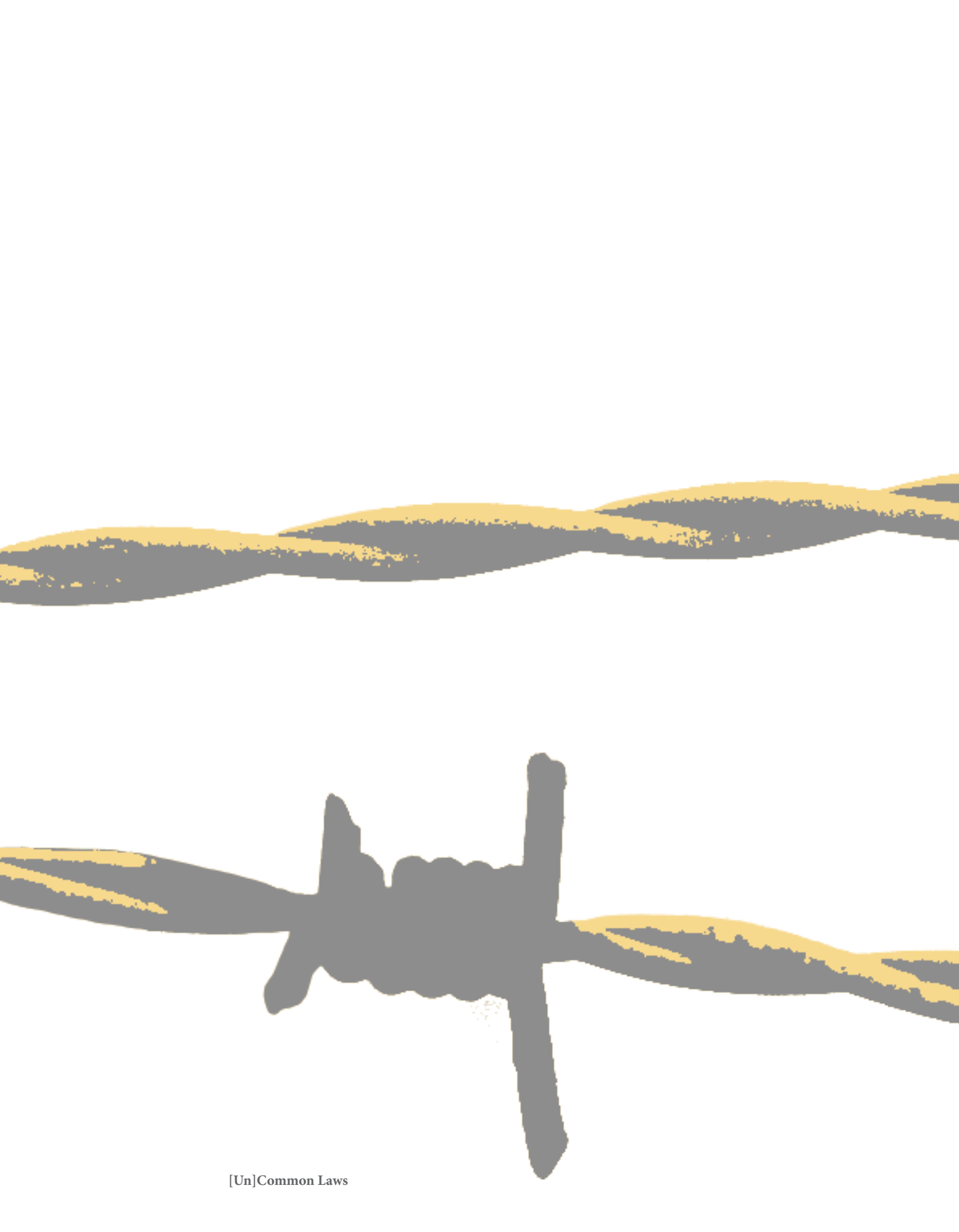


[Un]Common Laws



**HOW THE LEGAL SYSTEM UNDERSTANDS
ENCROACHMENT ON COMMON LANDS**





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ENCROACHMENT ON COMMON LANDS**



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[1]

INTRODUCTION



In India, anti-encroachment action has been largely considered as natural enforcement of one's property rights. This idea of illegal encroachment in Indian law is a direct influence of colonial-era property law¹. In the case of Indian common lands, action against encroachment is a way of enforcing the property rights of the largest land owner in India – the government.

A significant result of this regime of property rights through the enforcement of anti-encroachment laws and policies is the occurrence of widespread and forced evictions². Research has shown that the criminalising language of encroachment has been used to justify eviction of labouring Dalits and other oppressed caste groups.³ A lack of policy safeguards, resulting in encroachers being treated as criminals can largely be blamed for this.

As Indian law stands at present, there is no national legislation codifying different types of commons, i.e., common property resources that are freely accessible and shared by many people. The judgment passed in *Jagpal Singh v. State of Punjab*⁴ (the *Jagpal Singh* judgment) by the Supreme Court in 2011 was important for enumerating the duty of the Government to protect such commons. This case primarily involved the protection of water bodies from encroachers. However, as per Land Conflict Watch's (LCW) previous analysis⁵, *Jagpal Singh* has been overwhelmingly used by High Courts across the country to justify eviction of encroachers from all kinds of government land without much emphasis given to the protection of the commons. Further, our research revealed a disparity between the different classes of encroachers – with the poorer and marginalised communities bearing the brunt of evictions while commercial entities would see a greater leniency in removing their encroachments.

In order to identify patterns in how encroachments are dealt with differently based on the identity of the encroacher, it is first necessary to ask, “who is an encroacher?” under Indian law. In this report, we analysed 40 central and state legislations, 1630 high court judgments, 8 state policies and 131 case studies of land conflicts, to address this through the following research questions:

1. How is encroachment over public lands understood legally in India? What is the relationship between the statutory understanding of encroachment and enforcement by Courts?
2. How have the High Courts enforced action against encroachment on public land? What is the general attitude towards encroachers when they are identified? Based on records where the encroacher has been identified, are there patterns in the identities of the encroachers?
3. What are the rights of an encroacher, as recognized by laws as well as by the High Courts? How willing have the High Courts been to recognize such rights?
4. What does data from the Land Conflict Watch database⁶ show? How do conflicts involving encroachment play out?
5. How does the present legal regime of mass removal of encroachers contribute to the protection of commons?



■ SUMMARY OF KEY FINDINGS

- Only 38% of the cases contained any details of the identity of the encroacher. The largest category of identified encroachers are persons from Scheduled Castes or Scheduled Tribes or landless persons (in 94 cases and 5.7% of the total cases). This is in direct contrast with the judicial reasoning given in Jagpal Singh of encroachers being individuals with influence and power.
- Classification of encroachers into groups which are potentially marginalized (i.e., persons from SCs/STs and landless persons, religious minorities, poor agriculturalists and petty shop owners/ vendors) reveals that these vulnerable groups comprise 56.3% of the 348 cases. This classification sees a low rate of rights being discussed (33.67%) compared to the rate of evictions being carried out (57.14%). Whereas in some cases, such as in the category of petty shop owners and vendors, the rate of discussion of rights is high (62.5%), the rate of evictions is much higher (93.8%). This indicates that a higher rate of discussion of rights does not necessarily correlate to favourable orders preventing eviction.
- Classification based on influence and capital (such as in the case of influential figures, state or village officials, large-scale commercial/ industrial initiatives and religious figures) reveals that this group of encroachers only comprise 33.9% of the 348 cases. This category sees a similar rate of evictions overall (56.78%).. Notably, encroachers who engage in commercial or industrial interests see a 50% rate of eviction.

- The majority of legislation containing anti-encroachment provisions seek to protect government land from encroachment. The government has been given wide powers to remove any unauthorized occupation of such land.
- A clear majority of the cases (52.27%) ended in the Courts issuing directions for evictions or allowing eviction to be carried out by the administration. More than half of the cases (64.25%) did not involve any discussion on the rights of the encroacher. In cases where the rights of the encroacher were not discussed, evictions were allowed to be carried out at a far higher rate (58% of such cases), as opposed to where rights of the encroacher were discussed (42% of such cases).
- The majority of legislation contains provisions for prior notice to be issued before eviction proceedings, but it often does not include the time period allowed to the affected parties for their response. Without clear prescribed parameters, the time period allowed to parties before evicting them from their homes can arbitrarily range anywhere between 24 hours to 2-3 weeks.
- State governments have been taking actions to remove encroachment from common lands prior to the issuance of the Jagpal Singh judgment. But in some states, prior policies and pre-existing legislation often had provisions for regularisation of encroachment in cases of backward classes, such as tribals or 'harijans'. However, after the passing of the Jagpal Singh judgment, there has been an emphasis by certain state governments to remove encroachers regardless of identity.
- Over half of the cases (57%) did not have substantial details on the nature of encroachment, i.e., how the land was being used by encroachers. In contrast, there has been a deliberate effort on the Court's part to emphasise the nature of the encroached land more clearly. As such, there is an emphasis on protecting disputed land rather than identifying the reason for encroachment or possible mitigating factors.
- The most frequently occurring categories of encroachment are housing, including temporary dwellings over which no formal rights exist (14%). This indicates that the most frequent use of land for encroachment is by marginalized communities/ individuals for housing purposes or to seek shelter. Village land and Government land are the most frequently occurring categories for the disputed land (30.2% and 21% each).
- Data from the LCW Database reveals that conflicts involving encroachment overwhelmingly occur on common lands (70.2%), with a clear and large majority of conflicts happening on non-forested lands other than grazing lands. There currently exists no national legal framework recognising traditional rights of communities on such non-forested lands.
- The piece of legislation most commonly applicable to encroachment conflicts where common land is involved is the Forest Rights Act, 2006. The implication of this is that traditional inhabitants of forest land (over which private land titles are not granted) are being labelled encroachers and in many cases, evicted, despite the Forest Rights Act prohibiting eviction of forest-dwellers until the process of recognition and settlement of forest rights is complete.
- Data from the LCW Database further reveals that land conflicts involving encroachment often involve nomadic communities being labelled encroachers over the land they inhabit. Further, targeted eviction drives against members of the adivasi and scheduled tribe communities also reflect disregard to their constitutional rights by the authorities.

[2]

METHODOLOGY



The legal research for this phase of the project is based on primary data, including an analysis of:

1. Provisions of 40 state and central legislations which deal with encroachment and its removal: These legislations were identified from the dataset of 325 High Court cases citing the Jagpal Singh judgment, which were analysed in *(Un)Common Verdicts*. The legislations were filtered on the basis of their relevance and applicability to the eviction proceedings discussed in the High Court cases (Appendix I⁷). For the purposes of this project, the following factors were recorded for each legislation:
 - a. Relevant provisions, either as provisions cited in the High Court cases or provisions under which removal of encroachments are generally carried out,
 - b. Authority responsible for carrying out said removal of encroachments,
 - c. Type of land, i.e., the type of land sought to be protected from encroachments,
 - d. Whether prior notice has to be served to affected parties before removal of encroachments take place, and if so, the time period given to the parties for their response,
 - e. Whether the legislation contains any provisions for regularisation of encroachment, and
 - f. Whether the legislation contains any provisions for appeal against eviction orders.
2. 1630 High Court orders concerning encroachment and its removal (Appendix III): In order to obtain these cases, a search based on the relevant provisions (i.e. those dealing with eviction) of the aforementioned 40 legislation was carried out on the legal search engine Manupatra. LCW then filtered the available results on the following criteria:
 - a. the dispute must deal with one or more individuals facing eviction proceedings under one of the aforementioned legislation,
 - b. cases must include the de facto act of classifying the individual as an encroacher by either referring to the act as encroachment, unauthorised occupation of the land, trespass or similar,

- c. the orders analysed must be the final orders or judgments of the case.

Cases which fulfilled this criteria – 1630 in number – were extracted (Appendix III). As such, the research is limited to judgments or orders available on Manupatra till October 2022 and does not comprise an exhaustive list of cases in the subject matter or under the legislation. Based on these orders, common themes have been identified in the legal reasoning and applicability of eviction proceedings. The following factors have been recorded for each case:

- i. Particulars of each case, i.e., case name, case number, date of decision and name of High Court,
 - ii. Law under which encroachment has been identified,
 - iii. Nature of the alleged encroachment,
 - iv. Nature of the encroached land,
 - v. Whether there are any descriptions of the alleged encroacher's identity, and any commentary on encroachers in general.
 - vi. Whether the alleged encroacher had applied for regularisation of their encroachment,
 - vii. Whether there is any discussion on the rights of the encroacher,
 - viii. Whether the case resulted in eviction being carried out, and
 - ix. Whether the order cites the *Jagpal Singh* judgment.
- 3.** Provisions of 8 significant government policies/ schemes which feature multiple times in the 325 High Court cases analysed in *(Un)Common Verdicts*⁸. A qualitative analysis of these policies was carried out by looking at the provisions of the policy, the historical context of its issuance and subsequent policies passed.
- 4.** Secondary analysis of land conflicts involving encroachment was also done from 757 case studies of land conflicts from the Land Conflict Watch database. 131 case studies involving encroachment were identified for this report. This list of case studies in the LCW Database is not exhaustive and is contingent on the availability of public information in each state and the reporting infrastructure in place. As such, the dataset of land conflicts used is an indicative list of land conflicts across the country. The analysis considered the following parameters:
- a. The total number of people and land area affected by conflicts involving encroachment,
 - b. Classification of conflicts by region – Rural, urban or involving both,
 - c. Classification of conflicts by tenure type of land – Private, Common, or involving both,
 - d. Classification of conflicts over common land by type of commons – forested commons, non-forested commons or involving both,
 - e. Most commonly occurring legislations in conflicts involving encroachment,
 - f. Demands and contentions of communities affected by the conflicts involving encroachment,
 - g. Legal processes and loopholes in conflicts involving encroachment,

The sample set of legislations, judgments and policies will provide an indicative, not exhaustive insight into trends that can be observed in Indian law and jurisprudence.

The purpose of this analysis is to draw a nexus between the different approaches taken by the Executive, Legislative and Judiciary in addressing encroachment as a problem and their impact in classifying and characterising encroachers. Through a secondary analysis of ongoing conflicts from the LCW database, the disparity between disputes which reach courts and conflicts on the ground will become more evident.

[3]

WHAT IS ENCROACHMENT?



6

Encroachment generally refers to the process where a person occupies another person's land or property without permission. The Indian legal framework recognizes several forms of encroachment depending on the kind of land that needs to be protected. More significantly, this recognition is built on the notion that encroachment is a criminal offence, for example in Section 441 of the Indian Penal Code which criminalises trespass.

In Indian statutes, encroachment is often defined as the setting up of temporary, semi-permanent or permanent structures on another person's land for the purposes of either residential, commercial or any other use.⁹ Indian courts unequivocally recognize the act of encroachment on the private property of another as a wrong. However, they have also emphasised that encroachment on public property is considered a graver wrong or a public wrong.¹⁰ Such encroachment is considered to affect a number of people by virtue of obstructing the access of such people to the concerned public property.

The public trust doctrine, a principle that the State owns natural resources and common lands as a trustee on behalf of the public, builds upon this even further. As the trustee of common lands, it is the State's legal duty to protect these resources and ensure that they are not usurped by private interests for commercial gain. This duty to protect has resulted in the enactment of laws which recognize increased and intentional encroachment as land grabbing. Anti-land grabbing acts have been enacted in the backdrop of large-scale encroachment,¹¹ with the intent to protect both public and private lands, whereas anti-encroachment laws only protect public lands.

Conversely, there have been significant judgments passed by the Supreme Court recognizing the socio-economic factors driving encroachment and the need for humane evictions. In *Olga Tellis and Ors. vs. Bombay Municipal Corporation*¹², the Apex Court emphasised

on the need to take reasonable and proportionate action against any encroachers, even when eviction was supposed to be carried out against the individual. The result was a greater emphasis on ensuring the right to equality, life and dignity under the Constitution to encroachers by following due process of the law.

■ THE ISSUE OF FORCED EVICTIONS

Recent research has repeatedly shown that anti-encroachment drives have been a consistent reason for carrying out forced evictions.¹³ Forced evictions are the removal of individuals or families from their homes or land, without being given adequate protection under the law or in a manner which is in violation of existing laws¹⁴. This can be seen with evictions where prior notice has not been served on the individual before evicting them or demolishing their homes. The phenomenon of forced evictions has largely been understood to arise out of a lack of adequate housing, a universal problem for all countries. Article 25 of the Universal Declaration of Human Rights states that everyone has the right to a standard of adequate living, which includes access to food, clothing and housing. Article 11 of the International Covenant on Economic, Social and Cultural Rights (1976) built upon the same and made this a binding obligation on all signatories.

In May 1997, the Commission on Economic, Social and Cultural Rights (CESCR) also noted¹⁵ that all persons have the right to legal protection against forced evictions, harassment and other threats. Forced evictions were considered to be incompatible with the rights recognized in the Covenant. The CESCR in May, 2008 also recognized the issue of rising homelessness in India.

High Courts have reaffirmed all of these international instruments as well as the rights of encroachers in recent judgments.¹⁶ In *Sudama Singh v. Deepak Mohan Spolia*¹⁷, the Supreme Court reaffirmed that the State's constitutional and statutory obligation to ensure that if the jhuggi dweller is forcibly evicted and relocated, that the jhuggi dweller is not worse off.

However, it is worth noting that despite these guardrails being established by the High Courts, recent land conflicts in the capital have shown communities being evicted en masse for various urban development projects¹⁸. In such cases, evictees have had to rush to Court to obtain some interim protection from being brutally evicted from their homes. The question of rehabilitation has often been skirted by the nodal authority on grounds of the evictees not falling within procedural parameters under the relevant state policy that would entitle them to rehabilitation under existing law.

Further analysis from the LCW Database revealed that 62% of the 131 case studies analysed showed the prevalence of forced evictions as a contentious legal issue. 57 of such conflicts (43.5% of all case studies) occur over rural regions. This can be attributed largely due to forest administration officials carrying out evictions without complying with necessary procedures of providing prior notice or carrying out evictions in violation of the Forest Rights Act, 2006.

The overall analysis of the high court cases revealed at least 290 cases which emphasised the need for valid notice to be served along with fulfilling other procedural requirements. Further, in at least 60 cases, eviction orders were quashed on grounds of improper procedure. This could be either notice being issued improperly or not at all, or no reasonable opportunity to be heard granted to alleged encroachers. Whereas these cases comprise only a small portion of the total cases analysed, they highlight the importance of procedural requirements to be followed in carrying out eviction proceedings to prevent forced and inhumane evictions.

The image shows a person holding a torn piece of paper with a handwritten table and a circular stamp. The table lists various items and their quantities. The stamp is from the 'District Collector, Jharkhand'.

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HOW HAS ENCROACHMENT BEEN UNDERSTOOD IN INDIAN LEGISLATIONS?



Land and Conflict Watch analysed the provisions of 40 legislation that deal with the classification of encroachment (Appendix I¹⁹). These were the legislation found applicable in the High Court cases citing the *Jagpal Singh* judgment and were earlier analysed by LCW²⁰. Looking at these legislation would indicate how encroachment is defined in the first place, and the procedure established for carrying out the removal of such encroachments.

Notably, a majority of these legislation do not define encroachment separately in the statute. The provisions merely enumerate the power of the concerned State officials to carry out removal of encroachment or evictions and the subsequent procedure to be followed. However, the language around encroachment is largely similar across legislation – meaning, either the words ‘encroachment’ or ‘unauthorised occupation’ have been used.

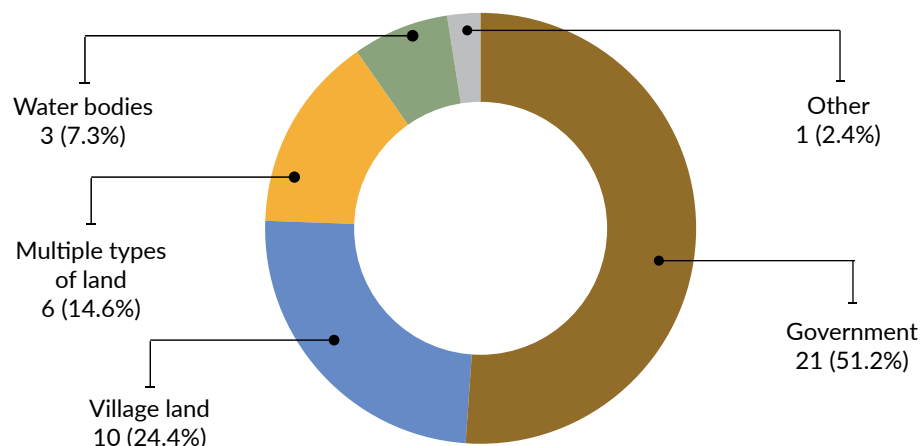
The greatest variance in key terms used across the 40 legislation can be seen with the lands sought to be protected from encroachment. The majority of these provisions involve the protection of solely government land (52.5%). The provisions in other legislation can be largely understood to protect either village land (25%), a combination of government land along with other lands (15%) or miscellaneous kinds of land, such as water bodies, protected areas or lands belonging to public religious institutions (7.5%).

The term 'government land' has different meanings in different states, as village lands, water bodies and other common lands are often considered as government land as well. However, the distinction is necessary to understand the immediate enforcing body for the rights of such lands. Nearly half the legislation mentions 'public land' as the subject land. This public land can be understood to be land managed by the Central or State Government or any government institution, despite being accessed by the public or community at large for community purposes, such as for grazing, irrigation, burials etc.²¹ Even legislations recognizing special tenure rights of agriculturalists have characterised such common and public land as lands in which the said tenure rights do not accrue.²²

The classification of village land denotes when the management of the land is vested with the local Gram Panchayat or Gaon Sabha. However, unless explicitly stated that title or ownership of the land lies with the Panchayat, the ownership of these lands also lies with the government. Unless the ownership of the land and not merely power of management, is explicitly noted to lie with a community or Panchayat of an area, all land which is not private land, including unoccupied lands,²³ is understood to be government land.

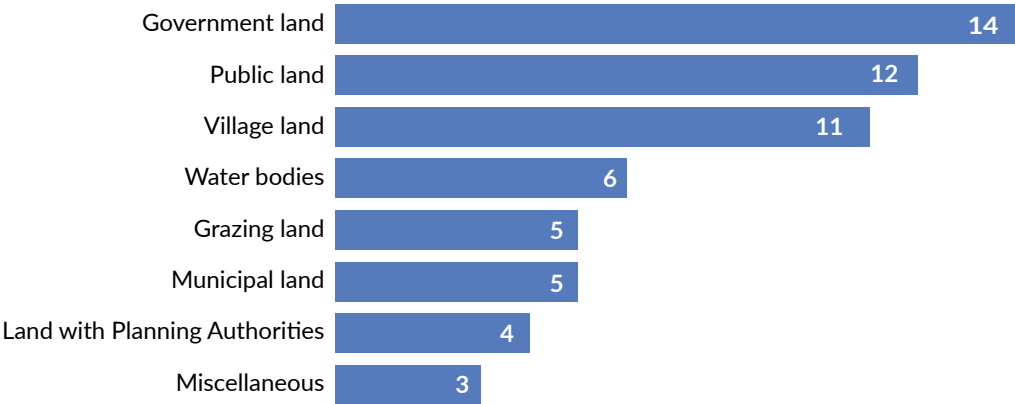
Graph 1 shows the type of land most frequently protected from encroachment on the basis of the ownership of such land. The most frequently occurring type of land, i.e., government land includes municipal land, public land and land with other government agencies (53%). The next most frequently occurring category is of village land (in 25% of the legislation), which includes agricultural land, *shamlat deh* land²⁴ and *abadi* land²⁵. 15% of the legislation includes protections for multiple types of land in the same provision. For example, the Rajasthan Tenancy Act, 1955 includes protection for government land, water bodies, and grazing land.

Graph 1: Land protected against encroachment by state/central legislations, based on ownership of land



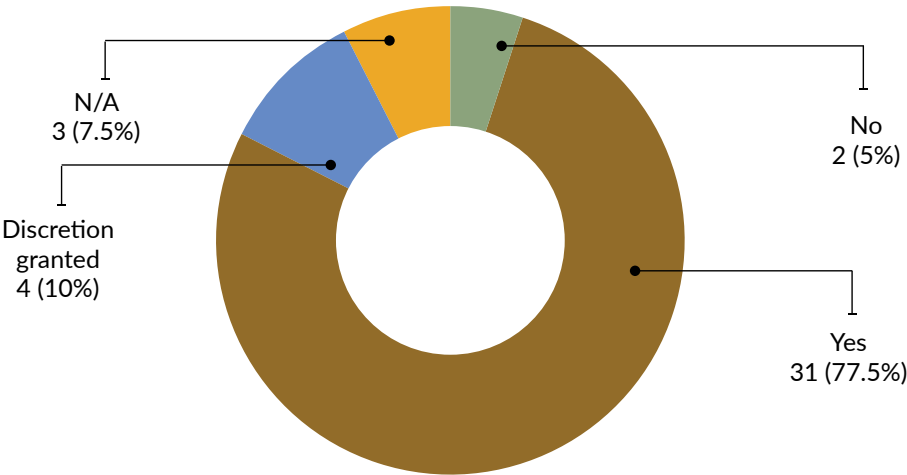
Graph 2 further shows which specific kinds of land are mentioned in the legislation. Government land in this chart is used to denote provisions which explicitly mention land owned or managed by the government without specifying any other details. “Land with planning authorities” denotes land governed by regional town planning boards, which have been established separately by specific state statutes. These planning boards are also additionally vested with the power to acquire land in their jurisdiction, leading them to potentially have access to private land as well. Village land includes common land vested in the panchayat as well as lands such as *Shamlat deh* and *abadi lands*.

Graph 2: Number of state/central legislations protecting land, classified by land type



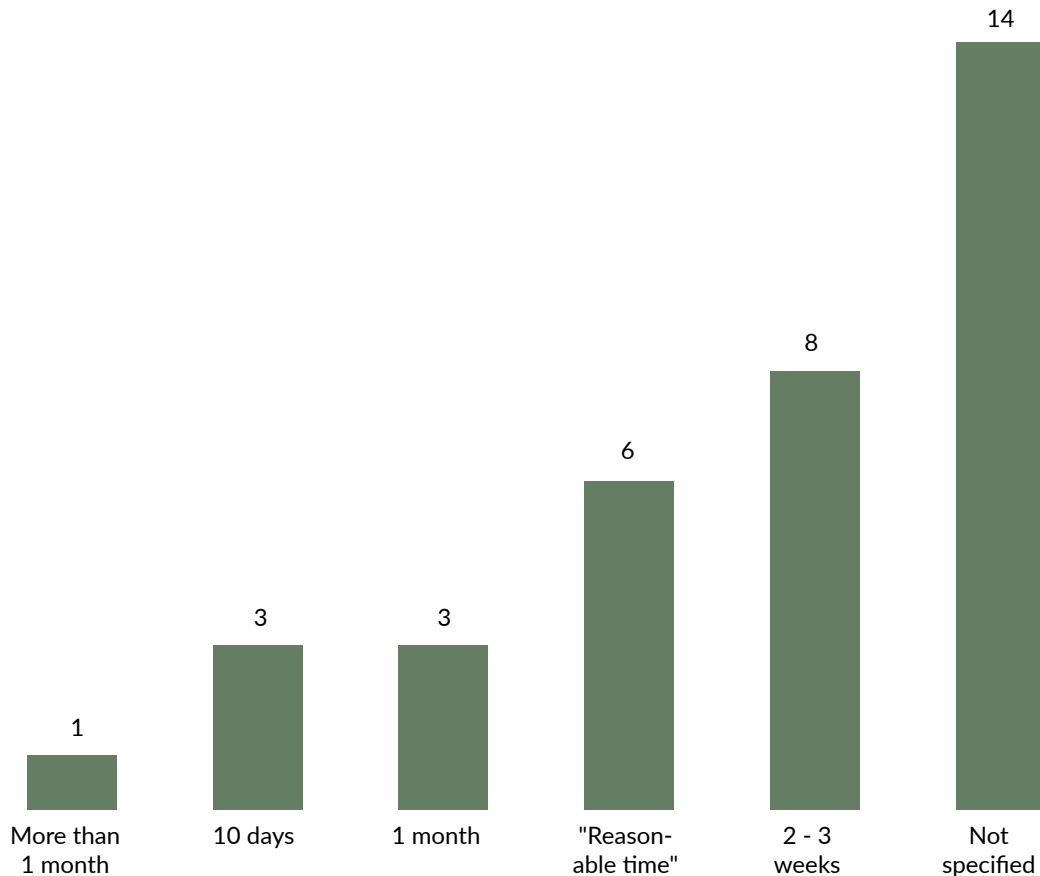
The following graphs show the distribution of key factors across legislation. Graph 3 shows whether prior notice to affected parties is an explicit statutory prerequisite. Whereas the majority of the legislation includes provisions for the same (77.5%), some tend to require prior notice for certain kinds of encroachment and not for others. Most notably, this distinction can be seen in urban areas with prior notice being required for demolition or confiscation²⁶ of permanent structures, but not for semi-permanent or temporary structures which obstruct roads.²⁷ Similarly, other municipal laws see the notice requirement completely dispensed with.²⁸

Graph 3: Distribution of legislation which include provisions requiring prior notice



Further, even if the provisions require prior notice to be served, they often do not include the time period allowed to the affected parties for their response (Graph 4). 35% of these legislations do not specify a time period. Additionally, 15% simply state that a reasonable amount of time must be granted to the affected parties. This period can drastically differ from state to state, based on the predominant case law by the state's High Court. However, among the legislations which do specify a time period, two weeks is the most frequently given time.

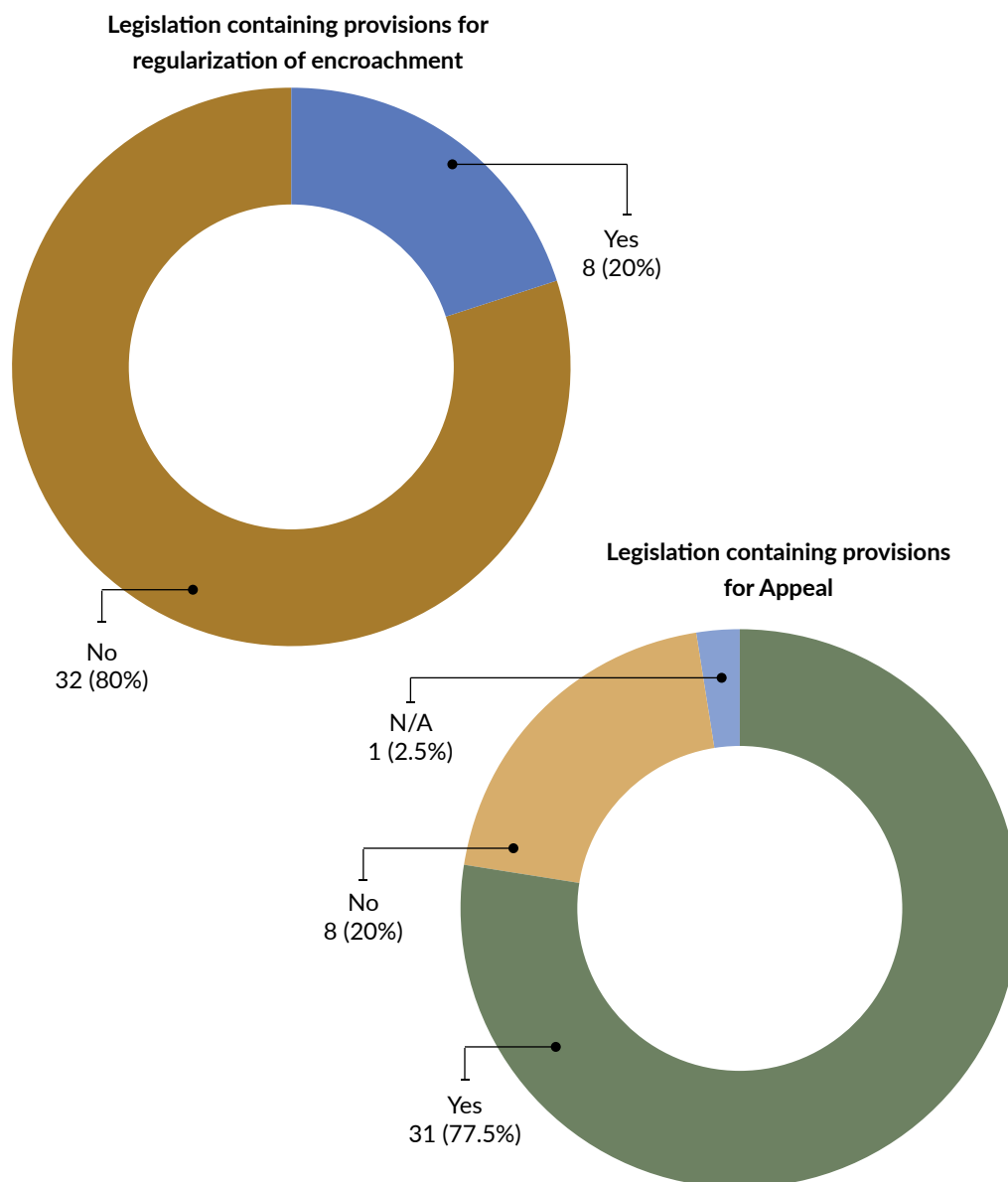
Graph 4: Amount of time specified for prior notice to affected parties (data from 35 legislations)



Graph 5 and graph 6 show the number of legislations which include provisions for regularisation and appeal against eviction orders. The overwhelming majority (80%) of the laws do not contain a provision for the regularisation, i.e., a provision recognising an encroacher's right over a property or land by granting them land tenure. Regularisation of encroachments is generally carried out under state-specific schemes passed from time to time. Further, the provision for regularisation can often be seen in legislation which serves the function of acting as the states' omnibus land revenue laws.²⁹

Conversely, the right to appeal is considered as an enforceable right of any aggrieved individual. The exclusion of a provision providing for this right would mean that an aggrieved evictee does not have an avenue within the government itself. In the event of a wrongful order, they will have to approach court, which can be an expensive and time-consuming forum for most. As per a 2016 survey, litigants in all kinds of civil cases reportedly spent Rs. 497 per day on average for court hearings and incurred a loss of Rs. 844 per day due to loss of pay.³⁰

Graph 5 and graph 6: Legislation containing provisions for regularisation of encroachment and appeal respectively



Most notably, these legislation largely did not classify encroachers on any particular factors of identity. However, multiple legislation includes exceptions to prosecuting encroachers for categories such as landless persons,³¹ women,³² persons from Scheduled Castes and Scheduled Tribes,³³ and for persons from the economically weaker section.³⁴ Conversely, an exception in one legislation has also been made for any buildings belonging to the government, due to it being used for a public service or public utility.³⁵



[5]

HOW HAS THE EXECUTIVE DEALT WITH ENCROACHMENT?



15

L and Conflict Watch identified 8 government resolutions/ circulars being mentioned in the context of contested eviction proceedings in High Court cases which cited *Jagpal Singh*. These policies help us understand the executive approach to encroachment as well as any change in state policy in handling encroachment and common land management. Whereas policies from 6 states were identified (Appendix II), a closer look at some states is warranted to understand the role of judicial pronouncements on longstanding executive policies. To that end, we have analysed the manner in which state policies were interpreted in three states - Gujarat, Uttar Pradesh and Rajasthan.



■ GUJARAT

The Government Resolution dated January 8, 1980³⁶ issued by the Gujarat Revenue Department is notable for being the prevalent policy for removal of encroachments prior to Jagpal Singh in the state. The basic principle of the resolution is to remove encroachment from public land³⁷. Notably, the policy explicitly mentions that consideration should be given to “backward class or non-backward class people” where eviction of such encroachers would cause great loss and where the government would not receive any specific benefit from evictions. The government resolution states that the Collector ought to consider the merits and demerits of evictions, even though encroachments done for commercial or industrial purposes should generally be removed.

The Resolution further states that encroachments are often made by “illiterate, poverty-stricken backward class Harijans, tribals, and backward castes” and that evictions should not cause hardships to the encroachers as a rule.

Litigation in the Gujarat High Court surrounding encroachment on public lands have mentioned erstwhile policies such as the 1980 notification for managing encroachment by the state³⁸. Most notably, litigants have sought regularization on the basis of such policies. However, despite being the prevalent law of the land for several decades, such policies have been reversed by the procedures initiated by Jagpal Singh.

For instance, the state government in its affidavit to the Supreme Court³⁹ stated that efforts were being taken to remove encroachments from all *gauchar* land. The state government submitted that in March 2011, 22,038 hectares of *gauchar* land were under encroachment. As of July, 2011, nearly 74% of these encroachments were removed. The state government did not provide any other details as to the identity of the encroachers.

Further, the government on the basis of the Jagpal Singh judgment, pronounced a policy for the management of *gauchar* land in April 2015⁴⁰. According to this policy, regularisation of encroachments on *gauchar* land in any case under any circumstances was prohibited⁴¹. The 2015 policy however, contains exceptions for allotment in cases of “important works of public utility” such as substations, water supply, and other facilities of government owned power companies. The policy also creates an exception for educational, health and other social sector works, given that no other land is available.



■ UTTAR PRADESH

There is a long history of government orders passed in Uttar Pradesh in compliance with the Jagpal Singh judgment that has been often referred to in High Court orders⁴². The circular dated October 4, 2012 by Commissioner-cum-Secretary, Board of Revenue, U.P. Lucknow, in particular, highlights the importance of the Divisional Level Committee in handling encroachment complaints on Gram Sabha land, waterbodies, grasslands and graveyards. Later judgments cite the circular to direct District Magistrates to take action as per the directions of *Jagpal Singh*⁴³.

However, as per an affidavit submitted to the Supreme Court in 2011⁴⁴, the state government highlighted its pre-existing compliance towards eviction of encroachers through earlier government orders. In 2007⁴⁵ and 2010⁴⁶, the state government directed all divisional commissioners and district magistrates in the State to monitor work of digging in water bodies and remove encroachments accordingly. District magistrates were also explicitly directed to make alternative arrangements for rehabilitation of “persons of weaker section” in accordance with the U.P. Zamindari Abolition and Land Reforms Act, 1950 (‘the UPZALR Act’). Section 122-B of the Act provides the mechanism for eviction of encroachers from Gaon Sabha land but also contains an exception clause for agricultural labourers belonging to Scheduled Castes or Scheduled Tribes.

The government order⁴⁷ issued after Jagpal Singh contained directions for all encroachments as of January 1, 2011 would be removed by the district authorities. However, the State Government had stated in its affidavit that evictions would be carried out as per the provisions of the UPZALR Act.

Further, it provided detailed information on the eviction of encroachers from waterbodies, public utility land and gram sabha land. Notably, 51% of the encroachment cases comprising persons from Scheduled Castes and Scheduled Tribes were regularized by the government in 2011. However, regularization only occurred at large for 14.5% of the total cases. Possession of the encroached land was handed back to the gram sabha in 51% of the remaining cases.



■ RAJASTHAN

In compliance of the Jagpal Singh order, the state government issued multiple circulars from 2011 onwards⁴⁸. However, these circulars are explicitly in the nature of prohibiting allotments on pasture lands.

In April 2011⁴⁹, the state government directed that allotment and regularization of charagah lands, ponds and water reservoirs for private or commercial use would be immediately stopped. This government order stated that the Rajasthan Tenancy (Government) Rules, 1955 allowed district authorities to change the classification of pasture land with prior consultation with the gram panchayat for agricultural or non-agricultural purposes.

In the affidavit submitted to the Supreme Court in 2011⁵⁰, the state government referred to another circular issued in 2011 by the Department of Rural Development and Panchayati Raj⁵¹. This circular issued directions for the demarcation of charagah lands, public ponds, playground for children and other such public utility areas. The circular also notes that a part of the abadi land has to be reserved for residential houses for the poorer section under national programs and poverty planning. It also notes that in 1975 and 1981, this reservation of lands was done for landless labourers, village artisans, and persons from Scheduled Castes and Scheduled Tribes but such lands were not mutated and recorded in panchayat records. As such, these lands were allowed to be re-allotted by Revenue Officers for other purposes, defeating the purpose of any welfare scheme. The State Government in its affidavit stated that after demarcation of gram panchayat lands of public utility, action would be taken against any encroachment.

The focus of the state government through its numerous circulars issued was to identify, develop and manage common lands and water bodies alongside the gram sabhas. This can be further seen with the letter issued in September 2013⁵². Through this, the gram sabhas were directed to share and discuss financial progress of efforts taken to secure common land, and then pass a resolution by channelling funds from ongoing programmes like MGNREGS. However, as noted in *(Un)Common Verdicts*⁵³, the Comptroller and Auditor General (CAG) report in 2019⁵⁴ recorded that no action plan for removal of encroachments from government land was produced by the state government in 2017-18. Further, as per this report, over 19,000 cases of encroachment were pending and issues of demarcation of village common lands remained.

[6]

WHAT DO INDIAN COURTS CONSIDER AS ENCROACHMENT?

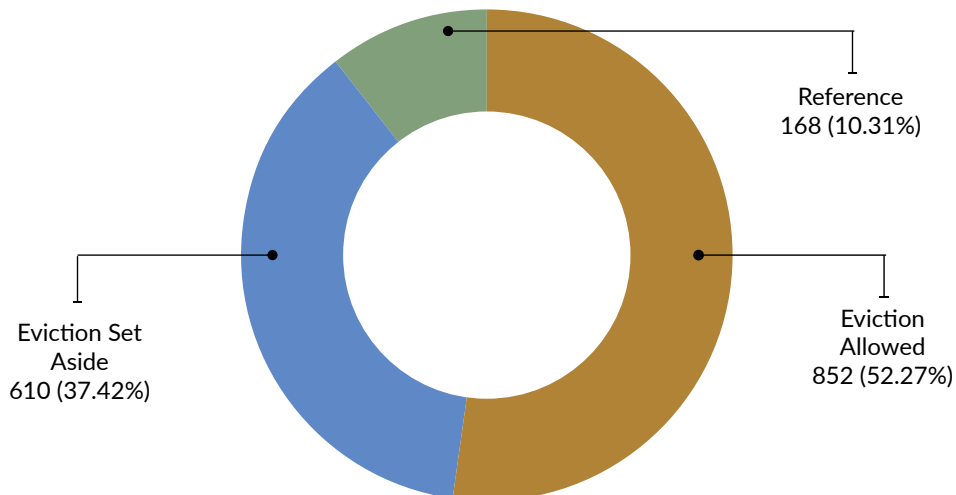


■ OVERVIEW

Land Conflict Watch analysed 1630 judgments/ orders from various High Courts which are concerned with encroachment and its removal (Annexure III).

At the outset, it is necessary to note that the majority of the cases ended with eviction being allowed or explicitly directed by the Court (52%). Graph 7 shows the distribution of cases in which eviction was allowed. For matters concerning eviction, where questions of fact need to be explored, it is common for an Appellate Court to refer the case back to the competent Executive authority, such as the district collector or tehsildar, to decide the case again. 10% of the cases contained a reference back to the competent authority. A reference to the government to decide the case afresh does not necessarily suggest a favourable outcome

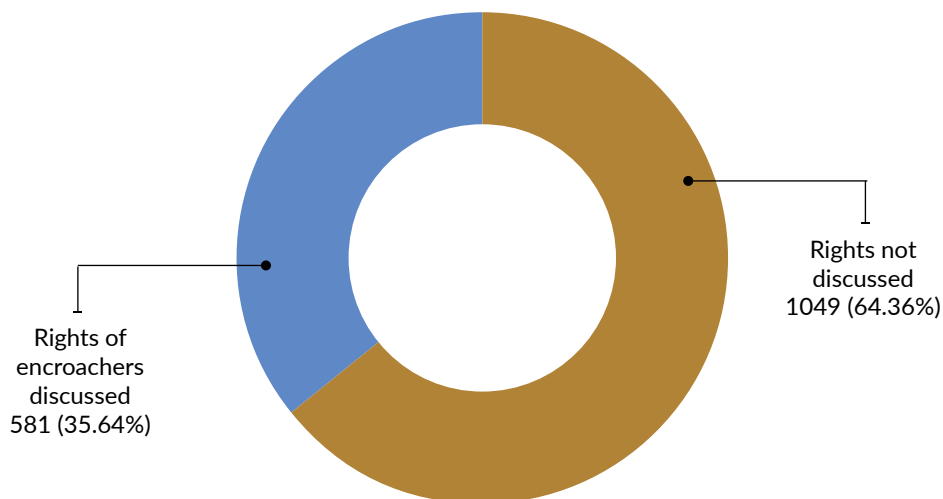
Graph 7: Distribution of cases in which eviction was allowed.



for the encroachers. Due to the nature of court proceedings, it is likely that in the case of another unfair or arbitrary decision by the Executive authority, the alleged encroacher will have to go through the process of filing another case, appealing such decision. Few cases saw the Courts issuing additional directions for the humane treatment of encroachers. Whereas some Courts issued directions to complete the eviction proceedings in a fixed period of time, some cases saw courts imposing harsh penalties on the encroacher and allowing the Executive authority to resort to police force to evict encroachers⁵⁶.

More than half the cases (64.4%) did not involve any discussion regarding the rights of the encroacher (Graph 8). In the cases where the rights of the encroacher were discussed, Courts emphasised on the need to follow the principles of natural justice, i.e., that the alleged encroacher be afforded a fair inquiry and a reasonable opportunity to be heard. At least 119 cases had the Courts emphasising the need to follow the principles of natural justice. The lack of valid prior notice was noted as a significant reason for invalid eviction proceedings in

Graph 8: Distribution of cases in which the rights of the encroacher were discussed.



at least 85 cases where eviction was overturned. The reiteration of these rights helps expand the procedure laid out in the applicable statute and form a legal framework around humane evictions. Figure 8 shows the distribution of cases in which the rights of the encroacher were discussed by the Court.

Table 1 compares the rate at which evictions were allowed with the number of judgments in which rights of encroachers were discussed in the judgment itself. It is evident that where the rights of the encroacher were not discussed, evictions were allowed to be carried out at a far higher rate (58%) than in cases where rights of the encroacher weren't discussed (33%). Whereas in cases where the rights of the encroacher were discussed, it is equally likely that evictions may or may not be carried out. This could suggest that having a discussion on the rights of the encroacher is likely to lead to a more equitable outcome in the verdict.

Table 1: Comparison of verdict involving eviction to discussion on encroachers' rights (data from 1630 cases)

		Rights of encroachers discussed?	
		Yes	No
Eviction to be carried out	Yes	242 (42%)	610 (58%)
	No	264 (45%)	346 (33%)
	Reference	75 (13%)	93 (9%)

LCW recorded whether the alleged encroachers had applied for regularisation in any of these cases. Despite being concerned with encroachment and eviction proceedings, only 13% of the total cases contained any discussion on the encroacher's claim for regularisation. This includes discussion on allotment of land by the state government done several years ago, so as to capture cases where an individual may be classified as an encroacher due to a change in government policy. However, out of the 214 cases which involved any discussion on regularisation, 125 cases (58%) saw evictions being allowed in the case. The most frequently occurring nature of encroachment in such cases was for housing purposes (in 58 cases). However, due to the nature of land frequently being classified as water bodies in such cases, regularisation was not allowed and eviction was directed to be carried out.

Despite the existence of regularisation policies in many states, these findings suggest that encroachers have not been allowed to avail the benefits of such policies. 25 out of the aforementioned 125 cases involved either indigent persons⁵⁷ or persons from Scheduled Castes/ Scheduled Tribes/ landless communities being evicted despite applying for regularization. Only a few cases see the Courts stating explicitly that no coercive action should be taken against the encroachers⁵⁸.

The involvement of regularisation in an encroachment case primarily suggests that the encroachers are individuals who have resided on the land for a long time. In private property disputes, the doctrine of adverse possession allows individuals who have occupied another's property for a long period of time to claim rights over the property. However, as seen with *Jagpal Singh* and other cases, encroachment done over a long period of time is not excused by the court. The legal framework in the Forest Rights Act, 2006 prohibits dispossession of land until the claims of the forest-dwelling tribes are considered by the government. It is necessary to establish a similar legal framework for evictees residing on non-forested common lands which prohibits evictions if there are claims for regularization already pending with the government.

■ NATURE OF ENCROACHMENT AND ENCROACHED LAND

It is necessary to note the wide disparity in the recording of facts related to encroachment. Nearly half of the cases (57%) did not have substantial details on the nature of encroachment. Whereas 12% of the total cases mention some sort of unauthorized construction taking place, 33% of the total cases simply mention the encroacher having taking possession of the land.

In contrast, 97% of the total cases mention descriptive details of the disputed land being encroached upon. Eviction cases often involve the encroachers trying to prove valid title over the disputed land. Hence, an overt emphasis is given by the Court on establishing the ownership of the land. However, without a complete recording of necessary facts such as land use and significance of the disputed land, the adjudication of such cases could fail to account for the true intent behind encroachment as a phenomenon.

In the cases where data is available (table 2), housing is evidently the largest category of encroachment (14% of the total cases). This category is used to include housing over which formal rights may not exist such as with temporary tin sheds and kaccha dwellings (impermanent dwellings). The category of private property includes more formal structures

Table 2: Distribution of cases based on nature of encroachment (data from 1630 cases)

Nature of encroachment	No.
Housing	229
Cultivation	96
Private property	84
Commercial and industrial	77
Shops	63
Tenancy	62
Allotted land	27
Other	26
Educational or healthcare institutions	17
Religious institutions	14
Pollution or temporary obstructions	6
Slums	6
Government	6
Roads	5
Insufficient data	929
Total	1647

as well as cases where private property was deliberately expanded by way of parapets and boundary walls. Both private property and large-scale commercial enterprises only constitute under 5% of the total cases. Cultivation and tenancy are also seen as large categories due to the majority of legislation dealing with allotment of agricultural land to individuals and granting tenancy rights over such land.

It is necessary to note that despite housing being the largest category for the nature of encroachment, there is virtually no discussion on the right to housing of such encroachers.

Whereas the rights of encroachers are discussed in 49.7% of the cases involving housing, this does not include substantive right to shelter, life and dignity as guaranteed under Article 21 of the Indian Constitution.

In contrast, there is a more deliberate effort on the Court's part to emphasise the nature of encroached land more clearly. Village land and Government land are the largest categories of encroached land, constituting 30% and 21% of the total cases respectively. The category of village land includes *abadi* land and *shamlat deh* land, which are traditionally recognized as land under the management of the village. The category of government land includes *nazul* land (i.e., non-agricultural lands), *poramboke* land (i.e., unassessed lands in some south Indian states which are considered property of the government and used by communities as a common resource) and instances when the Court only explicitly mentions government land. However, it is necessary to note that the ownership of the other kinds of land are often noted to still trace back to the government. For instance, public lands, waterbodies, and *gair mumkin* lands (i.e., unallotted lands which are often considered as unfit for cultivation or wastelands in the northern states) are all characterised as land owned by the government. In the case of water bodies, the Courts often emphasise the duty of the government to maintain the water bodies for the well-being of the general public.

Table 3 shows a clear distribution of the different kinds of land often sought to be protected in encroachment cases. After government and village lands, public land including roads and streets (13.6%) and waterbodies (12.7% of the total cases) are the most frequent lands being affected by encroachment.

Table 3: Distribution of cases based on disputed land (data from 1630 cases)

Nature of Disputed Land	No. of cases
Village (including abadi land and shamlat deh)	493
Government land (including nazul, poramboke and natham land)	343
Public land (including roads)	222
Waterbodies	208
Temple trust land	93
Local authority land	83
Insufficient data	56
Other	35
Wastelands (including banjar and gair mumkin)	26
Grazing lands	25
Forest	23
Community or private-owned	51

■ IDENTITY OF ENCROACHERS

At the outset, it is worth stating that only 38% of the total cases analysed contained any details of the identity of the encroacher. Further, only 348 cases (21.4%) contained explicit descriptions of the alleged encroacher. [Table 4](#) along with [graphs 9 & 10](#) indicate a distribution of these categories.

The largest category of encroachers identified are persons from Scheduled Castes or Scheduled Tribes or landless persons (in 94 cases and 27% of the cases where data regarding identity is available). It is worth noting that the *Jagpal Singh* judgment explicitly mentions that an exception can be made when encroachers are from this category, i.e., the encroachment can be regularised or allowed. Similarly, one of the largest categories observed are indigent persons or slum dwellers (in 31 cases).

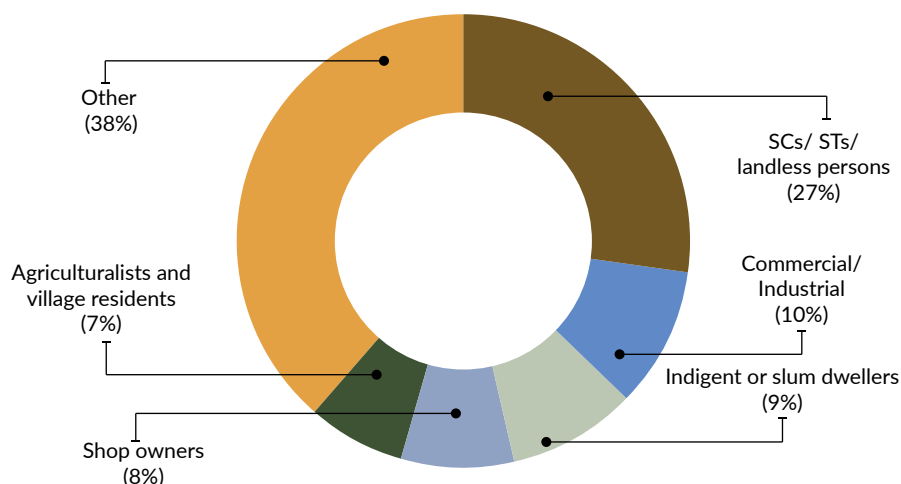
In comparison, commercial/ industrial companies can be seen to encroach on public land in 36 cases (10.3% of 348 cases). The government itself was recorded as having encroached on public lands, often water bodies, in 19 cases (5.5% of 348 cases). In 25 cases (7.18% of 348 cases), the court alluded to the alleged encroacher as 'influential persons', persons from 'superior class' or similar. In one of these cases, the Court referred to the individual as a "rank land grabber having encroached upon huge public land of about 21,000 sq.ft."⁵⁹. This category includes state officials or their relatives acting in a personal capacity but taking advantage of

Table 4: Distribution of cases based on identity of encroachers

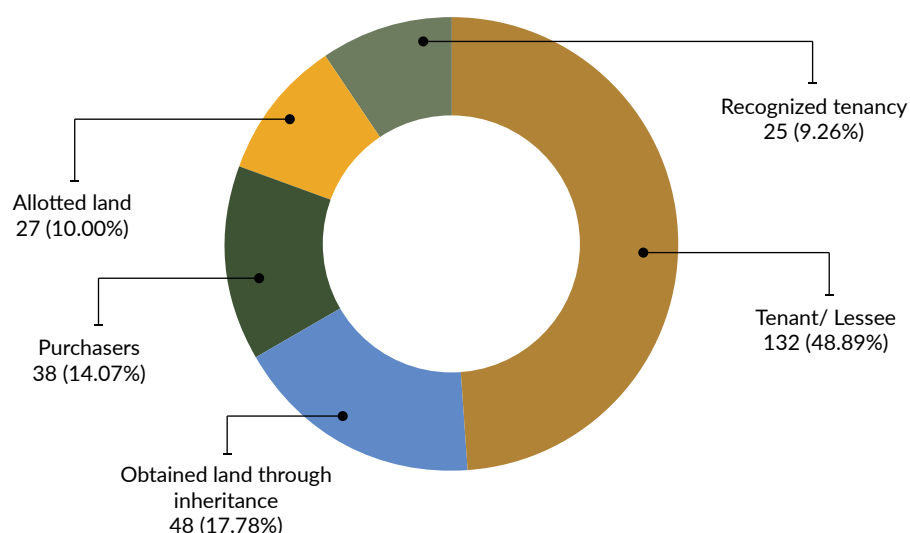
Identity of Encroacher based on Explicit Descriptions by the Court	No.
SCs/ STs/ landless persons	94 (27%)
Commercial/ Industrial	36 (10.3%)
Indigent or slum dwellers	31 (8.9%)
Shop owners	28 (8%)
Agriculturalists and village residents	26 (7.5%)
Influential/ political/ state officials	25 (7.2%)
Religious figures	22 (6.3%)
Other	20 (5.8%)
State	19 (5.7%)
Village official	16 (4.6%)
Educational institutes	14 (4%)
Religious minorities, refugees and migrants	10 (2.9%)
Elderly and/or people with disabilities	7 (2%)
Total	348

Identity of Encroacher based on Relationship with Disputed Land	No.
Tenant/ Lessee	132 (48.9%)
Obtained land through inheritance	48 (17.8%)
Purchasers	38 (14.1%)
Allotted land	27 (10%)
Recognized tenancy	25 (9.3%)
Total	270

Graph 9: Identity of Encroacher based on Explicit Descriptions by the Court



Graph 10: Identity of Encroacher based on Relationship with Disputed Land



their proximity to the state to usurp land. A similar trend can be seen with village officials, i.e., the sarpanch or their relatives, in 16 cases (4.6% of 348 cases). Notably, religious figures, i.e., officials from temples and other religious institutions, were also identified as encroachers in 22 cases (6.32% of 348 cases).

Further classification of these categories into groups of encroachers, who are potentially marginalised (i.e., persons from SCs/STs and landless persons, indigent persons, religious minorities, poor agriculturalists and petty shop owners), indicates that this set of encroachers comprise over half (56.3% of 348 cases) of the cases where information is available about the identity of the encroacher.

Additionally, classification of encroachers based on influence and capital (such as in the case of influential figures, state or village officials, commercial/ industrial initiatives and religious

figures) helps identify possible motives behind the encroachment. The *Jagpal Singh* judgment states that encroachment of common land is carried out by “unscrupulous persons using muscle power, money power or political clout”⁶⁰ for “personal aggrandisement” at the cost of the community dependent on the land, i.e., that encroachment is carried out by individuals with money and power for the express reason of personal enrichment. This categorization helps us identify such encroachers and see how courts have dealt with them. This category however, only comprises 34% of the 348 cases. An analysis of the rate of evictions for these two larger categories has been carried out in the next segment of this report.

In the majority of cases analysed, only the facts of the case would be mentioned, such as the history of the land in question and any transactions that have taken place. Thus, along with explicit mentions of the professions and/ or socio-economic class of the alleged encroachers, it is necessary to create categories based on the relationship that the individual has with the land. Thus, in certain cases, classifications based on how the alleged encroacher has acquired the land have been recorded.

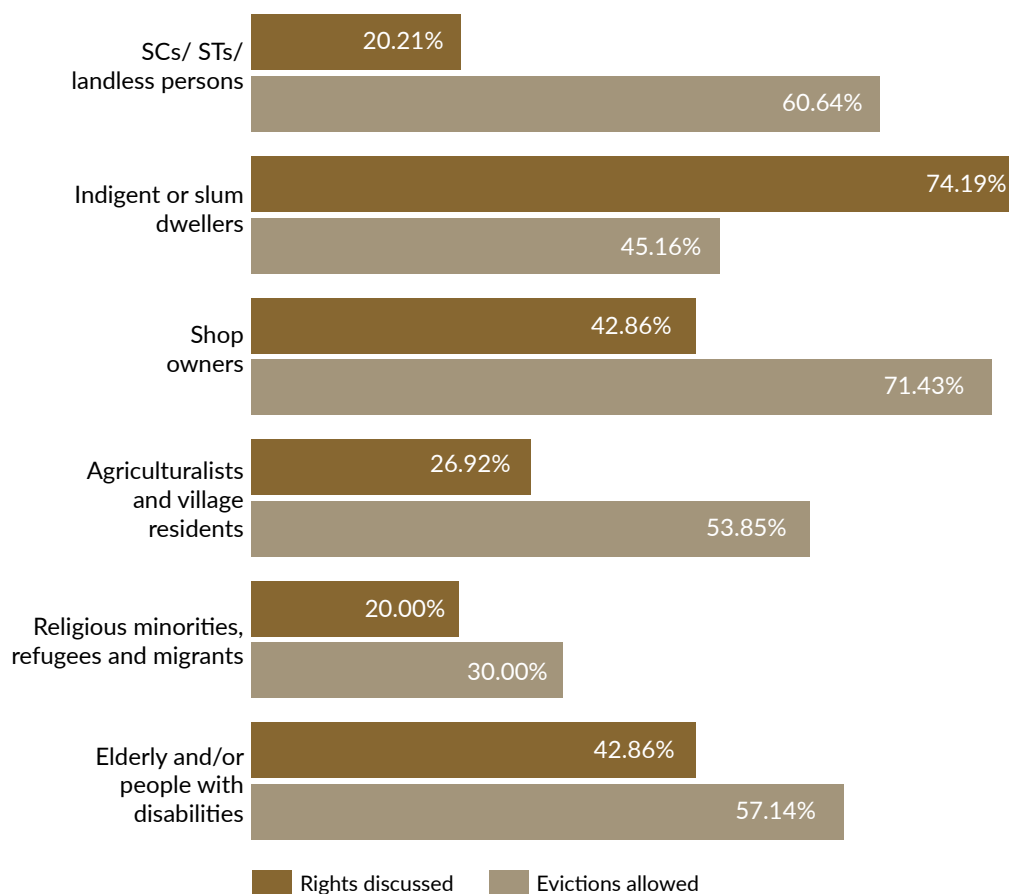
For instance, individuals who have used sale deeds as proof during the course of the court proceedings or have submitted that they have bought the land from someone who was already encroaching on public land have been mentioned as purchasers. Recognized tenancy as a category is used to denote individuals who have contended that they have claim over the disputed land on the basis of pre-existing tenurial rights. For instance, several cases in Punjab see individuals claiming right over the land as *bhonedars* and *dholdhars*. Similarly, in Uttar Pradesh, *bhumidhari* rights are claimed on the basis of pre-existing tenurial classes.

By creating these classifications, it is possible to understand how Courts balance the pre-existing rights of an individual with the allegation of encroachment. Further, in the case of purchasers, tenants and lessees, it is possible that the encroacher is simply the subject of a fraudulent sale or lease. Similarly, cases of allotment indicate the complicity of government agencies in wrongly or fraudulently allotting lands to unsuspecting people.

Lastly, after creating the larger classification of encroachers based on identity and influence, it is possible to analyse the approach of the court towards such groups through the rate of evictions being allowed and discussion on rights of encroachers. Graphs 11-13 provide the distribution of orders based on discussion of rights and evictions being allowed across different categories. From graph 11, it is evident that the category of potentially marginalised encroachers sees a low rate of rights being discussed compared to the rate of evictions being carried out. For instance, the category of persons from Scheduled Castes/ Scheduled Tribes or landless persons sees a clearly low rate of rights being discussed (20.21%) and an extremely high rate of evictions (60.64%). The category of indigent persons or slum dwellers sees a high rate of rights being discussed (74.19%), but an even rate of evictions (45.16%) This indicates that a higher rate of discussion of rights does not necessarily correlate to favourable orders preventing eviction. As a whole, this category sees evictions being carried out in 57.14% of the cases.

Graph 12 denotes the category of encroachers having potential influence and power. However, a necessary caveat must be added that this categorization is based on the judgment text alone and it is not possible to independently verify the actual socio-economic class of such persons. This category sees harsh and critical judgments being passed against the encroacher, particularly for influential/political figures and religious figures. This has also led to a much higher rate of eviction in both categories (60% and 68.18% respectively). Notably, encroachers who engage in large-scale commercial or industrial interests only see a 50% rate of eviction. This category also sees a similar rate of evictions overall (56.78%).

Graph 11: Proportion of cases in which evictions and rights were discussed for encroachers (out of total cases in each category) who are potentially marginalised

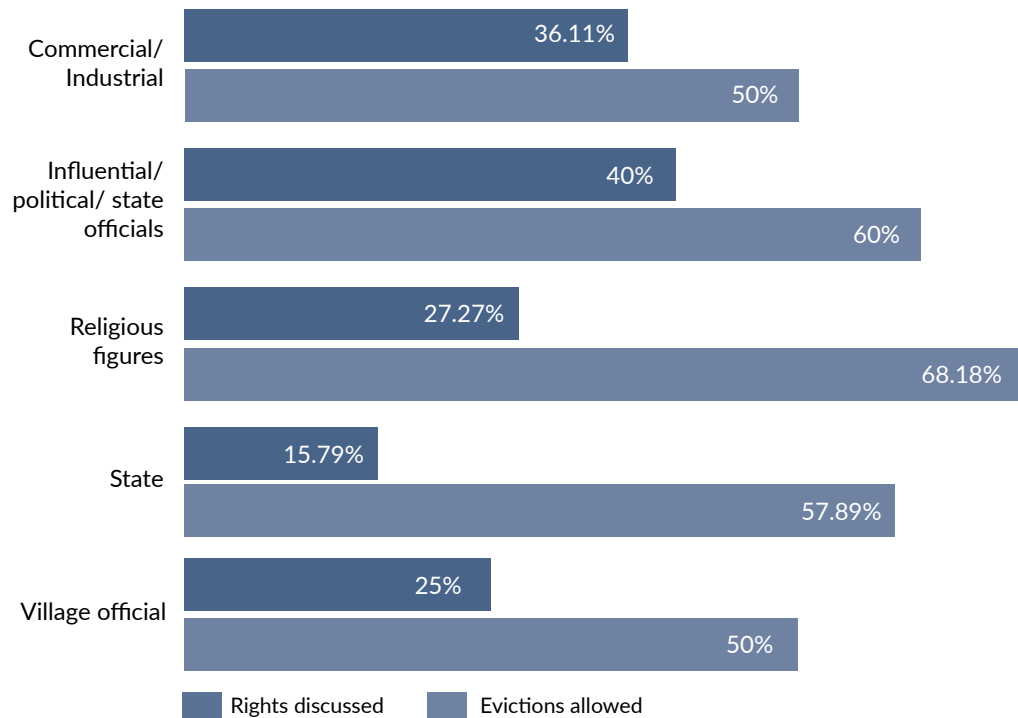


Lastly, graph 13 denotes the rate of evictions and discussion of rights based on the relationship of the encroacher to the disputed land. Significantly, tenants/ lessees who have been classified as encroachers see the highest rate of evictions (65.91%). Individuals who have recognized tenurial rights (such as in the case of bhumidhars or similar) see the lowest rate of discussion of rights (24%). Overall, only 36.67% of the cases for the categorization based on relationship to land see any discussion on the rights of the encroacher. The overall rate of evictions in this category is 60.74%.

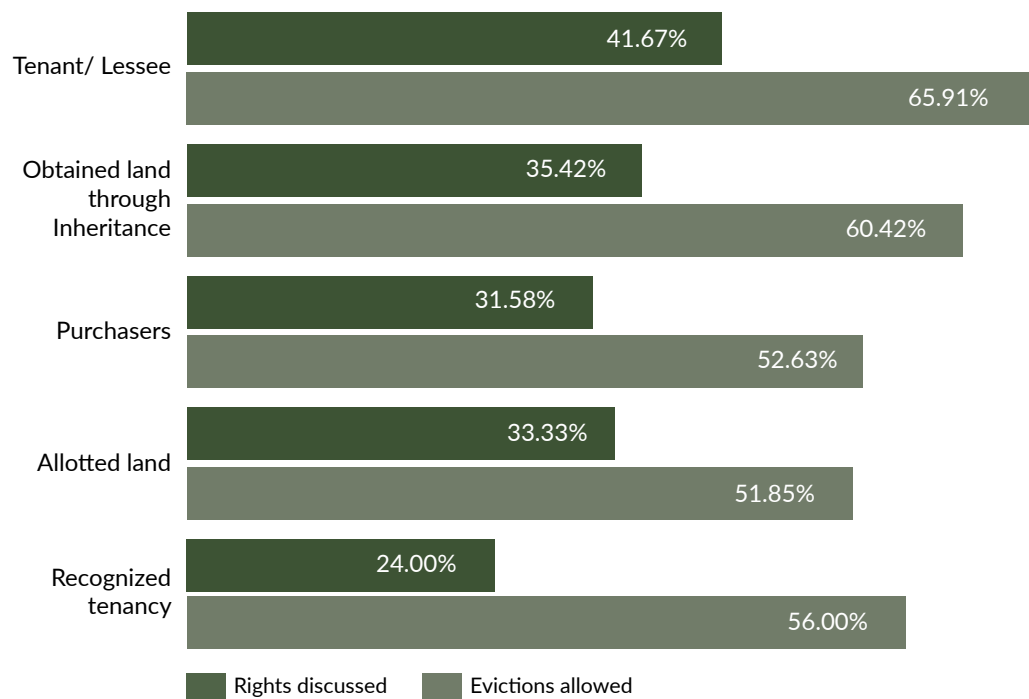
■ STATE-SPECIFIC JUDICIAL TRENDS SURROUNDING ENCROACHMENT

From the 1630 cases analysed, several judicial trends could be observed from cases emerging from 7 High Courts. Cases from these High Courts comprise 74% of the total cases analysed. The next segment captures indicative state-specific key trends surrounding encroachment on common land. The complete analysis from these states is included in Appendix IV. The aim of this analysis is to have an indicative understanding on differing approaches of the Courts to managing encroachment on common lands and safeguarding individual rights in tandem with state-specific policies.

Graph 12: Proportion of cases in which evictions and rights were discussed for encroachers (out of total cases in each category) who potentially have influence and power



Graph 13: Proportion of cases in which evictions and rights were discussed for encroachers (out of total cases in each category) based on their relationship to the land



1. In Tamil Nadu, 42.8% of the cases (122 out of 285 cases) analysed involve water bodies being encroached upon. This is primarily due to the high number of cases falling under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 ('Tanks Act'). 29% of the cases in the state relate to temple property due to the prevalence of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959. The majority of these cases dealt with rent recovery from tenants who had rented space on the temple property. It is worth noting that 75% of these cases ended with evictions being allowed. Total 24 cases from Tamil Nadu involve indigent persons or persons from Scheduled Castes/ Scheduled Tribes. 12 out of these 25 cases (50%) see eviction being allowed.
2. In Uttar Pradesh, there is a predominance of village lands (52%) being affected. It is worth noting that with respect to village lands, 45.63% of the cases ended in allowing eviction. 49 cases from this High Court involve indigent or landless persons, or persons from Scheduled Castes/ Scheduled Tribes. 26 of these cases (53%) end in eviction being allowed.
3. In the union territory of Delhi, 62% of all cases vaguely mention unauthorized constructions as the nature of encroachment. The majority of these cases are governed by the Delhi Municipal Corporation Act, 1957 and see encroachments occurring on public land and residential areas.
4. In Punjab, 79% of the cases analyzed deal with encroachment on *shamlat deh*, *abadi* and panchayat land. In the cases where data regarding the identity of the encroacher is available, it is apparent that the majority of the cases deal with agriculturalists who have formal tenurial rights over the land, or landless persons. These encroachment cases all fall under the Punjab Village Common Lands (Regulation) Act, 1961. Cases under this act often first have the establishment of the nature of the land, as the question of encroachment under this act can only be explored if the encroached land is *shamlat deh* land. In such cases, the Court often referred the matter back to the revenue authority to decide the nature of the land first.
5. In Madhya Pradesh, 71% of the cases analyzed explicitly dealt with government land, including municipal land. All of these cases were governed by the Madhya Pradesh Land Revenue Code, 1959. It is notable that the Code has provisions which allow encroachers to claim regularization for agricultural and residential purposes⁶¹. However, landless agriculturists rarely claimed the benefit under such provisions in these cases. Only three cases involving landless labourers saw the benefits under the Revenue Code being claimed⁶². In all three cases, the Court remitted the case back to the competent authority to be decided in accordance with prescribed law.
6. In Andhra Pradesh, the majority of cases under the Andhra Pradesh Panchayat Raj Act, 1994 deal with encroachment on government land, including poramboke (35 cases). The flagship scheme of the state government '*Navaratnalu-Pedalandariki Illu*' (i.e., housing scheme for the poor) was mentioned in several cases. The haphazard manner in which the scheme was announced⁶³ without prior identification of the land led to several cases where the state government proposed converting open plots, which had already been earmarked for building schools, temples, community halls and parks, into housing plots⁶⁴.



[7]

WHAT DOES DATA FROM THE LAND CONFLICT DATABASE SHOW ABOUT CONFLICTS OVER COMMON LAND?



31

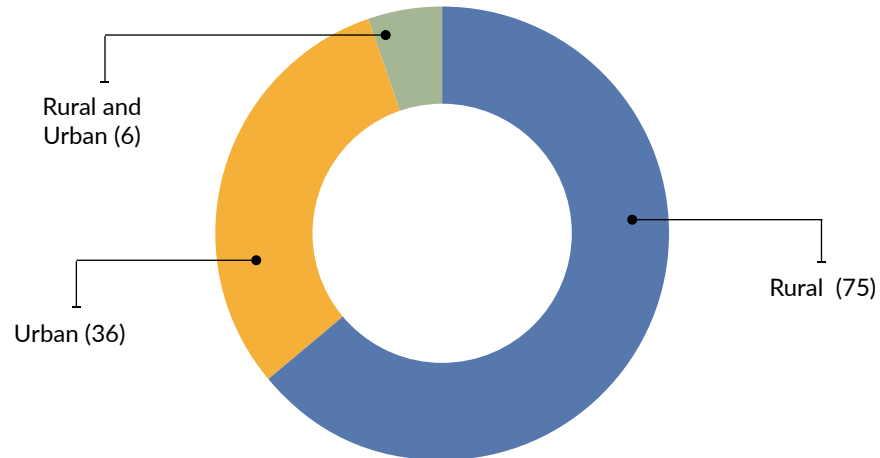
■ OVERVIEW

Out of 757 ongoing conflicts in the Land Conflict Watch database documented till March 2023, 131 pertain to the issue of encroachment in some way. At the time of writing this report, 6 conflicts have ended. At the outset, it should be noted that these conflicts, by definition either involve a community of people as one of the parties, or involve public interest in some way. The database does not include conflicts between private parties.

Out of these 131 conflicts regarding encroachment, 117 (89%) involve common land in some way. These conflicts affect a total of 12,93,762 (12.9 lakh or 1.3 million) people and span over 313432.79 (3.1 lakh) hectares of land.

Graph 14 shows the distribution of these conflicts by region. A clear majority (64.1%) of the conflicts have occurred over rural areas and nearly 70% (69.2%) of conflicts involve rural common land.

Graph 14: Distribution of land conflicts involving encroachment by region

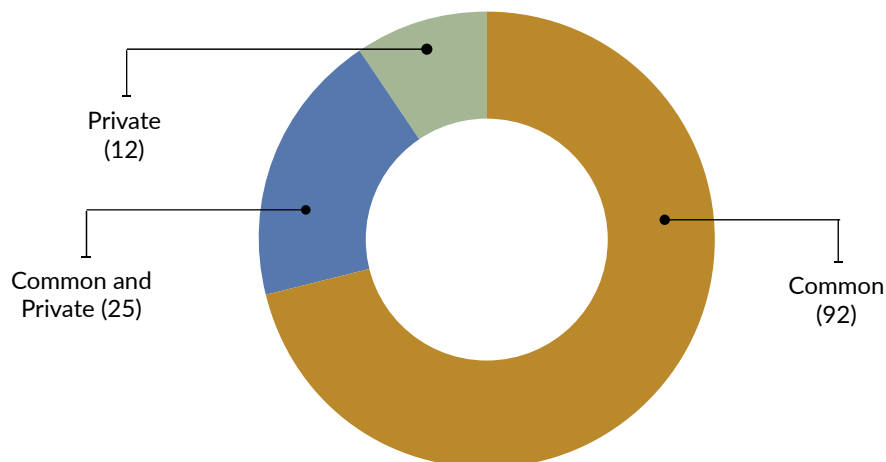


This data pertains to 757 conflicts from the Land Conflict Watch database. Out of these, 131 conflicts involve the issue of encroachment in some way and 117 involve encroachment of common land.

■ TENURE TYPE OF LAND AND TYPE OF COMMON LAND:

The LCW database classifies the conflicts by tenure type of land as either common land or private land. Common land here notably refers to land over which no individual person has ownership, and land which a group of people have historically managed and used. As seen in graph 15, the majority of the conflicts involving encroachment occur over common lands (71.32%).

Graph 15: Distribution of land conflicts involving encroachment by land type



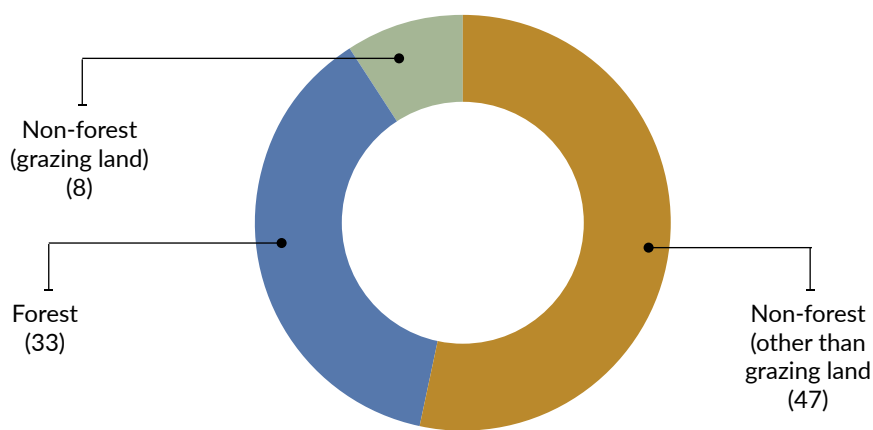
This data pertains to 757 conflicts from the Land Conflict Watch database. Out of these, 131 conflicts involve the issue of encroachment in some way.

■ TYPES OF COMMON LAND

The LCW database further uses the classification of sub-type of common lands to understand challenges faced by communities in different kinds of commons. This classification has led to two major categories - forested commons and non-forested commons. Non-forested commons can include grazing land, water bodies, and village land, among others.

53.4% of conflicts for which the forest-non forest classification is available, involve non-forest land other than grazing land. 37.5% of conflicts are over forested common land, while a meagre 9% involve grazing land (graph 16).

Graph 16: Distribution of land conflicts involving encroachment by type of common land



This data pertains to 88 conflicts concerning encroachment over common land, for which this classification is available

■ SECTORS

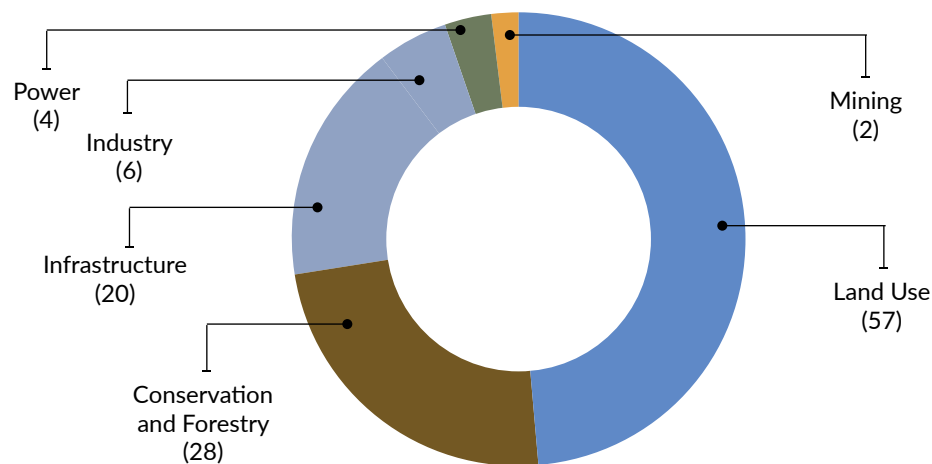
The LCW database categorises different kinds of land use by sectors. The six sectors include commercial activities, namely infrastructure, industry, mining and power, as well as issues arising out of Conservation and Forestry. The Land Use sector comprises activities which do not fall under any other category, and see the government not being directly involved in acquisition or diversion of the land. Examples of these include communal, ethnic and caste-based conflicts, as well as encroachment by non-right holders (other than caste-based).

Out of the 117 conflicts involving encroachment of common land, nearly half (48.7%) are classified under the land use sector (Graph 17). The other notable sector is Conservation and Forestry (23.9% of conflicts), due to the numerous instances of state forest departments evicting forest-dwelling communities labelled “encroachers”. The rights of these forest-dwelling communities are recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 ('FRA'). These rights include the right to hold and live on forest land, the right of ownership, collection and usage of minor forest produce and most significantly, the right to not be displaced from their land without due compensation.⁶⁵

Whereas the FRA framework does fall short at the stage of enforcement, it recognizes statutory rights of forest-dwelling communities and necessarily reinstates their rights over their customary land, and moves them from the category of encroachers into one of rights holders.⁶⁶ Notably, the failure of the executive to enforce such rights can be further

exacerbated by courts, such as the Supreme Court in 2019, when it directed the eviction of more than 1 million tribals and other forest-dwelling households whose claims under FRA had been rejected.⁶⁷

Graph 17: Distribution of land conflicts involving encroachment by sector

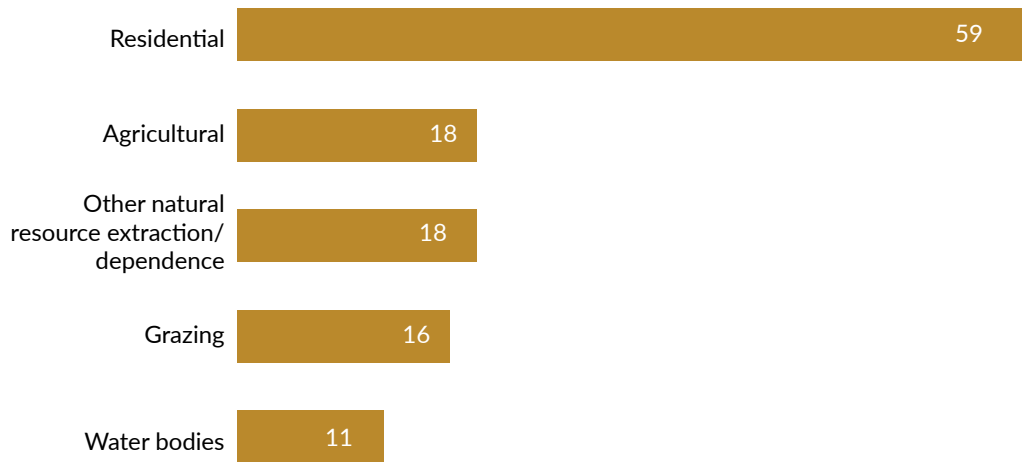


SIGNIFICANCE OF LAND TO COMMUNITIES

34

It can be seen from graph 18 that out of 117 conflicts involving encroachment of common land, in an overwhelming majority (50.4%), the land is being used by the community for residential purposes. This is followed by land use for agricultural purposes (15.3%), other natural resource extraction or dependence (15.3%), and grazing (13.6%).

Graph 18: Most frequently occurring significance of land in land conflicts involving encroachment

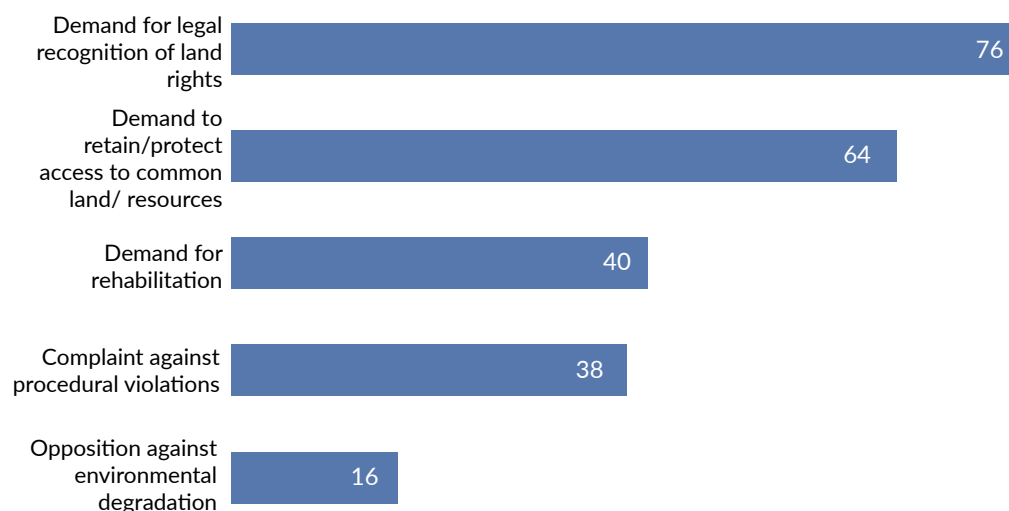


This data pertains to 757 conflicts from the Land Conflict Watch database. Out of these, 131 conflicts involve the issue of encroachment in some way and 117 involve encroachment of common land.

■ DEMANDS BY AFFECTED COMMUNITIES

The most frequently occurring demand of affected communities in conflicts involving encroachment is the demand for legal recognition of land rights, followed by a high demand to retain or protect access to common land (graph 19). Demands for rehabilitation are also common, seen made by communities who have been displaced and/or evicted from their homes. Complaints against procedural violation (such as non-serving of a notice before eviction) and complaints against environmental degradation are also common.

Graph 19: Most frequently occurring demands/ contentions of affected communities in land conflicts involving encroachment



This data pertains to 757 conflicts from the Land Conflict Watch database. Out of these, 131 conflicts involve the issue of encroachment in some way and 117 involve encroachment of common land.

In conflicts where demands for legal recognition of land rights have been made, in 42 conflicts (55.2%) of the land is forested, pointing towards a serious gap in the implementation of the Forest Rights Act, 2006.

■ LEGISLATIONS MOST COMMONLY APPLICABLE

The piece of legislation most commonly applicable to encroachment conflicts where common land is involved is the Forest Rights Act, 2006. The implication of this is that traditional inhabitants of forest land (over which private land titles are not granted) are being labelled encroachers and in many cases, evicted, despite the Forest Rights Act prohibiting eviction of forest-dwellers until the process of recognition and settlement of forest rights is complete. The next most frequent legislation to these conflicts is the Constitution of India, most often applicable when a community's fundamental rights have been violated in the course of the conflict.

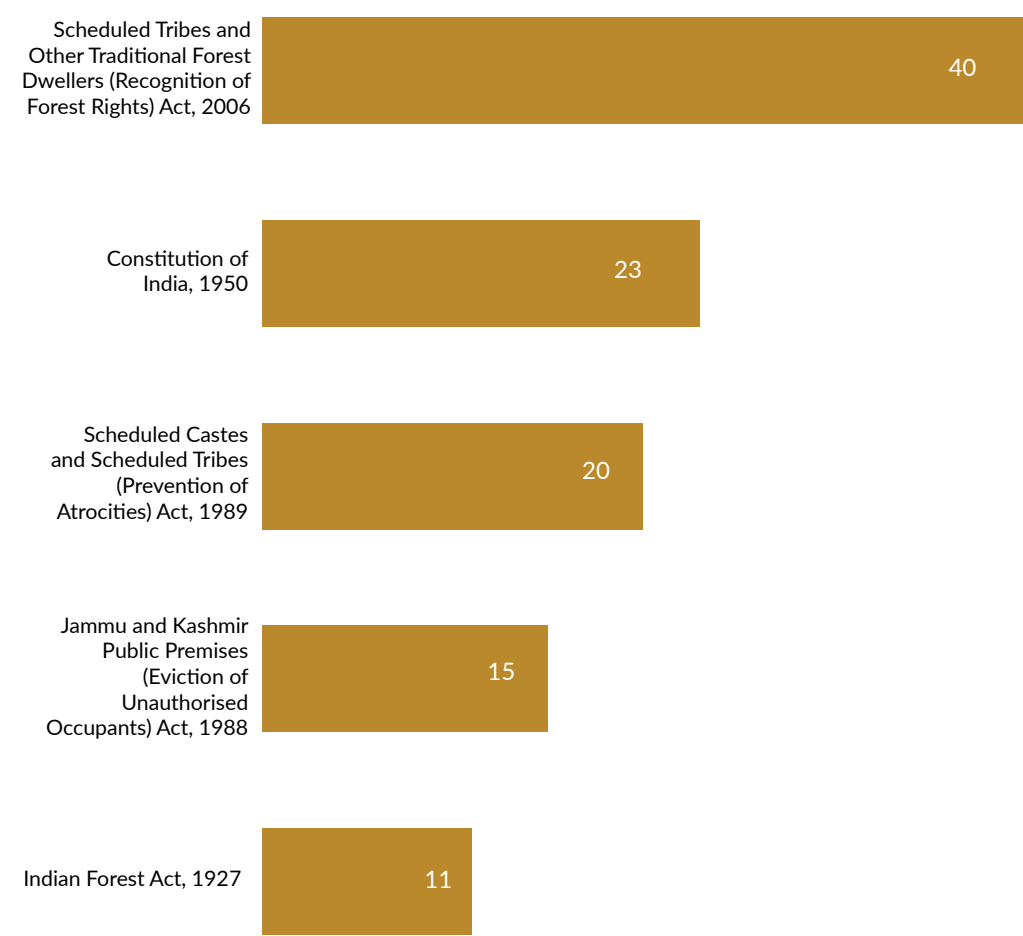
With regard to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, it is usually violence against a member of a scheduled caste or scheduled tribe community that attracts this law. Displacement of a scheduled caste or scheduled tribe individual would also be an atrocity punishable under this Act. Therefore, the application of this law to 20 conflicts

points towards the involvement of scheduled caste and scheduled tribe communities in at the very least, 20 cases and the applicability of this law indicates the violent nature of the conflict when such marginalized communities are involved.

The Jammu and Kashmir Public Premises (Eviction of Unauthorised Occupants) Act is one of a similar crop of central and state legislations empowering municipal authorities to evict encroachers from public land and property. They lay down a detailed procedure for such evictions, however, most importantly mandating the serving of a notice to the supposedly infringing party and the provision of a hearing before the occupant is ultimately evicted. In a number of cases, these safeguards are not adhered to.

The Indian Forest Act is also applicable to 11 cases as seen in Graph 20, as one of the most significant legislations applicable to conflicts of encroachment over common land. The Indian Forest Act provides a blanket restriction on entry into certain forest areas and thereby criminalises those who inhabit these areas as well. This law, especially when coupled with legislation such as the Wild Life Protection Act disproportionately impacts forest dwelling and tribal communities and often leads to their very existence being criminalised.⁶⁸

Graph 20: Most frequently applicable legislation in land conflicts involving encroachment

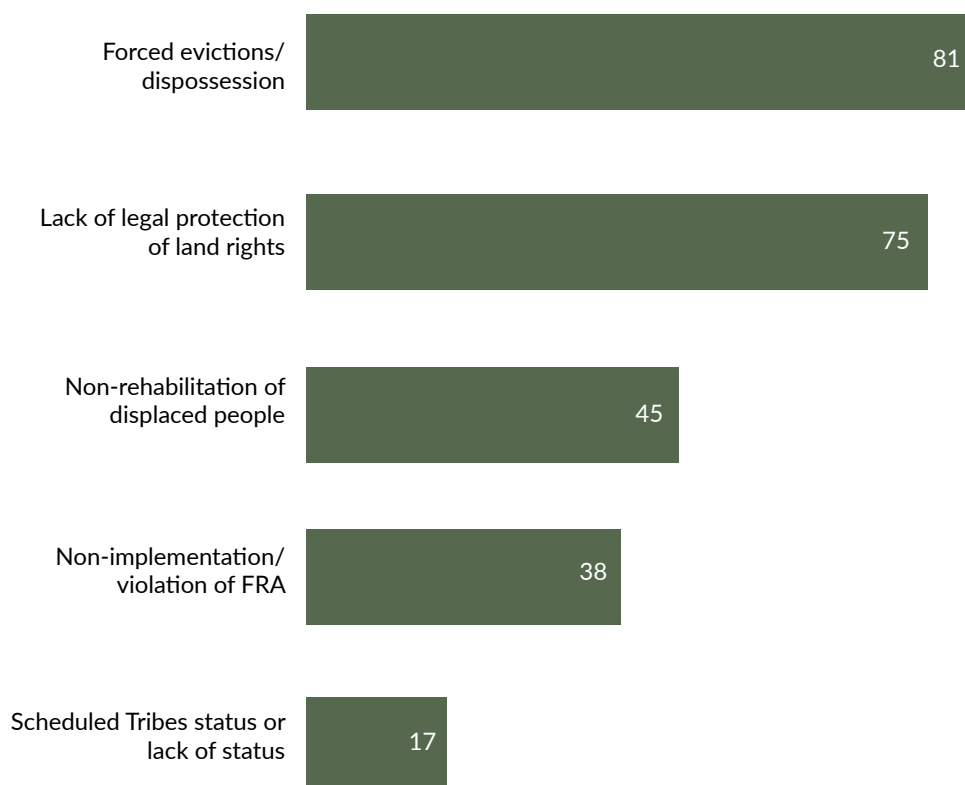


This data pertains to 757 conflicts from the Land Conflict Watch database. Out of these, 131 conflicts involve the issue of encroachment in some way and 117 involve encroachment of common land.

■ CONTENTIOUS LEGAL ISSUES

The LCW database also involves an independent legal analysis of the conflict to identify contentious legal issues emerging from the conflict. Graph 21 shows that when encroachment of common land is involved in the conflict, the most frequently occurring contentious legal issues are forced evictions/ dispossession, a lack of legal protection of land rights and non-rehabilitation of displaced people.

Graph 21: Contentious legal issues most frequently emerging from conflicts involving encroachment



This data pertains to 757 conflicts from the Land Conflict Watch database. Out of these, 131 conflicts involve the issue of encroachment in some way and 117 involve encroachment of common land.

“Scheduled Tribe (ST) status or lack of status” is a contentious legal issue based on identity. How do conflicts from which this issue emerges play out?

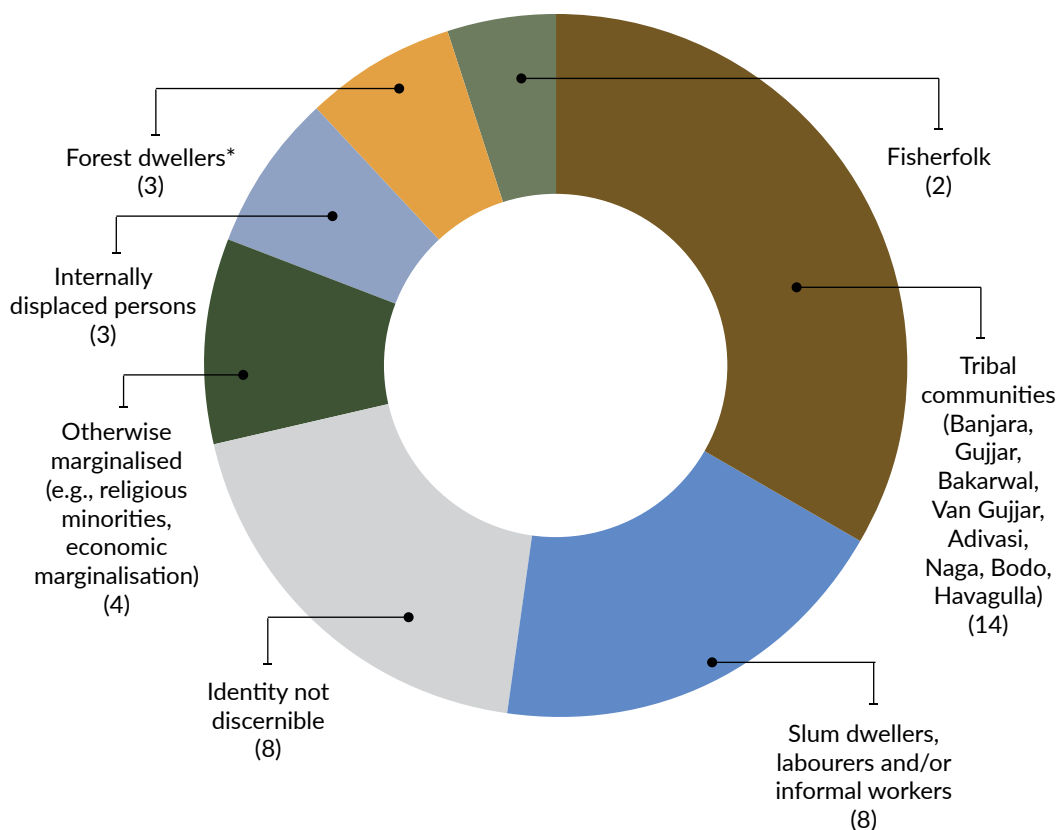
12 conflicts out of 17 (70.5% of conflicts where ST status or lack of status is an issue) concern nomadic communities being labelled encroachers over the land they inhabit. The communities are primarily the Van Gujjars of Uttarakhand and the Gujjar and Bakarwal communities of Jammu and Kashmir. These conflicts range from the community seeking scheduled tribe status to try and get their traditional forest rights recognised after being evicted from forest land, to their homes being forcibly demolished and them being evicted from grazing land being used as their primary source of livelihood.

Other conflicts concern non-nomadic communities but display similar trends. In Bhil Farmers in MP's Ratlam Face Risk of Eviction from Industrial Cluster, twenty-one families

belonging to the Bhil tribal community face the threat of being evicted from farmland in Karamdi village on the outskirts of Ratlam city. On paper, the land belongs to the government and is classified as grazing land. The Bhils, on the other hand, who are landless and grow food on their farms, claim to have been cultivating this land for nearly a century and to have been recorded in revenue surveys dating back to 1967.

Some targeted eviction drives against members of the adivasi and scheduled tribe communities have often resulted in violence against the communities. In *Multiple Eviction Drives in Assam Targeting Adivasis Displace Thousands, Houses Torched*, members of both the Adivasi and Bodo communities have faced multiple violent eviction drives – involving houses being torched and vandalised – over the past four decades by multiple governments and administrations. One of the eviction drives, carried out in 2010 was so brutal that one house was torched while a two year old child was sleeping inside a hut. The child later succumbed to his injuries. Despite being labelled as encroachers, experts maintain that the communities are

Graph 22: Identities of encroachers in conflicts where communities were forcibly evicted without rehabilitation



*The category of "forest dwellers" include both tribal and non-tribal forest-dwelling communities in cases where the subcategory was not discernible. entitled to forest rights over the land under FRA.

This data pertains to 757 conflicts from the Land Conflict Watch database. There are 42 conflicts in which communities have been forcibly evicted without rehabilitation, out of 117 conflicts which involve encroachment of common land.

■ WHICH OTHER MARGINALISED GROUPS ARE IMPACTED BY CONFLICTS OF ENCROACHMENT OVER COMMON LAND?

The *Jagpal Singh* decision identified Scheduled Castes, Scheduled Tribes and landless groups as being groups deserving of exemption from strict enforcement of eviction from common land. Among the encroachment-related conflicts in the LCW database, seven conflicts involve members of the Dalit community being labelled encroachers and/or being evicted from common land. In *Eviction of Dalit families sparks protests in Dehradun's Tarla Aamwala*, over a dozen Dalit families were evicted by the Dehradun Municipal Corporation without as much as prior notice. Eight conflicts involve landless communities, and most labelled encroachers seek regularisation of their rights over the common land.

There are 42 conflicts (Graph 22) in which communities have been forcibly evicted/dispossessed from their land AND not been rehabilitated. These are the primarily contentious legal issues emerging from these conflicts. What is the breakdown of the identities of communities impacted by these conflicts?

Over 80% (80.9%) of conflicts where “encroachers” were forcibly evicted without rehabilitation involve marginalised communities. 100% of such conflicts where the identities of the communities were discernible, involve marginalised communities.

[8]

KEY ISSUES:

MOVING BEYOND JAGPAL SINGH



40

In *(Un)Common Verdicts*, LCW analyzed 325 High Court cases which cited the Jagpal Singh judgment. The aim of the report was to understand how the judgment has been applied throughout the country in the decade following its passing. However, through our research, we found that the judgment has been utilized to largely justify evictions without passing directions for the protection of the common land.

Through the research in this report, it is evident that courts largely do not discuss the identity of the encroachers or nature of encroachment. There is an overwhelming emphasis on defining the kind of land as opposed to providing details as to the nature of encroachment or the identity of the encroacher. Only 348 out of 1630 cases contained signifiers of the encroacher's identity. Whereas other classifications can be made based on the relationship of the individual to the disputed land, without key facts regarding the affected person's socioeconomic status and/ or profession, it is difficult to ascertain whether the court is taking

cognizance of necessary mitigating factors. Further, without a full recording of these necessary facts, judgments can be used as harmful precedents in the future and encourage uniform eviction orders without looking at mitigating factors such as the encroacher's traditional and cultural rights, their economic status, caste, class, religion and their relationship with the land.

Further, the most frequently occurring use of land in the High Court cases as well as land conflicts is for housing (as seen in 229 cases). The right to housing and rehabilitation is guaranteed under Article 21 of the Indian Constitution is an extension of the right to life, and has been repeatedly affirmed by Indian Courts⁶⁹. However, there is little or no discussion of this when considering the rights of encroachers. The most frequent discussion of rights in the High Court cases pertain to the principles of natural justice, which are considered an extension of Article 14⁷⁰. However, there is little discussion regarding the safeguarding of rights under Article 21, which include the right to live with dignity meaning adequate nutrition, clothing and shelter⁷¹.

The research in this report is limited in its ambit, such that it only considers legislation mentioned in cases citing *Jagpal Singh* and subsequent high court cases based on such legislation. This has given us a wider understanding of eviction cases where the *Jagpal Singh* judgment has been used and prevailing state policies applicable in such cases. In *(Un)Common Verdicts*, LCW found that the *Jagpal Singh* judgment has been utilized in cases not dealing with encroachment.

Through this report, it is apparent that de facto classification of encroachers is being done not only in traditional encroachment cases but also, in cases of allotment, land acquisition and other property disputes. This is a dangerous trend which invisibilizes the role of the government in fraudulently or recklessly allotting land that is not meant to be allotted or acquiring land in a manner which does not hear objections from landowners. An explicit and clear legal framework is necessary which prohibits classification of encroachers through such legal processes and prevents forced evictions and dispossession of land.

A mere 6% of the cases analysed cite *Jagpal Singh*. As noted in *(Un)Common Verdicts*, the judgment has been cited to increasingly protect government land as opposed to common land which is utilized by all. Through the research in this report, it is evident that eviction from public land is largely done to protect government land as opposed to the commons. Analysis of certain state policies revealed that some state governments had progressive policies for regularisation of encroachment based on the socio-economic status of the encroachers. However, due to the pressure of the Supreme Court in 2011, several states framed new schemes with a renewed emphasis on eviction of encroachers. Few retained provisions which would create exceptions for the landless/ SCs and STs. Further strategies to help preserve the commons must necessarily be state-centric and focus on ensuring accountability from the state government based on its prior history of regularisation and management of commons.

The legal framework surrounding land encroachment itself is complicated due to multiple reasons. Multiple legislations are used and cited in a singular case despite notice being issued under only one legislation. In some cases, this would mean two different kinds of government authority carrying out evictions. The conflation of multiple legislations and duties vested in different government departments could suggest an all-encompassing need from Courts to carry out anti-encroachment action. This is exponentially made worse for stakeholders as each state has different land tenure systems as well as a different approach to encroachment. Moreover, such a legal system would be increasingly hard to navigate and would make seeking legal recourse against unjust eviction even more difficult. The use of police action in some states to remove encroachments further adds to the victimisation of evictees.



[7]

CONCLUSION



This research report outlines four different understandings of encroachment as a concept - encroachment as defined in Indian statutes, enacted by the state governments, characterised by courts in case law, and as analysed through ongoing land conflicts. Through the analysis of legislations which deal with encroachment, the following can be inferred:

- There is a clear emphasis on carefully defining each part of the land sought to be protected from encroachment. Different state legislations across the country go to different lengths to define unoccupied, unalienated and public lands all under the umbrella of government lands.
- However, such emphasis is noticeably absent in defining the process of encroachment itself and any further details about the procedure of evictions. Such details include the requirement to serve prior notice to encroachers and defining the time period given for answering said notice, and instances in which encroachment can be allowed or regularised. Whereas provisions for appeal largely exist in statutes for aggrieved persons, there is no legislative backing for what kind of mitigating factors should be considered by revenue officials when deciding cases of encroachment. Without clarity on these concepts, the fundamental rights of the encroacher to equality before the law are jeopardised.

Through the analysis of the 8 executive policies and surrounding government action, the following can be understood:

Even prior to 2011, state governments took action to remove encroachment from common lands. However, as seen in the case of some states, prior policies and pre-existing legislation often had provisions for regularisation of encroachment in cases of backward classes.

Through the analysis of the 1630 high court cases concerned with encroachment and its removal, the following can be inferred:

- A clear majority of the cases ended in the Courts issuing directions for evictions or allowing eviction to be carried out. Further, more than half of the cases did not involve any discussion on the rights of the encroacher. By comparing the number of evictions allowed to its corresponding number on the discussion on rights, it is evident that that where the rights of the encroacher were not discussed, evictions were allowed to be carried out at a far higher rate (58%)
- Further, over half of the cases (56%) did not have substantial details on the nature of encroachment. In contrast, there has been a deliberate effort on the Court's part to emphasise the nature of the encroached land more clearly. The most frequently occurring categories of encroachment are housing and cultivation (collectively 20%). In contrast, village land (30%) and government land (21%) are the most frequently occurring categories for the disputed land.
- Only 38% of the cases contained any details of the identity of the encroacher. The largest category of encroachers identified are persons from Scheduled Castes or Scheduled Tribes or landless persons (in 94 cases and 5.7% of the total cases). It is possible to identify encroachers based on their relationship to the land. However, only 36.67% of the cases for the categorization based on relationship to land see any discussion on the rights of the encroacher. Whereas the rate of evictions is comparable to the other categories (60.74%), a higher rate of evictions can be distinctly observed with tenants/ lessees and those who have inherited their land.

Lastly, the data from the LCW database has been useful for capturing land conflicts which happen on the ground as well as in court. Conflicts involving encroachment overwhelmingly occur on common lands (70.2%), with a clear and large majority happening on non-forested lands other than grazing lands. The most frequent legal issues concerning these conflicts are forced evictions/ dispossession and lack of legal protection of land rights. Through an analysis of this data, it is evident that the land in these land conflicts is most often used for residential purposes (in 50.4% of the cases).

Data from the LCW Database further reveals that land conflicts involving encroachment often involve nomadic communities being labelled encroachers over the land they inhabit. Further, targeted eviction drives against members of the adivasi and scheduled tribe communities also reflect brutality against these communities.

The research in this report has revealed the multiple complexities entrenched in the land and revenue legal system of India. Due to each state having its own complex legal framework and tenure rights system, it would be difficult for a single Supreme Court judgment such as *Jagpal Singh* to comprehensively address the problems faced by commons in India. Further, despite *Jagpal Singh* characterizing encroachers as people with money and power to usurp land, the research in this report reveals that the affected population are often poor and marginalized communities.

Orders like *Jagpal Singh* seek to protect the common lands from encroachment, given that the ownership and management of the land is vested with the government. However, the blanket implementation of the orders only seeks to alienate the communities dependent on such land by forcibly evicting them from their housing and place of livelihood. Further, by creating encroachers out of individuals who have received the land through allotment, sale or other valid legal proceedings, the state obscures its own role in the entire process. It is necessary that a robust system is established of granting protections to evictees from undue dispossession of land until reasoned orders can be passed by government officials and/or courts.

As the Rajasthan High Court observed, "We often forget that it is not out of choice that a person occupies land without title, a house with leaking roof and the walls which do not protect his family from cold winds."⁷²

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■ ABOUT LAND CONFLICT WATCH

Land Conflict Watch (LCW) is a multidisciplinary research agency that generates data and insights to address systemic issues underlying natural-resources transactions to minimise risks of businesses and socioeconomic vulnerabilities of communities. It has built the country's first and largest database of ongoing land disputes in which the public, or particular communities, are contesting changes in land use or ownership. These conflicts have been mapped on the LCW portal (<https://www.landconflictwatch.org>).



Land Conflict Watch

