

Preface

India has 304 million hectares of land and approximately 256 million households (Census of 2011). From the point view of planning, law and property rights, three factors are important when attempting to establish a relationship between the land and people. First, the Indian subcontinent has 15 agro-climatic zones with quite varying physical attributes prevailing in those zones. The value of the land, and potential use of land, is thus hugely different throughout the country, and affects the occupations people can adopt. Second, India is a federal union where socio-political organisation of the Indian republic is through 29 states and seven union territories. This division is not primarily based on agro-climatic aspects, but rather based on language and culture. Therefore, within one regional state, more than one agro-climatic region is often found. These regional states were governed by local kings prior to colonisation of the country. Thus, customs and rules (both pertaining to property and otherwise) that prevailed in each of these regions are longstanding and continued in the post colonisation and post-independence era. These regional states make laws and policies pertaining to the governance of land. Third, India is a hierarchical society with social groups at the bottom of hierarchy having limited access to land. Most of the landless population (about 30%) and people who hold less than one hectare of land (about 50%) belong to lower caste and indigenous communities. Yet these people have special rights which are constitutionally protected. These three factors present a complex scenario for land policies in the subcontinent.

The papers included in this volume are based on presentations made at the First South Asian Regional Conference of the International Association on Planning, Law and Property Rights (PLPR) held during 1–3 September 2015 at National Law School of India University, Bengaluru. Commencing with an inaugural symposium in 2007 and one annual international conference each year, PLPR has developed into a leading venue for an academic exchange between spatial planners, land use lawyers, architects, surveyors, and urban and regional sociologists.¹ The regional

¹For more information, please visit <http://plpr-association.org/>.

conference was funded by *Deutsche Forschungsgemeinschaft* (German Research Foundation), as closing conference of the FLOOR² subgroup on socio-ecological land policy. During the conference, 45 papers were presented. Papers that underwent a successful review process after the conference are included in this volume. The editors of the volume are fully cognizant that comprehensiveness of land policy scholarship is not present in this volume; no single volume could accomplish this. However, the papers included in the volume represent current strands of research in the domain and point out some of the emerging areas where empirical research is required. In the remainder of this preface, we provide a brief introduction to each of the papers included in this volume to facilitate readers' curiosity as they tread into the complex maze of Indian land policy issues.

Ever since the adoption of the Constitution in 1950, the question of land has been contentious. Though property rights were recognised as a fundamental right in the Constitution, through major court battles (between powerful landlords and the state that wanted to ensure distribution of land to landless population), this changed since the aims of land distribution could not be achieved when a liberalist interpretation of the fundamental right to land existed. The first two chapters of the volume relate to this question of the social content of property rights and legal routes to realise the social rights through land policies. Chapter “[Human Dignity and Property in Land—A Human Rights Approach](#)” by Benjamin Davy asserts that some property rights have been recognised as human rights to respect and promote the inherent dignity of each human being. He examines the relevant human rights documents sponsored by the United Nations and points out why recognising property as human right is critical to the realisation of other socio-economic rights. Chapter “[Evolution of Property Rights in India](#)” by Madhumita Mitra examines the evolution of property rights through legal battles in Indian courts and resultant jurisprudence that has emerged in independent India.

Chapters “[Postcolonial Evolution of Water Rights in India and the United States](#)” and “[Conflicting Interests and Intelligible Utilisation of Common Property Resources: A Study of a Tropical Wetland in South India](#)” deal with the question of the commons. In Chapter “[Postcolonial Evolution of Water Rights in India and the United States](#)”, Jesse Richardson shows how path dependency of policies is created through post-colonial structures. He takes the case of water rights in India and USA to empirically argue this case. Christabell in Chapter “[Conflicting Interests and Intelligible Utilisation of Common Property Resources: A Study of a Tropical Wetland in South India](#)” presents an alternative story. She examines the policies and programmes of a South Indian state towards wetlands and examines in detail the case of a lake. She points out how conflicts arise among multiple stakeholders over the use of common property resources. Both marginal communities and environmental values lose in this game.

²FLOOR is an acronym for Financial Assistance, Land Policy, and Global Social Rights. Publications and working papers of the FLOOR research group are available at www.floorgroup.de.

Chapter “[Land Transfer Tax Policy Regime and Its Influence on Property Markets: Analysing the Land Transfer Tax Policy of Kerala in the Last Decade](#)” by Nirmal Roy deals with the complex question of land markets. He takes the case of the state of Kerala and examines how changes to lax tax structure affects land prices and thus land markets. One of the major losses for the exchequer of the Indian state from land market is that people report nominal value for land in any transaction, while major chunks are exchanged between parties in non-taxable cash form (black money). In this context, this chapter examines the impact of lowering taxes for facilitating land markets. The study concludes that after a short spell of impact on land market through taxation changes, the status-quo is generally maintained.

During the period surrounding the conference, one of the intensely debated public policy issues was that of land acquisition. Chapters “[Development or Disaster? Land Acquisition and Dispossession in the Mining Belts and Coastal Zones of Rural Odisha, India](#)” and “[The “Public Purpose” That Is Not Inclusive](#)” deal with the question on land acquisition. Land acquisition laws formulated in 1894 by the British colonial regime are not viable for providing land for the development of industries. Though over 60% of labour force gains their livelihood from agriculture and allied activities, the agricultural sector contributed only 15% of GDP. Thus, policy imagination is focused on increasing the productivity of land by easing the land acquisition process and making such acquired land available for industrial investment. Chapter “[Development or Disaster? Land Acquisition and Dispossession in the Mining Belts and Coastal Zones of Rural Odisha, India](#)” challenges this view and argues how land acquisition for industries may be leading to displacement in mineral-rich regions. Chapter “[The “Public Purpose” That Is Not Inclusive](#)” explores this issue by addressing the assumption of ‘public purpose’ that is behind the land acquisition. In India, as in many countries, state power is weakened by social forces and private aims are advanced in the name of public purposes.

One of the biggest challenges that Indian land policy is due to tremendous urbanisation. This issue is the subject matter of Chapters “[The Cyclical Interaction of Institutional Constraints to Formal Affordable Housing Market in Raipur, India](#)” and “[City in Crossfire—The Environment Versus Development Debate in Navi Mumbai](#)”. Farmers, particularly small famers, are leaving the land, and seeking livelihood opportunities in cities. The urban centric growth model has encouraged this trend. According to the census of 2001, there were 384 cities with a population of 100,000 or above (Class I Urban Agglomerations). The census of 2011 reported that the number of such cities had increased to 468. If we consider small towns (urban agglomerations that do not have the population size of 100 thousand) they total 53 million or 43%, of India’s population. The gush of migration to urban areas has brought new pressures on housing, infrastructure and traffic. Chapter “[The Cyclical Interaction of Institutional Constraints to Formal Affordable Housing Market in Raipur, India](#)” by Aparna Vedula and Sarika Bodhankar deals with the dilemma of protecting the environment in contrast to the efficient building of infrastructure. The question of mangrove protection and discharge of industrial

effluents into the water bodies creates problem for sustainable planning; this has lessons for other cities in India. As the paper shows, the planned city of Navi Mumbai reduced the congestion and provided better housing. Yet, are these houses affordable? In the context of burgeoning property values in urban areas, this is a complicated question. Padmini Ram takes up this question in Chapter “[City in Crossfire—The Environment Versus Development Debate in Navi Mumbai](#)”. She draws on her doctoral work based on the city of Raipur in the state of Chhattisgarh. She argues that as the housing demand increased, the state first privatised the housing sector which then led to inequities forcing the state to revamp its Housing Board. Within three years of public intervention, sufficient stock of affordable housing for the city was created.

As pointed out in the beginning of this preface, one challenge to land policy in India is the huge differences among regions and states on the one hand, and the differences between stated policies and actual practices. Chapter “[Property Regimes in India: A Study of Political Determinants of Structural Factors](#)” by Deepa Kailasam Iyer makes an attempt to understand the driving forces behind the variations among states. She points out how dominant social groups and occupational categories in particular states shape the land policies in those states.

The final chapter by two of the editors aims to connect the global discourses on land policies with the challenges faced by policy makers in India. Some of the challenges are not unique to India, for instance the global trend toward urbanisation and thus the importance of urban property issues and planning, or the need to have land records system for facilitating transactions. India has plenty to learn from global experiences on such issues. On the other hand, some of the issues such as how land inequality is created through historical social structures are unique, and the answers for them will need to come from within the country.

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Land Policies in India

Promises, Practices and Challenges

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