eds.) *Transformative Law and Public Policy*. London & New York: Routledge.
- Pellissery, S. & Jacobs, H. (2017) “Property in India: Global Perspectives, National Issues”, in *Land Policies in India* (eds. Sony Pellissery, Benjamin Davy and Harvey Jacobs). Singapore: Springer.
- Pellissery, S., & Lødemel, I. (2020). Property and social citizenship: social policy beyond the north. *Social Policy and Society*, 19(2), 275-292.
- Richmond, A., Myers, I., & Namuli, H. (2018). Urban informality and vulnerability: A case study in Kampala, Uganda. *Urban science*, 2(1), 22.
- Roy, A. (2009). Why India cannot plan its cities: Informality, Insurgence and Idiom of Urbanization. *Planning Theory*, 8(1), pp. 76-87.
- Singh, S. (2006) “On repealing the urban land ceiling act” *Economic and Political Weekly* 41 (8).
- Suresh, H.J., Kothari, M., Fernandes, K., Sharma, K., Kher, S. & Bin Razzaq, S. (2005). *Bulldozing Rights: A Report on Forced Evictions and Housing Policies for the Poor in Mumbai*. Mumbai: Indian People’s Tribunal on Environment and Human Rights.
- Tsenkova, S. (2012). “URBAN PLANNING AND INFORMAL CITIES IN SOUTHEAST EUROPE.” *Journal of Architectural and Planning Research* 29(4): 292–305. <http://www.jstor.org/stable/43030983>.
- UN-Habitat. (2003). *The Challenge of Slums: Global Report on Human Settlements 2003*. London & Sterling VA: Earthscan.
- UN Habitat and GLTN. (2008). *Secure Land Rights For All*, Nairobi: UN Habitat.

- Wahi, N. (2014) "The tension between property rights and social and economic rights" in Helena Alviar (ed), *Social and Economic Rights in Theory and Practice*, London: Routledge.
- Yiftachel, O. (2009). Theoretical Notes on 'Gray Cities': The Coming of Urban Apartheid?. *Planning Theory*, 8(1), pp. 88-100.
- Zheng, Y. (2018). The credibility of slums: Informal housing and urban governance in India. *Land Use Policy*, 79, pp. 876-890.
- Zheng, Y. & Ho, P. (2020). Unpacking the paradox of "insecure" housing rights in China: Urban residents' perceptions on institutional credibility. *Cities* 97. Retrieved from <https://doi.org/10.1016/j.cities.2019.102485>.
- Zimmer, A. (2012). Enumerating the Semi-Visible: The Politics of Regularising Delhi's Unauthorised Colonies. *Economic and Political Weekly*, 47(30), pp. 92-93.

Appendix 1: Coding of Case Laws on the Principles of SFP

(0 = principle is ignored; 1 = principle is recognised; Missing info = case is silent on the matter)

Case	Facts of the case	Decision	P1	P2	P3	P4	P5	P6	P7	P8
Sanmukhbhai Bhikhabhai Patel And ... vs State Of Gujarat And Ors. 2004	A total of 13,81,062 Sq.Mtrs. of land of Kosad was acquired and the residents were compensated. On the acquired land, the Gujarat Housing Board constructed 1257 dwelling units for Middle Income Group ("MIG") and Higher Income Group ("HIG") categories, approximately, on 2,02,002 Sq. Mtrs. of land. Due to changes in fund allocation and administrative issues, the rest of the land was left unutilised. 67 petitions invoked under article 226 of the constitution pleading for the return of unutilized land	The court concluded that since the earlier owners had been paid compensation and land was given to the state, they couldn't own the land again even if there was a change in the public purpose or land wasn't being used.	0	1	-	-				
Dr. Shyam Sunder Prasad And Others vs Commissioner, Mch, Hyd. And ... on 13 August, 2001	The petitioners' land was deemed a slum area after the Commissioner of the Municipal Corporation of Hyderabad issued a notification. The land is the ancestral property of the forefathers and is located in the middle of the city, surrounded by commercial buildings. Petitioners claim that buyers have been denied the right to exercise their rights, and they are seeking	The court agreed to return the land to the original owner so that the great cause of building the hospital may continue. The arguments on both sides centred on the concept of property's social role.	-	1	-	-	-	-	-	1

Case	Facts of the case	Decision	P1	P2	P3	P4	P5	P6	P7	P8
	redress and assistance from the court.									
Kamal Nagar Welfare Association ... vs Government Of A.P. And Others, 1999	Petitioners are located on the Moosi River's bed. They allege that they have lived in that neighbourhood for decades. The petitioners, however, are at risk of being evicted as a result of the proposed Nandanavanam project, which aims to beautify the river Moosi.	The court instructed the authorities to investigate other sites such as Karmanghat or Gachibowli, as well as other locations, to review the construction of rehabilitation houses. Also, to discuss with the encroachers about their rehabilitation options on locations. In addition, the respondents were asked not to take up any further encroachments. The project was given the green light with the heads of the relevant departments being held accountable for any shortcomings.	1	1	-	-	-	1	1	-
Orissa Mining Corporation Ltd vs Ministry Of Environment & Forest, 2013	The Orissa Mining Corporation (OMC) has approached the Supreme Court seeking a Writ of Certiorari to quash the order passed by the Ministry of Environment and Forests on diversion of 660.749 hectares of forest land for mining of bauxite ore in Lanjigarh Bauxite Mines in Kalahandi and Rayagada Districts of Orissa.	The State of Orissa has been ordered to bring these concerns before the Gram Sabha and notify the Ministry of Tribal Affairs. After making a decision (which will be attended by a Judicial Officer of the rank of District Judge), the decision will be forwarded to MOEF, which will then take action on the Bauxite mining project's Stage II clearance. Writ petition disposed of.	1	1	-	1	-	0	1	-

Case	Facts of the case	Decision	P1	P2	P3	P4	P5	P6	P7	P8
Sayyed Ali And Ors vs Andhra Pradesh Wakf Board, 1998	The Waqf board leased land to a Dargah, which in turn leased land to sub-leasees who distributed and conducted acts of social service for the people. Although the Waqf board's writ suit to reclaim the land was dismissed (according to the Waqf Act's requirements), it was done for the benefit of the general public - a clear case of the court upholding the 'social use of property.'	After a Wakf is established, it remains thus for all time and is controlled by the Wakf Act, and a grant of patta in favour of Mokhasadar has no effect on the Wakf's original character. As a result, the court found no merit in learned counsel for the appellant's final argument. The appeal was consequently found to be without merit, and the matter was dismissed.	-	1	-	-	-	-	1	
State Of Manipur And Another vs Humdung Victims Of Development, 1994	Only lands required for construction of mini cement factory with an approach road and of the Nungshangkong mini Hydro Electricity Power Project were proposed to be acquired under the Land Acquisition Act, 1894. Owners of acquired lands, not being satisfied with amounts of compensation awarded to them under the respective awards, it is also said, had got their references brought Up before the Civil Court.	The court agreed to increased compensation but also stated, which was later challenged, that the hill lands of the Khas and Naga tribals were privately owned but subject to the government's pleasure.	1	1	-	1	1	0	1	0
State of West Bengal v. Bella Banerjee	Due to sectarian unrest in East Bengal, the Bengal Land Development and Planning Act of 1948 was passed to allow immigrants to resettle in West Bengal. The act itself was challenged in the lower court by the	The court held that the calculation or policy to arrive at such compensation can't be immune from judicial scrutiny. This reflects the "reap benefits accruing from it" criteria of the classical liberal individualist conception of	1	1	-	1	0	-	1	0

Case	Facts of the case	Decision	P1	P2	P3	P4	P5	P6	P7	P8
	landowners. The constitutionality of the act, as well as whether the compensation paid under the act was in line with Article 31(2), were both challenged in the Supreme Court.	private property.								
Golaknath v. State of Punjab 1967 AIR 1643	Under the Punjab Security and Land Tenures Act 1953, petitioner was intimated by the state that out of land he had, he could only possess 30 acres. Aggrieved by this decision, he moved the court under Article 32 of the Constitution and pleaded the violation of his Right to Property under Article 19 (1) (f) and Right to Equality and Equal protection of laws under Article 14.	The Court of Appeal's ruling on the issue of giving Fundamental Rights (FRs) a safe place in the constitution against the whimsical amenability of the constitution by the parliament. The majority judgement held that FRs are not amenable by the Parliament and are sacrosanct. FRs were equated with Natural Rights and pronounced as "the primordial rights necessary for the development of human personality" and the right to property was thus inalienable.	-	1	-	1	0	-	0	1
Chameli Singh And Others Etc. vs State of U.P. And Another AIR 1996 SC 1051	Supreme Court ruled in favour of the compulsory acquisition of land for the development of housing for SCs ('Dalits') in a case brought by a Dalit woman whose land was earmarked for conversion into flats.	The court held the view that the power of the State Government of invoking urgency clause under Section 17(4) of the Act while discharging its constitutional mandate to provide shelter to the poor, unless there is a mala fide in power exercise.	-	1	1	1	-	-	1	1

Case	Facts of the case	Decision	P1	P2	P3	P4	P5	P6	P7	P8
Jagpal Singh & Ors vs State of Punjab & Ors 2011 SC 1132	Unauthorised occupation of a village pond by Jagpal Singh and Ors in Rohar Jagir gram panchayat, which filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 to evict the appellants (Jagpal Singh and Ors) from their unauthorizedly occupied common village land (pond).	The appeal was dismissed and direction was issued by the court for all state governments for preparation of schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village.	-	1	-	1	-	-	1	1
Sharma Agro Industries vs. State of Haryana 2014 SC 1038	Quashing of acquisition proceedings and return of property to the appellant in the violation of the procedures under the Land Acquisition Act. The land acquisition award (under Land Acquisition Act, 1894) was made 5 years before the date of commencement of the Resettlement Act, 2013. However, no actual possession was taken by the state or its agent. Therefore, the acquisition proceedings of the land of the appellants have lapsed given Section 24(2)1 of the Resettlement Act, 2013.	The acquisition is quashed and the land is returned to their owners owing to lapse of the previous acquisition as the state did not take the physical possession for more than 5 years since the new act was enforced. The impugned previous HC judgement on this matter and acquisition notification including the award is quashed holding that the acquisition proceedings are deemed to have lapsed by not taking the physical possession.	-	0	-	0	-	-	0	1

Case	Facts of the case	Decision	P1	P2	P3	P4	P5	P6	P7	P8
People's Union For Civil Liberties vs State Of Gujarat on 5 September, 2000	Peoples' Union of Civil Liberties (PUCL), Shishu Milap, Samvad, Council of Social Justice, and a few individuals filed a writ petition before the Gujarat High Court on behalf of and for hutment residents. This is in response to allegations that the state and several government agencies violently smashed their hutments and their property.	The Supreme Court has ruled that the requirements of the general public cannot be ignored to preserve hutment and slum inhabitants' claimed human rights violations. It supported Navab Khan and Olga Tellis' verdicts, stating that no one has the right to use public land for personal gain. It would then be the responsibility of the competent authority to remove encroachments on the public street's pavement or footpath that restrict the free flow of traffic or pedestrian passage or re-passing.	1	1	-	-	1	1	1	1
Tarun Bharat Sangh, Alwar vs Union Of India And Others on 8 April, 1993	Tarun Bharat Sangh, a non-profit environmental organisation, filed a complaint with the court under Article 32 of the Indian Constitution, alleging extensive unlawful mining in an area designated as a tiger reserve in Rajasthan's Alwar District. It begged that the action be halted in the interests of ecology, the environment, and the rule of law.	It was noted that no mining lease could have been awarded or renewed within the forest without prior approval from the Central Government, as required by the Forest (Conservation) Act of 1980 and its Rules. No such previous consent or clearance from the central government was sought, to be sure. It was determined that the mining activity was illegal and that it had to be halted. Due to their inherent illegality, there had no choice but to close them.	0	1	-	-	0	1	-	-

Case	Facts of the case	Decision	P1	P2	P3	P4	P5	P6	P7	P8
Rural Litigation and Entitlement Kendra Dehradun & Others vs State Of U.P. & Ors on 12 March, 1985	Rural Litigation and Entitlement Kendra filed a writ suit in the Supreme Court against the operation of lime-stone quarries in India's Mussoorie Hill range. The quarries, it was said, posed a threat to the ecology and harmed perennial water sources.	The court ordered that all mining operations be halted immediately. The Court, on the other hand, was aware that halting all mining activities would result in the workers losing their jobs. It was underlined that the concerned workers should be employed through other government public service programmes (such as afforestation).	0	1	-	-	0	0	1	-
Pushp Steels & Mining (Pvt.) Ltd. vs State of Chhattisgarh & Ors, 22 July 2016	The Petitioners have asked for two reliefs in this writ petition: first, a writ of mandamus to be issued against the Respondents to compel them to immediately execute the mining lease agreement with the Petitioner-company for the land over which mining permission has been granted, including 66 hectares of diverted land over which the Respondents have granted the Petitioners working permission. Second, the Petitioners have asked for the show cause notice issued is contrary to law and without authority.	The court ruled in favour of the petitioner and ordered the state to complete the mining lease with the petitioners as soon as possible, ideally within 60 days of today.	0	1	-	-	0	0	1	-

Case	Facts of the case	Decision	P1	P2	P3	P4	P5	P6	P7	P8
Misrilall Jain and Sons and Ors. Vs State Of Jharkhand and Ors, 7 May 2007	The petitioners (Misrilall Jain and Sons) have challenged the Department of Mines' power to issue an executive order/resolution amending the surface rent of the land held by the petitioners as mining lessees in the state of Jharkhand. They all paid all statutory levies, royalty, and surface rent as indicated in the lease document and followed the statutory provisions of the MMDR Act and the Mines and Mineral Concession Rules.	The petitioner won the lawsuit, and the ratio decidendi of the decision indicates that statutory provisions do not allow state governments to adjust surface rent arbitrarily and that the power, according to the state and union list, resides with the government of India. It emphasises the division of authorities and subjects between the union and the state.	0	1	1	1	0	0	1	-
Padam Kumar Jain vs The Union of India, 6th October, 2016	The lawsuit was initiated after the petitioners' application for a lease renewal was denied by the Jharkhand government's Department of Industries, Mines, and Geology. As a result, petitioners have been instructed to turn over custody of the leased land to the Mines Department, failing which state authorities will take possession of the leasehold property. By Gazette Notification, the lease area was thereafter made available for public auction.	The petitioners receive a favourable judgement from the court. The ruling stated, "Impugned orders imposed by the State Government cannot be 1 in the sight of law and are therefore overturned." As a result, the Respondent State's subsequent actions are similarly rendered [non est] in the eye of law."	0	1	1	1	0	-	0	-

Case	Facts of the case	Decision	P1	P2	P3	P4	P5	P6	P7	P8
Subash Chander vs State Of Punjab And Ors. On 3 June, 1982	The petitioner is 'brick mining' on land that he leased from a private owner, and the private owner provides him with the revenue regularly, but the state of Punjab has required him to show cause because the state is not receiving any revenue. The petitioner argues that because land autonomy is in private hands, what role does the government have in it?	The court's decision acknowledges that the case is complicated and that the revenue court has jurisdiction. Furthermore, it supports the state, claiming that because the state owns a certain percentage of each piece of land and private entities do not have complete authority over the land, the state is entitled to the money. This decision might be viewed as a hazy mention of one of the features of social property, which calls for government participation in land revenue and ownership. As a result, this is one of the few instances where the aspect is mentioned.	0	1	1	1	0	-	-	-
T.N. Godavarnan Thirumulpad vs Union of India and Ors, 2005	An industrialist applied to mine iron ore in the area of Bhainsa Kankar, north of Bastar. The Mining Department of the Government of Chhattisgarh granted a prospective licence to the region. The Collector of North Bastar Kanker signed a mining lease deed in favour of applicant with the condition of lessee not to cut any tree without the permission of the authorities, and shall not enter the reserved forest or utilise forest routes for transportation	The Supreme Court acknowledged the CEC findings, as well as the fact that industrialist had broken the law by mining in forest areas. The judgement further notes that the State Government's affidavit demonstrates that the State Government was aware of the infractions and took the appropriate steps to address them. Not only has the state taken action to stop mining, but it has also begun legal processes against the wrongdoing officials.	0	1	1	1	0	0	1	-

Case	Facts of the case	Decision	P1	P2	P3	P4	P5	P6	P7	P8
	purposes without the written permission of the District Forest Officer (DFO). It was also stated that the lessee must allow State/Central authorities to inspect the premises at any time.									
Jagtar Singh Etc vs State Of Punjab Etc on 9 February 2012	The state government issued a notice seeking to acquire land measuring 122 acres, 2 canals, and 7 marlas for a public purpose. The sale deeds were executed in the State of Punjab's favour at a mutually agreed upon price that was three times the collector rate. The land is transferred under the dubious 'Optimum Utilization of Vacant Government Lands Scheme' under Section 4 of the Act. The petitioner wants to annul the sale since the land is not used for the original purpose of the takeover.	The court found in favour of the state administration after pointing to several earlier decisions of a similar sort. A change of purpose alone does not entitle landowners to contest the sale deeds.	0	1	-	-	1	0	1	-

Case	Facts of the case	Decision	P1	P2	P3	P4	P5	P6	P7	P8
Pandit Jhandu Lal & Ors vs The State Of Punjab & Ors on 16 November 1960	The Punjab Government issued a notification under sections 4 and 6 of the Land Acquisition Act, 1894, to begin the process of acquiring land for the development of a labour colony under the Government-sponsored Housing Scheme for Thapar Industrial Workers' Co-operative Housing Society Ltd employees.	According to the court, the land was bought for a public purpose, and the question now is whether the acquisition proceedings were vitiated by the Government's admitted failure to comply with the provisions of Part VII of the Act. It's also true that the Letters Patent Bench of the High Court failed to consider all of the provisions of Article 31 of the Constitution, resulting in erroneous judgments. As a result, an acquisition for a Company may also be made for a public purpose, as defined by the Act, provided a portion or all of the acquisition cost is covered by public money.	0	1	-	-	0	-	-	-
Alok Agrawal vs State Of Chhattisgarh on 3 November 2017	The petitioners' land in Village Apri, District Janjgir-Champa, was subject to acquisition under the Land Acquisition Act, 1894, but before acquisition could take place, the Act of 1894 was repealed, and the new Act of 2013 came into force on January 1, 2013, resulting in the cancellation of the old land acquisition proceedings and the initiation of new land acquisition proceedings under the Act of 2013 for the acquisition of 55.172 hectares of land, including the	The court ruled in favour of the State government. Both the notifications issued by the appropriate Government dated 2-3-2015 about the petitioners' land, is quashed. Similarly, the notification under Section 11 (1) of the Act of 2013 dated 1-4-2015 is also hereby quashed.	0	0	-	0	-	0	0	-

Case	Facts of the case	Decision	P1	P2	P3	P4	P5	P6	P7	P8
	petitioners' land, for public use.									
Vikas Vidyalaya & Anr vs State Of Jharkhand & Ors on 15 December 2017	The petitioner, an educational institution files a petition against the State of Jharkhand for invoking urgency provision under Section 17(4) of the Act and entering upon the plots of land of the petitioners for surveying purposes.	Supreme Court of India has directed the government agencies to take possession of the land and pay a compensation of 80% within 15 days. Some parts of the Ring road have already been under construction and therefore it will not be feasible to divert any changes into the procedure. The petitioner-school has been found entitled to get compensation only for 0.16 acre of land.	0	1	-	0	1	1	-	-
Nand Kishore Gupta vs State Of Uttar Pradesh (2010) 10 SCC 282	The Yamuna Expressway Industrial Area Development Authority (YEIDA) acquired land for the aim of constructing the Yamuna Expressway from Greater Noida to Agra with an interchange and developing land parcels for residential, commercial, and industrial purposes. The project was to be completed on a BOT (build, operate, transfer) basis, and a private company, J.P. Infratech Ltd., was chosen in a tendering and bidding procedure to carry it out.	The court ruled in favour of the state, finding that the acquisition was not a colourable exercise of power due to the lack of transparency in the bidding and tendering procedure and the purpose set forth in Section 40 of the Act. It was agreed that the term "public purpose" encompasses more than "public necessity," and that the project was unquestionably helpful and of enormous public importance.	0	1	-	0	0	1	-	-

Case	Facts of the case	Decision	P1	P2	P3	P4	P5	P6	P7	P8
Banwasi Seva Ashram vs State of Uttar Pradesh (1986) 4 SCC 753	In this dispute, the needs of national development clashed with the rights of forest residents, Adivasis, in Uttar Pradesh's Mirzapur area. Under Section 20 of the Indian Forest Act, 1927, a portion of the forest was designated as a reserve, while other portions of the forest were given notification under Section 4 of the Land Acquisition Act, 1894, for the construction of the Rihand Super Thermal Power Project. The inhabitants were charged with trespassing under the Uttar Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 1972.	While endorsing the proposal, the Supreme Court assigned equal weight to national development priorities and forest dwellers' interests and rights. It was of the opinion that, even if development schemes had negative consequences for the forest's traditional inhabitants, such priorities should be encouraged for the sake of the nation's wellbeing. Several orders were issued, the first of which was to free all land to be acquired from the ban on dispossession, which was to be done by the National Thermal Power Corporation (NTPC), and the second of which was to provide means for the residents to be relocated and their livelihoods to be restored.	-	1	-	1	0	1	-	-
Kedar Nath Yadav vs State of West Bengal (2017) 11 SCC 601	It was challenged whether the land acquired was for a public purpose or in the interest of Tata Motors Ltd., if the compensation awards were given after due inquiry, at a fair price and in compliance with principles of natural justice.	The court agreed to the “public purpose” and acquisition being valid but since the land had not been in use after the abandonment by the company, it was ordered that the land be given back to the original owners and the compensation paid shall not be recovered.	-	1	-	1	0	0	-	-

Case	Facts of the case	Decision	P1	P2	P3	P4	P5	P6	P7	P8
Amita Banta vs State of Haryana (2009) P&H 10818	The case involves the acquisition of land by the 'Haryana Urban Development Authority (HUDA)' for the stated purpose of 'development and utilisation of land for residential and commercial Sector 28 in Gurgaon'. The complaint was that the state under Sub-Section 3(f) and Section 48 of the Land Acquisition Act, 1894 released the land from acquisition for a private developer (DLF Construction Company).	The judgement was against the state given the court could not find a notified purpose for the acquisition and public purpose hence ceased to exist which exhibited a colourable exercise of power. Therefore, the impinged acquisition was withdrawn by the court.	-	1	-	1	1	0	-	-
Azadi Bacho Andolan vs State of Uttar Pradesh (2003) All 203	The case concerns land acquisition and rehabilitation for Bharat Petroleum Corporation Ltd., which sought to build a petroleum refinery in Shankargarh, Allahabad, which was classified as a backward area. The biggest concern was that if the villagers were evicted from their land, they would lose their homes, livelihood, and land.	The court ordered that the government take steps to rehabilitate those who are being evicted and establish plans to employ those who have lost their jobs as a result of the acquisition. The land was not given to Bharat Petroleum Corporation.	-	1	0	1	1	1	1	-
Tamil Nadu Pollution Control Board vs. Sterlite Industries (I) Ltd. and Ors.	The facts of the dispute, in brief, are that residents near the plant had complained of health problems such as irritation, throat infection, severe cough, breathing problem, nausea etc. due to emissions from the plant. The Tamil Nadu Pollution Control Board (TNPCB) directed the	The Supreme Court, setting aside the order on maintainability alone, observed that the NGT in the case had entertained a leapfrog appeal against the original order while an appeal was still pending before the appellate authority. It was held by the court that since the appeal is	-	1	0	1	0	0	-	-

Case	Facts of the case	Decision	P1	P2	P3	P4	P5	P6	P7	P8
	closure of the plant under section 33A of the Water Act and section 31A of the Air Act. Subsequently, the Government of Tamil Nadu endorsed the TNPCB direction and ordered the closure of the plant because of larger public interest. However, the NGT, permitted the re-opening of the plant.	a creature of statute and an appellate tribunal has to act strictly within the domain prescribed by the statute, such leapfrog appeals to NGT are without jurisdiction even if the doctrine of necessity is pleaded.								
Bimal Chandra Pradhan Vs. Mahanadi Coal Fields Ltd. and Ors	The petitioner's 60% of the land was acquired by a mining company of Odissa. Due to the livelihood loss of the displaced people, the government of Odissa had assured employment to one family member of dispossessed under the rehabilitation Assistance Scheme. But when the person who lost the land approached the mining company, his application was rejected reasons citing that there were zero vacancies to be filled in Category D.	The court came down heavily that it is mandatory to employ one of the family members who has lost more than 1/3rd of the total agricultural holdings and denial of rightful benefits cannot sustain the eye of the law. This is because financial compensation for the property is not all-encompassing as that of livelihood/job security and opportunity for societies, mobility etc.	-	1	0	-	0	-	1	-
Government . of A.P. and Ors. Vs. Syed Akbar	Mr. Syed Akbar's land (1573 sq. yards) was bought by the Andhra Pradesh government for the public purpose of developing KR Road. He was paid Rs. 1,400 per square yard, which the dispossessed owner. Government, which acquired land for public use, did not use two-thirds of it for any	If land obtained for a public purpose is not used for the reason for which it was bought, the Supreme Court stated that it can be used for other public purposes, such as afforestation. On land obtained by the state, the property serves a societal function.	-	1	0	1	1	-	-	-

Case	Facts of the case	Decision	P1	P2	P3	P4	P5	P6	P7	P8
	purpose and kept it undeveloped for a long period. Mr Syed requested that the land be returned to him. The government came up with a new public purpose for which the land may be used and filed it with the court.									
P.V.Krishna moorthy vs. the Government of India	The petitioners, here, can be divided into two groups: those whose lands are being sought to be purchased for the planned project, and those who are resisting the land acquisition proceedings. The District Revenue Officer of the concerned District, through which the planned project is to be implemented, is the project's authorised officer. The authorised officer/s issued a notification under Section 3A(1) of the Act stating that the Central Government is satisfied that the petitioners' lands are required for the development of a Green Field Highway Project for a public purpose and, as a result, has declared its intention to acquire the petitioners' lands. The petitioners, whose lands are also being sought to be purchased, have disputed this announcement.	The court did not look into the public purpose for which it was being purchased, but rather focused on the procedures to follow in acquisition cases, as laid out under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013. The acquisition notifications issued by the respective governments were quashed by the courts, not because the public purpose was not well served, or because the environment, livelihood, social life, or other rights of the people were jeopardised, but only because the acquisition procedures were not followed properly.	-	1	0	1	1	-	1	-

Case	Facts of the case	Decision	P1	P2	P3	P4	P5	P6	P7	P8
Rajiv Pujari vs. Anil Agarwal case	The public interest litigation petitions were filed on behalf of landowners who lack access to justice, as well as the public of the locality whose public interest is jeopardised by the Foundation's violation of the Rule of Law in acquiring vast tracts of government, temple, and private lands in its favour.	The court did not look into the public purpose for which it was being purchased, but rather focused on the procedures to follow in acquisition cases, as laid out under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013.	-	1	0	1	1	-	1	-
M.R. Palanisamy vs The Government of Tamil Nadu	The plaintiff, Palanisamy opposes a land redistribution and reform decree. He claimed that the government had declared a portion of his property excess under the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965. He filed a writ suit claiming that there was no such excess.	The writ petition is dismissed in this case on several grounds. The petitioner had been given notice of the transaction many times, but he kept it hidden from the court. The petitioner had not complied with the due process of law, which included a final notice with a deadline to produce the records and make a representation. As a result, the ruling was interpreted as having been issued without any objections from the petitioner. The land was awarded to 14 qualified members from the Adi-dravida community out of 41 applications received.	-	1	0	1	-	-	1	-

Case	Facts of the case	Decision	P1	P2	P3	P4	P5	P6	P7	P8
B. Venkatamm a vs. State of Andhra Pradesh (2004)	<p>Even though the Jagir system was abolished in the state of Andhra Pradesh in 1949, the plaintiffs were able to legally keep their family property. They continue to pay the government land revenues, just as they did to the Jagir. The social role of property is also shaped by its historical and cultural roots. As a result, jurisprudence in this area establishes legal frameworks to capture this feature of the property as well. However, their property was incorrectly stated due to the patwari's erroneous recording. The district collector, through his subordinates, began evictions under the Andhra Pradesh Land Encroachment Act, 1905, based on false information.</p>	<p>The court explains the property system's method for recognising the plaintiffs' historical relevance and land ownership. The plaintiff's argument is strengthened by the fulfilment of the social obligation criteria. The plaintiffs have been paying the land revenue continually, according to the court. They have also been paying municipal tax as well as non-agricultural land tax since the Jagir system was abolished and the Municipal Act was promulgated. As a result, this suggests a "thin" form of the social obligation norm. The fulfilment of these social obligations imposed by the state serves as a security for the preservation of one's property.</p>	-	0	1	-	0	0	-	-

Case	Facts of the case	Decision	P1	P2	P3	P4	P5	P6	P7	P8
Vasantiben Dhansukhbhai Desai vs The State Of Gujarat (2019)	The petitioners have raised concerns about the Gujarat Slum Clearance Board's illegal and arbitrary disposal of land that was originally owned by writ applications. It was purchased under the guise of a public purpose to create housing units in Kansad village for Lower Income Groups and Economically Weaker Sections.	When the Court is seized of the larger issue of illegal allotment and connivance of officials of the Gujarat Slum Clearance Board in the matter of allotment of plots which were supposed to be allotted to people from the Economically Weaker Section/Lower Income Group, the judge stated that the Gujarat High Court does not intend to undertake any fishing inquiry as to who is the owner, etc. As a result, the claimed purchasers are not entitled to any equity in the purchase of the said plots or premises, whose allotment has been declared to be fraudulent by the Collector since its start.	0	1	-	-	1	-	1	1
			5	33	6	19	9	7	19	7

Appendix 2: Slum Eviction Cases:

Sl No	Case	Who are the parties	The arguments from the state	Arguments from evictees
1	1986 AIR 180, 1985 SCR Supl. (2) 51. Location- Bombay Judgement – SCI	Olga Tellis & Ors v Bombay Municipal Council	If the right to property (on pavement) is claimed by using Article 19(1) e constitution of India.	Right to livelihood Article 21 is violated if evicted from the pavement. Mumbai Municipality Corporation Section 314 without notice is arbitrary, unreasonable and exclude the principle of natural justice.
2	K. Chandru Etc.Etc vs State Of Tamil Nadu & Ors on 10 July, 1985. 1986 AIR 204, 1985 SCR Supl. (2) 100	Petitioner: K. Chandru Etc.Etc. Vs. Respondent: State Of Tamil Nadu & Ors.	Slum Clearance Board, formulated under a state act, were clearing the slums.	One of the litigants asked the court to ensure no evictions of slum dwellers and pavement dwellers take place without proper rehabilitation and civic facilities.
3	Ahmedabad Municipal Corporation vs Nawab Khan Gulab Khan & Ors. 11 October, 1996 SCI	Petitioner: Ahmedabad Municipal Corporation Vs. Respondent: Nawab Khan Gulab Khan & Ors	Pavements were occupied. Over time, others moved in against payment to original encroaches. Slum-dwellers have the right to carry any trade but not on illegally occupied roads and roadsides.	An alternative place located at a faraway place will deprive individuals of livelihood.
4	Almitra H. Patel And Anr. ... vs Union Of India And Ors. on 15 February, 2000	Petitioner: Almitra H. Patel And Anr. Petitioners Vs. Respondent: Union Of India And Ors... Respondents. Date Of Judgment:	Business of slum creation has passive or active support from the authorised at tax-payers cost during formalisation or clearance. The uncollected trash is piling up and polluting everything in and around the slum.	
5	Indian Inhabitant And Citizen ... vs State Of Maharashtra on 17 September, 2009. Location- Mumbai. Public Interest Litigation No. 156 Of 2006. Along With Suo Moto Writ Petition (Pil) No. 6 Of 200 Pil 156 Of 2006	Shailesh Gandhi (Indian Inhabitant and citizen residing at) B2, Gokul Apartment, Podar Road, ig) Santacru (W), Mumbai 400 054.).. Petitioner Versus State of Maharashtra AntiCorruption Burea) through the DGP, ACB) having his office at Madhu Industrial) Estate, 1st Floor, Pandurang Budhkar1)	On corruption during the slum rehabilitation project.	
6	Tulsiwadi Navnirman Coop. ... vs State Of Maharashtra And Ors. ... on 1 November, 2007. Location- Mumbai. 2008 (1) BomCR 1, 2007 (109) Bom L R 2493, 2007 (6) MhLj 851	Tulsiwadi Navnirman Coop. ... vs State Of Maharashtra And Ors.	A designated authority created an instrument to incentivise private individual investors as well as the slum dwellers (self-organisation) to clear existing dilapidated structures and develop new housing infrastructure.	Parties requesting the court that the designated authority property implement its objectives, including slum dwellers are rehabilitated, state and private land are slum-free. The taxpayers' money and residential use of land is protected.

Sl No	Case	Who are the parties	The arguments from the state	Arguments from evictees
7	High Court Of Delhi At New Delhi + Wp(C) Nos.8904/2009, 7735/2007, 7317/2009 And 9246/200 Sudama Singh Vs Govt Of Delhi	Petitioners Through: Mr. Prashant Bhushan, Mr.Somesh Rattan and Mr.Rohit Kumar Singh, Advocates. Versus Government Of Delhi & Anr. Respondents Through Mr.Najmi Waziri, Standing Counsel for GNCTD	One of the parties was occupying the "Right of the way" therefore should not be entitled to any compensation and rehabilitation.	Policies within "Housing for Urban Poor" was being violated.
8	Mrs. Rutuparna Mohanty vs State of Orissa & Others on 15 September, 2010. W.P.(C) Nos. 11667 and 12723 of 2010. Location- Bhubaneswar	Mrs. Rutuparna Mohanty, Managing Trustee, Maa Ghar Foundation & 43 others. Petitioner Versus State of Orissa and others. Opp.parties W.P.(C) No. 12723/2010 Basti Unnayan Mahasangha represented by its General Secretary and others. Petitioners. Versus State of Orissa and others Opp.parties. For petitioner: Mr. Karunakar Jena.	Unauthorised occupants from the Medical College Premises were attempted to be evicted by the district collector to the temporary shelters at two college areas outside the city area.	Permissive possession claimed by the illegal occupants since they are residing for the last three generations. Children of the basti residing near govt. schools. Many govt. facilities and services are also available on the basti.
9	W.P.(C) 11616/2015, CM APPLs.31234/15, 3033/16 & 10640/17	Ajay Maken & Ors. Vs Union Of India & Ors.	Railways want to remove encroachers to increase passengers and persons living on encroached land. Existing state law cannot supersede union law.	Demolition violates Supreme Court's various judgements and Master Plan for Delhi. Displaced persons exposed to extreme cold in absence of proper rehabilitation.
10	Review Application No.70 of 2018 and WMP No.12557 of 2018. Location- Tamil Nadu	Pennurimai Iyakkam vs The Government Of Tamilnadu	Encroachment located beside a road needs to be moved for more than three hundred families. They have been asked to move within a deadline.	Mass eviction to distant locations creates a ghetto culture, right to education for the children is affected. Rehabilitation should be at the same place.