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# SVAMITVA

## A SOCIO-LEGAL ANALYSIS

KAVERI THARA

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Designed by Mukesh Rawat

# SVAMITVA

## A SOCIO-LEGAL ANALYSIS\*

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<b>Abbreviations</b>	
<b>AIR</b>	All India Reporter
<b>CoLR</b>	Computerisation of Land Records Programme
<b>DILRMP</b>	Digital India initiative and renamed Digital India Land Records Modernisation Programme
<b>DLR</b>	Department of Land Resources
<b>ICRISAT</b>	International Crop Research Institute for the Semi-Arid Tropics
<b>IHDS</b>	Indian Human Development Survey
<b>IIHS</b>	Indian Institute for Human Settlements
<b>LRM</b>	Land Records Modernisation
<b>MoRD</b>	Ministry of Rural Development
<b>NFHS</b>	National Family Health Survey
<b>NITI</b>	National Institute for Transforming India
<b>NLRMP</b>	National Land Records Modernisation Programme
<b>ORF</b>	Observer Research Foundation
<b>PRRC</b>	Property Rights Research Consortium
<b>RoR</b>	Record of Rights
<b>SCC</b>	Supreme Court Cases (legal case law journal)
<b>SVAMITVA</b>	Survey of Villages and Mapping with Improvised Technology in Village Areas
<b>SRA&amp;ULR</b>	Strengthening of Revenue Administration and Updating of Land Records
<b>UIDAI</b>	Unique Identification Authority of India
<b>ULPIN</b>	Unique Land Parcel Identification Number

## Abstract

The Survey of Villages and Mapping with Improvised Technology in Village Areas (SVAMITVA) a Central Government scheme which is currently underway in 6 Indian states, aims to provide property rights to rural home owners living in *abadi* areas, set aside by gram panchayats for residential purposes. This paper examines the legal issues that may arise in implementing it and the social consequences this scheme would likely have on the ground. Legal amendments to revenue and other laws applying to *abadi* properties are needed to introduce property cards (as a legal document of property ownership) as well as taxes (in states where *abadi* properties were either not taxed or exempted from taxes); and to provide gram panchayats the legal authority to maintain and update records. The scheme is restricted in ambit to *abadi* properties and relies on documented possession, thus excluding homes outside *abadi* areas such as homestead properties that combine residential and garden properties; and those possessing non-ownership rights such as squatter settlements or extensions of *abadi* properties that are not recorded. Furthermore, the reliance on documented possession would exclude women from co-owning their homes. Given that the scheme essentially transfers public land to private individuals, the inclusion of women as co-owners, as has been done in other land distribution schemes, could have been adopted. This could have vastly improved women's property ownership in India, a goal that is espoused in the NITI Aayog's Strategy for New India@75. Despite the vast repertoire of laws and precedents of earlier schemes and initiatives by states to address unequal access to land and property, the scheme fails to use them to include these socio-economically weaker groups. Given the deeply encrusted social inequalities prevailing in Indian villages, the process of marking boundaries and determining ownership of property is a political one, that can be hijacked by more powerful groups in villages. The lack of community participation in the implementation of the scheme which is primarily driven by revenue officers, will likely reinforce existing social hierarchies.



## Introduction

The Survey of Villages and Mapping with Improvised Technology in Village Areas (SVAMITVA) is a scheme aiming to provide a Record of Rights (RoR) to rural home owners living on *abadi* (literal translation: populated) land. *Abadi* land is the land reserved and set aside for rural residential needs and recorded as such in revenue codes that distinguish *abadi* land from land used for agriculture or allied purposes.<sup>1</sup> SVAMITVA aims to create property records for *abadi* areas where such records do not exist (for instance, Haryana<sup>2</sup>) and update land/property records in states where such records already exist (for instance, Maharashtra and Gujarat). Most states, while recording *abadi* land, did not record individual ownership or possession (Goswami et al, 2017), which SVAMITVA aims to rectify. It envisages a mechanism for the verification of ownership with the gram sabha and property/land owners, and to review existing documents (if any) to resolve conflicts during the survey process. Post the survey, it aims to correct records in case of errors and unresolved objections or disputes raised with district magistrates or collectors<sup>3</sup> (Government of India, 2020b). It also provides for the mapping of public land and gram sabha properties for the “preparation of better-quality” Gram Panchayat Development Plans (Framework for Implementation of SVAMITVA Scheme, 2021).

SVAMITVA is sponsored by the central government and was rolled out in 2020 with a projected outlay of Rs 79.65 crore for its pilot phase (2020-21), which is currently underway in approximately one lakh villages in six states—Haryana, Karnataka, Madhya Pradesh, Maharashtra, Uttar Pradesh, and Uttarakhand—and two Continuously Operating Reference Stations (CORS<sup>4</sup>) in Punjab and Rajasthan. It uses geospatial mapping using drone technology to help identify property boundaries accurately through “high resolution and accurate image-based maps” so as to create a “durable record of property holdings” (Government of India, 2020b). Once mapped and ownership verified, SVAMITVA envisages issuing property cards as proof of home ownership. The guidelines state that the provision of property cards would “facilitate the monetisation of rural residential assets,” enable homeowners to raise credit from banks and other financial institutions, and “strengthen tax collection and demand assessment process of gram panchayats” which would thus lead to better civic amenities.<sup>5</sup> While access to credit has been used to justify taxation of *abadi* areas, which in most states are exempt from tax, SVAMITVA’s main motivation seems to be to enable panchayats to generate revenue at the local level through taxes. Thus it takes seriously de Soto’s (2010) proposition of converting informal assets into capital, which comes at the cost of property taxes for many rural Indians who were not previously liable to pay taxes. SVAMITVA is the latest in a long line of Land Records Modernisation (LRM) programmes in India. The Computerisation of Land Records Programme (CoLR)<sup>6</sup> was launched along with the Strengthening of Revenue Administration and

<sup>1</sup> Section 4 (1) of the Uttar Pradesh Revenue Code, 2006 defines *abadi* land as “such area in a village which, on the date of commencement of this Code, is being used for the purposes of residence of its inhabitants or for purposes ancillary thereto such as *sahan* (courtyard) and green trees, wells etc...”

<sup>2</sup> In Haryana, *abadi* lands were recorded as a single unit with a single khewat, khatoni and *khasra* number—as is done for agricultural lands—without demarcating properties within settlements. Similarly, Karnataka and rural revenue estates in Himachal Pradesh also had *abadi* areas without details of individual ownership or possession (IIHS, 2015).

<sup>3</sup> 5.1.3 (iii) pg. 17-18, Correction in owner name, property boundaries, joint holding (Ministry of Panchayati Raj, 2020).

<sup>4</sup> “CORS is a network of reference stations which provide a virtual base station to allow access long-range high-accuracy Network RTK corrections. The CORS network supports in establishing Ground Control Points, which is an important activity for accurate geo-referencing, ground truthing and demarcation of lands” (MoPR, 2020).

<sup>5</sup> The 2011 census reveals stark inequities in access to water, sanitation and electricity in rural areas. 69.3% of rural homes have no latrines, 63.3% have no drains (Census of India, 2011a), 31% have open drains, and only 5% have closed drains. Forty-five percent of rural homes have no access to electricity (Census of India, 2011b).

<sup>6</sup> The CoLR provided for the digitisation of land records (including cadastral maps) and updating of RoRs. It focussed on computerising ownership records and providing legal sanctity to computer-generated records; storage and reproduction of land records data; ensuring accuracy of records; transparency; speedy dispute resolution; enabling fast and efficient data retrieval; creating a land information system for better planning; and citizen-centric services (Government of India, 2007).

Updating of Land Records (SRA&ULR)<sup>7</sup> in 1988-89 (Indian Institute for Human Settlements, 2015). In 2008, CoLR and SRA&ULR were clubbed together under the National Land Records Modernisation Programme (NLRMP)<sup>8</sup> to bring in a conclusive titling system with title guarantee<sup>9</sup> to replace the existing presumptive titling system (Government of India, 2008-09).<sup>10</sup> In 2015, NLRMP was brought under the Digital India initiative and renamed Digital India Land Records Modernisation Programme (DILRMP) (Indian Institute for Human Settlements, 2015). These LRM programmes aim to reduce property disputes, improve access to credit, and enable simpler and more equitable land markets (Indian Institute for Human Settlements, 2015).<sup>11</sup> What is significant about SVAMITVA is that instead of the Ministry of Land Resources, which has been at the forefront of the LRM programme, SVAMITVA is being implemented by the Ministry of Panchayati Raj. The joint secretary of the Ministry of Panchayati Raj provided two reasons for this (Nagar, 2021). First, the land resource ministry is not concerned with non-agricultural land and second, SVAMITVA was inspired by the Maharashtra survey of *abadi* areas, which resulted in clear property titles that allowed local panchayats to collect property tax from *abadi* areas.

While this paper attempts a socio-legal analysis of the SVAMITVA, it is circumscribed by a paucity of field evidence as the scheme is still underway and qualitative reports on its implementation are not yet available. This paper thus relies on evidence of implementation in the LRM programmes, produced by the Indian Institute for Human Settlements (IIHS) to examine the plausible roadblocks this scheme may encounter in the process of implementation. The first part of this paper examines the legal process for the implementation of the SVAMITVA underlining the variations in laws across states that would necessitate amendments to carry out surveys, maintain records and introduce taxes. The second part of this paper details the groups that are excluded from the ambit of SVAMITVA and the impacts it could likely have on them given the context of high gender, caste and social inequalities in rural India. It lays out the existing laws and policy measures that the SVAMITVA could have been linked up with, so as to make it more inclusive as well as progressive in terms of achieving housing rights for all Indian citizens. The third part examines the process used to determine ownership and resolution of conflicts, drawing on the Uttar Pradesh Abadi Survey Record Operation Regulation, 2020<sup>12</sup> (hereafter referred to as “UP *abadi* regulations”) issued by the Uttar Pradesh board of revenue to guide implementation of the scheme. It lays out the problems that could be encountered during the implementation of these regulations and recommends ways in which these issues could be better handled. The fourth part examines the property card as a legal document of property ownership and the grey areas in terms of legal validity, maintenance of records and financial viability that need to be addressed. This paper lays out the role that the central government can play in better guiding states, with specific directives and modes of implementation, so as to make SVAMITVA a success.

<sup>7</sup> The SRA&ULR was aimed at strengthening land records institutions such as survey and settlement organisations to enable efficient record preparation by setting up such organisations in places where no land records exist; training staff and setting up training infrastructure; modernising facilities to print, copy, and store documents; and strengthening revenue departments at the village level and above (Government of India, 2007). Under this program, modern survey equipment including global positioning systems, Electronic Distance Measurement Instruments (EDMs), theodolites, and work stations were purchased to carry out surveys (Government of India, 2007).

<sup>8</sup> NLRMP's objective was to set up e-governance and system reforms, enable development planning to address the disconnect between datasets; and making a comprehensive database available for land planning. It also developed citizen services including computerised RoRs with maps, caste, income and domicile certificates, web-based access to data on land, speedy systems of property registration, automated mutation notices, issuance of land passbooks in the form of smart cards, easy access to credit, etc. It also began the process of Geographic Information System (GIS) mapping for the entire country; digitisation of cadastral maps; integration of textual documents with spatial data; and setting up national and state land data banks (Government of India, 2007).

<sup>9</sup> See foreword by the secretary, Department of Land Resources who states: “The ultimate goal of the NLRMP is to usher in the conclusive titling system with title guarantee, to replace the current presumptive title system in the country” (Government of India, 2008-2009).

<sup>10</sup> India presently follows a system of presumptive titling, with registered documents of ownership (sale deeds, gift deeds, transfer of ownership based on inheritance, etc.) only providing an inference of legal title, which is open to legal challenge and therefore not conclusive proof of legal ownership. See page 17-18 for a more detailed discussion of presumptive and conclusive titles.

<sup>11</sup> IIHS volumes on LRM attempt a detailed evaluation of the LRM programmes (Goswami et al, 2017b).

<sup>12</sup> This was the only set of regulations available between December 2020 and November 2021 when this paper was written.



## 1. The Process of Implementation

*Abadi* land is land reserved and set apart by the gram panchayat from its own land, for the residential needs of a village community.<sup>13</sup> Revenue laws normally provide gram panchayats the power to allot land that it controls for residential purposes to certain specified groups residing in the village.<sup>14</sup> Several states record *abadi* land in the RoR, which is also used to record agricultural land holdings, though most of them did not record individual ownership or possession (Goswami et al, 2017). Some states have separate laws for *abadi* areas with requirements to maintain registers or other documents for *abadi* areas, such as the Uttar Pradesh Village Abadi Act, 1947. In Rajasthan, *abadi* land is regulated under the Rajasthan Panchayati Raj Act, 1994 and Rajasthan Panchayati Raj (Allotment, Change of Use of Land and Regularisation of *Abadi* Land in Panchayat Area for Tourism Units) Rules, 2015, which require the gram panchayat to maintain a record of *abadi* land.<sup>15</sup> The SVAMITVA scheme builds on these existing records in RoRs or those maintained by gram panchayats to integrate textual and spatial data, which are often mismatched in older records using drone survey to produce accurate high-resolution maps (Government of India, 2020b).

As per the framework of this scheme (Government of India, 2020b), states are required to carry out amendments to land revenue codes and any other administrative documents to “grant the property card due authority and validity” and “to undertake drone and physical survey of properties” (Government of India, 2020b, p. 21). However, states with other laws that govern *abadi* sites<sup>16</sup> (such as the Rajasthan Panchayati Raj Act, 1994, provides for surveys) would require amendments in these laws, in addition to the Revenue Codes.<sup>17</sup> In Uttar Pradesh, apart from amendments to the revenue code, the Abadi Survey Record Operation Regulation, 2020<sup>18</sup> (“UP *abadi* regulations”) were issued under provisions of the Uttar Pradesh Revenue Code, 2006<sup>19</sup> and the Uttar Pradesh General Clauses Act, 1904,<sup>20</sup> with prior permission of the Uttar Pradesh state government. Since most state revenue codes provide for such power to be exercised by relevant revenue authorities,<sup>21</sup> similar notifications may have been issued in other states to bring in regulations to enable the scheme. Unlike laws and amendments, rules and regulations do not need to be passed by the Parliament as they do not legislate but provide the process for implementing an already existing legislation. Revenue laws provide for survey and maintenance of records as well as limited powers of dispute

<sup>13</sup> Rajasthan Land Revenue Act, 1956 also includes such residential land in town and city in its definition of *abadi* land (Section 103 (b)). See Gopal vs Durga Parsad And Ors., 1973 (6) WLN 967, <https://indiankanoon.org/doc/1226594/>.

<sup>14</sup> For instance Section 63 of the Uttar Pradesh Revenue Code, 2006 provides for power to the Gram Panchayat to allot land for *abadi* sites and Section 64 lists the groups and the order of preference entitled to *abadi* sites (plots of land are called sites in the Code).

<sup>15</sup> Section 107F. Retrieved from <http://www.bareactslive.com/Raj/rj038.htm>. Another example is the Greater Noida Industrial Development Rural Abadi Sites (Management and Regularisation) Regulations, 2015, which provides for the governance of *abadi* sites in Greater Noida. The first amendment to these regulations enables mapping and modern methods of survey. Retrieved from <https://www.greaternoidaauthority.in/files/attachments/ruab1c.pdf>.

<sup>16</sup> See page 10-11 for a discussion on laws pertaining to the taxation of *abadi* properties.

<sup>17</sup> As Revenue Codes specifically provide for survey activities, amendments would be required to these codes to authorize survey of residential land, as provided in the SVAMITVA Framework.

<sup>18</sup> Notification 675 /1-14/2020 Lucknow, (2020, October 8). The Uttar Pradesh board of revenue issued these regulations with prior permission from the state government under section 43 (2) and section 234 (1) of the Uttar Pradesh Revenue Code, 2006 (Act 8, 2012) read with Section 21 of the Uttar Pradesh General Clauses Act, 1904 (Act 1, 1904). Retrieved from [http://bor.up.nic.in/pdf/Aabadi\\_Survey\\_Rules\\_Eng.pdf](http://bor.up.nic.in/pdf/Aabadi_Survey_Rules_Eng.pdf)(See Annexure A).

<sup>19</sup> Section 43 (2) provides the state government authorities to carry out a survey of *abadi* land and section 234 (1) of the Uttar Pradesh Revenue Code, 2006 (Act 8, 2012) provides the revenue board the authority to make rules consistent with the code “prescribing the forms, contents, methods of preparation, attestation and maintenance of the record-of-rights and other records, maps, field books registers, and lists”.

<sup>20</sup> Section 21 of the Uttar Pradesh General Clauses Act, 1904 (Act 1, 1904) provides that those with the power to issue a statutory instrument, would also have the power to “add, amend, vary, or rescind” the statutory instrument.

<sup>21</sup> Section 48 of the Karnataka Land Revenue Act, 1964 gives the revenue appellate tribunal the power to issue regulations “consistent with the provisions of the act” after “previous publication and with the previous sanction of the state government”. Retrieved from [https://www.indiacode.nic.in/bitstream/123456789/7741/1/12\\_of\\_1964%28e%29.pdf](https://www.indiacode.nic.in/bitstream/123456789/7741/1/12_of_1964%28e%29.pdf).

resolution and conciliation.<sup>22</sup> Therefore, authorities such as revenue boards and state governments have the power to issue rules through notifications as long as they are consistent with the provisions of revenue laws.<sup>23</sup>

Revenue laws in certain states do not empower the state to create records in the RoR for *abadi* properties. For instance the Property Rights Research Consortium (PRRC) inputs to the design of the next phase of SVAMITVA<sup>24</sup> notes that in the Punjab Land Revenue Act, 1887 which applies to Haryana does not apply to *abadi* properties and therefore Haryana implemented SVAMITVA under the Panchayati Raj Act, 1994, which empowers Gram Panchayats to prepare maps, but does not provide for recording properties in the RoR (Property Rights Research Consortium, 2020). As laws would differ from state to state, due legal process for the implementation of the scheme would also differ. The varied laws that apply to *abadi* property must thus be studied carefully, to ensure that required legal amendments are carried out to lend validity to the process and property cards as also to avoid future legal disputes.

While the UP *abadi* regulations provide comprehensively for the process of survey and mapping (discussed in detail in the following part), it does not provide for taxation. SVAMITVA introduces property tax for rural residential housing that were previously not taxed. State Panchayat Raj laws normally enable collection of taxes by the state with a broad provision meant to enable the introduction of new taxes. For instance section 37 (11) of the Uttar Pradesh Panchayat Raj Act, 1947, provides the gram panchayat power to levy “any other tax which the state legislature has the power under the Constitution, including Article 277 thereof, to impose in the state and of which imposition by the gram panchayat has been authorised by the state government.” However, it is unclear if the introduction of new taxes without legal amendments would withstand legal scrutiny.

Furthermore, certain laws exempt dwellings constructed in *abadi* areas from tax. For instance, the Delhi high court in a 1994 decision examined the provisions of the Delhi Municipal Corporation Act, 1957 which provides tax exemption for dwellings on *abadi* land if self-occupied, lower taxes if not occupied by the owner and higher taxes if used for non-residential purposes.<sup>25</sup> The provisions of such laws would therefore need to be amended in order to impose property taxes on all dwellings in *abadi* areas.<sup>26</sup> In view of the diversity of rates of taxation (self-occupancy, non-residential, etc.) provided by these laws, it is unclear if the taxes imposed under SVAMITVA would differ for dwellings based on occupancy.

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<sup>22</sup> See section 49 of the U.P Revenue Code, 2006.

<sup>23</sup> In addition to these regulations, state governments have also been formalising memorandums of understanding with the Survey of India to authorise mapping through drone technology. Retrieved from <https://economictimes.indiatimes.com/news/politics-and-nation/survey-of-india-signs-mou-with-maharashtra-govt-to-map-40000-villages-using-drones/articleshow/70495628.cms?from=mdr>.

<sup>24</sup> These inputs have been shared by the Joint Secretary, Ministry of Panchayati Raj, to the Panchayati Raj Departments of the states of Andhra Pradesh, Chhattisgarh, Gujarat, Jharkhand, Kerala, Odisha, Tamil Nadu, and Telangana, vide letter dated 4th January 2021 (D.O. No. N-19011(35)/1/2019-ePanchayat-Part(3).

<sup>25</sup> Naresh Kumar v. Union Of India And Ors, 1994 IVAD Delhi 1084, 56; DLT 746 (1994) (31) DRJ 621. Retrieved from <https://indiankanoon.org/doc/1041551/>.

<sup>26</sup> As the Uttar Pradesh example is used in this paper, an attempt was made to find similar laws in the state with no result. For example, case laws mention the Uttar Pradesh Village Abadi Act, 1948, however this act could not be found online. See: Ram Narain Choubey vs Gangadhar Choubey and Ors., AIR 1975 Allahabad 248. Retrieved from <https://indiankanoon.org/doc/1743133/> and Pheku Chamar And Ors. vs Harish Chandra and Ors, AIR 1953 Allahabad 406. Retrieved from <https://indiankanoon.org/doc/1267759/>.

## 2. Groups excluded from the ambit of SVAMITVA

As noted by Goswami et al. (2017), schemes pertaining to land need to be evaluated in terms of equitable distribution. As per the 2003-04 data from the National Sample Survey Office (NSSO), 41.63% households owned homesteads, a third of the households were landless, another third near to landlessness and 20% held less than a hectare of land. While 60% of the country's population had rights over only five percent of the country's land, 10% controlled 55% of the land. As per the 2011 census data, 0.83 million rural Indians were homeless (Tiwari & Rao, 2020). Detailing the diverse "non-ownership rights in urban and peri-urban land," Goswami et al. (2017) note, "this reality calls for a more nuanced approach, keeping in mind the needs of all stakeholders in various states, rather than a rigid focus on titling alone" (Goswami et al, 2017, p. 7).<sup>27</sup> The restricted focus on ownership rights, excludes a variety of rights to property including tenure (as discussed above), possession, use arrangements, community (collective) rights, tenure rights, customary rights, usufruct arrangements, etc.<sup>28</sup> While these arrangements have been observed with regard to agricultural and common lands (Goswami et al, 2017, p. 7), similar arrangements are bound to exist for residential properties which are often inhabited by several people with different rights and relations to such properties. The SVAMITVA scheme therefore needs to be analysed in terms of its effects on both ownership as well as non-ownership rights of vulnerable groups. Ownership rights are narrowly confined to the rights of those mentioned in the records of *abadi* properties. But others who do not have ownership of the property may possess security of tenure or have rights of residence.

The restricted focus on *abadi* areas could exclude residential homes outside *abadi* areas, unless such areas are notified as *abadi* areas by the Gram Panchayat to enable their inclusion under the scheme. In many states, such as Karnataka and West Bengal, homestead plots, which are small plots of land ranging from 0.02 to 0.10 acres (900 to 4300 square feet), have been provided to landless labourers and land-poor households (Hanstad, Brown, & Prosterman, 2002; Hanstad, Haque, & Nielsen, 2008).<sup>29</sup> These plots comprise of homes as well as some cultivation space for the household. Under programmes for the provision of rural housing such as the Indira Awaas Yojana, homestead properties have been provided to rural landless groups and certain states have passed laws enabling the regularization (providing legal recognition) of residential occupations of privately owned land (including those leased out by land owners to families for the purpose of residence).<sup>30</sup> These schemes have not been uniformly implemented with some families allocated land without receiving possession or in some cases not yet allocated such land despite eligibility. In such cases the SVAMITVA may exclude these households (Property Rights Research Consortium, 2020) and may even adversely affect them if they are located on public land which is also being mapped under the scheme.

Regularisation provides these groups security of tenure and protection from eviction. While laws (such as the Bihar Privileged Persons Homestead Tenancy Act 1947) enable the regularisation of such homestead properties (Jha, Tiwari & Zahan, n.d.), it is not clear if they are/would be recorded as *abadi* areas or if they are provided a distinct legal recognition. It is not clear if such homestead properties that combine residence and home gardens could be brought under the SVAMITVA

<sup>27</sup> Authors cite the report of the Department of Land Revenue report (2013), titled 'National Land Records Modernisation Programme (NLRMP) An Overview', document currently not available online.

<sup>28</sup> India Institute of Human Settlements. *Land records modernisation, state-level experiences: Policy brief*. Retrieved from <https://iihs.co.in/knowledge-gateway/wp-content/uploads/2017/11/2.-State-level-Experiences.pdf>.

<sup>29</sup> This was the recommendation of the Twelfth Plan Working Group on Disadvantaged Farmers, Including Women, 2011, headed by Prof. Bina Agarwal (Agarwal, 2011).

<sup>30</sup> For instance the Bihar Privileged Persons Homestead Tenancy Act 1947 defines a 'privileged person' as a person 'who has built his house on private land given to him by a landowner for residential purposes and has been living on that land continuously for one year, has permanent right over his homestead land' and holds no other land or no more than an acre of land other than the homestead property (Section 2 (d) (i) and (j) of the Bihar Privileged Persons Homestead Tenancy Act, 1947 [BIHAR ACT IV OF 1948]. Retrieved from: <http://www.bareactslive.com/BIH/bh626.htm>.

which is focused on residential properties only, and if not, what would be the mechanisms to legally document such holdings. Where there are residential holdings excluded from the scheme, this would create two categories of rural housing, those with and without property cards with the risk that legitimacy to property cards may erode the legitimacy of other documents of home ownership in rural India.

While SVAMITVA is narrowly focused on providing ownership, it is likely to run into situations of unauthorised occupation or encroachment of public land or households located on non-*abadi* properties. Hanstad et al. (2002) in their study of homestead plots in Karnataka note that many households had encroached onto government land to establish homesteads. *Abadi* areas have also over time extended, often onto public land and sometimes outside village limits. For instance in Maharashtra when property cards were issued to *abadi* residents, a request was made to extend the scheme to people living outside village boundaries in what is commonly referred to as *gaothan* or open government land (Goradia, 2020). SVAMITVA may thus throw light on these encroachments, setting the stage for removal of such encroachments. For instance, section 67 of the revenue code provides for punishment (by imposing compensation) and eviction in case of “wrongful occupation” of gram panchayat properties. As per the 2013 report on the state of housing in India, 1.91% of all rural homes are neither owned or rented, signifying possession without records of ownership or other legal entitlements (Government of India, 2013).<sup>31</sup>

Some of these groups settled on land they do not own, may possess security of tenure after long periods of residence and social and legal recognition of their rights to reside (Payne 1996, 2001). Such settlements are normally “regularised” or legalized after a period of time through recourse to laws that enable regularization. Many states have been “regularising” unauthorised occupation or encroachment of public lands. For instance Hanstad et al. (2002) note that such regularisation has enabled rural poor households in Karnataka to gain access to housing. Furthermore, revenue laws also provide for the allocation of land for housing marginal groups. For instance, section 64 of the revenue code states that gram panchayats when allotting land should give a preference to labourers and artisans belonging to scheduled castes, scheduled tribes, backward classes and those living below the poverty line—with a further preference to widows and the physically disabled. As Wahi (2019) notes, laws that provide for eviction of those occupying public land coexist with laws that enable regularisation of such properties and the formalisation of property rights.

The state therefore has two conflicting choices. In order to prevent local forces from shaping the decision on whether to evict or regularise these groups, there is a need for a clearly spelt out directive under SVAMITVA to regularise such dwellings thus preventing eviction and thereby increasing legal rural housing. This would thus mean that SVAMITVA must broaden its scope to include not just rural residents who are documented and living within *abadi* areas, but also those who are undocumented and possess rights that are not narrowly confined to ownership. This was done in the Maharashtra drone mapping survey which forms the basis for the SVAMITVA scheme, where those with undisturbed possession of land since 2011 were recognised as rightful owners (Property Rights Research Consortium, 2020). Specific directives could have been provided in the Framework document to regularize groups living on public land for a given period of time, specially those who are poor or marginalized including women headed households, SCs and STs.

Reports of the ongoing survey indicate recording of ownership rights (including joint ownership), along with details of welfare benefits received by members of the household, such as old-age and widow pensions and access to housing under the Pradhan Mantri Awas Yojana (PMAY) (See Figure 1.) (Survey of India, 2020). Though joint ownership is provided for this too would be recorded only if the documents already record joint possession/ownership. As noted by the Joint Secretary, Ministry of Panchayati Raj in a podcast on SVAMITVA by the Property Rights Research

<sup>31</sup> The 2013 State of Housing in India report draws data from 49th round (1993), 58th round (2002) and 65th round (2008-09).

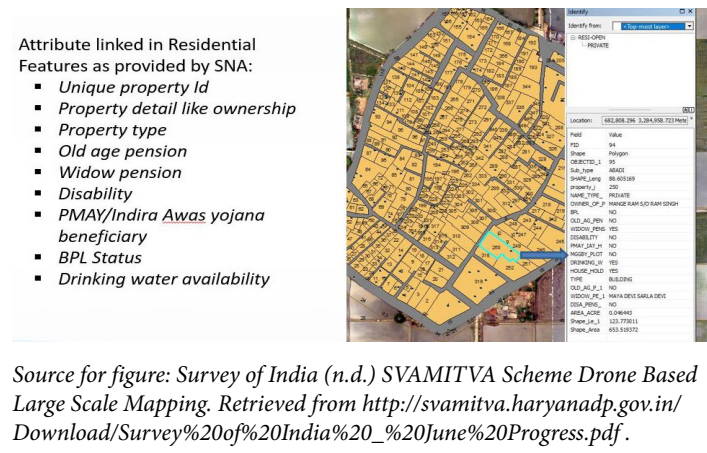


Consortium (Nagar, 2021) property cards would be made out to women heirs (as owners) or share-holders (as co-owner) if documents so reflect their status.

While there is no comprehensive gender disaggregated data on land and home ownership in both rural and urban areas, the limited gender disaggregated data available on ownership and operation of agricultural land can be relied on to draw an inference on rural home ownership. National level data on land holdings is available more recently from the Indian Human

Development Survey-II (IHDS-II) for 2010-11 and the National Family Health Survey-4 (NFHS-4) for 2015-16. As per IHDS-II data (2010-11),<sup>32</sup> only 6.5% of women aged 18 and older own agricultural land in landowning rural households. As per NFHS-4 data (2015-16) of the Indian Government, 28% of women and 49% of men aged 15-49 years owned land. However these data have been questioned in terms of accuracy.<sup>33</sup> As per the 2015-16 agricultural census women operate 13.96% of all operational landholdings, up from 12.79% in 2010-11. The share of the land that women operate has also increased from 10.36% of the total operated area in 2010-11 to 11.72% in 2015-16 (Government of India, 2020b).<sup>34</sup> Operational holdings refer to land that is wholly or partly used for agricultural production without any regard to title (ownership).<sup>35</sup> It signifies control over land for the purpose of cultivation and not ownership (though owners may cultivate land and thus be recognised as operational holders). As per the data collected by the International Crop Research Institute for the Semi-Arid Tropics (ICRISAT) which covers 9 Indian states (one of which was split into two states in 2014),<sup>36</sup> women's ownership of land was reported in only 16% of households studied of which 8% were co-owned with men.

**Figure 1. Ongoing survey to indicate ownership rights, welfare benefits etc. under PMAY**



<sup>32</sup> Agarwal et al. (2021) note the limitations of IHDS-II data. It has no data on the size of landholding by gender, thus inequalities in landholding size between men and women cannot be assessed. It records “top three household members owning agricultural land” and women are more likely beyond the top three, as they generally own less land with less social recognition of their rights. It has no information on individual or joint ownership essential to understand intra-household dynamics after recent laws providing equal inheritance rights for Hindu women (see footnote 40). Although it provides information on the mode of acquisition, in terms of inheritance, purchase, gift, etc., it does not mention from whom the property was inherited, spouse, father, etc (Agarwal et al, 2021).

<sup>33</sup> This data are restrictive as they exclude women over 50 years who are more likely to own land on the death of spouses (Agarwal et al, 2021). Agarwal et al. (2021) note that these data are rather questionable as including women above 50 years would further inflate women's ownership, especially as Lahoti et. al (2016,) in their analysis of IHDS data, had observed that 56% of women owning land were in this age group (Lahoti, Suchitra, and Swaminathan 2016). They also note the lack of convergence with NFHS data reversing regional patterns observed in IHDS data as well as data on individual states such as Karnataka (Swaminathan, Lahoti, & Suchitra, 2012). They observe that there are doubts regarding the accuracy of the NFHS-4 data as the household sample was expanded more than 5 times, necessitating more data collectors with limited experience which may have resulted in errors. This is based on information through personal communication with Dr. Pronab Sen in 2019, who was at the time of the survey, the Chief Statistician and Head of the National Statistical System.

<sup>34</sup> This marginal increase in female land holdings and their share of the operated area, accompanies an increase in operational holdings from 138.35 million in 2010-11 to 146.45 million in 2015-16. However, there has been a decrease in the total operated area from 159.59 million hectares in 2010-2011 to 157.82 million hectares in 2015-2016. The data therefore reveals increased fragmentation of land. (Government of India, 2020).

<sup>35</sup> This includes both cultivated and uncultivated area and includes farm buildings and house used for residential purposes. An operational holding is operated as a single unit either by one or more persons and though such holdings may be divided amongst family members, it would still be recorded in the name of the male head of household if he is the one carrying out cultivation. (Government of India, 2020).

<sup>36</sup> Andhra Pradesh (which was divided into Andhra Pradesh and Telangana in 2014), Bihar, Gujarat, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra and Odisha.



The patrilineal system which is the dominant system of inheritance in India<sup>37</sup> has excluded women from access to land and property. Despite an amendment in 2005 to the Hindu Succession Act, 1956 which provided Hindu women with equal rights of inheritance,<sup>38</sup> women continue to be excluded. Self-acquired property (not inherited) is written away to sons through will testaments and daughters are coaxed and/or coerced to give up their rights to inherited property through customs such as the '*haq tyag*' [giving up rights] (Chandran, 2016).<sup>39</sup> Women's lack of rights to housing results in homelessness due to their eviction from marital homes after the death of spouse and when husbands or fathers remarry (Chaudhry, Joseph, and Singh 2014) apart from a range of economic exclusions (Agarwal, 1994a; Agarwal, 1994b). In a 2019 study of 145 women in 78 shelter homes in 5 Indian states—Assam, Delhi, Meghalaya, Karnataka and Tamil Nadu revealed that the primary cause of short-term homelessness and eviction of women was domestic violence from the natal and marital family (Jagori, 2019).

The NITI Aayog's Strategy for New India@75, expressly provides that in order to improve women's asset ownership, the Government would "encourage joint registration with spouses/ sole registration of land in the name of the woman through registration fee and stamp duty concessions through special drives/awareness campaigns." While this has been done by several state governments that have reduced the fee for property registration to encourage women's co-ownership, this would apply only for privately held properties and only if families decide to do so. An easier route would be to record joint ownership on transfer of public land and property to private individuals. While the Indian government has distributed land acquired under land ceiling laws and subsidised homes/plots<sup>40</sup> to women or jointly to both men and women, these measures have been very minimal.<sup>41</sup>

If homes and land provided by the state can be allotted jointly, it is not clear why dwellings on *abadi* property cannot be similarly allotted jointly. Since gram panchayats allot *abadi* plots for the purpose of residence from its own land, and as these properties are still recorded in several states as owned by the gram panchayat, the SVAMITVA, as argued in part 1 of this paper, amounts to a transfer of public to private land in several states. This is also in keeping with provisions of the revenue codes with respect to allotment of land/property. For instance, the proviso to section 64 of the Uttar Pradesh Revenue Code, 2006 which empowers gram panchayats to allot *abadi* plots to marginalised groups, provides that "if the allottee is a married man and his wife is alive, she shall be co-allottee of equal share in the land so allotted." The SVAMITVA presents an opportunity to address this, without substantially modifying its objective or increasing costs of implementation, by merely linking up with laws that already exist.

<sup>37</sup> Some parts of the country followed a matrilineal system, such as the Malabar coast in southern India where the matrilineal system was abolished and patrilineal system introduced during colonial rule. Most Hindu communities in India follow the patrilineal system today. For a detailed discussion on systems of inheritance and women's rights to land, see Bina Agarwal's reputed book 'A Field of One's Own' (Agarwal, 1994b).

<sup>38</sup> This law applies to intestate succession (inheritance in the absence of a will/testament or inheritance of ancestral property). This has been further strengthened by a 2020 decision of the Supreme Court providing for the retrospective application of this amendment, except in cases where property has already been partitioned. Apart from Hindus, it also applies to Buddhists, Sikhs, Jains and followers of Arya Samaj. Women belonging to Christian, Parsi and Jew religious denominations also enjoy equal rights under the Indian Succession Act, 1925. However Muslim women are entitled to one half of the share of male heirs under the Muslim Personal Law (Shariat) Application Act, 1937. For more details, see Vineeta Sharma Vs. Rakesh Sharma, Civil Appeal No. 32601 of 2018 (Supreme Court of India 2020).

<sup>39</sup> While '*haq tyag*' has been noted in the northern states of India including Haryana and Rajasthan, similar social and family pressure is applied on women in other parts of the country.

<sup>40</sup> Subsidised housing schemes of the government such as Ashraya Yojana, Indira Awas Yojana and Dr. Ambedkar Housing Scheme have provided for individual titles in women's names or joint titles in the names of both spouses. (Swaminathan, Lahoti, and J.Y. 2012).

<sup>41</sup> Agarwal notes that the Sixth Five Year Plan (1980-85) acknowledges the need for joint titles for women and Eighth Five Year Plan (1992-97) recognizes the need for a change in inheritance laws to enable equal access to parental property and directs state governments to allocate 40% of the surplus land (acquired under land ceiling laws) to women alone and the remaining 60% jointly in the name of both spouses. She points out that surplus land comprises only 0.56% of the country's arable land (Agarwal, 1994b).

### 3. Determining Ownership and Resolving Conflicts

The Property Rights Research Consortium (PRRC) inputs to the next phase of SVAMITVA notes that ownership under SVAMITVA is being determined based on possession, with those in possession declared owners. It notes that this principle emerges from the Limitation Act, 1963<sup>42</sup> (Property Rights Research Consortium, 2020), a concept commonly referred to as adverse possession which has been used by poor groups to claim rights to land occupied for long periods of time (Haritas, 2021, p. 49) Proof of possession would have to be elucidated through documents recording possession maintained by the gram panchayat or such other authority charged with maintaining a register of such properties.<sup>43</sup> The UP *abadi* regulations provide a step-by-step process for clarifying land records and maps and then merging them together to issue one single document.<sup>44</sup> After survey and preparation of records, preliminary *abadi* records will be published in a meeting of the gram panchayat with 15 days provided for objections. In case objections are raised, the assistant records officer must fix a hearing to arrive at a conciliation or settlement.<sup>45</sup> This process is similar to the process of objections used in the Gujarat resurvey exercise. Disputes are resolved “on the basis of compromise” through a “reconciliation statement” with the signatures of two members of the village revenue committee. Those aggrieved by the decision of the assistant records officer, can submit objections to the district records officer within 15 days of the settlement who can then settle the issue by reconciliation or agreement.<sup>46</sup> In case there is no conciliation, the case will be marked “disputed”<sup>47</sup> until a verified copy of a court order on ownership is submitted.

While these provisions seem to ensure adequate recourse to those aggrieved, they must be placed within the context of deep inequalities and hierarchies as well as the rampant corruption of revenue officials in rural India. This power to settle disputes through reconciliation and agreement can be open to misuse and corruption, depending on the context. Studies of villages reveal the powers of local officials over land records—the use of discretionary powers to read and interpret records in determining rights, and the ability of local officials to produce written records of processes such as consultations without carrying them out (Chandra, 2021). This is further complicated by administrative non-compliance with laws and irregularities of procedure by land officials (Wahi, 2019).

Housing is not limited to shelter but also includes access to basic infrastructure and services such as water, electricity, and sanitation. Upper caste communities often occupy village land that is well serviced (Property Rights Research Consortium, 2020) and this could reinforce the exclusion of Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Castes (OBCs). Demarcation of boundaries can thus be politically charged as certain lands or access to services may be contested. As per the 2011 Socio Economic and Caste Census, SC groups comprise 18.45% of all rural households with 17.69% owning their homes. ST groups comprise 10.98% of all rural households with 10.5% owning their homes.<sup>48</sup> Field reports reveal that lower-caste groups suffer from spatial segregation—they are often located away from infrastructure and services available

<sup>42</sup> Part IV of this Act provides for ‘Acquisition of Ownership by Possession’ of private land occupied for a period of 12 years or more and government land occupied for a period of 30 years or more. The law provides that to prevent acquisition by ownership, the private owner has to reclaim the land within a period of 12 years (as per the Schedule) and the government has to reclaim it within a period of 30 years. Retrieved from <https://legislative.gov.in/sites/default/files/A1963-36.pdf>

<sup>43</sup> The joint secretary, Ministry of Panchayati Raj notes that the provision of property cards would be based on existing records of *abadi* properties (Nagar, 2021).

<sup>44</sup> This is done through *abadi* form 10 which shows record of ownership and use and form 12 with map data (Rule 30). Under rule 32 (2), form 10 is then used to prepare *gharauni*, the final rural *abadi* records in Uttar Pradesh.

<sup>45</sup> Rules 22 and 23

<sup>46</sup> Rule 27A

<sup>47</sup> Rule 20 (4) provides for disputes; Rule 20 (9) provides for resolution of the disputes on the basis of compromise and the recording of a reconciliation statement.

<sup>48</sup> Socio Economic and Caste Census, 2011, see: <https://secc.gov.in/reportlistContent>, for SC home ownership see: <https://secc.gov.in/getSCCategoryHouseOwnershipStatusNationalReport.htm>, consulted on 28th January 2021; for ST home ownership see: <https://secc.gov.in/getSTCategoryHouseOwnershipStatusNationalReport.htm>, accessed on 28th January 2021.

to other village dwellers (Dhar, 2011; Trivedi, 2011).<sup>49</sup> Despite measures taken by the Indian government to redistribute agricultural land to these groups, studies note the alienation of their land in favour of upper caste landowners in villages. The ability of these groups to retain their agricultural lands depends heavily on the local context which has varied between states and as well as villages with some states with upper caste dominance (Bihar, Madhya Pradesh, Rajasthan and Orissa) performing very poorly in this respect (Mohanty, 2011). Though this field evidence pertains to agricultural land holdings of SCs and STs, a similar inference can be drawn with respect to housing.

As local caste and power hierarchies would differ from state to state and village to village, it is important that SVAMITVA is attentive to local contexts and does not inadvertently reinforce caste hierarchies and strengthen upper-caste dominance. The process of conciliation therefore must be attentive to power hierarchies, and not reinforce segregation or alienation of rightful claimants. Legal recourse although available, is an expensive, arduous and time consuming process, well out of reach of poorer groups. Instead, community engagement in the implementation of the scheme can ensure transparency and accountability, and also avoid litigation. While the implementation of the scheme has been described as involving people in the exercise of boundary marking, there is no express mention of involving communities in the process. In Maharashtra and Odisha, communities were involved during drone mapping with access given to primary level data to enable verification by all stakeholders thus ensuring greater acceptance by the community (Property Rights Research Consortium, 2020).

As Deb (2020) notes, land is a highly charged and political issue and it is crucial that the process be transparent with neighbours and the community involved to ensure better acceptance of the scheme. She notes that certain groups such as Dalits, tribal communities and women are often excluded from access to land despite possessing a legitimate claim. It is therefore crucial to build safeguards in the implementation process to ensure that the interests of these vulnerable groups are “not crowded out by louder, or powerful voices” (Deb, 2020). Though the process of conciliation under SVAMITVA is open to challenge in a court of law, legal recourse is not just expensive but also time consuming. Involving communities and ensuring equitable access to land and resources is therefore vital.

The experience in the LRM programs indicates that there may be difficulties in reconciling old data with the more accurate data. Goswami Jha, and Lushington (2021), in their evaluation of LRM initiatives in Gujarat and Himachal Pradesh, note that geo-referential spatial databases in the resurvey initiative increased accuracy, which led to more disputes with people challenging the new records. Objections were filed by 10%–20% of all landowners which led the Gujarat government to shelve the new spatial records (Goswami, Jha & Lushington, 2021). In order to handle such discrepancies, SVAMITVA needs clearer guidelines to deal with similar situations. In addition, more time needs to be allocated to address objections and settle disputes. Though the regulations provide for two successive authorities to raise objections to, the time provided for doing so—15 days after the publication of preliminary records and 15 days after the first attempt to resolve dispute<sup>50</sup>—is very limited. The limited time period would especially affect migrant workers. It must be noted here that the proportion of male workers engaged in agriculture has been decreasing from 81% in 1977–78 to 63% in 2009–10 to 55.4% in 2019–20 (Government of India, 2021), indicating male

<sup>49</sup> The National Infrastructure Equity Audit which was reported in newspapers was not accessible online during the research and writing of this paper.

<sup>50</sup> After survey and preparation of records, preliminary *abadi* records will be published in a meeting of the gram panchayat and 15 days will be provided for objections. On receipt of objections, the assistant records officer will fix a hearing for conciliation or settlement (Rules 22 and 23). Notice period of hearing is not mentioned in the rules). Those aggrieved by the decision of the assistant records officer have 15 days to submit objections to the district records officer who can also settle the issue by reconciliation or agreement (Rule 27A). After this, a plot-wise *khasara* is prepared (Form 11) for each village by the assistant records officer. At this point, if the dispute has not been resolved, the plot is noted as disputed in form 9 under rule 29 (1).

farmers migration to nearby cities in search of better incomes. In the Gujarat resurvey, the time period for raising objections was increased to three months (Goswami, Jha & Lushington, 2021). Similar extension of timelines may be necessary to ensure that migrant members of households are not excluded.

The exercise of determining or identifying boundaries of plots or survey areas would include gathering information on the division of jointly-held vacant properties<sup>51</sup> and details of claimed and disputed shares in jointly-held plots.<sup>52</sup> The UP *abadi* regulations also provide for future divisions of plots post the issuance of property cards.<sup>53</sup> The process includes regular updating of records even after the completion of the scheme.<sup>54</sup> This is in line with the framework, which provides for regular updation of rural *abadi* records including property and map data<sup>55</sup> and data subsets including GIS<sup>56</sup> and digital data.<sup>57</sup> The regularity of such updating remains to be seen.

Finally, it must be noted that SVAMITVA is circumscribed within a system of presumptive titling which India follows at the moment, in which there is a presumption of ownership based on the registration of property documents. The registration of instruments such as sale deeds in a deed-based system, provides proof of transaction but is not legally considered a direct proof of ownership/title as it does not prove the legal right of parties to enter a transaction.<sup>58</sup> Land records in India draw from the colonial legacy of revenue administration to enable revenue and property taxation. Therefore, revenue codes of various states explicitly provide for the “presumption of correctness” of entries in the register and mutation with respect to ownership. However the Supreme Court has clarified that “an entry in revenue records does not confer title on a person whose name appears in the RoRs,” noting that revenue records have a “fiscal purpose” of payment of land revenue and no ownership can be conferred based on these records but decided by a competent civil court<sup>59</sup> (Goswami et al, 2017, p. 29). Therefore, while there is a presumption of ownership and the title conferred is incidental, it is not conclusive and could be challenged in court. However the Supreme Court has also held that registration of deeds is mandatory<sup>60</sup> for the transfer of rights, title or interest of immoveable properties.<sup>61</sup>

Conclusive titling would require all records of property to “mirror” field realities (thus requiring textual and spatial records) updated in a timely manner; a “true depiction of ownership status” without the need to refer to past records; “to draw a legal curtain over past transactions or rights”

<sup>51</sup> Rule 16 (1) (I)

<sup>52</sup> Rule 20 (4) recorded in Survey Form No-6(2)

<sup>53</sup> Rule 24 (C) provides for the unique *Abadi* code in case of future division of plots

<sup>54</sup> See Rule 37

<sup>55</sup> 12, 12.1, 12.2 and 12.3, see page 50

<sup>56</sup> 9.2.ii and iii (See Page 42).

<sup>57</sup> 10.2.iii, (See Page 45).

<sup>58</sup> A title-based system on the contrary where title to the property is registered (not the mere transaction) provides conclusive proof of ownership (Goswami et al., 2017b, 29–33).

<sup>59</sup> Suraj Bhan vs. Financial Commissioner and Ors., 2007 (6) SCC 186.

<sup>60</sup> Presumptive titles to property are recorded through land registration in urban India through the Stamps and Registration Departments and in rural India on land records maintained by Revenue Departments. In urban areas, registration involves taking on record documents such as sale deeds, gift deeds or other transfer documents after putting them up on public notice, without verifying the authenticity of such transactions in terms of the rights of parties to enter into such transactions. These records primarily establish fiscal responsibility for collection of land revenue or property tax (Bal 2017; Goswami, Jha, and Lushington, 2021). Revenue departments that deal with rural land, carry out a process of mutation following registration, which is meant to verify the authenticity of transactions. As a quasi-judicial process, mutation verifies ownership and the right of the seller to sell the property concerned. However, this verification by itself does not provide conclusive title. In some states mutation requires a field visit by the revenue officer or a public meeting to verify that the new owner has taken possession, especially when foul play is suspected. However, as mutations are time consuming and suffer from backlogs and corruption due to human intervention, some states have been pursuing auto-mutation of records which takes away this process of verification. For instance, Andhra Pradesh introduced auto-mutation in 2020. See: <https://www.newindianexpress.com/states/andhra-pradesh/2020/feb/12/auto-mutation-of-land-records-in-all-of-andhra-pradesh-2102366.html>, consulted on 10<sup>th</sup> August 2021.

<sup>61</sup> Suraj Lamp and Industries v. State of Haryana, (2012) 1 SCC 656.



and the provision of an indemnity as a “guarantee to the correctness of the title.”<sup>62</sup> Thus, the current deed-based registration would need to be replaced by a title-based system in which title of a property would be registered instead of the current system where deeds are registered (Goswami, Jha, & Lushington 2021, p. 29–30).<sup>63</sup>

#### 4. Property Cards

Property cards issued under the SVAMITVA<sup>64</sup> as a “legal document of property ownership” (Government of India, 2020b, p. 18) provide a presumptive title after verifying ownership based on existing records and as a single document integrates spatial and textual documents that were until now held by different departments (Mishra & Suhag, 2017). In a press release, the government noted that each state has a different name for property cards—title deed in Haryana, Rural Property Ownership Records (RPOR) in Karnataka, Adhikar Abhilekh in Madhya Pradesh, Sanad in Maharashtra, Svamitva Abhilekh in Uttarakhand, and Gharauni in Uttar Pradesh.<sup>65</sup> Property cards are not new, and have been issued earlier in a few states before the introduction of SVAMITVA. Karnataka introduced property cards for urban properties in 2009, which seems to have formed the basis for a similar program in rural India (Manasi & Smitha, 2018). The Maharashtra drone survey of *abadi* areas (known as *Gaothan*) incorporating both spatial and non-spatial records, which inspired the Ministry of Panchayati Raj (MoPR) to introduce SVAMITVA at the national level,<sup>66</sup> also distributed property cards (Yadav, Jha & Moun, 2020).

The report of the Maharashtra survey mentions the issuance of property cards by the settlement commissioner and the director of land records of the revenue department. It distinguishes between the *sanad* and the record of rights, which in the case of residential property is issued in the form of a property card.<sup>67</sup> The equation of the property card to the record of rights is also specified in the SVAMITVA framework.<sup>68</sup> The question remains as to which authority would be responsible in the various states for issuance and updation of property cards. As SVAMITVA is being implemented by the MoPR to enable Panchayats to raise taxes, it could be safely assumed that the Panchayat should

<sup>62</sup> Some states and the central government have displayed the intent to introduce conclusive titling. Rajasthan passed the Rajasthan Urban Land (Certification of Titles) Act, 2016 (RULCTA), section 21 of which authorises an IAS officer to adjudicate on titles and issue a provisional certificate of title for two years during which if there is no counter claim, a permanent title may be issued under section 25 (5). However, section 30 provides for the cancellation of the permanent title if “it has been issued under mistake and contains a declaration that is materially wrong”. Retrieved from <http://www.bareactslive.com/Raj/rj1011.htm#25>. The Maharashtra state cabinet approved the Maharashtra Land Titling Bill in 2019 which lapsed the same year on dissolution of assembly. NITI Aayog drafted the Model Act and Rules on Conclusive Titling based on the Maharashtra bill in 2020 (Nambiar, 2020). Retrieved from [https://prsindia.org/files/bills\\_acts/bills\\_parliament/Report-of-the-Committee-to-Draft-Model-Act-Rules-and-Regulation-on-Conclusive-Land-Titling.pdf](https://prsindia.org/files/bills_acts/bills_parliament/Report-of-the-Committee-to-Draft-Model-Act-Rules-and-Regulation-on-Conclusive-Land-Titling.pdf).

<sup>63</sup> There are debates on whether conclusive titling is feasible in the Indian context (Zasloff, 2011). It must be remembered that conclusive titling which is restricted to a recognition of ownership rights would exclude all other forms of rights (collective, customary, etc.) especially those that are informally recognized, unless these rights are provided legal recognition (Goswami et al., 2017b). In the case of these informally recognized rights such as rights of slum dwellers to inhabit land occupied for a certain period of time, experts suggest that rather than formalising titles and providing them ownership, the poor would better retain their homes if legal recognition is provided to their tenure (Payne, 1996; Payne, 2001). While this paper does not go deeper into these debates on formal/informal and presumptive/conclusive titles, the issue of equitable access to land and property remains central to the evaluation of SVAMITVA.

<sup>64</sup> Framework for Implementation of SVAMITVA Scheme, 3.2.2.vii, p. 9

<sup>65</sup> Press Information Bureau, Delhi. (2020, October 9). Retrieved from <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1663022>.

<sup>66</sup> This was noted by the Joint Secretary, Ministry of Panchayati Raj in a podcast on SVAMITVA by the Property Rights Research Consortium (Nagar, 2021).

<sup>67</sup> The *Sanad* contains details such as “the name of owner, village, tehsil, city survey number, scaled map showing dimensions and area of property, adjacent survey numbers/numbers/roads/landmarks etc” and is a “one-time static document” provided once the survey is completed. The RoR records right and liabilities. In the city survey which was used to survey *abadi* areas in villages, the RoR is prepared in the form of a property card. The property card “can be updated multiple times” and is thus not a static document.

<sup>68</sup> 7.1 of the Framework, sl no. 7.4 in the table of activities, at page 31.



be charged with the maintenance and updation of records. However, the UP *abadi* regulations provide for computerization (rule 35), issuance (rule 36) and updation (rule 37) of the “*Gharauni*” —the property card, in Uttar Pradesh, by the revenue department. It relies on existing land records machinery and authorities<sup>69</sup> under the revenue code instead of adding a separate authority.<sup>70</sup> In Haryana, the Panchayat is responsible for maintaining *abadi* documents. It is not clear if the Panchayats have the necessary infrastructure and ability to maintain and update property cards and RoRs (Property Rights Research Consortium, 2020). While RoR’s derive their legitimacy from the state land revenue codes with revenue departments maintaining these records, it is uncertain whether *abadi* records will continue to come under the ambit of revenue departments (as in UP) or under panchayats (as in Haryana). In case of panchayats maintaining and updating records, it is not clear how power and responsibilities would be shared between panchayats and the revenue department which traditionally controls RoRs.<sup>71</sup>

The Regulations provide for regular updating of records even after the survey and issuance of *gharauni*, in Uttar Pradesh—just as records of rights are updated on change in ownership.<sup>72</sup> The property card is therefore not immune from judicial challenge in a court of law as the titles are presumptive and court decisions can also result in updating the *gharauni*. Each plot is assigned a unique code to be issued with respect to each property similar to the unique identification number issued for Aadhaar cards.<sup>73</sup> With the Aadhaar used as proof of identity during the registration of properties is currently optional (Press Trust of India, 2019), it is quite possible that these two identification numbers (and two cards) could be linked in the future.<sup>74</sup> It is not certain if the introduction of property identification numbers and property cards through regulations issued by revenue authorities would pass judicial scrutiny. It is thus advisable to carry out such amendments to revenue laws to introduce the property card and property identification numbers which has not yet been carried out in Uttar Pradesh.

<sup>69</sup> For instance, the Record Officer under the Regulations is defined as the Collector of the District and the Assistant Records Officer is defined as the Sub Divisional Officer of the concerned Tehsil, as provided under Section 44 of the UP Revenue Code, 2006. The Revenue Inspector, Naib Tehsildar and Tehsildar are as provided for in Section 4 (17) of the Code.

<sup>70</sup> According to rule 9 and rule 11 (1) & (2), the assistant records officer (or records officer) is responsible for constituting the survey teams and supervise the revenue inspector who is responsible for the survey and record operation of the *abadi*/village *abadi* (Rule 12) area using modern technology; and finally both the survey team and the revenue inspector are supervised by the *naib tehsildar/tehsildar* (Rule 13).

<sup>71</sup> Another question here is whether the process of mutation which is carried out for agricultural land would be carried out for *abadi* properties as well, given that they too are recorded in the RoR.

<sup>72</sup> Chapter 3: Preparation of Records, Regulation 18 – Numbering of Plots, 18 (1) provides for numbering & 18 (2) provides for future division of the plot. [http://bor.up.nic.in/pdf/Aabadi\\_Survey\\_Rules\\_Eng.pdf](http://bor.up.nic.in/pdf/Aabadi_Survey_Rules_Eng.pdf) consulted on 14th March 2021

<sup>73</sup> Rule 24

<sup>74</sup> Since 2015 the Department of Land Resources (DLR) has been directing states to use Aadhaar as identity proof to register sale and lease deeds. In 2018 the Supreme Court constitution bench judgement allowed mandatory use of Aadhaar to identify recipients of welfare benefits provided by the state. This judgement was followed by the DLR issuing a guideline document to states recommending the integration of Aadhaar subject to the consent of property owners, on the grounds that it would check *benami* (a Hindi term denoting transactions that conceal the identity of transacting parties) or fraudulent land transactions and encourage Direct Benefit Transfers to welfare beneficiaries such as farmers for whom state welfare benefits are regularly provided. In 2019 the Union Government made it mandatory for farmers benefitting from income support under the PM Kisan Samman Nidhi scheme to link Aadhaar with their agricultural land records. In January 2021 the Union Minister for rural development approved the DILRMP’s proposal to integrate Aadhaar number with the Unique Land Parcel Identification Number (ULPIN) identifying land holdings which has been rolled out in Bihar, Goa, Gujarat, Haryana, Maharashtra, Odisha, Rajasthan, Sikkim and Tripura. This has been presented to the Ministry of Finance for approval after which it will be placed before the Union Cabinet (Gokhale 2021). Legal experts have criticized the broadening scope of the Aadhaar by linking it to other databases as contravening the right to privacy in the Indian Constitution. Ramanathan points out that one of the reasons for raising concerns about data security is the involvement of private actors. She refers to the dissenting judgement of Justice DY Chandrachud which observes that that neither the Central Government nor the Unique Identification Authority of India (UIDAI - responsible for the Aadhaar) “have the source code for the de-duplication technology which is at the heart of the programme. The source code belongs to a foreign corporation. UIDAI is merely a licensee..... The protection of data of 1.2 billion citizens is a question of national security and cannot be indemnified by a contract.” (Ramanathan, 2019)

Finally a grievance redressal system must be put in place to assist village residents in obtaining their property cards, ensuring it is updated in a timely manner and in enabling them to use it to access credit. As property cards are new and still to gain recognition as a legal document, there are reports that banks are refusing to accept it until they receive instructions from the Reserve Bank of India (RBI) (Goradia, 2020). Specific directions must therefore be issued to the RBI to instruct banks and financial institutions to accept the property card as a legal document of property ownership, so as to deliver on the promise of access to formal credit. Given that SVAMITVA is restrictive in its ambit to *abadi* areas, thus excluding several other forms of residence outside the *abadi* areas, the scheme thus creates two distinct groups—property card holders and those without property cards. The legal recognition of the property card may unintentionally erode the legitimacy of other legal documents of rural home ownership. Specific measures must therefore be taken to avoid this and affirm the validity of other legal documents of property ownership, in case they are not to be replaced by property cards.

## Conclusion

The SVAMITVA scheme as part of LRM efforts integrates spatial and textual records and clarifies boundaries through drone surveys for residential homeowners in *abadi* areas. While the framework for the scheme suggests amendments in land revenue laws which include detailed provisions on the survey, the variations in governance of *abadi* lands under Panchayat Raj laws, would require amendments too. Grey areas in terms of the distribution of power and responsibilities between panchayats and revenue departments need to be addressed at the state level to ensure smoother linkages and therefore better functioning of these institutions. As the scheme envisages introducing property taxes for dwellings that were earlier not taxable, amendments to laws that exempt such dwellings from taxes must be carried out and provisions for taxing *abadi* properties must be included to ensure the scheme withstands legal scrutiny.

In limiting itself to *abadi* areas where it provides property cards to homeowners based on already existing records in RoRs or registers maintained by the gram panchayat, SVAMITVA is narrow in its focus, thus excluding residential properties outside *abadi* areas such as homestead properties. As the scheme also includes the mapping of public land, impoverished groups living on such land may risk losing their homes. The implementation of the scheme in mission mode, providing a short duration for objections, needs to be rethought so as to provide migrant workers adequate time to raise objections. The narrow focus of the scheme on ownership, a feature of all the LRM initiatives in India, excludes those with non-ownership rights such as rights of residence. This would exclude homestead properties and those with tenure security as well as women who own very little land and are vulnerable to expulsion from their marital homes. The scheme could have enabled the regularisation of non *abadi* housing as well as the joint ownership of women, recognising spouses of owners/co-owners as joint owners/co-owners by linking up with state revenue laws that provide for the regularisation of residence and women's joint ownership. The process of determining ownership and reconciliation can be highly politically charged given the pronounced caste hierarchies in Indian villages. It is crucial that community participation is mandated (in addition to the participation of panchayat members and revenue officials) to ensure transparency and protect more vulnerable caste and religious groups. While SVAMITVA purports to create property cards as documents of legal ownership recorded in RoRs with a UPIN, it needs to be introduced as a legal document through an amendment to the revenue code to provide it legitimacy and legal acceptance. Further the government has to ensure its financial validity and acceptance by the Reserve Bank of India, to ensure it delivers the promise of access to formal credit.

Finally, it is crucial to set in place mechanisms to evaluate the progress of SVAMITVA in terms of not just the number of households obtaining property cards, but also in terms of administrative compliance with the guidelines of the scheme. As Wahi (2019) notes, land laws have suffered from “administrative non-compliance with the rule of law due to both unwillingness and incapacity.” She uses the example of land acquisition laws to detail how 95% of disputes before the Supreme Court were occasioned by administrative non-compliance with laws and rules while 34% were caused by irregularities in completing procedures for acquisition, half of which were due to “administrative unwillingness to comply with law.” This bureaucratic aspect of the scheme is perhaps the most important and would need evaluation once evidence on its implementation is available.

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