INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

VOLUME 3 ISSUE 1

Peer-reviewed, open-access, refereed journal

IJLAR

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www.ijlar.com

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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJLAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

THE OFFENCE OF LAND GRABBING: AN INDIAN PERSPECTIVE

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ABSTRACT

The concept of land grabbing has been incorporated as an organised crime in the Bharatiya Nyaya Sanhita (BNS), the penal code presently prevailed in India. Prior to coming into force of this Act, there were some State legislations in India in respect of organised crime and land grabbing which are still existent. The same meaning of *organised crime* as provided in those State legislations have been adopted in the BNS. The offences being committed as organised crime are to be continuous, caused by an individual or a group by application of violence, threat of violence, intimidation, coercion or other illegal activities designed to extract material benefit. Land grabbing, as an organised prime, is clubbed with offences like kidnapping, robbery, vehicle theft, extortion, trafficking of persons for prostitution or ransom and the like. Though 'land grabbing' *per se* is not defined in the BNS, the other State legislations prevailing in this field have designated this offence as unlawful occupation of any land by an individual or group without having valid title and use thereof. Accordingly, this type of offences seems to be *blue coloured* offences marked with explicit infliction on individuals and/or their immoveable properties as opposed to the *white coloured* land grabbing which is caused by exploiting the loopholes in the provisions of the prevailing laws in India in respect of intestate succession of immoveable properties left by their deceased owners and transfer of the same. These types of misdeeds are frequent in this country and checking the commission of those offences is very difficult. Some legislative and administrative reforms have been referred herein which seem to be effective to check the menace to some extent.

KEY WORDS: Grabbing**,** Inheritance, White coloured, Intestate, Excheat.

INTRODUCTION

Recently, the concept of *Land Grabbing* has been considered as a serious crime in criminal jurisprudence of India though its concept is not new. Before its incorporation in the Bharatiya Nyaya Sanhita (BNS)[1] as an organised crime[2], there was no reference of this offence in the old Indian Penal Code (IPC)[3] which was deleted by the former in 2023. But the states like Andhra Pradesh, Karnataka and Gujarat had their own land grabbing prohibition statutes namely the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982[4], the Karnataka Land Grabbing Prohibition Act, 2011[5] and the Gujarat Land Grabbing (Prohibition) Act, 2020[6]. All these Acts have maintained uniformity in respect of meanings of *land grabbing* and *land grabber*. Unlawful occupation of any land by a person or a group of persons without having any valid title thereon for illegal possession, creating unauthorised tenancy or leave and licence agreement in respect of such land, constructing unauthorised structures thereon for the purpose of selling and/or hiring etc. fall within the ambit of the definition of *land grabbing.* The original owner of such land may be the Government, a local body, any religious or charitable organization or endowment or an individual or a group of individuals. The person or the group of persons who commit/s such act, financially help/s other/s for such unlawful activities, collect/s money from the illegal occupant/s of such land by intimidating such person/s criminally or the abettor/s of those offences and his/her/their successor/s in interest are defined as the *land grabbers.*

It has already been referred that the concept of *land grabbing* is categorized in the group of organized crime wherein kidnapping, robbery, vehicle theft, extortion, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom are also included. These unlawful activities are to be continuous, carried out by an individual or a group of individuals in unanimity, acting as a member/members of an organised crime syndicate or on behalf thereof by applying violence, threat of violence, intimidation, coercion or other illegal acts designed to extract material benefit

[1] Act No. 45 of 2023
[2] Section 111 *Supra*
[3] Act No. 45 of 1860
[4] Andhra Pradesh Act No. 12 of 1982
[5] Karnataka Act No. 38 of 2014
[6] Gujarat Act No. 11 of 2020

inclusive of financial benefit. A syndicate or gang consisting of two or more persons which indulges in a continuing unlawful activity is known as an "organised crime syndicate"[7].

This is to be noted here that prior to inclusion of the concept of *organised crime* in the BNS, there were some State legislations in respect of this offence. These are the Maharastra Control of Organised Crime Act (MCOCA), 1999[8]; the Karnataka Control of Organised Crimes Act, 2000[9], the Arunachal Pradesh Control of Organised Crimes Act, 2002[10] and the Gujarat Control of Organised Crime Act (GCOCA), 2019[11]. The Maharastra Act is the oldest among all these State statutes. Any continuous unlawful activity caused by a person by the application of violence, coercion, intimidation or other illegal method with the objective of gaining pecuniary benefit or undue advantage for himself/herself or any other interested person as being a member of an organised crime syndicate or on its behalf is known as an organised crime in terms of the Maharastra Act. A group of two or more persons acting collectively as a gang for indulgence of activities of organised crime is known as an organised crime syndicate by the said Maharastra Act. A cognizable offence caused by a person as a member of or on behalf of an organised crime syndicate for which more than one charge-sheet have been filed before a competent court within last ten preceding years causing the court to have also taken cognisance thereof is designated to be a continuing unlawful activity under the said Act. No specific reference of land grabbing is made under the provisions of this Act. The same concept of organised crime is adopted by the Karnataka and the Arunachal Pradesh Acts but the Gujarat Act categorized land grabbing as one of the organised crimes. It seems that the Parliament of India was influenced by this concept of the Gujarat legislation and accordingly, the provision was incorporated under the BNS.

OFFENCE TO BE TREATED AS A WHITE COLLAR CRIME IN INDIA

Most incidents of land-grabbing should actually be considered as *white-collar* crimes in India. Generally, non-violent, financially motivated offences committed by persons settled in higher echelons of society by secretly manipulating circumstances in their favour exploiting their position

[7] Section 111 BNS
[8] Maharastra Act No. 30 of 1999
[9] Karnataka Act No. 1 of 2002
[10] Arunachal Pradesh Act No. 5 of 2002
[11] Gujarat Act No. 24 of 2019

and status are defined as *white-collar* offences, as opposed to a *blue-collar* crime which causes direct infliction on the person and/or property of an individual, the same being clearly visible and/or felt. The concept was coined in 1939 by Edwin Sutherland, an American sociologist.

Both the Andhra Pradesh and the Gujarat Land Grabbing (Prohibition) Acts include rights over land, benefits arising therefrom and buildings, structures and other things attached or fastened thereto within the definition thereof[12]. No such definition is incorporated in the BNS. The offence of *land-grabbing* seems to be considered as a *white collar* crime inasmuch as the same is very often conducted by exploiting loopholes in the laws of inheritance and transfer of immovable property prevailing in India, sometimes in connivance with some corrupt members of the concerned authorities.

LEGAL POSITION IN INDIA

In the field of inheritance, usually three types of law are followed in India excluding the tribal communities : (i) the Indian Succession Act, 1925[13], (ii) the Muslim Personal Law (Sharia) Application Act, 1937[14] and (iii) the Hindu Succession Act, 1956[15]. Apostates, Christians, Jews and Parsis are governed by the provisions laid down under the Indian Succession Act in India in the matter of their inheritance. The provisions under the Muslim Personal Law (Sharia) Application Act and the Hindu Succession Act are applicable to the Muslims and Hindus respectively in India.

This is pertinent to mention here that for the purpose of succession, the term 'Hindu' is applicable not only to the persons belonging to the Hindu religion in any of its manifestations, the persons professing Jainism, Buddhism and Sikhism as their religions are also governed by the provisions laid down under the Hindu Succession Act, 1956[16].

[12] Section 2 *Supra i*n notes 4 and 5
[13] Act No. 39 of 1925
[14] Act No. xxvi of 1937
[15] Act No. 30 of 1956
[16] Section 2(1)(a)&(b) of the Hindu Succession Act, 1956

Other than Parsis, the property of a deceased person dying intestate devolves upon the wife or husband of the deceased, as the case may be or upon the persons who are of the kindred of the deceased in terms of the provisions laid down under Chapter II of the Indian Succession Act, 1925.

Parsis are governed by Chapter III of the Indian Succession Act, 1925 in matters of inheritance. There is no distinction between a child who is born during the lifetime of a deceased and the child in womb at that time but is subsequently born alive. The widow or widower, as the case may be, of a decease loses her/his chance of inheritance in case of remarriage during the lifetime of the deceased.

In India, the law of inheritance is divided among Muslims according to their belonging to the respective school: Sunni law of succession and Shia law of succession. In terms of the customs of the Hanafi (Sunni) sect, there arise two types of succession in respect of property left by a Mohammedan dying intestate: (i) devolution upon persons related by marriage and blood and (ii) devolution upon unrelated successors, i.e., the acknowledged kinsmen of unknown descend of the concerned deceased in whose favour the acknowledgement was made by the deceased during his/her lifetime. Those who belong to the first category are also sub-divided into three groups : (i) "shares" are those whose respective entitlement in the property left by the deceased is fixed by law, (ii) "residuaries" are the successors who inherit to the residue of the said property after satisfaction of the claims of the sharers which is not so fixed by law and (iii) "distant kindred", relatives of the deceased who are neither *sharers* nor *residuaries.*The "sharers" exclude the "residuaries", the "residuaries" exclude the "distant kindred"and the "distant kindred" exclude the "unrelated kindred" in the matter of succession in respect of the Sunni Mohammedan dying intestate.

In case of Shia law of inheritance as prevailed in India, there are three classes of successors; (i) parents and (ii) children & other linear descendants of the deceased how lowsoever form Class I, (i) grandparents of the deceased how highsoever and (ii) brothers & sisters of the deceased and their descendants how lowsoever form Class II and Class III consists of (i) paternal and (ii) maternal uncles & aunts of the deceased and their parents & grandfathers how highsoever & their descendants how lowsoever.

In case of a male Hindu dying intestate, the property left by him firstly dissolves upon the heirs described in the Class I of the Schedule appended to the Hindu Succession Act, 1956; then, in case of unavailability of these heirs, devolution takes place upon the heirs mentioned in the Class II of the said Schedule; then, in case of unavailability of the members in both of these Classes, upon the *agnates*[17] of the deceased and lastly, in the unavailability of even these agnates, upon his *cognates*[18].[19]

Again, usual devolution of a female Hindu dying intestate takes place firstly upon her son and daughters (including the children of any pre-deceased offspring) and her husband, in case of their unavailability, upon the heirs of her husband, in case of unavailability of both these classes, upon her mother and father, if all the heirs as mentioned above still remain unavailable, upon the heirs of her father and lastly, if the unavailability still continues, upon the heirs of her mother. But in cases of unavailability of her son or daughter (including their pre-deceased offspring), if the property was inherited by the deceased from her father or mother, the said property is to devolve upon the heirs of her father. Similarly, if such property was inherited by her from her husband or father-in-law, in the unavailability of her children (including the children of her predeceased offspring), the devolution of such property occurs upon the heirs of her husband[20].

Child in womb during the lifetime of a deceased whose normal birth takes place subsequently is entitled to inheritance[21].

The doctrine of *Escheat* is explicitly incorporated in the Hindu Succession Act, 1956[22] which provides that in case of unavailability of any legal heir, the property of an intestate is to devolve to the government. Though other prevailing succession laws of India have no such provision, the

[17] Two persons related to each other by blood or adoption wholly through males (Section 3 of the Hindu Succession Act, 1956
[18] Two persons related to each other by blood or adoption not wholly through males (*Ibid)*
[19] Section 8 *Supra*
[20] Section 15 *Supra*
[21] Section 20 *Supra*
[22] Section 29 *Supra*

Constitution of India mandates such rule in respect of all properties left by any intestate or apostate having no legal heir[23].

Tribal people are explicitly exempted from the application of the Hindu Succession Act, 1956[24] and most of the State-level notifications often exclude them from the application of the Indian Succession Act, 1925. They are largely governed by their diverse localised customary laws of inheritance which are usually characterised by their patrilineal nature. In many cases, tribal customs of inheritance provide for community-based or clan-based succession whereby the immoveable property left by an intestate tribal cannot be a subject-matter of the doctrine of *escheat* to be invoked by the concerned State Government. Accordingly, the scope of 'land grabbing' *per se* is comparatively less in such matters.

There is no specific law in India to determine proper identification of a person claiming himself/herself as a legal heir of an intestate which seems to be main cause of *white collar* land grabbing in this country. Since the scope of pretending as legal heirs of a deceased is so vast here, it becomes almost impossible on the part of the concerned authorities to apply the doctrine of *escheat* in case of those properties which should actually have no claimants, but claims are unscrupulously being made against them by the persons having vested interests.

Transfer of an immovable property is carried out in India by executing and registering an instrument of transfer to be caused by the owner of that property in favour of the transferee in terms of the provisions laid down under the Registration Act, 1908[25]. When a person claiming himself/herself as the genuine legal heir of the deceased recorded owner of the property being the subject matter of the instrument of transfer presents such document for registration at the proper office, it is the duty of the registering officer to be satisfied as to the genuineness of the execution of the document by the original person and being so satisfied, he is duty-bound to register such document[26]. There is no such stringent provision in the prevailing law as to non-satisfaction on the part of the registering authority in the usual process where scope of camouflaging cannot be denied.

[23] Article 296 of the Constitution of India
[24] Section 2(2) of the Hindu Succession Act, 1956
[25] Act No. 16 of 1908
[26] Sections 34 and 35 of the Registration Act, 1908

Before coming into existence of the Registration and Other Related Laws (Amendment) Act, 2001[27] which incorporated a new provision in the Registration Act, 1908[28] prescribing compulsory affixation of passport-size photographs and fingerprints of both transferor(s) and transferee(s) in the instrument of transfer, many such documents were registered by impersonation. Though there was penal measure in the then IPC[29] for checking such menace, the use of the same practically became futile compelling the legislature to amend the law in 2001. But even thereafter, though there is continuity of this penalty in the present day BNS[30], the incidents of impersonation have not been stopped, instead of representing concerned individuals specifically in their actual names, the perpetrators are now falsely claiming themselves as the legal heirs of the concerned deceased individuals and submitting their original photographs and fingerprints in case of registration of immoveable properties.

REMEDIAL MEASURES

From the above discussion, it seems that absolute restrainment of land-grabbing, particularly *white colour* land-grabbing, is very difficult. Still, some safeguards may be suggested for preventing this abuse. Enactment for compulsory mutation of original legal heirs of the intestate within a stipulated period from the day of the death of the intestate should be legislated with the mandatory provision of *escheat* after the expiration of that period, if not so mutated by any of the legal heirs of the deceased during the said time limit.

Alternatively, issuance of a succession certificate, as mentioned in the Indian Succession Act, 1925[31], may also be taken into consideration in the matter of intestate succession. Usually, a succession certificate is issued in favour of the legal heirs of an intestate for establishing their right over the moveable properties left by the said deceased[32]. But the respective State Government is also empowered to categorise any immovable property left by an intestate under the ambit of a succession certificate by notifying in the Official Gazette[33]. By exploring this provision laid down

[27] Act No. 48 of 2001
[28] Section 32A of the Registration Act, 1908
[29] Section 205 IPC
[30] Section 242 BNS
[31] Part X of the Indian Succession Act, 1925
[32] Section 370 (2) (a)-(d) *Supra*
[33] Section 370 (2)(e) *Supra*

under the Indian Succession Act, 1925, appropriate measure may be adopted for registration of an instrument of transfer in respect of an immoveable property belonging to the intestate by causing execution of that instrument only by those legal heirs of the deceased in whose favour the succession certificate has been issued from the court of competent jurisdiction. There should also be a provision that the doctrine of *escheat* is to be applied immediately after the expiration of the period of limitation of application for such succession certificate, the applicability of the provision for extension of prescribed period in the Limitation Act, 1963[34] is compulsorily to be barred in case of such applications and accordingly, the Limitation Act, 1963 is to be amended suitably. A separate wing under the land department of every State Government, land being a State subject[35], should be established exclusively for performing the task of *escheat* in respect of unclaimed immoveable property left by an intestate. The officers of this wing must be well aware of the fact of the availability of such types of property within their respective jurisdictions.

CONCLUSION

It seems from the above discussion that *land grabbing* as envisaged in the BNS as an *organised crime* is concerned with *blue coloured* land grabbing, clubbed with offences like kidnapping, robbery, vehicle theft, extortion, cyber- crimes, trafficking of persons for prostitution or ransom and the like which can be carried out by using violence, threat of violence, intimidation, coercion or any other unlawful means[36]. But the concept of *white coloured* land grabbing clearly differs from such explicitly manifested crimes. As already mentioned, exploitation of loopholes in the existing legal system and manipulating the task in favour of the *land grabbers* are the characteristics of *white collar* land grabbing which is practically invisible and being practised frequently. Imposition of stringent penal measures is not the only solution for proper checking of this menace, suggested measures mentioned in the previous paragraph may, to some extent, effectively lessen the incidents of this type of land grabbing which seems to be more useful for a country like India as the vast amount of land to be acquired by it by the application of the process of *escheat* may well be utilised for the benefit of the general public. At the same time, concerned authorities should be more proactive and accountable.

[34] Section 5 of the Act No. 36 of 1963
[35] Serial No. 18 of the List II (State List) in the Seventh Schedule to the Constitution of India
[36] Section 111(1) BNS