

India Land & Development Conference 2020 Session Concept Notes



Azim Premji
University

Panel: : How Secure are the New Urban Tenures? An interdisciplinary and Legal Enquiry?

Organized by: Azim Premji University & NRM Centre for Land Governance

Achieving tenure security for all is now acknowledged as critical to sustainable development (Sustainable Development Goal 1.4.2). Land rights and tenure security, particularly private property rights are also regarded critical for well-functioning national economies (De Soto's, 2000) . In spite of attempts by the market and the state to deliver land tenure security in many countries, less than 50% of countries have mapped or registered private land in capital cities, and less than 30% of countries maintain digital land data for effective urban decision-making (Deininger, 2018)

India has been in the forefront of policy reforms to strengthen land and property rights since independence in rural areas. Post-liberalization, similar efforts have been launched in urban settings. Rapid urbanization has led to mushrooming of slums, unauthorized habitations and informalities in Indian cities. Insecure property rights impose a heavy cost on the economy and society by making property transactions difficult, giving rise to frauds and pushing a large section of people to informal settlements. While the inhabitants of these informal settlements form the foundation of urban services and growth, they live in perpetual fear of eviction and struggle to access public services entitlements. Improving their livelihoods amenities, living conditions as well as opening land and property markets have become the concerns of the state, propelling initiatives towards affordable housing, slum proofing, regularization of informal habitations and securing land and property rights.

Both the Government of India and several state governments have devised innovations in laws, institutions and technology and used multi-stakeholder platforms to confer new kinds of property rights to these sections of populations which hitherto remained landless or houseless. These initiatives include programs such as Urban Property Ownership Records aiming to secure the overall property rights regime in cities and towns; Basic Services to the Urban Poor (BSUP) program under the erstwhile Jawaharlal Nehru National Urban Renewal Mission (JNNURM) providing security of tenure and housing; Rajiv Awas Yojana'(RAY), or 'Slumfree India' prescribing legal title to slum dwellers/urban poor over their dwelling space through suitable legislation for property rights as a first step in the State's Slum Free Plan of Action. (Government of India, 2011) ¹. Recent Odisha Government's Land Rights to Urban. Recent Odisha Government's Land Rights to Urban Slum Dwellers program has been hailed as the world largest slum land rights project. Recently, the Union Government cleared a law which will give around 4 million slum dwellers in Delhi ownership right.

¹ The legislation should provide that the legal title is conferred either on the woman or jointly with the main male householder. Provision may be made for the legal entitlement to property to be on the house or on the land, as suits the cityscape. The title must be mortgageable and heritable, so as to enable access to formal credit mechanisms. It Urban Slum Dwellers program has been hailed as the world largest slum land rights project. Recently, the Union Government cleared a law which will give around 4 million slum dwellers in Delhi ownership right.

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These approaches seem to reflect a move towards 'Fit-for-Purpose' (FFP) approach to land administration, which strives for building and sustaining land administration systems that respond to particular national culture, contexts and capacities (Enemark, Bell, Lemmen, & McLaren, 2014, p. 5). Each jurisdiction is therefore encouraged to adopt its own way of 'allocating' and 'recording' land interests. However, taken from the lens of a more formal land tenure system such as the Torrens title system found in Australia and New Zealand, these approaches may appear (comparatively) to be an affront to established tenure models and thereby challenge indefeasibility of title.

While these initiatives aimed at enabling urban poor to realise their dream of owning a house that has a proper land title and access to basic amenities (Kundu 2013), they have also been critiqued as new mode of slum redevelopment which "seek to transform inner-city slum land into urban assets" (Roy 2014) by transforming "the complex ambiguities of informal property regimes into cadastral property and even more boldly into urban assets with globally legible value" (Roy 2014, Raman 2015).

Tenure, essentially the relationship between people and places, relies on a legal doctrine that also legitimises exclusion, thereby creating winners and losers (Boone, 2019). Urban tenure is also complex as rural or tribal (customary) tenures, evolving and adapting to geographical, cultural, social and economic contexts, quite often in a multi-dimensional space. Often set on a formal land administration with ample legacies, tenures in the urban settlements change dynamically as communities squat, acquire, settle, upgrade and transfer them through pluralistic legal framework, also embedding immense informalities. The tenures are defined and redefined across time, location, territory, typologies of rights (in right continuum), access regimes to common spaces and often negotiated and contested among holders, middle men, society and governments.

The Urban development, housing and land rights programs and initiatives perceive these tenure regimes often as informal and also as an encroachment or disruption on the formal tenure regime that cities hold or inherit from land revenue administrations. The city planners, developers and administrators in their attempt to secure or formalize or regularize these informal tenures, have adapted and introduced new form of tenures, as can be seen in these programs and initiatives. These new-urban-tenures also vary in terms of lease duration, size of land/house, socio-economic background of the dweller, typologies of rights (viz. inheritance, mortgage, alienation), use conditions (viz. residence, shops etc.) location (in-situ and ex-situ) etc., and also the way they are institutionalized, implemented and integrated into formal land and property registry.

Having been taken up over a long period of time across states and geographies with varied land laws, these new initiatives have seen varied degree of success that need to be documented and analyzed for drawing both academic insights and policy lessons. Also, of importance in this context is a good understanding of the gaps in the existing policy and legal framework across the Indian States and how these new-tenures superimpose and interact with existing informalities. Case laws that have emerged as a result of continuous litigations in the matter also call for a thorough examination.

About the session

India Land and Development Conference has been providing a platform for a dispassionate debate on various aspects of land governance in India. This year, we seek to bring to the discussion table the on-going and past experiments around securing the urban land tenures through federal, state and city initiatives involving innovations and disruptions. More importantly, we attempt to analyze the neo-urban tenures, their interaction with existing informalities and the emerging and potential implications, adopting a multi-disciplinary lens in general and legal angle in particular.

With Tata Trust's long-standing experience and engagement with the state agencies in designing and implementing urban development and property rights, it has a special interest to participate and draw learning

² must be alienable, after a certain number of years as decided by the State, during which period of time transfer back to the State should be permissible. http://spa.ac.in/writereaddata/Guidelines_Rajiv_AwasYojna-MoHUPA_2010.pdf

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from this panel. This panel will be moderated by Dr A. Narayana from Azim Premji University. The panel will have a practitioner (from one such project), along with academicians with relevant expertise, and also a legal expert. While this is the overall frame for the panel under this thematic area, we are also open to relevant insights and lenses to reinforce this narrative. We are of the firm belief that a session on this crucial issue would contribute to the overall relevance of the ILDC for both policy makers and academic researchers.

03-Mar-20

Panel 18: How Secure are the New Urban Tenures? An interdisciplinary and Legal Enquiry

15.15 - 17.00 Hrs

**Moderator****Prof Narayana A**, Faculty, Ajim Premji University**Panellists**

Ms Shikha Srivastava, Lead, Urban Poverty Alleviation and Livelihoods, Tata Trusts

Prof. Darshini Mahadevia, Programme Chair, School of Arts and Sciences, Ahmedabad University

Mr Alok Prasanna Kumar, Senior Resident Fellow, Senior Resident Fellow and Team Lead, Vidhi Centre for Legal Policy

Ms Aparna Das, Senior Advisor, GIZ-ICPP

Mr Kulasekhara Chakravarthy, General Manager, National Housing Bank

Date and Time: **13:30 – 15:00 hrs | 4 March 2020**Venue: **India International Centre, New Delhi**