

# LAND ENCROACHMENT- THE POWER OF CONNECTION AND WEALTH

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## ABSTRACT

Land encroachment is a major problem in India, where the lawful owners of the property often become the victims, not only of the encroachers but also of a powerful system at large. The civil and criminal remedies available prove insufficient in providing fair and speedy justice to the poor victims. The article discusses the major issues and the remedies available. This article explores the primary challenges and the available remedies, highlighting the obstacles faced by those seeking justice. It also proposes long-term solutions to address the problem.

The article discusses land encroachment, easement rights, civil remedies such as injunctions, and filing criminal complaints with local authorities. The proposed solution involves a top-down approach, starting with legislative reforms and extending to the executive branch, with the judiciary serving as a key pillar to ensure fair justice for victims. To address the issue, it is essential to dismantle corruption and implement a checks and balances system to ensure transparency and prevent abuse of power. Since the right to property is a constitutional right, it is vital for the government and justice system to protect the rights of the property owners.

## Land Encroachment: The Power of Connection and Wealth

In our society, the allure of connections, power, and money often leads to ethical and legal conflicts, particularly in matters of property and land. Land or a house is probably the most invaluable asset for anyone. The word **'land'** refers to everything permanently attached to the earth, and the **'beneficial enjoyment of the land'** denotes convenience, advantage, any amenity, or any necessity. It is probably the last asset a person wants to part away with. Land holds an important place in one's life not only because of the monetary value it holds but also because of the sentiments and memories attached to it. Over the years, the price of land in the Indian market has skyrocketed. This is mainly due to high

demand, rapid urbanization and land being a viable investment option. The land being a highly valuable asset, makes it crucial for owners to be equally diligent in protecting it from encroachments. People who have earned their property through hard work, years of savings, and lawful means frequently have to deal with strong neighbors, a local goon, or any other miscreant intruding on their property.

Such land encroachments are an increasing problem in our country, and the victims are often forced to surrender their land owing to the protracted litigation process and lackadaisical working of the local authorities. **"Land encroachment" is an act of illegally acquiring someone's property, partially or wholly and the person illegally acquiring the property knowing it to be the property of others**

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is known as the “Encroacher.” The major targets of these encroachers are properties of Non-Resident Indians (NRIs), poor aged couples whose kids live away for work, and unattended properties bought for investment purposes. These are usually soft targets who do not possess the immediate power and knowledge to take the necessary steps to protect their land. By means of their connections and influence, these powerful people i.e encroachers are able to impose undue pressure, manipulate systems, and essentially seize land that is legally the property of others. Despite their legal status, the legitimate owners are severely disadvantaged by this abuse of power and influence, which compromises justice and fairness. Such situations highlight how urgently strong legal safeguards and unbiased enforcement are needed to guarantee that justice is served and that the rights of legitimate property owners are protected from being exploited by those who wield disproportionate power and money.

The Constitution of India, as the supreme law of the country, guarantees certain fundamental rights to its citizens. Among these, the **Right to Life**<sup>1</sup> stands out as one of the most crucial rights, ensuring that every person, whether a citizen or a foreigner, is entitled to this protection. **The Right to Life encompasses more than mere existence; it includes the fulfillment of basic needs such as food, clothing, and shelter.** Regarding shelter, the Constitution also addresses the **right to own property**<sup>2</sup>. This constitutional right protects individuals' enjoyment of their legally acquired property and stipulates that no person shall be deprived of their property except by the authority of law. This provision ensures that property rights are safeguarded, reinforcing the broader spectrum of rights and freedoms that contribute to a dignified life.

Additionally, a person possesses fundamental human rights for the lawful and beneficial enjoyment of their property in a full and proper manner and these are known as the **easement rights**<sup>3</sup>. An easement is a legal right and a form of privilege that does not arise out of a contract but are inherent right present with the purchase of land. Such a right grants an individual the ability to use land that they do not

own. This includes rights such as the right of way, the right to discharge rainwater, the right to sunlight, and so on. For instance, if you own a house and your driveway crosses through your neighbor's property, you may have an easement that allows you to drive across their land to access your own. This easement ensures your right to reach your property and must be honored by the current and any future owners of the neighboring land. Unauthorized encroachment on another individual's land constitutes unlawful appropriation of property and infringes upon their established easement rights. Consequently, land encroachment also involves depriving a person of their easement rights through illegal construction on government land, blockages, and other means.

In view of the above, it is correct to say that no one has the right to violate the fundamental or constitutional rights of another person. In India, the breach or violation of such rights entitles individuals to approach the Hon'ble Supreme Court or High Courts to seek directions and remedies through writs. The Constitution of India provides for various writs, such as habeas corpus, mandamus, prohibition, certiorari, and quo warranto, to protect and enforce these rights. Under **Article 32** of the Indian Constitution, individuals can directly approach the Supreme Court for the enforcement of fundamental rights. Similarly, under **Article 226**, individuals can approach the High Courts to seek redress for the violation of their fundamental as well as Constitutional rights. These provisions ensure that citizens have a robust mechanism to protect their Fundamental and Constitutional rights against any unlawful infringement.

Indeed, the courts in India have consistently held that no one has the right to encroach upon another person's property. The judiciary has emphasized that encroachment is illegal, regardless of the nature of the encroachment. In the case of **Arulmighu Palapattarai Mariamman Tirukoil Rep. by its Executive Officer Namakkal vs. Pappayee & Others**<sup>4</sup>, the Madras High Court held that whoever commits the illegal act of encroaching upon a public street, even if it is a temple, should be prevented from doing so. Furthermore, any structure erected on a public street that restricts or prevents public

1 Under Article 21 of the Constitution of India

2 Under Article 300A

3 Under Section 4 of the Indian Easements Rights Act, 1882

4 (S.A.No. 190 of 2013 & M.P.No. 1 of 2013)

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access must be immediately removed. This judgment underscores the principle that public streets are meant for public use and should not be obstructed by any unauthorized structures, including those associated with religious or other institutions. Such rulings are important in upholding public rights and ensuring free and safe passage on public thoroughfares.

In the case of **Union of India vs. State of Gujarat and Ors.**<sup>5</sup>, the Hon'ble Supreme Court of India reiterated that religious structures cannot be permitted to encroach upon public land. The court emphasized the importance of removing such encroachments to uphold the rule of law.

Another relevant case is **Sodan Singh & Ors. vs. New Delhi Municipal Committee & Ors.**<sup>6</sup>, where it was held by the Hon'ble Supreme Court that no person, irrespective of religious sentiments, can claim the right to encroach upon public property.

Hence, these rulings emphasize the principle that property rights are to be respected and that encroachment, whether by individuals or institutions, is not permissible under the law.

In a case of land dispute or encroachment, both civil and criminal remedies are available to the victim. The civil remedy involves the process of filing a case of injunction in the court while the criminal remedy involves registering a **First Information Report (FIR)** at the local police station. The very first remedy any common citizen avails is to seek help from local police and authorities. In most cases, they are met with resentment. When lawful property owners approach authorities to file complaints or FIRs against powerful and wealthy encroachers, they often face significant obstacles. Authorities may refuse to accept their complaints, and even if accepted, no action might be taken due to the influence wielded by the encroachers. Instead of receiving the protection they deserve, the lawful owners may be threatened with severe consequences and subjected to malicious prosecutions. On the very surface, the system reeks of corruption or is driven by powerful or influential people. The victims often even take the route of **RTIs**<sup>7</sup> to seek information about the

proceedings of their complaint. However, the replies to RTI are often unclear, arbitrary, or irrelevant. This makes the innocent victim often helpless to the circumstance. The executive body plays a critical role in implementing and enforcing laws enacted by the legislature. When the execution of these laws is not done properly, significant loopholes emerge, leading to a failure in the delivery of justice which often results in law-abiding citizens facing substantial challenges despite their adherence to due process.

Land encroachment, which is commonly known as criminal trespass, as defined by **Section 441 of the Indian Penal Code (IPC), 1860** is the act of unlawfully entering someone else's property without permission to commit an offense, threaten possession of the property, or stay on the land uninvited. Those found guilty of land encroachment may be **punished with a fine extending to five hundred rupees and imprisonment of up to three months or both**. Apart from the sanctions delineated in the Indian Penal Code, the judiciary is empowered to intervene and prevent encroachment, as well as grant damages compensation for any harm caused by the encroachment, in accordance with the Land Encroachment Act. Property owners who wish to seek damages for land encroachment may file a claim in court according to **Order 39 (rules 1, 2, and 3) of the Civil Procedure Code (CPC)** which provides the remedy for an injunction. **Injunction** is an order of the court whereby the encroacher is required to do or refrain from doing a specific act. There are two kinds of injunctions that is permanent and temporary. A temporary injunction is a short-term order that forbids using the property for a set amount of time, whereas a permanent injunction is a long-term order that forbids using the property. To seek an injunction, you can file a case against the encroacher according to Order 39, Rules 1 and 2 of the CPC. After reviewing the application, the court could ask the encroacher to submit a reply. The court will then decide whether to grant or deny the request for an injunction based on the response. In some situations, the court may decide to issue an ex-parte injunction without waiting for the opposing party to respond. This may occur if the defendant refuses to respond to the application or if the potential delay in response would result in significant loss for the applicant. You

5 (2013)

6 (1989)

7 Right to information

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can be entitled to damages or compensation from the encroacher if you are a property owner who has lost money as a result of land grabbing or encroachment. This can cover monetary damages for harm done to the property or the owner, as well as damages for emotional distress.

When lawful property owners find no relief through executive measures, they often turn to the judiciary with faith that it will protect their rights. The courts fail to grant relief because of the inherent nature of working of courts in India, the cases are often not listed on time. Even if it is listed, there might be intentional attempts to delay the matter from the other side. In such cases, the courts might give an ex-parte injunction order which brings temporary relief. Despite all these, the victim is not completely relieved. His property is under trial and stays under pressure and distress. The person is harassed by regular court visits, especially when the jurisdiction of the matter is not in his hometown. All this is also compounded by the litigation charges that he has to bear to secure his land. The RTIs fail to provide you with the required information. The entire scenario highlights a grave miscarriage of justice and a failure of the legal system to uphold the rights of all individuals. The intimidation and manipulation by the powerful undermine the rule of law, erode public trust in legal institutions, and perpetuate a cycle of injustice. It is imperative for the authorities and judiciary to recognize and address these issues, ensuring that justice is not only done but also seen to be done. This includes taking firm action against those who abuse their power and influence, providing protection to vulnerable complainants, and ensuring that the legal process is transparent and equitable. Only through such measures can the integrity of the legal system be preserved and the rights of lawful property owners be safeguarded.

A key issue arises when authorities, influenced by powerful and wealthy individuals, either refuse to accept legitimate complaints or fail to act on them. This non-registration of an FIR not only violates a person's legal rights but also infringes upon their constitutional rights.

This not only undermines the rule of law but also erodes public trust in the legal and executive systems.

The legislative, executive, and judicial branches make up the three branches as the cornerstones of our democracy, which are interconnected and interdependent on each other for the performance of their respective tasks more effectively and efficiently as they directly impact the lives of citizens. However, out of these pillars, the most important part is the Executive body as it is in direct contact with citizens in their day-to-day affairs. It connects the citizens with the government and implements policies laid down by the government. The U.S. President, Thomas Jefferson, once said that the execution of laws is more important than making them. This clearly articulates the critical role of the executive in the proper implementation of laws. When these laws are not properly enforced, significant loopholes arise, leading to failures in delivering justice. This often results in law-abiding citizens facing substantial challenges despite their adherence to due process.

Consequently, the rightful property owners, despite following the legal procedures, find themselves vulnerable to threats, intimidation, and malicious prosecutions.

When poor but lawful property owners, despite providing all necessary evidence and documentation, find no relief through executive measures, they often turn to the judiciary with faith that it will protect their rights. However, the judicial process is frequently lengthy. During this protracted period, encroachers typically proceed with their unlawful activities, further undermining the rightful owners' confidence. It is important to note here that the lack of prompt action against these intruders not only demoralizes the affected individuals but also erodes the general public's faith in the justice system, discouraging others from seeking legal recourse due to threats and undue pressure.

Our esteemed judiciary has emphasized time and time again that "justice should not only be done but also seen to have been done" as a cornerstone of our legal system. This principle highlights the value of transparency and public trust in the legal system and the process of the judiciary. Justice must also be rendered in a way that is equitable and fair to the general public and equitable procedural justice is insufficient. The community's continued faith in the

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legal system's capacity to defend the rule of law and preserve rights is ensured by its visibility. It is much more important for the judiciary to act impartially and firmly in the administration of justice when powerful people use their connections and influence to trespass on the property of legitimate owners. By guaranteeing that everyone, regardless of power or status, is subject to the same rules and protections, upholding this concept helps prevent the erosion of public trust and strengthens the integrity of the legal system.

The courts must strive to resolve disputes timely and effectively, as justice delayed is justice denied. Courts should aim to conclude the cases within designated, self-imposed deadlines. Victims should be compensated fairly, not only for their physical damages but also for the mental agony endured throughout the entire process. Additionally, the judicial system should implement fast-track courts or special tribunals dedicated to land disputes to expedite resolution. Utilizing digital tools and advanced case management systems can further streamline the entire legal process, ensuring timely and effective justice delivery to those seeking redress.

Alternate methods of dispute resolution could also be adopted to save time and come to an amicable solution without indulging in court proceedings. These include arbitration, mediation and negotiation. The courts being extremely burdened with cases, these modern methods provide faster resolution of disputes. It also reduces the legal cost and fosters more cooperation between the parties. Greater public awareness about such legal recourses can bring trust in people to seek these pathways.

There is also a pressing need to enhance the accountability of the local authorities and officials.

Citizens should not face difficulties when dealing with local authorities. The legislature and judiciary must ensure that officials are held accountable for their actions. In cases where officials fail to meet their obligations to citizens, they should face appropriate reprimands. Everyone should be treated equally and anyone facing any discrimination to seek justice should have quick remedies to file a digital complaint against the official, ensuring that grievances are addressed promptly and transparently. Implementing these measures will foster trust and efficiency within the land administration system.

Furthermore, the effective use of technology can act as an essential tool to mitigate land disputes. This involves large-scale surveillance of land and property employing drone technology and the use of artificial intelligence to draw graphical maps of the cities with clearly demarcated public and private land holdings. Technology can also be utilized in digitizing the entire land registry process, thereby enhancing transparency. Implementing digital land registries reduces the risk of fraudulent activities and simplifies the process of verifying land ownership. Additionally, using mobile applications and online platforms can make land records easily accessible, ensuring that information is readily available and up-to-date.

All these steps will take us one step forward in providing swift justice to the victim. Undeniably, it is the duty of the government to enact and implement laws for the smooth working of society. However, it is also the responsibility of the citizens to abide by those laws. A citizen while enjoying his rights must not infringe on the rights of others. Nevertheless, in case of infringements, our system must be capable of ensuring justice for the victim and proper punishment for the infringer. With systematic changes, we can hope that land disputes can be resolved smoothly without unnecessary harassment of the victims.