

Agrarian Reforms *vis-à-vis* Constitutionalism in India: A Comparative Analysis with Indonesia

Varun Chhachhar ^a  , Aprila Niravita ^b , Karishma Verma ^a ,
Swikar Sankrit ^c 

^a Faculty of Law, University of Lucknow, Lucknow, Uttar Pradesh, India

^b Faculty of Law, Universitas Negeri Semarang, Indonesia

^c Dr. Shankar Dayal Sharma Institute of Democracy, University of Lucknow,
Lucknow, Uttar Pradesh, India

✉ Corresponding email: chhachhar_varun@lkouniv.ac.in

Abstract

This paper presents a comparative study on agrarian reforms in India and Indonesia, focusing on their constitutional foundations, legislative mechanisms, and judicial approaches. Agrarian reform has been central to the socio-economic transformation in both countries, where land ownership and rural livelihoods remain deeply significant. The main problem addressed is how these democracies have constitutionally managed land redistribution while balancing property rights and social justice. The study applies a doctrinal and comparative legal method, examining key constitutional provisions, legislative instruments, and judicial decisions. In India, reforms were initiated post-independence through the abolition of the zamindari system, later reinforced by constitutional amendments and the Ninth Schedule, evolving into broader property rights

under Article 300A. Indonesia, by contrast, anchors its land reform agenda in the Basic Agrarian Law of 1960, which derives legitimacy from the 1945 Constitution and the state ideology of *Pancasila*, promoting social justice and state control over land. Findings suggest that India relies more on judicial interpretation to legitimize reform within its constitutional structure, while Indonesia adopts executive-led reforms grounded in centralized legal authority. The paper concludes that despite different institutional approaches, both nations illustrate how constitutional frameworks can be adapted to facilitate distributive justice through agrarian reform.

KEYWORDS *Land Reform, Constitutionalism, Judicial Review, Equality, Socio-Economic Rights*

Introduction

Agrarian reforms have historically served as a foundational tool for achieving social and economic justice in post-colonial societies, particularly those burdened with inequitable landholding patterns inherited from colonial or feudal systems. In nations like India and Indonesia, where agrarian economies sustained the livelihoods of the majority, land reform became not just an economic imperative but also a constitutional and moral one. The effort to redistribute land was rooted in the desire to dismantle centuries-old hierarchies and promote inclusive development. However, the processes of agrarian reform in these countries also highlighted a deeper constitutional dilemma, balancing the sanctity of property rights with the broader goals of social equity and distributive justice.

Both India and Indonesia embarked on ambitious land reform programs in the aftermath of their respective independence movements. These efforts were not uniform in their design or outcomes, but they shared a common reliance on constitutional mechanisms to legitimize state intervention in land relations. In India, the abolition of the zamindari system¹ and subsequent land

¹ The abolition of the *zamindari* system in India is primarily executed through state-specific legislation rather than the constitutional mandate. However, the Indian Constitution provided enabling provisions for such reforms. Articles 31A and 31B, introduced and modified through constitutional amendments, granted immunity to land reform laws—such as those abolishing zamindari—from judicial review on the grounds of violating the right to property. These provisions were instrumental in allowing state legislatures to enact a series of Zamindari Abolition Acts post-independence, aimed at dismantling feudal land tenure systems and redistributing land to actual tillers.

ceiling legislations² were enabled through constitutional amendments and legislative ingenuity, such as the insertion of laws into the Ninth Schedule to shield them from judicial review. The transformation of the right to property—from a fundamental right to a mere constitutional right under Article 300A³ illustrates the Indian state's evolving position on land ownership and social justice. By contrast, Indonesia anchored its agrarian vision in the 1960 Basic Agrarian Law (*Undang-Undang Pokok Agraria*), which was framed within the ideological and constitutional fabric of the 1945 Constitution and the state philosophy of Pancasila. This law enshrined the principle of the social function of land, emphasizing the role of the state in regulating land use for the public good.⁴

Scholarly literature in both Indian and Indonesian contexts has addressed agrarian reform, though often in isolation rather than comparatively. Raj Krishna's early analysis traces the evolution of the land ceiling debate in India, highlighting both the policy aspirations of the Congress Party and the political consensus across ideologies in favor of redistribution to address structural rural inequality.⁵ W.C. Neale's study of land reform in Uttar Pradesh further illustrates that legal reforms, such as zamindari abolition and consolidation of holdings, had mixed outcomes, often failing to benefit the landless.⁶ More recently, Kalim Siddiqui has argued that India's neoliberal economic trajectory

² By 1961–62, ceiling legislations had been enacted across all Indian states, becoming one of the most debated aspects of land reform. These laws aimed to impose an upper limit on land ownership to enable redistribution among the landless. However, the ceiling limits varied significantly between states, ranging from 20 to 125 acres depending on factors such as crop type—distinguishing between food and cash crops—and local agronomic conditions. The unit of application also differed: in states like Andhra Pradesh, Assam, Bihar, Punjab, Haryana, Uttar Pradesh, West Bengal, Madhya Pradesh, and Maharashtra, the ceiling was applied on a per landholder basis, whereas in other states, it was determined based on the size of the family holding the land.

³ Article 300A was introduced by the 44th Amendment of the Constitution in 1978. It states: “No person shall be deprived of his property save by authority of law.” This amendment abolished the Fundamental Right to Property under Article 31 and made it a Constitutional Right under Article 300A.

⁴ Daniel Fitzpatrick, “Disputes and Pluralism in Modern Indonesian Land Law,” *Yale Journal of International Law* 22, no. 1 (1997): 172–212. See also Nadya Ivi Oktaviani, “Who Owns What? Legal Analysis of Unit Ownership in Solo Urbana Residence under Indonesian Land Law,” *Indonesian Journal of Agrarian Law* 2, no. 2 (2025): 77–88. <https://doi.org/10.15294/jal.v2i2.31116>

⁵ Raj Krishna, “Agrarian Reform in India: The Debate on Ceilings,” *Economic Development and Cultural Change* 7, no. 3 (1) (1959): 302, <https://doi.org/10.1086/449804>.

⁶ W.C. Neale, “Land Reform in Uttar Pradesh, India,” *A.I. D. Spring Review of Land Reform* 1, no. 2 (1970): 1–64.

has exacerbated agrarian crises, with land reform no longer featuring as a serious redistributive policy agenda.⁷ Maitreesh Ghatak and Sanchari Roy's empirical review further problematizes the efficacy of land reform, showing that while tenancy reforms had varied outcomes, ceiling laws often negatively impacted productivity without significantly altering land ownership patterns.⁸ In Indonesia, Daniel Fitzpatrick's work reveals how the Basic Agrarian Law of 1960—despite its intention to unify land law under a socially grounded framework—ultimately led to legal pluralism and uncertainty, especially in rural and *adat* regions.⁹

The constitutional tension surrounding agrarian reform in both contexts lies in reconciling two competing imperatives: the protection of individual property rights and the state's duty to promote equitable distribution of resources. In India, this tension found expression in a rich jurisprudential history, with landmark decisions like *Kesavananda Bharati v. State of Kerala* shaping the contours of constitutional interpretation.¹⁰ The doctrine of the basic structure¹¹, evolved through judicial reasoning, became a crucial framework through which the Indian judiciary examined the limits of state power, even in the realm of socio-economic reform. Conversely, Indonesia's constitutional framework, though more executive-centric, has increasingly seen judicial engagement through the Constitutional Court (*Mahkamah Konstitusi*), particularly in cases involving customary land rights and indigenous communities.¹²

Despite these insights, few studies have systematically examined how constitutional frameworks mediate agrarian reform across India and Indonesia. This paper aims to fill that gap by analyzing the legislative mechanisms, judicial interpretations, and constitutional philosophies that underpin land reform in

⁷ Kalim Siddiqui, "Agrarian Crisis and Transformation in India," *Journal of Economics and Political Economy* 2, no. 1 (2015): 3–22.

⁸ Maitreesh Ghatak and Sanchari Roy, "Land Reform and Agricultural Productivity in India: A Review of the Evidence," *Oxford Review of Economic Policy* 23, no. 2 (2007): 251–269, <https://www.jstor.org/stable/23606615>.

⁹ Fitzpatrick, "Disputes and Pluralism," 174.

¹⁰ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

¹¹ The doctrine of basic structure is a judicial principle developed by the Supreme Court of India in *Kesavananda Bharati v. State of Kerala* (1973), wherein the Court held that while Parliament possesses wide powers to amend the Constitution under Article 368, it cannot alter or destroy its "basic structure." This doctrine does not explicitly appear in the Constitution but was evolved to preserve the foundational features (basic features) of the Constitution. It serves as a safeguard against arbitrary constitutional amendments that threaten democratic governance and constitutional identity.

¹² Fitzpatrick, "Disputes and Pluralism," 203.

these two democracies. In India, the abolition of the zamindari system and subsequent land ceiling laws were constitutionally fortified through the Ninth Schedule and judicial precedents, particularly post-Kesavananda Bharati *v.* State of Kerala, where the basic structure doctrine delineated the boundaries of state intervention. Indonesia, on the other hand, located its agrarian agenda within the Basic Agrarian Law of 1960, rooted in the 1945 Constitution and Pancasila ideology, which collectively underscore the social function of land.

The urgency of this research lies in its relevance to ongoing global discourses on land, identity, and constitutionalism. As land continues to be a source of economic livelihood, social identity, and political power in the Global South, understanding the constitutional dimensions of land reform offers insights into how democracies mediate conflicts over resources. Furthermore, this study is significant for highlighting the institutional choices between judicial scrutiny and executive authority, and how these choices shape the legitimacy and outcomes of redistributive policies.

Methodologically, this study employs a doctrinal approach, analyzing constitutional texts, legislative enactments, and judicial decisions from India and Indonesia. Through comparative legal analysis, it examines the extent to which constitutional design, judicial philosophy, and legal culture influence the success and limitations of agrarian reform. This method allows for an in-depth understanding of how formal legal structures interact with political economy and social movements in shaping agrarian justice.

By situating agrarian reform within broader constitutional and developmental debates, the paper contributes to scholarship on socio-economic rights, legal pluralism, and democratic governance in post-colonial settings.

Constitutional and Historical Context in Agrarian Reform

A. Agrarian Legacy & Constitutional Beginnings in India

India's tryst with agrarian reform is deeply rooted in its colonial history and the socio-political compulsions of post-independence nation-building. Under British rule, various exploitative land tenure systems—most notably the zamindari system in northern India and the ryotwari and mahalwari systems elsewhere—created a class of intermediary landlords who extracted rent from tillers without investing in agricultural improvement. This led to widespread landlessness, poverty, and agrarian distress. At the dawn of independence in

1947, nearly 70% of India's population depended on agriculture, and yet most cultivators had little or no ownership rights over the land they tilled.¹³

The political leadership of newly independent India identified land reform as essential to achieving economic equity, dismantling feudal structures, and asserting state sovereignty over land distribution. The Indian Constitution, adopted in 1950, provided a progressive framework that was receptive to such reforms. While the right to property was initially included as a fundamental right under Articles 19(1)(f) and 31, the Directive Principles of State Policy, particularly Article 39(b) and (c) explicitly urged the state to ensure that "the ownership and control of the material resources of the community are so distributed as best to subserve the common good" and that "the operation of the economic system does not result in the concentration of wealth and means of production."¹⁴

To realize these aims, the Indian government introduced a series of land reform laws aimed at the abolition of intermediaries (e.g., zamindars), imposition of land ceilings, tenancy regulation, and redistribution of surplus land. However, early attempts were frequently challenged in courts on the grounds that they violated the right to property. In response, Parliament enacted the First Amendment to the Constitution in 1951, inserting Articles 31A and 31B and creating the Ninth Schedule to immunize agrarian reform laws from judicial review.¹⁵

Despite these measures, constitutional friction persisted. Landmark cases such as *Shankari Prasad v. Union of India* (1951)¹⁶, *Sajjan Singh v. State of Rajasthan* (1965)¹⁷, and *Golak Nath v. State of Punjab* (1967)¹⁸ tested the limits of Parliament's power to amend the Constitution, particularly with respect to fundamental rights. This culminated in the seminal judgment in *Kesavananda Bharati v. State of Kerala* (1973), where the Supreme Court ruled that while Parliament could amend any part of the Constitution, it could not alter its "basic structure," thus introducing a powerful judicial doctrine that would influence the course of socio-economic reform, including land laws.¹⁹

¹³ B.H. Baden-Powell, *The Land Systems of British India, Vol. I* (Clarendon Press, 1892), 145–152.

¹⁴ Constitution of India, 1950, Article 39(b) and (c).

¹⁵ Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* (Oxford University Press, 2012), 78–85.

¹⁶ *Shankari Prasad v. Union of India*, 1951 AIR 458.

¹⁷ *Sajjan Singh v. State of Rajasthan*, 1965 AIR 845.

¹⁸ *Golak Nath v. State of Punjab*, 1967 AIR 1643.

¹⁹ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

Ultimately, the right to property was downgraded from a fundamental right to a constitutional right through the 44th Amendment in 1978, which inserted Article 300A in Part XII of the Constitution.²⁰ This marked a turning point, signaling the state's prioritization of distributive justice over absolute property rights, while still retaining procedural safeguards.

India's agrarian legacy is rooted in deep colonial inequalities, marked by exploitative systems like zamindari and persistent rural poverty. At independence, addressing these land-based injustices became central to nation-building. The Constitution reflected this urgency through Directive Principles aimed at equitable resource distribution and social justice. Early land reform laws targeted abolition of intermediaries and redistribution of land, but faced judicial hurdles under the fundamental right to property²¹ (Article 31). This led to key constitutional amendments and the insertion of the Ninth Schedule to protect agrarian reforms from judicial review.²² Thus, India's constitutional beginnings laid a transformative yet contested foundation for agrarian justice.

B. Indonesia's Constitutional and Agrarian Transformation

Indonesia, too, inherited an agrarian structure shaped by colonial control and exploitation. Under Dutch colonial rule, large tracts of land were appropriated for plantation agriculture, while indigenous land tenure systems were either suppressed or marginalized. Following independence in 1945, agrarian reform emerged as a cornerstone of national development, particularly under the leadership of President Sukarno, who saw land redistribution as vital to achieving social justice and national unity.²³

²⁰ The Constitution (Forty-Fourth Amendment) Act, 1978 (Bill No. 88 of 1978), Section 2, 5, 6 and 34. <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-forty-fourth-amendment-act-1978>.

²¹ Article 31 of the Indian Constitution is omitted by The Constitution (Forty-Fourth Amendment) Act, 1978.

²² The Constitution (First Amendment) Act, 1951. The Ninth Schedule was introduced by the First Amendment in 1951 to protect land reform and other socio-economic legislation from being invalidated by courts for violating fundamental rights. It was intended to facilitate post-independence reforms, especially agrarian measures, by insulating specific laws from judicial review and ensuring continuity in the state's redistributive efforts.

²³ Triana Rejekiingsih, Chatarina Muryani, and Diana Lukitasari, "Study of the History and Dynamics of the Agrarian Policy in Transforming the Indonesia's Agrarian Reform," *Yustisia Jurnal Hukum* 8, no. 2 (2019): 315; Suhadi Suhadi, and Aprilia Niravita. "Urban Agrarian Reform Opportunities and Challenges for Land Rights Among Low Income Communities." *Legality: Jurnal Ilmiah Hukum* 32, no. 2 (2024): 1-26.

Indonesia's 1945 Constitution (UUD 1945) provided the ideological and legal foundation for agrarian reform. Article 33(3) of the Constitution explicitly states that "the earth and water and the natural riches contained therein are controlled by the state and shall be used for the greatest benefit of the people."²⁴ This provision, grounded in the philosophy of Pancasila, emphasizes the collective ownership of land and natural resources and the state's duty to manage them equitably.

Building on this foundation, Indonesia enacted the Basic Agrarian Law (*Undang-Undang Pokok Agraria* or UUPA) in 1960, which was a landmark statute aimed at unifying and democratizing land ownership. The UUPA abolished colonial dualism in land law by declaring that all land rights are subject to the national agrarian system and introduced new categories of land rights that reflected customary (*adat*) values and state regulation.²⁵ The law sought to cap landholdings, provide land to the landless, and recognize communal land rights. However, the implementation of the UUPA faced several constraints. The political turbulence of the 1960s, the anti-communist purge of 1965–66, and the subsequent rise of the New Order regime under Suharto significantly altered Indonesia's political economy. Under Suharto, the state emphasized economic growth, foreign investment, and centralized control, often at the expense of land redistribution and rural equity. Agrarian reform was deprioritized, and land acquisition for state or corporate purposes increased, frequently overriding community land rights.²⁶

Despite constitutional guarantees, Indonesia's agrarian reform thus became heavily influenced by authoritarian centralism. Customary land rights, particularly those of indigenous groups, were often subordinated to national development goals. It was only after the fall of Suharto in 1998 and the advent of democratic reform (*Reformasi*) that a more pluralistic and participatory approach began to re-emerge. The Constitutional Court (*Mahkamah Konstitusi*), established in 2003, has since played an increasingly assertive role in upholding customary land rights and ensuring constitutional checks on state power.²⁷

²⁴ Constitution of the Republic of Indonesia, 1945, Article 33(3).

²⁵ Act No. of 1960 Re Basic Provisions Concerning the Fundamentals of Agrarian Affairs (Basic Agrarian Law – UUPA), General Elucidation (A), <https://zerosugar.wordpress.com/wp-content/uploads/2014/08/law-no-5-of-1960-on-basic-agrarian-principles-etlj.pdf>.

²⁶ Rejekiingsih, Muryani, and Lukitasari, "Study of the History and Dynamics of the Agrarian Policy," pp. 316-318.

²⁷ Rejekiingsih, Muryani, and Lukitasari, pp. 322-323.

Indonesia's agrarian transformation is anchored in the 1945 Constitution and the Basic Agrarian Law of 1960, which aimed to replace colonial land systems with a unified national framework rooted in social justice and state control. Guided by the Pancasila ideology, the state assumed dominant authority over land to promote equitable access and national development. However, during the New Order regime, this control often led to centralized, top-down land allocation favoring corporate interests. Post-Reformasi constitutional reforms brought increased judicial oversight, recognition of customary land rights (*hak ulayat*), and a gradual move toward participatory governance. This evolving framework reflects Indonesia's ongoing effort to balance developmental goals with constitutional guarantees of justice, equity, and sustainability.²⁸

C. Diverging Constitutional Cultures and Agrarian Goals: A Comparative Note

While both India and Indonesia sought to transform their agrarian structures through legal and constitutional mechanisms, their trajectories diverged in several ways due to differences in political structures, legal cultures, and institutional configurations. India's parliamentary democracy facilitated a more pluralistic legal evolution, where judicial review became a cornerstone of constitutional governance. The Indian judiciary frequently acted as a counterbalance to majoritarian legislative impulses, thereby shaping the discourse on property rights and agrarian justice through constitutional interpretation.

In contrast, Indonesia's experience with guided democracy and later authoritarianism limited the role of judicial oversight during key phases of agrarian reform. Although the UUPA reflected progressive ideals, its application was often mediated through executive decrees and bureaucratic instruments rather than through legislative or judicial deliberation. Only in the post-Reformasi era has Indonesia begun to witness the emergence of an independent constitutional judiciary willing to challenge state action in favor of community and customary rights.

Furthermore, while both countries embedded the goals of land reform within their constitutional orders, their interpretations of ownership and public interest have differed. India's evolution from absolute property rights to a more balanced regime under Article 300A shows a conscious move toward

²⁸ Jeff Neilson, "Agrarian transformations and land reform in Indonesia," in *Land Development in Indonesia: Searching for the People's Sovereignty*, ed. John F. McCarthy and Kathryn Robinson (Cambridge University Press, 2017), 245-264.

distributive justice, even as it preserved the legal right to compensation and due process. Indonesia, on the other hand, conceptualizes land as being under state custodianship, with ownership rights being conditional upon their social function, as per Article 6 of the UUPA.²⁹

The constitutional and historical backdrops of agrarian reform in India and Indonesia reveal two distinct yet overlapping narratives. In India, constitutional amendments, judicial innovations, and legislative actions coalesced to support the dismantling of feudal land relations while accommodating the imperatives of constitutionalism. In Indonesia, constitutional mandates and ideological principles laid the groundwork for reform, but the centralization of power under successive regimes often diluted these goals. Nevertheless, both countries demonstrate that constitutionalism can serve both as an enabler and a constraint for socio-economic transformation, depending on how state institutions interpret and implement reform mandates.

India and Indonesia, while sharing post-colonial commitments to agrarian reform, diverge in their constitutional cultures and approaches to land governance. India's constitutional culture emphasizes judicial accountability, fundamental rights, and democratic contestation. Its agrarian goals have evolved through legal reforms, constitutional amendments, and active judicial balancing of property rights and social justice.

In contrast, Indonesia's constitutional culture is marked by strong executive authority and ideological unity under Pancasila. Agrarian goals are pursued through centralized state control, with land seen as a national asset for collective welfare. While post-Reformasi reforms have opened space for judicial oversight and customary rights, executive dominance remains influential.³⁰

These divergences reflect differing models: India's rights-based, pluralistic constitutionalism versus Indonesia's state-centric, ideological framework—each shaping distinct pathways toward agrarian justice.

Legislative and Policy Framework

The legislative and policy frameworks underpinning agrarian reform are crucial indicators of a state's commitment to redistributive justice and constitutional promises. While both India and Indonesia sought to address structural agrarian inequality through legal mechanisms, their approaches

²⁹ Act No. of 1960 Re Basic Provisions Concerning the Fundamentals of Agrarian Affairs (Basic Agrarian Law – UUPA), Article 1, 2, and 6.

³⁰ Rejekiingsih, Muryani, and Lukitasari, "Study of the History and Dynamics of the Agrarian Policy," pp. 318-321.

diverged due to differences in constitutional interpretation, administrative capacity, and political economies. This chapter provides a comparative analysis of the legislative strategies and policy instruments adopted by both nations to realize the goals of agrarian reform.

A. Layered Legislative Initiatives and Fragmented Implementation in India

India's legislative journey in agrarian reform can be broadly classified into four categories: abolition of intermediaries, tenancy reform, imposition of land ceilings, and land consolidation and redistribution. While these reforms emerged in the immediate post-independence decades, they evolved within the constraints of a federal system where land is a subject under the State List.³¹ Consequently, individual states enacted their own laws, resulting in significant regional variations in implementation and outcomes.

The first and most urgent legislative measure undertaken was the abolition of the zamindari system and similar intermediaries who collected rent from cultivators without engaging in agricultural production. Laws such as the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, and similar enactments in Bihar, Madhya Pradesh, and West Bengal aimed to transfer ownership from landlords to actual tillers. These reforms affected around 20 million cultivators and brought nearly 40% of India's cultivated land under direct state control.³² However, the efficacy of these laws was tempered by compensation provisions and litigation. Many landlords exploited legal loopholes, and in the absence of robust land records, numerous tenants were denied ownership. The abolition of intermediaries succeeded more in symbolic terms than in achieving comprehensive rural transformation.

Tenancy reform legislation had three objectives: (i) to regulate rent, (ii) to provide security of tenure, and (iii) to confer ownership rights to tenants. For example, the Bombay Tenancy and Agricultural Lands Act, 1948, and the West Bengal Bargadars Act, 1950, sought to protect sharecroppers from arbitrary eviction and provide them legal recognition. Yet, the success of tenancy reforms varied across states. In West Bengal, Operation Barga (1978), although a later initiative, became a benchmark for participatory land reform and was relatively successful in formalizing sharecropping relationships. In contrast, in states like

³¹ Constitution Of India, 1950, Seventh Schedule, List-II, Entry – 18.

³² Anuja Saklani, "Abolition of the Zamindari System in India: A Legal Interpretation," *International Journal of Advanced Legal Research* 5, no. 4 (2023), <https://ijalr.in/volume-3-issue-4/abolition-of-the-zamindari-system-in-india-a-legal-interpretation-anuja-saklani/>.

Bihar and Uttar Pradesh, absentee landlordism and informal tenancy arrangements persisted, undermining reform objectives.³³

The third major phase of land reform legislation involved the imposition of ceilings on land holdings and the redistribution of surplus land to landless peasants. Starting with the 1955 Policy Resolution on Land Reforms, followed by revised guidelines in 1972, various states enacted ceiling laws. These aimed to cap land ownership at varying thresholds based on land type and irrigability. For instance, the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, and Tamil Nadu's Land Reforms Act, 1961, set such limits and provided mechanisms for surplus land distribution. However, widespread evasion through benami transactions, land fragmentation, and family partitioning hindered effective implementation. By 2013, less than 20% of the declared surplus land had been successfully redistributed. Moreover, lack of political will, resistance from landed elites, and poor bureaucratic infrastructure further eroded the potential of ceiling laws.³⁴

The effectiveness of land reform policies is also contingent upon transparent and accurate land records. The government initiated various schemes like the National Land Records Modernization Programme (NLRMP) in 2008, later subsumed under the Digital India Land Records Modernization Programme (DILRMP).³⁵ These initiatives aimed to digitize land records, integrate registration and revenue departments, and issue conclusive land titles. However, progress has been slow, and uneven implementation across states continues to affect land tenure security and reform efficiency.

In the contemporary period, the focus of agrarian policy has shifted towards land acquisition for infrastructure and industrial projects. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, replaced the colonial Land Acquisition Act of 1894, attempting to make land transfers more equitable and participatory.³⁶ Yet, debates persist about balancing development with the rights of small farmers, tribal communities, and forest dwellers.

³³ D. Bandyopadhyay, "Land Reforms in India: An Analysis," *Economic and Political Weekly* 21, no. 25/26 (1986): A50–56, <http://www.jstor.org/stable/4375823>.

³⁴ P. S. Appu, "Tenancy Reform in India," *Economic and Political Weekly* 10, no. 33/35 (1975): 1339–75, <http://www.jstor.org/stable/4537334>.

³⁵ "DILRMP," Department of Land Resources, Ministry of Rural Development, accessed August 2, 2025, <https://dolr.gov.in/programmes-schemes/dilrmp-2/>.

³⁶ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 114, <https://www.indiacode.nic.in/bitstream/123456789/2121/1/A2013-30.pdf>.

B. Indonesian 1960 Basic Agrarian Law and Beyond

In Indonesia, the legislative framework for agrarian reform is anchored in the Basic Agrarian Law (BAL) of 1960, a transformative piece of legislation that sought to unify the dual system of land law inherited from the Dutch colonial period. The BAL was intended to be a framework law, supplemented by implementing regulations to guide land tenure, ownership, use, and distribution.

The BAL is grounded in Article 33(3) of the 1945 Constitution and promotes five central principles: national unity of agrarian law, the social function of property, equity in land distribution, recognition of customary land (*ulayat*) rights, and sustainable use of resources.³⁷ It emphasized that land has a “social function” and should not be hoarded or used in ways that are contrary to public welfare.³⁸ The law introduced various types of land rights, such as: *Hak Milik* (ownership rights)³⁹; *Hak Guna Usaha* (right to cultivate); *Hak Guna Bangunan* (right to build); and *Hak Pakai* (right of use).⁴⁰ It also recognized customary land rights, provided they did not conflict with national interests, but did not clarify the procedural mechanisms for recognition, creating ongoing ambiguity.

The political will that initially drove the BAL weakened significantly after the rise of Suharto’s New Order regime (1966–1998), which prioritized political stability and economic growth over social justice. Land reform stalled, and the state began aggressively acquiring land for large-scale agribusiness, mining, and infrastructure. Agrarian conflict intensified, with thousands of disputes recorded annually. The military-backed centralization of authority further marginalized indigenous and peasant voices. Moreover, land registration processes remained complex and costly. Although the National Land Agency (*Badan Pertanahan Negara* - BPN) was established to manage land administration, overlapping land claims, corruption, and bureaucratic opacity slowed reforms. Customary land continued to be viewed as “unoccupied” or “state land,” allowing for large-scale expropriation.⁴¹

³⁷ Fitzpatrick, “Disputes and Pluralism,” 172.

³⁸ Act No. of 1960 Re Basic Provisions Concerning the Fundamentals of Agrarian Affairs (Basic Agrarian Law – UUPA), Article 6.

³⁹ Fitzpatrick, “Disputes and Pluralism,” 183.

⁴⁰ Fitzpatrick, “Disputes and Pluralism,” 184.

⁴¹ Rejekiingsih, Muryani, and Lukitasari, “Study of the History and Dynamics of the Agrarian Policy,” 318.

Following Suharto's fall in 1998, Indonesia entered an era of democratization known as *Reformasi*. This period witnessed renewed attention to agrarian justice. Civil society movements, including the Consortium for Agrarian Reform (KPA)⁴², pushed for redistributive reforms and recognition of customary rights. Presidential Instruction No. 9 of 2000 was one of the first post-Suharto efforts to revitalize land reform, although its effects were limited by administrative inertia.

Under President Joko Widodo (Jokowi), land certification and tenure security became central policy goals. The Complete Systematic Land Registration (PTSL) program aimed to provide land certificates to millions of Indonesians, streamlining land ownership documentation and reducing legal uncertainty.⁴³ As of 2022, over 80 million parcels had been registered, reflecting a major administrative achievement. However, redistribution remained less robust. The agrarian reform component under Jokowi's "*Nawacita*" program sought to redistribute 9 million hectares of land, but actual implementation has been slow. Critics argue that the program tends to formalize existing inequalities rather than rectify them.

One of the most significant developments in the post-*Reformasi* period has been the Constitutional Court's decisions recognizing customary (*adat*) land rights. The AMAN (*Aliansi Masyarakat Adat Nusantara*) decision of 2012 ruled that customary forests are not part of state forests, a landmark shift in legal interpretation. This has opened the door for more secure land tenure for indigenous communities, although administrative follow-up remains limited.⁴⁴

⁴² Rejekiingsih, Muryani, and Lukitasari, "Study of the History and Dynamics of the Agrarian Policy," p. 319.

⁴³ See also Fida Nabilah Taufiq, Mohammad Hamidi Masykur, and Supriyadi Supriyadi. "Challenges Arising from Article 22 (2) of Ministerial Regulation ATR/BPN No. 6/2018 on Complete Systematic Land Registration (PTSL) Pertaining to Insufficient or Missing Evidence of Community Land Ownership." *Unnes Law Journal* 9, no. 2 (2023): 419-440; Muh Afif Mahfud, "Progressive Agrarian Law as a Concept to Attain Social Justice." *Pandecta Research Law Journal* 17, no. 1 (2022): 158-166.

⁴⁴ Rejekiingsih, Muryani, and Lukitasari, "Study of the History and Dynamics of the Agrarian Policy," p. 323. See also Artaji Artaji, et al. "Resolution of Agrarian Conflicts on Plantation Land through Restorative Justice in Indonesia." *Lex Scientia Law Review* 8, no. 1 (2024): 107-136; Vitri Dini Artistry, and Dewi Sulistianingsih. "Analysis of Grondkaart as Land Ownership Rights in the Perspective of Land Law in Indonesia." *Journal of Private and Commercial Law* 8, no. 1 (2024); Emelia Kontesa, and Zico Junius Fernando. "Reclaiming Our Roots: Agrarian Law's Battle Against Land Grabbing." *Lex Scientia Law Review* 8, no. 2 (2024); Nur Hidayani Alimuddin, et al. "Indonesia's Land Bank Authority: Aligning with Agrarian Law or Facilitating Land Grabbing?." *Journal of Law and Legal Reform* 5, no. 4 (2024).

Both India and Indonesia enacted ambitious land reform legislation driven by ideals of equity and constitutional justice. However, their experiences reveal common challenges: elite resistance, bureaucratic inertia, lack of political continuity, and weak land administration. In India, decentralization has allowed some states to innovate and succeed, while others have lagged. Indonesia's highly centralized governance during the New Order hindered the realization of BAL's radical promise, though recent decentralization and court interventions show renewed hope. Both nations are now at a crossroads facing pressure to modernize land systems through digitization and formal titling while simultaneously responding to social movements demanding redistributive justice. The tension between market-led land development and rights-based land distribution continues to define contemporary policy debates.

C. Legislative and Policy Frameworks of Agrarian Reform in India and Indonesia: A Comparative Note

The legislative and policy trajectories of agrarian reform in India and Indonesia reveal two distinct yet intersecting models of state intervention shaped by constitutional design, political economy, and administrative capacity. While both nations inherited deeply unequal agrarian structures and sought to institutionalize redistributive justice through law, the outcomes differed significantly due to variations in governance style, federalism, and ideological orientation.

India's approach to agrarian reform was incremental, layered, and deeply influenced by federalism. With land placed under the State List, each state enacted its own reform laws, resulting in wide regional disparities. Legislative innovations such as the abolition of intermediaries, tenancy reforms, land ceilings, and later digitization efforts were ambitious but unevenly implemented. The reforms achieved symbolic breakthroughs—most notably the formal end of zamindari—but their transformative potential was constrained by litigation, inadequate land records, elite resistance, and bureaucratic shortcomings. West Bengal's Operation Barga stands as a rare example of participatory success, whereas states like Bihar or Uttar Pradesh lagged due to entrenched informal tenancy practices. Ceiling laws, despite their redistributive promise, were systematically undermined through benami transactions and political compromises. Thus, India's legislative framework showcased constitutional intent but inconsistent administrative realization.

Indonesia, by contrast, pursued a unified and ideologically grounded framework through the Basic Agrarian Law (BAL) of 1960, which aimed to

dismantle colonial dualism and construct a national agrarian legal order. Anchored in Article 33(3) of the 1945 Constitution and the social justice principles of Pancasila, the BAL articulated strong redistributive and social-function mandates. However, its implementation was severely stunted by the authoritarian New Order regime (1966–1998), which prioritized economic development and resource extraction over agrarian equity. Large-scale state land acquisition, weak recognition of customary (*adat*) rights, and centralized decision-making hindered the BAL's transformative aspirations. Only after the Reformasi era did Indonesia witness renewed attention to land tenure reform, culminating in large-scale land certification under programs like PTSL and landmark Constitutional Court judgments affirming customary rights.

Comparatively, India's decentralized, judicially mediated reforms contrast with Indonesia's centralized but ideologically cohesive legislative model. India benefited from constitutional contestation and state-led experimentation but suffered from implementation deficits. Indonesia possessed a coherent legal vision but lacked sustained political commitment until democratization enabled partial revival. Both countries continue to grapple with land inequality, administrative inefficiencies, and competing pressures between market-driven development and rights-based redistribution. Their experiences underscore that legislation alone is insufficient; political will, institutional accountability, and societal mobilization are essential for meaningful agrarian transformation.

Judicial Response and Constitutional Balancing

The constitutional tension between protecting property rights and enabling state-led land reform has necessitated active judicial interpretation in both India and Indonesia. While legislative initiatives are the driving force behind agrarian reform, the judiciary acts as the constitutional custodian tasked with ensuring that reform measures align with constitutional principles. This section explores the role of the judiciary in both countries in negotiating the fine line between property rights and distributive justice. It examines how judicial bodies in India and Indonesia have responded to land reform challenges and contributed to balancing constitutional commitments with socio-economic objectives.

In India, the judiciary has played a pivotal role in balancing the goals of agrarian reform with constitutional guarantees, especially the right to property. Initially, courts often struck down land reform laws for violating Article 31 (right to property). In response, Parliament amended the Constitution—introducing the Ninth Schedule and curtailing property rights—to shield such laws. Over time, the judiciary adapted, notably in *Keshavananda*

Bharati and *I.R. Coelho*⁴⁵, by asserting that even Ninth Schedule laws must respect the Constitution's basic structure. The right to property was eventually downgraded to a legal right under Article 300A, enabling greater flexibility for redistribution. Indian courts thus evolved from rigid protectors of property to facilitators of social justice, striving to uphold constitutional morality while empowering legislative reforms.

A. India: The Judiciary as a Constitutional Arbiter

India's legal architecture was significantly shaped by post-colonial challenges involving property ownership, land redistribution, and economic justice. While the initial inclusion of the right to property as a fundamental right under Articles 19(1)(f) and 31 gave constitutional protection to private ownership, the political imperative of redistributive land reform led to immediate constitutional and judicial contestation.

The abolition of the zamindari system and implementation of land ceiling laws across states were met with a spate of legal challenges, mostly under Article 31, which provided the right to compensation in cases of compulsory acquisition. Early judicial interpretations in *Shankari Prasad v. Union of India* (1951) and *Sajjan Singh v. State of Rajasthan* (1965) upheld the power of Parliament to amend the Constitution, including fundamental rights, to facilitate reform laws. However, this view was overturned in *Golak Nath v. State of Punjab* (1967), where the Supreme Court ruled that Parliament could not amend fundamental rights, thereby stalling the legal validity of several land reform statutes.⁴⁶

This deadlock led to the Twenty-fourth and Twenty-fifth Constitutional Amendments and culminated in the historic *Kesavananda Bharati v. State of Kerala* (1973) case, where the Supreme Court formulated the "Basic Structure Doctrine." While the Court upheld Parliament's power to amend the Constitution, it laid down that any amendment should not destroy the basic structure, which included principles like the rule of law, judicial review, and socio-economic justice. Importantly, the Court clarified that land reform laws intended to serve the Directive Principles could not violate the essential features of the Constitution.⁴⁷ This marked a constitutional shift wherein the judiciary became an active participant in safeguarding both redistributive goals and constitutional limits.

⁴⁵ *I.R. Coelho (Dead) By Lrs v. State of Tamil Nadu & Ors*, AIR 2007 SC 861.

⁴⁶ *Golak Nath v. State of Punjab*, 1967 AIR 1643.

⁴⁷ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

In 1978, the Forty-fourth Amendment removed the right to property from the list of fundamental rights and inserted Article 300A, declaring it a constitutional right. This effectively allowed the state greater flexibility in acquiring land for public purposes, provided such acquisition adhered to the rule of law and due process. The transformation from an inviolable fundamental right to a conditional constitutional right symbolized a deeper constitutional balancing, one that prioritized social transformation over rigid legal formalism.

In the post-liberalization era, the judiciary has also dealt with tensions arising from state-led land acquisition for industrial and infrastructure development. Cases such as *K.T. Plantation Pvt. Ltd. v. State of Karnataka* (2011) interpreted Article 300A to mean that deprivation of property must be for a public purpose, must follow the authority of law, and provide fair compensation. The Court emphasized that although the right to property is no longer fundamental, it is not illusory.⁴⁸

Furthermore, in *Rajiv Sarin v. State of Uttarakhand* (2011), the Supreme Court held that compensation must not be illusory and must reflect the value of the property.⁴⁹ These decisions reinforce the idea that the state cannot bypass procedural fairness even when it acts in the public interest. Thus, the Indian judiciary has consistently oscillated between facilitating state efforts for equitable land distribution and ensuring that constitutional principles, including due process and non-arbitrariness, are upheld. This role has placed the judiciary at the heart of India's constitutional dialogue on agrarian reform.

Contemporary Indian jurisprudence on land acquisition reflects a shift toward greater protection of landowners' rights and procedural fairness. Landmark judgments following the enactment of the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* emphasize consent, social impact assessment, and just compensation. The Supreme Court has increasingly scrutinized state actions for arbitrary acquisition, delay in compensation, and non-compliance with statutory safeguards. Recent rulings stress that land acquisition must align with constitutional values of dignity, equality, and public purpose. This evolving jurisprudence signals a move toward balancing developmental needs with the rights of affected communities, reinforcing the rule of law and participatory justice in land governance.

⁴⁸ *K.T. Plantation Pvt. Ltd. v. State of Karnataka*, (2011) 9 SCC 1.

⁴⁹ *Rajiv Sarin v. State of Uttarakhand*, AIR 2011 SC 3081.

B. Indonesia: Executive Dominance and Judicial Emergence

Indonesia's judiciary did not initially play a strong role in land reform. Under the Suharto-era New Order regime (1966–1998), judicial institutions were subordinated to executive authority, and the interpretation of constitutional provisions was largely monopolized by the state. The 1960 Basic Agrarian Law (BAL) did not provide judicial mechanisms for conflict resolution, and most land disputes were resolved through administrative or political channels. However, the Reformasi period after 1998 marked a significant shift. The constitutional amendments of 1999–2002 led to the creation of the Constitutional Court (*Mahkamah Konstitusi*) in 2003, which was empowered to review laws against the 1945 Constitution and adjudicate disputes on constitutional rights, including land-related claims.⁵⁰

Indonesia's constitutional landscape has long been characterized by strong executive dominance, especially in matters of land and agrarian policy. Rooted in the 1945 Constitution and legitimized by the state ideology of Pancasila, the executive has wielded broad powers to control land for development and social justice. However, in the post-Suharto reform era, the judiciary—particularly the Constitutional Court—has begun to assert a more active role in upholding constitutional rights, including indigenous land claims and environmental protections. This judicial emergence reflects a gradual shift from executive centralism toward a more balanced constitutional order, though challenges remain in fully realizing judicial independence and accountability in land governance.

Indonesia's governance of land and agrarian matters has historically been dominated by the executive, empowered by the 1945 Constitution and the Basic Agrarian Law of 1960. This framework granted the state sweeping authority to control and allocate land in the name of national development and social justice. However, in the post-Reformasi era, the judiciary—particularly the Constitutional Court—has begun asserting a more active role. It has increasingly addressed issues of customary land rights, environmental justice, and procedural fairness, signaling a gradual shift from executive supremacy toward constitutional accountability. While executive influence remains strong, judicial emergence marks an evolving balance in Indonesia's constitutional order.

One of the most significant interventions of the Constitutional Court came in 2012 with Decision No. 35/PUU-X/2012, known as the AMAN case.

⁵⁰ Fitzpatrick, "Disputes and Pluralism," 203-205.

The Court held that customary forests (*hutan adat*) are not state forests, thereby recognizing the rights of indigenous communities to manage their ancestral lands.⁵¹ This decision was a major departure from past interpretations that viewed all unregistered land as state land, often used to justify evictions and land acquisition for development projects. Subsequent decisions by the Constitutional Court have further emphasized the need for legal recognition of customary rights and local community participation in land governance. The judiciary has increasingly demanded that any land-related legislation must be consistent with constitutional principles of social justice, decentralization, and human rights.

In other significant decisions, the Constitutional Court has struck down provisions in forestry and land-use laws that allowed for large-scale land licensing without adequate consultation or compensation. For instance, in Decision No. 45/PUU-IX/2011, the Court invalidated a provision that allowed plantation companies to renew their land-use rights without proper community participation, deeming it incompatible with Article 28H of the Constitution, which guarantees the right to a healthy environment and livelihood. Moreover, the Court has stressed procedural justice in state-led land acquisition.⁵² In a democratic Indonesia, the emphasis has shifted from unilateral state control to more participatory and equitable mechanisms of land management. The judiciary is now seen as a legitimate venue for asserting community claims and challenging state or corporate overreach.

In Indonesia, judicial oversight on land acquisition and licensing has gained prominence in the post-Reformasi era, as courts increasingly review executive actions for legality, fairness, and constitutional compliance. The Constitutional Court and Administrative Courts have intervened in cases involving forced evictions, environmental degradation, and violations of customary land rights. These courts scrutinize whether land acquisitions serve a genuine public purpose and whether licensing processes comply with procedural norms and community consent. Although executive dominance persists, judicial oversight has emerged as a critical check, promoting

⁵¹ Constitutional Court of Indonesia, Decision No. 35/PUU-X/2012, <https://aman.or.id/petition-for-mk-no-35-ruling-and-indigenous-peoples-bill#:~:text=In%20decision%20No.%2035%2FPUU-X%2F2012%2C%20the%20Constitutional%20Court%20confirmed,should%20no%20longer%20be%20considered%20as%20State%20Forests>.

⁵² Constitutional Court of Indonesia, Decision No. 45/PUU-IX/2011, https://en.mkri.id/download/decision/putusan_sidang_eng_putusan_sidang_45+PUU+2011-TELAH+BACA+%28ENG%29.pdf.

transparency, accountability, and protection of constitutional rights in land governance.

Despite these progressive decisions, the Indonesian judiciary faces several challenges. Many Court rulings remain weakly implemented at the administrative level due to bureaucratic resistance, lack of legal infrastructure, and limited public awareness. Further, conflicts between statutory land rights and customary rights continue, especially in resource-rich provinces like Kalimantan and Papua. Corruption within local governments and law enforcement agencies also hampers the enforcement of judicial decisions. Nevertheless, the Constitutional Court has emerged as an increasingly influential institution in shaping agrarian constitutionalism in Indonesia, offering a degree of judicial balance in what was previously an executive-dominated domain.

C. Comparative Constitutional Balancing

The Indian and Indonesian judiciaries reveal contrasting yet convergent paths in constitutional balancing. India's judiciary evolved as a robust interpreter of constitutional limits, establishing the basic structure doctrine and reconfiguring the property regime in light of socio-economic goals. The Indian courts have actively shaped land jurisprudence by navigating between the Directive Principles and the fundamental rights framework.

Indonesia, constrained by decades of authoritarian rule, initially lacked a judicial counterbalance. But the post-Reformasi judiciary, particularly the Constitutional Court, has embraced its constitutional mandate to review agrarian laws, recognize customary rights, and demand procedural safeguards. Although still evolving, the Indonesian judiciary represents a transition from legal passivity to proactive constitutional engagement. Both systems show that the role of courts in agrarian reform is not static, it is shaped by political transitions, institutional reforms, and civil society mobilization. While India relied heavily on judicial interpretation to reconcile reform with constitutionalism, Indonesia's judiciary gained prominence as a result of democratization and decentralization, reflecting different trajectories of constitutional evolution.

India and Indonesia approach agrarian law through distinct yet constitutionally grounded frameworks aimed at balancing state-led reform with individual rights. In India, constitutional amendments, the Ninth Schedule, and evolving judicial doctrines have enabled land redistribution while gradually reinforcing procedural fairness and the right to property under Article 300A.

The judiciary plays an active role in scrutinizing state actions for compliance with social justice and constitutional principles.

In contrast, Indonesia's agrarian regime is rooted in the 1945 Constitution and the Basic Agrarian Law of 1960, which grant the state dominant control over land in pursuit of national development. While historically executive-driven, recent judicial interventions—especially by the Constitutional Court—signal a growing role in protecting customary rights and environmental standards. Both countries illustrate a constitutional balancing act: India emphasizes judicial mediation of competing rights, while Indonesia reflects a transition from executive centralism to cautious judicial oversight in agrarian governance.

Comparative Constitutionalism and Agrarian Justice

Agrarian justice, which encompasses equitable access to land, redistribution of agrarian assets, and protection of socio-economic rights of rural communities, is a critical test for the robustness and adaptability of constitutional frameworks in post-colonial societies. Both India and Indonesia, emerging from colonial regimes with highly inequitable landholding patterns, adopted ambitious agrarian reform agendas. However, the constitutional pathways each followed reveal important differences in the structure, approach, and philosophy underpinning agrarian governance. This chapter offers a comparative analysis of how constitutionalism in India and Indonesia has engaged with agrarian justice, focusing on institutional arrangements, interpretative doctrines, and the reconciliation of rights-based protections with redistributive imperatives.

A. Constitutional Philosophy and Agrarian Justice

In India, constitutionalism evolved around the foundational values of justice, liberty, equality, and fraternity as enshrined in the Preamble. Agrarian reform was viewed as central to realizing socio-economic justice. The Directive Principles of State Policy, particularly Articles 38 and 39, offered a normative framework to guide the State's redistributive interventions. These non-justiciable provisions gave constitutional legitimacy to radical land redistribution policies aimed at dismantling feudal structures and empowering tillers.⁵³

⁵³ Constitution of India, 1950, Article 38 and 39. Article 38 mandates the State to reduce inequalities in income and status by restructuring agrarian relations to promote social

Indonesia's constitutionalism, conversely, is deeply shaped by its foundational ideology of Pancasila, particularly the fifth principle: "*social justice for all the people of Indonesia*." The 1945 Constitution's Article 33 provides a strong basis for state control over land and natural resources, asserting that production sectors vital to the country must be controlled by the state to ensure the welfare of the people. This formulation aligns more closely with a centralized, executive-led model of agrarian justice, where social interest supersedes individual property rights without extensive judicial scrutiny. India's model, therefore, emphasizes balancing individual rights with state imperatives through judicial review and constitutional amendments, while Indonesia relies on a statist model that prioritizes collective welfare and economic nationalism, often limiting judicial engagement. This divergence influences the design and execution of land reforms in both states.

Constitutional philosophy and agrarian justice intersect through the principles of equality, dignity, and social justice enshrined in many modern constitutions. Agrarian justice seeks to correct historical land-based inequalities through reforms that redistribute land and secure rights for marginalized communities. Constitutional frameworks—through provisions like directive principles, socio-economic rights, and judicial interpretations—legitimize such reforms while balancing individual property rights. Philosophical debates, from Rawlsian fairness to Ambedkar's vision of social liberation, underscore the moral urgency of land reform. Ultimately, agrarian justice is not just a policy goal but a constitutional imperative to build an equitable and inclusive society.

1. Institutional Balancing and Judicial Restraint

India's judiciary, particularly the Supreme Court, has played an active role in interpreting constitutional provisions vis-à-vis agrarian reforms. Landmark cases such as *Kesavananda Bharati v. State of Kerala*⁵⁴ and *Minerva Mills v. Union of India*⁵⁵ established the doctrine of the basic structure, ensuring that essential constitutional features, including the rule of law and judicial review, cannot be abrogated even by constitutional amendment. These decisions, while upholding the State's authority to carry out land reforms, also carved out limitations to protect core rights, thereby institutionalizing a system of constitutional checks and balances.

justice. Article 39, particularly clauses (b) and (c), provides a constitutional basis for land redistribution by requiring the State to ensure that ownership and control of material resources, like land, are distributed to serve the common good and that economic power does not become concentrated in a few hands.

⁵⁴ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

⁵⁵ *Minerva Mills v. Union of India*, 1981 SCR (1) 206.

Indonesia, until the constitutional reforms of 1999–2002, lacked an independent judicial forum capable of constitutional review. The establishment of the Constitutional Court (*Mahkamah Konstitusi*) marked a turning point, allowing for a more participatory form of constitutional governance. However, in matters relating to land and agrarian reform, the Court has tended to defer to legislative and executive discretion, often citing Pancasila and national development goals as overriding justifications. For instance, in cases involving customary land rights (*hak ulayat*) of indigenous communities, the Court has sometimes affirmed state control over land, even while acknowledging traditional land tenure systems.⁵⁶ Thus, while India's constitutionalism reflects a dynamic judicial-legislative tension, Indonesia exhibits a more centralized approach, with limited avenues for judicial contestation of state-led agrarian decisions.

2. Land as a Constitutional Right: Divergent Norms

India's land reform journey was closely linked to the evolution of the right to property. Initially a fundamental right under Articles 19(1)(f) and 31, the right to property was progressively diluted to facilitate land redistribution. The First, Fourth, Seventeenth, and Forty-Fourth Amendments collectively modified property rights, culminating in Article 300A, which renders the right to property a constitutional but non-fundamental right.⁵⁷ This transition reflects India's commitment to privileging socio-economic justice over rigid property rights, particularly in the agrarian context.

In contrast, Indonesia's 1960 Basic Agrarian Law established a unified legal framework for land tenure, integrating customary (*adat*) law and state law. The state retains ultimate control over land use, with private ownership understood as a secondary right subject to state regulation. The Indonesian model does not recognize a property right akin to India's Article 300A but instead embeds land rights within a structure of state stewardship.⁵⁸ This fundamental difference means that while Indian courts adjudicate violations of constitutional property protections, Indonesian courts interpret land rights primarily within statutory and ideological bounds.

This divergence also impacts the participation of marginalized communities in legal processes. In India, judicial activism and public interest litigation (PIL) have empowered landless groups to assert entitlements under

⁵⁶ Daryono, "The Transformation of Land Law in Indonesia: The Persistence of Pluralism," *Asian Journal of Comparative Law* 5 (2010): 1-32.

⁵⁷ D.D. Basu, *Introduction to the Constitution of India* (LexisNexis, 2013), 275–278.

⁵⁸ Fitzpatrick, "Disputes and Pluralism," 172-174.

constitutional and legislative mandates. Indonesia, while more recent in acknowledging indigenous land claims, still faces challenges in reconciling adat systems with centralized agrarian laws.

3. Customary Rights and Indigenous Recognition

Both nations grapple with the integration of customary tenure systems into formal legal frameworks. In India, while tribal and forest-dwelling communities enjoy certain protections under the Fifth and Sixth Schedules and the Forest Rights Act, their claims are often overridden by state and industrial interests. The constitutional and legal mechanisms do provide forums for redress, but implementation remains uneven.

Indonesia's constitutional amendments post-1998 led to greater recognition of indigenous people (*masyarakat adat*), notably through Article 18B(2), which affirms respect for traditional communities as long as it aligns with national interests. However, actual enforcement has been limited. Despite favourable rulings by the Constitutional Court—such as Decision No. 35/PUU-X/2012, which recognized indigenous forests as separate from state forests—implementation hurdles persist, particularly due to conflicting interests between central authorities and local communities.⁵⁹ Thus, both systems exhibit partial inclusion of customary land rights, but with different constitutional and institutional arrangements. India's judiciary plays a more pronounced role in mediating conflicts, while Indonesia's centralized structure often limits local autonomy in land governance.

4. Lessons in Constitutional Flexibility and Democratic Accountability

The comparative analysis reveals that constitutional flexibility in both India and Indonesia has enabled significant agrarian reforms, albeit through distinct trajectories. India employed constitutional amendments, judicial innovation, and parliamentary initiatives to embed land redistribution within a democratic framework. This process, while contentious, fostered public deliberation and strengthened judicial accountability.

Indonesia, meanwhile, used ideological principles and centralized administrative instruments to pursue agrarian reform. The relative weakness of judicial oversight in the early decades of reform limited rights-based challenges but enabled swift state action. However, as democratization deepened post-Suharto, new constitutional mechanisms have emerged to promote accountability and indigenous recognition, though the state continues to exert dominant control.

⁵⁹ Constitutional Court of Indonesia, Decision No. 35/PUU-X/2012.

Ultimately, both models underscore the complex interplay between constitutional design, institutional practice, and agrarian justice. India's legalistic and rights-based approach provides greater scope for contestation and protection of minorities, but at the cost of protracted litigation and implementation delays. Indonesia's centralized ethos ensures efficiency but risks marginalizing vulnerable communities unless adequately counterbalanced by participatory constitutionalism.

B. India *v.* Indonesia: Courts on Compensation & Justiciability under Agrarian Reforms

Judicial engagement with agrarian reform in India and Indonesia reflects two different constitutional trajectories: one built on detailed statutory standards for compensation and administrative procedure, and the other on constitutional reinterpretation of state authority over land and recognition of customary rights. These structural differences shape both the substance of compensation and the boundaries of justiciability.

1. Compensation Standards

Indian courts operate within a tightly codified framework under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR). This statute prescribes market-value-based compensation with mandatory solatium, interest, and rehabilitation entitlements. Judicial review therefore concentrates on whether the State has followed statutory procedures and correctly applied valuation formulas. The Supreme Court routinely recalibrates compensation using doctrinal tools such as the theory of deduction to avoid inflated or speculative valuations. As a result, compensation disputes are highly justiciable, and courts act as active arbiters of valuation fairness.

Furthermore, Indonesia's compensation jurisprudence is more fragmented. The Basic Agrarian Law (UUPA, 1960) and Law No. 2/2012 establish broad principles, while actual valuation relies on administrative standards like replacement value (NPW). Because land systems span formal title, communal (*adat*) claims, and state forest classifications, monetary valuation is often shaped by executive discretion. Courts—particularly administrative courts—review the legality of procedures but rarely substitute their own assessment of compensation. The Constitutional Court has strengthened protection for customary land, but compensation outcomes remain uneven due to gaps in registration and implementing regulations.

2. Justiciability and Judicial Posture

Indian courts treat land acquisition and agrarian disputes as squarely justiciable when statutory compliance, procedural fairness, or constitutional rights are at stake. They intervene robustly to enforce social impact assessments, notice requirements, consent provisions, and rehabilitation obligations. However, they maintain deference on the question of whether land should be acquired for a public purpose—drawing a line between reviewing legality and second-guessing legislative policy choices. The overall judicial posture is therefore procedurally interventionist but policy-deferential.

In Indonesia, the Constitutional Court has played a transformative role in expanding the justiciability of agrarian questions, especially by affirming the constitutional status of *adat* land and limiting the State's residual powers over forest and agrarian resources. Yet, the practical reach of these decisions is constrained by administrative fragmentation and slow legislative follow-through. While rights are judicially recognized, remedies often remain declaratory, and implementation depends on executive bodies, land registries, and sectoral ministries. Thus, justiciability is constitutionally expansive but administratively constrained.

India has a strong statutory architecture, precise judicial oversight of compensation and procedures; courts often grant effective remedies. While, Indonesia has as strong constitutional rights discourse, courts recognize communal and social-function claims but face structural constraints that limit enforceability. In short, India demonstrates judicial enforcement of legislated standards, while Indonesia reflects judicial recognition of constitutional land rights that outpace administrative capacity.

Challenges and Contemporary Development

Agrarian reforms in India and Indonesia, while rooted in post-colonial redistributive justice, continue to face dynamic socio-political challenges in the 21st century. Both countries, shaped by unique constitutional mandates and historical legacies, have struggled to fully realize the transformative potential of land reform. Despite early legislative and constitutional momentum, several systemic, legal, and institutional hurdles have hampered the efficacy and inclusivity of these reforms. This section explores the current challenges confronting agrarian reform in both India and Indonesia, highlighting emerging developments such as climate vulnerability, digitization of land records, land-grabbing, and customary rights claims.

Both India and Indonesia face complex challenges in implementing agrarian laws amidst evolving socio-economic and political contexts. In India, key issues

include land acquisition disputes, inadequate rehabilitation, fragmented landholdings, and the tension between industrial development and farmers' rights. The *Land Acquisition Act of 2013* marked a progressive shift, but inconsistent implementation and legal ambiguity remain concerns.

In Indonesia, challenges include weak enforcement of the Basic Agrarian Law of 1960, overlapping land claims, corruption in licensing, and conflicts between state development projects and customary land rights. Decentralization and judicial activism have spurred some accountability, but executive dominance continues to shape land governance.

Contemporary developments in both countries show increased judicial scrutiny, rising civil society engagement, and growing emphasis on sustainability and customary rights—indicating a gradual but uneven shift toward more inclusive and rights-based agrarian frameworks.

A. Fragmented Land Reforms and Emerging Conflicts in India

India's land reform agenda, largely conceived in the immediate aftermath of independence, has seen diminishing attention over the decades. The abolition of intermediaries, imposition of land ceilings, and tenancy reforms, while bold in intention, were variably implemented across states due to India's quasi-federal structure. The fragmentation of landholdings due to inheritance customs, the persistence of absentee landlordism, and the lack of comprehensive tenancy documentation continue to plague rural agrarian justice.

One of the major challenges in contemporary India is the growing tension between agricultural communities and the industrial or infrastructural interests of the state. Land acquisition has become a contentious issue, as evident in widespread protests such as the Nandigram and Singur agitations in West Bengal⁶⁰, and the more recent farmers' protests (2020–21) against the now-repealed farm laws⁶¹. These movements underscore the anxiety among small and marginal farmers about losing their land without adequate compensation or consultation. The principle of "eminent domain," despite constitutional safeguards, is often exercised in ways that undermine the spirit of participatory governance enshrined in the Constitution.

⁶⁰ "The Protests in Singur and Nandigram - Human Rights and Justice in India," India Study Channel, accessed August 2, 2025, <https://www.indiastudychannel.com/resources/94740-Singur-Nandigram-And-Industrialisation-West.aspx>.

⁶¹ "Farm laws: India farmers end protest after government accepts demands," BBC, December 9, 2021, <https://www.bbc.com/news/world-asia-india-59566157>.

Further, while the digital India initiative includes programs like the Digital India Land Records Modernization Programme (DILRMP), progress has been uneven. Land titles in India are presumptive rather than conclusive, which creates significant insecurity for both ownership and tenancy rights. This technical-legal deficit impedes credit access for farmers, prevents investments in productivity, and increases vulnerability to dispossession and litigation. Women, though entitled to land rights under amended Hindu Succession laws⁶², still remain largely excluded from formal ownership due to socio-cultural constraints and lack of administrative support.

Environmental degradation and climate change have also emerged as serious impediments to agrarian livelihoods. Droughts, floods, and soil degradation disproportionately affect small farmers, exacerbating rural poverty and migration. These ecological shifts highlight the need to rethink land reform not only through a redistributive lens but also in terms of climate justice and sustainability.

B. Land Grabbing and Indigenous Struggles in Indonesia

Indonesia's Basic Agrarian Law (BAL) of 1960, although ambitious in design, has encountered practical limitations due to conflicting land governance systems, especially between statutory and customary (*adat*) laws. With the decentralization of power following the fall of Suharto's New Order regime in 1998, regional governments acquired significant authority over land-use decisions, resulting in uneven enforcement of land rights and widespread corruption in land allocation processes.

A major contemporary challenge is the phenomenon of "land grabbing" by state and corporate actors for extractive industries, palm oil plantations, and mega-infrastructure projects. These actions frequently displace indigenous communities and smallholders, whose customary claims are not formally recognized under statutory law. Despite the Constitutional Court's landmark 2013 ruling in MK35/PUU-X/2012, which affirmed that customary forests are not part of state forest zones, the implementation of this ruling remains tepid, constrained by bureaucratic inertia and vested economic interests.⁶³

Indonesia's customary rights movement has grown in strength, led by organizations such as AMAN (*Aliansi Masyarakat Adat Nusantara*), which continue to demand full recognition of communal tenure systems and

⁶² The Hindu Succession Act, 1956.

⁶³ Simon Butt, *The Constitutional Court and Democracy in Indonesia* (Brill, 2015).

restitution of ancestral lands. However, the lack of a unified national land cadastre and overlapping jurisdictions among ministries (such as Agriculture, Environment, and Public Works) has prevented effective resolution of such claims.

Another key development is Indonesia's One Map Policy (OMP), aimed at integrating disparate land-use maps to create a single authoritative digital reference for all land in the country.⁶⁴ While conceptually transformative, the OMP faces resistance from powerful business and bureaucratic stakeholders and suffers from delays in data verification and public accessibility. Additionally, the rise of agribusiness and the commodification of land as a financial asset pose a structural threat to the vision of agrarian justice enshrined in the 1945 Constitution. As rural populations decline and urban migration accelerates, there is an emerging disconnect between constitutional ideals of social justice and the neoliberal policy orientations adopted in practice.

C. Cross-Cutting Challenges: Governance, Judicial Delays, and Political Will

Both India and Indonesia grapple with challenges that stem from poor governance mechanisms, lack of transparency, and weak institutional accountability. Land administration agencies in both countries have been historically marred by inefficiency, corruption, and lack of coordination across departments. Dispute resolution remains expensive and time-consuming, with judicial systems overloaded and ill-equipped to address the complexities of land disputes in a timely manner.

The role of the judiciary in safeguarding agrarian justice remains crucial but inconsistent. In India, while landmark decisions like *Kesavananda Bharati* and *Indra Sawhney*⁶⁵ have emphasized the principles of social justice, many land acquisition-related cases are either delayed or decided on procedural rather than substantive grounds. Similarly, in Indonesia, despite progressive constitutional court decisions, enforcement remains inconsistent at the local level due to limited administrative capacity and resistance from entrenched elites.

Political will has also fluctuated in both countries. Agrarian reform is often deprioritized in electoral agendas in favor of more populist, short-term welfare measures. Bureaucratic reforms to streamline land governance, encourage

⁶⁴ "Government Launches One Map Policy to Accelerate National Development," Cabinet Secretariat of The Republic of Indonesia, July 19, 2024, <https://setkab.go.id/en/government-launches-one-map-policy-to-accelerate-national-development/>.

⁶⁵ *Indra Sawhney v. Union of India*, AIR 1993 SC 477.

cooperative farming models, or protect marginalized land users are frequently stymied by political inertia or competing economic priorities.

D. Climate Change and Agrarian Resilience

Climate change presents a common existential threat to agrarian economies in India and Indonesia. Increasing climate volatility has intensified the precarity of smallholder agriculture, necessitating adaptive reforms in land policy. In both countries, sustainable land management practices, such as agroforestry, climate-resilient cropping, and watershed-based planning remain under-promoted due to fragmented policy attention and lack of integration with land rights reforms.

Agrarian resilience also depends on secure land tenure, which in turn enables farmers to invest in long-term soil conservation, water management, and crop diversification. Insecure tenure discourages such practices, locking communities in a cycle of vulnerability and underproductivity. The convergence of climate justice with agrarian justice is an urgent necessity but remains inadequately addressed in mainstream policy discourse.

E. Towards a Transformative Agrarian Constitutionalism

For both India and Indonesia, the future of agrarian reform lies in forging a more holistic, participatory, and justice-oriented land governance system. Constitutional values must be interpreted not just as legal doctrines but as living instruments capable of responding to socio-ecological crises and demands of grassroots movements. In India, this implies moving beyond a technocratic approach to land digitization toward recognizing and empowering informal rights-holders, tenant farmers, and women. Strengthening Gram Sabhas and Panchayati Raj Institutions in land decision-making could bridge the gap between law and lived reality.

In Indonesia, operationalizing constitutional court judgments and integrating *adat* communities into national land frameworks could enable more pluralistic and culturally responsive reform. The success of the One Map Policy will be pivotal in this regard, as will continued civil society advocacy for indigenous land recognition.⁶⁶ Ultimately, agrarian constitutionalism in both

⁶⁶ Indonesia's ongoing efforts to reform land governance highlight the need to better align national legal structures with the country's vast cultural diversity. One key opportunity lies in operationalizing Constitutional Court judgments—particularly decisions that recognize the rights of *masyarakat adat* (customary communities) to their traditional forests and territories. Although these rulings affirm that customary lands are not state

nations must embrace a forward-looking, equity-centered paradigm—one that harmonizes the imperatives of growth, sustainability, and social justice in the spirit of their founding ideals.

Conclusion

Both India and Indonesia illustrate how constitutional design shapes the possibilities and limits of agrarian justice. India's judicial-centric model enables robust contestation, procedural safeguards, and rights-based pluralism, yet its reliance on litigation has produced uneven implementation and persistent bureaucratic delays. Indonesia's executive-centric tradition, by contrast, enabled

forests, their practical impact has often been limited by slow regulatory follow-up, overlapping claims, and inconsistent implementation at provincial and district levels. Turning these decisions into clear administrative procedures, mapping standards, and dispute-resolution mechanisms would give *adat* communities stronger and more predictable legal standing. Equally important is the integration of *adat* communities into national land frameworks, such as registration systems, spatial planning, and resource-management regimes. Because *adat* land tenure is based on collective stewardship, oral histories, and flexible boundaries, it does not always fit neatly within Western-style property categories. By adapting national frameworks to accommodate communal ownership, customary norms, and participatory decision-making, the state can create a more inclusive model of land governance. This may involve collaborative mapping, recognition of customary institutions, and legal pathways for registering communal rights without forcing them into individual titles. Together, these steps would move Indonesia toward a more pluralistic and culturally responsive land reform system—one that respects local identity, reduces conflicts, and promotes sustainable land management. Empowering *adat* communities through meaningful legal recognition not only strengthens social justice but also enriches Indonesia's constitutional commitment to unity in diversity. *See* Adriaan Bedner, and Yance Arizona. "Adat in Indonesian land law: a promise for the future or a dead end?." *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 416-434; Ikhda Fitria, "Recognizing adat law: Problems and challenges in modern law system in Indonesia." *The Indonesian Journal of International Clinical Legal Education* 2, no. 4 (2020): 503-516; Iwan Permadi, et al. "Resolving Disputes Arising from Land Acquisition for Public Purposes Involving Indigenous Peoples in the Nusantara Capital Region." *Journal of Law and Legal Reform* 5, no. 2 (2024): 705-748; B. Rini Heryanti, and Amri Panahatan Sihotang. "Model for Ulayat Land Dispute Resolution Based on Participatory Justice in the Era of Sustainable Development." *Pandecta Research Law Journal* 17, no. 1 (2022): 37-49; Radhityas Kharisma Nuryasinta, and Yohana Puspitasari Wardoyo. "Escalation of Community Legal Literacy in Resolving Land Disputes in Bumiaji Village, Batu City." *Jurnal Pengabdian Hukum Indonesia (Indonesian Journal of Legal Community Engagement) JPHI* 7, no. 2 (2024): 191-212; Fairus Augustina Rachmawati, Shafa Amalia Choirinnisa, and Latif Latif. "Integrated Land Registration System: Between Legal Certainty and Challenges (Case of Semarang City)." *Indonesian Journal of Advocacy and Legal Services* 3, no. 2 (2021): 217-232.

swift policymaking but often marginalized customary landholders and diluted the redistributive vision of the Basic Agrarian Law. Post-Reformasi judicial interventions—especially the Constitutional Court’s recognition of indigenous land rights—signal a shift toward constitutional accountability, though administrative inertia continues to hinder enforcement. These trajectories underscore that constitutional flexibility alone cannot secure redistributive outcomes; effective land reform also demands political commitment, institutional coherence, and meaningful protection for vulnerable communities.

Looking forward, both countries must move from enabling reforms on paper to ensuring grounded, community-centered implementation. India can deepen its democratic foundation by strengthening local institutions and extending substantive protection to informal cultivators, women, and tenant farmers, thereby complementing judicial oversight with administrative responsiveness. Indonesia’s priority is to translate constitutional rulings on *adat* rights into actionable policy by operationalizing court judgments and fully realizing initiatives such as the One Map Policy to harmonize land governance. Together, these steps reflect an emerging model of transformative agrarian constitutionalism—one that treats constitutional values as evolving instruments responsive to socio-ecological realities and integrates climate resilience with equitable land tenure.

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**“The earth, in its natural,
uncultivated state... was the
common property of the
human race**

Thomas Paine (1797, *Agrarian Justice*)

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