

The Encroachment of Public Property in Punjab: Reasons and Remedies

Muhammad Faisal*, Jahanzeb Khan**, Rana Muhammad Adeel-Farooq***, Khushbakht Bibi****

Abstract

Encroachment of public property is a legal offence. Yet, it has not been implemented nor institutionalized in Pakistan. The property laws in Pakistan are not upgraded since colonial regime. These traditional property laws have failed in implementing or finding the solutions of the illegal public property grabbing. This is why; citizens utilize the capacity in grabbing the public property for their own interests for both long and short term self-interests and benefits. So, the complaints of encroachment and illegal settlement on public property in the province of Punjab in Pakistan are alarmingly high. Based on the broad geographical boundary of the province of Punjab in Pakistan, this research paper finds that; the issues of encroachment of public property in Punjab are contributing to institutional and legal weaknesses. There is also a missing connectivity of the government institutions to resolve the disputes of encroachment of public property. Thus arising complaints of the encroachment across the province are alarmingly high.

Keywords: Pakistan, Punjab, Encroachment of Public Property, Public Property Laws

Introduction

Under the property right Act, the role of government governing institutions/bodies/departments/agencies has become important in administering the public property in a number of modern states. Several political, economic, policy and political ideas are underpinning in this concern. The developed states like the European countries, America, Britain and Germany have the institutional domain of anti-encroachment laws. On the other side, the issues of encroachment of public property are common in most of the developing states as the state laws are inconvenient or have the missing tendency in approaching the institutional and administrative management in an appropriate and procedural way regarding the usage of the public property. A number of presently existing developing states until now are virtually without proper land acquisitions policies or have poor technical and institutional infrastructure in this concern (Kitay, 1985). The developing nations like Pakistan have the traditional property laws which were adopted dating back to British colonialism.

These laws/rules/regulations are not properly institutionalized in the public domain in the post-independence period of Pakistan. Hence, these regulations are irrelevant or at least seem less bound in implementing or finding the solutions of the illegal public property grabbing. That is why; the citizens utilize the capacity in grabbing the public property for their own interests for long term as well as short self-interests and benefits.

*Ph.D Scholar, Department of Political Science, University of Punjab Lahore

**PhD Scholar, Department of Public Administration, University of Sindh, Jamshoro

***Assistant Professor, Department of Economics, University of Sahiwal, Sahiwal

****PhD Scholar, Department of Political Science, Bahauddin Zakariya University, Multan

Based on the analysis of the previous literature available on the encroachment of public property, this study finds the encroachment of public property in Punjab, their main reasons and the role of the government institutions in managing the cases of the encroachment. The research is based on the descriptive mode and the data is accessed from the secondary sources. The study also finds the major bottlenecks in the existing acts and laws on the anti-encroachment on public property and also demonstrates important recommendation to stop the encroachment of public property in Punjab. The study is limited to the province of Punjab in Pakistan only.

Research Questions

The research intends to address the following important questions:

1. What are the main reasons of public property encroachment in Punjab?
2. How effectively, prevailing laws are addressing to resolve public property encroachment?
3. What steps, Government of Punjab needs to adopt in managing public property?

Statement of the Problem

The present study finds that; the issues of encroachment of public property in Punjab are contributing the institutional and legal weaknesses and the missing connectivity of the government institutions to resolve the disputes.

Objectives of the Study

Encroachment of public property is a legal offence in everywhere and also in Pakistan. Pakistan until now have the traditional property laws which are not properly institutionalized in the public domain and thus are irrelevant or at least seem less bound in implementing or finding the solutions of the illegal public property grabbing. That is why; the individuals utilize the capacity in grabbing the public property for their own interests for long term as well as short self-interests and benefits. Based on the broad geographical location of the province of Punjab, this study is aimed to ponder on the:

1. Issues of encroachment of public property in Punjab
2. Role of government institutions in handling the issues of encroached public property
3. recommendations to address the issue in the institutional domain

Significance of the Study

This study will be important in drafting a comprehensive strategy to withdraw the encroachment of public property from the encroachers.

Methodology

The study is based on descriptive approach. The data has been collected from the existing secondary sources such as books, newspapers reports and the website links.

Self-Observation with the past work

This paper provides the analysis of a two way picture on the issues of encroachment of public property issues:

- i) Traditional policies which the various institutions of Punjab government has adopted to control the issue
- ii) Case to case data on land encroachment issues which appeared in the renowned daily newspapers published from Pakistan

There is a huge gap between the published material and the reports of encroachment in Punjab. The present research is an attempt to bridge the institutional and legal gap in administering the public property in the province.

Literature Review

A renowned German Philosopher Karl Marx strives in his research that; in a capital state system, there is a strong bond between the type of public property rights and the political system. This has been central to political economy in any capitalist setup. The contemporary research on policy studies shows that the economists, policy makers and the institutional strategists have tackled more distinct and advance issues, which are showing that the public property rights can be imperfectly defined or uncertain in some countries, and are not necessarily enforced 'from above' in a reliable way. There are number of significant cases of analysis on the issues of public property encroachment all over the world and especially the condition is critical in developing countries. The states either missing the proper institutional, procedural, legal and an administrative mechanism on this issue or the political system is not properly working to make structural reforms in this concern. Apart from this, the legal obligations and arrangements are also proclaiming challenges in implementing or adopting the legal protection for the investor's rights that are being afforded in developed states like Britain, France, United States and Germany. By considering this aspect, La Porta et al. (1998) in their study have exemplified the difference in the legal protection of the investor's rights. The writers focus on Anglo-Saxon Common Law system, French as well as German Civil Law systems in a comparative perspective. The study concludes that the property rights under these laws are less secured and needs re-evaluation by the states institutions.

However, de Meza and Gould (1992) in their study prove that self-proclaimed property rights create inefficiency in the business as well as in market economy. Grossman and Kim (1995) analyze a property right model where citizens of a particular state can invest resources both in predation and in defense, showing that in equilibrium, property rights will be less than fully secure. In a related model, Hirshleifer (1995) brings out nicely how the prevailing political system and the security of property rights are related. Depending on the parameters of the technology of production and of the technology of appropriation, conflict, and struggle, this model can describe a stable anarchic equilibrium, or the emergence of dictatorship, or of other forms of political organization. The assumed technology of appropriation and conflict is related to the type of lottery introduced by Tullock (1967) in the rent-seeking literature. Another writer, Neary (1997) presents an interesting comparison of these two types of models.

The present paper analyzes the encroachment of public property in province of Punjab (Pakistan). The encroachment of public property is a critical issue in Pakistan and especially in the federating unit of Punjab. So, the research has vital importance in the policy perspective to analyze the several aspects of the encroachment of public property. It has been observed that encoded laws on public property rights are not up to the mark. While the role of various government agencies and departments are also relatively weak to resolve the issue in this concern. Like Pakistan, in other developed as well as in the developing countries, encroachment is publically prohibited under law, but the institutional role is weak so far. This research paper find the existing policy gap and recommend some exemplary policy options to discourage the encroachment of public property either by the citizens or by the state agencies.

Theoretical Framework

In any of the modern state, public property is considered as an important public asset. The common notion of the public property is; the place, building, land or premises which are dedicated to the public under the sub-set of the state (Clark and Kohler, 2005). Previous two decades have received an institutional and administrative attention (Mohd, n.d) in managing the public property by the state institution in a number of states. Maintenance and proper management of public property is considered as an important responsibility of the government in any state. Maintenance of public property is the acquisition, controlling, maintaining, utilizing and disposing of the public property by the state authorities and institutions in the people's interests (New York State Property Management Law, 2014). Different government in developed states maintain the right to intervene directly in the public property domain through zoning laws, building and sub-division laws, and anti-encroachment laws (Kitay, 1985). While; an appropriate system of implementation is relatively weak in most of the developing countries like Pakistan. Following table defines the legal procedure of maintenance of public property in different countries: However, in developing states, highly empowered political leaders/influential persons are considered as the most active speculator in issues of the land grabbing through means of violent or illegal possession. It results into the encroachment of public property by more individuals thus creating a vicious space for painful process of exploiting state's property rights (Kitay, 1985). Under Article 2 (j) of Sindh Public Property Act 2010; Under Article 24 Clause (2) of the constitution of 1973; *"No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation or specifies the principles on and the manner in which compensation is to be determined and given"*.

Table 1: A Comparative Analysis public property laws in different states

Sr. No.	Country	The Nature of the Public Property Laws
1.	<i>Australia</i>	Every state (Province) in Australian territory has their separate procedure of licensing and compliance requirements
2.	<i>Canada</i>	The public laws in Canada and landlord/tenant relations is categorized as provincial subject and each province makes its separate laws to maintain the public property issues
3.	<i>New Zealand</i>	New Zealand has two types of procedure in this concern: a) All forms of property management legislation is administered by the central legislature b) Since 2009, the licensed property managers collect rent via an audited trust account. These managers are professionally qualified. Under this system, the rights of the invest property owners and the tenants are being protected.
4.	<i>United States</i>	Each state in United States has different public property laws. a) In large states like New York, Texas and Colorado property management companies are hired for real estate licensing. Under this procedure, the Property Manager (PrM) may be a licensed real estate salesperson for a definite time period. However, the PrM property must be working under the supervision of a licensed real estate broker b) In other states of USA, the businessman requires to have a business license to start the business at a specific location.
5.	<i>United Kingdom</i>	There is no statutory regulation to administer the public property affairs. The companies administering the rented and other residential property areas are the member of the Association of Residential Letting Agents (ARLA)

6.	<i>India</i>	The statutory regulations are not present in country in dealing with the public property affairs. In 2013, Real Estate Regulation and Development Bill (RER&D) bill was passed by the Central Union cabinet. This bill seeks to propose specific Regulatory Bodies (ReBs) in India to resolve the existing and future public property issues
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The data is compiled by Researchers on the basis of different sources

Encroachment is simply defined as “*the unauthorized occupation of or undue interference with property* (Article 2 (j), (Article 2 (j), Sindh Public Property/Removal of Encroachment Act 2010).

The formal acts of anti-encroachment are which are presently exercised by the Government of Punjab and Balochistan are originally based on the Land Acquisition Act 1894 while Khyber Pakhtunkhwa in 1977 and Sindh adopted the Anti-Encroachment Act in 2010. After the 18th amendment, the subject of public property management is transferred to the provinces. So, every province now has its separate procedure to maintain the public property. In different provinces, the procedural mechanism of management of public property is different. The procedural differences in each of the province are explained as following:

- **Punjab:** Municipal administrations/ are established under the local government department. These Municipal administrations which are responsible to manage the public property issues.

- **Khyber Pkhtunkhwa:** Khyber Pakhtunkhwa has adopted the Anti-encroachment law since 1974. The encroachment issues are administered under this act.

1. **Sindh:** Sindh opted the Anti-encroachment law since 2010 (Amended in 2011).

- **Balochistan:** Municipal administrations are responsible to implement the anti-encroachment laws in the province.

Provincial Facts on Encroachment of Public Property in Pakistan

So far, formal documentary record is not available on the cases of encroached property in Pakistan. However, rough estimates which have been recorded in the day to day press information are alarmingly high. There are also variations in the registered cases of encroachment across Pakistan. The ratio is high in Karachi which is the commercial hub of the country. The data on Balochistan is not available. The available fact from newspaper sources and revenue department in Punjab especially in Lahore are at the larger scale. There are different reasons of encroachment in different provinces while the land mafia is actively involved in Murree, Lahore and Rawalpindi and in other commercial places of the provinces. Following is a brief analysis of encroachment cases across the provinces;

Punjab

Punjab is the most populated province in Pakistan, having an estimated density of 460 persons per square milometer (Punjab Statistics Development, 2012). The urban centres of the province like Lahore, Rawalpindi, Faisalabad and Multan are widely growing since 1990s. The rural population is also rapidly accessing the basic facilities of life. The value of the property is increasing in cities as well as in the villages and towns. At the same time, the cases of encroachment are increasingly high in Punjab as compare to other provinces. Following is an estimated figure of major issues of encroachment of public property and finance issued by various departments of the Government of Punjab:

- i. An assessment carried out by the Punjab Board of Revenue that the over Rs 666 millions in shape of royalty fee belong to the land developers have not been paid to the government
- ii. 227 cases are pending in six divisions of the province

iii. In district Lahore 42858 kanals [27877 kanals in Lahore city alone] out of which 8944 kanals is provincial property, 28765 belong to the federal government, 1592 belong to Auqaf department and 3297 kanals belong to other public departments.

iv. There are 445 encroachments in the areas which are under the control of Lahore Development Authority (The data is accessed from multiple sources available at:

<http://www.lahoreestate.org/page/2/?s=list+of+punjab+government+car> accessed on May 07, 2015)

v. 2855.21 acres of forest land in Murree is grabbed by the encroachers while 2325 encroachers have been estimated in forest boundaries (Manzoor, 2013).

vi. This data is only showing a minor figure. The estimation from the rural as well as the smaller cities is not available. It can be roughly estimated that billion rupees worth property and public sources have been grabbed by the land encroachers in Punjab.

• Sindh

After the adaptation of Anti-encroachment Act in 2010, 143 cases of public property encroachment cases were registered in Sindh, 46 cases have been decided but in most of the cases the property did not evacuated from the encroachers so far. The cases of encroachment of public property are high in the urban centers as compared to the local territories. In most of the cases, certain political personalities are also involved in the encroachment process (Daily Times, November 08, 2009).

(Source: <http://www.bexpress.com.pk/2014/page/278/> accessed on May 07, 2015)

• Khyber Pakhtunkhwa

The debate in the provincial assembly of Khyber Pakhtunkhwa in March 2013 opened up the cases of encroachment and illegal land grabbing by the mafia. The debates identified that 186,690 kanals public property had been encroached in five district including Hangu, Nowshera, Abbottabad, Peshawar and Lakki Marwat while 349,266 kanals property is illegally occupied in another eight districts. The detail of the encroached public property is given in the following table:

• Capital Territory

i. Land encroachment scams have been identified in Capital Development Authority (CDA)

ii. Private land developers are also responsible for the land encroachment cases in Islamabad

iii. The statistics of a Audit report conceal that the sector E-11 and *Kuri Model Village* have the worth capacity of Rs 4.6 billion public property

Source: <http://pyarizameen.com/blog/land-encroachment-scam-decaying-the-capital-development-authority-cda-in-pakistan/> accessed on May 07, 2015.

The data on Balochistan is not available.

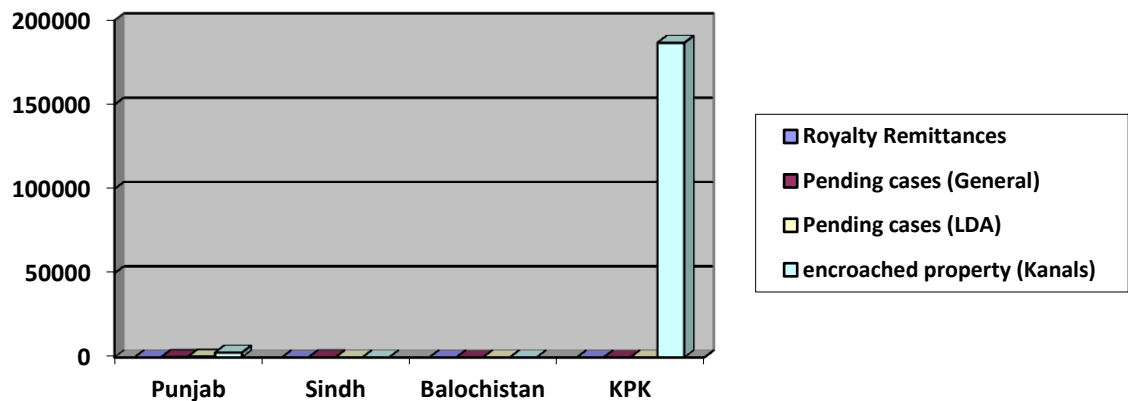
Table 3: Showing the encroached land in five major cities of KPK

Sr. No.	City	Encroached Public Property in Kanals
i.	Hangu	184,976
ii.	Nowshera	983
iii.	Abbottabad	369
iv.	Peshawar	242
v.	Lakki	98

	Marwat	
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(Source: The Express Tribune, March 06, 2013)

Table 4: Showing the encroached property in different province of Pakistan



Reasons of Encroachment of Public Property in Punjab

The biggest concern of the multiple issues which was surveyed by daily “*The News*” in 2012 in Pakistan, encroachment by major reasons behind these gridlocks are illegal parking on roads and encroachment by vendors who setup shop on the roadside. There are number of reasons of encroachment of public property in Punjab. A few of the reasons are described as under:

1. Non existence of weak procedural lease, rent and purchasing policies
2. Land Mafia
3. Corruption
4. Rapid Urbanization and illegal construction
5. Unwritten local government laws regarding property rights
6. The delays in the court litigation process
7. Non existence of the local government institutions
8. Political leaders/influential persons

Anti-Encroachment laws in Punjab

Until now, Government of Punjab has not adopted a proper Anti-Encroachment Act. However, the enacted laws and the procedural mechanisms have been adopted from the previous laws which are traditional and old. The provincial needs to update the existing laws on the encroachment issue.

Clause 26-A of the Forest Act of 1927 defines that:

1. Under the municipal laws of the province of Punjab;
 - a) The municipal officer/forest officer/competent authority may issue notice to the encroacher and ask to leave the encroached public property within a specific time scale
 - b) Immediately proceed legal/administrative proceedings against the encroacher
2. The court may proceeds the trial of the encroacher under different municipal laws based on the nature of the encroachment of the property/land.
3. If the administration fail to complete the action;

- a) The court directly summon the encroacher or through municipal corporation
- b) May impose fine to a specific limit not exceeding 1000 every day after the time period, fixed by the court to leave the encroached property
- c) Order the accused to pay the expenditure to the municipal government incurred by the corporation on removal of the encroachment (Article 26-A, The Forest Act 1927)

Another Act, Lahore Development Authority Act 2013 which was adopted for Lahore division, under Article 13A of Act XXX of 1975 explains that:

“The authority may prepare, establish and develop housing and any other schemes, buildings, infrastructures, services, commercial, semi commercial projects or sites and for the purpose it may enter into an agreement with any person”.

While Second Schedule, section 35, list of offences part-A of the same act further explains that:

“Establishing temporary shops or running any restaurant or vending stalls for eatables wooden khokas or any sort of commercial activity on any road, street, footpath, public place, over a drain or any other property vesting in the authority”.

To, maintain the public property in other territories of the province Punjab, the local municipal laws which are usually weak are implanted and their implementation is not validated to punish the encroachers.

The Role of Institutions against the encroachment of Public Property

1. Across the province, responsibility to maintenance public property belong to Punjab Board of Revenue
2. Local Municipal Administrations which usually have unwritten acts are presently administering the public property in tehsil and district domains; however, there is no proper Anti-encroachment force to control the issue of public property encroachment.
3. Institutions have weak capacity in administering the public property
4. Anti-encroachment law yet to be legally adopted
5. Anti-encroachment force is not yet functioning to control the situation of encroachment.
6. Police is over-seeing the matters of public property encroachment, the department which already is over-burdened.

Findings

- Anti-encroachment laws are existed in Sindh and Khyber Pakhtunkhwa while in Punjab proper act/law is not available.
- Government of Punjab has also not made proper rule for leasing public property and the land mafia has grabbed the forest land especially in Murree and the same is the case with Lahore, Rawalpindi, Multan and Gujranwala etc.
- Available data on the encroachment of the public property in Punjab which is presented in this paper is derived from the different sources of newspapers and websites which need to be investigated at the broader spectrum.
- There is an issue of lack of management and planning at the departmental level in the maintenance of the public property.
- For both private and government housing schemes, shopping centres, parks, plazas, roads and other places which fall in the category of Public property, Punjab government have not planned any agenda for the protection from the encroachers.

Recommendations

- Punjab Anti-encroachment Act must be framed to cope with the cases of encroachment of public property in Punjab
- Proper leasing policies should be immediately adopted to cope with the situation of land grabbing in big cities while the agricultural lands have been illegally occupied by the big landlords and tenants in the Southern Punjab
- Proper record should be maintained immediately through multiple institutions/local government departments and an official document must be prepared to estimated the cases and issues of encroachment of public property in Punjab
- Institutional weaknesses of Punjab Revenue department must be curtailed and a comprehensive survey is needed to be carried out to find the exact figure of encroachment of public property throughout the province
- Government of Punjab step towards a meaningful strategic and operational plan to cope with the encroachment of public property throughout the province

Conclusion

Like other provinces of Pakistan, cases of encroachment of public property are significantly high in the province of Punjab. In rural as well in the urban areas of the province, he citizens have illegally occupied the public property worth of billions of rupees. This is a huge lose to the government revenue as well as threat to the environment, culture, society, villages and the cities. Although, the government of Punjab has recently linked the revenue department with the modern technological means. However, it remains many loopholes in its fullest implementation. Apart from this, there is no proper legal and procedural way to control the issue. Yet, the Anti-Encroachment Act has not been adopted by the provincial government. To cope with the issue, a comprehensive survey of encroachment of public property in Punjab is urgently required. On the basis of the survey, proper strategic plan including the adaptation of the Anti-Encroachment is required to cope with the issue

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