

(UN)COMMON VERDICTS

**Analysis of Supreme Court
and High Court Judgments
on Common Lands**



**Land Conflict
Watch**

In partnership with



भारतीय प्रतिष्ठान
NATIONAL FOUNDATION FOR INDIA





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Publisher: Nut Graph LLP

Acknowledgements

We would like to thank Muhammad Ali Khan, Additional Advocate General for Chhattisgarh in the Supreme Court, for his valuable inputs throughout the drafting of this report. We would also like to thank Kanchi Kohli, senior researcher at Centre for Policy Research, for her valuable guidance in the preparation of this report. Their inputs have not only helped us conceptualise the report but also imagine the next stage of research. We look forward to carrying out future research in the field of commons and engaging with experts and stakeholders in the field.

We are grateful to the 102 researchers who have contributed to the Land Conflict Watch database over the past five years. Their work has helped add the voice of necessary stakeholders throughout the report. Finally, we are grateful to the readers and users of Land Conflict Watch for their continued enthusiasm and keen interest in our work.

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ANALYSIS OF SUPREME COURT AND HIGH COURT JUDGMENTS ON COMMON LANDS

1. Introduction

On January 28, 2011, in the landmark case of *Jagpal Singh and Ors. vs. State of Punjab and Ors.*¹ (*Jagpal Singh*), the Supreme Court directed state governments to create a framework to protect commons, i.e. public lands for communal use. It also directed state governments to submit reports from time to time on the steps taken to remove encroachments and restore the commons for the benefit of the community.

While *Jagpal Singh* did not lay down a new law as such, it was seen as a benchmark decision because it reinforced the importance and the need to protect village commons. State laws regulating commons have existed for decades, but *Jagpal Singh* pushed many states to frame new schemes to remove encroachments from public utility land.

This report studies the implementation of *Jagpal Singh* and analyses the enforcement of rights to the commons, with the objective of highlighting specific areas where legislative or judicial intervention is required.

Orders like *Jagpal Singh* often include sweeping directions, which could lead to both opportunities as well as eventual disadvantages. It is valuable to understand how such orders lose fidelity during implementation across diverse geographies, administrative systems and in this case, legislations governing lands.

In this context, we set out with the following research questions to measure the extent of implementation of *Jagpal Singh*:

1. How are commons understood legally in India? Is there a gap between how commons are understood theoretically and *Jagpal Singh's* understanding of commons?
2. To what extent has *Jagpal Singh* been enforced? And to what extent have states complied with the Supreme Court's directions and how have they done so?
3. How have the high courts applied the judgment? Has it been strictly applied or watered down? How have the high courts developed jurisprudence for the commons with their interpretation of *Jagpal Singh*?
4. From a fundamental rights perspective, what are the key issues that hinder the enforcement of the order in its spirit?
5. What does data from the Land Conflict Watch database show? How do conflicts over commons play out?
6. Is there a connection between the *Jagpal Singh* directions and the challenges faced on the ground in enforcing rights over common land?

To answer these questions, we conducted an analysis of over 110 submissions by state governments to the Supreme Court in *Jagpal Singh*, and 325 high court cases. We perused the filings to identify concrete schemes implemented or actions taken prior to *Jagpal Singh*. Further, we examined 325 substantive judgments passed by different high courts to identify judicial trends in the protection of common lands and eviction of alleged encroachers. This report documents the findings of our research.

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ANALYSIS OF SUPREME COURT AND HIGH COURT JUDGMENTS ON COMMON LANDS

We hope our findings will:

- a. Guide future judicial interventions for more effective protection of commons,
- b. Encourage a beneficial reading of *Jagpal Singh*, and
- c. Lead to better supervision and oversight of the implementation of the apex court's decision.

We believe our research will help policy makers, researchers, lawyers and other stakeholders in understanding past and ongoing judicial interventions in the governance of the commons.

Summary of Key Findings

1. There is a trend of high courts relying on *Jagpal Singh* in cases not only concerning common lands, but government land as well.
2. There is little discussion on the need to preserve common lands for communities which are dependent on them.
3. There is a need to re-examine the judicial understanding of “encroachment”. There is also a need to introduce more rigorous standards of record keeping in cases of alleged encroachment – a majority of the cases analysed did not mention the nature of encroachment, the identity of the encroachers and whether they belonged to protected groups.
4. *Jagpal Singh* allows an exception for regularisation of common land leased to the landless, the Scheduled Castes (SCs) and Scheduled Tribes (STs). But out of the 24 cases which explicitly concerned eviction of landless persons or SCs or STs, evictions were done in 15 and regularisation was ordered in only one case.
5. The table below provides a snapshot of how state governments responded to *Jagpal Singh* based on compliance reports submitted to the Supreme Court:

Nature of Response to <i>Jagpal Singh</i>	States/Union Territories	Number of States/Union Territories
New scheme framed/ would be framed	Assam, Chhattisgarh, Dadra & Nagar Haveli, erstwhile state of Jammu & Kashmir, Karnataka, Kerala, Mizoram	7
Existing legislation was reiterated	Andaman & Nicobar Islands, Bihar, Chandigarh, Daman & Diu, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, erstwhile state of Jammu & Kashmir, Jharkhand, Kerala, Madhya Pradesh, Maharashtra, Manipur, Odisha, Pondicherry, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand, West Bengal	23
<i>Jagpal Singh</i> was deemed inapplicable	Arunachal Pradesh, Lakshadweep, Meghalaya, Nagaland, Sikkim, Tripura	6

6. Only the state governments of Bihar, Jharkhand, Maharashtra, Odisha and Uttar Pradesh incorporated the exception for the landless/SCs and STs in the schemes, legislations and policies they cited in their filings.
7. Conflicts over common land, recorded in the Land Conflict Watch database, point to a lack of legal protection of rights over such land and patterns of forced evictions and non-rehabilitation of displaced persons. A framework for enumeration and vesting of rights over common lands in the manner that the Recognition of Forest Rights Act, 2006 provides, would serve as a safeguard for common land rights for their intended beneficiaries.

2. Methodology

The legal research for this report has been based on primary data, including an analysis of:

1. Over 110 filings submitted by state governments in response to the Supreme Court's directions in *Jagpal Singh*, with a focus on affidavits and compliance reports.
2. The provisions of some existing state legislations that deal with encroachment and its removal, as well as policies introduced after *Jagpal Singh*. The reports and affidavits were analysed for compliance with the Supreme Court's directions, adherence to fundamental rights and illegalities that violate either the judgment or the fundamental rights. Analysis of provisions in state legislations and new state schemes to find out exceptions permitted in *Jagpal Singh*, i.e., for Scheduled Castes/Scheduled Tribes/landless persons.
3. An analysis of 325 high court judgments and orders passed till November 2021 that cite *Jagpal Singh*. Based on these judgments, common themes were identified in legal reasoning, factual scenarios, interpretation of *Jagpal Singh* and the final directions of the high courts. Based on this analysis, the relevant recordings of the judgments were captured in the following broad categories:
 - Reference to *Jagpal Singh* (whether it was merely cited, discussed, upheld, or deemed inapplicable)
 - Relevant facts (nature of commons and nature of encroachments)
 - Whether the dispute was filed in public interest
 - Whether the dispute involved persons from Scheduled Castes/Scheduled Tribes or landless persons, and if so, whether the exception for such groups permitted in *Jagpal Singh* has been considered
 - Whether directions were passed to restore commons to original use
 - Whether directions were passed for evictions to be carried out
4. Secondary analysis of conflicts over common land was also done based on the Land Conflict Watch database, taking into account the following parameters:
 - Total number of people affected
 - Total land area affected
 - Total investment stalled
 - Classification of conflicts by region – rural, urban or involving both

- Categories of legislation applicable to conflicts, to identify patterns in the nature of conflicts
- Demands and contentions of communities affected by conflicts over rural common land
- Legal processes and loopholes in conflicts over rural common land

The purpose of this analysis is to draw a nexus between:

- The issues flagged by and addressed by state legislation, and
- The issues involved in common land rights as reported from the ground.

3. What are Commons?

Common property resources or commons refer to non-exclusive areas that have been historically managed and used by a group of people. A key feature of such areas is that no private person or legal entity owns or holds property rights over such areas, and they are accessible to the public at large.² Commons are most often associated with a village or a particular community. Use and access rights over commons are distributed amongst several “owners” who are a part of these communities.³

Organisational rules in commons are often determined by local governments. This theoretically allows all interested members of the community to have a say in the decision-making process. Thus, commons are sometimes conceptualised as “private property for a group”.⁴ More practically, however, commons are described as a category of resources over which ambiguous rights exist. These rights are held by various stakeholders.⁵

That said, protecting common property resources is a constitutional imperative enshrined in the Directive Principles of State Policy. Provisions of the Constitution direct states to ensure that policies framed by the Union government distribute ownership and control over community resources for the sake of common good.⁶ The provisions also ensure that the operation of the economic system does not result in a concentration of wealth in the hands of a few to the detriment of the public.⁷ While the directive principles are not legally binding, the emphasis they place on preserving community resources serves as the impetus for the Supreme Court’s directions in *Jagpal Singh*.

What role does the Public Trust Doctrine play in conceptualising commons?

The Public Trust Doctrine is based on the principle that the State holds natural resources such as air, water, forests, ecologically fragile land and common lands as a trustee on behalf of the public. As a trustee, it is the State’s legal duty to protect these resources. It ensures they are not usurped by private interests for commercial gain. Such resources must be managed by the State for the welfare of the public.

This was first noted by the Supreme Court in *MC Mehta vs. Kamal Nath and Ors.*,⁸ where it was held that natural resources cannot be permitted to be eroded for any use – private, commercial or otherwise, unless courts found the encroachment necessary in good faith, for public good and public interest.

Jagpal Singh stems from the Public Trust Doctrine. The judgment notes that the rights of villagers over common lands in India have been guarded zealously for ages so that they do not lose their rights by entrusting the State with certain properties. The state governments being asked to prepare schemes to evict illegal occupants is understood as an attempt to nudge them to act on their legal responsibility to protect common lands, as trustees. It is therefore necessary to identify cases where *Jagpal Singh* has been relied on to summarily evict alleged encroachers, regularise public utilities or commercial ventures, or protect government land earmarked for large scale projects.

The Public Trust Doctrine is more than a mere affirmation of State power to use public property for public purposes.⁹ Commons must be available for use by the general public. Courts should make a distinction between the government's general obligation to act for public benefit, and the more demanding obligation it has as a trustee of public resources.¹⁰ The doctrine does not necessarily prohibit the alienation of property held in public trust, meaning that it does not explicitly lay down that rights to such property cannot be transferred. Instead, the doctrine imposes a higher degree of judicial scrutiny on government action that attempts to restrict free access to common property resources.¹¹

Several high courts have based their legal analysis of commons-related disputes within the Public Trust Doctrine. Perhaps most significantly, the Madras High Court observed in 2015 that common property resources are part of the public's "environmental capital", and that the state has a fiduciary duty to protect the same.¹² The Karnataka High Court similarly emphasised the importance of the Public Trust Doctrine. It specifically observed that the doctrine enjoins the State to protect natural resources including lakes, tanks, and water bodies; as they constitute public property.¹³

Prior to *Jagpal Singh*, the Allahabad High Court in 2009, issued directions to district collectors across Uttar Pradesh to reopen cases where common land had been allotted to private persons and take corrective action.¹⁴ The dispute itself arose from allotment of common land to the daughter-in-law of the village pradhan. In the appeal of this order before the Supreme Court, the apex court upheld the Allahabad High Court's decision, lamenting the fact that the village pradhan had violated public trust reposed in him.

Normatively, how should commons be interpreted?

The term commons broadly refers to a set of resources that are freely accessible and shared by many. It covers land, water, and forest resources that may have a special significance to communities and livelihoods of people. This includes rivers, grazing lands, ponds, wells, graveyards, and public roads. The public has a vested interest in ensuring the continuity of such resources for future generations, and so it is in everyone's interest that they be protected.

The concept of commons offers a solution to the perennial conflict between public interest and private ownership over natural resources. Non-exclusiveness is a key feature of common property resources, implying free and equal access to all people of the specified community. Indivisibility is another important principle. It indicates that benefits flowing from commons are meant for collective consumption and use.¹⁵

Jagpal Singh understands commons as public utility lands in villages that have for centuries been used for the common benefit of villagers. Though vested in the State and managed by Gram Sabhas/Gram Panchayats, they are treated as inalienable in order to preserve their status as community land. Cases relying on *Jagpal Singh* seldom undertake an analysis of the nature of the disputed common property resource.

How have commons been interpreted in Indian law?

There is no uniform definition of commons applicable across statutes and legal contexts. Under Indian laws, land is classified as private, government (or "public"),

and village land vested in the Gram Sabha. This is largely the understanding applied in *Jagpal Singh*. These village lands are known as *shamlat* lands in Punjab and Haryana, *poramboke* in Tamil Nadu and Andhra Pradesh, and *comunidade* lands in Goa. Rights over them are recognised by state legislation and vested in local authorities.

Courts have not yet ventured a comprehensive definition of common property resources. In fact, courts rarely undertake a formal assessment of whether the land in dispute is a common property resource. Often, courts tend to rely on pre-existing land records or the mere submissions of parties. Both can be problematic when there are elements of collusion and corruption among government officials and land-grabbers. There is little discussion to suggest that the court conducts its own investigation, even when the communal value of the land has been claimed. This places an onerous burden on representatives of the village/community reliant on the common lands to not only prove ownership or possession but also prove corruption, if any.

Often, no justification is provided for applying commons jurisprudence to a dispute where the land resources involved are arguably not common property resources, such as a public parking facility constructed by a private entity.¹⁶ Courts also make the mistake of conflating government land with common lands, such as in the case of land earmarked for the railways.¹⁷ The lack of a clear understanding of the scope of commons has resulted in a scattered reliance of *Jagpal Singh*, which is then invoked by parties in any dispute concerning encroachment on any non-private land.

However, some key differences can be seen across high courts in their understanding of who owns the commons or for whose benefit they can be used. For instance, in 1995,¹⁸ a residents' welfare association in urban New Delhi moved the Delhi High Court against the use of common land as a cremation ground by villagers residing nearby. The court decided against the Gram Vikas Samiti representing the villagers. It stated that even if the disputed land was Gaon Sabha land (as was argued by the Samiti), the disputed land would now be vested in the Government of NCT of Delhi.

The Allahabad High Court, in contrast, came down heavily on misuse of Gaon Sabha land by private individuals, even when leasing the disputed land.¹⁹ Similarly, in the case of *Rajendra Tyagi vs. State of U.P. and Ors*,²⁰ the court criticised the fraudulent allotment of Gaon Sabha land by the state government, done for the benefit of a real estate company.

Interestingly, some high courts have also made a distinction between community land and common land.²¹ Community land is earmarked for a specific community, while common land is meant for a 'public purpose' generally. In *Kumapatla Appa Rao vs. Government of Andhra Pradesh*, land was acquired in 1985 and earmarked for constructing houses for the homeless. In its decision, the High Court of Andhra Pradesh reasoned that land meant for a "communal purpose" could only be enjoyed by persons of a particular group or community, whereas every member of the public can enjoy public land. Land allocated for housing schemes would fall under the category of "communal land", while schools, temples, and community halls may be considered common.²²

4. What does *Jagpal Singh* Understand as Encroachment of Commons?

Multiple interpretations of *Jagpal Singh*

The *Jagpal Singh* case was particular to a village pond, which had been encroached, filled up and built upon. The order recorded the following:

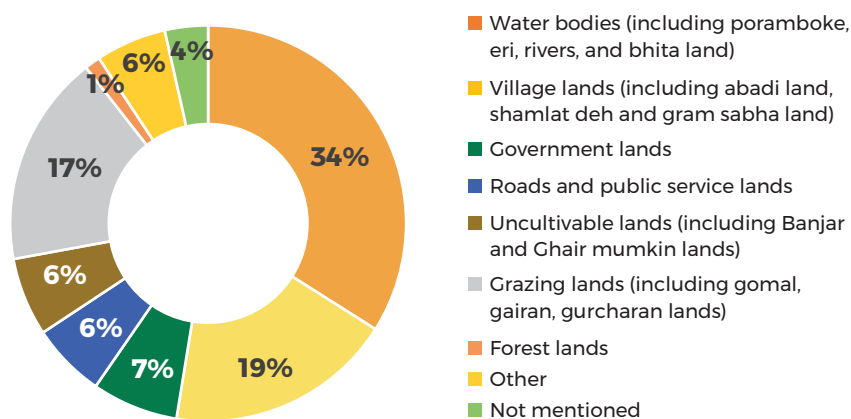
*The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularising such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village.*²³

This observation may be interpreted in one of two ways:

1. That encroachment using muscle/ money power and in collusion with officials is a blatant illegality, which must not be condoned, and the encroachment must be removed.
2. The presumption that all encroachment of commons land is done in collusion with officials, therefore making all encroachments a blatant illegality, which must be removed.

In this report, we analysed 325 high court cases which cite *Jagpal Singh*. We observed that in 312 of such cases involved commons, public land, and government land. The chart below indicates patterns in the nature of lands which have been encroached upon, based on the aforementioned 312 cases:

Chart 1: Classification of cases based on the nature of commons



As *Jagpal Singh* originally involved a dispute regarding encroachments on a water body, it has been overwhelmingly applied to similar cases of encroachment on water bodies. Of the 312 cases, 105 cases involve the protection of some sort of water body. This includes tank *poramboke* land, *eri* land, rivers, water ways, drains, canals and even *bhita* land (i.e. land around a water body). Many of these disputes notably involve land between housing properties being recorded as common land dedicated to water bodies. Through *T.K. Shanmugam*,²⁴ there is a concerted push to include even water bodies that have dried up.

The next largest category of commons are grazing or pastoral lands, which include *gomal* lands, *gairan* lands, *gurchuran* lands, etc. Fifty three cases out of 312 have been recorded to be regarding the encroachment of grazing lands. As noted in the case of *Bhaskar vs. State of Maharashtra*,²⁵ grazing land is essential for the livelihood of agriculturalists and villagers and there needs to be a concerted effort from the state to preserve the same.

Similarly, 57 out of 312 cases have been recorded to be concerning encroachment of village land. This includes land recorded as Gram Sabha land, village land, panchayat land, *Abadi* land and *Shamlat Deh* land. There is a distinct need to record this separately from the 21 cases of uncultivable lands (which include *Banjar* and *Ghair Mumkin* lands) as there is a difference of opinion among high courts in whether such lands can be allotted to any non-villager. Village land sees a distinct autonomy, being vested in the village for common utilisation. Cases of encroachment are seen as an affront to not only the immediate environment of the encroached land but also the village which utilises the same.

Lastly, as can be seen from the breakup of cases, *Jagpal Singh* has been excessively applied even in cases of government land (23 such cases) and roads, and lands which are earmarked for public utility services (19 such cases). The latter involves encroachment on public pathways and community resources, such as bus stands and public cart tracks. Arguably, many high courts have characterised all commons to be government land, including all water resources. However, for the sake of clarity, government land has been classified as its own category to indicate how *Jagpal Singh* is often relied upon when the land belonging to the government is at risk. It can be argued that this application indicates that encroachment on government land is also seen as an affront to the rights of the community at large.

Case analysis shows that in many instances, courts themselves have acknowledged that the occupants of common land were living there for decades and were offered regularisation by the state government. Such instances end with the matter being decided after the petitioners get stuck in litigation for decades, only to be informed that they cannot be granted relief as the law has since been reversed. These would not fit the bill of encroachments done by using muscle/money power and in collusion with officials. A more humane approach must be undertaken for regularisation or rehabilitation of such occupants to ensure that people are not left homeless.

Specific directions given in *Jagpal Singh* against which compliance may be measured

- Encroachment on gram panchayat land using muscle and money power in collusion with officials is a blatant illegality that should not be condoned. Such illegalities should not be regularised as the land must be preserved for common use.
- Construction of houses on encroached common land is no reason to regularise an encroachment. Trespassers should remove their constructions, and possession of the land must be given back to the gram panchayat.
- Government letters regularising encroachment on common land are illegal and without jurisdiction. Common interest should not suffer merely because an unauthorised occupation has existed for many years.
- Orders issued by state governments permitting allotment of gram sabha land to private persons and commercial establishments on payment of money are illegal and must be ignored.
- Prepare schemes for eviction of illegal/unauthorised occupants of common lands and restoration of encroached lands to gram sabha/panchayat for common use. Schemes should provide for speedy eviction after a show-cause notice and a hearing.
- Prolonged encroachment or expenditure incurred on constructions on the land is no reason to regularise the illegal possession.
- Regularisation should only be permitted in exceptional cases, such as where lease was validly granted by a government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary, or other public utility on the land.

Orders passed by the Supreme Court after pronouncing *Jagpal Singh*

The bench in *Jagpal Singh* ordered that the matter be heard from time to time so that the court could monitor the implementation of its directions. The matter was listed on May 3, 2011, by which time only the State of Jharkhand had filed an affidavit as to the measures it had taken in compliance with the apex court's order. Justice Markandey Katju, the author of the judgment, retired in September 2011, before he was able to hear the matter again.

As per publicly available records, the next substantive order was passed on February 8, 2013, when the Supreme Court decided on an interim application filed by M/s. Gas Authority of India Ltd. ("GAIL").²⁶ GAIL's application challenged an order passed by the district collector of Vadodara, directing GAIL's removal from common land that was owned and managed by the Gujarat Industrial Development Corporation

("GIDC"). The collector submitted that GAIL was encroaching on the land and that as per *Jagpal Singh*, the Supreme Court had ordered that such encroachments were to be removed. GAIL argued that the alleged encroachment was only a small portion of land and GIDC was amenable to allotting this portion in their favour. A three-judge bench of the Supreme Court, headed by Justice Altamas Kabir at the time, ordered that GAIL's encroachment be regularised by treating the same as a 'public utility service'.

This seems to be the first and arguably most significant instance where one of the exceptions carved out in the judgment have been applied. As such, this interim order validates a line of high court decisions similarly regularising the allotment of common land to public sector industries engaged in the extraction of resources or production of energy.²⁷ Two months after the order was passed in favour of GAIL, the proceedings were officially closed. On April 18, 2013, the same three-judge bench of the Supreme Court observed that there was no further need to hear the matter. The sentiments expressed in the main judgment were general and it was therefore the duty of concerned state governments to enforce the same.

In 2013, a contempt petition was filed against the State of Punjab, alleging that they were not complying with the directions issued in the main judgment.²⁸ The petition was dismissed on December 18, 2014, with the Supreme Court observing that they saw "no reason to proceed with the present contempt petition for the alleged breach of certain directions issued by us which were advisory in nature."

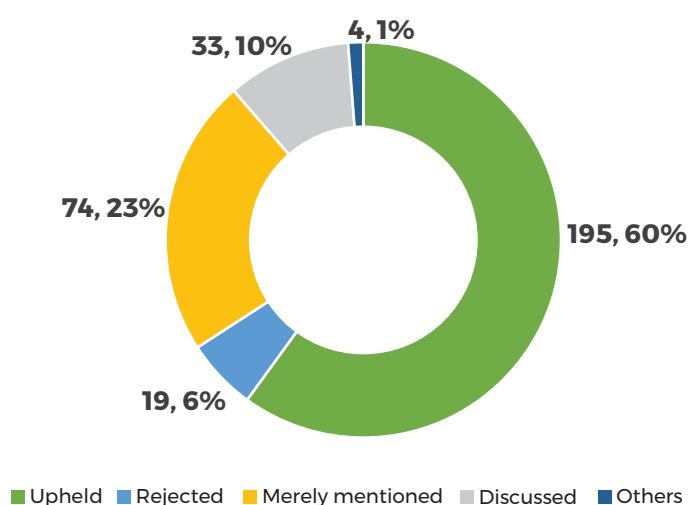
5. Compliance with *Jagpal Singh*

How has *Jagpal Singh* been interpreted and applied by High Courts?

1. An overview of the 325 High Court cases citing *Jagpal Singh*

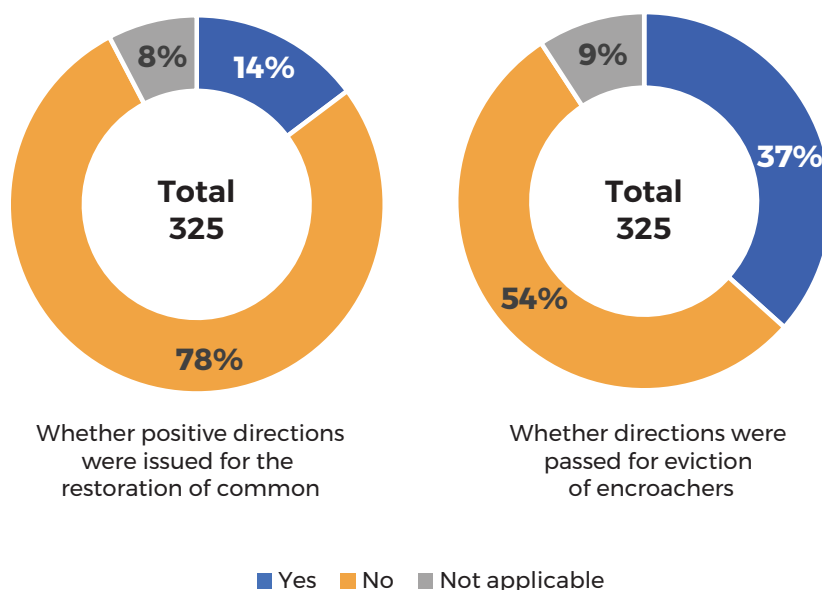
We analysed 325 judgments passed by high courts which discuss *Jagpal Singh* and its applicability in the cases before them. These judgments are spread across 18 high courts.

Chart 2: Classification of high court decisions based on their reference to *Jagpal Singh*



In summation, 195 out of 325 cases (60% of all cases) upheld *Jagpal Singh* and applied it in their analysis of the case before them. In 74 other cases (22% of all cases), the high courts merely make a passing reference to *Jagpal Singh*, without applying the judgment to the case at hand. Only 19 out of 325 cases see the judges distinguish the case at hand from *Jagpal Singh*. This is when the judgment is considered to not have any applicability in the case. Despite the same, *Jagpal Singh* has largely been noted favourably by all high courts, though there has been no discussion on the efficacy of the same.

Chart 3: Classification of high court decisions on encroachment of commons based on nature of directions issued

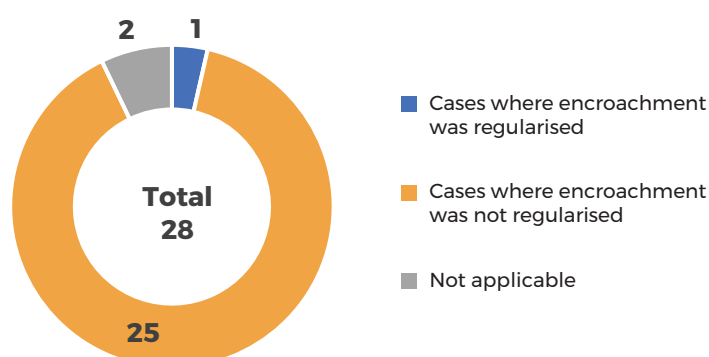


Jagpal Singh has been applied in a variety of cases other than cases of encroachment (such as cases of land allotment, land acquisition and environmental degradation). However, in cases of encroachment, there is a clear emphasis on issuing only directions for eviction without any directions for restoration of the encroached commons. Further, even where no directions for eviction have been recorded, it is necessary to note that no specific directions were passed in such cases. In cases where the alleged encroachers appealed eviction orders passed by the government officers, the high court often dismissed the case without granting any relief against pending eviction.

Similarly, in the 47 cases (constituting a mere 14% of total cases) where directions were passed for restoration of the encroached commons, the high courts often resorted to simply saying that the commons must be restored in accordance with existing laws. The efficacy of these directions would then highly depend on the legislation or policy in place but the same was not discussed by the courts.

Significantly, 97 cases have been noted to be filed in public interest. There has been little discussion on whether public interest litigations (PILs) filed for eviction of encroachers by third parties may lead to parties with vested interests abusing the judicial process. Fifteen out of these 97 cases see directions being passed for restoration of commons, whereas 23 see directions for evictions being passed. Whereas a significant portion of such third party PILs were redirected to the government official in charge for further inquiry. Greater emphasis can be seen being placed on evicting the alleged encroachers than on restoring the commons.

Chart 4: Classification of 28 cases where encroachers were landless or belonged to a Scheduled Caste or Scheduled Tribe



Another important factor to be noted through the analysis of the high court cases is the consideration and application of the exceptions permitted in *Jagpal Singh*. The judgment specifically mentions that Gram Sabha land may be leased to persons belonging to Scheduled Castes/Scheduled Tribes or landless persons. Out of the 325 cases analysed, 28 specifically noted the involvement of the aforementioned groups. Whereas some of the remaining cases do involve poor marginalised persons or agricultural labourers, there is a conspicuous absence in recording details of the alleged encroachers' socio-economic status.

Further, from the 28 cases involving landless persons or persons from Scheduled Castes/Scheduled Tribes, there are 26 cases which involve the question of eviction. Only one case sees a direction for regularisation as per *Jagpal Singh*, whereas 15 cases had explicit directions for eviction.

The manner of implementing *Jagpal Singh* and the jurisprudence of preservation of commons varies greatly with each high court. It is thus necessary to consider larger judicial trends that can be observed over the course of the past decade in specific high courts.

2. Madras High Court: A discussion on the Public Trust Doctrine and encroachment as a social evil

Even prior to 2011, the Madras High Court had explored the protection of water bodies in the case of *L. Krishnan vs. State of Tamil Nadu (L. Krishnan)*.²⁹ However, after 2011, some common threads in the jurisprudence surrounding protection of commons (particularly water bodies) and eviction of encroachers can be observed from the leading cases of *T.K. Shanmugam vs. State of Tamil Nadu (T.K. Shanmugam)*³⁰ and *Chettinad Cement Corporation Ltd. vs. State of Tamil Nadu and Ors.*³¹

T.K. Shanmugam vs. State of Tamil Nadu

The Public Trust Doctrine in encroachment cases was expanded in the matter of *T.K. Shanmugam*. The original case involved a public interest writ petition, seeking grant of *patta* to encroachers who were residing near Korattur Lake in Chennai, Tamil Nadu. These encroachers were issued ration cards and voter identity cards,

and several of them had purchased the land in question by registered sale deeds. All the supposed encroachers were said to belong to the lower income group and were largely daily wage earners.

The matter was referred to a three-judge bench of Madras High Court to consider whether the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 ("Tanks Act") were in consonance with previously decided cases such as *L. Krishnan* and *Jagpal Singh*. The high court examined the history of *L. Krishnan*, the Tanks Act, and *Jagpal Singh*, and concluded that the common thread amongst these cases and policies was the preservation of water bodies. It is at this juncture that the high court also expanded on the Public Trust Doctrine.

The court in this judgment connected the Public Trust Doctrine with the concept of commons. However, the court characterised the commons as owned by the government, where the State is a 'trustee' of the public. The court emphasised communal rights over private rights, stating that where natural resources are held by the State, the State has a fiduciary duty of stewardship of the public's 'environmental capital'.³²

The court further held that water bodies must be managed similar to a trust. The government cannot regularise encroachments even on water bodies which were disused, as the disuse is man-made and caused by "a cartel, which systematically works with a view to grab Government property". The three-judge bench held that even tanks not falling within the purview of the Tanks Act must be protected by the government.

However, the actual fate of the encroachers was only dealt with by a two-judge bench of the court on November 27, 2015. This bench not only dismissed the fact that several hundred families had been living in the encroached area for more than 25 years, it also went on to note that the unprecedented floods in November 2015 in Tamil Nadu were caused by the allowance of encroachments on water bodies. The court stated that the deviating water entered "residential areas causing devastating effects" due to encroachments reducing the flood storing capacity.

The order has no other discussion on the rehabilitation of the encroachers, despite noting that the constructions by encroachers are likely to be the ones destroyed during flooding.

The judgment of the three-judge bench was cited in at least five other cases in the Madras High Court as a source for the Public Trust Doctrine.³³ Further, in at least nine more cases,³⁴ parts of this judgment which include the reference to *Jagpal Singh* was cited. This is the only reference to *Jagpal Singh* throughout such judgments. In the majority of these cases, the high court issued directions for eviction of encroachers but not for specific restoration of the encroached commons.

Chettinad Cement Corporation Ltd. vs. State of Tamil Nadu and Ors.

The judgment passed in *Chettinad Cement Corporation Ltd. vs. State of Tamil Nadu and Ors.* on August 13, 2018 by a single-judge bench of Madras High Court is often cited in similar cases to reiterate the social harms of encroachment.

The case involved a cement corporation laying down railway tracks in 2009 on government *Poramboke* lands without obtaining the necessary permissions. These lands included natural waterways, which had been damaged by the corporation in the course of digging for the railway tracks. In February 2015, the district sub-collector passed an order, directing the corporation to vacate the government land, against which the corporation filed a writ petition in the High Court.³⁵

In August 2018, a single-judge bench not only upheld the sub-collector's order but also issued further directions to evict the corporation from the subject land immediately. The judge elaborated on the social harms of encroachment,³⁶ stating that the "basis of the alarming rise of encroachments is the greed, selfishness, and jealousy of people".

The court stated that encroachment is a passive form of land-grabbing, and it harms the government as well as the public. As the government lands are meant to be utilised for the welfare of the public, any offence against the same must be treated as an offence against the State. Further, the court stated that encroachers deprive the State of its right to possess land under Article 300-A of the Constitution, which protects people from being deprived of their land without following the due process of law.

The court relied upon *Jagpal Singh* to reiterate the involvement of muscle/money power and collusion with officials for grabbing village land. The aforementioned explanation of encroachment as a social issue as well as the reliance upon *Jagpal Singh* along with other judgments, has been reproduced verbatim in at least 12 other similar cases of encroachments.³⁷

However, it is necessary to note that since then, the corporation has gone on to appeal the August 2018 judgment in the high court as well as the Supreme Court. Both were dismissed in early 2019.

In the meanwhile, a local group of residents initiated contempt proceedings before the single-judge bench as the district administration had not removed the encroachments. It was then found that the government officials had attempted to lease the government land to the corporation. This led to an order by the court, framing charges against the errant government officials. This was also appealed by the government officials. On March 8, 2021, the Madras High Court dismissed the appeal, stating that the government handing over prime water bodies to a private entrepreneur for exploitation was akin to acting like "the Zamindars of India" who can "lease out the Himalayas and the Western Ghats".³⁸

The corporation has again approached the Supreme Court to appeal the March 2021 judgment. Despite the unanimous approach of the Madras High Court as well as the Supreme Court in the past proceedings, the apex court on March 25, 2021, stayed the contempt proceedings but directed that there should be no interference, construction or encroachment on the water bodies.³⁹ The matter is still pending before the Supreme Court.

3. Delhi High Court: Regarding the protection of forested commons

In 1996, the Supreme Court had held that the ridge area in New Delhi ought to be protected as per the provisions of the Forest Conservation Act, 1980, even though it was not declared as a reserved forest.⁴⁰ Following the same, a notification was issued by the state revenue department, directing certain uncultivated Gaon Sabha lands in the southern ridge area to be handed over to the state forest department for the purpose of creating a reserved forest.⁴¹

In this context, the Delhi High Court cited *Jagpal Singh* in cases where residents of revenue villages in Delhi were dispossessed of their lands in favour of the forest department. For instance, in one such case,⁴² inhabitants of the village Bhati contended that they had been the original residents of the area since 1996. The petitioners, being from the Gurjar tribe, enjoyed the status of “Other Traditional Forest Dwellers” as defined under the Forest Rights Act, 2006. *Jagpal Singh* was cited in this case to negate the claim of the petitioners that they had been residing in the area for many generations.

Similarly, in another case⁴³ where the petitioners argued that their predecessors had been allotted residential plots under a scheme by the state government for landless villagers, the Delhi High Court cited *Jagpal Singh* to reiterate that occupation of gram panchayat land for a long duration would not form a basis for regularisation. In this case, the petitioners claimed that they had been in possession of the land since 1974-1975, and had only learnt of the 1996 notification in 2003 when the government authorities threatened to demolish their houses.

Lastly, the common judgment, rendered in the cases of *Prabhat Kumar Sharma vs. Govt. of NCT of Delhi*⁴⁴ and *Deepak Batra and Anr. vs. Govt. of NCT of Delhi and Anr.*,⁴⁵ is a leading judgment concerning the forested commons of Delhi. While outlining the history of the ridge as forested lands, the court noted that challenges to the 1996 notification were often unsuccessful. This is attributed to petitioners being unable to produce documents of their lawful possession of the land. Petitioners in those cases claimed the land as Gaon Sabha land, meant for ‘collective enjoyment’. The court rejected this contention and termed such instances as encroachments. In the case where the petitioners claimed right of way over disputed forest land, the court stated that the petitioners were not “poor villagers” and held that their encroachment could not be regularised as per the exceptions outlined in *Jagpal Singh*.

4. Allahabad High Court: Repeated attempts to enforce *Jagpal Singh* and the regularisation of encroachments by educational institutions

The majority of orders passed by the Allahabad High Court which cite *Jagpal Singh* are concerned with Gram Sabha land. However, due to repeated inaction or corruption of government officials in dealing with Gram Sabha land, there are a multitude of cases concerning enforcement of *Jagpal Singh*. Further, the high court often relied on *Jagpal Singh* even in cases of fraudulent allotment of Gram Sabha land, especially in the context of either poor farmers or educational institutions who happen to encroach upon Gram Sabha land.

Prem Singh vs. State of Uttar Pradesh

On October 4, 2012, the commissioner-cum-secretary, Board of Revenue in Lucknow issued a circular, publicising the directions issued in *Om Prakash Verma vs. State of Uttar Pradesh*.⁴⁶ In *Om Prakash Verma*, the Allahabad High Court had directed revenue authorities to initiate proceedings against any illegal occupation or misappropriation of Gaon Sabha land. The circular notably asked government officials to publicise the directions of the high court in various newspapers and broadcast media to help remove illegal encroachments.

Despite the same, the Allahabad High Court later in *Prem Singh vs. State of Uttar Pradesh*⁴⁷ observed that a large number of similar writ petitions were being filed only for the enforcement of *Jagpal Singh*. The case of *Prem Singh* itself was a writ petition filed in public interest, for directions to be issued to the district magistrate for inquiring into illegal occupation of a public pond by certain individuals. However, no further details regarding the petitioner's relation to the encroached land, alleged encroachers or even nature of encroachment were given.

In *Prem Singh*, the high court held that complaints of occupation over public ponds or similar public lands must be handled by the district magistrate in line with the law laid out in *Jagpal Singh*. The case has been cited in at least 28 other similar cases in the Allahabad High Court. Most notably, it has been utilised in at least 21 similar cases of private citizens filing writ petitions (often PILs) to remove alleged encroachment.

In most of these cases, details about the nature of encroachment and the identity of the alleged encroachers have been rarely discussed. However, the high court most often directed the appropriate government officials to inquire into the matter, similar to the directions passed in *Prem Singh*.

Regularisation of encroachments by educational institutions

Jagpal Singh notably mentions exceptional cases where compounding of encroachment cases on public utility land should be allowed. Apart from land leased to landless persons or persons from Scheduled Castes/ Scheduled Tribes, an exception could also be allowed for cases where "the land is actually being used for a public purpose of the village", such as schools or dispensaries for villages.

There have been at least 11 notable cases where educational institutes built on commons have approached the court to prevent demolition of their institutes. Such institutes range from state-recognised degree colleges and intermediate colleges to private educational institutes, which were allotted land by the Gaon Sabha earlier. None of these cases have a clear example of the court allowing the educational institute to stand as per *Jagpal Singh*. Some of the significant examples have been explored below:

- In the case of Durga Narain College, an intermediate college recognised under the Uttar Pradesh Intermediate Education Act, 1921,⁴⁸ the Allahabad High Court rejected the application of *Jagpal Singh*. The college was established on parts of *Abadi* land (i.e., land vested with the Panchayat/Gaon Sabha), in 1923. However, despite rejecting the application of *Jagpal Singh*, the Court

holistically analysed the public utility that the institution had served in the past century. Further, the court noted at length that there was a tendency of “highhanded village pradhans” with state officials to “create chaos” and Gaon Sabhas should not be “given a free hand to claim every Abadi site”.

- However, in a similar case,⁴⁹ where the dispute involved an intermediate college established in 1968 over Gaon Sabha land, the matter was referred to the district collector to be decided without much discussion.
- In the case of *Ramnidhi Vidyalaya*,⁵⁰ the petitioners also relied upon *Jagpal Singh* to argue that their institution was imparting education to children in the local area and this should be considered a public service. However, the court simply noted that *Jagpal Singh* provides for regularisation in “exceptional” cases, which the petitioner failed to prove. The petitioner also claimed that there were other supposed encroachers who had been embroiled in proceedings by the Gaon Sabha. However, this claim was explicitly rejected by the court, stating that one cannot claim parity in illegality.
- Lastly, in *Yaduraji Jr. High School Samiti vs. State of U.P. and Ors.*,⁵¹ the Allahabad High Court stated that private educational institutions are not covered under the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950. The Act provides an order of preference in which land may be allotted to landless labourers.⁵² The court held that private educational institutions do not fall under any of the preferential categories. However, the court still took a positive view of the exception under *Jagpal Singh* and stated that the petitioner institution should be allowed to offer alternative land of equal value in exchange for running its institute.

5. Bombay High Court: When can an encroacher claim a vested right upon encroached lands?

A ‘vested right’ is used to refer to an unconditional right which an individual may exercise at any given time. The question of whether people may claim a vested right to regularise their encroachments came up in several cases before the Bombay High Court, such as in *Bhagwan Kisan Wagh and Ors. vs. State of Maharashtra and Ors.*⁵³ In this case, the Nagpur Bench of the Bombay High Court examined whether the petitioners could claim a vested right in light of a government resolution issued on November 28, 1991. The petitioners in this case claimed to have been in possession of *Gairan* land (i.e., grazing lands) since the year 1990 and had received a No Objection Certificate from the gram panchayat.

However, many such applications for regularisation were pending when another government resolution was issued on July 12, 2011 after the passing of *Jagpal Singh*. While the high court observed that a legitimate expectation may arise if there was an express promise given by a public authority or if there was a regular practice in existence. However, this expectation would be revised if there is any change in rule or legislation. Through this observation, the high court held that the petitioner had no legal right whatsoever as a fresh policy had been issued by the government in 2011.

This legal position is further exacerbated through the case of *Sarjerao vs. Divisional Commissioner (Revenue), Amravati, Distt. Amravati and Ors.*,⁵⁴ which

relied heavily on *Bhagwan Kisan Wagh*.⁵⁵ The petitioner in this case claimed to be a Scheduled Caste and in possession of the disputed land since 1936. The high court rejected the application of the exceptions laid down in *Jagpal Singh* by the petitioner.

The high court held that such exceptions were applicable to those landless farmers and members of Scheduled Castes/Scheduled Tribes whose unauthorised occupation was *already* regularised as on the date of the government resolution passed in 2011.

This attitude of the high court is also reminiscent in *Bhima Shivram Salunke and Ors. vs. State of Maharashtra and Ors.*,⁵⁶ which also relied on *Bhagwan Kisan Wagh*. In this case, the petitioners were stated to be from the *Bhilla* Adivasi community, which would make them Scheduled Tribes. The high court came down on the petitioners for relying on the 1991 notification and stated that the petitioners are encroachers who openly and “audaciously” claimed to have encroached on government land.

6. Rajasthan High Court: The establishment of PLPCs

Public Land Protection Cells (‘PLPC’) were first set up in Rajasthan through the case of *Jagdish Prasad Meena and Ors. vs. State of Rajasthan and Ors.*⁵⁷ There was a recurring issue of PILs being filed for removal of encroachment over common lands, such as pasture lands and water bodies. A common allegation in such PILs was that government officials were taking no steps to remove such encroachments, despite repeated complaints made by publicly spirited individuals.

Prior to PLPCs, the Rajasthan High Court would often refer the matter to district collectors to verify the claims of encroachment and take action accordingly. In *Jagdish Prasad Meena*, the high court issued directions for PLPCs to be set up in every district under the district collector. After receiving complaints regarding encroachment on common lands from the public, the PLPC would order relevant revenue authorities to verify such claims and take action according to law, including initiating penal action against trespassers.

The high court specified that PLPCs are to follow the Supreme Court’s directions in *Jagpal Singh* while considering complaints. These directions include giving the illegal occupants a show cause notice and a brief hearing, while also ensuring their speedy eviction. Importantly, the case reiterated *Jagpal Singh*’s directions that prolonged occupation or large expenditure incurred for constructions on the disputed land would not be considered grounds to regularise the illegal occupation. Regularisation is an exceptional measure, one that should be granted in very few cases.

PLPCs were set up to provide a pan-Rajasthan solution to encroachment on common land in rural areas of the state. They additionally serve the purpose of streamlining the process of adjudication over claims of encroachment and reduce the burden of the high court. As the judgment itself notes, “*if this practice is put in place, this court would not be inclined to directly entertain such public interest litigation or would do so only in the event of inaction on the part of the concerned PLPC.*”

After *Jagdish Prasad* in January 2019, the Rajasthan High Court has routinely referred matters to the PLPC.⁵⁸ In other cases,⁵⁹ the high court also stipulated a time period within which the PLPC must dispose of the matter. Such cases have also cited the earlier judgment in *Gulab Kothari vs. State of Rajasthan*,⁶⁰ which preceded *Jagdish Prasad*. In *Gulab Kothari*, the high court emphasised the importance of preserving footpaths and public ways by removing unauthorised encroachments from the same. As per the high court in this case, encroachments on footpaths were flourishing because of tacit support from local authorities. Therefore, the authorities should not be allowed to shirk away from their responsibility to take appropriate measures.

The efficacy of the PLPCs is still yet to be determined. After *Jagdish Prasad*, the high court played only a limited role in handling encroachment on commons – meaning, the high Court only intervened in case of inaction on part of the concerned PLPC. Revenue officials, however, are often ill-equipped to grapple with the disputed legal questions, such as the applicability of exceptions noted in *Jagpal Singh*. This could lead to claims of encroachment being decided on the basis of the existence of the encroachment as opposed to exceptional circumstances in which they should be regularised. So far, no challenge against a decision of the PLPC has reached the Rajasthan High Court.

7. Madhya Pradesh High Court: Setting up PLPCs

Taking a cue from the High Court of Rajasthan, the High Court of Madhya Pradesh at Gwalior also decided to set up PLPCs to deal with recurring PILs relating to encroachment on common lands.⁶¹ Through its recent order on June 9, 2021, the Madhya Pradesh High Court ordered the chief secretary of the state to designate a permanent body under the district collector to receive complaints regarding encroachments and take necessary action for removal of the same. Multiple PILs regarding encroachment on common land have already been redirected to the Madhya Pradesh PLPC for consideration.⁶²

8. Gujarat High Court: Application of the exceptions laid down in *Jagpal Singh*

On several occasions, the Gujarat High Court has invoked the exceptions carved out in *Jagpal Singh* to regularise the allotment of common land to companies engaged in resource extraction and power generation.

For instance, in 2012, in *Ishwarbhai Nathubhai Naik vs. State of Gujarat and Ors*,⁶³ government authorities decided to allot *gauchar* (grazing)/*padtar* land (waste land) to the Gujarat Energy Transmission Corporation (GETCO) in order to set up a power plant. Part of the land allotted for the power plant included two ponds that were under the care of the Gram Sabha of a nearby village. A writ petition was filed in public interest, challenging the allotment as illegal and violative of the Supreme Court's directions in several cases, including *Jagpal Singh*. However, the Gujarat High Court held that the judgment was not applicable as GETCO had not illegally occupied the land. The land had duly been allotted for the purpose of establishing a substation, which would be of service by providing electricity to the people of the village.⁶⁴ However, the court had not referred to the public utility exception mentioned in *Jagpal Singh*.

In *Kalipura Gram Panchayat vs. State of Gujarat and Ors.*,⁶⁵ the Gujarat High Court was more explicit in its reference to the public utility exception. In this case, the government authorities had allotted 1,90,052 square metres of land to GETCO to set up a 400 KV substation. The gram panchayat of village Kalipura raised several objections, including that the allotted land was *gauchar* land and the remaining land was insufficient to graze their cattle. The collector rejected these objections, stating that the substation provided a public purpose, i.e., providing electricity to the village.

During writ proceedings before the high court, the petitioners relied upon *Jagpal Singh* to argue that *gauchar* land, being common land, cannot be allowed to be occupied for commercial purposes. However, the court held that the proposed use of the *gauchar* land fell under the public utility exception of *Jagpal Singh*, noting that private interests must give way to public purpose.

Less clear are perhaps the Gujarat High Court judgments where common land has been allotted for resource extraction – specifically, in the context of coal mining. For instance, in one case,⁶⁶ large swathes of land, including *gauchar* lands, were allotted to Essar Power for the industrial purpose of setting up a coal conveyor corridor.⁶⁷ One of the several arguments taken against the allotment was that common land was allotted to a private industrial house for an industrial purpose, in blatant disregard for the Supreme Court's directions in *Jagpal Singh*. The Gujarat High Court rejected this contention, stating the judgment was not applicable to the facts of the case.⁶⁸

In another case,⁶⁹ a part of *gauchar* land which was allotted to a gram panchayat in 1957, was allotted to a private party for mining purposes in 1985. Due to objections by the villagers, no mining operations were carried out until 2006, when the lease period came to an end. The lease-holder filed for an extension of the lease in 2011, which was granted for a period of 50 more years by an order passed in July 2015.⁷⁰ State authorities had also begun constructing a road from the *gauchar* land, in an attempt to eventually assist with the leaseholder's mining activities. The Gujarat High Court rejected the contentions of the gram panchayat, relying on *Jagpal Singh*. The court permitted the grant of lease, stating that it was an extension of the pre-existing lease that had been granted in 1985, as opposed to freshly usurping common lands by carrying out new constructions.

Executive action following *Jagpal Singh*: Common elements in states' responses

Land Conflict Watch accessed the filings made by states and union territories in response to the directions passed in *Jagpal Singh* for: (1) framing a scheme and, (2) submitting compliance reports from time to time. Based on the compliance reports filed by states, we analysed their responses, first by looking at whether a new scheme was actually framed in response, or whether existing legislation covering the subject matter of the order was reiterated. And second, whether the exception permitted in *Jagpal Singh* for landless individuals or Scheduled Castes/ Scheduled Tribes also features in the state's policy for removal of encroachments from commons.

The legislative frameworks analysed as per the state governments' own filings in the Supreme Court, as on the date of filing. They may not reflect subsequent changes made to state laws/policies if such changes have not been reported to the court. Thus, this analysis should be used for indicative purposes only, to gain a preliminary understanding of different states' responses to *Jagpal Singh*. Also, most filings were made prior to 2014, so the submissions have not been made by the state of Telangana which was formed in 2014. The submission made by Andhra Pradesh was not accessible.

1. Overview of state responses to *Jagpal Singh*

In response to *Jagpal Singh*, as per the filings made to report compliance of the order, the following states reported that new schemes for the eviction of encroachments from common land would be prepared: Assam, Chhattisgarh, Dadra & Nagar Haveli.

The following states responded with the new scheme that had been framed: erstwhile state of Jammu & Kashmir, Karnataka, Kerala, Mizoram.

The following states reiterating the existing legal framework in the state which provided for the eviction of encroachments from common land: Andaman & Nicobar, Bihar, Chandigarh, Daman & Diu, Delhi, Goa, Haryana, Himachal Pradesh, erstwhile state of Jammu & Kashmir, Jharkhand, Kerala, Madhya Pradesh, Maharashtra, Manipur, Odisha, Pondicherry, Punjab, Tamil Nadu, Uttar Pradesh, Uttarakhand and West Bengal.

The following states responded to *Jagpal Singh* deeming the directions inapplicable to the state, either due to the specific land holding pattern in the state, or no instances of encroachment of common land: Arunachal Pradesh, Lakshadweep, Meghalaya, Nagaland, Sikkim, Tripura.

Below, we have analysed legal developments in some specific cases in greater detail, since the existing policy was reported to the Supreme Court in compliance with *Jagpal Singh*.

2. Maharashtra: A complete reversal of policy after 2011

The majority of cases adjudicated by the Bombay High Court which cite *Jagpal Singh* are concerned with applications filed for regularisation of encroachment made as per a notification passed in 1991. Through these cases, it is evident that encroachers often approach the court as the applications made for regularisation were left in "cold storage".⁷¹ However, many of these judgments concluded with directions for eviction and see deference given to the actions taken by the executive following *Jagpal Singh* in 2011.

On November 28, 1991, the state government issued a resolution, allowing regularisation of encroachments made between April 1, 1978 and April 14, 1990. Following *Jagpal Singh*, a new government resolution dated July 12, 2011 was passed. The 2011 notification was passed to ensure removal of encroachments on E-Class lands (grazing lands). According to the Bombay High Court, this

policy decision was taken so that in future, such lands would only be utilised for implementing public utility services and for implementing the policies of the central/state government. The high court stated that “it was also resolved not to allot such lands to any individual or any private institution.”⁷²

The 2011 notification was issued to particularly preserve grazing lands meant for animal husbandry. This was reaffirmed in the case of *Bhaskar vs. State of Maharashtra*,⁷³ where the Bombay High Court emphasised on the “pitiable condition of animal husbandry” in grazing lands due to human greed. The court also criticised the state government for issuing the earlier 1991 notification, in light of the “steep decline in the animal husbandry in proportion to human population in the country”.

In the case of *Bhaskar Bhagwant Dikkar and Ors. vs. State of Maharashtra*,⁷⁴ the Bombay High Court also held that earlier orders which upheld the 1991 notification had not considered directions passed in *Jagpal Singh*. Directions were passed for the state government to implement the 2011 notification as well as the directions of *Jagpal Singh*, along with recalling any orders under the 1991 notification which regularised encroachments on grazing lands.

3. Uttar Pradesh: A history of legislative changes urged by judicial intervention

Land rights in Uttar Pradesh have had a rich legislative history with several measures to protect Gaon Sabha land.

Zamindari was abolished in Uttar Pradesh through the U.P. Zamindari Abolition and Land Reforms Act, 1950. The preamble of the Act of 1950 itself says that it was enacted to provide for the abolition of the Zamindari system, and characterised the same as involving “intermediaries between the tiller of the soil and the State in Uttar Pradesh”. The Act was thus enacted to ensure the rights of land owners and users after the abolition of the Zamindari system.

Provisions of this Act allow the state government to vest lands with the Gaon Sabha or any local authority.⁷⁵ The Act also has other provisions which allow allotment of lands for housing sites for persons falling in specified categories, including Scheduled Castes, Scheduled Tribes and Other Backward Classes as well as persons of General category living below the poverty line. The Act of 1950 is an enactment with a social purpose.

The Allahabad High Court has noted that attempts to grab Gaon Sabha land should not be permitted as it would only result in “a situation where persons with muscle and clout would be encouraged to take the law in their own hands.”⁷⁶

Following *Jagpal Singh*, the Uttar Pradesh state government issued a government order on March 23, 2011, issuing directions to several revenue authorities to provide adequate protection to Gaon Sabha land and to dispose of matters relating to unauthorised occupation within a month. The order also issued directions to remove illegal occupation from Gaon Sabha land and public utility lands, such as ponds, by identifying illegal occupations since January 1, 2011.

Following the same, the case of *Om Prakash Verma vs. State of Uttar Pradesh*⁷⁷ was decided in August 2012. Through this case, revenue authorities were directed to invite complaints from members of all Gaon Sabhas in Uttar Pradesh. In compliance with this order, the state government issued an order in September 2012, directing the establishment of a Divisional Level Committee to handle complaints of illegal occupation of Gaon Sabha land. In compliance with another order passed in *Om Prakash Verma* in March 2013, a committee was constituted by the Department of Urban Development to take action for removal of illegal occupation of tanks, *kabristans* (graveyards) etc. falling within the limits of various urban local bodies. The state government also issued simultaneous orders for removal of encroachment from such lands.

The case of *Om Prakash Verma* was finally decided on May 28, 2014 with the Allahabad High Court issuing elaborate directions to revenue authorities to take action according to the 1950 Act.

However, it is to be noted that the U.P. Zamindari Abolition and Land Reform Act, 1950 was repealed along with 31 other enactments to usher in the Uttar Pradesh Revenue Code, 2006 through a fresh amendment passed in 2015. The code itself had been passed by the state legislature back in 2006, however, it had stayed in abeyance for a decade despite receiving presidential assent in 2012. The state government enforced the Act on December 18, 2015. Notably, despite the enforcement of the code, the Allahabad High Court noted that the court, “on a daily basis is deluged by petitions alleging failure to act against encroachments or apathy in implementing orders of eviction”.⁷⁸

4. Tamil Nadu: Repeated attempts in failure to preserve water bodies

There has been no dearth of statutes and schemes passed by the State of Tamil Nadu for expeditious removal of encroachments on water bodies, at least in the past two decades. A similar active and eager approach can be seen with the Madras High Court. Much like the State of Uttar Pradesh, the court and the executive have worked in tandem to ensure removal of encroachments.

However, in the case of Tamil Nadu, the removal of encroachment from water bodies was repeatedly emphasised. In 2005, the Madras High Court passed the landmark judgment of *L. Krishnan vs. State of Tamil Nadu*,⁷⁹ where directions were passed for the state government to identify all natural water resources in the state and encroachments on the same, and take action according to the existing law. The court emphasised the need to reduce the suffering of the people of the state due to water shortage. Later, in the case of *Anti-Corruption Movement vs. Government of Tamil Nadu*,⁸⁰ the high court classified tanks into three categories:

1. Category A: Tanks that do not have any problem with regard to rehabilitation and restoration.
2. Category B: Relatively large tanks that are required to be restored at least partially, so as to improve and sustain the subsoil water levels and ensure pollution-free environment.
3. Category C: Tanks that are completely infested with encroachments and cannot be restored at present.

On the basis of this categorisation, the high court directed that the Public Works Department along with district collectors would decide the program for evicting encroachments from water bodies in categories A and B within a specified time frame. The 10 tanks identified under category C were fully encroached upon by houses. It is to be noted that the high court at this stage suggested that multi-storied tenements be made in the existing location to retrieve some portion of this land back. The question of rehabilitation was deferred to the state government. The court only noted that long-time settlers and those holding family cards as issued by the state government may be given preference in providing alternate accommodation.

In the meantime, the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (hereafter, Tanks Act) was enacted by the state government. This Act provided measures for evicting encroachments on tanks which are under the control and management of the Public Works Department of the state government. The validity of the Act was challenged in *T.S. Senthil Kumar vs. Government of Tamil Nadu*⁸¹ and subsequently upheld by the high court.

Following *Jagpal Singh*, the provisions of the Tank Act were challenged and re-affirmed in *T.K. Shanmugam vs. State of Tamil Nadu*.⁸² The court also noted that tanks that do not fall within the purview of the Tank Act ought to be protected from encroachments. Such encroachments must be removed according to the provisions of the Tamil Nadu Land Encroachment Act, 1905.

However, as per the Report No. 8 of 2017 by the Comptroller and Auditor General of India, relating to the general and social sector of Tamil Nadu, it is noted that the system envisaged in the Tanks Act did not help in protecting the tanks as the Water Resources Department of the state government had not fixed boundaries for all water bodies through its survey. This is supposed to be the first step in prevention of encroachments.

The failure of officials to remove encroachments from water bodies has been a key issue of contention for both the state government and the high court. In the last decade, a series of decisions of increasing severity were touted by both to combat this problem.

In 2012, the state Rural Development Department with the help of Anna University, Chennai planned to remove encroachments and restore the water bodies by first releasing corrected versions of block-wise, village panchayat-wise maps which would display water bodies as opposed to maps only displaying the boundaries of revenue villages.⁸³ A recent update to this study suggested that the water bodies in Chennai alone have reduced from 60 to 28 in the last century.⁸⁴

Merely six years later, the National Green Tribunal (NGT) slapped a penalty of ₹2 crores on the state government over the inordinate delay in removal of the encroachments along the Adyar and Cooum rivers in Chennai.⁸⁵ The tribunal directed the Tamil Nadu chief secretary to look into the matter directly and ensure that the steps are taken on an urgent basis in the interest of the environment and the people. Even though the penalty was stayed by the high court shortly

afterwards,⁸⁶ the case is still ongoing before the NGT, and was last listed on October 31, 2018.

In July 2019, it was reported that the state government was in the process of amending the century old Tamil Nadu Land Encroachment Act, 1905.⁸⁷ The reported amendments were set to ensure stringent punishment for encroachers, along with introducing provisions for appealing or filing review petitions. However, no such amendment has been introduced yet.

Most recently in December 2021, the state Registration Department announced that no more registrations should be permitted on water bodies. More notably, the department announced that district registrars would coordinate with the Revenue Department to fix the value of land as “zero”, so that there would be no more transactions on the respective survey numbers.⁸⁸

5. Other states

Common land regulation policies vary greatly from region to region. Most notably, in response to the directions in *Jagpal Singh* for chief secretaries to submit compliance reports to the Supreme Court, the chief secretaries of a number of northeastern states including Meghalaya, Arunachal Pradesh, Nagaland responded stating on record that there is no common Gram Panchayat land, and the regional landholding system ensures that land is either held by individuals or clans.

A number of states (Sikkim, Tripura, Daman & Diu) also went on record to state that there were no instances of encroachment of common land within their territories. The affidavit filed by the Union Territory of Lakshadweep states that there was no communal land earmarked in the first place, so there was no question of such land being encroached.

6. Key Issues in the Interpretation of *Jagpal Singh*

Enforcement of *Jagpal Singh* through PILs

A glaring issue with the legacy of *Jagpal Singh* can be seen in the lack of enforcement in multiple states. This inadequacy can be best understood through the constant filing of writ petitions as Public Interest Litigation writs (i.e., PILs).

Most notably, the case of *Prem Singh vs. State of Uttar Pradesh*⁸⁹ is a clear example of a writ being filed seeking reinforcement of *Jagpal Singh* and the same being entertained without presenting the necessary details of the nature and severity of the encroachment or the identity of the encroachers. *Prem Singh* being reproduced mechanically in similar cases of PILs filed by third parties, which likewise do not go into the necessary details, raises the question of the efficacy of justice being served.

Further, the admission of such PILs at the appellate stage often leads to certain observations being made in the name of public interest. For instance, in *Valmik vs. State of Maharashtra*,⁹⁰ a PIL was filed seeking directions to remove encroachments over *gairan*/grazing land and a public way. The petitioners sought the demolition of 51 housing structures. When it came to the fate of the encroachers, the Bombay High Court noted that it could understand the plight of the persons who do not have a roof over their head, but that such “persons who have been given the benefit of public schemes of government, such as Charkul Yojna and have again caused encroachments on the *gairan* land.” The court concluded that “such persons cannot be protected.”

Similarly, in *A. Muthuraman vs. District Collector*,⁹¹ the Madras High Court (Madurai Bench) observed that the state government should draw a scheme not only to remove existing encroachments but also prevent further encroachments in the future. The court suggested that the state government ought to register cases under the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 in cases of encroachments where the water bodies were damaged/disturbed and the natural course was affected. Punishment under this Act involves payment of a fine as well as imprisonment of at least one year. The court also suggested that damages should be recovered from encroachers for restoration activities in the water bodies. Coupled with the conspicuous absence of detail regarding the economic standing of such encroachers, such measures can only be understood to be punitive in nature.

Another problem with PILs filed by third parties is that the court is likely to change the implicated nature of commons. In the case of *Ashok Maruti Rawoot vs. State of Maharashtra*,⁹² a PIL was filed to challenge an order passed by the state government which earmarked land vested in the gram panchayat, for construction of a memorial.

The petitioners relied upon the exposition in *Jagpal Singh* that Gram Sabha land is meant to be used as public utility land. However, the Bombay High Court ruled that the said construction fit the definition of public purpose, on the basis of the affidavit of the government officials as well as an endorsement by the Maharashtra Legislative Assembly. The high court also chose to observe that the petitioners were selectively choosing to challenge the decision of the state government to set up this memorial and not others. This created a fluctuating standard for what constitutes public utility of commons, as the court failed to set fixed criteria for the same. Further, the court questioned the motives of the citizens who had filed the petition, and passed an adverse order with its criticism recorded. Such observations could potentially have a chilling effect on similar cases of encroachment where PILs are the only remedy for concerned citizens.

Eviction schemes: Blanket eviction of all residents or humane exceptions?

Through *Jagpal Singh*, the Supreme Court issued directions that the chief secretaries of all states had to ensure strict compliance with the order, and submit compliance reports to the Supreme Court from time to time. In these compliance reports, most states reiterated existing local legislation which, when enforced, would result in the removal of encroachment of village common lands.

A common thread through these state legislations are the provisions in the local laws and policies for eviction of encroachers, the power for which usually rests with the district collector. Notably, with the exception of a few policies,⁹³ most comprise straightforward mechanisms for the survey of common lands and eviction of all “encroachments” regardless of their nature.

However, legislations in some states, such as the Punjab Village Common Lands (Regulation) Act, 1961 and allied rules, which regulate village commons or *shamlat deh* in Punjab, Chandigarh and Haryana, and the Bihar Public Land Encroachment Act, 1956, applicable to Bihar and Jharkhand, also make special provisions for people belonging to Scheduled Castes, Backward Classes or economically weaker sections to provide common land for residential purposes. The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 also provides for an exception to regularise occupation of common land by Scheduled Castes and Scheduled Tribes, and admit them as *bhumidhars* with non-transferable rights over that land.

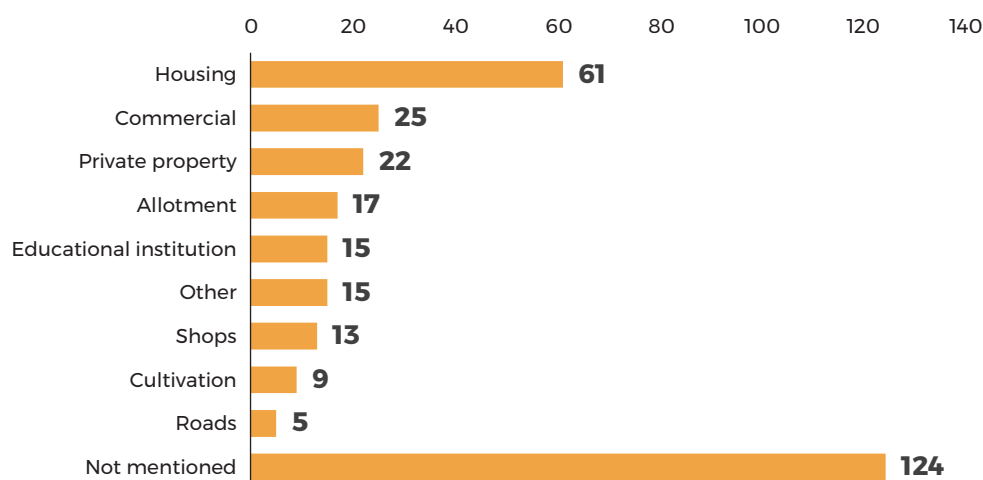
Nature of encroachments and status of enforcement of *Jagpal Singh*

1. Nature of encroachments

There are two main ways in which government land or commons land is encroached – people who do not have shelter or any means of livelihood occupy common lands for the purposes of housing or cultivation. The other kind of encroachment is land grabbed by private individuals or entities who illegally occupy public land by creating fake documents with the help of revenue department officials. It is worth examining how encroachments manifest in different states to understand which category they would fall under.

The chart below classifies the instances of encroachment in 306 cases decided by high courts, and classifies them based on the nature of encroachment.

Chart 5: Classification of cases on the basis of nature of encroachment



Through the 325 high court cases analysed by us, 306 of such cases explicitly related to alleged encroachment or cases of land allotment where the principles of *Jagpal Singh* have been relied upon. It is to be noted that out of these 306 cases, 124 cases can be noted to specifically not mention the nature of encroachments. Such cases either see a *de facto* acceptance that an encroachment has occurred without any investigation or see the high court examining evidence as to whether an encroachment has happened, without recording what the actual structure is. The largest category of encroachment observed in these 306 cases is housing and shops with 74 such cases (24%). Specifically, there were 61 cases where the housing of the encroacher was at risk of being demolished, often involving some semi-permanent construction. 13 cases out of the 74 involved shops of the alleged encroacher, often involving petty shops and kiosks.

A distinction was made between this category and that of private property, where a portion of the encroacher's property was alleged to have encroached upon the commons. This would normally involve a shared wall or a part of the encroacher's estate. Similarly, cases where proposed or constructed roads are the alleged encroachment also indicate a tendency to expand one's property without considering neighbouring lands. There were 22 cases involving encroachment by private property and 5 cases involving encroachment by proposed or constructed roadways.

A further distinction was made for commercial ventures, which see private companies encroaching common land. The 25 cases recorded of such instances involve private cement companies, real estate companies, mining industries, among others. Through such distinctions, it is clear how many cases of encroachment involve the alleged encroacher's entire home and livelihood being threatened and how many cases involve an alleged encroacher expanding their property for commercial gain, at the expense of the commons.

2. Status of enforcement

Rajasthan

Consider the case of encroachments in Rajasthan. During 2014-17, there were 12,08,800 cases of encroachments on government land in Rajasthan as per the state Revenue Department. Of these, 19,012 cases of encroachment involving 31,423 hectares of land were pending as on March 31, 2017, according to a Comptroller and Auditor General (CAG) report of 2019.⁹⁴ Whereas *Jagpal Singh* directed the chief secretaries of all state governments to frame a scheme for the speedy eviction of “illegal occupants” on village common lands, the CAG report pointed out that “no action plan for removal of encroachments from the government land was produced to audit though called for between December 2017 and May 2018.”

Media reports also suggest that there are many discrepancies in the state over identification and demarcation of village common lands.⁹⁵ This indicates that the wrongful entries in the land records of the state need to be corrected and a comprehensive land survey is required to be done to address the encroachment issues in the state.

Karnataka

In Karnataka, encroachments by landless people or occupation of public land is regularised, from time to time, through various regularisation schemes of the state government.⁹⁶

In December 2008, the state government incorporated the Karnataka Public Land Corporation (KPLC) as the primary agency for all transactions related to public land. According to data from KPLC,⁹⁷ the authorities managed to remove encroachments from 1,01,664 acres of land across 30 districts in the state by December 2013. And from January 1, 2014 to June 30, 2021, the state conducted evictions from another 1,69,082 acres of encroached government lands. However, another 1,34,157 acres of encroached land as per complaints received to KPLC is yet to be evicted.

According to a CAG report of 2018 on Karnataka titled ‘Grant, Lease, Eviction of Encroachment and Regularisation of Unauthorised Occupation of the Government Lands’,⁹⁸ KPLC could only monitor the progress of eviction and disposal of complaints on encroachments reported by district offices in the absence of powers under the Karnataka Land Revenue Act, 1964 for any executive action. “Though the government set up (March 2016) Special Courts for speedy disposal of disputes relating to government land, it was noticed that 94% of the cases pending in various courts were yet to be transferred as of June 2017,” revealed the audit report.

Punjab

In Punjab, massive encroachments on different types of government land has been a long pending issue. For instance, citing a two member panel comprising Judge SS Saron and ex-DGP Chander Shekhar report submitted to a cabinet sub-committee on March 27, 2019, *The Tribune* reported that the state government was not acting upon statewide encroachments and illegal sale of over 6 lakh acres.⁹⁹ On September 5, 2018, *The Times of India* reported that 12% of total

cultivable village common lands in the state, that is 21,106 acres of total 1.7 lakh acres of cultivable common lands are encroached upon.¹⁰⁰

Jagpal Singh has originated out of the concerns over encroachments of village common lands. However, despite the lapse of ten years of time, the successive state governments have not yet formulated a state specific scheme or plan to address the encroachment problem. Similar is the status in majority of the states including Rajasthan, Karnataka, Bihar and Telangana, among others.

Loopholes in state specific land laws, wrongful entries in land records and nexus of officials and illegal land grabbers and politicians remain to be main reasons behind large scale illegal encroachments. There are numerous methods adopted by various states to address the land encroachment problems. But, the common lands are shrinking and encroachments are recurring. As cases of encroachments rise across the country, it is crucial for state governments to adopt region specific action plans, along with a comprehensive land survey of all lands and audits of land records.

Restoration of encroached commons: What steps have the courts ordered?

Through *Jagpal Singh*, the Supreme Court had observed that water bodies such as ponds are often illegally auctioned at throwaway prices to businessmen in collusion with the public authorities/gram panchayat and the money collected from such auctions is not used for the common benefit of villagers, but misappropriated by certain individuals.

Jagpal Singh directs restoration of the land for the common use of the villagers. However, while the high courts across the country have relied upon *Jagpal Singh* to direct eviction of encroachers from public lands, few cases see an explicit direction to also restore the said land for the common use of the villagers or at least to its state prior to encroachment.

The use of the Public Trust Doctrine is important to hold the State responsible as the guardian of such public resources and lands. Several cases in high courts have been decided against the State, holding that there is a failure in their duty as the trustee of the public to preserve lakes and other water bodies. In the case of *Pankaj Babulal Kotecha vs. Municipal Corporation of Greater Mumbai and Ors.*,¹⁰¹ the Bombay High Court found that the respondent corporation had illegally constructed upon the subject lake by having it filled up and the state had granted illegal *post facto* sanction for such illegal construction. Directions were issued to the state government and district authorities to take over possession of the subject land within a period of three months, demolish the illegal construction and restore the lake within a period of six months.

Further, in the recent case of *Pachchu vs. State of Uttar Pradesh*,¹⁰² the Allahabad High Court directed that the encroacher would be given six months to vacate the land and he would be allowed to take all materials involved in the construction of his housing/structure in place. Most importantly, the Allahabad High Court highlighted the importance of preserving ecological resources as per *Hinch Lal Tiwari*,¹⁰³ and directed that the pond was to be restored to pristine condition.

It is also important that the court takes cognizance of encroachments as a societal problem perpetuated by government officials. Through cases such as *R. Mastan Rao vs. The District Collector, Kancheepuram and Ors.*,¹⁰⁴ the Madras High Court directed the district collector to conduct review meetings with officials to identify encroachments in government lands as well as water bodies within their district within two weeks. In the event of failure or dereliction of duty, the district collector was required to initiate disciplinary proceedings against errant officials. Similar directions were passed in multiple similar cases, which would ensure uniformity of action taken by officials throughout the state.

In the case of *Om Prakash Verma vs. State of Uttar Pradesh*,¹⁰⁵ the Allahabad High Court issued comprehensive directions reinforcing statutory duties to be complied with. One of these directions included a mandate for the district collectors to provide oversight over local authorities, such that the assistant collectors are responsible for taking action for restoration of possession of the particular land to the allottees of that land.

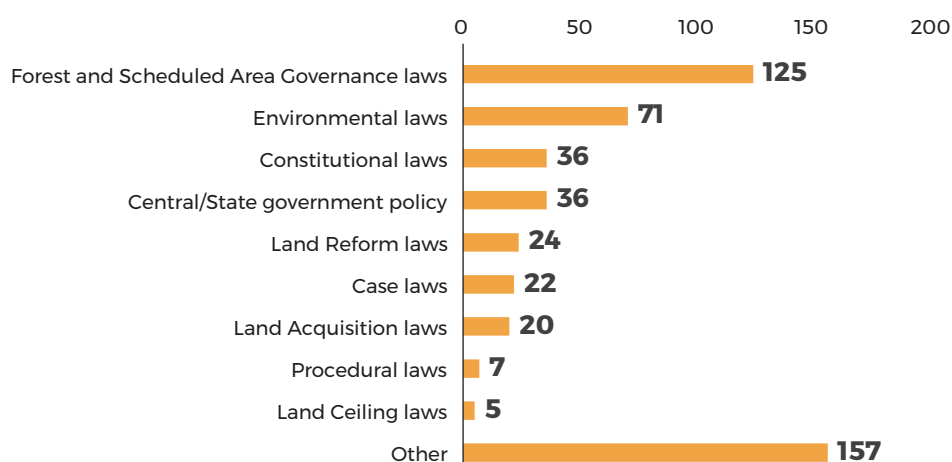
However, there has been a clear emphasis on eviction of encroachers rather than preservation of commons. In the case of *K.K. Ramesh vs. The State of Tamil Nadu and Ors.*,¹⁰⁶ the Madras High Court issued directions to the Tamil Nadu government to prepare a list of water bodies in all districts and subsequently, ensure that no registration of land is done at such sites. Significantly, the court also directed that no connection of electricity or water was to be provided to such encroachers. The court held that encroachers would not be heard to complain of deprivation of any fundamental rights till “their purge from their unconstitutional acts”.

7. Conflicts Over Common Land in the Land Conflict Watch Database

At the time of writing this report, there are 248 ongoing conflicts in the Land Conflict Watch database that pertain solely to common land. These conflicts over common land affect 1,611,970 (1.6 million) people, involve ₹262,162 (2.6 lakh) crore of stalled investment and are spread over 640,410.63 hectares of land. Out of these 248 conflicts, 180 involve rural common land, which is the subject matter of *Jagpal Singh*.

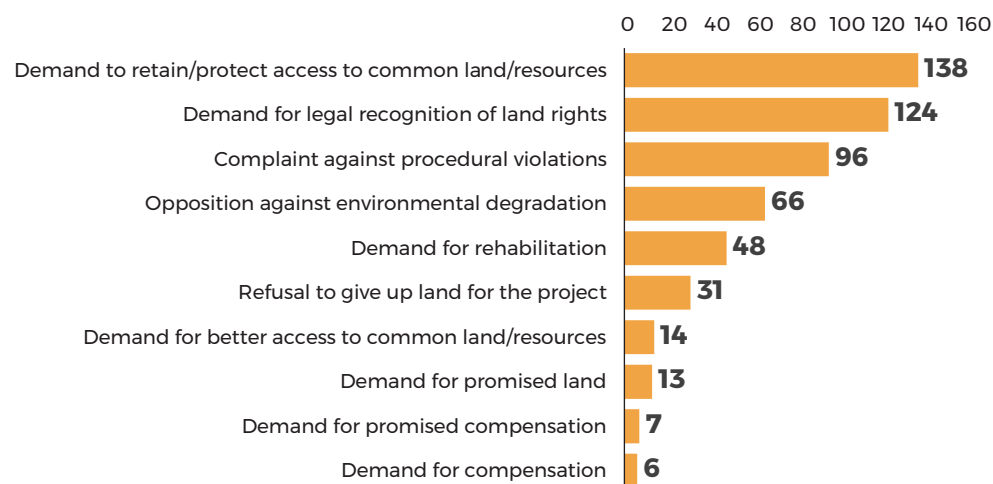
What patterns in conflicts over common land does the database indicate? The categories of legislation most frequently applicable are an indicator of the nature of conflicts over common land.

Chart 6: Categories of legislation most frequently applicable in conflicts involving commons



Forest and Scheduled Area Governance laws are the most frequently applicable category of legislation applicable to conflicts over common land, followed by environmental laws, government policies, and constitutional laws. This is owing to the fact that most of the conflicts over common land in the database pertain to forested commons. A qualitative analysis of these conflicts indicates that in most cases, the conflict involves the non-recognition of legitimate claims made over forest land by forest dwelling communities. Even the demands made by communities indicate above that demands for legal recognition of land rights are extremely common. However, this form of lack of access to commons is not addressed by the *Jagpal Singh* directions.

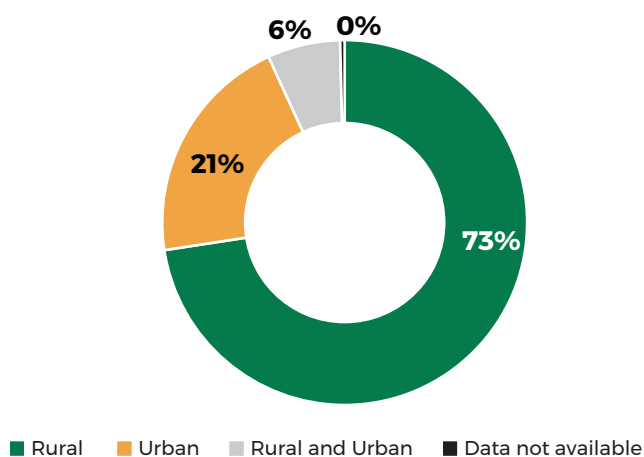
Chart 7: Demands/ contentions of the affected community in conflicts involving commons



It can be seen that the most commonly made demand by communities affected by conflicts over common land is the demand to retain and protect access to common land and resources. This is followed by demand for legal recognition of land rights, complaints against procedural violations, opposition against environmental degradation, and demands for rehabilitation.

The chart below (Chart 8) depicts the classification of conflicts over common land by region. It can be seen that 21% of conflicts are over urban commons and an additional 6% involve urban commons. This is another limitation of both *Jagpal Singh* and state legislation governing commons, as their scope does not extend beyond village commons vested with the gram panchayat or gram sabha.

Chart 8: Distribution of conflicts involving commons on the basis of region



Note: The percentages in this chart have been rounded off to the nearest whole number

Conflicts over urban commons are significant – they affect 679,819 people, have ₹10,822 crore of stalled investment associated with them, and span over 42,533 hectares of land. Instances of encroachment of such urban commons are usually dealt with under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 or state-specific variants of this Act. However, there is a lacuna as far as a mechanism for the protection of urban residents' access to commons is concerned. Unsurprisingly, forced evictions/dispossession of land occurred in over 43% of conflicts over urban common land. A lack of legal protection over land rights can be seen in nearly 39% of cases, and non-rehabilitation of displaced people has taken place in over 35% of cases.

If the language of *Jagpal Singh* is looked at carefully, it says that encroachment of common village land “using muscle power, money power or political clout”, and being put to use for a completely different purpose than it originally served, for commercial gain is a blatant illegality which must be dealt with strictly through eviction. There are a number of conflicts with a close nexus to *Jagpal Singh*.

For example, Kanwar Lake,¹⁰⁷ Asia's largest freshwater oxbow lake, has been shrinking in size at an alarming rate owing to encroachments both for residential purposes, and for commercial constructions. The local fisherfolk have suffered owing to the impact of degradation of land and pollution on their livelihood.

However, an examination of the conflicts over common land from the database shows that this is not necessarily the manner in which the occupation of all common land takes place.

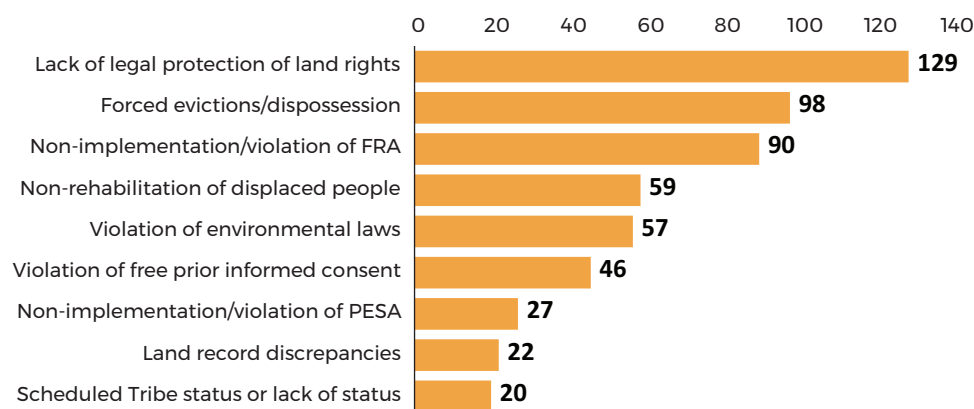
For instance, in Gujarat,¹⁰⁸ a group of 50 Dalit women who have been cultivating pasture land for the past few decades were evicted and charged with provisions under the local land grabbing legislation and threatened with criminal action. They resisted the eviction and the criminal action, which is where the conflict arose.

In Maharashtra,¹⁰⁹ Dalit communities were demanding regularisation of land rights for common grazing land over eight districts of Maharashtra that they have been traditionally cultivating.

In Karnataka,¹¹⁰ the Muzrai department sent a notice to the village residents that the 15 acre land on which they had built houses belonged to the government. The residents claimed that the land was allotted to them 20 years ago by the Nagalamadike panchayat to build houses and that they had been paying property tax for the last 20 years. However, according to the website of the Karnataka Public Lands Corporation Limited, the families have encroached upon government land as they do not have title deeds to the allotted land.

Thus, it can be seen that while *Jagpal Singh* directs for the protection of access to commons in one type of scenario, that is not necessarily the sole manner in which occupation of commons takes place, and therefore strict orders for eviction will not be an appropriate solution in all cases. The legal processes and loopholes applicable to conflicts over common lands also shed some light on issues faced in the protection of access to commons.

Chart 9: Most frequent legal loopholes/ legal processes in conflicts involving commons



It can be seen that a lack of legal protection over land rights is the most frequently applicable legal loophole, followed by forced evictions/dispossession of land, and non-implementation/violation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA). This is followed by non-rehabilitation of displaced people and violation of environmental laws.

It is notable that there is an overlap between forested commons and common village lands. Regardless of whether the forested area comes under the purview of the forest department or the revenue department, groups of forest dwelling communities can be categorised as villages.¹³¹ However, there is a specific framework by way of which rights over common forest land are regulated. FRA is the legislation under which rights over forest land are recognised.

While common land is vested in the Gram Sabha for the common use of the villagers, rights to forest land are vested in the inhabitants of the forest themselves, and granted recognition by the Gram Sabha by way of a procedure laid down in the Recognition of Forest Rights Rules, 2007. These include the right to hold and live on the forest land, the right of ownership, collection and usage of minor forest produce and other community forest rights. The Act recognises both individual and community forest rights, but similar to the rights to use of village commons, neither result in the grant of private land titles to the persons in which these rights are vested.

The Gram Sabha is also the authority regulating the use of forested common land. Section 3(2)(ii) of FRA requires that all diversion of forest land for developmental projects is subject to recommendation from the Gram Sabha. However, it is not the Gram Sabha who is responsible for the eviction of “encroachers”, but the Forest Department.

While the FRA framework does have shortcomings at the stage of enforcement, as the chart above indicates, it does have a few features that may prove to be necessary safeguards for the beneficiaries of village common land that are missing in the local laws. The specific rights vested in forest dwellers are enumerated in Section 3 of the Act, serving as protection from arbitrary action against people exercising their legitimate right of use.

8. Conclusion

We outline two possible interpretations of *Jagpal Singh*. An assessment of 325 cases citing the judgment finds support for both these interpretations made by different high courts.

A resolution may perhaps be found in the Public Trust Doctrine, which has been relied on by some high courts while applying the judgment. However, the same notably leads to the characterisation of commons as government land. Further, there is a dearth of explicit directions passed in these cases for the preservation of commons. A closer look at the original disputes leading to such cases often show poor marginalised persons having had their housing and property demolished so that government officials can restore the commons for the benefit of the public. This is further evidenced by multiple cases in which persons belonging to Scheduled Castes/Scheduled Tribes or landless persons appeal a decision of eviction before the high court, only for their case to be thrown out without adhering to the explicit exceptions laid down in *Jagpal Singh*.

A necessary conclusion that can be drawn from the analysis undertaken in this report is that there is little to no consideration of the exceptions allowed in *Jagpal Singh*. Not only do certain high courts appear to have blurred the exception of public utility land to suit the needs of the state government at the time, there is little discussion on the need for rehabilitation of the displaced encroachers.

There is a notable absence of necessary details in many cases. Even when not pertaining to Scheduled Castes/Scheduled Tribes/landless persons, most high courts do not note down the particulars of the encroacher in question and the nature of the encroachment. At most, the humane direction of eviction involves an opportunity to be heard for the encroacher and a time period before which the eviction can happen.

Many leading judgments consider encroachment to be a social evil, to be dealt with a firm hand. However, in the socio-economic context of this country where a majority of the population is below the poverty line and does not have adequate housing or may have gotten housing through faulty allotment of village land, it is worth re-examining who these judgments serve to benefit.

Moreover, states took varying approaches in their response to the judgment, based on an analysis of the compliance reports filed in the Supreme Court. Some states and UTs have denied the existence of common land within their jurisdiction altogether, due to varied landholding patterns, and others claim to not have any cases of encroachment on common land. Some states have set up administrative bodies to deal with complaints of encroachment over common lands, in an attempt to avoid overburdening courts with such complaints. Despite the passing of *Jagpal Singh*, some states have still not reported having framed the required schemes. This only underscores the importance of ensuring that any policy governing common land be localised, rather than centralised. Finally, the protection of commons cannot be approached in isolation from the constitutional right to livelihood, the right to access to housing, and the right to life with dignity.

Endnotes

1. *Jagpal Singh and Ors. v. State of Punjab and Ors.*, Civil Appeal No. 1132/2011.
2. N.S. Jodha, *Common Property Resources and Rural Poor in Dry Regions in India*, 21 Economic and Political Weekly, 1169 (June, 1986).
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(UN)COMMON VERDICTS

Analysis of Supreme Court and High Court Judgments on Common Lands

In the 2011 landmark case of *Jagpal Singh vs. State of Punjab*, the Supreme Court directed state governments to create a framework to protect commons, i.e. public lands for communal use. This report contains analysis of over 110 submissions by state governments to the Supreme Court in *Jagpal Singh*, and 325 substantive judgments passed by different high courts citing the judgment. Conflicts over common lands, recorded in the Land Conflict Watch database, point to a lack of legal protection of rights over such land and patterns of forced evictions and non-rehabilitation of displaced persons.
