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EDITORIAL

Editorial - Property Rights through Theory and Practice

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Upon the completion of twenty years (2001–2021), the *Centre for the Study of Law and Governance (CSLG), Jawaharlal Nehru University* undertook a series of activities to mark the occasion and among these was a workshop held in December 2022 focusing on *Property Rights through Theory and Practice* (in collaboration with Jindal Global Law School and Inter-University Centre for Alternative Economics, University of Kerala). The work presented at this workshop reflected an interdisciplinary engagement with law, very much a product of the affiliations of the participants with CSLG as faculty or students—the conception and work behind this collection has been generated by the thought processes that have taken place over many years at CSLG. It was strongly felt by all those who participated in the workshop that they wanted to share the collective energy felt at the workshop, motivating the attempt to gather this collection of essays.

The energy of the event was not just the synergy of fellowship but also an expression of a collective intent to highlight practice in conjunction with theory, that is, to speak back to theory, enriching it with empirical interaction. There is a fluidity to the notion of property, and such fluidity can be understood when we see it in operation on the ground. For such an endeavour, the locational emphasis of this collection is immediately apparent—a huge empirical diversity in relation to property can be found all over the Indian subcontinent. There are many varying contexts within which issues pertaining to property rights come to the fore, starting from constitutional interpretations of property to the expression of local norms that govern property on the ground. By bringing together these diverse experiences and contexts, the overall aim of this volume is to see if we can better understand and comment on the role of property and its governance in the constitution of economic, social, and political life. This diversity of experience, which is interesting in itself, is also a cause for those contributing to this volume to engage empirical experience with theories of property so as to invigorate and creatively engage with conceptual issues. Thus, here the locational emphasis does not signify a straightforward conversation between the empirical material and received conceptual apparatuses, but rather it is an attempt to use the opportunity to engage with conceptual frames from a locational perspective, somewhat in the spirit suggested by Arif, "to see how encounters among a diversity of locations, expressive lives and experiences connect in messy, non-hierarchical, uncharted but resonant and associative ways, such that they insist on destabilising dominant concept or modes of theorising" (Arif, 2015, p. 53). All the contributions aim to do this in varying degrees with some concentrating on theoretical or conceptual concerns, while others are more empirically oriented, but none of them are devoid of the conversation between theory and the empirical. Additionally, all the contributions share

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the premise that property (and the many issues that surround it) is defined relationally and it is the appreciation of this that allows the innovative exploration of theory and practice around the problems of property.

We do not attempt to summarise the contributions as such, but briefly point to how their contents reflect such relationality. To begin, Aashita Dawer, in her paper titled "Primacy of Property as Devolution of Rights: Case of Women in India through the lens of Inheritance Laws," introduces important social elements into a law and economics analysis of customary Hindu inheritance laws in the face of attempts at reform for gender equity. Apart from somewhat unsettling the traditional paradigms of analysis, her paper engages with the promise of equality guaranteed by the Indian Constitution, reflecting the tension between India's liberal constitution and the many social practices on the ground. Arpan Acharya's paper "Public Spaces and the State in India: Identity and Property in the Hijab Controversy" also speaks to the issue of property and the Indian Constitution. He does so by using economics-based typology of property to open up the public space as a site where the issue of confessional exclusion—the wearing of the hijab, is studied by discussing the tensions generated by both statutory and constitutional law while governing space. This analysis veers the conversation towards an understanding that emphasises the socially constructed nature of property rights, highlighting the capture of resources on the grounds of identity. Tensions arising from identity and property are likewise brought out by the paper written by Jaivir Singh "Juristic Personhood and Property: Some Reflections on the Juridical Path of the Idol in India." He begins by describing the role of the idol as a juristic person in resolving property disputes of Hindu religious establishments, going on to show how this device used to govern intra community disputes was used for an inter-community dispute in relation to the Ayodhya dispute. This configuration of property rights is revealed to have a number of ramifications—of course in relation to politics and the secular Indian Constitution, but prominently in relation to the economy as well.

If some papers look at identity and property, then another set emphasises property and distribution of resources purposely (distributional issues are implicitly present in all the papers). Radhika Chatterjee's paper "Legal Pluralism, Waqf and Property in Urban India" provides a detailed ethnographic account of the plural legal regimes that govern the use of waqf property in an urban village (Mehrauli) in Delhi. Her account highlights the redistribution of local resources through informal arrangements that allow people to share property rights locally. The redistribution question is approached in a more philosophical tone by Aloke N. Prabhu in his paper titled "Ethical Foundations of Property: Socializing Property through Trusteeship". He enquires how a Gandhian theory of property that encourages the idea of holding property in trust to the benefit of all, can be converted into a legal system of obligations. He develops his arguments in conversation with redistributive mechanisms discussed by the political philosopher John Rawls. Naimitya Sharma's work "Negotiating the Quality of Property Rights: Heuristic Strategies for Better Environmental Outcomes in India" takes on the role of property rights in governing the environment—presenting three instances one, where a commonly held beach is voluntarily cleaned; second, land is bought up by a private individual to set up a sanctuary; and third, a group of villagers who manage a collectively shared water source. The distribution question (along with allocative concerns) inheres in the varying property rights regimes that emerge in different contexts and is also dependent on the role of agents— the volunteers who lead change and who are instrumental in constituting the regimes.

This brief description of the contents of the papers of the volume shows that they are quite in contrast to the conventional or standard study of property in India. They do not follow the route of black letter of law treatises or invoke much repeated issues surrounding the removal of property as a fundamental right and setting it up as a

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constitutional right. Instead of viewing property in the Indian context as static or at best engaging with constitutional property doctrines frozen in time, the papers in this volume attempt a more dynamic understanding that looks out to view individuals or groups of people establishing their interests, convincing society and/or courts of their importance and the property rights they hold or want to hold. It is in this sense the relation between an economic imagination and property helps the interdisciplinary study of property, and if there is one thread that connects the papers of this volume, it is the exploration of property in relation to an economy— sometimes explicitly and at other times more implicitly. This is not the formal economics of economic journals or textbooks but a sense of the economy in relation to law, nor is it the law and economics exercise of interpreting law using the norms of standard economics but rather an attempt to understand how law (particularly property law) economy, society, and politics mutually constitute each other.

References

Arif, Y. (2015). 'The audacity of method', *Economic and Political Weekly*, 50(1), pp. 53–61.

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