

# IMMOVABLE PROPERTY RIGHTS

A CASE FOR LAW REFORMS IN PUNJAB



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*"The law perverted! The law—and, in its wake, all the collective forces of the nation—the law, I say, not only diverted from its proper direction, but made to pursue one entirely contrary! The law becomes the tool of every kind of avarice, instead of being its check! The law is guilty of that very iniquity which it was its mission to punish! Truly, this is a serious fact, if it exists, and one to which I feel bound to call the attention of my fellow citizens."*

Frédéric Bastiat's classic essay, "The Law"



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## ABBREVIATIONS

B-READY	Business Read
CPIA	Country Policy and Institutional Assessment
DC	Deputy Commissioner
DILRMP	Digital India Land Records Modernization Programme
GDP	Gross Domestic Product
GIS	Geographic Information System
GNSS	Global Navigation Satellite System
GPS	Global Positioning System
IDA	International Development Association
IPRI	International Property Rights Index
IPR	Intellectual Property Rights
INLIS	Integrated Land Information Service
LP	Legal and Political Environment
MRT	Mass Rapid Transit
NAB	National Accountability Bureau
PPR	Physical Property Rights
PULSE	Punjab Urban Land System Enhancement
RERA	Real Estate Regulation Act 2016
SECP	Securities and Exchange Commission of Pakistan
SLA	Singapore Land Authority





## PREFACE

Pakistan has faced severe economic crises in the past and is still facing one. Inflation has remained very high during the past few years making it hard for the majority of the poor and lower-middle class even to survive on the bare minimum. In these testing times, the state has little or hardly anything to offer due to squeezed fiscal space. It has to increase taxes and energy prices to pay for public debt, pensions, and independent power producers (IPPs). This economically alarming situation requires some drastic cost-effective policy interventions to encourage local and foreign investment. Only private sector investment is likely to bring economic turn-around for the country be it job creation, improved forex reserves, or more public revenues.

An effective system of property rights and contracts provides the fundamental foundation for improving the confidence of investors in any system. Unfortunately, both of these have remained neglected areas and mainly the colonial system continues with some land reforms which too remained inconclusive. People are left to themselves to settle their property and contractual disputes or left at the mercy of decades-long court proceedings to settle them. This situation has caused frustration and, many a time, resulted in a series of conflicts causing the loss of precious lives. As a student of law and public policy for over three decades, it has baffled me and always wanted to contribute to systemic reforms in a meaningful way.

I appreciate RASTA and the Pakistan Institute of Development Economics for providing an opportunity to research property rights, one of the most important aspects of the economy which is affecting millions of lives of the poorest of the poor. As explained in this report, we need some drastic reforms to have a system where property rights are protected. An interesting aspect of the proposed reforms is that hardly much public spending is required on the implementation of these reforms with benefits ranging from reducing conflicts and encouraging investment. In my humble view, huge benefits outweigh the costs of adapting the proposed reforms.



In the end, I think that hardly any debate is required on the statement of the problem regarding property rights in Punjab but do acknowledge that there may be a difference of opinion on conclusions and recommendations. This study does not try to reinvent the wheel and is based on the existing knowledge base. This study will be meaningless if no time-bound property law reform agenda is set for Punjab by the elected representatives of that province. I would welcome any ideas based on reasons which are most likely to make property rights effective.





## EXECUTIVE SUMMARY

Immovable property is a precious and limited resource. It has always attracted human attention for ownership and possession. Be it the feudal system of the West or the Jagir system of the Indian subcontinent, immovable property played a significant role in evolving social structures in any society. Even the communist philosophy revolved around it. During the past more than a century, the proper use of immovable property has played a pivotal role in the economic development of various nations. This has been done through systemic reforms by enacting laws for the protection and enforcement of property rights.

This report takes the reader from the introduction of property and property rights, their etymology and history to the protection and enforcement of property rights in various jurisdictions of the world. The position of Pakistan in property rights protection based on international reviews, indices, and rankings is captured to identify problems relating to such rights. It contains a detailed introduction and analysis of the Torrens system before analyzing gaps in the property rights system of laws in Punjab. Based on these deliberations, certain conclusions have been drawn and specific recommendations have been made for systemic reforms requiring legislative intervention.

Property rights are internationally recognised rights and almost every nation has laws for the protection of private property rights. Apart from a hiatus of less than a century of communism, private property rights remained a predominant feature of every nation's legal system. Even the present-day communist nations have started creating room for private property rights for economic development. After independence, Pakistan did not focus on property rights except for an unfinished agenda of land reforms. The digitisation of land records is more of an administrative reform than bringing a sea change in the system of property rights.

The Constitution expressly provides for property rights but the laws to protect those rights were mostly made during the colonial era with a different mindset





and for different times. Land laws applicable to rural areas, transfer of property laws, eminent domain law, legal restrictions on land alienation, and property dispute settlement laws are all colonial laws inherited by the state after independence. Some of the laws relating to immovable property passed after independence, like preemption, possession, katchi abadis, and electronic transactions laws went the other way instead of promoting property rights. The law relating to strata titles and condominiums is conspicuously missing from the property laws of Punjab.

As expected, Pakistan fared poorly on all the international indices on property rights. It has consistently performed poorly on the World Bank, Infrastructural Development Association's Country Policy, and Institutional Assessment (CPIA) on property rights, and occupies 156th rank out of 175 countries ranked on the property rights index of the Heritage Foundation. Worse still is the 104th rank out of 125 countries on the International Property Rights Index (IPRI). It consistently ranked very low on the measure 'registering property' in the erstwhile Doing Business Index of the World Bank. A similar ranking is expected in the forthcoming B-READY Index of the World Bank which will replace the Doing Business Index.

The existing property law reforms in Punjab are sporadic and are not likely to provide an impetus for economic revival. Reform measures should come as a package and not cover a single aspect of property-related laws. In recent years, it did make some progress on the digitisation of land records, ensuring inherited property rights of women and honouring tenancy agreements other than agricultural tenancies.

A comparative analysis of the legal systems relating to property rights shows that economic progress made by Singapore, New Zealand, and Australia is based on a solid foundation of one of the most effective property rights laws in the world. An analysis of the property rights system of England and Wales has also been made apart from a detailed analysis of Indian laws of property. This story is repeated throughout the world that the developed economies either have robust property







rights laws or the fast-growing economies are trying to catch up on property law reforms to hasten their economic progress.

Sir Robert Richard Torrens has the credit of coming up with a novel initiative some 170 years ago on property law reforms. The system is named after him as the Torrens system based on mirror, curtain, and guarantee principles. This initiative has since changed the world's view of immovable property being a private affair of the owner with hardly any responsibility of the state other than the state being the custodian and guarantor of title to the private properties. This system has its positives and negatives but it is still regarded as one of the best possible systems for protection and enforcement of property rights.

In Punjab, the deed registration system for immovable property transactions has been prevalent for more than a century. That too is not universally applied and many entities, including private societies and companies, are the custodians of property transactions. This has resulted in a lack of investment in general and especially in the development of private properties. Financial institutions are reluctant to provide credit to small farmers and for large holdings they hedge. Hence, credit on land security does not come cheap; rather it is costlier than other securities. There are huge conflicts over property disputes and these conflicts have overburdened the judiciary. These conflicts invariably turn violent and have resulted in the loss of many precious lives. Multiple factors in our legal system are responsible for defective titles and consequential conflicts.

Universal registration of all property transactions by a sole state agency, the introduction of the Torrens system, the digitisation of entire land and strata properties in juxtaposition with cadastral maps, the rationalisation of taxation on property transactions, allowing online property transactions, capacity building of land administration officials in modern technologies, and reforms in laws relating to eminent domain and katchi abadis is a way forward for introducing an effective system of property rights in Punjab. This will require the repeal of some laws, substitution of few, amendment of others, and enactment of new laws.





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# 1. INTRODUCTION

*“To any man whom we have deprived or dispossessed of lands, castles, liberties, or rights, without the lawful judgment of his equals, we will at once restore these.”* (Carta, n.d.)

Right from the beginning of human society, human beings remained aware and possessive of things and property. In pre-historic societies, the concept of wealth, belongings, and property existed and norms to protect them. These social norms invariably transformed into laws, decrees and edicts. Like other ancient societies, the right to ownership existed in ancient India. Property connotes ‘a thing or things belonging to someone.’ Property may also be construed as anything that is owned by a person who holds legal rights over it. It is, hence, the rights of a person with respect to a thing or asset. It is an abstract term and jurists have always found it difficult to give exact meaning to it.

‘Property’ is an object of legal rights, or possessions or wealth collectively, frequently with the connotation of individual ownership in English usage. It is derived either directly or indirectly (through French *propriété*) from Latin *proprietas*. *Proprietas* means the peculiar nature or quality of a thing and ownership. The expression ‘*proprietas*’ originates from ‘*proprius*’, which is an adjective meaning peculiar or own, as against ‘*communis*’(common), or ‘*alienus*’ (another’s). Even before ‘property’ became a legal term, it was distinguished from an association of persons or one another (Alexander & Donahue, n.d.). Another necessary corollary of the concept is that anything capable of ownership is property.

## 1.1 IMMOVABLE PROPERTY

Immovable property refers to assets firmly attached to the ground, making them difficult to relocate easily. Examples encompass land, buildings, and any permanent structures affixed to land (Cambridge Dictionary, n.d.). The legal scope often encompasses interests in real estate or rights tied to land usage. In





contrast to movable property, which can be transferred without altering its form, immovable property remains fixed in place and moving it would typically alter its structure or cause damage (Shekhar, 2016). The General Clauses Act defines immovable property to include land, benefits derived from land, and objects attached to the land or permanently affixed to structures on the land.<sup>1</sup> This definition is not exhaustive, as any property listed following 'include' is also treated as immovable. Similarly, under the Transfer of Property Act, immovable property excludes standing timber, growing crops, or grass.<sup>2</sup> This too is non-exhaustive. Specific definitions of immovable property may vary in various jurisdictions and different contexts or laws. Normally, an immovable property includes:

- Land is the surface of the earth and everything over or under it, including minerals, water, and airspace. Benefits arising out of land and things attached to the earth or permanently fastened to anything attached to the earth are included in it.<sup>3</sup>
- Benefits arising out of land are rights like mineral rights, easements, and profits that can be derived from the land.
- Things attached to the earth are buildings, trees, other vegetation and machines that are considered permanent and not intended to be moved.

## 1.2 MOVABLE PROPERTY

Movable property in ordinary connotation is the goods or possessions owned or held by any person that can be transported or moved from one place to another. Examples include furniture, jewellery, equipment, vehicles, and clothing. Essentially, any property capable of being relocated falls under the category of movable property.<sup>4</sup> This term is defined across various legal statutes and

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<sup>1</sup> The General Clause Act 1897, section 3(25).

<sup>2</sup> The Transfer of Property Act 1882, section 3.

<sup>3</sup> The Land Acquisition Act 1894, section 3(a).

<sup>4</sup> The General Clause Act 1897, section 3(36).



encompasses all types of property except for immovable property. This definition is repeated in the Registration Act.<sup>5</sup> The term 'movable property' encompasses all tangible property of any kind, excluding land and objects affixed to the land or permanently attached to structures on the land.<sup>6</sup>

There is an intriguing debate surrounding whether trees should be classified as movable or immovable property. The determination hinges on the primary purpose for which the tree was planted. If the tree is cultivated for its fruit, it is generally classified as immovable property. Conversely, if the tree is grown primarily for timber, it tends to be categorised as movable property.<sup>7</sup> Moreover, the classification of a tree as movable or immovable property hinges on the intention expressed in the contract. In such cases, the doctrine of fixtures is applied to determine the status of a sale agreement. If the intent is to maintain the trees for ongoing growth and nourishment, they are typically considered immovable property, otherwise, they are classified as movable.<sup>8</sup>

## 1.3 PROPERTY RIGHTS

Property rights are the rights regarding legal ownership, possession or utilisation of resources whether movable or immovable. These resources may be tangible or intangible and can be owned by individuals, legal persons, businesses, or governments. It is regarded as the exclusive authority to determine the use of any resource. The state approves the uses selected by the holder of the property right and enforced by state power. If the resource is state-owned, the state agent who determines its use has to operate under a set of rules or laws passed by the legislature or by the executive under authority delegated by the legislature to discharge the functions assigned to such agent (Alchian, n.d.). Property rights aim to promote economic efficiency by facilitating the creation of a property market and allowing for the efficient allocation of property resources. Immovable

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<sup>5</sup> The Registration Act 1908, section 2(9).

<sup>6</sup> The Pakistan Penal Code 1860, section 22.

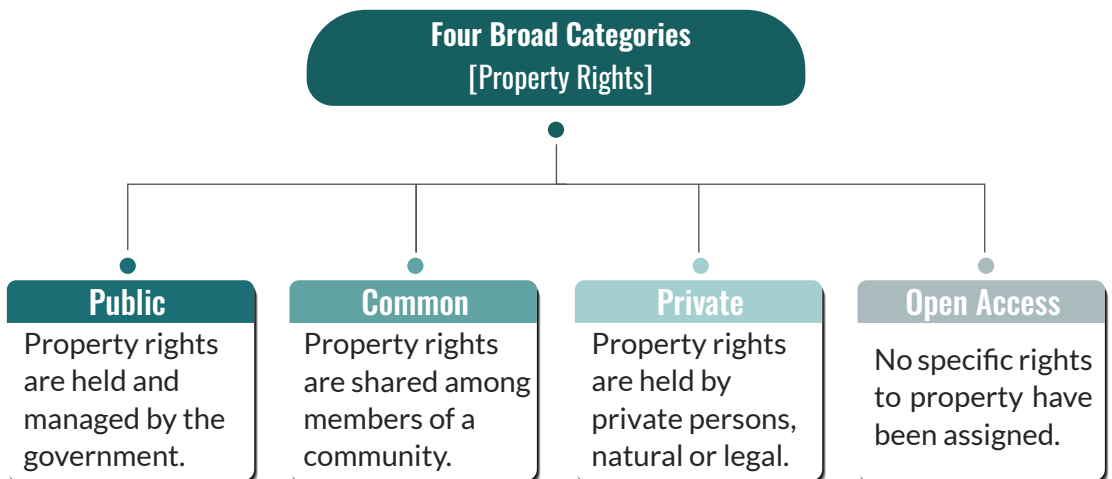
<sup>7</sup> Shanta Bai v. State of Bombay, 1958 AIR 532, 1959 SCR 265.

<sup>8</sup> Marshall v. Green, (1875-76) L. R. 1 C. P. D. 35.



property rights are commonly referred to as real property rights. For movable property rights, the term personal property rights is used, while for intellectual properties, the use of intellectual property rights is common.

The Universal Declaration of Human Rights of 1948 (Article 17) provides that every person has the right to own property individually or in association with others. However, this right is not explicitly recognised in the International Covenant on Economic, Social and Cultural Rights of 1966 and the International Covenant on Civil and Political Rights of 1966. The European Convention on Human Rights in 1950 did acknowledge the right of persons to peacefully enjoy their possessions, with considerations for the public interest and ensuring that the tax obligations are met.<sup>9</sup> The American Declaration of the Rights and Duties of Men, the American Convention on Human Rights and the African Charter on Human and Peoples' Rights expressly recognise the right to private property. Similarly, the International Convention on the Elimination of All Forms of Racial Discrimination also contains provisions concerning the right to own as well as inherit property.<sup>10</sup>



<sup>9</sup> European Convention on Human Rights, Protocol 1, article 1.

<sup>10</sup> International Convention on Elimination of All Forms of Racial Discrimination, article 5.





## 1.4 PROPERTY LAW

Property law encompasses the intricate web of legal relationships among individuals concerning tangible assets such as land and goods. It defines the collective set of duties, rights, privileges, limitations, immunities, powers, liabilities, and disabilities that pertain to both movable and immovable property. Virtually every legal system worldwide incorporates some form of property law. Within these legal relationships, the law typically attributes the following rights, privileges, powers and immunities to the owner or user of the property:

- the right to possess, with others obligated to refrain from interference;
- the privilege of use, with others lacking the right to prevent such use (accompanied by the right of the user to restrict others from using it);
- the power to transfer any of these attributes to another (who can then exercise similar authority);
- immunity from modification or change by others of these attributes (ensuring others are prohibited from changing them) (Alexander & Donahue, n.d.).

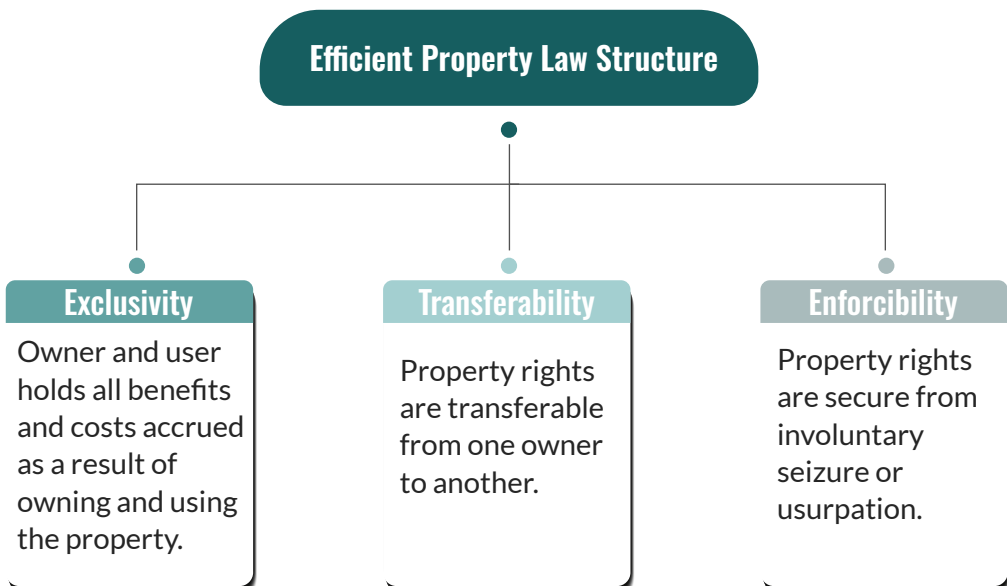
An effective legal framework is essential for securing property rights. When private property rights are insecure, opportunities are limited and economic development is hindered. Conversely, secure property rights are crucial for fostering investment, which, in turn, drives economic growth and prosperity. A robust legal system of property rights ensures that owners have secure and legally recognised ownership of their assets or properties, enabling them to trade, invest, and utilise them efficiently. In contrast, an improper legal system of property rights creates uncertainty, discourages investment, and hinders economic growth (Miller, 1997).

Property rights are the legal rights recognised by the legislatures to determine who owns what and why. The government is the custodian of the legal system and



decisions made by it about property rights have a huge impact on a person's or association's decision and ability to take part in the economy through investment or otherwise (People's Economy, n.d.). These include titles, possession, and various modes of transfer of an immovable property. But there are also certain restrictions or limitations on legal property rights like land use laws and legal restrictions on air rights. Mineral resources underneath or over one's land are legally deemed as state property in many jurisdictions.

In numerous countries like Pakistan, land administration ranks among the most corrupt public services, alongside the courts and the police. Beyond blatant fraud in the allocation and management of public lands, a significant factor contributing to this corruption is the frequent requirement for users to pay bribes to obtain standard services. The bribes can be substantial, particularly in urban and peri-urban areas. An effective legal system mitigates or prevents the misuse or abuse of authority by public officials responsible for providing this essential public service relating to land administration. It ensures clarity of title over the property with efficient and secure property transactions.

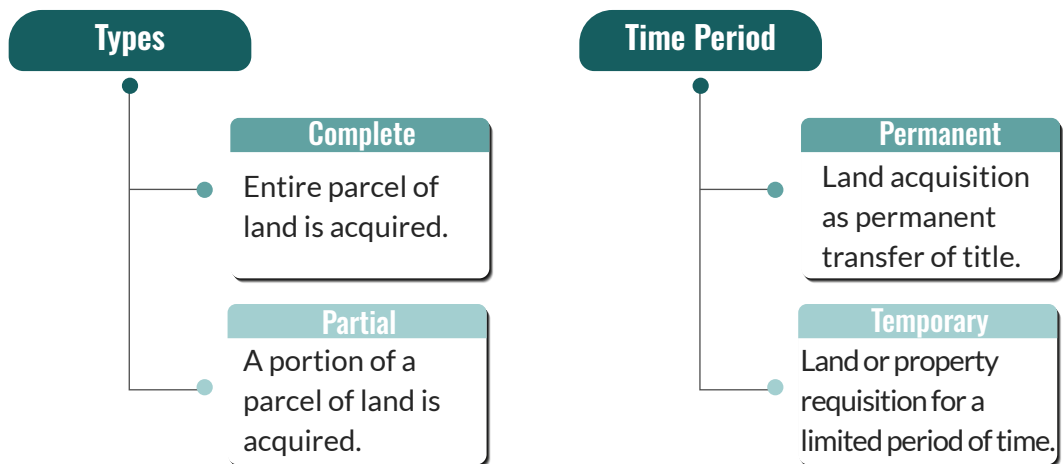


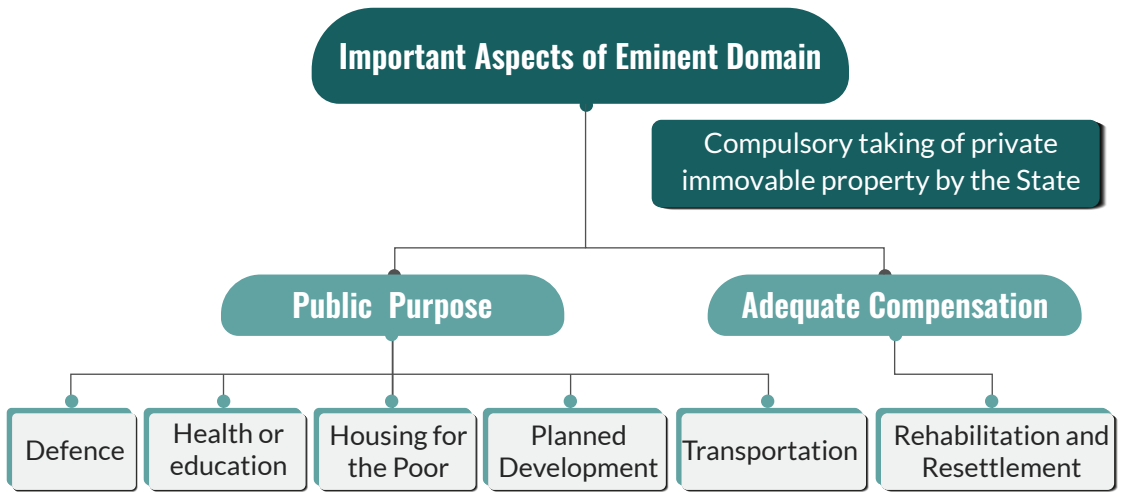


## 1.5 MODERN PHILOSOPHY OF PROPERTY

The 17th-century Dutch jurist Hugo Grotius introduced the theory of eminent domain. This theory granted the state the power to takeover the private property. Only if, when such an action was for a public purpose and against fair compensation to the person whose property was taken or acquired by the state. This idea gained widespread acceptance in capitalist economies. John Locke viewed the denial of property rights as a breach of the social contract with individuals or citizens. John Stuart Mill, the proponent of liberty, argued that there is an inseparable linkage between property and liberty. He argued that securing property rights is crucial for human freedoms. Conversely, Marx and Engels have opined that property is merely a tool in the social struggle between the elite class and the proletariat, a means by which capitalists or the elite exploit proletarian labour and keep them in subjugation. According to them, true reform would only occur with a revolution, leading to the abolition of property (Miller, 1997). On the other hand, Frederic Bastiat has opined “life, liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place.”

## 1.6 EMINENT DOMAIN





## 1.7 SPECIAL KINDS OF PROPERTIES

Water, natural resources and human organs fall in the category of special kinds of properties. Generally, water under or adjoining land of a person will give limited rights to use to such person with due deference to the rights of users in lower riparian. Similarly, natural resources are generally treated as state property even if found in or beneath private property. Modern law does not recognise human beings as property but there is debate on treating human blood and other organs as property. Normally, the transfer of human blood and organs is extensively regulated under the law.

## 1.8 IMPORTANCE OF RIGHTS TO IMMOVABLE PROPERTY

A proper system of real estate rights in the private sector plays an important role in economic development and in shaping the economic landscape. It is a GDP growth catalyst, promotes investment, creates jobs, triggers infrastructure development and is a huge source of government revenues. The construction industry forms the backbone of the economy. It can have a great boost if the private sector's rights to immovable property are properly protected by the state. It not only creates jobs for architects, engineers and the labour force in the





construction industry but also multiple jobs due to investment in production and other sectors. The rights to immovable property in Pakistan have many challenges from titles to regulatory complexities, bureaucratic hurdles, qabza groups and encroachments. It is imperative to address these systemic issues for the use of real estate as the real driver for economic development (Nouman, 2024).

Property rights are a fundamental cornerstone of market systems. Without clear ownership, discussing markets and exchanges becomes nearly impossible. However, determining ownership is more complex than it appears, and even more challenging is assessing the fairness of such ownership (People's Economy, n.d.). Property rights are essential for a functioning economy. They dictate resource allocation and usage, can be used as collateral, and offer the security and confidence necessary for investment and development (Ross, 2023). Property rights allow the owner or holder to use the property as they see fit, within certain legal constraints. These rights include retaining, selling, renting for profit, or transferring the property to someone else.

Access to land and proper ownership documentation are crucial for the livelihoods of many poor individuals especially in rural areas (Deininger, 2008). Land laws play the most important role in shaping property transactions for residential, commercial, and industrial purposes, which includes costs for accessing and transferring the property. These laws impact the use of land or property as collateral to obtain credit and inspire or otherwise investment decisions. Land and property remain significant sources of public revenue through various taxes and duties. Effective land policies and laws are essential for achieving high economic growth rates and have a significant impact on poverty alleviation (Ross, 2023).

In a society where property rights do not exist or are not properly enforced, the ownership and use of resources are dependent upon the principles of power or force. Normally, this power or force is used by the state or other powerful elites of the society. The resources in such a society are allocated by political ends or





usurpation rather than the foundation for economic development. The government or usurper decides about the user or beneficiary of the property and may also exclude any rightful claimant from the use of the property.

## 1.9 WHO CAN OWN PROPERTY?

Property is anything that can be owned. It is a person's proprietary rights as opposed to his personal rights (Salmond, 1913). There may be property without an owner called escheat or *res nullius*, which becomes property of the state. Otherwise, most of the property is owned by persons, individuals, or legal persons. Even an unborn child is legally recognised as a person for ownership of property. But a child or a legally declared insane person has limited right of ownership and the guardian of such person may, under certain legal restrictions, exercise ownership rights over the property owned by the child or insane person. They are legally capable of ownership of the property. They may own the property but are not legally competent to enter into property transactions. The parent or guardian appointed by the court may enter into property transactions on behalf of and for the benefit of the child or insane person.

## 1.10 HISTORY OF PROPERTY RIGHTS

Property rights have deep historical roots. In ancient societies, property rights were often based on custom, tradition, or the power of rulers. As societies became more complex, legal systems developed to formalise property rights. The Normans introduced the feudal system in England after their conquest in 1066. In the feudal system, the king was the owner of all land and he could grant the use of any land to his subjects in return for the provision of revenue or rendering of military or other services for the state (Ting et al., 1999). The Magna Carta 1215 was a revolutionary step in England that established the due process right. It provides that the king cannot take anyone's land or property without due process. Magna Carta is a reflection of the tension that existed between the Crown and his subjects with regard to property. John Locke in the late 16th century argued for private property rights.<sup>11</sup> Industrial revolution in Europe

<sup>11</sup> The Second Treatise of Government (1689).





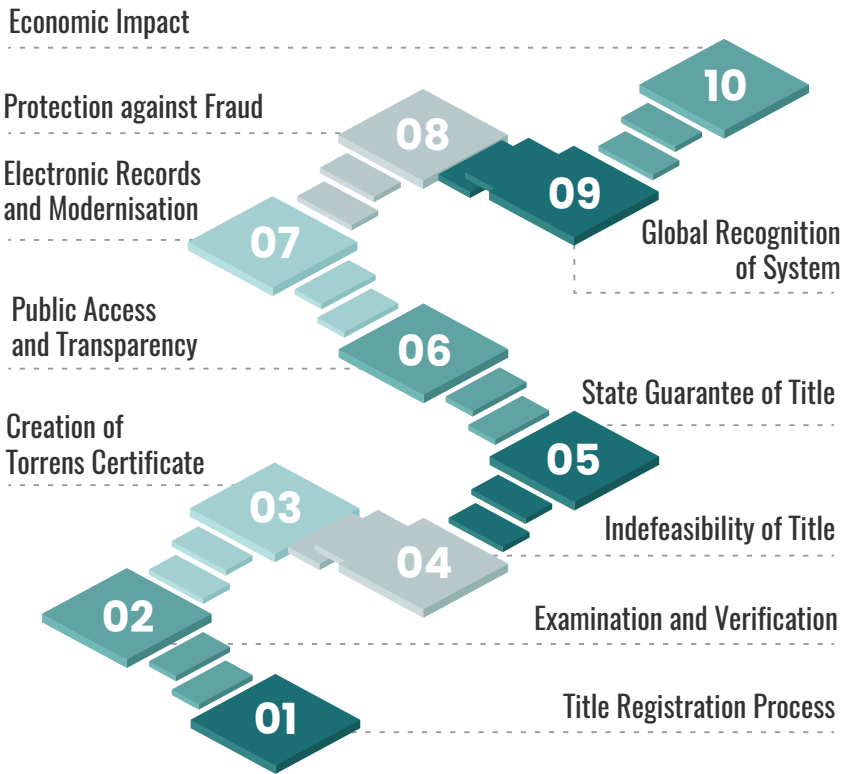
brought the enclosure movement which converted and consolidated inefficient and tiny parcels of land into larger but more productive parcels. The Statute of Uses 1535 was aimed at raising land taxes but during the industrial revolution, it was later used for the transfer of title. This law lasted until 1925 when the Law of Property Act of 1925 repealed it.

English common law developed into the Anglo-American system and civil law traditions emerged in continental Europe based on Roman law, providing legal frameworks for property ownership, contracts, and inheritance. Barring the strict communist period in the twentieth century, most of the world followed either of these two systems (Alexander & Donahue, n.d.). Property rights only matter if they are swiftly enforced by the state (Murtazashvili & Murtazashvili, 2016). Otherwise, mere rights without efficacious remedies in case of violation become a mockery.

Sir Robert Torrens in the 1850s propounded the concept to simplify and facilitate the sale and transfer of land through the Torrens certificate in South Australia. The government-appointed registrar is authorised to issue the certificate to the transferor following a search of the property's legal history. The Torrens certificate provides future purchasers or transferors of property with an indisputable record of ownership. It includes a government guarantee of title which works more than the insurance policy to resolve title disputes (Chen, 2022). The South Australian Real Property Acts of 1860 and 1861 provided for the issuance of such certificates of title based on several factors. The Torrens certificate, rather than registration, is legally recognised as irrefutable evidence of the title of the property in the person in whose name the property is registered (Ting et al., 1999).



## 1.11 HOW TORRENS CERTIFICATES WORK<sup>12</sup>



### Evolution of Western Land Administration Systems

'Variables	Feudalism - 1800	Industrial Revolution 1800-1950	Post-War Reconstruction 1950-1980	Information or Environment Revolution 1980
<b>Human kind to land evolution</b>	Land as Wealth or political power	Land as a commodity	Land as a scarce resource and a marketable commodity	Land as a community-scarce resource

<sup>12</sup> For detail, see Section 5.

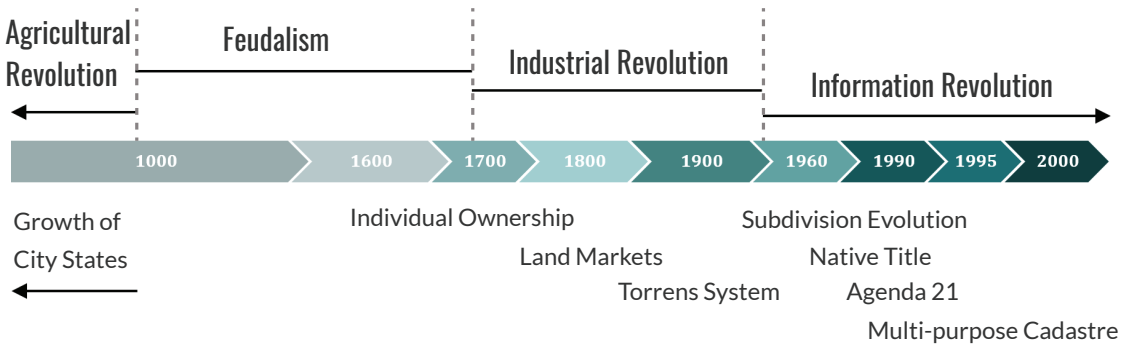




<p><b>Evolution of cadastral applications</b></p>	<p>Fiscal cadastre: Land valuation and taxation paradigm</p>	<p>Legal cadastre: Land market paradigm. But still limited marketability and prone to lengthy legal disputes. It did work in small pockets.</p>	<p>Managerial Cadastre: Land management paradigm to use this resource to good effect.</p>	<p>Multi-Purpose cadastre: Sustainable development paradigm. Use this resource to facilitate economic, social and environmental sustainability.</p>
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Source: Babu & Nautiyal (2013).

*Evolution of Land Administration*



Source: Babu & Nautiyal (2013).

**1.12 HISTORY OF LAND SYSTEM IN THE INDIAN SUBCONTINENT**

*Mughal Era*

In the subcontinent, Alauddin Khilji (1255 to 1316), who ruled India from 1296 to 1316, introduced a system of land administration aimed at enhancing land revenue. Todar Mal (died in 1659), an aid of Mughal emperor Akbar, has the credit of laying the fundamental principles of land revenue and land administration system which is still prevalent in the subcontinent with some



modifications during the past about 400 years (Hussain, 2023).

In the Mughal Era, the revenue was collected from the villages. Zamindars were appointed by the government to collect revenue from the peasants or producers and give it to the state (king). Zamindars were not owners but controllers or revenue collectors but their authority on the village was supreme with unbridled powers over peasants. They had draconian powers including taking coercive measures against the peasants, and even permitted to punish the poor peasants (Riser Up, 2021). The ownership of land was vested in the state or the king, but the local peasants were allowed to exchange lands with the permission of the zamindar. Zamindar as the king's agent had the authority to change peasants of any parcel of land. The concept of male primogeniture was in place to ensure the continuity of zamindar. After the death of Zamindar, the eldest son used to become the zamindar. This transformed when the Mughals lost control, the zamindars claimed ownership over the entire villages in their control.

### **British Era**

In 1793, private land ownership was introduced in India by the British in Bengal as a permanent settlement. Before that, the zamindar was the agent of the state. He became lord of the land (landlord). Governor General lord Cornwallis introduced a new Zamindari or feudal system in the subcontinent which still exists in one form or another in Pakistan (Singh, 2018). A bureaucratic system of revenue collectors was introduced to collect revenue from zamindars. This was the transition in the subcontinent from feudalism to capitalism. For the first time, land ownership and transfer between private persons through sale-purchase started in the Indian subcontinent. In Punjab, permanent settlement started in 1846 and was completed in 1865 on account of the variety and complexity of land tenures in Punjab. The settlement officers had the final authority to recognise proprietary rights during the first permanent settlement in Punjab.

In 1820, the British introduced the Ryotwari system. In this system, parcels of the state land were allocated for a specific period to agricultural tenants in return for the payment of revenue to the state. The Ryotwari system was





introduced in Sindh in 1843 as its new land distribution system. State land was also given to local influential as jagirs or ownership in return for their loyalty to the British. The zamindars and tenants were able to sell their harvest in the open market to pay taxes or land revenue. It integrated the rural economy with the urban commodity market giving rise to capitalist agriculture. But due to poor harvest or any other cause, if zamindars and tenants were not able to generate enough income from selling the harvest, they used to obtain debt from Hindu moneylenders to pay taxes. Debt repayment gave rise to multiple problems including a drastic reduction of agricultural land being transferred to moneylenders due to non-payment of debt. This was not suitable for the British. The Punjab Tenancy Act of 1887 and the Punjab Alienation of Land Act of 1900 were enacted to restrict or prohibit the transfer of agricultural land for non-agricultural purposes.

### *Post-independence*

In 1947, only 0.5 per cent of people owned around 25 per cent of land in Punjab. The majority of the rural population was tenants and peasants, they hardly owned any land. Muslim League felt the need for land reforms in the country and constituted an Agrarian Reforms Committee for land reforms in 1948. The committee noted that the British gifted the land as the jagirs to the major landlords. It recommended that land beyond a ceiling must be taken back from zamindars without any compensation and redistributed to small tenants and peasants. It recommended a maximum ceiling of 150 acres for irrigated land and 450 acres for non-irrigated land. But elite Zamindars were in power and the recommendations could not be acted upon. As a result, Pakistan hardly witnessed any agricultural growth between 1947 and 1958 (Riser Up, 2021).

### *Land Reforms in Pakistan*

The military regime introduced the first land reforms in 1959, known as Ayub's Land Reforms. These reforms were introduced through the Martial Law Regulation 64 with the maximum ceiling of 500 acres of irrigated land and 1000 acres of non-irrigated land. The land beyond the ceiling was taken over from the



landlords and was redistributed to landless peasants. With these reforms, Pakistan achieved proper growth in agriculture between 1959 and 1970. This may be one of the factors along with the provision of water for irrigation through improved irrigation system, building dams for water storage and growing use of agricultural machinery like tractors and tube wells.

In 1972, Zulfikar Ali Bhutto, as the civilian martial law administrator, started further land reforms through the Martial Law Regulation 115 and the Land Reforms Regulation 1972 by reducing the ceiling to 150 for irrigated land and 300 for non-irrigated land. Again in 1977, further land reforms were introduced by further reducing the ceiling of irrigated land to 100 acres, and non-irrigated land to 200 acres. Agriculture income tax instead of earlier flat tax was also introduced by providing exemption to smaller landholdings of less than 25 acres. This was done under the Land Reforms Ordinance of 1977, which subsequently became the Land Reforms Act of 1977. 1.3 million acres of land were resumed under the 1972 land reforms, while 1.8 million acres were resumed under the 1977 reforms. Out of these 3.1 million acres, only 1.8 million acres were distributed amongst landless peasants (Naqvi et al., 1987). Subsequent martial law regime rolled back some of these reforms through an amendment of 1981 excluding educational institutions, cooperative forming societies, and an individual who had established a livestock form, from the applicability of reforms.<sup>13</sup> Despite constitutional cover for land reforms,<sup>14</sup> the Shariat Appellate Bench of the Supreme Court put the last nail in the coffin of land reforms by declaring the Land Reforms Act of 1977 and the Martial Law Regulations 115 of 1972 as repugnant to the injunctions of Islam and the Act ceased to have effect from 23 March 1990.<sup>15</sup> The story of land reforms in Pakistan ended with this declaration.

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<sup>13</sup> The Land Reforms (Amendment) Ordinance, 1981, section 2.

<sup>14</sup> Constitution of the Islamic Republic of Pakistan, Art. 253.

<sup>15</sup> Qazalbash Waqf and others v. Chief Land Commissioner, Punjab, Lahore and others (PLD 1990 SC 99).





### COMMON PROPERTY TERMS IN PAKISTAN

BIGHA	A 4-kanal piece of land, equal to half an acre.
FARD	A document that indicates proof of a property's ownership.
JAMABANDI	The process of updating land records, generally done after every four years.
KANAL	A land measurement unit. 1 kanal = 20 marla or 4500 sq ft or 500 sq yd.
MARLA	A measurement of land – varying in size between 225 sq ft to 272 sq ft.
PARTAL	The process of verifying and updating a property's records – as and when it changes hands
PATWARI	A government employee tasked with keeping records of land ownership.
REGISTRY	A document indicating proof of property ownership, issued by the Revenue Department.
SARSAHI	A land measurement unit, approximately 25 square feet in size. 1 marla = 9 sarsais.
SHAJRA	A detailed map of an area, with numbers mentioned against each particular piece of land.

## 1.13 CONCLUDING REMARKS

The legal system that promotes land markets is one of the critical factors for encouraging investment through undisputed and clear private ownership of immovable property. Even the communist countries have moved back to private ownership from earlier absolute state ownership of land. The capitalist nations have moved even further to create private sector land markets through the privatisation of state land. These changes in the land administration systems have necessitated matching legal reforms and the simultaneous development of administrative infrastructures (Ting et al., 1999). Post-World War II has seen the development of major legislation for higher-density housing and subdivisions of land, buildings, airspace, or condominiums. During all these years, hardly any systemic change has been incorporated into the legal framework of property





rights in Pakistan except for some limited land reforms and digitisation drives during the past decade or so. We are still clinging to colonial legacy laws and there is hardly any move to develop a land market that is conducive to private sector investment and enhanced productivity. Hernando de Soto has rightly stated that certainty of ownership and land title are the ultimate objects of an effective and efficient land title registration system (De Soto, 1993). Land markets are heavily dependent upon a legal system of universal land registration, only that can deliver a certainty of title (Ting et al., 1999).





## 2. PROPERTY LAWS

Systems are made and reformed by making laws. Law is a vital instrument of change (Ting et al., 1999):

*“Law in particular is one of the primary instruments through which the State acts to select particular institutions and types of economic organizations. The rise of the modern corporation in the US, for example, could not have occurred without active encouragement by courts and legislatures.”*

Simpson (1976) states that ‘In England, and in many other countries which use English land law, land registration has nothing to do with land tax or a public inventory of ownership, but has been introduced solely to simplify conveyancing (as the business of creating and transferring interest in land is called).’ The deed registration system is prevalent in Punjab and also in the rest of Pakistan. This system does not provide for title certification of property nor deed registration confers irrefutable title in favour of the transferee. This existing system in Punjab only attaches a rebuttable presumption of the title of an immovable property in case of a registered deed of transfer of property. There are many laws relating to immovable property ranging from property records, land administration, transfer, taxation, possession, tenancies, and property dispute settlement. These laws are discussed in some detail in the following paragraphs.

### 2.1 CONSTITUTION AND PROPERTY RIGHTS

The rule of law clause<sup>16</sup> of the Constitution, among other things, mandates that an action detrimental to the property of any person shall not be taken except following the law. This protection is constitutionally available to every person, citizen or foreigner, corporation, or individual. Citizens’ private property rights are protected and a citizen has a fundamental right to acquire, hold, and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.<sup>17</sup>

<sup>16</sup> Constitution of the Islamic Republic of Pakistan, Art. 4.

<sup>17</sup> Ibid, Art. 23.



The concept of eminent domain with well-recognised restrictions has also been made part of the Constitution.<sup>18</sup> A person cannot be deprived of his property nor his property can compulsorily be acquired or taken possession of save for a public purpose. Property can only be acquired under the law that must provide for compensation for compulsory acquisition. The law of acquisition should either fix the amount of compensation or specify the principles and how compensation is to be determined and given to the affected persons. This right against compulsory acquisition is of any person and not merely of a citizen.

An ownerless property vests in the provincial government, if located in the province otherwise it vests in the federal government. Any land beyond the territorial waters of Pakistan situated in the ocean or continental shelf of Pakistan vests in the federal government.<sup>19</sup> The parliament is empowered under the Constitution to make law prescribing maximum limits as to property which may be owned, held, possessed, or controlled by any person. It invalidates any law that permits ownership of land beyond the limits fixed by the parliament through a law in the exercise of the power conferred under this article.<sup>20</sup> Taxes on immovable properties are expressly excluded from the purview of federal laws.<sup>21</sup> Hence, the Constitution contains all the fundamental provisions for private property rights. These rights have to be enforced through laws passed by appropriate legislatures that is parliament or a provincial assembly.<sup>22</sup> The Constitution provides the framework but we need additional laws to allow proper and speedy conveyancing and regulatory system to allow land to flow to the best economic use.

## 2.2 LAND REVENUE ACT

The Punjab Land Revenue Act of 1967 replaced the Land Revenue Act of 1887. With some minor modifications, it is just a continuity of the 1887 Act. According

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<sup>18</sup> Ibid, Art. 24.

<sup>19</sup> Ibid, Art. 172.

<sup>20</sup> Ibid, Art. 252.

<sup>21</sup> Ibid, Fourth Schedule, Federal Legislative List, Part I, entry 50.

<sup>22</sup> Ibid, Art. 142.



to the Act, each local revenue official (patwari) is obligated under the Act to keep a record of land rights and to separately record mutations for changes in ownership. The Land Revenue Act was enacted with the underlying rationale of assisting the state with land revenue administration, levying, and collection (Siddique & Naurin, 2022). The purpose of this law is to make and maintain records of rights, assess and collect land revenue and provide for land revenue administration.<sup>23</sup> It provides for the maintenance of the record of land owners and tenants in a revenue estate.<sup>24</sup> A person shall, within three months of the acquisition of ownership of land, report such acquisition to Patwari<sup>25</sup> or Land Arazi Centre.<sup>26</sup> A revenue officer may, after summary enquiry, settle disputes relating to entries in the record of rights.<sup>27</sup> A person may approach the civil court for correction of any entry or dispute relating to the title of land in the record of rights.<sup>28</sup> An entry in a record of rights or periodical record has a rebuttable presumption of truth.<sup>29</sup> However, these records are poorly maintained and are subject matter of disputes and lengthy litigation (Siddique & Naurin, 2022). Land surveys are not frequently done, land records are invariably incomplete or, in the majority of cases, the records are not updated. The courts have consistently held the view that revenue records are not valid and conclusive proof of title of property. These are only maintained for the realisation of land revenue and do not confer any land title on any person.<sup>30</sup> Furthermore, the record of rights was only meant for agricultural land and land subservient to agriculture. Abadi Deh (village and town) and urban areas were excluded from its purview for practical reasons but a 2019 amendment aimed at enlarging the scope of the Act to cover

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<sup>23</sup> The Punjab Land Revenue Act, 1967, preamble.

<sup>24</sup> *Ibid*, section 39.

<sup>25</sup> *Ibid*, section 42. Patwari is the land revenue official responsible for one or more revenue estates.

<sup>26</sup> *Ibid*, section 42-A.

<sup>27</sup> *Ibid*, sections 44 and 152-A.

<sup>28</sup> *Ibid*, sections 53 and 152-A.

<sup>29</sup> *Ibid*, section 52.

<sup>30</sup> *Corporation of the City of Bangalore v. M. Papaiah and Anr.*, (1989) 3 SCC 612 (India). *Mst. Subhan v. Allah Ditta* 2007 SCMR 635.



Abadi Deh and urban areas for maintenance of record of rights of these areas.<sup>31</sup> (For a detailed discussion, see Chapters VI and VII).

## 2.3 ALIENATION OF LAND ACT

In the Western Punjab, Hindu moneylenders primarily lent money to Muslim peasants. A British official, Septimus Thorburn, in his 1885 book 'Mussulmans and Moneylenders in the Punjab,' detailed the challenges Muslim peasants faced under Hindu moneylenders, noting that an increasing number of peasants were becoming serfs to these lenders. He argued that to maintain British control over the province, a key military recruitment area, this issue needed to be addressed. To mitigate this potential political problem, the Punjab Alienation of Land Act was enacted in 1900, restricting land transfers from a member of an 'agricultural' tribe to a member of a 'non-agricultural' tribe. A list of agricultural tribes was created to enforce this legislation.<sup>32</sup> Any permanent alienation or mortgage of land in contravention of the Act without the sanction of the collector is of no legal effect.<sup>33</sup> The sale of land in the execution of a court decree is also prohibited.<sup>34</sup> It bars jurisdiction of civil courts in matters pertaining to this Act within the jurisdiction of the Collector<sup>35</sup> and lawyers are forbidden to represent any party in such proceedings.<sup>36</sup> Even at that time, the Act failed to achieve its objectives, as moneylenders and members of non-agricultural tribes engaged in *benami*<sup>37</sup> transactions, acquiring control of land through nominal transfers to members of agricultural tribes. A 1938 amendment also failed to curb these practices. Over time, wealthier peasants replaced professional moneylenders in

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<sup>31</sup> Section 3 of the Punjab Land Revenue Act, 1967 was substituted by the Punjab Land Revenue (Amendment) Act 2019 (XVIII of 2019), published in the Punjab Gazette (Extraordinary), dated November 26, 2019, p. 1669, s. 2.

<sup>32</sup> The Punjab Alienation of Land Act, 1900, section 4.

<sup>33</sup> Ibid, section 14.

<sup>34</sup> Ibid, section 16.

<sup>35</sup> Ibid, sections 13-E and 21.

<sup>36</sup> Ibid, section 20.

<sup>37</sup> 'benami' denotes a purchase of property conducted in such a way as to conceal the identity of the true buyer.





the rural credit market (Swamy, 2010). Cornwallis<sup>38</sup> propounded that the land should frequently change hands, and encouraged the urban elite to purchase and develop rural agricultural land. However, the Punjab Land Alienation Act, on the other hand, was enacted with the main aim of excluding urban capital from acquiring rural agricultural land. It seems that at the height of its power in 1900, the colonial rulers were fearful of market forces. This colonial legacy still haunts us though the rationale based on which this law was passed no longer holds good. Still, this is the law of the land and any land transfer can be challenged on the allegation and proof that the transferee is a member of a non-agriculturist tribe or is not a member of the recognised agriculturist tribes of the district.<sup>39</sup> This is so, even if the land is purchased to instal an industry or any other major private sector development. Of late, this law, though still in force, is not being implemented by the collectors but its echo is still being heard in the courts.<sup>40</sup> Anyone may still challenge a land alienation to a person who is not a member of the recognised agricultural tribe of the district in Punjab. This law is not applicable in the case of a loan from a bank, company or cooperative society<sup>41</sup> or where it is exempt by the Punjab Board of Revenue.<sup>42</sup> The alienation of land to a juristic person like a company or society is also a grey area since there is no tribe of legal persons and the law does not contain any provision for the ultimate beneficial owner except a *benami* provision.<sup>43</sup> But it is still a sleeping monster for the immovable property market and casts a cloud over every land transaction in the rural areas of Punjab.

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<sup>38</sup> Charles Cornwallis, British governor-general of India (1786–93, 1805) and viceroy of Ireland (1798–1801). He introduced legal and administrative reforms in Bengal, notably the Cornwallis Code (1793) to establish a law-abiding and incorruptable British rule in India. Britannica. Charles B. Dewitt III, *Title Insurance: A Primer*, 3 *Tenn. J. Prac. & Proc.* (2000).

<sup>39</sup> Peer Bakhsh v. Nabi Bakhsh, 2002 YLR 1624 (Lahore High Court) and Muhammad Anwar v. Muhammad Boota, 2001 YLR 2078 (Lahore High Court).

<sup>40</sup> Kindly see Makhdum Raju Shah v. Member Board of Revenue, Punjab (2011 YLR 1724), Muhammad Anwar v. Deputy Commissioner, Faisalabad (2002 SCMR 422), and Riazul Hassan v. Muhammad Ayub Khan (1991 SCMR 2513).

<sup>41</sup> The Punjab Alienation of Land Act 1900, section 3-A.

<sup>42</sup> *Ibid*, section 24.

<sup>43</sup> *Ibid*, section 13-A.



## 2.4 LAND REFORMS REGULATIONS

These martial law regulations were made ostensibly in the sacred name of Islam. Its preamble contains the purpose of equitable distribution of wealth and economic powers as ordained in Islam. It also states that Islam abhors the concentration of wealth in a few hands, and termed it as supreme national interest to improve the economic well-being of the peasantry by making agriculture a profitable vocation.<sup>44</sup> It prohibited the transfer of excess land,<sup>45</sup> the partition of subsistence holding in Punjab consisting of twelve and a half acres<sup>46</sup> and the alienation of land below the economic holding of fifty acres in Punjab.<sup>47</sup> Fortunately, the Shariat Appellate Bench of the Supreme Court declared the prohibition of partition and alienation below economic holding as against the injunctions of Islam after twenty years.<sup>48</sup> Hence, the law made in the name of Islam was declared un-Islamic by the court. Had these provisions, especially the provision declaring alienation of land unlawful, not been declared un-Islamic, this law might have cast serious doubts and consequential litigation over most of the land transactions in the rural areas.

## 2.5 CONSOLIDATION OF HOLDINGS ORDINANCE

This law aimed at the redistribution of all or any of the lands in a revenue estate or sub-division of a revenue estate to reduce the number of plots.<sup>49</sup> This law provides an important mechanism to consolidate small agricultural land pieces of peasants as well as co-sharers into one or two large parcels through the consolidation process.<sup>50</sup> Agricultural land consolidation is considered an important tool that may lead to economies of scale, lowering production costs,

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<sup>44</sup> The Land Reforms Regulations 1972, long title and preamble.

<sup>45</sup> Ibid, paragraph 7.

<sup>46</sup> Ibid, paragraph 22.

<sup>47</sup> Ibid, paragraph 24.

<sup>48</sup> Haji Muhammad Anwar v. Government of Pakistan (1994 SCMR 899). Also see Qazalbash Waqf and others v. Chief Land Commissioner, Punjab, Lahore and others (PLD 1990 SC 99).

<sup>49</sup> The Punjab Consolidation of Holdings Ordinance, 1960, section 2(f).

<sup>50</sup> Mahmood Shah v. Qutab Shah, 1965 PLD 5 (West Pakistan Board of Revenue).





and efficient use of agricultural inputs, such as machinery, seeds, fertilisers, and pesticides. This can result in increased agricultural profitability and productivity (Ali, 2023). This law has also outlived its utility and the Punjab Board of Revenue even initiated a process to repeal this law in 2021 and the law remained dormant from 2002 to 2017 under the directions of the governor and chief minister of Punjab (Khalti, 2021). The consolidation process took too long to conclude and gave rise to grievances of owners of small holdings on account of actual or perceived discrimination or favouritism in the consolidation proceedings. This law has also given rise to multiple litigation.

## 2.6 PRE-EMPTION ACT

Preemption is defined as a preferential right to acquire by purchasing an immovable property in preference to other persons because of the right of preemption.<sup>51</sup> Preemption is a right held by the owners of immovable property, allowing them to maintain peaceful enjoyment of their property by acquiring proprietary possession of another specific immovable property, not originally theirs, on the same terms as its sale to another person.<sup>52</sup> The colonial law of preemption<sup>53</sup> was reenacted in Punjab with Islamic undertones after the judgment of the Shariat Appellate Bench of the Supreme Court in the Said Kamal case.<sup>54</sup> The revised law of preemption was only enacted in Khyber Pakhtunkhwa (formerly NWFP)<sup>55</sup> as well as in Punjab.<sup>56</sup> No statutory law of preemption exists in the provinces of Sindh and Balochistan, while the Punjab Pre-emption Act of 1913 is applicable in Islamabad Capital Territory (Mirbaz & Jawad, 2022).

The impact of the law of preemption on investment and the land market is scarcely debated. These laws are frequently misused, often with the seller's tacit consent. In a 1980 sale transaction, the Supreme Court of Pakistan excluded

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<sup>51</sup> Punjab Pre-emption Act 1991, section 2(c).

<sup>52</sup> Govind Dayal v. Inayatullah, (1885) 7 All 779.

<sup>53</sup> The Punjab Pre-emption Act, 1913.

<sup>54</sup> PLD 1986 SC 360.

<sup>55</sup> The Khyber Pakhtunkhwa Preemption Act, 1987.

<sup>56</sup> The Punjab Pre-emption Act, 1991.





urban properties from the exercise of the preemption right, citing provisions from the Punjab Pre-emption Act of 1913, in the following words:<sup>57</sup>

*“A close look at the afore-referred provision would indicate that urban immovable property is not merely the immovable property which fell within the limits of a town as declared by the Board of Revenue but the courts of law could also hold any property to be urban immovable property if there was evidence to that effect. The suit land was a small plot of two kanals and it was specifically averred in the written statement that it was purchased for building a house; that it was part of the Shakargarh Town; that no custom of pre-emption prevailed at the relevant time. Respondent plaintiff did not provide evidence to prove that it was not urban property. The sale deed itself indicates that the suit land was purchased for construction purposes and three vendors had placed on record their affidavits to the effect that the suit land was not agricultural and further that it was sold for construction purposes.”*

However, the Shariat Appellate Bench of the Supreme Court has held that the exemption of all the immovable properties situated in urban areas does not fulfil the requirement of *Zaroorat*, but a particular property can be exempted in the *Sharai'h* from the application of the law of preemption based on *Zaroorat*. The Court declared section 2(a) of the Punjab Pre-emption Act of 1991 repugnant to the injunctions of Islam to the extent it excludes all the urban properties and the properties situated within the cantonment limits permanently from the application of the Act.<sup>58</sup> This judgment leaves the room for exercise of the right of preemption over residential, commercial, industrial and urban properties. However, it also leaves room for including the instances of '*Zaroorat*' in the law including the necessity of investment for the economy. Furthermore, some of the Islamic scholars, especially Imam Malik, only confined the right of preemption to co-sharers of undivided property (Mirbaz & Jawad, 2022). This aspect also requires consideration by the legislature to impose limits on the right of pre-emption.

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<sup>57</sup> Muhammad Idress and others v. Sardar Ali, 2013 SCMR 913.

<sup>58</sup> Muhammad Shabbir Ahmed Khan v. Government of Punjab, PLD 1994 SC 1.





## 2.7 TRANSFER OF PROPERTY LAWS

*“Title records are deeply intertwined with transfers of property.”* (Merrill & Smith, 2017).

The Transfer of Property Act of 1882, the Registration Act of 1908, and the Punjab Land Revenue Act of 1967 are the basic laws for the transfer of immovable properties. However, properties are also transferred by the development authorities, Defence Housing Authorities, cooperative housing societies, and even private entities like Bahria Town (Pvt.) Ltd. The Transfer of Property Act covers all inter vivos (between living persons including corporations)<sup>59</sup> transfers of immovable property, like sale, gift, exchange, mortgage, and lease. The transfer of property through inheritance is out of the purview of this law. An interesting fact about this law is that since 1882, except for sections 54, 107 and 123, that too in municipal areas only, it has not been formally enforced in Punjab.<sup>60</sup> However, courts are applying and relying upon various provisions of this law irrespective of the lack of formal enforcement. A development authority in Punjab may transfer property under the Management and Transfer of Properties by the Development Authorities Act of 2014.<sup>61</sup>

The Registration Act of 1908 mandates that a non-testamentary instrument that purports or operates to create, declare, assign, limit, or extinguish any right, title, or interest in immovable property, has to be compulsorily registered.<sup>62</sup> The registration of the transfer of immovable property is designed to maintain a public record of the transfer of property and to ensure that the purchaser/transferee is protected in case of a title dispute.

The transfer of property registration has become a major source of revenue for

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<sup>59</sup> The Transfer of Property Act 1882, section 5.

<sup>60</sup> Ibid, section 1(3) provides that the Government may, by notification in the official Gazette, extend the Act to the whole or any part of Punjab. Only section 54, 107 and 123 were enforced in all municipalities of Punjab with effect from 6 May 1935. It has not generally been enforced.

<sup>61</sup> The Management and Transfer of Properties by Development Authorities Act 2014, section 3.

<sup>62</sup> The Registration Act, 1908, section 17.



the provincial as well as federal governments in the form of registration fees, stamp duty, local/ municipal tax, advance income tax, capital gains tax, and capital value tax. Interestingly, despite all these taxes, there is no guarantee that the title of the property will not be disputed or if disputed, the government or its land record agency will guarantee the title of the transferee. After registration of the transfer deed or conveyance, the transferee is required to apply for mutation in the register of mutations maintained by Patwari or a land record centre after payment of the mutation fee.<sup>63</sup> The mutation register is not a part of the record of rights and there is no presumption of truth attached to entries in the mutation register. However, when the mutation is reflected in jamabandi,<sup>64</sup> such entry in jamabandi has a presumption of truth attached to it. Transaction of sale of immovable property is only complete on sanctioning of mutation. There is no regulatory mechanism for retaining a unified public record of land transfer transactions in private housing societies, defence housing authorities, development authorities, etc.

The Land Acquisition Act of 1894 contains the state power of eminent domain. The state may compulsorily acquire or transfer private land for public purposes or the purpose of a company<sup>65</sup> on payment of compensation under this law. The Constitution limits this power only for a public purpose.<sup>66</sup> However, the Supreme Court has declared that the acquisition of land for a company or cooperative housing society for the development of a housing scheme is lawful even if the purpose is useful to the public and may not necessarily be for a public purpose.<sup>67</sup> There is no clear timeline between the notification of intention to acquire land<sup>68</sup> and the award of compensation to the interested persons.<sup>69</sup> The land acquisition

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<sup>63</sup> The Punjab Land Revenue Act, 1967, section 34.

<sup>64</sup> 'Jamabandi' refers to a land revenue record that contains essential details about land ownership, cultivation, and other rights in the land. It is part of record of rights.

<sup>65</sup> The Land Acquisition Act, 1894, preamble.

<sup>66</sup> Constitution of the Islamic Republic of Pakistan, Art. 24.

<sup>67</sup> Muhammad Ishaq v. Government of Punjab, 2002 SCMR 1652

<sup>68</sup> The Land Acquisition Act, 1894, section 4.

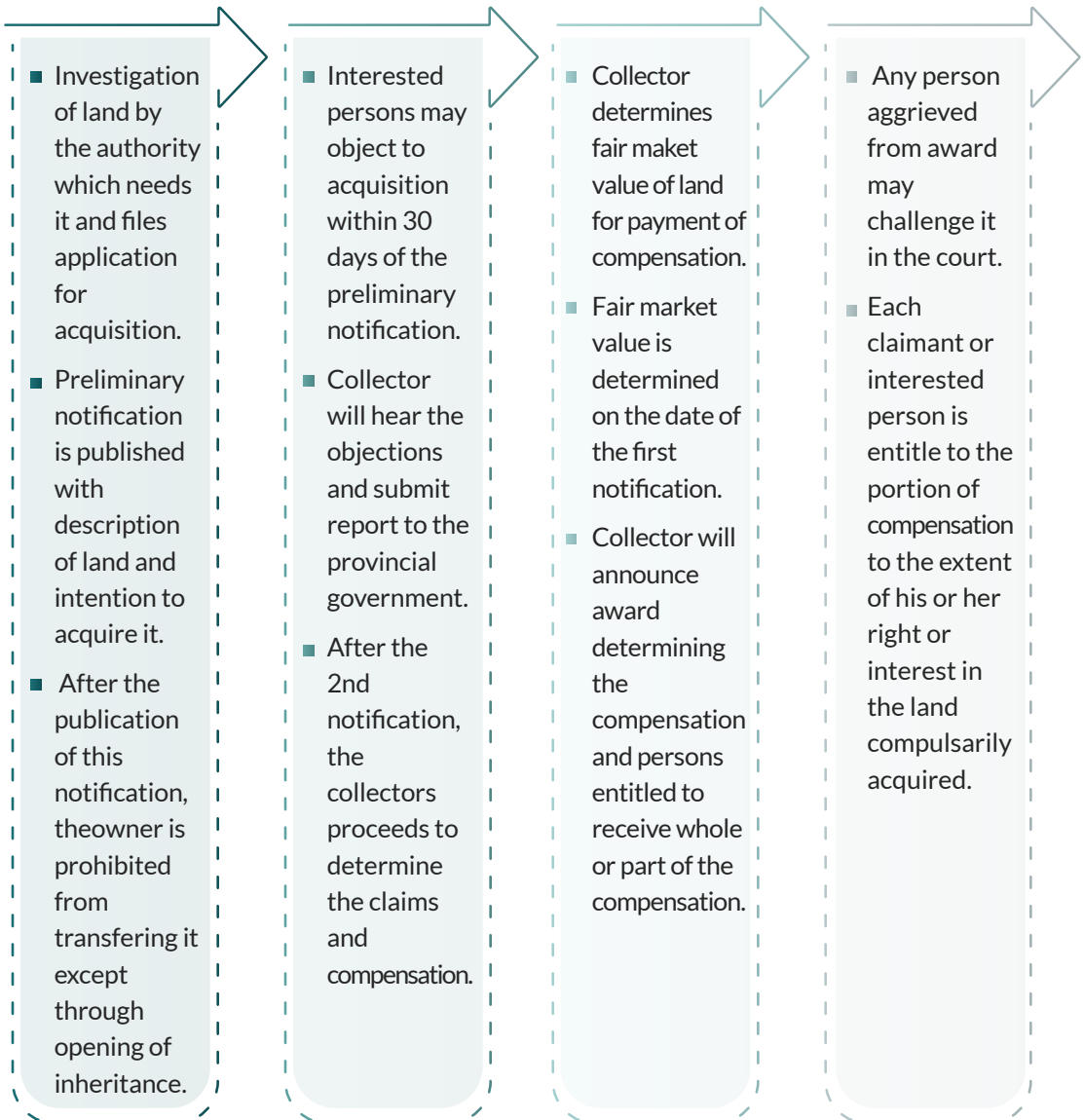
<sup>69</sup> Ibid, section 11.





collector determines the area of land required to be acquired, the amount of compensation, and the identification of interested persons who are entitled to payment of compensation.<sup>70</sup>

## 2.8 LAND ACQUISITION PROCESS



<sup>70</sup> Ibid.



## 2.9 COMPARATIVE ANALYSIS OF THE LAND ACQUISITION ACT 1894 WITH THE LATEST INDIAN LAW

ASPECT OF ACQUISITION	LAND ACQUISITION ACT OF 1894	INDIAN RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT OF 2013
Public purpose	Public purpose or purpose of a company	Only for public purposes mentioned in the Act like defence, security, planned development etc.
Consent of owners	Not needed.	Needed in case of acquisition for a private company or public-private partnership project.
Social impact assessment	No requirement before acquisition.	It is mandatory before the commencement of the formal acquisition process.
Compensation	Market value	Market value in urban areas and double the market value in rural areas.
Market value	Mainly based on DC rates.	Circle rates and sale instances.
Premium for compulsory acquisition	15% of the compensation.	100% of the compensation.
Return of unused land	No provision.	The land has to be returned to the owners if remains unused for 5 years after acquisition.
Rehabilitation & resettlement	No provision.	It is mandatory.





Lease	No provision.	It is one of the options for acquisition through lease instead of title transfer.
Urgency clause	Can be invoked in any case without even determining compensation, and land can be taken over.	It is permissible in an emergency due to calamity, defence or security.

## 2.10 ELECTRONIC TRANSACTION OF PROPERTY

The Electronic Transactions Ordinance 2002 gives legal recognition to instruments or documents in an electronic form.<sup>71</sup> But a contract for the sale or conveyance of immovable property or any interest in immovable property has specifically been excluded from electronic transactions unless the federal government, by notification, applies the law to such instruments.<sup>72</sup> This is even though it is almost improbable to deny electronic signatures due to the advancement of technology and even if denied, it is easy to prove such signatures. The question of free consent is much better addressed in electronic transactions than in the immediate physical presence of the parties. Furthermore, wet ink on paper signatures is routinely denied in the courts and proving them requires the production of oral evidence of witnesses in lengthy and prolonged trials. In South Africa, electronic signatures are governed by the Electronic Communications and Transactions Act 25 of 2002 and, like Pakistani law, it specifically excludes an agreement for alienation of immovable property as not sufficient proof. However, in a recent judgment, Eastern Cape High Court has held that it is acceptable for a signatory to use a mobile phone app, to apply a photo of his actual signature, onto a sale agreement for land.<sup>73</sup>

<sup>71</sup> The Electronic Transactions Ordinance 2002, section 3.

<sup>72</sup> Ibid, section 31.

<sup>73</sup> *Borchers and another v. Duxbury and others* (1522/2020) [2020] ZAECPEHC 37; 2021 (1) SA 410 (ECP).



As a significant move, the Punjab Government has recently initiated an online portal system for property registration in the province. The move aims to facilitate citizens in registering their properties online, saving them time and resources (Nexthome.pk., n.d.). But for the final step, the parties have to appear before the sub-registrar in person or through their duly authorised persons with registered power of attorney. This step can also be performed online with notification under Section 31 of the Electronic Transactions Ordinance 2002 and adapting a detailed procedure under the provincial registration law.

## 2.11 STRATA TITLES

Strata property is a building or land divided into separate units, usually called lots. There are normally three types of strata properties, namely, residential, commercial, or mixed-use. A strata title signifies the division of land into two or more separate units and includes the property common to all the units. The specification of a unit may be a distinct space or structural division in a multi-story building, not necessarily by reference to the land (Legal Services Commission South Australia, n.d.). There are also 'common-hold' and 'condominium' laws for the same purpose. These properties are normally multistory buildings with separate units (lots) owned by different owners and common areas and facilities (common property), which are collectively owned by the owners of the units or lots. Strata title laws have evolved during the last century and they have become an essential part of property laws in the modern world.

No law regulates titles in strata or condominium property in Punjab. Sindh did pass a law to regulate services, amenities, façade, parking, and common areas in a condominium building by the residents, union, or society of the building through registered maintenance companies.<sup>74</sup> However, that law does not regulate title over units or lots in the condominium property. Modern cities develop vertically and require proper strata title and management law to attract

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<sup>74</sup> The Sindh Condominium Act, 2014, preamble.





investment in the crucial construction sector in the cities. The builder transfers the strata unit either through their document or through a registered sale deed. Some builders even extort money from the dwellers in the form of parking, common area maintenance, lifts, water supply, electricity, and security services fees.

## 2.12 KATCHI ABADIS<sup>75</sup>

Pakistan is one of the unique examples where city slums are not only encouraged but also perpetuated by law. It all started with the Transfer of Evacuee Land (Katchi Abadi) Act of 1972 which not only recognised usurpation but also encouraged slums in metropolitan areas. After the Sindh Katchi Abadis Act of 1987, Punjab followed suit and enacted a similar law in 1992.<sup>76</sup> It was aimed at the regularisation and development of *katchi abadis* in Punjab.<sup>77</sup> Katchi abadis were declared legal on an as-is-where basis even when they were situated on illegally occupied mainly government land as late as 2011.<sup>78</sup> Yet another law was enacted in 1995 to confer proprietary rights on non-proprietors in the *abadi deh*,<sup>79</sup> that too in the name of Islam.<sup>80</sup> It even conferred title on an illegal occupant of private land.<sup>81</sup>

These laws have fundamental flaws since they encourage slums in cities, towns, and villages instead of finding viable alternate solutions to make inhabited areas slum-free with proper town planning. They are also frequently criticised as instruments which give a premium for land usurpation. During the past fifteen years, states in neighbouring India have come up with a much better legal framework to make their cities slum-free through their respective laws relating

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<sup>75</sup> 'katchi abadis' are mainly urban slums.

<sup>76</sup> The Punjab Katchi Abadis Act, 1992.

<sup>77</sup> Ibid, preamble.

<sup>78</sup> Ibid, section 5.

<sup>79</sup> 'abadi deh' is site of a village or town.

<sup>80</sup> The Punjab Conferment of Proprietary Rights on Non-proprietors in Abadi Deh Act, 1995, preamble.

<sup>81</sup> Ibid, section 3.





to the conferment of proprietary rights on slum dwellers. Most of these laws provide for the allotment of purpose-built small residential units to such dwellers free of cost in or near the slum (GOI, 2011b). Indian Punjab has recently enacted a law for the conferment of proprietary rights upon slum dwellers. This law may serve as a model for inclusive urban growth in slum-free cities of Punjab. The provision of in situ rehabilitation of slum dwellers in affordable housing with basic amenities is likely to solve the problem where necessary transit camps may be established for such dwellers till their proper relocation, preferably at the same place where they developed the slum.

## 2.13 BRIEF ON THE INDIAN PUNJAB SLUM DWELLERS (PROPRIETARY RIGHTS) ACT OF 2020

Sr. No.	Text	Main Features
1	Proprietary Rights	<ul style="list-style-type: none"> <li>▪ The Act mandates the applicability of its provisions for every slum dweller occupying land in a notified slum in any urban area before March 20, 2020.</li> <li>▪ The proprietary certificate will be issued only if the municipalities would be desirous of transferring municipal properties with a simple majority and if the land occupied by a slum dweller belongs to a statutory board or corporation of the state government.</li> <li>▪ The proprietary rights on such land shall be in favour of a slum dweller only if the land site does not exceed 30 square meters within the municipal corporation area, 45 square meters within the municipal council area or 60 square meters within the notified area committee.</li> </ul>
2	Relocation	<ul style="list-style-type: none"> <li>▪ The slum relocation land site shall not exceed more than 30 square meters.</li> <li>▪ The proprietary rights of slum dwellers belonging to the economically weaker section category shall be settled free of cost, while for other categories, the</li> </ul>





		<p>rates would be defined by the government from time to time.</p> <ul style="list-style-type: none"><li>■ If a slum dweller occupies land beyond the maximum permissible limit mentioned above, irrespective of the category they might belong to, the excess land shall be settled in favour of the occupant at rates which would be determined by the government from time to time.</li><li>■ The proprietary rights of the settled land shall be inheritable but not transferable by sub-lease, sale, or gift for thirty years from the date of issue of the certificate of proprietary rights of the land.</li><li>■ If any slum dweller is found to have obtained more than one certificate of the proprietary rights of the land, the authorised officer shall cancel all the certificates of the proprietary rights.</li><li>■ If the site has untenable living conditions, the slum dwellers should be rehabilitated off-site.</li></ul>
3	In situ redevelopment	<ul style="list-style-type: none"><li>■ The planning and building regulations shall be applied as per the state regulations and wherever any relaxation is felt necessary for the implementation of a redevelopment plan, the same may be granted under permissible deviation as per the said regulations.</li><li>■ During the period of redevelopment of the slum area, transit space shall be provided to the slum dwellers as per the provisions of the housing scheme issued by the government.</li></ul>
4	Procedure for Settlement of Proprietary Rights	<ul style="list-style-type: none"><li>■ A committee shall be constituted which would be known as the 'Slum Area Redevelopment and Rehabilitation Committee' for each urban area.</li><li>■ Such a committee shall have the authority to approve the list of persons on whom the proprietary rights of land under this Act, shall be settled.</li></ul>



		<ul style="list-style-type: none"> <li>▪ Necessary surveys, spatial mapping, fixing of the physical boundary of the slums, identifying eligible slum dwellers with community participation, and preparing and publishing the list of eligible slum dwellers should be done.</li> <li>▪ For efficient functioning of the committee, the government shall appoint officers and employees for relevant positions.</li> </ul>
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*Source: Indian Housing Federation (2021).*

## 2.14 POSSESSION LAWS

The proverb “possession is the nine-tenths of the law” is fundamentally wrong under modern legal systems though historically was the basis for the determination of a title to the property. If actual possession is everything in law, then it is law of jungle or might is right law. There are probably not even social norms that would permit the usurpation of property under the power principle and not according to fair legal principles (Pagano, 2019). Other than holders of valid title, lawful possession of immovable property is regulated in Punjab under the Transfer of Property Act of 1882 in the form of mortgage<sup>82</sup> or lease;<sup>83</sup> a licence under the law relating to easements;<sup>84</sup> tenancy under the rural and urban tenancy laws;<sup>85</sup> and a co-sharer in possession of joint property.<sup>86</sup>

Till 1995, our legal system did recognise that a non-owner occupant of an immovable property gains title and ownership of that land after a certain period.<sup>87</sup> This law was called adverse possession. In cases where possession of

<sup>82</sup> The Transfer of Property Act, 1882, section 58(d).

<sup>83</sup> Ibid, section 105.

<sup>84</sup> The Easements Act 1882, section 52.

<sup>85</sup> The Punjab Tenancy Act, 1887 and the Punjab Rented Premises Act 2009.

<sup>86</sup> The Punjab Land Revenue Act, 1967 and the Punjab Partition of Immovable Property Act 2012.

<sup>87</sup> The Limitation Act, 1908, section 28.



immovable property was taken by the illegal occupant in a hostile, notorious and overt manner and if the occupant is holding it adversely to the owner of the property.<sup>88</sup> But in 1991, the Shariat Appellate Bench of the Supreme Court declared it un-Islamic and this provision along with Article 144 was deleted through an amendment in 1995.<sup>89</sup> But Article 120 as a residual Article, provides that suit for which no period of limitation has been provided, the period of limitation for such suits is six years. It has created an anomalous situation where adverse possession cannot extinguish ownership of the owner but at the same time, the owner cannot recover possession from the trespasser after an efflux of six years.

## 2.15 DISPUTE SETTLEMENT LAWS

Pakistan has about 60-70 per cent of land-related civil litigation and about 40-50 per cent of criminal litigation arising out of land disputes (Siddique, 2020). This heavy litigation is a reflection of the existing legal system relating to immovable property. Property disputes range from title disputes, possession disputes, disputes about entries in the public record, rent disputes, boundary disputes, and partition disputes. These disputes take years, even a lifetime or more, to resolve. Under the existing law, if the title of any person over immovable property is disputed, such person may approach the civil court seeking a declaration of title with or without seeking recovery of possession.<sup>90</sup> Specific performance of the sale of property agreements,<sup>91</sup> compensation for breach of contract<sup>92</sup> and damages for trespass under the law of tort are other property-related disputes that land in courts for adjudication. For the recovery of lawful possession, a person, wrongfully dispossessed, may file a suit for

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<sup>88</sup> PLJ 2007 SC 892; 1984 CLC 2351; and PLD 1974 Kar. 235.

<sup>89</sup> Omitted by the Limitation (Amendment) Act, 1995 (II of 1995); assented to by the President on 12 October 1995; and, was published in the Gazette of Pakistan (Extraordinary), dated: 18 October 1995, pp. 939-940, section 2.

<sup>90</sup> The Specific Relief Act, 1877, sections 8 and 42.

<sup>91</sup> Ibid, section 19.

<sup>92</sup> The Contract Act, 1872, section 73 and the Specific Relief Act, 1877, section 19.



recovery of possession within six months of such dispossession.<sup>93</sup> A wrongfully dispossessed person may also file a complaint in court for punishment of the trespasser and recovery or restoration of possession of the property.<sup>94</sup> A magistrate may put the rightful occupant in possession of immovable property subject to the subsequent determination of the rights of the parties by the concerned civil court.<sup>95</sup> However, the magistrate may only assume jurisdiction in the event of a breach of peace or likely breach of peace. A criminal court may also restore possession to the complainant on conviction of accused of an offence relating to property.<sup>96</sup> Partition disputes are resolved by the revenue officers in case of rural areas<sup>97</sup> and civil courts in case of urban areas.<sup>98</sup> Recently, an additional jurisdiction of ombudsperson has also been created for enforcement of property rights of women in Punjab.<sup>99</sup> For the resolution of disputes between landlords and tenants or recovery of possession from tenants, separate laws exist for rural or agricultural<sup>100</sup> and urban or non-agricultural properties.<sup>101</sup>

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<sup>93</sup> The Specific Relief Act, 1877, section 9.

<sup>94</sup> The Illegal Dispossession Act 2005, sections 3, 7 and 8.

<sup>95</sup> The Criminal Procedure Code, 1898, section 145.

<sup>96</sup> Ibid, section 522.

<sup>97</sup> The Punjab Land Revenue Act 1967, chapter XI.

<sup>98</sup> The Punjab Partition of Immovable Property Act 2012.

<sup>99</sup> The Punjab Enforcement of Women's Property Rights Act 2021.

<sup>100</sup> The Punjab Tenancy Act, 1887.

<sup>101</sup> The Punjab Rented Premises Act 2009.



### 3. PROBLEMS RELATING TO PROPERTY RIGHTS

*“The land is the only thing in the world worth working for, worth fighting for, worth dying for because it’s the only thing that lasts.”* Margaret Mitchell

Immovable property is a unique and limited resource. It is a disservice to the nation if the policymakers are not able to give an efficient system for harnessing the true potential of this precious resource. Property rights are essential to prosperity. A strong property rights system in an economy provides a major incentive for investors to invest in the economy. The system that ensures the safety of investment in immovable property is one of the key factors in boosting the confidence of investors. Proper administration of property rights is always aligned with the economy’s prospects for economic growth. To make the land administration system reliable, it must provide unambiguous information on the title of property, encourage the development of the real estate sector, and protect the security of tenure (World Bank, 2024b).

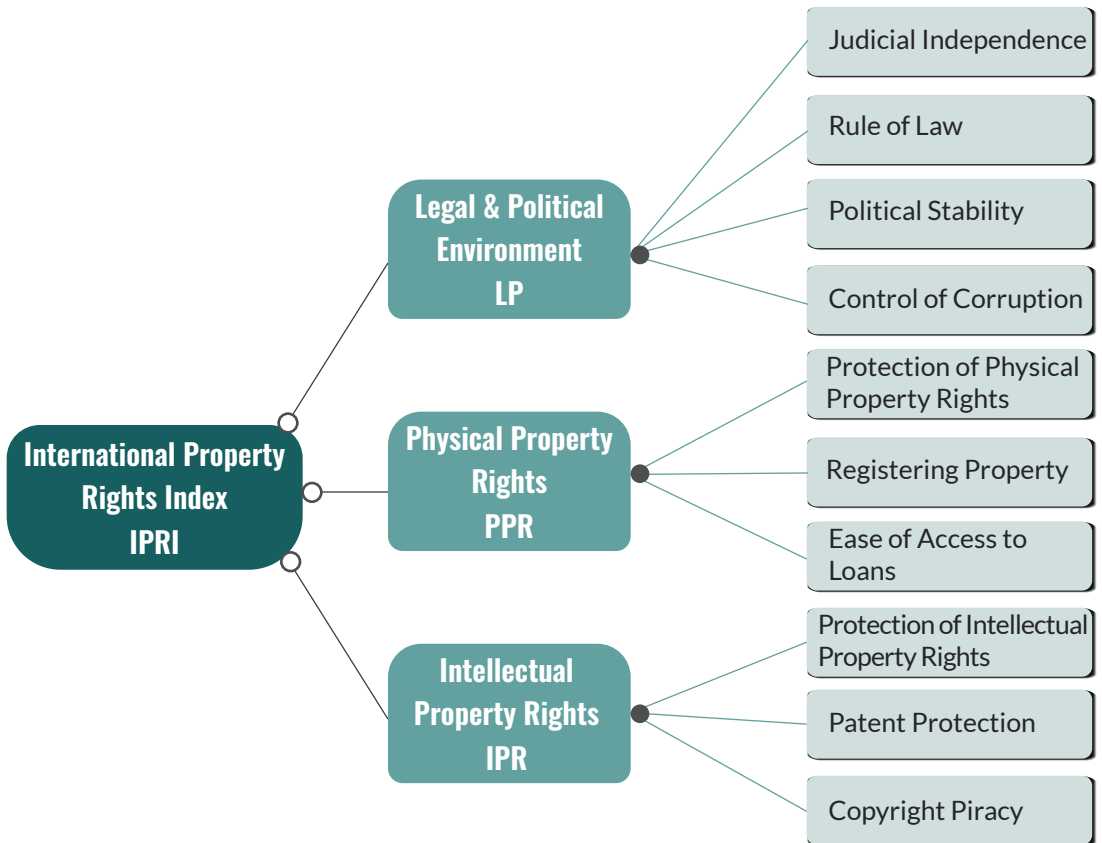
#### 3.1 ASSESSMENT OF PROPERTY RIGHTS IN PAKISTAN

The World Bank's IDA annually publishes Country Policy and Institutional Assessment (CPIA) that measures property rights and governance based on rules rating. It provides an assessment of the extent to which the private sector’s economic activity is facilitated by a legal system and governance based on rules. A good and effective system not only respects property and contract rights but also ensures their effective enforcement (World Bank, 2024 c). Pakistan has one of the worst ratings in the region scoring just 2.5 on this index in 2022 (World Bank, 2024d). The average rating of South Asia is 2.8 which is better than the country rating of Pakistan. This performance has either been stagnant or poor over the last many years. The Property Rights Index 2023 of the Heritage Foundation ranked Pakistan at 156th out of 175 countries indexed in the index. Pakistan obtained a meagre score of 29.3 out of 100 on this index (Heritage.org, 2023).



### 3.2 INTERNATIONAL PROPERTY RIGHTS INDEX (IPRI)

The International Property Rights Index (IPRI) of the Property Rights Alliance is one of the most cited indices of property rights. IPRI has a comprehensive structure to assess property rights (see Figure 1). The index has three main pillars: legal and political environment (LP); physical property rights (PPR); and intellectual property rights (IPR). The pillar ‘legal and political environment’ is further divided into four components: judicial independence; rule of law; political stability; and control of corruption. The pillar of ‘physical property rights’ has been unbundled into the protection of physical property rights; the registration process; and the ease of financing. The pillar of ‘intellectual property rights’ is divided into protection of intellectual property rights; patent, trademark and copyright protection.





The IPRI 2022 depicts a similar low ranking of Pakistan in this prestigious index. Out of 129 countries included, Pakistan was overall ranked 108. It is 109<sup>th</sup> in legal and political environment (LP), 101<sup>st</sup> in physical property rights (PPR), and 114<sup>th</sup> in intellectual property rights (IPR) (Property Rights Alliance, 2022). In the gender equality (GE) ranking on the property rights index, Pakistan's ranking is even worse as it is ranked 122 out of 129 countries. Pakistan is ranked 18<sup>th</sup> out of 19 countries in the Asia and Oceania region, with a total score of 3.814 out of 10.

In 2023, Pakistan's IPRI score fractionally increased just by 0.01 to 3.824. It is placed 17<sup>th</sup> out of 19 countries in the Asia and Oceania region and 104<sup>th</sup> out of 125 countries. Pakistan is classified in the index as a lower-middle-income country. Pakistan's legal and political subindex fractionally increased by 0.025 to 3.403. It obtained scores of 4.646 in judicial independence, 3.726 in rule of law, 1.811 in political stability, and 3.429 in control of corruption. Its physical property rights subindex decreased by -0.025 to 4.193 with scores of 5.089 in the perception of property rights protection, 2.595 in the registration process, and 4.896 in access to financing. Pakistan is one of the worst performers in political stability, rule of law, control of corruption, and the registration process (Property Rights Alliance, 2023).

### 3.3 DOING BUSINESS

In the last World Bank's Doing Business Index 2020, on the measure relating to 'registering property' Pakistan was ranked 151 out of 190 economies (World Bank, 2022). The registering property in Lahore measure of quality (World Bank, 2022) contains some startling facts. It is also noted that the property registration agency and cadastral or mapping agency do not use the same property numbers and their data is not synchronised. The data on property transactions is not publicly available. Even the official statistics of transactions with the property registration agency are not published. All the privately held land plots are not formally registered at the immovable property registry. All such plots are not mapped. There is no private or state guarantee to the registered sale deeds of immovable properties. No compensation is provided to a party to cover losses





incurred in a property transaction based on erroneous information provided by the immovable property registry. Court of the first instance takes more than three years to decide a property dispute and there is no data available regarding disputes pending adjudication relating to land. It is not a difficult task to fill these systemic gaps and even to improve upon other indicators relating to registering property.

### 3.4 B-READY

World Bank has replaced 'Doing Business' with the 'Business Ready (B-READY)' report on the business environment and investment climate in most economies. The first such report is likely to be published in September this year (World Bank, 2024a). This report will assess the quality of public services and regulatory framework being provided to businesses, and the efficient practical combination of regulatory framework and public services. World Bank has already published a handbook on methodology for such a report in May 2023 (World Bank, 2024b). There are ten topics or broad parameters for assessment. Business location is one of these topics. This topic is divided into three pillars, each pillar is divided into categories, each category into subcategories, and each subcategory into multiple indicators.

In the business location topic, the quality of the regulatory framework for the ownership, sale and lease of an immovable property will be assessed (World Bank, 2024b). It will also assess the transparency of information in the transfer of immovable property and efficiency in such transfers. A proper property transaction regulatory framework improves the efficiency and transparency of property transactions, reduces costs, and increases the accuracy of property information. To secure the proper transfer of title in a property transaction, it is necessary to verify the title documents of the transferor by the official registering the transaction. All property transactions should be registered in one registry and a system of online title search has to be in place. Land disputes will also be assessed which make up most of the volume of court cases in Pakistan (Siddique, 2020). In the prevention of such disputes and proper management of the existing





ones, the legal framework for land administration needs to provide effective mechanisms of dispute resolution that are consistent and non-discriminatory. The title registration system should be error-free to reduce disputes and consequential costs to affected parties. Out-of-court alternate dispute resolution for the settlement of land disputes will bring efficiency and reduce the unnecessary burden upon the courts. The system of title guarantee is another positive indicator for the investors (World Bank, 2024b).

Digitisation is the key indicator like a single platform for checking titles, encumbrances, transfer, and redressal of grievances in all these processes (World Bank 2024b). Online availability of property transactions and land-related disputes of at least the last five years, all costs involved in any property transaction and service standards at the land registry, and statistics of time involved in the resolution of property disputes during the last five years. Moreover, cumbersome land transfer processes and high costs in registering transfers discourage people from registering the transfer of property. Hence, the time and costs involved in the registration of the transfer of immovable property are also one of the indicators for the assessment of any legal system under the B-READY index (World Bank 2024b). All these and other indicators were published in May 2023 but despite the passage of more than one year, there is no publically available strategy to improve Pakistan's ranking in this all-important global economic index.

### 3.5 EXISTING REFORM MEASURES

The main issues and problems relating to immovable property rights in Pakistan are proof of ownership and informal land transactions. There is great difficulty in the identification of the ownership of land in the absence of a centralised system of recorded titles and title guarantees; and a defective transfer registration system. Oral gifts, etc. of immovable property, unregistered agreement to sell, equitable mortgage, power of attorney, pre-emption, will, joint holding, and *benami* law make land-related transactions complex and prone to multiple litigation spanning over decades to decide (Siddique, 2020).



Policymakers in Pakistan have consistently ignored the necessary private property rights reforms for improved protection of property rights. Except for law reforms relating to urban tenancies, women's land rights, and the digitisation of land records and transactions, only some insignificant administrative reforms have been introduced since independence. The prevalent colonial-era property rights system suits the elite and powerful. The existing system offers this top section of society unimaginable political and financial gain (Ahmed, 2022).

In 2007, the Punjab Government promulgated an Ordinance<sup>102</sup> to redefine the relationship between urban landlords and tenants. It was subsequently passed as an Act of the Provincial Assembly.<sup>103</sup> This law is based on the sanctity of contract and swift disposal of tenancy disputes of registered tenancies.<sup>104</sup> High stamp duty on tenancy agreements and physical presence for registration are the main factors for low registration of tenancy agreements. If the cost and time for registration of tenancy agreements are managed through a reduction in stamp duty and electronic registration, universal registration of such agreements can be achieved. Thereby further reducing time in the resolution of tenancy-related disputes.

In 2012, the Punjab Government launched some women-friendly initiatives that included law reforms to ensure the realisation of the property rights of women. Colonial era partition law<sup>105</sup> was repealed and replaced by a new law aimed at the swift disposal of cases related to the partition of urban immovable property.<sup>106</sup> This law was further strengthened in 2015.<sup>107</sup> Similarly, amendments were made in Chapter XI of the land revenue law relating to the partition of rural land especially on the opening of inheritance.<sup>108</sup> A 2021 law provided another remedy

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<sup>102</sup> The Punjab Rented Premises Ordinance, 2007.

<sup>103</sup> The Punjab Rented Premises Act 2009.

<sup>104</sup> Ibid, preamble.

<sup>105</sup> The Partition Act, 1893.

<sup>106</sup> The Punjab Partition of Immovable Property Act 2012.

<sup>107</sup> The Punjab Partition of Immovable Property (Amendment) Act 2015.

<sup>108</sup> The Punjab Land Revenue (Amendment) Act 2012 and the Punjab Land Revenue (Amendment) Act 2015.





to women to complain before the ombudsperson for the redressal of grievances relating to property rights.<sup>109</sup>

### 3.6 DIGITISATION OF LAND RECORDS AND E-REGISTRATION

The initiative of Land Record Management and Information System (LRMIS) in 2006 is the major development for the protection of property rights since independence but it came too late, almost 50 years after independence. After 18 years, still some 9 per cent of revenue records have not yet been digitized (Khan et al., 2023). This landmark initiative was backed by legal reforms through amendments in the Punjab Land Revenue Act of 1967 in 2007<sup>110</sup> and then in 2018.<sup>111</sup> The Punjab Land Records Authority was also established through law in 2017.<sup>112</sup>

The provincial government has also launched the Punjab Urban Land System Enhancement (PULSE) project to bring urban properties within the ambit of the establishment of a unified central database of the properties (Government of Punjab, Pakistan, n.d.). Once properly implemented, the PULSE project will provide a much better and more transparent record of titles in urban immovable property. This project is also being undertaken by the Punjab Land Records Authority. But unlike rural land, urban immovable property titles are complex and are not maintained by any single authority. Title and transfer of urban immovable property are even within the exclusive domain of private housing societies, cooperative housing societies, defence housing authorities, cantonment boards, and other development authorities. As explained in the previous chapter, several laws cover or are interpreted to provide cover for such property transfers and record-keeping of titles. As recommended in the handbook of B-READY, there has to be a single land or immovable property registry. The Punjab Land Records Authority has not yet envisaged legal reforms

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<sup>109</sup> The Punjab Enforcement of Women's Property Rights Act 2021.

<sup>110</sup> The Punjab Land Revenue (Amendment) Act, 2007.

<sup>111</sup> The Punjab Land Revenue (Amendment) Act 2018.

<sup>112</sup> The Punjab Land Records Authority Act 2017.



required to have a single land registry for the whole of the province. Furthermore, it is not clear from the project documents for treatment to be meted out to strata properties in the absence of a proper legal framework (Pulse, n.d.).

E-registration of deeds including transfer of property deeds is another recent positive step of the provincial government (Government of Punjab, Pakistan, n.d.). Key features of this electronic registration system include e-stamp challan creation, electronic fee payment, electronic issuance of security paper, the provision of access to the e-registration portal through the creation of an account, the initiation of the deed registration process, verification of paid challans of fees, entry of particulars of parties, and submission of the deed registration request to the sub-registrar before appearing before the sub-registrar for recording the statements of the parties and witnesses. This saves a lot of time for transferors and transferees of immovable properties. However, this reform is being undertaken as an administrative measure and it is not backed by legal reforms to make it mandatory for all the players in deed registration to use the electronic registration system and also further strengthen the e-registration system.

It is clear from the above that some major reforms for the protection of property rights have been introduced during the last two decades. Further reforms, especially law reforms, are necessary to attract investment and to create a property market. Pakistan also needs to improve its general outlook in the enforcement of property rights and carefully examine the reasons for its poor showing in all the property relating reliable global indices. Each of these indexes has multiple pillars and each pillar has numerous measures or indicators. Normally, a country report of an index provides sufficient rationale for scoring and rating each one of the indicators.





### 3.7 PERFORMANCE OF PAKISTAN IN PROPERTY RIGHTS-RELATED INDICES

Sr. No.	Index and Year	Score	Position of Pakistan
1	World Bank (IDA) Country Policy and Institutional Assessment (CPIA) 2022	2.5 out of 10	--
2	Heritage Foundation's Property Rights Index 2023	29.3 out of 100	156 out of 175
3	Property Rights Alliance's International Property Rights Index 2022	3.814 out of 10	108 out of 129
4	Property Rights Alliance's International Property Rights Index 2023	3.824 out of 10	104 out of 125
5	World Bank's Doing Business Index 2020 [Registering Property]		151 out of 190



## 4. COMPARATIVE PROPERTY RIGHTS

*“The rights of persons, and the rights of property, are the objects, for the protection of which Government was instituted.” James Madison*

There is an inseparable connection between a country’s economic well-being and robust property rights protection. A lack of property rights is demonstrably linked to low productivity and poverty around the world (Quesnel, 2023). This chapter provides an overview of a select group of nations through an examination of their immovable property rights protections. On the 2023 International Property Rights Index (IPRI), Singapore and New Zealand were globally ranked number 2 and 5, respectively, while Australia and the United Kingdom were ranked number 10 and 15, respectively. India was placed at 62. These countries were way above Pakistan’s dismal ranking of 104 (Property Rights Alliance, 2023). Though most of these countries have different geographical, social, and economic models that contribute to different property rights cultures and legal approaches, there are some lessons to be learnt from their systems.

### 4.1 SINGAPORE

In 2023, Singapore's IPRI score decreased by 0.009 to 7.958, ranking it first in the Asia and Oceania region and second globally. As an advanced economy and high-income country, Singapore saw a decline in its legal and political subindex by 0.384 to 8.068. The subindex included scores of 6.192 for judicial independence, 8.715 for rule of law, 8.021 for political stability, and 9.343 for control of corruption. Additionally, the physical property rights subindex decreased by 0.072 to 8.192, with scores of 8.944 for the perception of property rights protection, 8.655 for the registration process, and 6.977 for access to financing. It has achieved one of the highest rankings in political stability, perception of property rights protection, registering process, rule of law and control of corruption (Property Rights Alliance, 2023).





Though there exist freeholds, most of the land in Singapore is owned by the state which is given on 999-year or 99-year leases (Buycondo.org, n.d.). Singapore has a single land administration agency, that is, Singapore Land Authority (SLA) which provides the following land administration services (Government of Singapore, n.d.):

- Selling and leasing land to both the public and private sectors, and allocating land to support national development.
- Registering land and property transactions, and issuing and guaranteeing land titles in Singapore.
- Managing and collating digitised information on Singapore's roads, MRT networks, property boundaries, and outlines of public housing and industrial buildings.
- OneMap: an integrated online geospatial platform providing reliable, timely, and accurate location-based information and services to the public. Use OneMap for street directory information and services such as LandQuery, SchoolQuery, and PopulationQuery, among others.
- Integrated Land Information Service (INLIS): a one-stop internet portal offering information on land matters like road line plans, survey plans, and property boundaries. INLIS also provides details on property ownership, property transaction history, and surrounding amenities.
- Maintaining the national land survey system, which supplies fundamental information about land in Singapore. This system establishes and maintains the geodetic reference system and infrastructure to support all land survey and geospatial activities.

Singapore implemented the Torrens title system in 1956 as one of the measures to attract investment.<sup>113</sup> This title system is voluntary and provides a reliable and

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<sup>113</sup> The Land Titles Ordinance 1956 (Ordinance 21 of 1956); re-enacted as the Land Titles Act 1993.





efficient framework for registering land titles, ensuring transparency and security in property ownership. It has played a pivotal role in modernising the land registration process, enhancing the reliability of land title records, and providing greater confidence to property owners and investors in Singapore (Buycondo.org, n.d.). The old common law deed registration system and the land titles system remained legally permissible in parallel in Singapore, but now, almost all of the land in Singapore is registered under or has been converted to the land titles system with indefeasible titles. The title certificate issued by the SLA is conclusive evidence of the title (Baker McKenzie, n.d.). Presently, land titles are registered under the Land Titles Act of 1993, while strata titles are conferred under the Land Titles (Strata) Act of 1967. Strata properties are managed and maintained under the Building Maintenance and Strata Management Act of 2004. The Conveyancing and Law of Property Act of 1886, the Residential Property Act of 1976, and the Sale of Commercial Properties Act of 1979 are the transfer of property laws of Singapore. The Land Acquisition Act of 1966 allows the state to compulsorily acquire any land for public purposes or in the public interest by paying compensation to the owner or tenure leaseholder. The terms ‘public purpose’ and ‘public interest’ have been defined to bring certainty to the implementation of the law. Rental agreements are strictly enforced under mandatory mediation and are one of the most effective contract enforcement systems in the world (World Bank, 2022).

## 4.2 NEW ZEALAND

In 2023, New Zealand's IPRI score decreased by 0.136 to 7.793, ranking it second in the Asia and Oceania region and fifth globally. As an advanced economy and high-income country, New Zealand saw its legal and political subindex decrease by 0.091 to 8.664, with scores of 8.704 for judicial independence, 8.637 for rule of law, 7.914 for political stability, and 9.403 for control of corruption. Additionally, its physical property rights subindex decreased by 0.006 to 7.749, with scores of 8.093 for the perception of property rights protection, 8.636 for the registration process, and 6.518 for access to financing. It has achieved one of the highest rankings in political stability,





registering process, rule of law and control of corruption (Property Rights Alliance, 2023).

New Zealand consistently ranked number one in the later years of doing business index (World Bank, 2022). It was ranked the world's number two economy in registering property. It is also expected to be the world leader in the protection of property rights under the new B-READY index. It has about 30 per cent of the area as Crown or state land which is normally given on a 999-year or 99-year lease. There are other categories of Crown land (Krassov, 2022). Aboriginal Maori tribes own about 5.6 per cent of the country's area as freehold land which is subject to the Maori Land Act of 1993. About 45 per cent of the country's land is described as general land mostly in private ownership.

It is strange that without any constitutional protection of property rights, New Zealand has one of the best property rights protection under ordinary laws. It adopted the Torrens system from South Australia way back in 1870 through the Land Transfer Act of 1870. Currently, the Torrens system is being implemented under the Land Transfer Act of 1952. New Zealand provides a cheap and efficient land transfer system with highly effective state guarantees for private titles (Boast, 2013). Registered owners have undefeasible titles. The system protects the lenders or mortgagees through a charge over the immovable property and a right to sell the mortgaged property.<sup>114</sup> With a state-guaranteed title, the conveyancing of land is easy, uncomplicated, and very effective. The Public Works Act of 1981 provides for compulsory land acquisition only for public works and on the payment of adequate compensation. The right of reversion to the original owner is also available under the law in case land is no longer required for public work.<sup>115</sup>

New Zealand has properly regulated strata title or unit ownership. Property owners hold title to their units while sharing ownership of common areas like lifts, stairs, lobbies, hallways, and recreational facilities between all unit owners (Williams, n.d.). The management of shared areas such as these falls to a body

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<sup>114</sup> The Land Transfer Act 1952, section 100.

<sup>115</sup> The Public Works Act 1981, sections 40, 41 and 42.



corporate made up of all individual unit owners. This body corporate then elects a strata manager to oversee the management and upkeep of the common areas. This all is governed under the Unit Titles Act of 2010, which establishes a legal framework for strata title ownership as well as the rights and responsibilities of unit owners, the body corporate, and strata managers.

The Residential Tenancies Act of 1986 regulates tenancy agreements in New Zealand. A tenancy agreement has to be in writing and shall contain certain provisions including the names and addresses of the landlord and tenant, the term of the tenancy, and the amount of rent. Apart from other terms and conditions, the agreement may include provisions regarding utility payments, and maintenance and use of common areas.<sup>116</sup> Tenancy disputes are normally resolved through mediation or arbitration. Rarely do such disputes land in the tenancy tribunal for the enforcement of the tenancy agreement. Commercial leases are governed under the Property Law Act of 2007. Normally, lease disputes are also resolved through mediation agreements or arbitration awards. Each of these settlements is enforced by the courts (The Lawyers, n.d.). There is a certain amount of certainty and swiftness in tenancy dispute resolution in New Zealand since it has one of the better systems of contract enforcement.

## 4.3 AUSTRALIA

Australia's IPRI score increased by 0.071 to 7.688, ranking it third in the Asia and Oceania region and tenth in the world. As an advanced economy and high-income country, Australia saw its legal and political subindex rise by 0.217 to 8.15, with scores of 9.018 for judicial independence, 8.349 for rule of law, 6.759 for political stability, and 8.475 for control of corruption. However, its physical property rights subindex decreased by 0.02 to 7.395, with scores of 8.446 for the perception of property rights protection, 7.929 for the registration process, and 5.809 for access to financing. Australia holds strong global and regional rankings in judicial independence, perception of property rights

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<sup>116</sup> The Residential Tenancies Act 1986.



protection, registration process, rule of law, and control of corruption (Property Rights Alliance, 2023).

Australia is a federation and except for indigenous rights to land,<sup>117</sup> most of the real property laws are state laws. Unlike New Zealand where the right of Maori tribes over their land was accepted by the British, they declared entire Australia as the land 'terra nullius' (belonging to no one). The British Crown owned land in the whole of Australia and land titles were originally conferred by the Crown upon private persons (Toner, 2005). Most of the state land laws recognise these grants and provide a system for the transfer of property.<sup>118</sup> South Australia pioneered the adoption of the Torrens title system in 1858. Since then, every Australian state and territory has embraced this system of land titling. Each property is allocated a unique number and registered with its respective state or territory. This registration includes details such as property boundaries, any restrictions, and the legal owner's information (Legal Kit, 2023). In Australia, a standard real estate transaction typically includes identifying the property's legal owner via an online title search, obtaining a copy of the sale contract, examining the land registry, reviewing the deed, and seeking legal counsel when needed.

The following are some of the prominent land laws in various states of Australia:

- New South Wales: The Real Property Act of 1900 and the Conveyancing Act of 1919.
- Victoria: The Transfer of Land Act of 1958 and the Land Titles Validation Act of 1994.
- Australian Capital Territory: The Land Titles Act of 1925.
- Queensland: The Property Law Act of 1974 and the Land Title Act of 1994.

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<sup>117</sup> The Native Title Act 1993 and Aboriginal Land Rights (Northern Territory) Act 1976.

<sup>118</sup> Like the New South Wales law: Real Property Act 1900.



- Northern Territory: The Law of Property Act of 2000.
- South Australia: The Real Property Act of 1886 and the Real Property Act of 1862.
- Western Australia: the Property Law Act of 1969 and the Titles Validation Act of 1995.

Interests in land not governed by the Torrens title system are known as old titles or general law interests. These are regulated by the common law and equity in Australia. Registration of these interests is optional and exists only in limited parts of Australia (Krassov, 2022).

Similar to Torrens titles, strata title is an Australian innovation in property law that has been adopted worldwide. Strata community living is a popular choice in Australian cities because it offers low maintenance due to the shared nature of community living and costs. This, along with smaller areas to maintain and the availability of common facilities, makes strata title schemes an appealing option (ESM Strata, n.d.). All the states of Australia have their own strata title laws.<sup>119</sup> In Australia, the first strata titles legislation was enacted in Victoria in 1960. The fundamental principles of the Victorian Strata Titles Act of 1960 were adopted by New South Wales through the Conveyancing (Strata Titles) Act of 1961. Over time, the other states also implemented their own strata title and management laws.

Every state has residential tenancies laws.<sup>120</sup> These laws determine the relationship between landlords and tenants. The system ensures the implementation of rental agreements. Normally, it only takes 44 days to evict a defaulting tenant (Rental Agreements, n.d.). Various types of commercial leases exist in different states of Australia. Such leases are generally categorised as office leases, retail leases, industrial leases and medical leases. Each category of

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<sup>119</sup> The Western Australia Strata Titles Act 1985, The South Australia Strata Titles Act 1988.

<sup>120</sup> Like the New South Wales Residential Tenancies Act 2010.





lease may have its regulatory framework but terms and conditions in a lease deed are of paramount consideration (Legally Yours, 2024). Leases other than retail leases are normally governed under the common law of Australia while state-specific laws are made to regulate retail leases (Kallmyr, 2024).

## 4.4 UNITED KINGDOM

England and Wales are the birthplace of common law as well as modern concepts of personal freedoms and property rights. Right from the Magna Carta to the present day, the right to life, liberty and property are ensured under the legal system of the United Kingdom. The first two are personal rights but they may become meaningless without the right to property. As George Washington has rightly remarked, "Freedom and property rights are inseparable. You can't have one without the other."

The United Kingdom's IPRI score increased by 0.19 to 7.489, ranking it 10th in the Western Europe region and 15th in the world. As an advanced economy and high-income country, the United Kingdom saw its legal and political subindex rise by 0.275 to 7.627, with scores of 8.163 for judicial independence, 7.853 for rule of law, 6.152 for political stability, and 8.341 for control of corruption. However, its physical property rights subindex decreased by 0.009 to 7.143, with scores of 7.493 for the perception of property rights protection, 7.679 for the registration process, and 6.257 for access to financing. The United Kingdom has shown improvement in judicial independence, rule of law, control of corruption, the registration process, and access to financing (Property Rights Alliance, 2023).

Some fundamental changes were brought in the laws of England and Wales relating to immovable property during the law reforms of 1925. The Land Registration Act, the Settled Land Act, the Law of Property Act, the Trustee Act, the Administration of Estates Act, and the Land Charges Act were enacted in 1925 and, together, they are referred to as the Law of Property Acts of 1925. In the recent past, the enactment of the Land Registration Act of 2002 is one of the



most significant changes in the area of property law which, among other things, allowed electronic property transactions (Krassov, 2022). Private proprietary rights in the United Kingdom are either freehold or leasehold (Cook, 2012). The owner of the freehold is the one who owns heritable land or rights to real property. Leasehold estate is subordinate to freehold estate because it has limited validity. A fixed-term lease of an estate is valid for a term which may be between a few days to 999 years or even for an indefinite period. Periodic lease is lease at will. Though it may be granted periodically like for a quarter, year etc. but is terminable only upon notice for termination served upon the other party. English law also recognises encumbrances on immovable property like easement rights and mortgages.

The Commonhold and Leasehold Reform Act of 2002 provides for private ownership of flats within the spatial volume of a building with elements of general management of the entire apartment building (Krassov, 2022). It provides conditions for the creation of ownership rights to parts of the building. The common parts of the building are in common ownership and are managed collectively. The Land Registration Act of 2002 reorganised the Land Registry as a department of the government of the United Kingdom. This department was created in 1862 to register land rights in England and Wales. The Land Registry guarantees the rights to registered titles and interests concerning the land akin to the Torrens system. It contains information about ownership and lease rights when the lease term exceeds seven years. Millions of titles are registered with the Land Registry. As of August 2012, almost 80 per cent of land titles in England and Wales were registered with the Land Registry as guaranteed titles, while most of the unregistered titles are agricultural land, churches, educational institutions, and Crown land (Krassov, 2022).

The Land Registration Act of 2002 provides mandatory registration of all leases for a term exceeding seven years. A registered lease becomes a registered title for the term of the lease guaranteed by the Land Registry. It is in the tenant's interest to register the lease to secure his possession. A lease is a title as well as a contract. Though it secures possession of the tenant but subject to the





condition that the tenant fulfils his part of the contract.

Farm tenancies are regulated under the Agricultural Tenancies Act of 1995. Like other leases, farm tenancies are also mostly dependent upon the terms and conditions of the agreement between the landlord and tenant. Subject to the term of the tenancy, vacation notice during the term on either side has to be of at least 12 months. A tenancy is a farm tenancy if at least a part of the tenanted land is an agricultural farm throughout the life of the tenancy. This tenancy must also meet one of the following two conditions:

- The landlord and tenant have exchanged notices before the beginning of the tenancy confirming they intended it to remain as a farm tenancy throughout the term of the tenancy; or
- if no such notices have been exchanged before the commencement of the tenancy, the purpose of tenancy is primarily agricultural (GOUK, 2012).

English law recognises adverse possession.<sup>121</sup> Possession is based on the assertion of title contrary to the claim of another person or the acquisition of land by a person who does not have a title to it. To prove adverse possession, it has to be proved that the real owner has ceased to exercise ownership of the land or has been deprived of ownership.<sup>122</sup> The person who is in possession of the land must prove that he has sufficient control and has used the land. The person who occupied the land must have the intention to exclude everyone, including the real owner;<sup>123</sup> and the person in possession without permission of the real owner.<sup>124</sup> Title based on adverse possession is also required to be registered with the Land Registry, which has to follow certain procedures like three months' notice to the earlier registered owner.<sup>125</sup>

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<sup>121</sup> The Limitation Act 1980.

<sup>122</sup> *Williams Brothers Direct Supply Limited v. Raftery* (1958) 1 Q. B. 159.

<sup>123</sup> *Lamberth LBC v. Blackburn* (2010) EWCA Civ. 912; *JA Pye (Oxford) Ltd and Others v. Graham and Another* (2002) UKHL 30 and *Battersea Freehold & Leasehold Co. Limited v. Wandsworth LBC* (2001) 82 P&CR 137.

<sup>124</sup> *Beresford v. City of Sunderland* (2003) UKHL 60.

<sup>125</sup> The Land Registration Act 2002.





Northern Ireland, as a principle, follows the English common law and most of its property rights system is similar to England and Wales. While Scotland follows the civil law system, there are some fundamental differences between the land laws of England and Scotland. These differences range from types of title to transactional obligations of buyers and sellers and the treatment of agreements to sell land (Dentons, 2020).

## 4.5 INDIA

India and Pakistan share a legal system inherited from their common colonial past. Recently, India has made significant economic progress, but its legal system and protection of property rights lag behind global standards. However, India's legal framework in this regard remains notably more advanced compared to Pakistan.

India's IPRI score decreased by 0.071 to 5.072. It is still ranked 10<sup>th</sup> in the Asia and Oceania region out of 19 countries and 62<sup>nd</sup> in the world out of 125 countries indexed. Classified as an emerging and developing economy, India is still considered a lower-middle-income country. India's legal and political subindex increased by 0.039 to 4.652, with scores of 5.481 for judicial independence, 4.838 for rule of law, 3.878 for political stability, and 4.41 for control of corruption. However, its physical property rights subindex decreased by 0.081 to 5.45, with scores of 5.69 for the perception of property rights protection, 4.554 for the registration process, and 6.105 for access to financing. India performed relatively well in judicial independence and access to financing but lagged in the rule of law, control of corruption, and political stability (Property Rights Alliance, 2023).

### 4.5.1 Title Insurance

A big stride forward has been made in India towards clear and undisputed land titles through due diligence for land title records under the Real Estate Regulation Act of 2016 (RERA).<sup>126</sup> This law empowers the state governments to

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<sup>126</sup> The Real Estate (Regulation and Development) Act, 2016. Gazette of India.





make title insurance mandatory for any new class of real estate transactions. The system of title insurance is designed under RERA to protect purchasers of real estate and lenders from losses that may arise because of unknown encumbrances, liens, or defects in title. These encumbrances, liens, and defects exist before the transfer or transaction and title of land (Keleher, 2012; American Land Title Association, 2005). However, implementation of this law by the state governments is still a huge challenge in India because of the absence of a title insurance market or a sufficient number of specialised title insurance companies (Burman, 2019).

Apparently, this law is similar to the title insurance system of the United States developed in the late 19<sup>th</sup> century. In a case decided in 1868,<sup>127</sup> the seller, though in good faith, failed to disclose title defect to the purchaser of a property. The purchaser sued the seller. The court held that the seller was not liable for being negligent. The purchaser should have been aware or done his due diligence on the principle of the buyer being aware. Soon after the decision of this case, the Real Estate Title Insurance Company, a title insurance company, was incorporated in Philadelphia.<sup>128</sup> This was in response to suboptimal public land record systems in most of the states of the United States. Since then, the title insurance business of title insurance companies has been thriving business in the United States. This has resulted in improved title records and provided reliable indemnity for any title defect (Arruñada, 2002). Title insurance covers past title defects, hence, it is retrospective. Only a one-time premium is required to be paid; the insurance company/ agent also conducts due diligence on the title and helps reduce the defect; and insurance covers litigation costs regarding the title. This system is not considered workable in the absence of clear laws and an efficient judicial system (Arruñada, 2002).

#### 4.5.2 Digitisation of Land Records

For rural areas, India initiated the National Land Records Modernization Programme in 2008. It has now been renamed the Digital India Land Records

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<sup>127</sup> Watson v. Muirhead, 57 Pa. 161, 161 (1868).

<sup>128</sup> Charles B. Dewitt III, Title Insurance: A Primer, 3 Tenn. J. Prac. & Proc. (2000).



Modernization Programme (DILRMP). This programme has the ultimate aim of adapting the system of indefeasible titles with state guarantees akin to the Torrens system of titling. Presently, there is no guarantee of the conclusiveness or correctness of land records being maintained by states in India. These land records are still presumptive, i.e., the presumption of truth is attached to them. But this presumption is rebuttable, leaving huge room for challenging the title on multiple grounds (Burman, 2019). In 2017, the Indian government announced the extension of DILRMP to urban areas. This will include the computerisation of the record of rights along with the simultaneous digitisation of cadastral maps of the urban areas (GOI, 2017b).

In India, the central government provides financial assistance for the implementation of DILRMP, while state governments are assigned the function of implementing the necessary changes. The DILRMP consists of four main components, each with its sub-components: the computerisation of property records, the computerisation of registration under the Registration Act, the implementation of surveys and spatial mapping using modern technology, and capacity building. According to a 2006 report by the Planning Commission of India, the modernisation efforts have mostly focused on the computerisation of property and land transaction registration records, with little progress made in the other two areas (GOI, 2006).

### ***4.5.3 Transfer of Property***

The transactions of immovable property in India are regulated under the Registration Act of 1908 and the Transfer of Property Act of 1882. The Registration Act mandates registration of agreements to sell immovable property, sale deeds of immovable property, and conveyance of immovable property, while leases of less than one year do not require compulsory registration. It is important to note that registering a land transaction under this Act does not establish a title. The Transfer of Property Act of 1882 outlines the procedures for transferring immovable property and defines the rights and responsibilities of the parties involved. However, neither of these laws presumes or guarantees the validity of the title to immovable property. The Indian





Supreme Court has explicitly ruled that revenue records do not constitute a valid proof of title.<sup>129</sup> Consequently, there is no mechanism in India that "guarantees" land title. Courts, rather than the state, have the ultimate authority on land title disputes. Land surveys are conducted infrequently and the records are often incomplete or outdated (Zasloff, 2011). It is the responsibility of a prospective purchaser to assess the quality of the title. The purchaser must bear the costs associated with reviewing public records and faces the risk of unfavorable judicial decisions, despite conducting initial due diligence based on information found in the official records.

#### 4.5.4 Torrens Title

Land is a state subject under item No. 18 in the State List, Constitution of India. The union government, however, proposed a model Bill in 2011 for the consideration of all states to adopt the Torrens system (GOI, 2011a). This Bill has the following key features:

- Mandatory registration of all immovable property as conclusive proof of electronically recorded titles is required. This includes a mechanism to invite objections and resolve disputes through special tribunals before property registration. The property record will serve as conclusive proof of ownership for the person listed in the register.
- Establishment of a Land Titling Authority at the state level as a single body to register all titles of immovable property.
- The property record will include boundary survey data; a unique identification number; and a title record.
- Opening of area title registration offices of the Land Titling Authority with powers of a civil court to create a register of titles.
- The register of titles contains a prepared and maintained record for each property. It will include a general description for each property such as a map, and locational details; descriptive data, such as a unique



identification number, plot number, total area, built-up and vacant area, address, site area, and undivided share in the land; details of survey entries, provisional title records, conclusive title records and their status, mortgages, charges, and other rights and interests in the property; details of property transfers and past transactions; and any disputes related to the property.

- Entries in the register of titles will serve as conclusive evidence of ownership. These entries will be maintained electronically, indemnified, and kept in the public domain.

To date, Rajasthan is the first and only state to adopt the Torrens system in India. This Rajasthan law on urban land titles certification provides a certification of the title system and mandates the state government to indemnify any person who suffers any loss because of any defect other than the encumbrance or other charge recorded in the register of titles and title certificate.<sup>130</sup> The state government is required to notify the urban areas to which this law becomes applicable. There is, however, little chance of implementation of this law without correcting the administrative and legal deficiencies in the land records. India still faces a huge challenge in maintaining the quality of public land records and the marketability of land titles (Burman, 2019). A land titling Bill has been under consideration in the Andhra Pradesh Legislative Assembly since 2019.<sup>131</sup> A title defect is challengeable within 12 years of its detection even if the actual defect occurred a century earlier.<sup>132</sup>

#### 4.5.5 Condominiums

The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act of 1963 to a certain degree regulates strata titles and management of spaces within a building with separate units called flats.<sup>133</sup> Similarly, the Maharashtra Apartment Ownership Act of

<sup>130</sup> The Rajasthan Urban Land (Certification of Titles) Act 2016.

<sup>131</sup> The Andhra Pradesh Land Titling Bill, 2022.

<sup>132</sup> The Limitation Act, 1963.

<sup>133</sup> The Maharashtra Ownership Flats (Regulation of Promotion of Construction, Sale, Management and Transfer) Act 1963.





1970 provides for the conferment of title of an apartment in a multi-story building. It also makes such a title to an apartment heritable and transferable.<sup>134</sup> An apartment is defined as a part of the property intended for any type of independent use. This includes one or more rooms or enclosed spaces located on one or more floors, or parts thereof, in a building. The intended uses can be for residence, office, the practice of any profession, carrying out any occupation, trade, or business, or any other type of independent use. It must have a direct exit to a public street, road, or highway, or a common area leading to such street, road, or highway.<sup>135</sup> This law applies to urban or municipal areas of the state of Maharashtra.

#### **4.5.6 Adverse Possession**

Adverse possession is recognised under the law of limitation based on the British common law principles.<sup>136</sup> Adverse possession allows individuals to assert ownership rights over land through open and continuous possession over a specified period, usually around 12 years. This legal principle seeks to balance the interests of possessors and owners by promoting active land use and discouraging neglect. However, adverse possession is contingent upon meeting specific conditions, including hostile occupation, continuous possession, and adherence to legal obligations (Symbiosis Infra Pvt Ltd., 2024).

#### **4.5.7 Eminent Domain**

Compulsory land acquisition continued in India under the colonial era Land Acquisition Act of 1894 which remained in force until 2013. India made a big leap forward by modernising the law governing eminent domain. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013 (India Code, n.d.) was made to strike a balance between public good and the right to private property. The following are the key

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<sup>134</sup> The Maharashtra Apartment Ownership Act, 1970, preamble.

<sup>135</sup> Ibid, section 3(a).

<sup>136</sup> The Limitation Act, 1963, section 27.



features of this law:

- 'Public purpose' is clearly defined to avoid arbitrary acquisition of immovable property.
- Consent from 70–80 per cent of affected landowners is mandatory for land acquisition for private investment projects or any public-private partnership project.
- Compensation has to be four times the market value of land in rural areas and at least two times the market value of the immovable property in urban areas for compulsory land acquisition.
- The law contains specific provisions for resettlement and rehabilitation of the persons affected due to compulsory land acquisition.

#### 4.5.8 Tenancies

Immediately after independence, land reforms including tenancy reform were carried out in various states of India. In most of the states, leasing agricultural land or agricultural tenancy is legally regulated or, in some cases, banned altogether (Swaminathan, 2017). Maximum rent was fixed at one-sixth to one-third of the gross produce in different states. In some cases, proprietary rights of agricultural land were also conferred on tenants. Most of the laws regulating agricultural tenancies were passed by state legislatures immediately after independence.<sup>137</sup>

In 2016, the Government of India published a report from an expert committee on land leasing. The report contains criticism of the old tenancy laws for being restrictive and prohibitive putting constraints on the land tenancy markets and promoting the spread of informal tenancy. This prevents tenants from accessing any government benefits. It recommended the deregulation of agricultural

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<sup>137</sup> See the Bombay Tenancy and Agricultural Lands Act, 1948; Gujarat Tenancy and Agricultural Lands Act, 1948; Pepsu Tenancy and Agricultural Lands Act, 1955; and Goa, Daman and Diu Agricultural Tenancy Act, 1964.





tenancies. Given this, the union government proposed a model agricultural land leasing law. With this, a state government can provide direct support to the cultivator tenant. But it has been criticised as a landlord-friendly legislative proposal. Maharashtra enacted the Maharashtra Agricultural Land Leasing Act of 2017. Andhra Pradesh has also legislated a new tenancy law replacing the old ones. Andhra Pradesh Cultivator Rights Act of 2019 was enacted along the same lines.

Pro-tenant rent control law was also enacted immediately after independence.<sup>138</sup> States have also enacted similar laws. Rent control laws contain rules for letting out an immovable property. These laws are aimed at ensuring non-exploitation of the landlords' and the tenants' rights. However, due to some of these pro-tenant laws, the property market has not grown in some areas or regions. There are instances that tenants are still paying paltry rent without regard for the inflation and increased value of the immovable property over the years (Acharya, 2024). It is difficult to evict a tenant under this system. Union government has tried to bring reforms to rent control laws but faced stiff resistance from the existing urban tenants. These laws make rent increases difficult and grounds of eviction justifiable without regard to the tenancy tenure mentioned in the tenancy agreement.

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<sup>138</sup> The Rent Control Act, 1948.





## 5. TORRENS TITLES

*'The people must have a law suited to the requirements of modern times.'* Robert Richard Torrens

### 5.1 HISTORY

It all started in South Australia. In the early days of the Australian colony, South Australia followed the British common law of conveyancing. The vendor has to prove/ produce an unbroken chain of a title deed and hand over that chain to the buyer while executing the transfer deed in their favour. Invariably, property numbers on district maps are mentioned in these deeds to identify property but these maps were inaccurate and such deficiencies are compounded by private subdivisions of land. Loss or destruction of title deeds in the chain was also common making buyer's title uncertain. Robert Richard Torrens remained Collector of Customs in Adelaide from 1840 to 1853. He observed the clarity of the titles of ships based on a single certificate. He was deputed as the Register-General of Deeds in the year 1853. After four years, he became a member of the lower House of Parliament of South Australia. There he started canvassing and lobbying for land title reforms (Government of Australia, n.d.). In the same year, Torrens introduced the Real Property Bill in the Parliament, with the following cardinal features:

- Standardised and simple conveyancing forms without any need for a lawyer except for complex cases;
- vendor or transferor to surrender title certificate on sale or transfer and a new certificate is issued in favour of the buyer or transferee; and
- registration and certification would provide conclusive validity to land transactions.

The Bill was passed as the Real Property Act of 1858. The Land Titles Board was established under the Act to give a title certificate of immovable property rather





than relying on the conveyancing deed. After the passage of the Act, Torrens resigned from the Parliament and assumed the office of the Register General of Titles created under the Act. Once the new system was in place, Torrens started to advocate for the system and within two decades, the Torrens system was adopted by the whole of Australia and the neighbouring island nation of New Zealand. The Torrens system has since been adopted or partially adopted internationally as a simple system of land title management (Government of Australia, n.d.). The system largely remained unchanged over a century but during the last few decades automation revolution has taken it to new heights. Now electronic conveyancing of real property has been introduced in South Australia since 2016. Despite these changes, the integrity of the register of titles has always been maintained and guarded.

Canada and Ireland also adapted the Torrens system in the late 19th century. Russia, the Philippines, Malaysia, Indonesia, Israel, Sri Lanka, Thailand, China, and Saudi Arabia are other major countries that have adopted this system. In Europe, many countries like Austria, Denmark, Finland, Germany, Poland, Portugal, Spain, Sweden, Switzerland, and the United Kingdom have embraced the Torrens title registration system. Despite strong opposition and lobbying from insurance companies, this system has also found its way into about 11 states of the United States though it has universal application only in Minnesota, Massachusetts, and Hawaii, while it is partially adapted or is made voluntary in other states. The Torrens system was a positive systemic change in property laws for its ability to ensure certainty of title to immovable property. It provides a much cheaper and swift land titling and registration system. Through this system, the indefeasible and irrefutable title is conferred on the buyer without going through the hassle of detailed due diligence of the vendor's title or any assurance of certainty even after extensive due diligence through expensive lawyers (Deiningner et al., 2010).



## 5.2 SALIENT FEATURES

Theodore B. F. Ruoff has enunciated 'mirror', 'curtain' and 'insurance' principles as the mainstay of the Torrens system of land titling and registration (Ruoff, 1952). The mirror principle ensures that the land register most appropriately mirrors all essential facts related to the land title. The 'curtain' principle prohibits any investigation or inquiry beyond the entries in the land register by deeming them as final and conclusive for ascertaining the title. The 'insurance' principle involves a state guarantee to compensate bona fide claimants for losses due to inaccuracies in the register. Under the Torrens system, a single registry records all land transactions in a single register under a unique title number. This register also includes details of encumbrances such as easements, mortgages, and their discharges. A brief explanation of these principles is as follows:

**Mirror principle:** The title document reflects current ownership and all registered interests in the property, including mortgages, easements, and liens. It





typically does not include details on zoning restrictions or similar matters.

Curtain principle: Prospective buyers need not investigate beyond the current title certificate since it contains comprehensive and up-to-date information about the property's title.

Insurance principle: The land title registry is responsible for ensuring the accuracy of each title certificate. It may maintain an insurance fund to compensate parties affected by errors in the register (Chen, 2022).

### 5.3 TORRENS CERTIFICATE

A Torrens certificate, also referred to as the Torrens title, is an instrument that serves as indisputable and definitive proof of title of the immovable property mentioned in it. At its core, the Torrens system guarantees the state's assurance of property title. It ensures that the registered owner or holder of the Torrens certificate possesses an unchallengeable, absolute, and irrefutable title to the property. Once an immovable property is registered under this system, it is presumed that it is free from any undisclosed encumbrance, claim or interest which is not documented on the Torrens certificate and the land register. An entry in the Torrens certificate stands as conclusive evidence of ownership of the property. The transfer of title is only finalised upon the entry of this information in the title register and issuance of a new Torrens certificate. While a contract between parties to transfer title is a necessary prerequisite for registration, its validity hinges on completing the registration process. This contrasts with the deed registration system, where title transfer typically occurs upon execution of the conveyance deed (Agarwal, 2022).

Torrens title laws differ across countries, but typically, an entry in the register of titles is deemed inviolable even if it was made due to errors by the registrar or the involved parties. If the legitimate right holders lose their rights due to an incorrect register entry, they may seek financial compensation for their loss but cannot reclaim the property itself. The property will remain with the buyer, whether or not encumbrances listed in the register are present.



## 5.4 STATE GUARANTEE

State guarantee is one of the cornerstones of the Torrens system. Except for a few countries (Agarwal, 2022) where the Torrens system is in place without proper governmental guarantee, the government or designated authority of the government is responsible to any genuine claimant for loss due to any entry in the register and certificate. The genuine right holders who lose their property rights due to an incorrect register entry may claim monetary compensation for the loss but cannot reclaim the property. In most countries with the Torrens system, like Australia, New Zealand, and the United Kingdom, the government has created a fund to provide compensation in such cases. The legally designated authority is crucial in maintaining land records and issuing Torrens certificates. The systems and integrity of such authorities are essential for the success of the Torrens system in any country. A government guarantee is a fundamental feature that distinguishes the Torrens system from other land registration methods. It gives property owners confidence and a high level of security, knowing their property rights are fully backed by the state, ensuring they do not need to worry about defects or mistakes in their title (FasterCapital, n.d.).





### The Framework

Digital land records will facilitate switch

Draft Legislation will propose that states move from presumptive to conclusive system

Unified legal framework being finalised to allow government-backed land ownership

### How will it help?

Reduce land related litigations

Farmers to get easy access to credit

Land acquisition to get easier

Real estate transactions to become more transparent

Title holders to be eligible for compensation from government

## 5.5 ADVANTAGES OF TORRENS SYSTEM

**Clarity of title:** The primary advantage of the Torrens system is the assurance of clarity of land title. This clarity of title diminishes the risk of title disputes involving the registered immovable property owners and other title-related issues in property transactions. This certainty gives confidence to investors for the construction of residential, commercial or industrial establishments on such property.

**Simplified transfers:** Transfer of property becomes a straightforward affair under the Torrens system. The government or designated state agency provides a guarantee for the land title and its accuracy, and there is no need to establish and verify the chain of title deeds back to the original source. There is no need for buyer-side due diligence for the purchase of a property. It saves time and money for the buyers of immovable properties. The buyers can trust the record and entries in the land register and Torrens' certificate to enter into a deal for the purchase of the property. They know fully well from these two documents that they are getting what they have paid for.



Shield against fraud: the Torrens system acts as a safeguard or shield against fraudulent or illicit claims on the property. The government or a designated state agency provides a shield to the registered owner's title in case anyone raises a challenge against the title of the owner. There is hardly any chance of overturning the buyer's title unless the buyer has committed clear fraud in the transaction.

Land grabbing and adverse possession: Registration of property under the Torrens system prevents it from illegal grabbing and acquiring the property by adverse possession against a registered owner unless the law allows registration of interest of a usurper of an immovable property because of efflux of time and meeting other stringent conditions. The law may also provide a swift administrative remedy for the restoration of lawful possession since registered rights are conclusive evidence of rights or title over the property.

Investment friendly: Singapore and New Zealand have consistently achieved top ranking in the Doing Business Index. Both have efficient and effective Torrens systems. They have also performed exceptionally well on the registering property parameter. China and Saudi Arabia are the latest additions to the Torrens system, while India is also trying to reform its property rights laws by introducing the Torrens system and title insurance. Investors are considered more comfortable with the Torrens system than the deed registration system.





## 5.6 CHALLENGES AND DISADVANTAGES

As explained above, although the Torrens system has many advantages, it is not without significant disadvantages. Some of the disadvantages of this system are as follows:

**High initial expenses:** Shifting from the existing deed registration system to the Torrens system has direct and indirect costs like establishing new authority and its area offices, training of personnel, and funds to pay compensation to genuine claimants. If these costs are transferred to buyers, it will make the new system very expensive and people will be less likely to be attracted to it.

**Not widely accepted:** The Torrens system is not universally accepted. The top ten economic powers like Brazil, France, India, Italy, Japan, and the USA mainly follow deed registration systems with some aspects of the Torrens system or





title insurance system (Agarwal, 2022). It is not a universal system and, even in countries that follow this system, it is mostly applicable to a class of immovable properties, not to all types of properties. It is most likely to be a parallel system to a deed registration system or may be made mandatory for limited sectors like strata developers, development authorities, and housing societies. For the rest of the areas, an extensive enquiry into title-related documents will be required on the escalating cost for adaptation of this system for such properties.

Cumbersome and slow: Adapting and implementing this conclusive system of titling is a pain staking job and requires many legal and administrative reforms. To name a few, the updation and digitisation of the existing land record is a necessary prerequisite for ensuring encumbrance-free land records or all the encumbrances that stood recorded in the land record. The land records are maintained by many agencies, departments, societies, authorities, companies or even private entities. These records have to be consolidated with a single entity as the title registering authority. To adapt this system, simultaneous law reforms in the laws relating to the registration and transfer of immovable properties, and infrastructural as well as administrative changes in the maintenance of these records are also required. For example, soon after independence from Spain, the Philippines adopted the Torrens system in 1903.<sup>139</sup> But in the Philippines, a very large number of land owners opted against registering their properties under the Torrens system. Even after eight years of adoption of the Torrens system, only 9,000 out of a total of 2,250,000 pieces of immovable property were registered under the Torrens system (Corpuz, 1989). Even in 2008 (after the passage of a century), the Department of Environment and Natural Resources stated that hardly 69 per cent of the immovable properties required to be registered under the Torrens titles were so registered in the Philippines (Government of Philippines, 2008). Many transfers of immovable property are not registered, there are informal property transactions, and instances of loss, damage, theft and illegal entries in the register are common occurrences in the Philippines (Eleazar et al., 2013). Despite all this, the Philippines persists with the Torrens system.

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<sup>139</sup> The Land Registration Act 1903.



**Underdeveloped state institutions:** The Torrens system establishes clear-cut rules where registered interests take precedence over unregistered ones, consolidating information about these interests in a single register maintained by a single public body. The underlying premise is that the Torrens system inherently achieves its intended outcomes through either state enforcement or the efficiency that encourages voluntary adoption over other institutional arrangements. However, examples from informal settlements in developing countries highlight the flawed assumptions of the Torrens system in contexts of developing nations, especially in situations where state institutions lack authority, are underdeveloped, or face challenges to their legitimacy (Fitzpatrick et al., 2019).

**Law based on assumptions:** The Torrens system hardly has any use as a universal principle for the formulation of public policy. A state with strong institutions and error-free registration of rights to immovable property are prerequisite assumptions for the proper working of the Torrens system. This may not be reflective of the institutions and landholding reality of developing nations. Given this, the Torrens system may not achieve the desired effects because extra-legal or informal landholders, due to poverty or exclusion, are unable to comply with the law. They continue to use alternative methods of property management based on allodial concepts such as possession, custom, transactions, and family or community networks (Fitzpatrick et al., 2019).

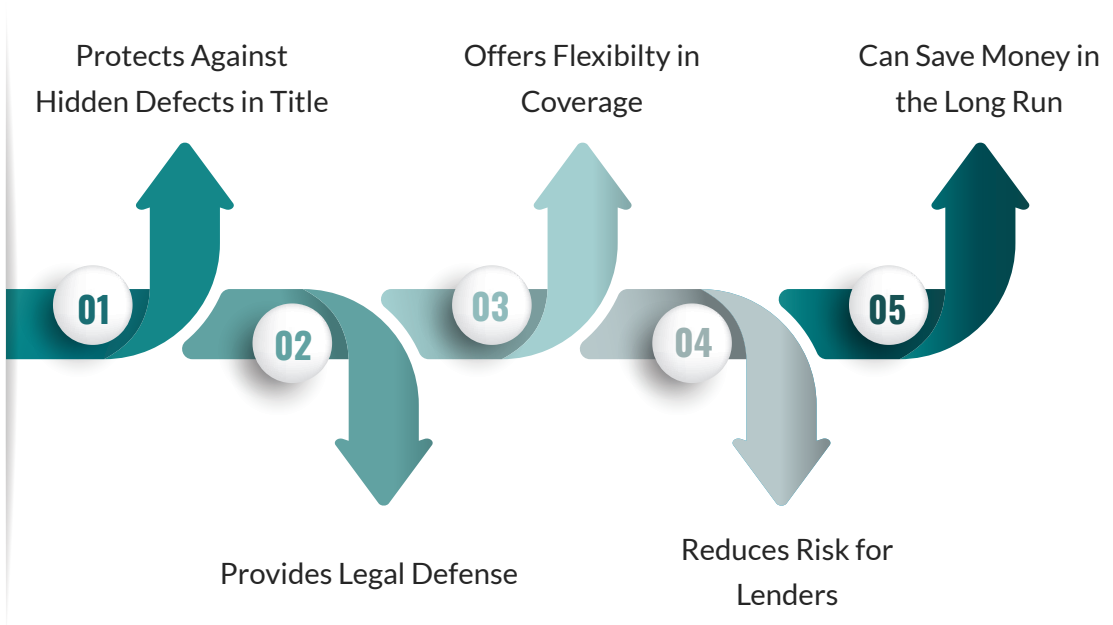
**Lack of trained personnel:** Torrens system requires highly trained, efficient honest public servants for its efficient and effective roll out. These traits are almost always lacking among the public officials in the developing countries.

**Possible errors:** While the Torrens system aims to provide indefeasible title and sanctity of entries in the register, it is easier said than done. The registration process is prone to develop errors unless extreme care is taken in the development of the Torrens system. Any error in the registration process may lead to lengthy and protracted litigation to rectify the error, losing the very purpose for which the system is adapted.



Incomplete system: No system is complete or covers all aspects of secure property titles, but the same is the case with the Torrens system. Even in Australia, the owners of immovable properties have started obtaining title insurance. The title insurance companies of the USA have started their operations in Australia because of deficiencies in the Torrens system (O'Connor, 2003). In Australia, many defects and encumbrances have been excluded from the title guarantees. The title insurance companies have started covering these defects and encumbrances like the following (Burman, 2019):

- Adverse possession;
- the interests validly created on the immovable property but have not been registered;
- unregistered tenancies, easements, and rights of way;
- any encumbrance created by law like rates and taxes; and
- land losses caused by negligence or fraud.



**DIFFERENCES BETWEEN THE DEED & TORRENS SYSTEM**

DETAILS	DEED SYSTEM	TORRENS SYSTEM
Passing of title	Passed upon execution, signing, sealing & delivery	Passed upon registration
Accuracy	Filled with uncertainty, complex, expensive & complicated	Simple, easy & secured
Security	Registration is not compulsory	Registration is everything & compulsory
Guarantee by the State	Not guaranteed by the State since transactions were made personally between parties	Guaranteed by the State – if there's any loss due to defects in registration : the state is responsible

**5.7 FUTURE OF THE TORRENS SYSTEM**

Despite the challenges, the Torrens system is still and will remain highly relevant even in the near future. In our part of the world, immovable property is one of the most important elements for financial stability and personal wealth. There is a necessity for a fully secure and the most efficient land registration system. The Torrens system is not ideal but it continues to be the best possible system for ensuring effective enforcement of property rights and making property transactions reliable. Right from its inception in the middle of the 19th century to the digital age, it continues to increase its presence in the world. The Torrens system is a time-tested testament to the importance of property rights for socio-economic development.

When implemented meticulously, the Torrens system ensures immutable property record-keeping and upholds the integrity of property records. It includes a stringent identity verification process, incorporating biometrics to verify identity. This rigorous verification acts as a significant deterrent to fraud,



ensuring that only legitimate property owners are recognised and protecting against title fraud, a major concern in real estate transactions.

Modern advancements like digital signatures and advanced encryption further secure documents related to registered property. Integration with blockchain technology adds additional layers of security, making transactions virtually tamper-proof and enhancing fraud prevention. While transparency is a fundamental aspect of the Torrens system, not all information is publicly accessible, with sensitive details such as owners' addresses often restricted.

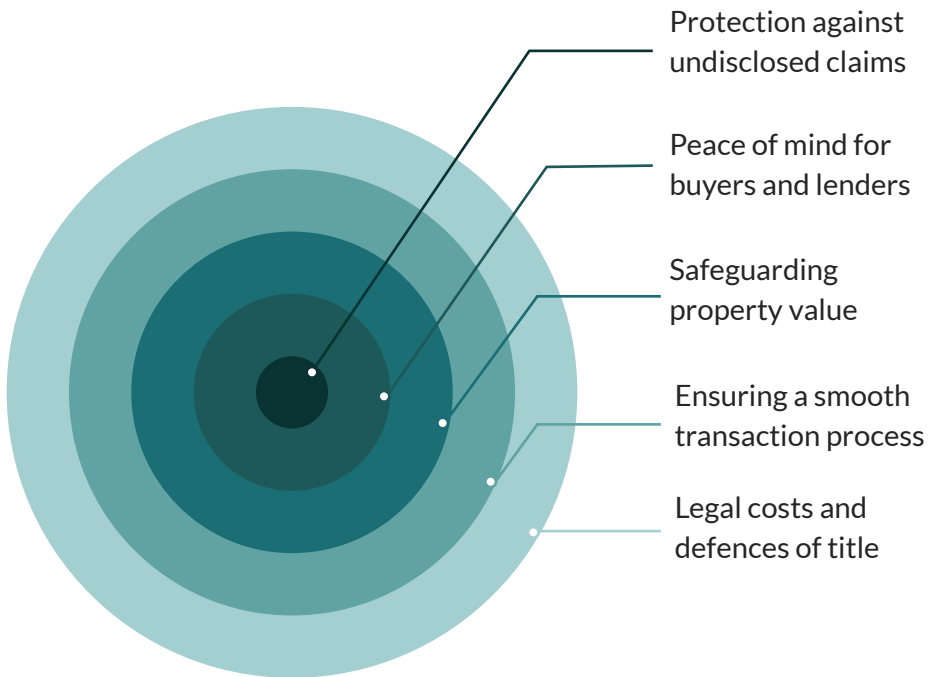
A digital Torrens system tracks changes to property records to prevent fraud, maintaining detailed audit trails that allow authorities to investigate and trace unauthorised alterations swiftly. This capability is crucial not only for deterring and identifying fraudsters but also for promptly resolving disputes related to property record entries. Digitisation and blockchain technologies are being used to strengthen the Torrens system and remove some of its shortcomings.

Economically, the Torrens system has a significant impact. It has a stimulating effect on the property market. It boosts investor confidence and encourages investment. It reduces transaction costs associated with title searches, legal due diligence and insurance. In a nutshell, the Torrens system is time tested system which has delivered dividends in many parts of the world. It embodies a sophisticated approach to the land tenure system, enhances the title security of immovable property, and minimises the risks of fraud and litigation. The fruits of this system have huge benefits for the economy and society. The Torrens system provides a clear and easily accessible record of rights relating to immovable property which is essential for efficient and transparent property transactions (FasterCapital, n.d.).





## 5.8 IMPORTANCE OF TITLE INSURANCE WITH TORRENS CERTIFICATES





## 6. GAP ANALYSIS OF PROPERTY RIGHTS IN PUNJAB

*“The country was founded on the principle that the primary role of government is to protect property from the majority, and so it remains.”*

Noam Chomsky

Real estate is distinct because of its immovability and value tied to location. With one of the world's highest population growth rates, demand for real estate continues to rise, while its supply remains constrained. Property rights exert a significant influence on livelihoods, industrial development, economic prosperity, and social progress. Studies indicate that individuals with secure land rights fare better than those without, enjoying improved access to markets and other economic opportunities facilitated by land ownership (FAO, 2002).

Land represents a substantial portion of the total asset value among Pakistani households, particularly within lower-middle-income or lower-income families. Land ownership or home ownership is the best way to amass wealth. The assurance of land titles and the methods used for title assurance play a crucial role in determining land values (de Soto, 2013).<sup>140</sup> In addition, land is commonly used as collateral and it can increase credit worthiness of a person for credit availability if the land title is clear and reliable (Feder & Noronha, 1987). However, the accuracy of land rights records in Punjab is inadequate, leaving significant room for misuse and prolonged litigation lasting decades. Cases involving forgery, fraud, and misconduct are frequent. Moreover, the prevalent use of informal markets for title transfers means many transactions go unrecorded, making them challenging to trace. This issue is exacerbated by rapid urbanisation. Moreover, frequent changes in land use are occurring without adequate regulatory mechanisms and effective oversight to manage such changes systemically. Defects in land administration and title systems provide a

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<sup>140</sup> Hernando de Soto, a renowned Peruvian economist and author, has made substantial contributions to the understanding of property rights' significance in developing countries. His research emphasises the crucial role property rights play in economic development, especially within the informal sectors of developing economies.





breeding ground for qabza groups<sup>141</sup> and wider conflicts in society.

## 6.1 EXISTING REAL ESTATE SECTOR

For multiple reasons, the real estate sector is shaping the economic landscape of Pakistan. However, its direction requires to be tweaked to transform passive investments in property into real investments that contribute to production and job creation. The real estate sector plays a crucial role in GDP growth, foreign direct investment, infrastructure development, the creation of employment opportunities, social advancement, the creation of wealth, and the generation of government revenues. Despite this, it encounters challenges like land encroachments, regulatory complexities, and bureaucratic hurdles. To overcome these obstacles, collaboration among the government, industry stakeholders, and investors is essential. They can streamline regulatory processes, establish transparent land management systems, and embrace sustainable development practices. Utilising technology for efficient land records management and implementing smart urban planning initiatives can lead to a more resilient and environmentally conscious real estate sector (Nouman, 2024).

## 6.2 PROTECTION OF TITLE

There is no state or government protection of land title in Punjab and also in Pakistan. Buyers or transferees of immovable properties are required to perform their due diligence and conduct inquiries about the title of the seller or transferor and take the risk in case, at any time, some error or flaw is found in the title or title of any of the predecessors of the seller.<sup>142</sup> In other words, the state does not guarantee the accuracy of property records in its possession, leaving buyers to rely on the public record at their own risk. Consequently, the state does not compensate or defend buyers' titles if they purchase property based on

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<sup>141</sup> 'qabza group' is a group of persons who illegally possess an immovable property or dispossess a legal possessor of the property.

<sup>142</sup> *Caveat emptor*, The Transfer of Property Act, 1882, section 55, Bahar Shah and others v. Manzoor Ahmad (2022 SCMR 284).

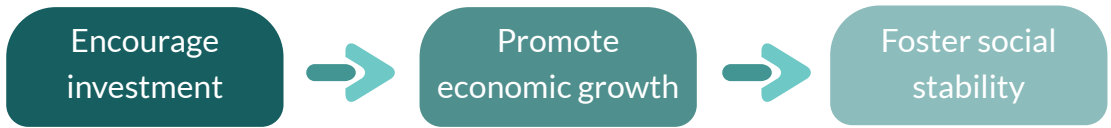




official documents that later reveal flaws in the seller's title. Property buyers are left to resolve these issues independently, despite acting upon state representations and paying substantial taxes and fees for property transfers. This situation often leads to extensive litigation and acts as a deterrent for foreign investors considering investments in the region (Siddique & Naurin, 2022).

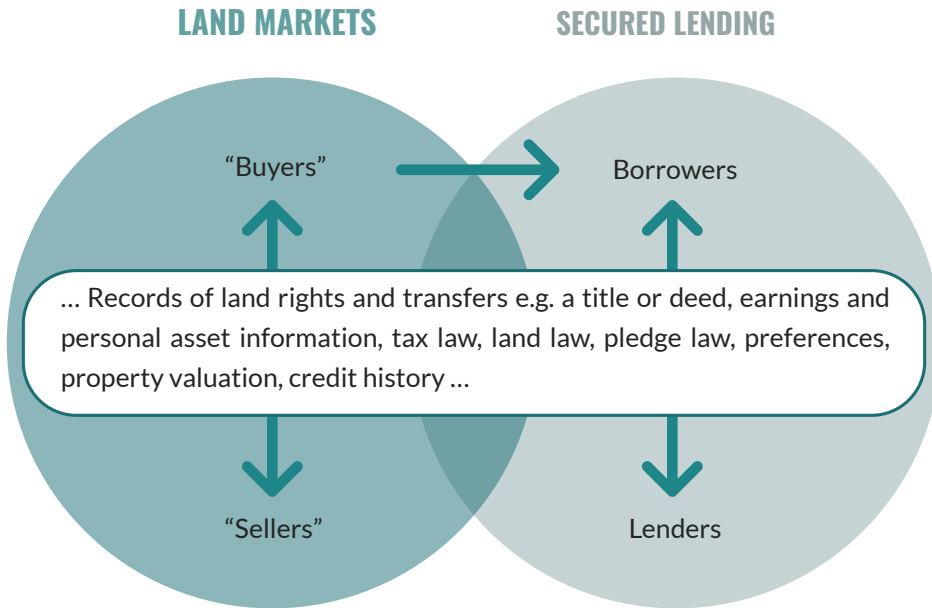
In Punjab, one can establish ownership of immovable property based on presumptive documents in support of such a claim of title. Only a clear and simple land title document protects the rights of the owner against any other competing claim to the property. The land ownership records include all the previous registered sale deeds of the land, revenue records of rights of the land with all the mutations, property tax documents of the urban immovable property, and government survey records of the land. However, the land titles often remain unclear and disputed due to numerous issues stemming from the old *Zamindari* system, gaps in the legal framework, and problems with the administration of land records. The permanent settlement by colonial rulers made *zamindars* from managers to owners of land under their management. Title issues started right from that point in time. Over the years, the land record was manipulated through fake entries and wrongful mutations. It was not easily accessible to landowners and they were kept in the dark for decades about wrong entries in the revenue record. The legal system also empowered the revenue officials to act according to their discretion instead of making them accountable to people for rendering public service. These ambiguities have resulted in a multiplicity of litigation concerning ownership of immovable properties, adversely impacting both the agriculture and urban immovable properties. These challenges underscore the critical need for a reformed system of property rights that provides for clear titles of immovable properties and a well-organised universal land registration without any exception.





### 6.3 LACK OF INVESTMENT AND CREDIT

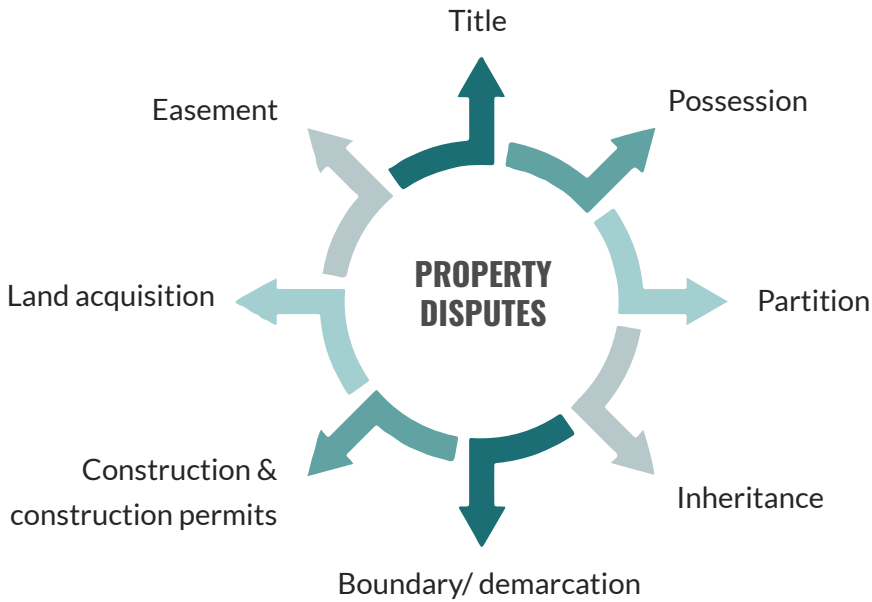
A robust system of property rights guarantees that private investors possess legally secure and well-acknowledged ownership of their properties. This assurance from the state enables them to take investment decisions, enter into trade, and efficiently utilise their resources. Conversely, inadequate property rights introduce uncertainty, deter investment, and impede economic growth (de Soto, 2013). Ensuring secure property rights is essential for enabling private businesses to utilise property as collateral for credit. This facilitates investment in new projects, expansion of operations, and job creation. Research indicates that domestic private credit amounts to approximately 150 per cent of GDP in developed countries, whereas it is hardly around 30 per cent of GDP in developing countries (Stein et al., 2013). This issue often stems from a lack of collateral in developing countries. It underscores the critical role of property rights in fostering economic growth by facilitating access to credit for private businesses. Moreover, secure property rights promote investment in infrastructure, which is crucial for robust economic development and rapid job creation. In the absence or weakness of property rights, private enterprises are less inclined to undertake long-term investments in infrastructure assets. For instance, the insecure property rights situation in prime urban areas of Punjab has resulted in their underutilisation or abandonment. An investor hesitates to improve properties due to the risk associated with forcible eviction, uncertain litigation or compulsory acquisition. This underinvestment in real estate and infrastructure significantly impedes economic development. There are severe building height restrictions and building bye-laws do not allow proper use of vertical space even in dense urban areas.



## 6.4 CONFLICTS OVER LAND

The absence of property rights can provoke disputes over land and other resources, often requiring expensive and protracted resolution processes. In severe cases, these conflicts can escalate into violent crimes, exacerbating challenges to economic growth. For instance, in Rwanda, land disputes have created significant barriers to both economic progress and national reconciliation since the genocide in 1994. In response, the government has undertaken reforms focused on enhancing the acknowledgement of property rights, including a comprehensive land registration initiative. Consequently, the incidence of land-related disputes has declined, fostering increased investment in agriculture, housing, commercial, and industrial sectors (Tutor2u, 2023).





## 6.5 CLARITY OF LAND TITLES

**Excessive Litigation:** It is estimated that court cases related to immovable properties account for two-thirds of all cases pending adjudication before the courts in Pakistan (Siddique, 2020). These land-related disputes encompass issues concerning disputed land titles, ownership rights, and related records. They contribute to the overload of court systems, tying up land in lengthy litigation processes and adversely affecting sectors and projects reliant on these disputed land titles. Resolving such disputes in courts often spans decades. These land disputes invariably result in a chain of violent crimes including murders.

**Credit Collateral:** Land serves as collateral for loans in agriculture, business, and development sectors. Unclear or disputed land titles have been observed to restrict the availability of credit and capital for agriculture, housing, and industrial projects (Mathew, 1990). The farmers with small holdings constitute more than 60 per cent of all landholders in Punjab. They often lack formal land titles, thereby facing challenges in accessing credit from banks.



**Real Estate and Other Development Projects:** Infrastructure projects frequently experience delays attributed to land-related issues. These delays arise from factors such as the unavailability of land free from encumbrances, flawed land rights records, inadequate compensation, claims for an increase in compensation, and the filing of numerous legal cases challenging land acquisition (GOI, 2017a). There is evidence indicating that unclear land titles, associated costs from disputes and legal proceedings, and opaque real estate transactions contribute to inefficiencies in the real estate market. Even private sector ventures necessitate clarity regarding land ownership and valuation, both of which are complicated in the absence of clarity of land titles. Any cost-intensive development on land with encumbrances or unclear records risks future challenges, thereby heightening investment risks.<sup>143</sup>

**Urbanisation and Shortage of Houses:** Population explosion (Nawaz & Mahmood, 2023) and rapid urbanization (O'Neill, 2024) are creating pressure on change of land use in peri-urban areas. It is aggravating the housing shortage, especially in urban areas. The housing shortage is assumed to be around ten million units though some doubt this figure. But still, many are living in slums or katcha houses. This pressure is more likely to increase especially in urban areas (Ahmad, 2023). As urban areas become increasingly congested, new housing developments are emerging in the peri-urban outskirts of cities. However, unclear land titles have sparked numerous ownership disputes surrounding these new housing projects. Compounding this issue, affordable houses in major cities are a rare commodity. It has pushed poor urban dwellers to settle in informal settlements or slums known as katchi abadis. Many of these katchi abadis occupy prime land in major urban centres like Lahore without formal town planning or clear land titles. They operate outside the formal sector, resulting in no property taxes being paid on the occupied land. Additionally, these settlements often lack basic infrastructure such as roads, water supply, and sewerage systems. Creating sustainable cities necessitates a robust

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<sup>143</sup> Niamatullah Khan v. Federation of Pakistan, 2022 SCMR 171, famous as 'Nasla Tower case'. Innocent bona fide purchasers for value had to suffer because of title defects overlooked by the developer and the concerned public officials.





property tax system, which remains challenging to implement without clear land titles.

**Benami Property Transactions:** A *benami* property transaction occurs when an immovable property is transferred to one person for funds provided by another person. The first person holds the property on behalf of another who has provided the funds without any love and affection based on a close relationship between the two. Transfer and use of funds hold the key to determining a transaction as a *benami* transaction. Such transactions often involve the investment of black money to buy properties in the name of others. Informal and vague titles as well as outdated land records facilitate and promote these transactions. Prevention is always better than cure and the generation or utilisation of black money in or through *benami* transactions can be prevented with digitisation and centralisation of land records, along with regular up-to-date records. This is crucial for the effective enforcement of laws governing *benami* transactions.<sup>144</sup>

## 6.6 FACTORS FOR UNCLEAR TITLES

Land titles in Pakistan, particularly in Punjab, remain unclear for several reasons. The land record system inherited from the *Zamindari* era, coupled with a legal framework lacking guaranteed ownership provisions, contributes to these uncertainties. Furthermore, the collection and maintenance of information related to land records exacerbate gaps in the system.

**Presumptive Land Titles:** The current land title system is presumptive, reflecting its origins from pre-independence times with minimal subsequent changes. This approach often prioritises current possession of land over rightful entitlements. Land or property transfers between buyers and sellers are documented through sale deeds, which must be registered as per existing legal norms. However, this registration pertains to the transaction itself rather than confirming land ownership. It is mere evidence that the deed is executed by persons named

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<sup>144</sup> The Benami Transactions (Prohibition) Act, 2017.



therein without any guarantee that the seller is competent to transfer the property mentioned in the deed. Importantly, there is no government or agency guaranteeing land titles under the current framework. This system leaves enough room that even a bonafide purchaser for value cannot be assured of clear title to the property because any successful challenge of an earlier transfer of the title may become fatal to the property rights of such purchaser.

**Registration System:** Land can be transferred between parties through sale, purchase, gift, inheritance, mortgage, and lease or tenancy. The Registration Act of 1908, is the primary law governing the registration of land-related documents. Consequently, all sale deeds for land or immovable property must be registered under this Act. During the registration of a property sale deed, the identities of the buyer and seller and the registration status of the previous sale deed must be verified. This identity verification is carried out using various proof documents, though the sub-registrar may not always physically inspect the land's location and attributes. Registering a sale deed creates a permanent public record of the transaction, enabling anyone interested in purchasing the property to verify the last registered owner. If a land transfer deed that requires registration under the Registration Act of 1908, is not registered, it cannot be used as evidence of ownership in court.

**Caveat Emptor:** The responsibility and risk of verifying the validity of the title lie with the buyer, not with the government or sub-registrar. This due diligence involves investigating past ownerships and transactions to confirm there are no encumbrances. This process becomes challenging if previous transactions are not properly recorded and there are discrepancies between government records and the actual state of land ownership. Errors or gaps in old land records also make it easier to dispute ownership.

**Non-registration of Property Transactions:** Some of the transfers of immovable property are not compulsorily registerable.<sup>145</sup> These include compulsory land acquisition, court decrees, succession, government grants of land, short leases of

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<sup>145</sup> The Registration Act, 1908, section 18.





immovable properties and partitions especially family settlement of inherited immovable property. Therefore, many transactions of immovable property are not recorded or registered. The register of the registered immovable properties may not accurately reflect the title or possession of the property. This situation often results in serious disputes leading to civil or even criminal litigation related to title or possession or both.

**High Cost of Registering Immovable Property:** For registering an immovable property transaction, the parties to the transaction have to pay several taxes and other charges. These include stamp duty, registration fee, local tax, capital gains, capital value and advance income tax. This makes property transactions very expensive, leading to the avoidance of registering immovable property transactions. This is a direct consequence of higher taxation etc. on property transactions that makes people opt for informal transfers without registering them. This makes the record of the registry of lands inaccurate and, in certain respects, outdated.

**Transactions Outside the Registration Office:** The development authorities, defence housing authorities, cooperative housing societies, other private housing societies, and condominium developers allot immovable property and also record subsequent transactions of immovable properties without registration with the sub-registrar. Mutation of agricultural land is also in practice which only involves revenue officers. Title records with multiple bodies add further complexity to the land titling system.

**Restrictions on Transfer of Title:** The colonial era Punjab Alienation of Land Act of 1900 restricts agricultural land alienation to members of agricultural tribes of the district. This law is a burden on the economy as well as on the statute book. The circumstances prevalent at the time of enactment of this law are no longer relevant in Punjab. The problem created by Hindu moneylenders has vanished but this very restrictive law is still there which can be misused against a bona fide investor. The Punjab Pre-emption Act of 1991 also places a clog on the transfer of any immovable property. The law in its present form is one of the major





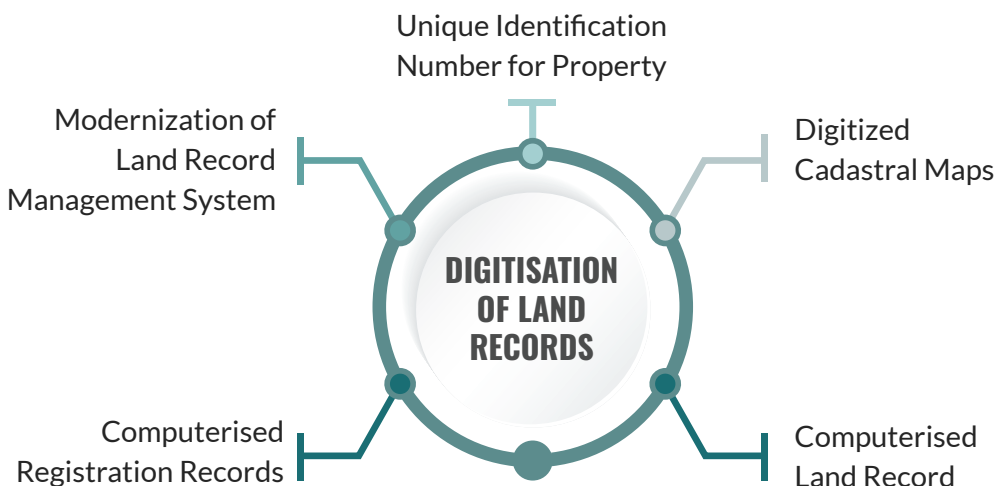
hurdles to creating the land market in Punjab. There is no certainty of title in the presence of this law. These laws are aimed at promoting the status quo concerning land ownership with a clear bias in favour of continuing with the existing owners or their next of kin. They are used to prevent innovation in farming and may also be used to stall the process of corporate farming. This system is prone to misuse and has resulted in unnecessary litigation burdening already over-burdened courts.

**Keeping the Land Records:** Land administration involves recording, processing, and disseminating information about land ownership, value, and possession or use. Historically, Punjab's land records management system was designed for land revenue collection. However, modern land records should include details such as property identification, ownership, encumbrances, rental documents, tax documents, spatial records like maps and boundary limits, and transaction records such as sale, lease, and mortgage deeds. Currently, no single entity maintains all these records in one place. Instead, these records are scattered across various locations and managed by different entities, leading to discrepancies and disputes. Land ownership is determined through multiple documents, including the registered sale deed, record of rights, survey documents outlining a property's boundaries and area, and property tax receipts. Cross-checking all these records against all the past transactions of the property and the current situation on the ground is a time-consuming and cost-intensive exercise.

**Defective Land Records:** Earlier, registration of land transactions and the maintenance of land records used to be done manually. These documents, primarily records of rights, were kept by the revenue officials and were not open to public inspection. This made it difficult, time-consuming and costly just to access the land records or the record of the land registry for any property-related transaction. The process was highly inefficient and used to cause inordinate delays in property transactions. While the digitisation of the land records programme was started in 2006, the progress remained slow because of a large volume of land records and a complete shift from manual to



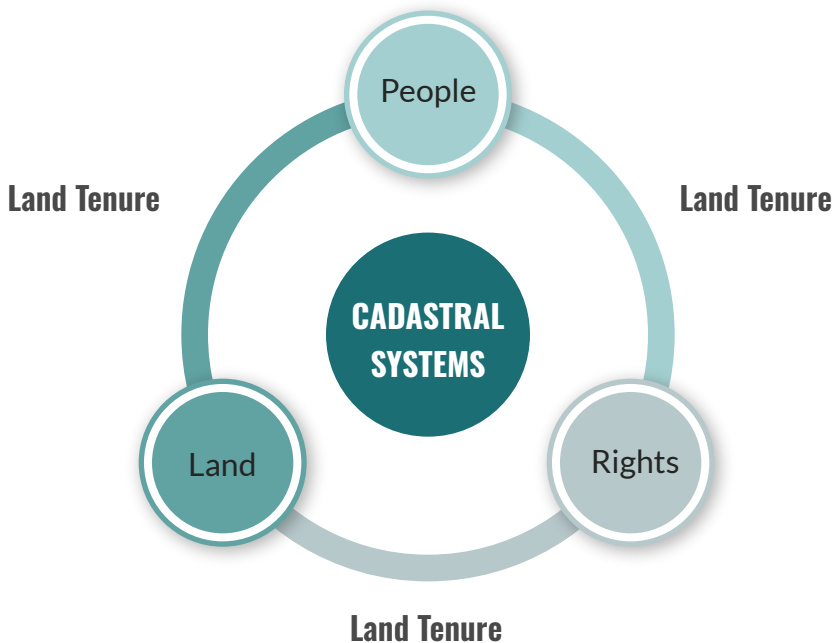
digital record has not yet taken place. Both digital and manual records are simultaneously being kept in all the *Tehsils* of Punjab. The cadastral maps of a revenue estate should be completely redrawn after every 50 to 60 years. However, the record of rights still relies upon the cadastral maps of the revenue estates prepared during the British Raj. The digitisation of land records should be linked to updated cadastral maps of the land. However, Land Arazi Centers in Punjab are providing easy, even remote, access to land records and registration procedures. They are providing easy and speedy access to land records, especially *Fard*,<sup>146</sup> mutation, and e-registration of land transactions (Government of Punjab, Pakistan, n.d.). Furthermore, this record is not linked with records of the high courts, district courts, the National Accountability Bureau, etc. This linkage may enable a purchaser to immediately get information on any pending litigations or encumbrance concerning the immovable property. For the correction of clerical errors in the digitised record like a spelling mistake or the arrangement of surname, etc., citizens have to go through the hassle of multiple visits to the same old revenue official (patwari) (Abdullah et al., 2020). There is no integration and reliance on the data of the National Database and Registration Authority (for citizens) and other agencies like the Security and Exchange Commission of Pakistan (for companies).



<sup>146</sup> 'Fard' is a copy of land record being kept by the land revenue authorities.



**Records and Actual Position:** Poor maintenance of land records over the years and decades has led to inaccuracies in documentary and actual position of ownership and possession on the ground. The Board of Revenue and revenue officials had almost abandoned surveys for the updation of the revenue records under the Punjab Land Revenue Act.<sup>147</sup> Now, the maps are not being used to establish actual boundaries of the property on the ground, resulting in a mismatch between spatial and textual records of immovable properties. This discrepancy also occurs because land transfers and partitions, whether through inheritance or sale, are not captured through surveys, if surveys take place at all. For example, when a property owner dies, records may not be updated when the land is transferred to heirs and partitioned through unrecorded family settlements. To ensure the success of digitisation efforts, it is essential to integrate cadastral maps with textual data after detailed surveys, ensuring that complete and updated information about a land parcel is available at the time of registration and any subsequent transfer of the property.

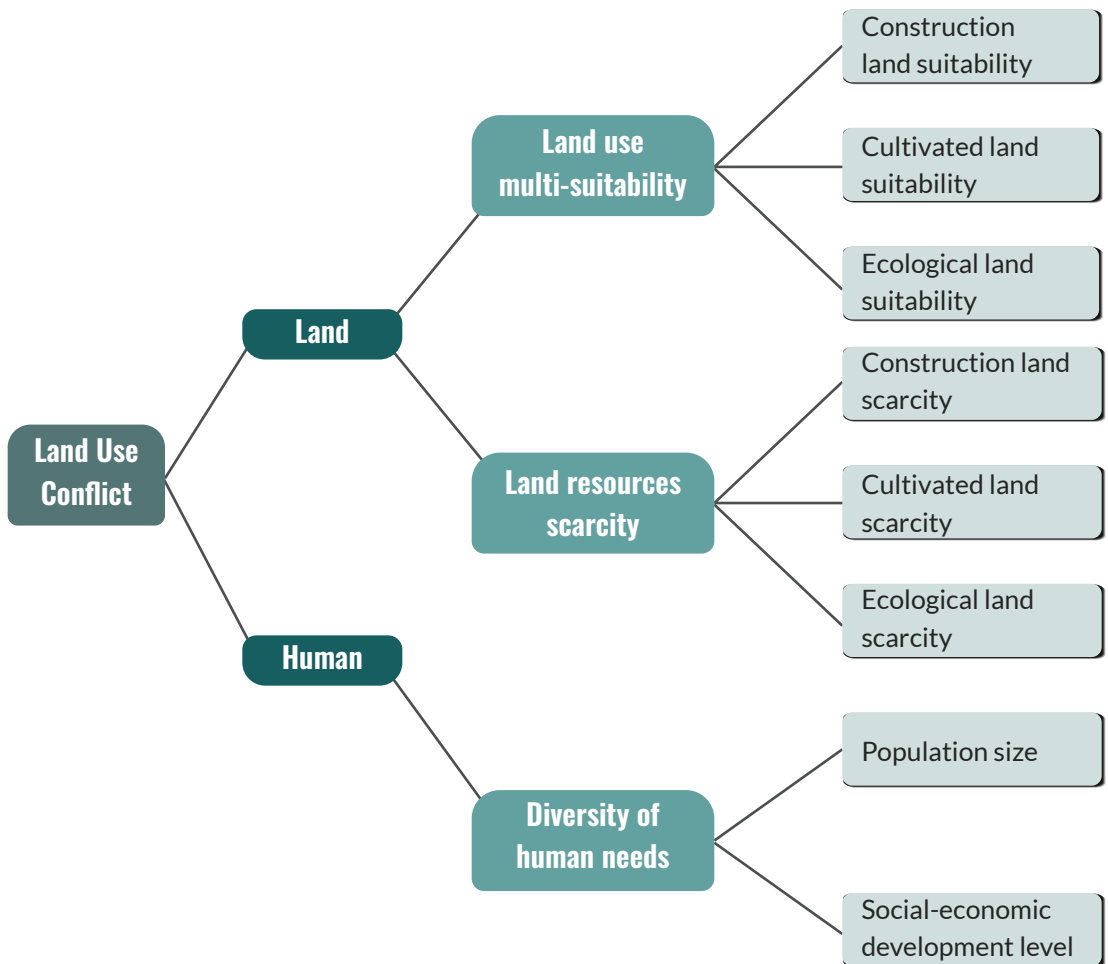


<sup>147</sup> The Punjab Land Revenue Act, 1967, chapter X.





**Urban and Village Land:** The existing cadastral maps of revenue record, though defective, are almost always limited to agricultural land or land subservient to agriculture. This leaves villages and towns outside the scope of the cadastral maps. Old urban areas have also the same position. Only planned urban areas have proper cadastral maps though they are also not updated to capture divisions and changes in land use. The digitisation of urban land records has been started by the provincial government and it is expected to be linked with the cadastral maps of urban areas and a provision of regular updation of these maps to align them with the textual record.





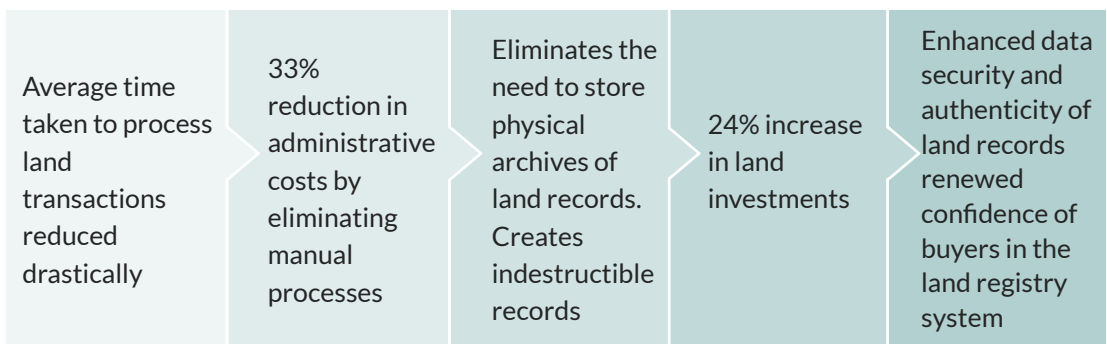
**Multiple Entities Deal with Land Records:** The land records connote a combination of three types of records containing data with respect to immovable properties, i.e., a textual record, which is normally kept in the record of rights; spatial record, like field maps; and transaction details, such as registered sale deeds and other mutations. There are different state agencies responsible for the maintenance of this data, which is part of land records. To further complicate the situation, these records are also maintained by private entities in the case of housing societies or schemes and condominium development. In cities and villages, some data relating to various categories of immovable properties is also available with other utilities like electricity distribution companies, natural gas companies, water supply agencies, and internet or telecommunication companies. They also need to reflect the updated title of the property but that is not the case. The textual land records, property registration records, cadastral maps, and other documents are not synchronised on real real-time basis and hardly match each other. Additionally, a buyer of any immovable property has to approach multiple agencies and entities to obtain requisite information about the property he or she intends to buy. These agencies and entities work in silos, and if one such agency updates its record relating to the property, that makes the records of the other agencies and entities unreliable and outdated.





**Possession and Boundary:** Due to defects in the land record, their poor maintenance, overlapping, and the difference between textual records and cadastral maps, possession and boundary disputes are common phenomena in Punjab. Unscrupulous land grabbers also use these defects to their advantage and force weaker or absentee owners to sell their valuable land at giveaway prices to these land grabbers. The legal system also favours the rich and powerful since poor and weak owners are left at the mercy of courts for lengthy trials in case their land is forcibly occupied by the rich and powerful elements in the society. There is inherent bias of the courts in favour of the status quo which, in these cases, favours the dominant position of the rich and powerful. There is no executive land administration agency to restore possession to its rightful possessor till the final decision of a court.

**Digital Land Transactions:** Remote property transactions are still not possible in Punjab despite the automation of some crucial steps leading to the registration of such transactions under the e-registration system of the Punjab Land Records Authority (Government of Punjab, Pakistan, n.d.). An agreement to sell an immovable property or any deed of conveyance of immovable property or any interest in the immovable property has specifically been prohibited under the law dealing with electronic transactions unless the federal government, by notification, applies the law to transfer instruments of immovable property.<sup>148</sup> Despite massive improvements in information technology during the past two decades and the use of electronic property transactions in other jurisdictions, no attempt has been made to apply this law to property transactions.



<sup>148</sup> The Electronic Transactions Ordinance 2002, section 31.



**Capacity Issues:** The relevant agencies or entities conduct the process of data collection and maintenance of records relating to immovable properties at the level of revenue estate, village, town, tehsil, or city. There is a dire need for capacity building of the staff involved in data collection and compilation including the use of modern technologies like unmanned aircraft, photogrammetry, tachymetry and global navigation satellite system (GNSS) for cadastral surveys along with the use of satellite imagery, global positioning system (GPS) and geographic information system (GIS). The use of modern technology is necessary for updating and proper maintenance of land records and strengthening the system of land management. It is only possible if the capacity among the relevant officials at all levels is built in the use of these modern technologies.

**Adverse Possession:** Like Anglo-American and civil law till 1995, our legal system also recognised that a non-owner occupant of an immovable property gains title and ownership of that land after a certain period.<sup>149</sup> In 1991, the Shariat Appellate Bench of the Supreme Court declared it un-Islamic and this provision along with Article 144 was deleted through an amendment in 1995.<sup>150</sup> But Article 120 is a residual Article. It provides that suit for which no period of limitation has been provided, the period of limitation for such suits is six years.<sup>151</sup> It has created an anomalous situation where adverse possession cannot extinguish ownership of the owner but at the same time, the owner cannot recover possession from the trespasser after an efflux of six years. This adds yet another confusion in the land titling system which requires appropriate reforms.

**Dispute Settlement:** On average, 50 per cent of the total cases pending adjudication before civil or criminal courts in Pakistan are land-related (Siddique, 2020). This huge litigation reflects upon the state of affairs of the existing legal system regulating immovable property. Property disputes range

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<sup>149</sup> The Limitation Act, 1908, section 28.

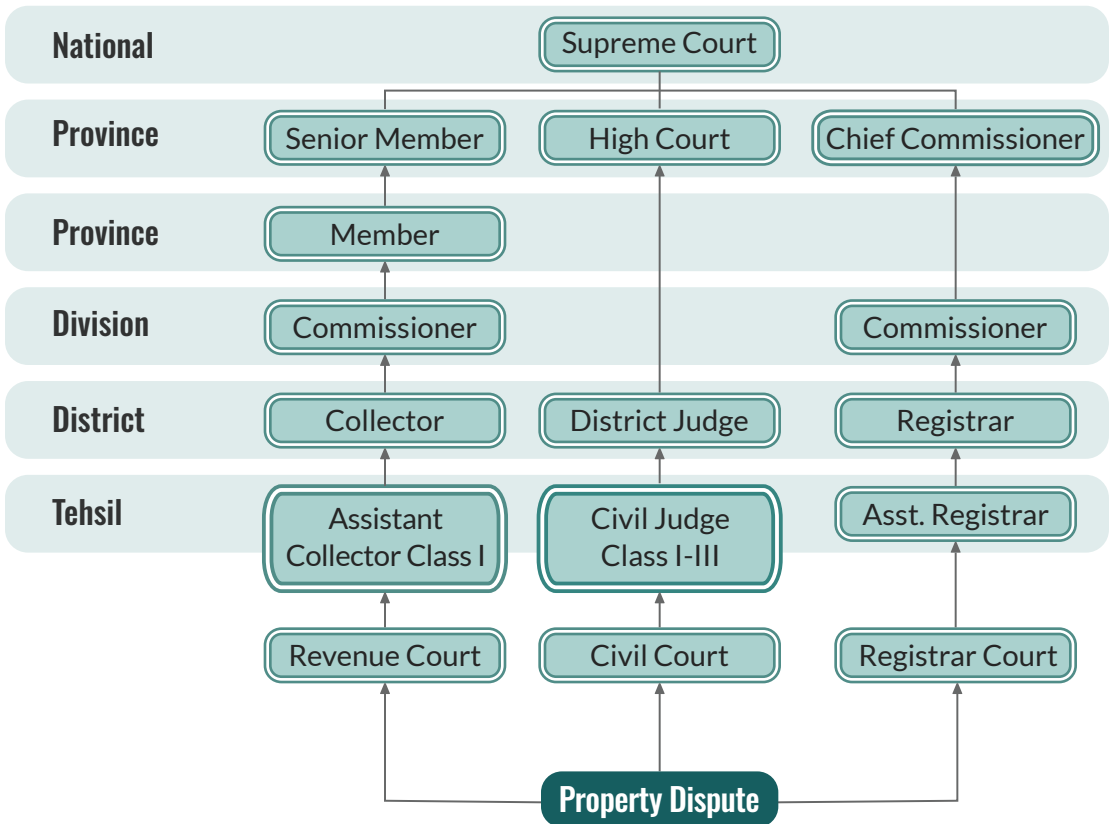
<sup>150</sup> Omitted by the Limitation (Amendment) Act, 1995 (II of 1995); assented to by the President on 12 October 1995; and, was published in the Gazette of Pakistan (Extraordinary), dated: 18 October 1995, pp. 939-940, section 2.

<sup>151</sup> The Limitation Act, 1908, The First Schedule.





from title disputes, possession disputes, disputes about entries in the public record, rent disputes, boundary disputes, and partition disputes. These disputes take years, even a lifetime or more, to resolve under the existing laws. There has always been an emphasis on increasing the number of judges rather than reforming the system aimed at a reduction in property-related litigation. In addition, there is hardly any noticeable significant change in the number of property-related litigations after the computerisation of the land record (Abdullah et al., 2020). Ways and means have to be found to reduce or eliminate the chances of disputes relating to immovable property. The solution lies in prevention rather than increasing the strengths at the dispute resolution fora and/or creating new fora for the resolution of ever-increasing such disputes.







**Eminent Domain:** It is compulsory private land acquisition by the government for public use, but only upon the payment of fair compensation. Colonial-era land acquisition law<sup>152</sup> leaves public purpose and compensation at the discretion of public officials like the Board of Revenue, commissioner, and land acquisition collector. These discretionary decisions ultimately land in courts and take several years to resolve. Public sector projects frequently necessitate the acquisition of private immovable property for purposes such as constructing public roads, erecting government buildings, or installing utilities like electric lines or water, gas, and sewer pipes. Urban renewal provides another example, where a governmental body acquires an entire urban area, often containing substandard buildings and mixed land uses, and subsequently clears the area. The government may then either develop the area itself or sell the parcels to private developers, requiring them to adhere to a development plan devised by the government. However, there are many instances that this law is used for a section of the public, a private cooperative or housing society or a private developer. However, this may not be permissible in any modern jurisdiction.<sup>154</sup> A similar treatment is also given in the lower determination of compensation for the compulsory acquisition of private land. The determination of affected or interested persons is another area of concern and varying interpretations because of defective land title records (Ahmed, 2022).

**Legal due Diligence:** In cases of major commercial real estate deals, the buyer engages a counsel or lawyer for the legal due diligence. Legal due diligence generally involves a review of the entire chain of title deeds including encumbrances. This includes searching for any lien in the sub-registrar office, litigation regarding the property, and publication of interest to acquire or buy the property seeking objections or claims. It may also involve searches with the Securities and Exchange Commission of Pakistan (SECP) if the seller is a company as to the competence of its directors. Additionally, it may involve a minute examination of the following aspects:

- Position of revenue records relating to the property;

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<sup>152</sup> The Land Acquisition Act, 1894.

<sup>153</sup> Kelo v. City of New London, 545 U.S. 469 (2005).





- written inquiries from the seller about any outstanding tax or third-party claim over the immovable property;
- consideration of the survey report or plan of the immovable property showing its area, boundaries and construction;
- consideration of any statutory restriction on the permissible use of immovable property and conversion;
- consideration of consent or permission of any other person or authority required for transfer; and
- searches to ascertain the applicability of any other law like the Punjab Alienation of Land Act of 1900 on the proposed transaction.

Some of the legal issues which may not be apparent from this type of legal due diligence may include claims of persons in possession; lack of construction permission over a part of the property; lack of the requisite permissions or partial encroachment like the case of Nasla Tower; information on pending claims of any public authority; old but not withdrawn notification under section 4 of the Land Acquisition Act of 1894 to acquire the property; undisclosed litigation which may not even be in the knowledge of the transferor; and pending inquiry or investigation of NAB on any allegation of NAB offence or money laundering against the transferor.<sup>154</sup> However, legal due diligence hardly provides any defence to the transferee in any subsequent litigation even if it is due to defective due diligence. Lawyers almost always add wide disclaimers and are never held accountable for defective advice or legal services by bar councils.

**Katchi Abadis:** In Punjab, the legal cover is provided for the usurpation of prime urban land to turn it into a slum called katchi abadis. These slums have narrow zig-zag streets and hardly any sewerage, potable water or sanitation system. They lack basic amenities and unhygienic conditions not suitable for human dwelling. These slums are being perpetuated through laws enacted during the past 50 years.

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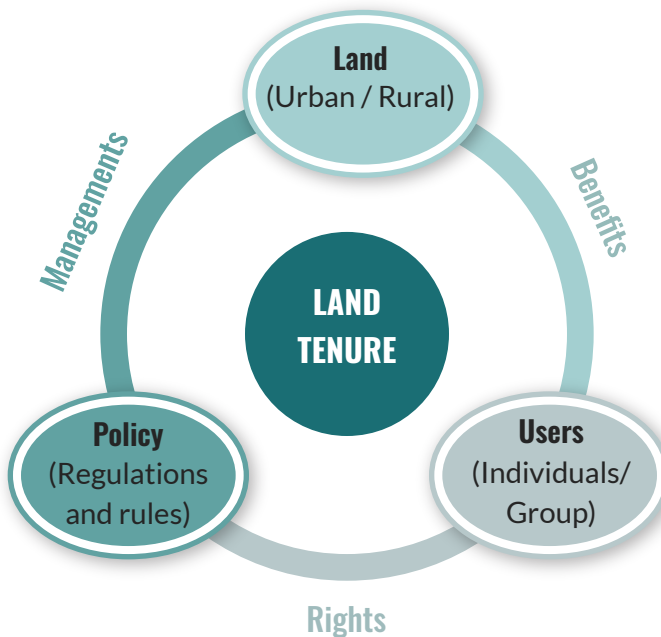
<sup>154</sup> The National Accountability Ordinance, 1999, section 23.



## 7. CONCLUSIONS AND RECOMMENDATIONS

*“If you really want to help the rest of the world, what you've got to do is encourage free markets, private property rights and the strong rule of law and get rid of the dictators in a lot of these countries.”*  
Congressman Dave Brat

Property rights and effective contract systems are prerequisites for providing a solid foundation for economic development, especially in developing countries like Pakistan. A proper legal regime of property rights prepares the ground for investment, the provision of credit for doing business, and the efficient use of land and other resources. Rwanda is the most recent example where property rights reforms have promoted economic growth, increased investment and decreased conflict (Tutor2u, 2023). Targeted property law reforms in Punjab are more likely to work as catalysts and produce the same results in the whole of Pakistan.





## 7.1 CONCLUSIONS

The principal purpose of most land-related laws in Punjab is still to generate more revenues for the state, and there is more focus on rural land than urban immovable property. There is no focus on the land market or using this important resource for the promotion of investment and the creation of jobs. Our land laws and systems are especially archaic in many respects and require the following improvements or reforms:

- (a) Any transfer of rural, peri-urban or even urban land requires maintenance of record of transfer by various agencies and entities. Multiple land records create disputes due to overlap, raise property transaction costs and increase the potential for fraud with consequential civil and criminal litigation.
- (b) There has been rapid urbanisation in Pakistan, especially in Punjab. The land revenue record system did not cater for the needs and requirements of urban land records. This gap has promoted high levels of land-related conflicts in society. It is essential to eliminate this spatial record vacuum by entrusting the function of maintaining spatial records in rural and urban areas to a sole agency with sufficient capacity to cater for the needs of specific areas or classes of areas.
- (c) Complete computerisation of rural and urban land records linking every right and title with cadastral maps is required. This integration of textual records with cadastral mapping is central to the success of the proposed law reforms. Not an inch of land in Punjab or condominium should be left out of this system and full coverage of such a digital land record system should be ensured. The integration must be done in a manner that the textual record matches the cadastral data and every encumbrance is swiftly recorded or removed against the identified property. The use of the latest technology, like blockchain, may be used to secure the digital land record. The system may have room for the adoption of new reliable



technologies as and when they become available.

- (d) The establishment of a spatial framework system which is capable of achieving full coverage within a reasonable time and limited resources, at least as a medium-term strategy. A complete cadastral mapping under current methods can be very expensive. The use of modern low-cost technology is recommended for cadastral mapping and surveying. These include unmanned aircraft, photogrammetry, tachymetry and GNSS, GPS, GIS, and the use of satellite imagery. These low-cost technologies may be combined with existing field maps in the revenue records and other readily available spatial land records.
- (e) There is a need to find technological means to improve textual and cadastral records for every well-defined situation. There may be well-defined processes that can rapidly be improved to prepare, maintain, and update textual and cadastral records simultaneously and combine the two to reduce land-related disputes.
- (f) The government or a single agency of the government, responsible for land and spatial records, may outsource most of its functions to the private sector. It needs to focus on its regulatory role and the maintenance of a single database of all land-related transactions.
- (g) Taxes and duties on land-related transactions should be reduced and the scope for property tax and wealth tax on immovable property. This will encourage people to avoid informal land transactions, reduce disputes and save time, and money for the state and people.
- (h) Legal restrictions on the alienation of rural or urban land like land alienation law and the law of preemption may be removed for transfer of clear title to the buyers.
- (i) Registration of all leases, tenancies, mortgages, government grants, agreements to sell, compulsory land acquisitions and other encumbrances





on the immovable property without any exception may be made compulsory by making such registration easy and inexpensive. The state can gain through the reduction in its expenditures on police, judiciary, and revenue departments. The system should encourage people to register every transaction related to immovable property, which is integrated into a single database.

- (j) The single database of land records with a unique property code for each property should be integrated with the systems of all the related departments and agencies like federal and provincial revenue collection agencies, law enforcement agencies including the National Accountability Bureau, courts, National Database and Registration Authority, local governments and local authorities, and housing societies and colonies. In this system, every new information relating to immovable property is recorded and updated by a sole agency, but that should be reflected across all the departments, agencies and entities. This would help in the reduction of abuse or misuse of authority in land administration, instances of loss of land records and delays in property transactions. It may also improve revenue collection for the state.
- (k) The government or a specialised single agency of the government should legally be allowed to guarantee land ownership, possession, strata title or any other right or title over the land. It is easier in newly planned housing societies and colonies as well as strata units or lots in condominiums. It may be difficult in other areas till the integrated database of textual and cadastral records is in place with the registration of all titles and encumbrances. However, the introduction and gradual expansion of the Torrens system are essential for creating a conducive environment for the investors.
- (l) Maximum property-related transactions may be allowed to be made online with the least human interaction and interface with public officials. There are ways and means to safeguard against fraud in such online



transactions. Those safeguards may be used to make the land transaction transparent, simple, and hassle-free. The system of online property transactions and online real-time bidding for properties may be adopted for the development of the online real estate market.

- (m) Individuals tasked with upgrading, registering, and maintaining land records need to be thoroughly trained and proficient, especially in modern information technologies. Their training should cover the comprehension of revenue records, surveying, the creation and electronic maintenance of land records, and regular updates of such records. Additionally, the training programme should also impart skills to such officials such as computer operation, record-keeping, and data management.
- (n) An optional system of title insurance may also be in place. While the initial insurance for the title of any immovable property might be costly, subsequent insurance for future transactions will be more economical. This is due to title insurance companies having lower administrative costs for underwriting follow-up policies. Unlike lawyers, title insurance companies have an incentive to detect and rectify title defects to avoid future claims. This process includes informing land record authorities about any errors, defects, or changes in the title. As a result, the state stands to benefit from the incentive structure of the title insurance market, as these companies augment the state's administrative functions. This approach supports the goal of creating more precise land titles. Therefore, it is essential to develop a functional title insurance market, allowing buyers of immovable property the option to secure title insurance.
- (o) All existing laws relating to katchi abadis may be repealed and replaced with a well-thought law providing for in situ relocation of slum dwellers in flats etc., with proper utilities and amenities.





- (p) The colonial-era land acquisition law is also outdated with a plethora of complexities. The land acquisition process is very lengthy and full of discretions, and landowners are almost always at a disadvantage. Every acquisition lands in courts to be decided after years of litigation. These disputes delay the projects and waste precious time and resources of interested persons and state functionaries. It needs to be replaced with a new law with a restricted and clearly defined scope of public purpose, the introduction of mandatory time limitation for completion of the acquisition process and payment of hefty compensation to interested persons on the Indian model.
- (q) The law relating to possession of immovable property also requires thorough revision. Land records authority should be able to determine the lawful possession of any person for the time being (in case of leases or tenancies) or permanent. Such administrative determination may be made subject to the final determination of the courts. But this system too will only work in case of clear titles and synchronisation between textual land records and cadastral maps.

## 7.2 RECOMMENDATIONS FOR LAW REFORMS

Property rights laws have gone through a sea change during the past 150 years. These times have seen the introduction of the Torrens system, land registration systems, strata laws, title guarantees and, more recently, electronic property transactions and public disclosures. Some major property law reforms have taken place in England and Wales in 1862,<sup>155</sup> 1925,<sup>156</sup> 2002,<sup>157</sup> and 2024.<sup>158</sup> Even in Australia, some major property law reforms are taking shape, like Queensland's Property Law Act of 2023 for introducing e-conveyancing, electronic property transactions, electronic filing and records retention. Property laws are also being reformed in India. There has been a conscious move

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<sup>155</sup> The Land Registry Act 1862.

<sup>156</sup> The Law of Property Acts of 1925.

<sup>157</sup> The Land Registration Act 2002.

<sup>158</sup> The Leasehold and Freehold Reforms Act 2024.





towards creating a land market in India during the past decade or so.<sup>159</sup>

Except for a few minor exceptions, Punjab is lagging behind the rest of the world in systemic reforms for introducing an effective system of enforcement of property rights. Even some redundancies have not been dealt with nor visible gaps in the existing system of property laws have been filled. In view of what has been discussed above, the following law reforms may be considered for effective enforcement of property rights in Punjab:

### ***The Punjab Land Alienation Act of 1900***

This law may be repealed having outlived its utility and it has the potential of being misused against a bona fide investor. The problem created by Hindu money lenders in 1900 is no longer a problem being faced by rural landowners.

### ***The Punjab Pre-emption Act of 1991***

This law is also one of the avoidable bases for litigation on property transactions. It is also common observance that the seller, expressly or impliedly, colludes with the preemptor (who is normally next of kin of the seller) to extort money from the bona fide purchaser for value. Further, in the presence of this law, there is no certainty of title unless the court proceedings including appeals are finally decided. That may cause inordinate delays in the projects causing irreparable loss to the economy. No investor is likely to invest in the construction of a building or factory on a property which is the subject matter of litigation based on an alleged right of pre-emption.

Apparently, Islamic injunctions relating to preemption are based on the Hadiths of the Holy Prophet (صلى الله عليه وسلم). These Hadiths give only a very limited right of preemption to co-sharers or joint owners of the undivided property. They are

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<sup>159</sup> The Real Estate (Regulation and Development) Act, 2016; the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; The Draft Land Titling Bill, 2011; the Rajasthan Urban Land (Certification of Titles) Act 2016; Maharashtra Agricultural Land Leasing Act, 2017; and Andhra Pradesh Cultivator Rights Act, 2019.





narrated by Imam Malik and are reproduced below (Mirbaz & Jawad, 2022):

*“Yahya related to me from Malik from Ibn Shihab from Said ibn al-Musayyab and from Abu Salama ibn Abd ar-Rahman ibn Awf that the Messenger of Allah, may Allah bless him and grant him peace, decreed for partners the right of preemption in property which had not been divided up. When boundaries had been fixed between them, then there was no right of pre-emption.”*

*“Malik said that he heard that Said ibn al-Musayyab, when asked about pre-emption and whether there was a sunna in it, said, “Yes. Pre-emption is in houses and land, and it is only between partners.”*

The text of these Hadiths clearly limits the right of preemption to co-sharers or joint owners of undivided property and specifically prohibits conferment of this right once the property is divided and an owner sells his divided share with possession to a stranger. The law may strictly be limited to permissible situations and no other to avoid inordinate delays in projects due to lengthy court proceedings. Another aspect which requires specific law reforms is the concept of “*zaroorat and zarar*”. Though the law provides that the right of pre-emption is exercisable only in the case of *zaroorat* or to avoid *zarar*<sup>160</sup> these two words have not been defined leaving their determination to protracted litigation. Defining these two words with objective criteria is also likely to reduce the harm being caused by this law in casting clouds over the title of the purchaser of the property.

### ***The Transfer of Property Act of 1882***

Comparable laws of conveyancing of immovable property have witnessed major changes since the enactment of this law. This has been done for systemic reforms, shifting to Torrens system from a deed registration system, and e-conveyancing, e-filing, e-transaction and e-records of properties. Interestingly this law has not been formally enforced despite the lapse of over 140 years. It allows the creation of encumbrance over an immovable property without

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<sup>160</sup> The Punjab Pre-emption Act, 1991, section 6(2).



registration of such encumbrance like mortgage and agreement to sell. A consolidated law of conveyancing, registration and title of immovable property, and the unique identification number of each unit or parcel of immovable property may be enacted on modern lines with the option of the Torrens system.

### ***The Registration Act of 1908***

This law does not provide universal registration of all transactions or encumbrances over immovable property. Furthermore, even registration of a property transaction is deemed as registration of a sale deed, etc., and not a conclusive proof of title. There is only a rebuttable presumption attached to such registered transaction documents and, if challenged, the beneficiary has to prove them by producing oral evidence in support of the transaction. This problem area may also be resolved by replacing it with a consolidated law including a mandatory land registration system and only one entity responsible for administering such law with appropriate monitoring, evaluation and accountability mechanisms.

### ***The Punjab Land Revenue Act of 1967***

In pith and substance this is the law relating to land revenue and the record of rights is its ancillary subject. The provisions of this law relating to the record of rights may be consolidated with the above-referred law covering major aspects of immovable property.

### ***Torrens Titles***

The Torrens system may be introduced by making it mandatory upon clear properties like urban housing colonies, housing societies, development schemes and strata properties. Title certificates of these properties may be given for a nominal fee. For other properties, the land record authority may charge substantial fees like 0.5 per cent to 1 per cent of the market value of the property before conducting an investigation or due diligence and the issuance of a title certificate. For every transfer of immovable property, a title certificate may be





mandatory with a clear distinction between planned and unplanned properties for a fee to be charged for such a certificate. This requires the enactment of a new law with a single registering authority for the whole of Punjab. It should be illegal for any other entity or authority to register property titles and registration with this single authority should be made mandatory.

### ***Strata Law***

Presently, there is no law in Punjab to confer strata titles and the management of strata properties. This branch of property law is well developed in other parts of the world and enactment of such a law will encourage investment, especially in the prime urban immovable properties. It will also promote vertical development of city areas making full use of this precious resource.

### ***Law of Possession***

Every lawful possession of an immovable should be registered with the single land registry of titles. If it is not registered, it should be deemed as unlawful possession entitling the administrative agency to restore lawful possession to the person who is entitled to such possession. The anomaly created because of an amendment in the Limitation Act of 1908 relating to recovery of possession may also be corrected with prospective effectiveness. These reforms require the repeal of the Illegal Dispossession Act of 2005 along with section 145 of the Criminal Procedure Code, 1898. The courts may decide disputes based on title and/or possession based on title records maintained by the land records authority treating such record as conclusive evidence or proof of title and/ or possession.

### ***Inheritance Mutations***

Presently, two separate systems of recording the inheritance of immovable property exist in urban and rural areas. In rural areas, the revenue officer sanctions inheritance mutation under the Punjab Land Revenue Act of 1967. In the case of urban property, the relevant land record agency insists on a court



decree declaring the legal heirs of a deceased before entering the names of legal heirs in its record. This difference always produces different inheritance mutations of both these sets of properties. As explained above, a single land record authority may have the function to record all conveyances of property including inheritance. It may have a linkage with the family tree maintained by the National Database and Registration Authority. It may hold a summary inquiry before entering inheritance mutation. The single land registry of titles should be empowered to register every transaction or transfer of immovable property including inheritance.

### ***Law of Partition***

In the case of rural joint immovable property, the revenue officer has jurisdiction to hear the case of partition of such property between the co-owners. In the case of urban property, the civil court has jurisdiction to order the partition of such property under the Punjab Partition of Immovable Property Act of 2012. This duality may end and a single administrative land record authority or land registry of titles may handle all cases of partition and in case of partition of any parcel of an immovable property, allocate separate numbers to separated parts or parts of the property.

### ***Tenancies***

In cases of tenancy of agricultural land or land subservient to agriculture, the revenue officer has jurisdiction to resolve disputes between landlords and tenants under the Punjab Tenancy Act of 1887. In the case of buildings and rented lands, the rent tribunal has jurisdiction to resolve disputes between such tenants and landlords. There may be intrinsic differences between these two types of tenancies. Even within these two types, further classification is also possible like housing, commercial and industrial tenancies. But all these cases may be handled by one forum with a direct linkage to the database of the land record authority or land registry of titles.





### ***Land Acquisition Act of 1894***

Some major reforms in the system of compulsory land acquisition are required to limit the scope of public purpose to a well-defined situation which may not include land acquisition for the private sector or the purpose of any company. Every step may have a maximum time limitation and non-adherence may nullify the whole process. Interested persons have to be adequately compensated in the analogy of India. Determination of interested persons should be mainly based on the database of the land record authority. Every land acquisition should be registered with the land record authority.

### ***Katchi Abadis***

There is no clear vision for cities in Punjab especially with respect to slums. World over, states have strived to make cities slum free. This requires the repeal of all three laws of 1972,<sup>161</sup> 1992<sup>162</sup> and 1995<sup>163</sup> that promote slums in the cities and other areas of Punjab. Instead, Punjab may take a leaf out of the model Property Rights to Slum Dwellers Act of 2011 India to deal with every growing slum in the major cities of Punjab.

### ***Taxes and Fees on Property Transactions***

The property transactions are loaded with federal and provincial taxes, duties and fees. To achieve universal registration, it is necessary to make the registration process simple and cost-effective. Alternate sources of revenue from the property like property tax and wealth tax may be explored and the taxation burden on property transactions needs to be reduced to encourage people to register property transactions. This requires amendments in the Income Tax Ordinance 2001, the Stamp Duty Act of 1899 and the Registration Act of 1908.

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<sup>161</sup> The Transfer of Evacuee Land (Katchi Abadi) Act, 1972.

<sup>162</sup> The Punjab Katchi Abadis Act, 1992.

<sup>163</sup> The Punjab Conferment of Proprietary Rights on Non-proprietors in Abadi Deh Act, 1995.



### *Maximising the Use of Technology*

Maximum use of information technology for e-conveyancing, electronic property transactions, electronic filing and maintenance of property records should be promoted by law. The federal government may issue the requisite notification under section 31 of the Electronic Transactions Ordinance 2002 allowing electronic immovable property transactions. Unified land title law may provide for the use of digital signatures and advanced encryption to ensure the safety and security of documents related to registered property. Extra layers of security of record through blockchain integration with the Torren system may also be made mandatory. Human interface with public officials of the land record authority may be drastically reduced or eliminated in immovable property transactions and the provision of information relating to any immovable property.





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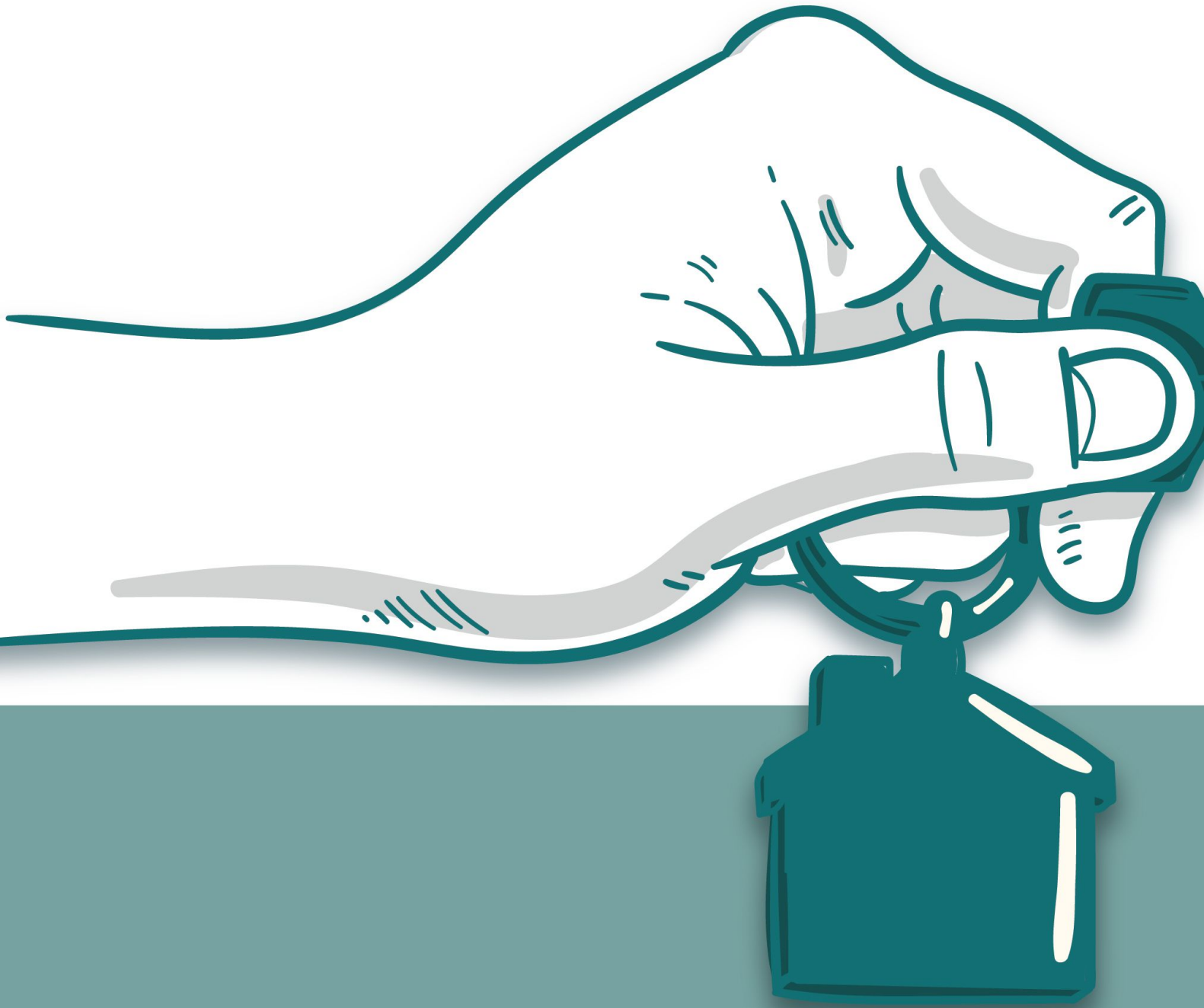


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