

The Annual Survey of State Laws in India

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Introduction

Even as studies continue to assess the Gujarat Model of Development, hailing or critiquing it, the state continues to be a forerunner in promoting economic growth of India. As one of the highly industrialised states in India, with a population share of only 4.99 percent, it contributes to about 7.9 percent of India's gross domestic product (GDP).² In addition to being home to the world's largest petroleum refining hub, the diamond industry, leading textile markets, engineering and chemical industries, shipbreaking yards and salt pans, the state has emerged as a favoured destination for investors. According to the Department for Promotion of Industry and Internal Trade (DPIIT), Gujarat received the highest Foreign Direct Investment (FDI) in the financial year 2020-2021 at US\$ 21.89 billion and topped the states, with 30 percent of the total equity inflow.³ Keeping pace with the centre's progressive liberalisation of the FDI policy, Gujarat sought to be a highly investor-friendly state. However, the state's performance needs to be linked to how it has addressed issues of production, land and labour. Under the Indian Constitution, land is a state subject while labour is a concurrent subject. It becomes necessary to examine how the state exercised the power vested in it to attain balanced growth, and address citizens' needs during the COVID-19 pandemic within the changing socioeconomic and political scenario. Accordingly, this survey examines the laws that were passed on the subject of land and labour in the year 2020 in the given context. The Gujarat state legislative assembly passed several other laws including the Gujarat Salaries and Allowances of Members, Speaker and Deputy Speaker of the Gujarat Legislative Assembly, Ministers and Leader of the Opposition Laws (Amendment) Act, 2020 that reduced basic salaries of the MLAs, speaker and deputy speaker, ministers and leader of the opposition by 30 percent.

For the development of the area and management of the pilgrimage at Ambaji in the state, the Ambaji Area Development and Pilgrimage Tourism Governance Act, 2020 was enacted to help provide necessary civic infrastructure through effective planning, administration, and governance.

The Gujarat Tenancy and Agricultural Lands Laws (Amendment) Act, 2020

Land leasing in Gujarat is governed by three Acts: the Gujarat Tenancy and Agricultural Lands Act, 1948, the Gujarat Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958 and

1. Associate Professor (Law), NALSAR University of Law.
2. Government of Gujarat, "Socio-Economic Review 2019-20: Gujarat State", 34 (Directorate of Economics and Statistics, February 2020).
3. Department for Promotion of Industry and Internal Trade, "FDI in India: Annual Issue" (2020) *available at*: https://dpiit.gov.in/sites/default/files/Chapter_1.3_A_vi.pdf (last visited on April 17, 2022).

the Saurashtra Gharkhed, Tenancy Settlement and Agricultural Lands Ordinance, 1949. Under the provisions of these laws⁴ agricultural land could not be transferred to a non-agriculturist. However, with the rise in demand for land for various industrial and developmental purposes, such restrictions were relaxed and transfer of agricultural land was allowed for bona fide industrial purposes.⁵ Such purchasers must inform the collector about the purchase. If they are satisfied that the purchase is for a bona fide industrial purpose, a certificate would be issued to that effect.

As it stood originally, if industrial activity did not commence on the land acquired for that specific purpose even after three years of issue of the certificate, the same would be vested with the government free from all encumbrances and there was no provision of further sale to a third party once the purchaser defaulted. However, by virtue of an amendment in 2015, an option for further transfer was provided. The state government could, by notification in an official gazette, permit transfer of agricultural land to any nonprofit public trust established for charitable purposes in the field of health and education.⁶ The purchaser had to make an application to the collector for further sale of land for bona fide industrial purposes. Such permission was granted upon payment of a premium to the tune of 40 percent *jantri* value (value determined by the government) of the land. The premium would increase to 60 percent *jantri* value if the application was received between the fifth and seventh year and to 100 percent of *jantri* value after the seventh year.⁷

The Gujarat Tenancy and Agricultural Lands Laws (Amendment) Act, 2020 makes changes to the three afore-mentioned tenancy laws. The slab has now been inversed. Under the amended provisions, such permission shall be granted by the collector only upon the payment of 100 per cent of the prevailing *jantri* value if the application is made after a period of three years but before the completion of a period of five years, 60 percent between the fifth and seventh year, 30 percent after the seventh year but before ten years, and 25 percent after ten years.

The amendment also permits the sale of land in favour of any person or institution for use of such land for other than bona fide industrial purposes, including setting up an agricultural university or animal husbandry university, or facilities for education, medical education and health.⁸ While permitting transfer of the land for purposes of education and health is seen as a move in favour of public interest, the inverted slab of premium is seen as problematic. It is alleged that the same will allow those promoters to profit who will benefit from the appreciation of the value of land that was purchased years ago by paying a small premium to the government.⁹

4. The Gujarat (Bombay) Tenancy and Agricultural Land Act, 1948, s. 63; the Saurashtra Gharkhed, Tenancy Settlement and Agricultural Lands Ordinance, 1949, s. 54; the Gujarat Tenancy and Agricultural Land (Vidarbha Region and Kutch Areas) Act, 1958, s. 89.

5. The Gujarat (Bombay) Tenancy and Agricultural Land Act, 1948, s. 63AA; the Saurashtra Gharkhed, Tenancy Settlement and Agricultural Lands Ordinance, 1949, s. 55; the Gujarat Tenancy and Agricultural Land (Vidarbha Region and Kutch Areas) Act, 1958, s. 89A.

6. The Gujarat (Bombay) Tenancy and Agricultural Land Act, 1948, s. 63(1A); the Saurashtra Gharkhed, Tenancy Settlement and Agricultural Lands Ordinance, 1949, s. 54(1A); the Gujarat Tenancy and Agricultural Land (Vidarbha Region and Kutch Areas) Act, 1958, s. 89(1A).

7. The Gujarat (Bombay) Tenancy and Agricultural Land Act, 1948, s. 63AA(4A),(4B); the Saurashtra Gharkhed, Tenancy Settlement and Agricultural Lands Ordinance, 1949, s. 55(3A)(3B); the Gujarat Tenancy and Agricultural Land (Vidarbha Region and Kutch Areas) Act, 1958, s. 89A(4A)(4B).

8. The Gujarat (Bombay) Tenancy and Agricultural Land Act, 1948, s. 63AAA; the Saurashtra Gharkhed, Tenancy Settlement and Agricultural Lands Ordinance, 1949, s. 55A; the Gujarat Tenancy and Agricultural Land (Vidarbha Region and Kutch Areas) Act, 1958, s. 89AA.

9. Express News Service, "Gujarat: Tenancy Bill passed in Assembly; Cong terms it 'pro-industry'", *The Indian Express*, Sep. 25, 2020, available at: <https://indianexpress.com/article/india/tenancy-bill-passed-in-assembly-cong-terms-it-pro-industry-6612001/> (last visited on March 7, 2022).

The Gujarat Land Grabbing (Prohibition) Act, 2020

Ensuring equity of ownership and providing for certitude of title have proven to be challenging areas of land governance and regulation. The ever-growing demand for land coupled with appreciation in its value, has encouraged land grabbing.¹⁰ In order to tackle land grabbing by unscrupulous elements, the Gujarat Land Grabbing (Prohibition) Act, 2020 (hereinafter referred to as the Land Grabbing Act) was enacted on October 8, 2020 and was retrospectively operable from August 29, 2020. After Andhra Pradesh, Assam and Karnataka, Gujarat is the fourth state which has enacted an Act to deal with land grabbing.

The Act defines land grabbing as every activity of occupying land without lawful entitlement and with a view to illegally take possession of such land, whether with or without the use of force, threat, intimidation and deceit.¹¹ A land grabber is any person who directly or indirectly takes illegal possession of land and constructs unauthorised structures on it; or who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation. A land grabber could be an individual, a group of persons, a company or a religious or charity organisation. The definition also includes a successor-in-interest who may have purchased the land in good faith or inherited the land. The land grabbed may belong to the government, a public sector undertaking, a local authority, a religious or charitable institution or a private person. The Act declares that land grabbing is an unlawful activity, whose practice is prohibited, and a punishable offence.¹²

A complaint of land grabbing has to be made to the district collector having jurisdiction over the area where the disputed land is situated. The complaint shall be investigated by a seven-member committee constituted by the collector, who will appoint an inquiry officer. The officer has to report whether a prima facie case exists. Only if the inquiry officer confirms that such a case exists, will the committee initiate further action, including ordering registration of a first information report (FIR). The police must register the FIR within seven days of the committee's order. To ensure speedy enquiry into an alleged act of land grabbing and for speedy trial of ownership and title disputes and swift restoration of the grabbed land to the rightful owner, the Act establishes special courts, which are mandated to dispose of matters preferably within six months. Both the collector and the special court have the power to take suo moto cognisance of any land-grabbing case. The Land Grabbing Act stipulates a minimum punishment of 10 years, which could extend to 14 years, and a fine, which could be equal to the value of such properties. The decision of the court is final and the Act does not provide for an appeal, a revision or review. According to the available reports, the Gujarat government has registered 345 FIRs against 1,178 people for land grabbing, and chargesheets have been filed against 190 persons.¹³

On the face of it, the Land Grabbing Act promises to protect the interests of small-farmers and citizens from the fraudulent claims of the land mafia by providing that disputed land titles and fraudulent claims will be resolved by special courts in a time-bound manner. On closer scrutiny, several substantive and procedural infirmities have been identified in the Act.

10. Since the Gujarat Legislative Assembly was not in session at that time, the Act was initially passed through an ordinance, which has now been repealed and replaced with this Act.

11. The Gujarat Land Grabbing (Prohibition) Act, 2020, s. 2(e).

12. The Gujarat Land Grabbing (Prohibition) Act, 2020, s. 4.

13. Express News Service, "Anti-land Grab Act in Gujarat: 345 FIRs filed against 1,178 people in one year" *The Indian Express*, Aug. 19, 2021, available at: <https://indianexpress.com/article/cities/ahmedabad/anti-land-grab-act-in-gujarat-345-firs-filed-against-1178-people-in-one-year-7460523/> (last visited on Nov. 24, 2021).

Suspect Constitutional validity

Article 13 enjoins the state from making any law which infringes on the fundamental rights guaranteed under part III of the Constitution and states that any law made in contravention of the rights shall, to the extent of contravention, be void. Under section 9(1) of the Land Grabbing Act, a special court is empowered to take cognisance of and try every case arising out of any alleged act of land grabbing whether before or after the commencement of this Act. The Act thus has a retrospective effect, which is seemingly in breach of article 20 of the Constitution by allowing for post-facto punishment. The constitutional validity of the Land Grabbing Act was challenged in the high court of Gujarat in February 2021.¹⁴ Nearly a hundred petitions challenging this law have been filed before a division bench headed by the chief justice of Gujarat.¹⁵

Conflates the Landless and Land Mafias

Another major criticism that has been levelled against this enactment is that it fails to distinguish between land mafias and landless/homeless persons who may be in occupation of land. This is evident when one refers to the very definition of land grabbing as provided in section 2(e) of the Land Grabbing Act. The term land grabbing broadly recognises any activity of occupying land without a lawful entitlement and with a view to illegally taking possession of such land, whether with or without the use of force, threat, intimidation and/or deceit. Thus, even peaceful possession of land could amount to land grabbing. It is, therefore, feared that this definition may result in even poor and landless people facing charges of land-grabbing for occupying a vacant land which they do not own. Mobile street vendors who might be occupying land for a temporary period for the purposes of carrying out their livelihood could be hauled up under such provisions. Thus, the broadly scoped definition of land grabbing when coupled with the quantum of punishment may inadvertently lead to criminalising poverty. Consequently, an Act which is supposedly pro-poor and pro-citizen, may end up being an anti-poor law.

Furthermore, while adopting stringent measures to curb the menace of land grabbing by miscreants, the Land Grabbing Act lost sight of other existing laws. For instance, the Act stands in direct conflict with the central government legislation on the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, which provides for regulation of street vending. The Act was enacted to protect street vendors from police extortion and eviction threats from the administration. The said Act recognised occupational rights of the street vendors, who were sometimes perceived as encroachers before the law. However, the Land Grabbing Act, by casting its net wide, has yet again entrapped street vendors, thereby negating the recognition accorded to them under the Street Vendors Act. Similarly, the scope of the Land Grabbing Act can also be extended to forest dwellers and scheduled tribes, whose rights of self-cultivation and habitation have been recognised under the Forest Rights Act, 2006. Thus, provisions of the Land Grabbing Act have the potential of hindering the process of legalising and regularising land-holding by indigenous communities.

14. Satish Jha, "Constitutional validity of Gujarat Land Grabbing Act challenged in High Court", *Deccan Herald*, Feb. 13, 2021, available at: <https://www.deccanherald.com/national/west/constitutional-validity-of-gujarat-land-grabbing-act-challenged-in-high-court-950725.html> (last visited on Nov. 24, 2021).

15. Express News Service, "Gujarat Land Grabbing (Prohibition) Act: HC suggests state to consider Amendments", *The Indian Express*, Nov. 26 2021, available at: <https://indianexpress.com/article/cities/ahmedabad/gujarat-land-grabbing-hc-amendments-7641855/> (last visited on Dec. 2, 2021).

Conflating Criminal and Civil Matters

Since the land covered by the Land Grabbing Act is not limited to encroachment on government land but also extends to private land, the provisions of the Act can be conveniently invoked in matters of property disputes between private parties. Such application is worrying on two counts: first, the provisions of the Land Grabbing Act when read with the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as PASA) provide private parties an opportunity to misuse state machinery of arrest and detention by initiating criminal proceedings instead of resorting to civil proceedings. For instance, in a matter before the High Court of Gujarat¹⁶, provisions of PASA were invoked together with the Land Grabbing Act in a dispute between a landlord and his tenant. The complaint primarily emerged from the fact that the complainant-owner of the plot did not approve of certain persons, including the present petitioner, visiting his tenant. This led to a dispute for vacating the premises, and it is against this background that the provisions of the Land Grabbing Act were invoked. The petitioner was treated as ‘a property grabber’ and named as an accused along with four others in the FIR filed under PASA. The single judge bench of the high court voiced its concerns regarding abuse of the Land Grabbing Act given that an offence under this Act could also attract detention under PASA. Taking cognisance of the silence of the government on this question and after perusing the FIR and other material on record, the detention order of the petitioner was quashed. The matter highlighted the overlap between the property grabbing provisions of PASA and the land-grabbing sections under the Land Grabbing Act.

Second, under section 9(1), read with section 17 of the Land Grabbing Act, primacy has been accorded to the special court by providing that unless declared valid by this court all transactions of alienation shall be null and void, despite pronouncement of orders or decrees by a competent court or by operation of the law of limitation. Such retrospective operation of prohibition on alienation of grabbed land amounts to an overriding effect and leads to reopening of matters on which private parties may have already got a resolution after long-drawn legal battles. Thus, the Land Grabbing Act has the effect of unsettling agreements, partitions, transactions of alienation of grabbed land by subjecting such transactions to the provisions of this Act even when such alienations had taken place prior to the date of the Act coming into force. Such disputes have already begun to surface before the courts. For instance, two petitioner brothers moved the high court seeking stay orders against criminal proceedings against them under the Land Grabbing Act. The dispute was about the land which, according to the petitioners, was granted by the government to their great grandfather as a part of the refugee settlement scheme and on which there was an ongoing civil dispute.¹⁷ Once the prima facie case of land grabbing was established, the burden of proof was placed on the accused to prove that they were not land grabbers.¹⁸ In other words, once the prima facie case of land grabbing is established by the state, the brunt of establishing that the Act did not apply has been placed on the accused. This is especially so because the Act does not specify any standard of evidence for establishing a prima facie case.

Another striking feature of the Land Grabbing Act is the unquestioned supremacy of the special court established under its provisions. Not only is it vested with powers to try every case of land grabbing or

16. *Jagdishbhai @Jago Ratilal Mehta v. State of Gujarat* C/SCA/10778/2021, order dated Sep. 01, 2021.

17. TNN, “Gujarat high court stays land grabbing charges” *The Times of India*, Aug. 25, 2021, available at: <https://timesofindia.indiatimes.com/city/ahmedabad/hc-stays-land-grabbing-charges/articleshow/85606929.cms> (last visited on Nov. 24, 2021).

18. The Gujarat Land Grabbing (Prohibition) Act, 2020, s. 11.

to determine title and ownership of such land grabbed¹⁹ irrespective of the fact that a parallel civil or criminal litigation may be pending before other courts, but it is also empowered to reopen matters that may have been decided upon before the commencement of this Act.²⁰

While section 202 of the Gujarat Land Revenue Code, 1879 and the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 provide for a summary procedure of eviction of an unauthorised occupant, there is no such provision in the Land Grabbing Act. In other words, whilst these Acts provide for a proper procedure for eviction as issue of notice, adjudication by a competent officer, and appeal against the order, section 9(8) of the Land Grabbing Act empowers the special court, to preemptorily restore the possession of the land grabbed after evicting by force if it so deems fit. The special court, unlike the authorities under the 1879 Code and 1972 Act, has been conferred the power to follow its own procedure notwithstanding anything in the Code of Civil Procedure 1908, with the only safeguard being that the said procedure shall not be inconsistent with the principles of natural justice and fair play.²¹ There is no provision for appeal, and such use of force by the state may render the writ power also infructuous. While the Land Grabbing Act, to all intents and purposes, was enacted to provide protection to the people from the machinations of land sharks, it is increasingly proving to be an anti-poor and confiscatory legislation.²²

Labour Laws

Labour is a subject in the concurrent list of the Constitution, which means that both the centre and the states can make laws on it. In case there is repugnancy between the law passed by the state legislature and the one passed by the union government, the central law prevails. However, a provision of a state law may override that of a central law if the former receives the assent of the President. Following the onset of the pandemic in March 2020 and the subsequent lockdown, several states were eager to ameliorate the financial situation by reviving trade and commerce and promoting economic growth. Citing compelling economic circumstances prevailing due to COVID-19, the Gujarat state legislative assembly passed four Bills on labour and employment, which diluted existing provisions favouring labour in the Industrial Disputes Act, 1947; the Factories Act, 1948; and the Contract Labour (Regulation and Abolition) Act, 1970, tilting the legislative scale in favour of employers and industrial establishments.²³

Under the Industrial Disputes Act, 1947, establishments having 100 or more workers are required to seek prior permission of the state government before closure or layoff or retrenchment.²⁴ The Industrial Disputes (Gujarat Amendment) Bill, 2020 however raised this limit and made it applicable to establishments with 300 or more workers. Similarly, the Factories (Gujarat Amendment) Bill, 2020

19. The Gujarat Land Grabbing (Prohibition) Act, 2020, s. 9(2).

20. The Gujarat Land Grabbing (Prohibition) Act, 2020, s. 9.

21. The Gujarat Land Grabbing (Prohibition) Act, 2020, s. 9(3).

22. Also see Varsha Bhagat-Ganguly and Rejitha Nair, "Criminalising 'tool' created, name: Gujarat Land Grabbing Prohibition Act 2020", Mar. 14, 2021 available at: <https://www.counterview.net/2021/03/criminalising-tool-created-name-gujarat.html> (last visited on Nov. 25, 2021); Vinay Sachdev and Dhruvil Kanabar, "Criticism of the Gujarat Land Grabbing (Prohibition) Act, 2020", Jun. 28, 2021, available at: <https://bhattandjoshiassociates.com/criticism-of-the-gujarat-land-grabbing-prohibition-act-2020-part-2-2/> (last visited on Nov. 25, 2021).

23. The amendments were initially routed through an ordinance. The same has now been repealed and the Bills received presidential assent on January 1, 2021.

24. The Industrial Disputes Act, 1947, s. 25K.

as well as the Contract Labour (Regulation and Abolition) (Gujarat Amendment) Bill, 2020 enhanced the existing threshold limits of workers before the requirement of prior permission would be applicable to them.

Further, section 25N of the Industrial Dispute Act, 1947 has also been modified to do away with the provision of wages for the notice period. Prior to the amendment, workers needed to be given three months' notice or wages for the notice period before retrenchment. However, post the amendment workers can be retrenched only after giving them three months' notice, which is a favourable change that does not allow sudden dismissals from service. Additionally, section 36C has been inserted in the Industrial Disputes Act, 1947 and section 5A to the Factories Act, 1948 to enable the state government to exempt new establishments or undertakings for a period of 1000 days from all or any of the provisions of both the said central Acts.

Further, sections 51, 54, 55 and 56 of the Factories Act, 1962 limited maximum number of daily and weekly work hours and stipulated interval for rest hour. The state government invoked section 5 of the Factories Act, 1962 and issued notifications granting exemption to all factories registered under the Act from obligations mandated under sections 51, 54, 55 and 56 of the Act.²⁵ The first notification was issued on April 17, 2020²⁶ by the Labour and Employment Department of Gujarat, which was to provide relaxations from the aforementioned obligations under the Factories Act from April 20, 2020 till July 19, 2020. Later, these relaxations were further extended for another three months from July 20, 2020 to October 19, 2020 by the second notification on July 20, 2020.²⁷ The notifications revised the maximum limit of working hours to 12 hours per day and 72 hours per week, and fixed overtime wages at a rate proportionate to the ordinary rate of wages.

The constitutional validity of these notifications was challenged before the supreme court by the Gujarat Mazdoor Sabha.²⁸ Ruling in favour of the petitioners, the supreme court quashed the notifications in question that legitimised the subjection of workers to onerous working conditions at a time when their already feeble bargaining power stood further whittled by the pandemic. Whilst the court took cognisance of the fact that the government was attempting to address financial exigencies caused by an unprecedented pandemic, it categorically held that financial losses could not be offset on the weary shoulders of labour.

Law and Policy

As per the registration data from Directorate of Industrial Safety & Health, the number of working factories registered under Factories Act, 1948 in the state increased from 31504 at the end of 2017 to 34081 at the end of 2018.²⁹ For an industrial state like Gujarat, which witnesses a constant influx of migrant workers, it is imperative to put in place laws that ensure protection and welfare of labour.

25. Section 51 limits weekly hours to maximum forty-eight hours, section 54 limits daily hours to maximum nine hours, section 55 provides for at least half an hour of interval for rest between shifts and section 56 prohibits spreading over work period, including interval for rest, beyond ten-and-a-half hours in any day.

26. Notification no. GHR/2020/56/FAC/142020/346/M3.

27. Notification no. GHR/2020/92/FAC/142020/346/M3.

28. AIR 2020 SC 4601.

29. *Supra* note 2.

In a bid to attract new investments and create employment, the state government moved the above-mentioned reforms in labour laws, which offered regulatory relaxations. Consequent to the amendment in the Industrial Disputes Act, industrial establishments with less than 300 workers can now ‘hire and fire’ workers or even close down without seeking prior permission from the state government. Such upward revision was carried out in the number of workers in the Factories Act and the Contract Labour Act as well. As per the claims of the government, the amendments would encourage demand for labour. It was claimed that industrial establishments and factories were currently under-hiring and over-working existing employees by limiting the recruitment under the statutory threshold to avoid falling within the ambit of the respective Acts. With the upward revisions in the thresholds, more workers would be offered employment.

To summarise, though the state government saw itself as a facilitator who was putting growth back on track by striking a balance between the industries and the workforce, the amendments evidently tilted heavily in favour of industries and employers. Even as labour continued to be distressed and faced huge difficulties during the COVID-19 countrywide lockdown, the government’s misconceived responses that aimed at reducing the regulatory burden of employers and industry only resulted in further increasing the vulnerabilities of workers.

Conclusion

Most of the legislation passed during the evaluation period are deeply problematic not just in the norms incorporated in the statutory provisions but also in terms of the larger policy implications they hold for the citizens. For a state that boasts of being a forerunner in economic development, it is critical to reflect on the outcomes of its policies and how efficiently it functions as a welfare state. Gujarat’s Industrial Policy 2009 pitches for catalysing robust, sustainable and inclusive growth. But does it actually walk the talk? Reducing the protection offered through labour regulations at a time when labour was most vulnerable (during the pandemic) bespeaks of an indifference to the plight of the working class. If the objective is to create employment opportunities, it needs to be asked at whose cost is such opportunity being created. Similarly, stringent laws that can activate the state machinery to effect instantaneous eviction of occupants from land without observing the procedural safeguards that would help distinguish the wrongful from the wronged only renders marginalised and impoverished communities more vulnerable.