## PREFACE

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## Ministry of Housing and Urban Affairs <br> Govermment of India

Number of cities covered for Affordable Housing

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## A HISTORIC MOMENT

## V. Venkatesan

A Fundamental Right to Privacy has always been assumed to exist under the Indian Constitution. The courts too have recognised that such a guarantee is implicit in some of its key provisions under Part III, dealing with fundamental rights. Therefore, when the Supreme Court's nine-judge Constitution Bench made an express declaration that the right to privacy enjoyed state protection under Article 21 of the Constitution, it appeared as if the court was refreshing its nearly seven-decade-old jurisprudence.

The judgment in Justice K.S. Puttaswamy (Rtd.) vs Union of India, delivered unanimously by nine judges on August 24, is remarkable for its clarity of vision and elegance throughout its 547 pages.

To many who followed the hearing of the case closely, the outcome is not at all surprise. After 70 years of Independence, it would have been highly unpopular for India's Supreme Court, and any of its judges, to subscribe to a proposition that ran counter to the liberal ethos of the times. Therefore, the nine judges simply had no option but to declare that the right to privacy was a fundamental right. Even the consensus among the judges on the issue could not be just a coincidence. Any judge expressing a dissenting view could have run the risk of being seen on the wrong side of history.

The surprise was, however, over how the union of India and respondents could adopt before the court the extremely regressive view that the right to privacy did not deserve to be a fundamental right. There cannot be a right to be left alone when man is a social animal, said senior counsel Aryama Sundaram, counsel for Maharashtra. The right to privacy was demanded by only those who had something to hide, said Rakesh Dwivedi, senior counsel for Gujarat. The right to privacy had no relevance for the hungry millions, said the Attorney General, K.K. Venugopal. Privacy was just a facet of liberty, and being amorphous, it could not be elevated to the status of a fundamental right, was the refrain of many respondents before the court.


The six separate judgments delivered by the judges provide comprehensive answers to each and every misgiving expressed by the respondents. The lead judgment was delivered by Justice D.Y. Chandrachud on behalf of himself, Chief Justice J.S. Khehar, and Justices R.K. Agrawal and S. Abdul Nazeer. Justices J. Chelameswar, S.A. Bobde, Rohinton Fali Nariman, Abhay Manohar Sapre and Sanjay Kishan Kaul delivered separate judgments expressing their agreement with the main opinion authored by Justice Chandrachud.

A bench of nine judges had to be constituted because a five-judge bench hearing the challenges to the Central government's Aadhaar Act had found that it could not proceed further without clarifying whether the right to privacy was a fundamental right under the Constitution. And the five-judge bench realised that it could not hear and decide the issue because two previous benches of the court, with eight and six judges each in 1954 (in the case of M,P. Sharma vs Satish Chandra, District Magistrate, Delhi) and 1962 (in the case of Kharak Singh vs State of Uttar Pradesh) respectively, had given rulings that were interpreted by the respondents as having rejected the right to privacy as a fundamental right.

As five judges cannot overrule a decision rendered by six or eight judges because of the norms of judicial discipline, Chief Justice Khehar (who retired after delivering the verdict) constituted thenine-judge bench and completed the hearing of the case in seven days in July. But the significance of the nine-judge bench does not lie in the numbers alone. Alayman is sure to ask what difference it makes if privacy is recognised as a fundamental right rather than an ordinary right. Fundamental rights enjoy constitutional protection. As Justice Chandrachud explains, if privacy is to be construed as a protected constitutional value, it would redefine in significant ways our concepts of liberty and the entitlements that flow out of its protection.

But the definition of the right to privacy was elusive during the hearing of the case. The nine-judge bench found merit in the lone dissenting view of Justice Subba Rao in the Kharak Singh case. Justice Subba Rao had held that though the Constitution did not expressly declare the right to privacy as a fundamental right, such a right was essential to personal liberty.


Surveying the case law on the subject, Justice Chandrachud was quick to reach certain conclusions. One is that fundamental rights emanate from basic notions of liberty and dignity, and the enumeration of some facets of liberty as distinctly protected rights under Article 19 does not denude Article 21 of its expansive ambit. Secondly, the validity of a law which infringes the fundarnental rights has to be tested not with reference to the object of state action, but on the basis of its effect on the guarantees of freedom.

Clarifying further, Justice Chandrachud observed that the right to be let alone was a part of the right to enjoy life. The right to enjoy life was, in its turn, a part of the fundamental right to life of the individual, he held.

As Indian society evolved, the assertion of the right to privacy had been considered by the Supreme Court in varying contexts replicating the choices and autonomy of the individual citizen, Justice Chandrachud observed.

The bench overruled both M.P. Sharma and Kharak Singh to the extent they held that the right to privacy was not protected under the Indian Constitution.

During the hearing, most of the respondents, including the Centre, argued that the Constitution framers did not want privacy to be elevated as a fundamental right, as shown by the Constituent Assembly Debates.

The answer to this was provided by Justice Chandrachud as follows: "Would this court in interpreting the Constitution freeze the content of constitutional guarantees and provisions to what the founding fathers perceived? The Constitution was drafted and adopted in a historical context. The vision of the founding fathers was enriched by the histories of suffering of those who suffered oppression and a violation of dignity both here and elsewhere. Yet, it would be difficult to dispute that many of the problems which contemporary societies face would not have been present to the minds of the most perspicacious draftsmen."

## ABERRATIONS CORRECTED

The privacy judgment has enormous significance in correcting certain historical aberrations, which had tarnished the Supreme Court's image in the past. One is the court's judgment in $A D M$


Jabalpur vs Shivakant Shukla, delivered during the Emergency by a five-judge Constitution Bench of which Justice Chandrachud's father, Justice Y.Chandrachud, was a member,.

The issue before the court was whether the President could suspend the right of every person to move any court for the enforcement of the right to personal liberty under Article 21 upon being detained under a preventive detention law. Four of the five judges answered the question in the affirmative. Justice H.R. Khanna dissented and emphatically held that the suspension of the right to move any court for the enforcement of the right under Article 21, upon a proclamation of Emergency, would not affect the enforcement of the basic right to life and liberty. Justice Khanna added that the Constitution was not the sole repository of the right to life and liberty and that even in the absence of Article 21, it would not have been permissible for the state to deprive a person of his life and liberty without the authority of the law.

Justice D.Y. Chandrachud disapproved the judgments of the majority judges in this case. He held in paragraph 119: "The judgments rendered by all the four Judges constituting the majority in $A D M$ Jabalpur are seriously flawed. Life and personal liberty are inalienable to human existence. These rights are, as recognised by Kesavananda Bharati, primordial rights. They constitute rights under natural law."

The overruling ofthe judgment authored by Justice Y.V. Chandrachud by his son after 40 years is one of the salient aspects of the Supreme Court's privacy judgment. It was as if Justice.D.Y. Chandrachud was waiting for this moment to correct a historical aberration for which his father, who was among the four judges who delivered it, was often criticised during his lifetime and after.

Although the judgment in $A D M$ Jabalpur was so unpopular that the court did not rely on it as a precedent in subsequent cases, the court did not have the opportunity to overrule it expressly. This opportunity unfolded before the bench in the Puttaswamy case. The bench did not take long to overrule it accordingly, along with another subsequent decision, Union of India vs Bhanudas Krishna Gawde, delivered in 1977.

Justice Sanjay Kishan Kaul, in his judgment, observed that the majority opinion in ADM Jabalpur must be buried ten fathom deep, with no chance of resurrection. Justice Nariman, in his separate judgment, endorsed the overruling.


Another aberration in the Supreme Court's history which the Puttaswamy bench sought to undo was in Suresh Kumar Koushal vs Naz Foundation, delivered in 2014, A two-judge bench of the court had set aside a judgment of the Delhi High Court holding that Section 377 of the Indian Penal Code, insofar as it criminalises consensual sexual acts of adults in private, was violative of Articles 14, 15 and 21 of the Constitution. The Supreme Court, while setting aside the High Court's verdict, held that a minuscule fraction of the country's population constituted lesbians, gays, bisexuals and transgenders (LGBT) and in the last more than 150 years fewer than 200 persons had been prosecuted under Section 377 and this could not be the basis for declaring that it was unconstitutional. The Supreme Court also rejected the Delhi High Court's reliance on judgments in foreign jurisdictions to support its verdict.

In the Puttaswamy judgment, Justice Chandrachud held that neither of the above reasons could be regarded as a valid constitutional basis for disregarding a claim based on privacy under Article 21. He reasoned: "The purpose of elevating certain rights to the stature of guaranteed fundamental rights is to insulate their exercise from the disdain of majorities, whether legislative or popular .... The test of popular acceptance does not furnish a valid basis to disregard rights which are conferred with the sanctity of constitutional protection. Discrete and insular minorities face grave dangers of discrimination for the simple reason that their views, beliefs, or way of life does not accord with the 'mainstream'. Yet in a democratic Constitution founded on the rule of law, their rights are as sacred as those conferred on ather citizens to protect their freedoms and liberties. Sexual orientation is an essential attribute of privacy. Discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual."

Finding the Supreme Court's 2014 judgment in Koushal unsustainable, the Puttaswamy bench disagreed with it saying LGBT rights could not be construed to be "so-called rights". Their rights were not "so-called", but were real rights founded on sound constitutional doctrine, Justice Chandrachud wrote.

He explained that the invasion of a fundamental right " was not rendered tolerable when a few, as opposed to a large number of persons, were subjected to hostile treatment. The chilling

effect on the exercise of the right posed a grave danger to the unhindered fulfilment of one's sexual orientation, as an element of privacy and dignity, he further reasoned.

The bench, however, refrained from overruling the Koushal decision because a curative petition filed against it was pending before another bench. "We would leave the constitutional validity to be decided in an appropriate proceeding," Justice Chandrachud's judgment reads. Justice Kaul concurred.

## CHARGE OF ELITISM ANSWERED

Responding to the contention that the right to privacy is an elitist concept, Justice Chandrachud said: "Our Constitution places the individual at the forefront of its focus, guaranteeing civil and political rights in Part III and embodying an aspiration for achieving socio- economic rights in Part IV. The refrain that the poor need no civil and political rights and are concerned only with economic well-being has been utilised through history to wreak the most egregious violations of human rights. Above all, it must be realised that it is the right to question, the right to scrutinise and the right to dissent which enables an informed citizenry to scrutinise the actions of government. The theory that civil and political rights are subservient to socio-economic rights has been urged in the past and has been categorically rejected in the course of constitutional adjudication by this court."

But there was one aspect of the right to privacy on which there was unanimity among the petitioners and the respondents. It is that the right to privacy is too amorphous to be defined in specific terms and that it should be left to evolve from case to case. But this agreement itself became the reason for divergence between them, with the petitioners seeing no harm in declaring it as a fundamental right and the respondents insisting that a right should be recognisable in order to guarantee its protection.

The petitioners apprehended that a restrictive definition of the right to privacy specifying what it included could hamper its growth in the future. The respondents, on the contrary, suggested that a mere finding that the right to privacy was a fundamental right, without specifying its contours, could limit the state's pursuit of its development agenda.


Agreeing with the petitioners that privacy must be left to evolve case to case, Justice Chandrachud laid down three grounds to justify an invasion of privacy. They are existence of a law, a legitimate state aim suffering from no arbitrariness, and proportionality of the means to the object. The court is expected to apply these grounds to judge invasion of privacy by state and non -state actors in a particular case before it.

The technological development today can enable not only the state but also big corporations and private entities to be the big brother, Justice Kaul cautioned.

It was during the hearing of the case that the Centre disclosed that it proposed to set up an expert committee, headed by former Supreme Court judge B.N. Srikrishna, to draft a robust data protection law.

But data protection, as the petitioners’ counsel, Shyam Divan, explained, is only one facet of the right to privacy, that is, the right to informational privacy. But there are other facets too which need protection as a fundamental right: the right to bodily integrity, the right to be forgotten and even the right to be let alone. The sharing of biometric data, which the Aadhaar scheme entails, involves many facets of the right to privacy.

The first reference to the larger bench in the Aadhaar case was in August 2015 by a three-judge bench, which was reiterated by a five-judge bench in October that year. But it took nearly two years for the court to set up a larger bench to hear and decide the limited issue of whether privacy is a fundamental right-raised by as many as 21 petitioners before it.

Petitions challenging the Aadhaar Act will now be heard and decided by regular benches of the Supreme Court in the light of the privacy judgment, even as the petitioners are jubilant that they stand vindicated.

# Frontline, <br> 15 September, 2017 

## CRCRCRER



# Distortions in Land Markets and Their Implications for Credit Generation in India <br> K.P. Krishnan, Venkatesh Panchapagesan, Madalasa Venkataraman 

## 1. Introduction

Credit markets work imperfectly because lenders do not have all the information that borrowers have on their ability and intent to repay. Lenders address this informational asymmetry through contracting, by using explicit and implicit information to ex ante screen borrowers with an higher ablity to repay, through covenants to restrict the nature and use of funds, and through close monitoring ex post to maximise the likelihood of repayment.

Lenders also protect their investments by explicitly requiring borrowers to post collateral to cover losses in case of a default. Collateral serves two key purposes: one, it acts as a check on borrowers' actions and reduces agency and monitoring costs for lenders, and second, it protects lenders from exogenous shocks that could impact borrowers' ability to repay. Collateral requirements create a high hurdle for borrowers with high default probabilities, leading to higher efficiency in credit allocation: only better quality borrowers come forward to seek credit. These mechanisms allow credit markets to function normally without either undue credit rationing or excessive cost of capital that may cripple investment activity and economic growth.

Assets provided as collateral have certain desirable characteristics. Lenders prefer assets whose ownership and value are easily determinable, while borrowers prefer assets where there is minimal disagreement in valuation with lenders. Moreover, lenders require collateral that are liquid and can also be disposed of quickly in case of default. Binswanger (1986) calls this feature of collateral as "appropriability"-the ability to liquidate collateral with minimal loss to lenders. Only an appropriable collateral can serve as a meaningful deterrent to borrowers. Aside from desirable features, the cost of collateralisation - the cost incurred by borrowers and lenders in the provision and acceptance of a collateral and in its subsequent disposal on default-also matters. High marginal cost of collateralisation increases expected cost of capital and lowers loan-to-value ratio.


In most countries, lenders prefer land as a collateral as it is easy to locate and identify, easy to value, and has reasonable liquidity. It also does not experience depreciation, which impairs most assets that are collateralised. The maturity of the land market, the quality of property rights as well as various environments-legal, information, economic and social-determine the marginal costs of collateralisation for the lender. The Indian land market, though old, is in an early stage of evolution as a modern market. Land assumes a unique position among Indians and is widely sought after as cultural norms favour landownership across all sections of the society. More than $65 \%$ of rural and urban Indians own land and property, and a large proportion of loans to individual and corporate entities utilise land as collateral. However, several aspects of the market are structurally weak and inefficient, and inhibit credit development. Issues related to title, multiple strata of markets, record-keeping, and lack of coordination amongst agencies dealing with land markets form the crux of this issue. As a result of this, lenders are unable to "appropriate" the asset after default, or monetise it quickly on recovery. According to a 2001 study by McKinsey, land market distortions cost India around 1.3\% in annual gross domestic product (GDP) growth.

Indian lenders (mainly banks) have rationally responded to these structural issues by adopting conservative credit policies to protect profitability at the cost of credit availability. Interestingly, despite this conservative approach, defaults have risen in recent times and are threatening the capital adequacy and survival of several large formal lenders in the country. Clearly, land should not have been one of those collaterals facing these issues given its attractiveness in India.

The paper is structured as follows: We examine the state of the Indian land markets in Section 2 and highlight aspects that limit credit provision and recovery after default. Section 3 describes the issues related to inappropriability of foreclosed land with special emphasis on process issues that make selling land difficult even when it is otherwise liquid. We propose simple opportunistic reforms and deeper structural reforms in Section 4, followed by our conclusions in the last section.


## 2. Land as a Collateral in India

### 2.1 Heterogeneous Land Markets

It is important to emphasise that there is nothing called an "Indian land market." Land, under the Constitution of India (Seventh Schedule), is predominantly a state subject. Indian land markets, therefore, are not a homogeneous whole, but a series of state land markets with different levels of rights over landownership, usage, and revenue.

The heterogeneous nature of various states' land markets has important implications on the ability to transact in land freely. Since each state is able to frame policies to manage its own land markets, the rules and regulations that govern agricultural and urban land are different across Indian states. The lack of a standardised market introduces difficulties in the provision of land-based credit, especially across state boundaries, as will be discussed later in the paper.

### 2.2 Credit against Land in India

Landownership plays an important economic and cultural role in India across both rural and urban households. The National Sample Survey Office (NSSO) (2013) suggests that land constitutes $73 \%$ of the total asset base of rural households. (with buildings adding another $21 \%)$. Urban households, comparably, own almost $92 \%$ of their assets in land and buildings.

With such a high ownership of land, it is not surprising that land forms the largest collateral for Indian households. Aside of landowners, tenants-mostly informal-also seek credit for land usage (for example, crop loans for cultivation), though the underlying land is not used as collateral. We abstract from this type of credit and focus mostly on credit made against land for this study.

Land forms the primary means of credit access for rural cultivator households and for small businesses. Among urban households, the difference in landownership amongst selfemployed and others is stark: self-employed households hold about 77\% of their assets in land while other urban households hold only 39\% in land (NSSO 2013). The higher landownership among self-employed in the urban areas and among cultivator households in

the rural areas brings clearly the importance of land in accessing credit for business and agricultural operations.

Institutional lenders in India accept land as collateral, while non-institutional lenders usually provide more unsecured, short-term loans for immediate and personal credit. Landowners, especially the small and marginal farmers, seek informal source of financing because they do not have proper title deeds to pledge their land. But their land continues to remain as an implicit collateral as they often get pressurised to sell it by aggressive moneylenders upon default.

Formal institutional lenders, such as banks, provide a variety of loans against land and buildings. Farm and non-farm loans are provided against agricultural holdings of rural land. Homestead and operational landholdings may also be collateralised for meeting household expenditure and other non-farm expenditure. Urban households typically borrow against their land for expenditures on housing, health, and education. Personal loans against property-for education, health and marriage-by both rural and urban households form the bulk of retail loans against land and buildings.

Credit is also provided to households for financing the purchase of their homes (mortgage financing), secured against the property so purchased. Loans for direct purchase of land are usually not provided since these are considered speculative in nature. However, loans for purchase of land and subsequent construction of a house on the same land are considered as housing loans and are provided accordingly. The combined gross bank credit to housing sector, including priority housing was around 5,400 billion in 2014-15. However, mortgage financing in India is still at a very low level as a percentage of its GDP; and mortgage penetration is still at an abysmal 13\% across India (National Housing Bank 2014).

In corporate India, firms routinely collateralise their landholdings to finance projects. Short-term loans such as working capital loans are rarely financed against land, but long-term capital purchase and term loan financing often use land or plant and machinery as a collateral. Real estate and associated firms collateralise their operational holdings in land and buildings. Construction loans are provided against land on which the construction takes place. Loans to the

real estate development sector are classified as "sensitive sector lending" that are capped at levels set by the Reserve Bank of India (RBI); non-banking financial companies (NBFCs) actively fund firms that may not have access to the formal banking sector.

Lending againstland and building by banks and non-banking financial institutions is regulated by the RBI. The RBI's guidelines on loans against property define the maximum loan-to- value and debt-to-income ratios. These guidelines also specify, at times, the maximum exposure of scheduled commercial banks to large value home loans, to commercial real estate loans, and to priority sector homeloans.

Our estimates, based on the RBI's Basic Statistical Returns for the year 2014, indicate that nearly $50 \%-60 \%$ of all retail loans are indexed to real estate as collateral in one form or the other. About $80 \%$ of all corporate debt is secured, of which about $50 \%$ of all term loans are collateralised against land andbuildings. Among agricultural loans, more than $80 \%$ of all loans have land as collateral. The extent of loans against land availed with the informal and unorganised lending sectors is small and is around $10 \%$, though land is often the first asset to be used to repay outstanding debt. In short, land is a heavily-used collateral to obtain credit in Indian markets.

### 2.3 Collaterlisation of Land

Lenders evaluate several factors before accepting land as collateral. These include: (i) does the land belong to the borrower? (cleanland titling); (ii) is the land properly identifiable in the land and property records maintained by the state? (clear land mapping/record-keeping); (iii) has the land been already pledged with other lenders or are there legal dues attached to the land? (full disclosure of liens and encumbrances): (iv) do the. constructions/settlements that are on the land adhere to local laws? (legal constructions); (v) is the value of land sufficient to cover the loan in case of distress? (easy and transparent valuation); (vi) if there is default, can the land be sold to recover dues owed easily? (quick and inexpensiveland sale after default).

### 2.3.1 Land Title

The land titling system in India is based on "presumptive" titles as opposed to "conclusive" titles that validate ownership. Title is presumptive in the sense that the person in possession and paying the tax for the land/property to the revenue authorities is the presumed

owner. This is also the legal position as per the Indian Evidence Act, 1872. While this satisfies the requirements of the governments in raising revenue against landownership in case of land transactions, the onus is on the property owner to establish her indefeasible title if there is a question regarding ownership.

Impairment of title could occur in multiple ways. As per the prevalent laws in many states, tenants who are able to demonstrate long periods of occupancy can claim reversionary rights on the land. In certain cases of Hindu Undivided Family (HUF) lands, all dependents to the head of the family need to sign off in case of a sale to a third party before title can be transferred in full. The onus, therefore, is entirely on the buyer to not only check for clean title but also for unfettered occupancy rights.

Because there is no state guarantee on titles or a private title insurance system, the ability to claim legal recourse from the seller becomes important. Sale contracts typically have a clause where the seller agrees to indemnify the buyer against title defects. Once there is a title dispute, the case filed in the various courts can drag on for years, if not decades. A study by McKinsey suggests that as much as $90 \%$ of land parcels in India are subject to legal disputes over ownership."

The lack of guaranteed title leads to inefficient credit markets. When borrowers collateralise property with impaired title, lenders face the risk of not being able to recover their credit exposure in case of default. Costs of due diligence are prohibitive and private markets for title guarantee or insurance do not exist. Indian lenders have, therefore, rationally responded to this uncertainty by protecting themselves ex ante with credit rationing and through off-contract solutions like personal guarantees.

### 2.3.2 Quality of Land Records

Multiple governmental agencies are responsible for maintaining records related to land. For example, the survey and settlements department, revenue department and the registration department all keep records related to various aspects of land-location, physical characteristics, responsible party for discharging tax liability related to the land, encumbrances, etc. Lenders spend time and effort in obtaining an integrated view of all aspects of the property due to the silo-

based nature of work of these agencies and the lack of standardised, inter-linked information collected by each department.

The quality of land records also varies from state to state. While some states still have manual registration, others maintain computerised records of registrations, and still others have a property identity system for unique enumeration of properties, leading to more efficient title searches. The nature of records may also differ for land that represent personal holdings, for common land (government or village lands), and for lands that have been distributed as part of various land distribution schemes.

Lenders face other issues due to the interstate differences in documentation standards and lexicography. The set of documents required for registration of properties varies from state to state, and each state has its own lexicography, sometimes even in terms of measurements and units. Information asymmetry is compounded by access issues: state land registries can only be accessed from specified nodes within the state. Information on land-related disputes and pending litigations is also accessible only locally. As long as the lender and the borrower operate within a single administrative jurisdiction of a state, the effect of these issues may be marginal. However, the lackof standardised land-related data across jurisdictions can increase the marginal costs of collateralisation substantially for lending across state borders.

Apart from macro-level variations in land records across states, the quality of microlevel information on individual land parcels may also vary within each state. Parcel identification is the process of uniquely identifying the coordinates of land parcel-it maps the physical contours of the parcel to the one described in the records. There are several challenges faced by a lender in determining the exact contours of the land that is being collateralised.

Infrequent updates of cadastral survey maps: Cadastral maps are updated infrequently for most regions in the country because of fiscal reasons or for political exigencies. For instance, the last town planning survey and settlement map for the city of Bengaluru was created in the early 1970s. Subsequent revisions have only been on a piecemeal basis despite the tremendous growth of the city. This does not give an integrated view of the land and built environment to capture planned as well as unplanned, organic development.


Lack of coordination of multiple agencies involved in cadastral surveys: Where partitions of land are created subsequent to the cadastral surveys, these need to be updated in the geo-referenced cadastral maps. However, the sheer volume of transactions and the inability to update these manually without technology means that revenue and cadastral records are at variance. Geographic information system (GIS-based technology for geolocation and geotagging parcel information is only now being taken up in urban areas, and that too, mostly in major cities.

Lack of integrated information related to the land: Apart from cadastral and revenue records, lenders also require information on flooding risk, seismic zone, and ecologically sensitive areas, which is unavailable at present.

### 2.3.3 Prior Liens and Encumbrances

Due to the complex nature of laws governing land transactions, there are multiple legal entities and laws under which land can be alienated or encumbered, but there is no single nodal agency to track these encumbrances. Mortgages that create a charge on the land are registered. The Central Registry of Securitisation Asset Reconstruction and Security Interest (CERSAI) of India was recently set up to record all mortgages against property. However, CERSAl does not include reconstruction loans outside the provision of the SARFAESI Act, loans given out by entities other than banks, and loans prior to 2011, when it was set up.

Furthermore, not all land-related, contract-based transactions are required to be compulsorily registered; sale agreements on land, which indicate the intent to alienate to a counterparty, need not be registered. Under Section 18 of the Registration Act, 1908, registration of documents such as court decrees, land orders, partitions, leases, mortgages, power of attorney transactions on land is not mandatory, but is left to the discretion of the state. Informal credit market transactions are also, ipso facto, not documented anywhere.

Some examples of transactions that could impair the ability to collateralise land include:
(i) Agricultural land that is bought by non-agriculturists is untenable as collateral since the original transaction is invalid: in most cases, agricultural land can only be alienated to agriculturalists.

(ii) Similar is the case with Scheduled Caste (SC)/Scheduled Tribe (ST) lands that cannot be alienated to non-SC/ST owners, but which may have been sold to third parties with or without their cognisance. In this case, all subsequent transactions are declared null and void.
(iii) The nature of hereditary/HUF land lends itself to a different set of complexities. All coparceners (in case of HUF) and joint owners/heirs-including, for example, married daughters living elsewhere-who have legal claim on the land have to be identified and need to sign off during a sale to a third party. There are numerous anecdotal cases where heirs-who were not part of the sale transaction-later claim partial ownership and apply for legal recourse.
All this precludes an ability to have a single comprehensive view of all liens over the land due to the large number of formal/informal credit markets, instruments, and contracts that can alienate land rights in favour of various participants. While ownership may be traced through the record-keeping system of registrations to a certain extent, the presence on non- registered liens makes it impossible to keep track of the multiple parties who may have liens to the land.

### 2.3.4 Legality of the Developments on Land

Even if the title, encumbrances, liens, leases and other ownership aspects have been verified and found to be in order, the property itself may suffer from impairment as collateral because of the violations of the law regulating the developments and construction on the land.

Most urban areas have master plans that determine the zoning regulations, impacting the type, nature and height of structures that can be built in a certain location.

However, these master plans are rarely followed due to the large informal land economy, creating zoning violations. (where the nature of the zoning regulation may not have been complied with) and development control regulation violations (where the norms for built environment have been violated). It is estimated that at least $80 \%$ of structures across Delhi suffer from either zoning violations or Development Control Regulations (DCR) violations. Numbers are not available across different cities in India but are believed to be similar in terms of magnitude.


The violation in development process impacts the collateral value of the property since banks and formal lenders can only provide loans against the "regular" part of the structure and not against areas under violation. This causes two issues: first, there is a difference in perception of valuation between the borrower and the lender, leading to higher transaction costs in resolving the valuation; in some cases, the "irregular" part of the construction may lead to substantial reduction in value for the "regular" part of the structure as well, leading to substantial reduction in the collateral value.

It is difficult to obtain formal sources of funding for irregular structures, fostering a dependence on informal sources of financing. This impacts the loan-to-value ratio(LTV) exposure of informal financiers, and creates a vicious cycle where higher informal sector lending incentivises irregular built-up areas. Of course, periodic but selective regulatory amnesties (like AkramaSakrama in Karnataka) also increase moral hazard risk and may pose risk to lenders who have lent prior to the violation.

### 2.3.5 Land Valuation

Valuation is the process of ascertaining the value of the (collateralised) asset. The value of the collateral decides the quantum of credit that is disbursed and loss given the default.

The valuation report is an exhaustive exercise that considers geographic information, including geotagging of property, actual physical verification of the property contours and verification of legal documents. The end goal of the valuation exercise is to ascertain whether the riskadjusted value of the land is sufficient to cover the value of the loan in case of default. To achieve this, the valuer obtains market values of similar parcels and extracts heuristic information for each component of the valuation.

Appraisal, unfortunately, is only a best estimate of value in an opaque market. Buyers, sellers, governments, lenders, and appraisers all have different sources of information, with different estimates of value. It is generally believed that the high incidence of black money leads to transactions being registered at values way lower than market prices. Government estimates of market values are substantially lower than the actual market value of transactions as well. The

opacity of land prices, combined with the thinness of the market, make it difficult to extract any kind of meaningful signals on price information.

Valuation is a one-time activity, and appraisals are based on prices at the time of loan origination. There are no forward- looking estimates of valuation based on growth assumptions, and though the RBI guidelines provide for risk-adjustment at the gross level for the lender, this is rarely translated to valuation of the individual properties which stack up in the risk bucket. Midterm loan valuations are not mandatory, so credit risk exposure is never properly assessed until it may be too late.

The appraisal exercise requires a high level of judgment of a skilled appraiser and by the lender. Differences in opinion between two appraisers lead to significant differences in valuation, and the lender takes the valuation risk. Lenders rationally respond to this price opacity and judgment calls by decreasing LTV ratios, leading to inefficient credit markets.

### 2.3.6 Land Appropriability after Default

Collateral protects the lenders exposure only when there is quick and costless appropriability (disposal) of the asset in case of default. Upon default (and after exhausting other methods for recovery), the lender must be able to seize the collateral quickly and sell it without significant loss in value. Inability to do either impacts the attractiveness of the collateral in the first place.

The formal process used to recover loan dues depends on the specific mechanism adopted after default. In India, the recovery process can be set in motion by either the borrower or lender using (in addition to using civil courts under the Code for Civil Procedure)" Lok Adalats, or Debt Recovery Tribunals (DRT), or the SARFAESI Act (meant to provide relief to lenders without using courts or tribunals).

Most number of resolutions go through Lok Adalats (as they are meant to ensure speedy settlement) though they represent only a small percentage of value under dispute. The opposite is true for cases under the SARFAESI Act. Recoveries are also the highest under the SARFAESI Act as it favours lenders over borrowers. Section 35 of the SARFAESI Act provides overriding powers for the act over all other mechanisms to recover loans, making it more preferable among formal lenders, especially in recent times. Unfortunately, the act applies only to banks and financial

institutions and not to other creditors such as those holding secured corporate bonds. Similarly, it does not resolve problems of already encumbered collateral or collateral with no clear marketable title.

Despite these alternatives and a clear intent to speed up the recovery of dues, the actual process to seize and sell collateral remains tedious, costly and difficult to enforce for lenders.

Since either of the contracting parties can initiate default proceedings, borrowers use forum shopping to select mechanism that favours them at the expense of the lender. Regulatory loopholes such as filing writs under the high court or under the Appellate Tribunal to stall and buy time are commonly exploited to the detriment of the lender. Most DRT cases take several years to close and the backlog requires extensive staff hiring to clear them. Recent Supreme Court rulings also limit powers of a lender on collateral usage. For example, a bank or a financial institution cannot evict tenants of collateralised property under the SARFAESI Act. Borrowers take advantage of poor record keeping (including lack of geotagging) to claim agricultural land status ex post to void proceedings under the SARFAESI Act as the act does not apply to such lands. Lenders need help from a variety of institutions, including government agencies such as the police and the district magistrate office, to seize collateral without impinging on borrowers' rights or causing grievances. Though lenders seek to complete recovery quickly with minimal time and cost impact, they need to consider borrowers' desire to accurately value the collateral as any residual balances after settling lender's dues accrues to the borrower.

Independent valuers are used to set the reservation price for the seized collateral, which is usually at a discount to market values as the collateral is sold on an "as-is" basis. Lack of scientific valuation methods for distressed properties means that discounts are more heuristic than scientific, and most properties get sold eventually at the reservation price despite having competitive bid auctions. There is also increasing divergence in borrowers' and lenders' valuations as the asset goes into recovery mode that could slow down the recovery process. In addition, the presence of black money in land transactions, especially in high-value land parcels, limits lenders' ability to monetise collateral when their exposure is the greatest.


The inability of collateral to fully compensate lenders on default, or "impaired collateral appropriability," has hidden costs. Since collateral provides the lender a means to reduce information asymmetry, there is a reliance on other mechanisms if collateral is impaired. These mechanisms may include referral- based lending, dependence on heuristics, and lending based on cultural networks that may lead to fuzziness in credit decision-making. Lenders demand higher margins on impaired collateral, leading to lower loan-to-value ratios and under- provision of credit. Marginal costs of collateralisation increase. The lender invests in external expertise such as legal and valuation professionals, increasing processing time at the time of provision and recovery. Such costs add to the cost of credit for borrowers.

The above issues summarise some of the challenges faced by lenders as they assess the ability of land to be used as collateral. Now we turn to potential solutions that would mitigate some of these challenges.

## 3. Solutions to Current Issues

Improvements in and reform of institutional structures that deal with title, lien and encumbrance information, accurate valuations, and timely and low-impact cost recovery, etc, will lead towards making land a better collateral. Given the high investment in land and property, reforms that target collateralisation of land and property will definitely lead to higher productive efficiency in Indian markets. We discuss both structural reforms which are long-term in nature as well as some short-term opportunistic reforms below.

### 3.1 Structural Reforms

Clearly, there are many reforms that have already been identified, and are in the process of implementation. Some of these lacunae in title and encumbrances have been a recurring theme amongst state actors and lenders alike, and steps are underway to reform the way title is provided by the state. Land-related disputes account for about $60 \%$ to $70 \%$ of all civil litigations, while a McKinsey study suggests that as much as $90 \%$ of land parcels in India are subject to legal disputes over ownership.

The recommendations from the central government's Title Certification Task Force recognise the need to modify a variety of existing laws before a land titling system can be put in

place. The Draft Land Titling Bill (2011), seeks to provide for the establishment, administration and management of a system of conclusive property titles by the government through registration of immovable properties, and is based on the Torrens system used globally.

The Torrens system embodies three principles: (i) the mirror principle, indicating that the register of titles mirror reality exactly; (ii) the curtain principle, suggesting that there is a curtain over the past and that a register entry in the register of titles is conclusive evidence of the title at present and the past need not be investigated; and (iii) the assurance principle, which guarantees indemnification by the state agencies on errors in the register of title. The land title certificate issued to the land property owner under this system will serve as a certificate of full, indefeasible, and valid ownership in the court of law.

Though this approach seems ideal, it is far from being practical as it is legislation intensive and expensive. The Government of India (GOI) estimates pegged this number to be around ₹ 5,700 crore in 2008. By contrast, digitilisation of textual and cadastral land records, full computerisation of registration and integration of these processes, besides providing easy access, would cost far less and allow for robust private insurance system to step in to mitigate title risks. Interestingly, even in countries that follow Torrens system of state-guaranteed titles, there is an increasing trend for lenders to seek private title insurance.

Other proposed reforms include amending the Registration Act, 1908, to make it imperative to register all transactions that can alienate, or create use, access or ownership rights to land. This will go a long way in providing a single view of all encumbrances with reference to ownership.

Some other structural reforms that have been proposed include:
(i) Digitisation of land records in a single, standardised format across the various departments that handle data related to land and GIS mapping of all land-related data-physical parcel data, revenue data, property tax data, planning permissions, and updates to landownership, etc. Digitisation could lead to dematerialisation of landownership records and lower transaction costs, similar to what happened in India's securities markets in the 1990s.

(ii) Overhauling the litigation in land with reduced timelines and fast-tracked courts and judicial process reforms to handle litigations in property, and investing in alternate dispute resolution mechanisms.
(iii) Rationalising stamp duty owed when there is a transfer of interest in immovable property. Reducing the burden of stamp duty would encourage transactors to register all legitimate rights in transfer of immovable property.
(iv) Streamlining the property registration system and reducing costs (the property registration process in India takes 62 days, and costs-including stamp duties-on average 7.7\% of the property value, the highest amongst all BRICS (Brazil, Russia, India, China and South Africa) countries) would reduce burden on land market participants and may, in fact, increase revenues and reduce the use of black money. This would need to go hand in hand with reforms that make all land-related transactions mandatory to be registered.
(v) Recording of ownership of apartments and commercial premises in multi-storeyed buildings should be taken up urgently. When the Transfer of Property Act, 1882 was enacted, there was no concept of ownership of an apartment (flat), commercial or an industrial unit, in a multi-storeyed structure constructed on land. Most of the urban and metropolitan areas now have such structures but there is no uniform law governing ownership rights in such portion of a building. Since land is a state subject, each state is currently adopting different procedures to recognise such rights. Further, there is no registration system to record ownership rights of a person in any flat or apartment with particulars of such specific property. There is a need to introduce such system by making uniform law recognising property rights in such built environment.
(vi) Allowing access to credit security information to the public, similar to encumbrance searches at the revenue department level.
(vii) Streamlining the process to seize collateral under SARFAESI Act. Despite empowering lenders, the SARFAESI Act requires intervention by several governmental agencies that could slow down the seizure of collateral upon default. Shortening the process by explicitly

setting turnaround times and eliminating loopholes such as acknowledgement of the delivery of notices by borrowers may require amendments to the act.

The suggested land-related reforms of the Committee on Financial Sector Reforms of the Planning Commission, GoI, include: full computerisation and integration of land records; full cadastral mapping of land; settlement of land disputes; compulsory registration of all transactions; elimination of restrictions on land markets; remote and easy access to registration procedures and to land records; standardisation of forms and computerisation of land offices; and reduction of stamp duty (Planning Commission 2009).

Apart from these structural reforms that would require time, political capital and financial cost outlay, there are a clutch of smaller, opportunistic reforms that lenders can pursue to decrease information asymmetry in land, mainly with reference to valuations. These are discussed below.

### 3.2 Opptunistic Reforms.

Much of the opportunistic reforms that lenders can pursue come from the internal processes and from publicly available information that can be collected and analysed in a smarter way. In essence, these opportunistic reforms are low-cost, high-value reforms that lenders can pursue independently while they wait for structural reforms.

Creating a central repository of bank valuation data: Valuers are the eyes and ears of the lenders on the ground, and they provide high-quality micro and macro-level data on each land parcel and property. In the absence of publicly available land and property price data, valuations of land for mortgage provide a rich source of credible data.

One way to use valuers' data efficiently is through the creation of a shared technology portal that captures all valuation data-both current and historical-on transactions solicited by formal lenders. The portal would collect all available documentary and valuation evidence related to a single property across various points in time, across banks and branches.

This allows the banks to capture potential price changes, including the degree of speculation in land prices, in a geo-referenced framework, and perform analytics on credit exposures by administrative jurisdiction or location.


Such a valuation repository serves three main purposes: it provides regular credible price information that lenders can use to implicitly mark to market their collateral values; it allows to create a list of properties that have had prior transactions and documentary evidence, thereby grading risk on properties; and it allows lenders to have benchmark values, especially of land located in areas where the lenders have no prior exposure to.

In addition, it forces standardisation (discussed separately below) of valuation practices across lenders and ensures that dubious valuations can be identified quickly before loans are committed. Along with CERSAI data, this valuation data will reduce marginal costs of collateralisation and hence increase credit availability in the long run.

Standardising data collection through a uniform data dictionary: There are varied statespecific documentary requirements for immovable property, and lenders and valuers spend immense time and effort customising their loan processes for each state. A uniform data structure that has standard nomenclatures and formats of attributes across different states is necessary. The uniform document dictionary will create a common minimum documentary library used across all lenders, which will assist in providing better valuation reports and better analysis of price information.

An important evolution worth mentioning is the Uniform Mortgage Data Program (UMDP) in the United States, which has standardised the inputs into valuation reports through a Uniform Appraisal Dataset (UAD) to provide common requirements for appraisal and loan delivery data. The UAD is a standard format for submission of appraisal reports to the lenders and government- sponsored entities such as "FannieMae" and "FreddieMac."

This data dictionary allows banks to collate property price information and obtain a single view of all manners of risks surrounding land-related loans. This is an excellent innovation worth following in markets like India where real estate prices are opaque and large welfare losses are associated with lack of price transparency.

Providing easy access to governmental data, including on approvals, surveys, and other landrelated information: Electronic provision of govemmental data is already under way in several states underthe various e-govemance initiatives. However, the cost of digitising large amounts of historical data

in a searchable electronic format is not trivial. While fiscal constraints have prevented the provision of such data in public domain, one quick solution could be to scan existing government documents and display them as images. Lenders can use existing software that could convert images to searchable documents thereby tremendously reducing the information asymmetry that prevails today."

Link CERSAI to credit decisions: Another opportunistic reform worth pursuing is the creation of a ranking system forcleanlands within the CERSAI suchthat overtime, there is a quality signalling of land and property that has undergone the rigorous property checks of banks andfinancial institutions.

Anecdotal evidence suggests that banks are trusted by customers to uncover any deficiencies in title that they are privately unable to uncover. This is due to the inherent procedures of the bank to and its ability to navigate stakeholders in the title identification process. Over time, mortgaged property and property that has been evaluated by the lenders' credit process are likely to have a higher quality of title. Maintaining a database of such "clean" properties with internal ratings, allows the process to become easier for these properties the next time they enter the credit process for any other transaction.

## 4. Conclusions

Land, as well as built property, in India is a highly sought-after collateral for lenders, given its tremendous demand and value to Indian households. However, its ability to generate credit to its owners is limited by the structural weaknesses in the land market that operates under a myriad of rules and regulations that vary from state to state. In this paper, we examine some of these weaknesses and propose some structural and opportunistic reforms that would mitigate them.

## Economic \& Political Weekly, <br> 2 September, 2017

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Book Review

## Interpreting India

# (A review of the book 'Interpreting The World To Change It' <br> Essays for Prabhat Patnaik 

Edited by C.P. Chandrasekhar and Jayati Ghosh)

## C.T. Kurien

This volume of over a dozen scholarly essays in honour of Prabhat Patnaik is a fitting tribute to a leading economist and public intellectual of our times. The editors note: "While he is widely recognised as a brilliant economist with a mastery over contending theoretical traditions in the subject, he made quite clear his predilection for and commitment to applying, developing and extending the Marxist approach. Known primarily as an economist of the finest calibre, he has also forayed with much effect into a range of allied disciplines in search of an understanding of contemporary reality. What is significant about the volume is the fact that apart from personal tributes to Prabhat Patnaik (including a moving one by Ashok Mitra, another outstanding academic of our times and a former Finance Minister of West Bengal), most of the contributions are attempts to interpret the contemporary reality of the world and specifically of India.

In order to focus on that theme, I shall, in this review, concentrate on those essays that directly deal with that topic.

That the world of today is very different from what it was half a century or even a few decades ago will be readily accepted, mainly because of the manner in which rapidly changing technology, especially communication technology, has been impacting the daily life of all sections of society. However, beneath it there have been changes in the economic, political and social spheres of equal significance. Think of the 1980s. At the beginning of that decade a claim that was heard was that a third of humanity (in the Soviet Union, the People's Republic of China, countries of Eastern Europe, and many more) had accepted socialism as their economic order and the expectation was that more countries from the "Third World" would soon

join them. Capitalism was in crisis from the 1970s and so the socialist claim seemed to make sense.

And yet, by the end of the decade, practically all of Eastern Europe had rejected socialism, and by the early 1990s, even the mighty Soviet Union had collapsed. And the "reforms" launched by Deng Xiaoping in China in the mid 1980s were seen to be a move towards capitalism.

## NEOLIBERALISM

After playing its role in the disintegration of the Soviet Union, the United States was busy inaugurating a "market economy" in the residual Russia and extending its military might into West Asia and other parts of the world. This is the theme thatAijaz Ahmed deals with in the volume. He interprets the changes as the U.S.' "extraordinary success in subordinating all other countries of the imperialist core to its own purposes as it functions both as a nation-state protecting its own national capital through all means necessary, and, simultaneously, as the internationalised state that protects the interests of the integrated global finance capital in all corners of the world".

Aijaz Ahmed claims that neoliberalism, which for longhad been confined to enclaves like Chile, became a global phenomenon because of the coincidence of the rise to power of market champions inthe U.S. (Ronald Reagan) and the United Kingdom(Margaret Thatcher), the collapse of socialism in the Soviet Union and Eastern Europe and the "reforms" in China. These three changes made available vast labour resources to global capital in countries where they had previously been highly protected; went some distance in resolving the problem of corporate profits, thus universalising the capitalist mode of production; in short, leading to what has come to be known as "globalisation" from the early 1990s. Of course, in less than three decades nationalism in various forms has come to reassert itself, most glaringly in the U.S.

## NATIONALISM AND SECULARISM

IrfanHabib deals withnationalism, especially as it emerged in India during the freedommovement. "It was opposition and resistance to British rule, on the one hand, and modern education and social reform, on the other, that laid the seeds of allegiance to India as a nation," says the historian. Mahatma Gandhi pointed out that India's opposition was not to the British as such, but to the British as rulers over India and their use of power to exploit the people of India. Nehru was

influenced by people resisting colonialism throughout the world and presented a picture of independent India very different from what Gandhi had envisaged and in which the state would playa major role in matters economic. The Karachi Congress of 1931 provided the basis of Indian nationalism as consisting of individuals with explicitly recognised fundamental rights with the state given responsibility to ensure them.

In his paper, Irfan Habib also touches on the relationship between Indian nationalism and secularism. The theme is dealt withmorefully by Akeel Bilgrami. He points out that "the emergence of secularism as an ideal and doctrine owes to the political fall-out of a certain trajectory in the justification of state power in Europe, from within which the ideal then emerged". For long in Europe, the justification of state power was based on divine right. Renaissance thinking that gradually moved away from the "divine" sought explanations in terms of worldly or "secular" categories. Secularism there fore, was part of the search for the basis of nationalism. It also marked a separation between the perceived other-worldliness of religion (the church in Europe) and the this-worldliness of the state. The situation was different in India.

Religions in India have been very different. They are by no means "other-worldly"; they affect daily lives in terms of what to eat, how to dress and much more. To be realistic, therefore, acceptance of religion as areality is unavoidable. That was the issue during the freedom movement. Leaders reacted to it in different ways. Gandhi was a devout Hindu, but quite open to other religions. Nehru was a "secularist" in its European sense, but recognised that Indian society for centuries was characterised by a completely un-selfconscious pluralism. In any case, during the freedom movement the focus was on holding the vast Indian population together in the fight against the British by emphasising "unity in diversity", "composite culture" and "inclusive nationalism". To give concrete expression to these, the Congress not only supported the Khilafat Movement, it launched a Muslim Mass Contact Programme to demonstrate the inclusiveness of the freedom movement. That none of these finally succeeded in keeping India united but led to a division of the country on religious basis is a sad admission. When the Constitution of the Republic of India was being drafted, there was considerable discussion on the secular nature of the new nation. The final decision was that it was not necessary to spell out that the republic would be a

"secular" one because its secular and inclusive character were amply brought out, according to Bilgrami, by "a commitment to freedom of religion"; and "a commitment to certain fundamental constitutional rights that neither mention religion nor mention opposition to religion".

## HINDU RASHTRA

Sitaram Yechury adds to this discussion by dealing with the contemporary situation in India, especially after the Bharatiya J anata Party (BJP) came to power at the Centre and in many States. He states that the objective of the Rashtriya Swayamsewak Sangh and the BJP is to replace the secular democratic Indian republic with their concept of Hindu rashtra, that is to foster "Hindu nationalism" in place of "Indian nationhood". The definition of secularism that he prefers is that it is separation of religion from politics which means that "while the state protects the individual's choice of faith, it shall not profess or prefer any one religion".

## SOCIALISTIC PATTERN OF SOCIETY

C.P. Chandrasekhar shifts the discussion to another of those contested issues in post-Independence India, especially during the period of Nehru, that of the socialistic pattern. It is well-known that Gandhi and Nehru differed considerably, particularly about the economic order that was to be pursued and promoted after Independence and that Nehru's ideas finally prevailed. Nehru was a great admirer of the economic progress that the Soviet Union made within a few decades after the revolution and attributed it to the direction that the state provided and to the pattern of industrialisation that was pursued with emphasis on heavy industries.

How these were to be achieved within the framework of a democratic polity (to which he was equally committed) was, for him, the real issue. While many admirers of socialism outside the Soviet Union thought of it as primarily a way to reduce income inequalities, to Nehru its main feature was state sponsored industrialisation, which is what the "socialistic pattern" meant for him. This was to be achieved by planned investment decisions. And, the "socialistic pattern of society" envisaged an element of gradualism in the transition to a system with substantial social ownership while protecting the economic interests of the "small man".


## AUTHORITARIANISM

The transition from these essentially background material to the contemporary situation in India comes in Prakash Karat's piece on political authoritarianism, which he sees as being closely related to neoliberalism. According to him, "the pre-eminent demand of the neoliberal regime is that governments may change but the reforms process must go on". This has been happening ever since the liberal isation process was started in 1991, irrespective of the political complexion of the government, whether Congress-led coalitions, BJP-led coalitions, a nonCongress secular coalition and now the BJP-led government. All these governments have supported the vital interests of contemporary capitalism such as financial sector liberalisation, disinvestment of shares in public sector enterprises and privatisation of basic services. Another feature common to all these regimes has been the entry of business persons into politics at all levels from local bodies to Parliament and the funding of political parties by the real estate sector. The plea for andattempts to provide "strong government" is another manifestation of the same urge.

Zoya Hasan in her treatment of "Democracy after Modi", provides further evidence and analysis of the same phenomenon. She describes the general election of 2014 that gave absolute majority to a Hindu nationalist party, saw the routing of the Indian National Congress, and the near obliteration of the Left parties as representing a "tectonic shift" in Indian politics. It also brought out the nexus between big business and socially reactionary religious nationalism. The Modi government has publicly stated that the original version of the Constitution did not proclaim India to be a secular state, and it is the natural tolerance of Hinduism that allows equal citizenship to those professing other faiths.

The volume, therefore, provides a great deal of interpretative material of yesterday and today. Prabhat Patnaik's contributions to these themes have indeed been significant. But Prabhat Patnaik has dared to go beyond. In several of his writings he has questioned the "canonical view of Marxism" and has insisted that socialism and Marxism have to be interpreted to change them and has called for a "creative effort to reconstruct Marxism" (Seehis Re-En-visioning Socialism). While maintaining that capitalism, which is not compatible with genuine democracy, must yield place to socialism, his position has been that there is no inevitability about it, and so the ushering

in of socialism is essentially a democratic political task to be led by a subset of the people who will not have any "hardened interest of their own". A couple of'papers critically evaluating Prabhat Patnaik's views on these aspects would have substantially enriched the volume.

Frontline,
15 September, 2017

## CRCRCRER



## RESUME OF BUSINESS TRANSACTED DURING THE $16^{\text {th }}$ SESSION OF THE TWELFTH HIMACHAL PRADESH LEGISLATIVE ASSEMBLY

The $16^{\text {th }}$ Session of the Himachal Pradesh Legislative Assembly commenced on $22^{\text {nd }}$ August, 2017. This being the Mansoon Session, major business before the House was presentation, consideration and passing of the Govt. Bills. In all, the House met for 4 days.

On the $22^{\text {nd }}$ August, 2017, the opening day of the Session commenced at 11.00 A.M. with established convention of playing of the National Anthem. Thereafter, House paid rich tributes to late Shri Sada Nand Chauhan, former Member of Himachal Pradesh Legislative Assembly. The Hon’ble Chief Minister, Ministers, the Leader of Opposition and Members including the Hon'ble Speaker, made obituary references to the departed soul. The second day House also paid obituary references to the passing away of Shri Balwant Singh Negi, another former Member of Himachal Pradesh Legislative Assembly.

The Secretary, H.P., Legislative Assembly laid on the table of the House a copy each of the Bills passed during the Fourteenth Session and assented to by His Excellency the Governor of Himachal Pradesh.

During the Session, the Government provided answers to the notices of Starred Questions and Un-Starred Questions.

During the Session. the documents relating to Annual Administrative Reports, Annual Accounts/Audited Reports of variousAutonomous Bodies/Corporations of the State Government and the Recruitment \& Promotion Rules of various Departments were laid on the Table of the House. 50 Reports of the House Committees were presented and laid on the Table of the House.

In the sphere of Legislative Business, the following Bills were introduced:-

1. The Himachal Pradesh Appropriation (No. 3) Bill, 2017 (Bill No. 7 of 2017);
2. The Himachal Pradesh Repealing Bill, 2017 (Bill No. 9 of 2017)
3. The Himachal Pradesh Excise (Amendment)Bill, 2017 (Bill No. 10 of 2017); Bill, 2017, (Bill No. 10 of 2017);

4. TheHimachal Pradesh SingleWindow (Investment, Promotion and Facilitation)

Bill, 2017, (Bill No. 10 of 2017);
5. The Himachal Pradesh Hindu Public Religious Institutions and Charitable Endowments (Amendment) Bill, 2017 (Bill No. 11 of 2017); and
6. The Himachal Pradesh University of Health Sciences Bill, 2017, (Bill No. 16 of 2017). The Himachal Pradesh Appropriation (No. 3) Bill, 2017 (Bill No. 7 of 2017), The Himachal Pradesh Repealing Bill, 2017 (Bill No. 9 of 2017) and The Himachal Pradesh University of Health Sciences Bill, 2017 (Bill No. 16 of 2017) was considered and passed by the House.

This being the last Session of the Twelfth Vidhan Sabha, the Hon'ble Speaker expressed his thanks to the Hon'ble Chief Minister, Leader of Opposition and Members for their cooperation for the smooth functioning of the House. Most of the time of Session was marred by pandemonium and walkouts.

The House was adjourned sine-die by the Hon'ble Speaker, Shri Brij Behari Lal Butail on the $25^{\text {th }}$ August, 2017 after playing of the National Song. The House was prorogued by His Excellency, the Governor of Himachal Pradesh on 26 ${ }^{\text {th }}$ August, 2017.

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