

## 1. Executive Summary

An estimated 7.7 million people in India are affected by conflict over 2.5 million hectares of land.<sup>1</sup> These disputes clog all levels of courts in India, and account for the largest set of cases in terms of both absolute numbers and judicial pendency.

**Equity and grant funding into social infrastructure enablers, policy reform organizations, and legal-tech enterprises** is required to solve the problem of land disputes clogging up the judicial system.

This recommendation is based on a framework that explores the – **causes of dispute** and **causes of delay in redressal**. Causes of dispute section explores legislative and administrative developments leading to such disputes, while the latter focusses on procedural bottlenecks and motivation of litigants to resolve the issue.

The challenges resulting out of “causes of dispute” can be effectively nudged by advocating for policy reform, while those involving “delay” can be solved through market-based solutions. Hence, the investment recommendations mapped using an **impact vs effort** matrix prioritizes social infrastructure to pool in entrepreneurs and organizations in this initiative. This is followed by advocating for policy reforms, and lastly funding of entrepreneurs who can solve the procedural challenges pertaining to disputes.

## 2. Findings - Structural root causes

To understand how to reduce this clogging and the role that investment firms play in solving this problem, the following questions are investigated.

**What are the causes of dispute, and what are the causes of delay?**

Analysis of the causes of dispute would help us understand the effectiveness of the system, while the causes of delay would hint towards how procedures can be made more effective. Understanding the causes of dispute can be mapped to policy and advocacy reforms, while causes of delay can be related to entrepreneurs who can create more efficient systems with a market driven solution.

Let us explore the following questions in the first bucket – What were the limitations in the design and implementation of land laws? What, if any, are the specific type of land disputes that are admitted into the courts which result in clogging of the judiciary?

On the other hand, causes of delay can be elaborated through – How long do the cases on average last? Are there alternate mechanisms that allow the participants to disengage? Who are the parties involved in the dispute and what role do they play?

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<sup>1</sup> <https://www.landconflictwatch.org/>

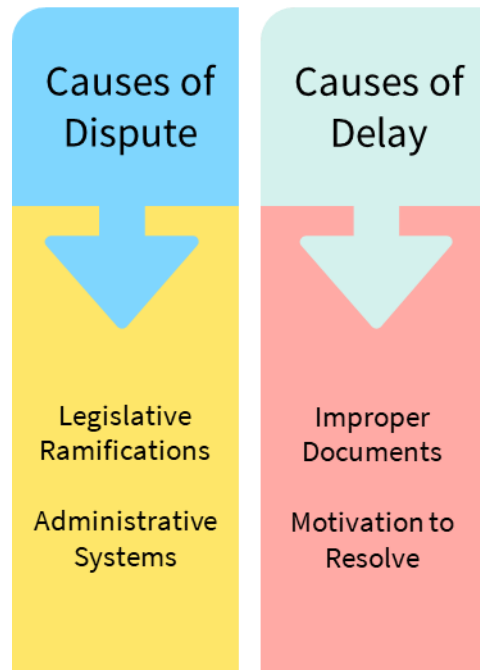


Figure 1 Structural Root Causes - Visual representation

## 2.1. Causes of dispute

### 2.1.1. Legislative ramifications - De Jure and De Facto

#### **Land Redistribution**

India's story of land related disputes begins with its land redistribution initiatives which had twin motives –

1. Abolishing the zamindari system to give land back to the tiller, and
2. Establishing land ceilings to minimize inequalities of income.

While these reforms were well intended, the unintended consequences were severe in the context of land disputes. They resulted in discrepancies in land records as it was in the land owner's interest to leave the land fallow, rather than contract it to tillers who would later claim possession. Due to land ceilings, property transfers were faked which resulted in benami properties.

## **Land Acquisition Acts of 1894 and 2014**

Over two-thirds of total cases, according to a study, that went to the courts involved claims by land losers seeking enhanced compensation under the Land Acquisition Act.<sup>2</sup>

A new law that was introduced in 2014 had three clauses that are relevant to this study –

1. It brought, under its purview, not just land owners who lost the land, but also *livelihood losers*. This may have increased the number of litigants approaching courts.
2. Compensation was to be provided using proper market rates as opposed to the prevailing circle rates. However, bureaucrats often use circle rates to award compensation in the absence of a proper real estate market. Needless to say, such compensations were challenged in courts.
3. Two of the six land related acquisitions that were permitted under the new law included – Planned development, and industry. When the aggrieved party felt that they were not adequately compensated for the actual value that would be reaped post land development, they litigated in the court.

### **2.1.2. Administrative systems – Legacy dies hard**

#### **Presumptive ownership**

Property ownership in India is on presumptive basis, i.e. ownership is claimed by verifying one of the following documents such as Registered Sale deed or Property Tax filings. However, these documents only record the transfer of property and not actual ownership, hence the ownership of the property is subject to challenge in courts. The 2006 Hindi movie “Khosla ka Ghosla” depicts this challenge aptly.

#### **Land records departments**

Land records are a combination of three different types of data records – textual, spatial, and transactional which fall under the Revenue, Survey and Settlement, and Registration Departments respectively. These departments work in silos, without adequate data bridges between them. The time lapse in recording and reconciliation creates distortion as land records do not mirror the reality on the ground. This causes an opportunity for disputes between different parties.

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<sup>2</sup> Understanding Land Conflict in India and Suggestions for Reform

Department	Functions	Documents Maintained
Revenue	<ul style="list-style-type: none"> <li>Collection of <b>land revenue</b></li> <li>Updating and maintaining <b>revenue records</b></li> </ul>	<ul style="list-style-type: none"> <li>Record of Rights (RoR)</li> <li>Mutation register</li> </ul>
Survey and Settlement	<ul style="list-style-type: none"> <li>Maintaining <b>spatial land records</b></li> </ul>	<ul style="list-style-type: none"> <li>Village map</li> <li>City survey maps</li> </ul>
Registration and Stamp	<ul style="list-style-type: none"> <li><b>Registration of property</b> documents and deeds</li> <li><b>Evaluation</b> and collection of stamp duty</li> </ul>	<ul style="list-style-type: none"> <li>Encumbrance certificate</li> <li>Sale deed</li> </ul>

Figure 2 Different departments involved in Land Records and their functions

To summarize, the causes of dispute are due to conflicting laws that need to be amended by the center and the states. There needs to be a move towards guaranteeing conclusive titles by streamlining the collection and maintenance of land data through administrative changes and capacity building.

## 2.2. Causes of Delay

A NITI Ayog paper suggests that land related disputes on average take 20 years to be resolved.<sup>3</sup> The easiest solution, one might argue, is to hire more judges to clear all impending cases as the judge-to-population ratio is abysmally low at 19.66 judges per million<sup>4</sup>. However, that solution is out of scope for this study.

### 2.2.1. Missing or improper documentation

Legal teams spend significant amount of time retrieving data from government departments and landowners who have physical copies of land records. The issue of improper documentation could be particularly challenging in rural and tribal areas where awareness is also low. Given that land conflicts over mining projects (typically tribal territory), are the second highest cause of distress with 852,488 citizens affected<sup>5</sup>, this is one of the biggest bottlenecks to enhance judicial procedure.

### 2.2.2. Motivation to resolve – Game theoretical lens

Let us explore two type of cases –

1. A **negative equilibrium** case where one or more parties involved do not have an incentive to resolve the case, and
2. A **positive equilibrium** case where all parties involved are willing to resolve the matter, but are unaware on how to do so, without approaching the courts.

<sup>3</sup> [http://niti.gov.in/writereaddata/files/document\\_publication/Arbitration.pdf](http://niti.gov.in/writereaddata/files/document_publication/Arbitration.pdf)

<sup>4</sup> 2011 Census

<sup>5</sup> Institutions for Equity and Resilience, Annual World Bank Conference

An instance of the former could be where a wealthy individual/organization with ample resources tries to burn out the opponent with lesser resources by delaying procedures through adjournments. In such cases, an external nudge is required – either through government or other external sources.

However, if all the parties involved are willing to resolve the matter, then settlement arrangements can be made outside of the judicial system. In the context of property laws, these would be cases where both the buyer and seller are willing to undertake the transaction, but require an intermediary to mediate the negotiation.

*To summarize, delay occurs due to lack of required documents and involved parties not having a platform to resolve the conflict. These require solutions focused on digitizing documents and solutions for out of the court settlements.*

### 3. Recommendations

In the context of this analysis, reforms would involve a series of grant and equity investments. As the largest cause in the clogging is related to compensation for acquisition of land, that should hold priority. However, there is no direct way to influence this. Hence, efforts must be made to spread the bets in developing the ecosystem with multiple solutions so that this problem can be tackled from different dimensions.

#### 3.1. Framework for prioritizing

**Impact vs Effort** framework is used to analyze the efficacy of investments. Impact is defined using Omidyar Network's impact framework<sup>6</sup> of looking at direct and sector level impact. Effort, on the other hand, has two components –

1. Complexity, which is critical while prioritizing Grants
2. Costs, which are an important part of evaluating investments into startups.

While cost involves valuing the company through product market fit, founders and the solution; complexity is measured by the number of stakeholders and systems, level of dependencies and if the problem at hand is a technical or a wicked problem – involving behavioral change.

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<sup>6</sup> <https://www.omidyarnetwork.in/impact-framework>

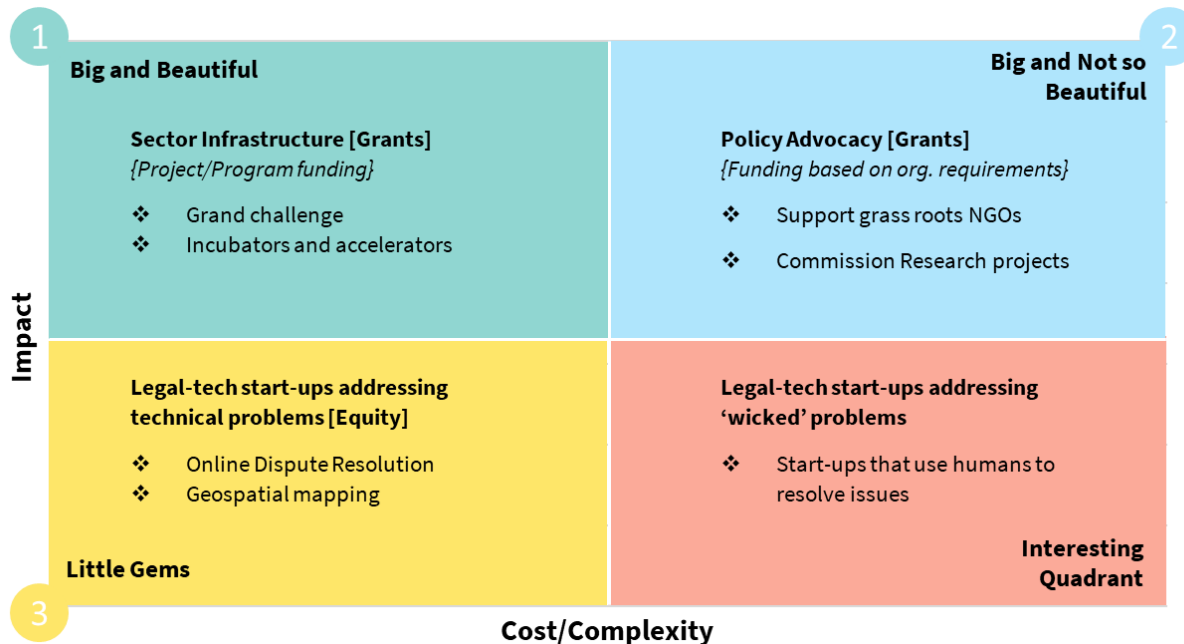


Figure 3 Prioritization framework - Impact vs Effort (cost/complexity)

### 3.2. The 'Why'

The priority of investments would follow – Big and Beautiful, followed by Big and Not so Beautiful, and finally Little Gems. The grants can be mapped to the issues discussed under the causes of dispute, while the market-based solutions are recommended to address the causes of delay.

1. **Big and Beautiful:** Enablers have a high impact of influencing and transforming the entire sector while the dependencies are low. This will be the best buck for money as the legal startup ecosystem is still nascent. Additionally, this will act as a funnel for Omidyar to scout promising companies to invest into.
2. **Big and Not so Beautiful:** Advocating for policy changes involves human agency and influence to nudge stakeholders in the right direction. Secondly, awareness and capacity building is also required in this quadrant to ensure proper execution of the law. This is a preventive step which will ensure that fewer new cases go into the constitutional courts. This segment specifically addresses a market failure; hence it has to be solved using grant capital.
3. **Little Gems:** These challenges can be solved by adequately investing cash into bold entrepreneurs who bring in their drive and innovation. Complexity is low as there are fewer dependencies involved.

We can deprioritize the fourth quadrant as they do not add much value in the context of the plan.

### 3.3. Investment Recommendations

Organization	Description	Rationale	Investment Type and Amount
<b>Sector Infrastructure</b>			
<b>Agami</b>	Agami works to support innovation in law and justice - the Agami Prize, the Agami Summit, Agami Challenges, and other initiatives	<ul style="list-style-type: none"> <li>Scout for entrepreneurs who are excited about Legal-Tech. Support them to bring about innovation into the legal redressal system</li> </ul>	Program or Project Grant <i>{To one or between both the organizations}</i> <b>\$ 1.5 Mn</b>
<b>Ashoka</b>	Ashoka is the world's leading community of social entrepreneurs who champion the new social change ideas and support the innovators		
<b>Think-tanks and Advocacy Organizations</b>			
<b>PRS</b>	PRS is a research institute that provides research support on legislative, public policy to MPs and MLAs	<ul style="list-style-type: none"> <li>Work with legislators to influence policy pertaining to land and judicial system</li> </ul>	Project Grant <i>{Or based on needs of the organization}</i> <b>\$ 500K</b>
<b>Centre for Policy Research</b>	CPR conducts research that contributes to a more robust public discourse about the structures and processes that shape life in India	<ul style="list-style-type: none"> <li>Support the “Land Rights” vertical at CPR</li> </ul>	Program Grant <i>{Or based on needs of the organization}</i> <b>\$ 500 K</b>
<b>Vidhi/IVM</b>	The Vidhi Centre for Legal Policy is a think-tank doing legal research to make better laws and improve governance for the public good	<ul style="list-style-type: none"> <li>Create awareness through Vidhi podcast (or similar podcasts Puliyaabaazi, Pragati)</li> </ul>	Project Grant <b>\$ 200K</b>
<b>Grassroots Field Organization</b>			
<b>PRADAN</b>	PRADAN is an NGO that works with India’s rural poor to help them emerge from poverty and lead a life of dignity	<ul style="list-style-type: none"> <li>Mobilize people to claim for their land rights particularly in tribal areas</li> <li>Creating training modules and building capacity for bureaucrats and village elected representatives</li> </ul>	Grant <i>{Based on needs of the organization; split between the two organizations}</i> <b>\$ 800K</b>
<b>Landesa</b>	Landesa partners with governments and local organizations to ensure that rural people have secure rights over the land they depend on		
<b>Entrepreneurs</b>			
<b>Teal Check</b>	TEAL is a decision support platform for land and property due diligence. They use analytical tools to collate, organize and interpret data from land records, property registrations, tax filings, and court mandates	<ul style="list-style-type: none"> <li>To digitize land records and analyze them</li> </ul>	Equity <i>{Spent between Teal Check and Sama}</i> <b>\$ 1.5 Mn</b>
<b>Sama</b>	Sama is an online dispute resolution platform in a fast and cost-effective manner. They use sophisticated technology and a network of skilled professionals for resolving disputes	<ul style="list-style-type: none"> <li>For online dispute resolution and out of court settlements</li> </ul>	

Figure 4 Investment Recommendations along with the rationale and investment amount

### 3.4. Success Metrics

The measure of success for the three categories of investments should result in agreed upon outputs and outcomes. The table below shows metrics that can guide in monitoring and measuring process.

Investment Type	Output	Outcome
<b>Sector Infrastructure</b>	<ul style="list-style-type: none"><li>• Number of events or challenges held</li><li>• Number of entrepreneurs mobilized</li></ul>	<ul style="list-style-type: none"><li>• Create a community of change agents who can reimagine the judicial system</li></ul>
<b>Policy Reform</b>	<ul style="list-style-type: none"><li>• Number of papers published</li><li>• Number of audience engaged</li></ul>	<ul style="list-style-type: none"><li>• Generate interest of policy makers in fixing the loopholes in the land related regulations</li></ul>
<b>Entrepreneurs</b>	<ul style="list-style-type: none"><li>• Number of clients reached</li><li>• Number of cases resolved outside of courts</li></ul>	<ul style="list-style-type: none"><li>• Create financial returns</li><li>• Fasten the way cases are procedurally dealt in courts</li></ul>

*Figure 5 Success metrics for different types of investments*

## 4. Risks to the strategy

While the strategy covers all aspects, there are four major risks which need to be considered –

Firstly, while building sector infrastructure the most eminent challenge is behavioural. The culture of the incubator trickles down to the entrepreneurs, hence thought needs to be provided towards building culture of the organization. It should be inclusive to allow diverse ideas to germinate with focus on solving land acquisition related cases.

Secondly, policy reforms in a democratic setup present political risk. After having spent time and resources, if the term of the decision maker is over then the required change will not occur. Thirdly, working with grassroots organizations on matters of land can be challenging to scale up because different states have different land related laws. Careful evaluation of NGO partners needs to be performed.

Lastly, equity funding is subject to reputational risk particularly with early-stage start-ups with limited historical information. Investors should ensure that proper due diligence is conducted on the companies and their founders.



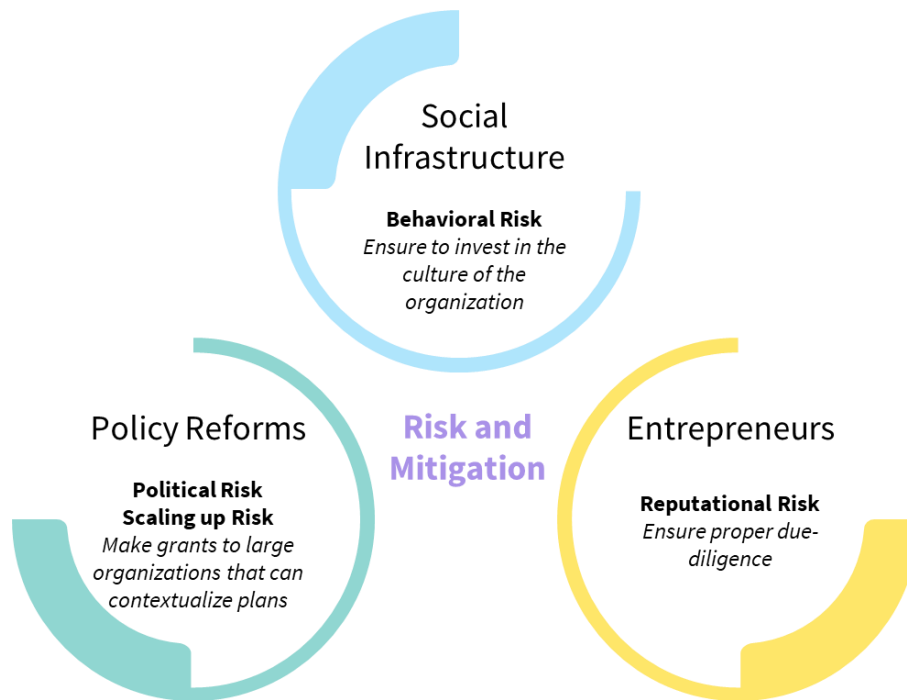


Figure 6 Different types of risk and mitigation strategies

## 5. Summary

The challenge of land disputes clogging the judicial system is a massive bottleneck that needs to be solved for Indians. Solving this is also critical in ensuring that the courts have bandwidth to hear other important cases in a timely manner – *because justice delayed is justice denied*. As for the aspiring India, once cases swiftly disposed, they can focus on other important facets of their life and contribute to the development story of the country.