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Legal archaeology: reconstructing a case study of the Gujarat High Court Bullet Train Judgment

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ABSTRACT

This article employs legal archaeology as the methodology to review the *Jigarbhai Amratbhai Patel v State of Gujarat* (2019 Bullet Train Judgment) in the Gujarat High Court. It assembles a novel case study in a manner that respects its unique, subjective and formal origins while showcasing its diverse past. The litigation concerned the dominant choice between public interest and private property rights in compulsory land acquisition. Melding the official report and unofficial sources, legal archaeology focuses on the relationships between the internal operations of the court and the general social, political, and cultural elements that influenced its decision-making. Stories and lived experiences are powerful means to open fresh perspectives on reality, develop a richer narrative, and pose different, and significant queries. Emma Nottingham's phased methodological approach to the legal archaeology and its application to the Bullet Train Judgment reveals that the genesis of the judgment is not singular but prismatic.

Keywords: legal archaeology; land acquisition, Gujarat High Court; 2019 Bullet Train Judgment; human stories and lived experiences; empirical data.

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INTRODUCTION

Land is a hotly debated and contentious topic. Globally, state compulsory land acquisition has been and remains subject to significant contestation. There is inevitable conflict between the state's application of public interest and rights vested in private ownership. Governments face mounting pressure to provide public services while also meeting rising land demand. Governments and economic actors view obstructive holding of private land as inefficient and conflicting, hindering economic growth and rational development.[1] Compulsory land acquisition attracts considerable academic attention.[2] The variety of land-grabbing activities range from massive land-extensive transactions to more gradual 'pin-prick' land acquisitions.[3] According to Wendy Wolford and colleagues, since land emerged as the 'new gold', land transactions now involve more players. These include financial firms that sometimes have questionable or illegal relationships with insurance companies, pension funds, and various types of private and public investors worldwide. Land politics, often in remote and inaccessible areas, is becoming increasingly entangled with global capital and financial networks in previously unimaginable ways as resources become more financialised and incorporated into international trading networks.[4]

In India, state land acquisition for development, infrastructure and industrial projects has deep and far-reaching implications for economic, environmental, social, and political life. Land acquisition in India is a divisive topic, and numerous scholars have noted various difficulties. These include 'people homeless and landless, with no way of earning a livelihood, without access to necessary resources or community support, and with the feeling that they have suffered a grave

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1 Food and Agricultural Organization, *Compulsory Acquisition of Land and Compensation FAO Land Tenure Studies 10* (FAO 2019) ch 10.

2 U Ramanathan, 'Land acquisition, eminent domain and the 2011 Bill' (2011) 46 (44–45) Economic and Political Weekly 10–14; B White et al, 'The new enclosures: critical perspectives on corporate land deals' (2012) 39 (3–4) Journal of Peasant Studies 619–647; S Ouma, 'From financialization to operations of capital: historicizing and disentangling the finance–farmland-nexus' (2016) 72 Geoforum; Journal of Physical, Human, and Regional Geosciences 82–93; 'Seized: the 2008 land grab for food and financial security' *Grain* 24 October 2008; S Chakravorty and A Palit (eds), *Seeking Middle Ground Land, Markets, and Public Policy* (Oxford University Press 2019); B Aha and J Z Ayitey, 'Biofuels and the hazards of land grabbing: tenure (in)security and indigenous farmers' investment decisions in Ghana' (2017) 60 Land Use Policy 48–59.

3 W Wolford et al, 'Global land deals: what has been done, what has changed, and what's next?' (2024) Journal of Peasant Studies 1–38.

4 Ibid.

injustice'.[5] Unfair procedures and unjust compensation can weaken the security of land tenure, increase tensions between the Government and the populace, and degrade public confidence in the rule of law.[6]

Projects including Nandigram,[7] Singur,[8] Niyamgiri,[9] and POSCO[10] have shaped India's land acquisition discourse. These projects raised questions about capitalism, development, and social and environmental impact, thus making land acquisition a disturbing problem for policy-makers. Judicial recognition of these challenges was highlighted in the Supreme Court of India, For instance, in the *Mahanadi Coal Fields* case,[11] the court stated:

> a blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the constitution hardly ever reach the most marginalized citizens ... for a people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic.[12]

Consequently, the Indian Parliament introduced the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (LARR Act) that came into force from 1 January 2014. The LARR Act, a self-contained code, considered as welfare legislation, seeks to correct the historic bias and shortcomings of land acquisition.

Currently, India's expansive growth strategy involves major infrastructure and economic development which require acquisition of land for public purpose. Projects such as Bharatamala Pariyojana

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5 FAO (n 1 above) 2.

6 R Chakrabarti and K Sanyal, *Shaping Policy in India: Alliance, Advocacy, Activism* (Oxford University Press 2017).

7 The fishing village of Nandigram in West Bengal witnessed police shooting on 14 March 2007, killing 14 residents, including two women. The locals were demonstrating against the Government acquiring property to establish a chemical centre.

8 The controversy related to the proposed land purchase of a Tata Motors auto factory in Singur, in the Hooghly district of West Bengal.

9 The construction of an alumina and bauxite mining project in the state of Orissa by Vedanta Company and its Indian subsidiary M/S Sterlite Ltd in the Niyamgiri Hills. This amounted to the forcible eviction of the poor tribal people from their homes and causing extensive damage to the environment.

10 The construction of an integrated steel plant with a service sea-port at Paradip in the Jagatsinhpur district of the state of Orissa that threatened the area's unique biodiversity and anticipated dislocation and displacement of the long-standing, forest-dwelling communities.

11 *Mahanadi Coal Fields v Mathias Oram* (2010) 11 SCC 269.

12 Ibid 273.

– Visionary Corridor[13] aim to optimise the efficiency of freight and passenger movement across India by developing critical infrastructure and creating direct and indirect employment in the sector.[14] Similarly, the much-awaited Ahmedabad–Mumbai bullet train project, hailed as 'new-age connectivity', aims to improve railway technology, provide employment, and be eco-friendly transport.[15] This train project required acquisition of land for its construction. However, the project produced the classic tension between public purpose and private ownership that culminated in litigation between the affected landholders, farmers, and the authorities. The litigation, namely *Jigarbhai Amratbhai Patel v State of Gujarat*[16] (hereinafter referred to as the Bullet Train Judgment), was decided in 2019 in the Gujarat High Court. The judgment, as a legal event, was influenced and intertwined with issues of history, politics, economics and justice as analysed in the article.

This article is original in that it uses legal archaeology as a methodology to review the Bullet Train Judgment. It assembles a novel case study in a manner that respects its unique, subjective and formal origins while showcasing its diverse past. Contextualising cases outside the case reports and judicial opinions results in a historical narrative that is 'more complete, and more complex … shakes things up to provoke debate, both about the merits of the case and about [the] adversarial system of justice'.[17] A deeper and different investigation reveals nuanced or important facts that otherwise would appear insignificant while reading the 'bare, laconic law reports'.[18] Melding official reports and unofficial sources allows legal archaeology to focus on the relationships between the internal operations of the court and the general social, political, and cultural elements that influenced its decision.[19] In this context, stories and lived-experience narratives are powerful ways to open fresh perspectives on reality, develop a richer narrative, and pose new and significant queries. Mindful there is no traceable academic scholarship on this case, we inquire into how those

13 See MakeinIndia.

14 See, generally, M D Maria, E Robinson and G Zanello, 'Fair compensation in large-scale land acquisitions: fair or fail?' (2023) 70 (106338) World Development 1-11, 1.

15 R K Thakur, 'India's first bullet train will be launched soon: PM Modi' *New Indian Express* (Nation 6 January 2025).

16 Bullet Train Judgment 2019 SCC OnLine Guj 6988.

17 D L Threedy, 'A fish story: Alaska Packers' Association v Domenico' (2000) 2 Utah Law Review 185–221, 220–221.

18 E Nottingham, 'Digging into legal archaeology: a methodology for case study research' (2022) 49 (S1) Journal of Law and Society S16–30, S18.

19 J Novkov, 'Legal archaeology' (2011) 64(2) Political Research Quarterly 348–361, 353.

in positions of legal power used that power and how those without experienced it.

Accordingly, the article is structured as follows. The next section briefly addresses the methodological framework of legal archaeology. It also discusses Emma Nottingham's four-stage framework[20] that gives legal archaeology methodology a stronger structure and organisation for the process of case investigation. The third section offers a case study opportunity to analyse Nottingham's framework regarding the Bullet Train Judgment. This is followed by the conclusion in the final section.

LEGAL ARCHAEOLOGY: THEORETICAL BASE AND METHODOLOGY

Brian Simpson coined the term 'legal archaeology'[21] to create a category of legal scholarship focusing on the study of common law cases. Excavating reported cases:

> in some ways resemble those traces of past human activity – crop marks, post holes, the footings of walls, pipe stems, pottery shards, kitchen middens, and so forth, from which the archaeologist attempts, by excavation, scientific testing, comparison, and analysis to reconstruct and make sense of the past. Cases need to be treated as what they are, fragments of antiquity, and gently to free these fragments from the overburden of legal dogmatics, and try, by relating them to other evidence, which has to be sought outside the law library, to make sense of them as events in history and incidents in the evolution of the law.[22]

In this context, rather than representing a legal case as a discursive doctrinal site, an archaeological dig promotes deeper understanding of law and appreciation of micro-level details and distinctive origins. By 'digging into the background and the context of famous legal disputes',[23] 'piecing together broken shards'[24] and 'shedding light on how things have come to be'[25] it captures the situated legal practices and performative dimensions of the reported case.

Rediscovering and reconstructing case narratives by using legal archaeology is a systematic process that involves sifting not only primary legal sources (official case files, court records and judgments)

20 Nottingham (n 18 above) S22–29.

21 A W B Simpson, *Leading Cases in the Common Law* (Oxford University Press 1995) 12.

22 Ibid.

23 R W Gordon, 'Leading Cases in the Common Law by A W Brian Simpson' (1997) 95(6) Michigan Law Review 2044–2054, 2044.

24 J L Maute, 'Response: the values of legal archaeology' (2000) 2 Utah Law Review 223–247, 224.

25 C Jones and J Montgomery, 'Competing narratives in a case biography: a tale of two citadels' (2020) 00(0) Journal of Law and Society 1–29, 4.

but also non-legal sources (newspapers and magazines, professional journals, lawyers' archives and public records).[26] Empirical fieldwork interview sources also play an important role in developing a fuller and enriched narrative.[27] Lombardo acknowledged their importance and stated:

> this short list [of resources] is merely a starting point to provide assistance for those who may wish to step beyond appellate opinions in a search for the factual complexities of actual cases, and dirty their hands in the kind of digging that can sometimes yield the 'rest of the story'.[28]

Scholars have highlighted the rationale and value of legal archaeology to reconstruct the case in its historical, social, and political context. This includes bringing the 'invisible'[29] or 'insignificant'[30] facts or events to the forefront as 'intimate factual details',[31] developing a richer narrative that helps 'harness an individual's passion for justice by developing legal skills',[32] 'integration of data for a balanced insight',[33] producing knowledge on experience that 'encompasses specificity, historicity, situatedness, contextuality and narrativity of meaning ... [mirrors] pragmatism and its offshoot, legal realism ... [rather than] abstraction or atemporal universality',[34] and untangling the legal struggles and tracing the movement strategies by the legal community within institutional boundaries to be 'translated to [the] public sphere'.[35] However, critics such as William Twining argue that lack of focus with no generally accepted methodology reduces the relevance of the theory and considers the case as 'only passing reference to doctrine ... what is the point?... [and] Why should we read them? What are we supposed to do with them? What are they good for?'[36] Despite this criticism, legal archaeology envisages 'cases more broadly',[37] 'free from the overburden of legal dogmatics, and [tries to]

26 P A Lombardo, 'Teaching health law legal archaeology: recovering the stories behind the cases' (2008) Journal of Law Medicine and Ethics 589–593.
27 Nottingham (n 18 above) S24.
28 Lombardo (n 26 above) 592.
29 W Twining, *Law in Context: Enlarging a Discipline* (Clarendon Press 1997) 170.
30 Nottingham (n 18 above) S19.
31 Ibid.
32 Maute (n 24 above).
33 Jones and Montgomery (n 25 above).
34 D L Threedy, 'Legal archaeology: excavating cases, reconstructing context' (2006) 80(4) Tulane Law Review 1197–1238, 1201.
35 Novkov (n 19 above) 359.
36 Twining (n 29 above) 169. See also W Twining, 'What is the point of legal archaeology?'(2012) 3(2) Transnational Legal Theory 166–172.
37 D L Threedy, 'Unearthing subversion with legal archaeology' (2003) 13(1) Texas Journal of Women and the Law 133–148, 145.

relat[e] them to other evidence … to make sense of them as events in history and incidents in the evolution of law'.[38]

In legal archaeology, the recognition of the human story and lived experiences is invaluable and raises new and important issues. Storytelling, as a powerful human experience, unravels the narrative process to 'listen to voices … that may have been shut out … which have been long silenced …'.[39] We are influenced by Debora Threedy's view that 'there is much to be learned from a case that does not show up in the "official" narrative in the reported opinion'.[40] Exploring competing narratives not only through legal arguments and literature but through 'obscured'[41] people's voices helps reconstruct the case. The human story focuses on the lived experiences that are 'grounded in the particulars of their social reality and experience'.[42] Acknowledging and valuing the real-life experiences of people involved, Nottingham supports Wilson's claim that '[l]egal reasoning … is only half of what is in the law reports. The other half is the human story of who has come to the court and why.'[43] By drawing attention to this focus, the construction of the human story through lived experiences can be a strategic and instrumental tool in developing the case narrative. John Noonan in his book *Persons and Masks of the Law*[44] highlights the humanistic angle by stating:

> the law not as a set of technical skills which may be put to any use but as a human activity affecting both those acting and those enduring their action … No person itself, the law lives in persons. Human beings form rules of law to shape the attitude and conduct of human beings and applied by human beings to human beings. The human beings are persons. The rules are communications uttered, comprehended, and responded to by persons. They affect attitude and conduct as communications from persons to persons. They exist as rules—not as words on paper—in the minds of persons.[45]

The evidence of human voices and lived experiences presented through stories creates space to challenge conflicting narratives within the legal system that can be misrepresented due to 'exclusivity of dominant structures that subject "others" to exist outside the spaces of the law's

38 Ibid 134.
39 D R Papke, *Narrative and the Legal Discourse* (Deborah Charles 1991) 32.
40 Threedy (n 34 above) 1197.
41 Jones and Montgomery (n 25 above) 1.
42 J Matsuda, 'Public response to racist speech: considering the victim's story', (1989) 87 Michigan Law Review 2320–238, 2324.
43 Nottingham (n 18 above) S19.
44 J T Noonan, *Persons and Masks of the Law* (University of California Press 2002).
45 Ibid xix and 4.

legitimacy'.[46] By mobilising the notion of human experience and objectifying the space of dominant narrative, legal archaeology creates a 'gesture of responsibility'[47] towards voices that were excluded or misrepresented to explain factual accounts and how the legal system responded to them.

However, these human stories and lived experiences are not necessarily neutral, value-free, or certain. Politics or deep-rooted interests may manipulate the living experiences to legitimise histories and the case narrative. Lorraine Code makes this point:

> there are stories in which, by their nature, however fluid, they could not play a part. So, there are true stories, if perhaps not True ones. There is something to go on, even though it is not as neat or as clean as scientific and legal and other practitioners long have wished.[48]

Despite the limitation, the human story discloses a narrative of 'rifts and struggle' within the legal system and the 'ultimate resolution of these tensions in terms that relate the resolution to power and ideological transformation'.[49] Thus, legal archaeology, by embedding the human story in a case narrative, provides a kaleidoscopic rather than a single account of the legal event so neatly settled in the law report.

The methodology of legal archaeology is criticised as 'not rigorous enough, not difficult enough … and impractical'.[50] However, it is not about finding information but providing specificity and analysis through explanations and causal connections. This helps evolve methodology about the operation of law in society. In this context, we appreciate Emma Nottingham's phased methodological approach to the legal archaeology case method.[51] The metaphorical approach:

> reconstructs a case narrative in a way that embraces its random and variable history and appreciates its unique and subjective origins … makes the methodology more rigorous and transparent by adding structure and organization to the process of investigation to respond to criticisms regarding lack of focus, sensationalism, and distance from doctrine.[52]

Nottingham constructs four main phases of the legal archaeology case method: (1) surveying the ground, (2) excavating, (3) on-site interpretation, and (4) post-excavation analysis.

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46 D Watkins, 'Recovering the lost human stories of law: finding Mrs Burns' (2013) 7(1) Law and Humanities 68–90, 70.

47 Ibid 73.

48 L Code, 'Stories people tell' (1986) 16(3) New Mexico Law Review 599–606, 605.

49 Novkov (n 19 above) 352.

50 Threedy (n 37 above)144.

51 Nottingham (n 18 above).

52 Ibid S22.

Surveying the ground determines the initial selection of a case and the justification of that decision. It helps ensure that the case is suitable for subsurface excavation of 'conflicting stories … acts that are lost when something is considered as irrelevant' and 'promote[s] exploration of issues such as motivation, context and barriers to expressions …'.[53]

Excavating unearths a range of potential sources (primary and secondary), thereby laying the groundwork to obtain archaeological information. As a systematic process, empirical and archival sources (including court records, counsel's papers, correspondence, newspaper articles and periodicals) are valuable 'artefacts'.[54] These help reconstruct the case in terms of cultural–historical and societal perspectives. It also 'uncover[s] how motivations and goals [are] disguised by legal language so that courts could be used as a public forum for debate'.[55]

On-site interpretation allows the researcher to disclose the micro-level details for the comprehensive construction of a case narrative. The goal is to create a detailed understanding by identifying 'key actors and events that contributed to the development of the case'.[56] On-site interpretation can be a 'messy and unwieldy process'.[57] Nevertheless, it may capture the subjective facts of the key actors due to their experiences and understandings, thereby creating factual ambiguity. Such accounts offer an alternative understanding to those factual explanations based on case reports.

Post-excavation analysis evaluates and interprets the case narrative to identify new layers of understanding. Its principal aims are to:

> lead researchers to make novel observations, challenge current assumptions about a case, and help to make sense of patterns of events for which we do not already have a record. Conclusions might be drawn through a comparison of the new 'unofficial' narrative with the 'official' narrative in the case report.[58]

The purpose is 'transformative and not descriptive'. It provides a contextual analysis and an invaluable and broader understanding than that found in the official report of the case.

Although Nottingham's work focuses on the importance of legal archaeology as a tool for case study research, the application of her four-stage process to the Bullet Train Judgment produces credible evidence that supports her analytical approach. Though doctrinal methods continue to dominate reading and writing about legal

53 Ibid S23.
54 Ibid S24.
55 Ibid.
56 Ibid S26.
57 Ibid S25.
58 Ibid S27.

cases, they are not sufficient to capture the complex legal-ideological interlinked discursive struggles and underlying pervasive politics. Consequently, the use of legal archaeology, rather than the doctrinal case study methodology, is preferred to 'piece together micro-level details',[59] thereby providing an alternative 'unofficial narrative that is not reflected in the official reported opinion'.[60] By reconstructing the narrative, the legal archaeology analysis provides distinctiveness through the human stories and lived experiences. It highlights the social reality of exclusion, misrecognition and misrepresentation of the affected farmers due to dominant powers and institutional structures. Here, we present a contrasting picture of the Bullet Train Judgment based upon an examination of empirical and archival sources by employing Nottingham's four-stage process.

LEGAL ARCHAEOLOGY AND ITS APPLICATION TO THE BULLET TRAIN JUDGMENT: A CASE STUDY

This section deals with the four main phases of legal archaeology as developed by Nottingham and is applied as a case study through the Bullet Train Judgment. Nottingham's work suggests that undertaking the phased approach facilitates legal scholarship that moves beyond traditional doctrinal analysis and better appreciates the distinctive and subjective origins of the case.

Surveying the ground

Legal archaeology is typically used to examine historic cases. However, Nottingham states that there is no justification to time-bound this methodology. A scholar may have a variety of tools in their toolbox if they want to conduct a legal archaeology study of a recent case.[61] We clarify the intellectual basis for selecting the Bullet Train Judgment relating to the land acquisition in the State of Gujarat. The specific context of human stories and lived experiences allows the examination of a range of information prior to its interpretation and summary by the lawyers and placement before the judges. It reveals the subtleties of a case story and the narrative power to clarify the circumstances and justifications that led to the court case. However, a nuanced analysis of the judgment requires a deeper understanding of the underpinning constitutional and statutory legal requirements in the historical and current context. Accordingly, the first phase, surveying the ground, is divided into three subsections, namely the interconnection of the Indian Constitution, the statutory framework, and the official judgment.

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59 Ibid S18.
60 Threedy (n 34 above) 1197.
61 Nottingham (n 18 above) S30.

The Indian Constitution and land acquisition

Indian constitutional discourse on compulsory land acquisition has focused on eminent domain. The right of eminent domain is the right of the sovereign state, through its regular agencies, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the state, including private property, on account of public exigency and interest, general welfare, and for the public good.[62] Historically, the constitutional provision on right to property under article 31 gave the state the power of acquisition of a private property, with a guarantee of compensation to be fixed or determined according to the criteria laid down in the statute itself.[63] The acquisition by the state was in compliance with the Directive Principles of State Policy which ensured 'a more egalitarian society with a distribution of resources that would subserve the common good'.[64] The intention of distributing the material resources of the society, which included obtaining and using private property for public purposes promoted the 'welfare of the people … social order in which justice, social, economic and political, shall inform all the institutions of the national life'.[65] Thus, the law mandated that state acquisition has two conditions: it is for a public purpose and the divestiture requires compensation for the acquisition.[66]

With time, the Indian Supreme Court has linked the acquisition power with article 300A as a constitutional right and vitalised

62 Bullet Train Judgment (n 16 above); *Bernard Francis Joseph v Government of Karnataka* 2025 INSC 3; *Hindustan Petroleum Corporation Ltd v Darius Shapur Chenai* (2005) 7 SCC 627.

63 Article 31 protected the fundamental right to be free from property deprivation unless authorised by law and provided for compensation for the property taken possession of or acquired. However, the 44th constitutional amendment in 1978 removed art 31 from the list of fundamental rights. For a scholarly debate, see G Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966) 84–99; H C L Merillat, 'The Indian Constitution: property rights and social reform' (1960) 21 Ohio State Law Journal 616–646; R S Gae, 'Land law in India: with special reference to the Constitution' (1973) 22 International and Comparative Law Quarterly 312–328.

64 T Allen, 'The revival of the right to property in India' (2015) 10(1) Asian Journal of Comparative Law 23–52, 26. Part IV of the Indian Constitution deals with non-justiciable affirmative directive principles of state policy that outline socio-economic goals and promote the welfare of the people.

65 Ibid.

66 Bullet Train Judgment (n 16 above) 622. See also *Jaganath Prasad Gupta v Union of India* 2024 SCC Online Cal 11276; *Anand Singh v State of UP* (2010) 11 SCC 242; *State of Maharashtra v Reliance Industries Limited* (2017) 10 SCC 713.

the scope within the overarching principle of the rule of law.[67] Article 300A states that no person shall be deprived of their property save by authority of law.[68] It enables the state to:

> put restrictions on the right to property by law. That law must be reasonable. It must comply with other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive or what is beyond what is required in public interest … no[r] be disproportionate to the situation or excessive.[69]

Article 300A is both a constitutional right to property[70] and a human right in a welfare state[71] but is not a fundamental right. Forcefully dispossessing a person of their private property without due process of law would be a violation of both a human right and a constitutional right under Article 300A. In *N Padmamma v S Ramakrishna Reddy*,[72] the Supreme Court stated:

> if the right of property is a human right and also a constitutional right, the same cannot be taken away except in accordance with law. Article 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300-A of the Constitution of India, must be strictly construed.[73]

In 2024, in *Kolkata Municipal Corporation v Bimal Kumar Shah*[74] the Supreme Court widened the right to property and acquisition nexus to include seven intersecting and interconnected sub-rights to constitute as a whole. These are the right to notice, right to be heard, right to a reasoned decision, duty to acquire only for public purpose, right of restitution or fair compensation, right to an efficient and expeditious process, and the right of conclusion. As foundational concepts, these seven sub-rights are synchronised in both laws and administrative actions relating to compulsory acquisitions. For the Indian judiciary,

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67 With effect from 20 June 1979, art 300A was added by the Constitution (44th Amendment) Act 1978.

68 For a scholarly debate about the nature of the right to property, see M Seervai, *Constitutional Law of India* (NM Tripathi 1992) 1354–1427; D D Basu, *Shorter Constitution of India* (Wadhwa 1999) 873–877; R R Babu, 'Constitutional right to property in changing times: the Indian experience' (2012) 6(2) Vienna Journal on International Constitutional Law 213–247.

69 *KT Plantation Private Limited v State of Karnataka* (2011) 9 SCC 55.

70 *State of Bihar v Project Uchcha Vidya* 2006 (2) SCC 545; *Chairman, Indore Vikas v M/S Pure Industrial Cock & Chem* (2007) 8 SCC 705; *M/S Entertainment Network v M/S Super Cassette Industries Ltd* 2008 (9) SCALE 69.

71 *Vidya Devi v State of HP* (2020) 2 SCC 569.

72 *N Padmamma v S Ramakrishna Reddy* (2008) 15 SCC 517. See also *Tukaram Kana Joshi v MIDC* (2013) 1 SCC 353; *Lachhman Dass v Jagat Ram* (2007) 10 SCC 448.

73 *Padmamma* (n 72 above) 526.

74 *Kolkata Municipal Corporation v Bimal Kumar Shah* (2024) 10 SCC 533.

conditions such as public purpose, reasonable and fair compensation, procedural safeguards, rehabilitation, and resettlement are central to the wellbeing, development, identity, history, and culture of vulnerable poor communities including people dependent on land. Thus, the deprivation of property can only be done subject to strong safeguards against arbitrary acquisitions, hasty decision-making, and unfair redress mechanisms.

Statutory framework on land acquisition

The statutory framework also reflects compulsory acquisition in the two primary legislations – the Land Acquisition Act 1894 (now repealed)[75] and the LARR Act 2013. The Land Acquisition Act 1894, an archaic law passed during the British Raj, made the 'power of eminent domain solely for executive determination, and thus non-justiciable … the expression "public purpose" was ambiguous … unexplained and unreasonable delay in the payment of compensation and such delay damaged both the acquirers and the landowners'.[76] In independent India, the Land Acquisition Act 1894 continued to operate and allowed the Government to acquire private land for public purposes and also for companies undertaking developmental activities considered beneficial to the general public. The use of the 1894 Act was subject to controversies and acrimonious debate. These included the broad scope of interpretation of public purpose thereby giving the Government wide discretionary powers, non-compliance with the procedural formalities, arbitrary compensation without any standardised and fair market-value guidance, and no added provisions of rehabilitation and resettlement packages to the affected people or communities.[77] Further, a report by the Centre for Policy Research[78] states that the 1894 Act:

> created a situation whereby the central and state governments could apply differential principles of compensation for acquisition of land situated in the same state according to the object of acquisition and

75 The Land Acquisition Act 1894 passed by the British Government was too narrow, lacked humanitarian touch and a sense of justice. It was repealed by the LARR Act 2013.

76 S Bhat and Y R R Babu, 'Contemporary issues and challenges of land acquisition law in India: a critical analysis' (2016) 3(3) In-Law Magazine National Law School of India University 6–10.

77 M Mitra, 'Relevancy of the right to fair compensation and transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 In India' (2024) 12(4) International Journal of Creative Research Thoughts 1445–1448; B Isainee, 'Land acquisition Acts in India: a critical analysis' (2019) 5(5) International Journal of Law 77–79.

78 N Wahi et al, 'Land Acquisition in India: A Review of Supreme Court Cases from 1950 to 2016' (Centre for Policy Research 2017) 15.

> their subjective discretion, thereby creating manifest injustice … there existed a serious imbalance of power between the state and individuals … [t]his imbalance existed at two levels, first at the level of legislation as embedded in the text of the law and second, at the level of executive implementation of the law.[79]

To correct the above-mentioned defects and redress the imbalance of power, the Indian Parliament enacted the LARR Act 2013. The primary promoters of the 2013 Act, Jairam Ramesh and Muhammad Ali Khan, stated that the law was 'drafted with the intention to discourage land acquisition. It was drafted so that land acquisition would become a route of last resort.'[80] Through a facilitative and collaborative process, the preamble of the LARR Act envisions ensuring a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families. The emphasis is on people's involvement and participation, social cohesion and community development, and an inclusive process through consultation with the institutions of local self-government.[81]

The LARR Act is commendable because it strives to change affected individuals, previously burdened by development, into partners. According to Ramesh and Khan, the 2013 Act is founded upon 'five pillars – fairer compensation, consensual acquisition for a clear public purpose, rehabilitation and resettlement for displaced families, a marked reduction in the powers of the Collector and an effective appellate mechanism'.[82] Therefore, the Act's important elements include: a broad definition of 'people interested', encompassing title holders to livelihood losses; enumerated listing that constitutes public purpose; greater participatory mechanisms through social impact assessment (SIA) and provisions for consent; limiting the invocation of the urgency clause; a standardised formula for enhanced, equitable and fair compensation, including the solatium amount; and providing rehabilitation and resettlement benefits for both affected and displaced families. The basic purpose is to improve their social and economic conditions, post-acquisition of land. The Act aims to ensure that the land sought to be acquired is not subject to uncertainty and the

79 Ibid.

80 J Ramesh and M A Khan, *Legislating for Justice: The Making of the 2013 Land Acquisition Law* (Oxford University Press 2015) 70.

81 See *Deputy Commissioner and Special Land Acquisition Officer, Bangaluru v SV Global Mill Limited, Chennai* ILR 2020 Kar 1897.

82 Ramesh and Khan (n 80 above) 11.

endless passage of time and that the affected parties are not prejudiced on account of the acquisition sought to be made by the authority.[83]

Despite the LARR Act changing the manner of the acquisition of land:

> Jairam Ramesh and Muhammad Ali Khan, admit that it was more a 'disabling' law than an 'enabling' one for land acquisition .... It had limited effect on the 'development versus rights' debate, and both the industry and some bureaucrats believed it made building infrastructure much more challenging.[84]

The reason being that issues including the requirement of consent, fair and just compensation, and procedural requirements of SIA became hugely contentious with far-reaching consequences.[85] Both the central and state governments experienced inability to acquire land for infrastructure and development. The LARR Act was regarded as 'anti-development ... [resulting in] project delays ... a highly complicated process of acquisition which renders it difficult or almost impossible to acquire land'.[86] Consequently, the Government used its executive power to introduce the LARR Ordinance in order to amend the LARR Act 2013.[87] Having far-reaching consequences, the LARR ordinance exempted land acquisition for five sectors: (i) defence; (ii) rural infrastructure; (iii) affordable housing; (iv) industrial corridors; and (v) infrastructure projects including public–private partnership projects where the central Government owns the land.[88] These sectors would not require the approval of 80 per cent of affected landowners nor require a SIA study.[89] The then Finance Minister Arun Jaitley observed 'historically, the power to acquire the land is a sovereign power ... the amendment ... balances the developmental needs of India, particularly rural India, while still providing enhanced compensation to the land owners'.[90] Though industry welcomed the ordinance, it faced stiff opposition in Parliament and farmers' protests on the

83 See *C Lajith v State of Kerala* 2024 SCC OnLine Ker 9; *Aman Sharma v State (NCT of Delhi)* 2022 SCC OnLine Del 3576; *Mihin Laling v State of Arunachal Pradesh* 2022 SCC OnLine Gau 2146.

84 Chakrabarti and Sanyal (n 6 above) 297.

85 Wahi et al (n 78 above).

86 I R Chowdhary and P R Chowdhary, 'Holdout and eminent domain in land acquisition' (2016) 51(1–2) Indian Economic Review 1–19, 6. See also ET Bureau, 'Changes in land laws balance development, compensation: FM Arun Jaitley' *Economic Times* (Delhi 5 January 2015).

87 The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance 2014 (No 9 of 2014).

88 Ibid s 10A.

89 Ibid.

90 P K Nanda, 'Arun Jaitley defends land acquisition amendments' *Livemint* (Delhi 5 January 2015).

ground.[91] Ramesh and Khan were highly critical of these amendments and stated:

> consent and Social Impact Assessment process had been hardcoded into the DNA of the law. Acquisition had become a tool for the use of brutal force by the State … now with this step … had returned us to the days of the British enacted law where our citizens enjoyed no say in their development.[92]

However, the amending ordinance lapsed in 2015 as it was not put to the vote in the upper house of the Indian Parliament (Rajya Sabha).

Nevertheless, the provisions of the lapsed LARR ordinance amendments were substantially incorporated by the State Government of Gujarat[93] alongside several other states.[94] These state amendments result from the Indian Constitutional provision that places 'land' as a state subject,[95] and 'acquisition and requisition' of property under the concurrent list.[96] These amendments expanded the powers of the state and project proponents but at the same time 'diluted progressive provisions of the LARR Act'.[97] Social activists claimed that the 'state amendments were invading the constitutional rights of citizens as key aspects like consent and SIA provisions, objections by affected citizens, the participation of representative local bodies in acquisition of land have been exempted'.[98] Despite criticisms, states proceeded with the respective amendments.

The official story: Jigarbhai Amratbhai Patel v State of Gujarat *(Bullet Train Judgment)*

We now review the official case narrative that underpinned the Gujarat High Court decision in the case of *Jigarbhai Amratbhai Patel v State of Gujarat*.[99] The case study is an important enquiry point to apply

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91 N Wahi, 'How central and state governments have diluted the historic land legislation of 2013' *Economic Times* (Delhi 14 April 2018); D Sathe, 'Land Acquisition Act and the Ordinance: some issues' (2015) 50 (26–27) Economic and Political Weekly 90–95.

92 Ramesh and Khan (n 80 above) 128.

93 The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 Gujarat (Act No12 of 2016).

94 See the State Amendment laws in Rajasthan, Maharashtra, Telangana, Jharkhand, Tamil Nadu, Andhra Pradesh, Karnataka and Haryana.

95 The Constitution of India – Seventh Schedule, List II (Entries 18, 45, and 49).

96 The centre and states can make laws on subjects enumerated in the Concurrent list; Acquisition and Requisition fall under Seventh Schedule, List III (Entry 42).

97 Wahi (n 91 above).

98 India Today Web Desk, 'What is 2013 Land Acquisition Act and why social activists filed a petition against state amendments to the law' *India Today* (Delhi 12 December 2018).

99 Bullet Train Judgment (n 16 above).

the legal archaeology framework. By summarising the facts of the case and the court's *ratio decidendi* the article critically analyses whether the key stakeholders' stories and their lived experiences were ignored, misrepresented, or excluded by the dominant official case narrative. Through legal archaeology, we create a stage for those voices, 'each with their own meanings, understandings, and lives … envisioned as valuable, agentic subjects rather than passive research objects'.[100]

The Bullet Train Judgment relates to petitions filed by farmers, agriculturalists, and holders of land in various areas of Gujarat. Their land was to be acquired for a public purpose. The petition was filed as a special civil writ petition under article 226 of the Constitution of India to enforce their constitutional and legal rights.[101] It involved the construction of an infrastructure project, the Mumbai–Ahmedabad High Speed Bullet Train linear project. As a collaborative venture between the Governments of India and Japan, the objectives included the reduction of traffic pollution, strengthening intra-regional connectivity, boosting construction activity, the technological enhancement of railways, long-term infrastructure development, the creation of temporary and permanent employment, a reduction in greenhouse gas emissions due to more efficient transport options, and the development of a state-of-the-art manufacturing and software ecosystem.[102]

The Gujarat Government started the land acquisition process through the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat) Act 2016 (herein after referred as the State Amended Act to the Principal Act, the LARR Act 2013). Under section 10(A) read with section 2(1) of the Gujarat State Amended Act,[103] infrastructure projects, including public–private partnership projects, were exempt from the application of the provisions of chapters II and III of the 2013 LARR Act. This

100 E Whittingdale, 'Becoming a feminist methodologist while researching sexual violence support services' (2021) 48 Journal of Law and Society S10–27, S13.

101 The Indian court hierarchy is a three-tiered integrated system with the Supreme Court at the apex, followed by a High Court in each state, and base-level Subordinate Courts working under the superintendence of the higher courts. The Supreme Court (art 32) and High Courts (arts 226 and 227) are constitutional bodies with extensive jurisdictions including original (writ), appellate and inherent. In the Bullet Train case, the affected farmers filed their case in the High Court of Gujarat. The farmers argued that their land acquisition in Gujarat was unreasonable, arbitrary and without giving adequate compensation, and hence violative of their constitutional and legal rights.

102 National High Speed Rail Corporation Limited, 'Supplemental Environmental Impact Assessment Report (Volume-I: Main Report) for Mumbai-Ahmedabad High Speed Railway Project' (2018) 2.

103 Gujarat Act (n 93 above).

meant that the mandatory SIA provision was inapplicable to the bullet train project, the justification being that, to attract investment for infrastructure development, the procedural part of land acquisition should be faster and less cumbersome.

The petitioners claimed that as SIA is the nucleus of the LARR Act 2013 its exemption by the state Government was illegal and suffered from the vice of excessive delegation. Further, the requirement of awarding fair and just compensation, which is at the heart of land acquisition, reflected arbitrariness and illegality. Intertwined issues relating to consultation, consent, market value, and lump-sum amounts were not followed in the spirit of the law and hence violate the legislative policy, right to life and equality, and the rule of law. However, the state governmental authorities and the National High Speed Rail Corporation (respondents, hereinafter referred to as authorities) argued that the entire land acquisition was carried out according to the legal requirements, thereby ensuring transparency and fairness. The authorities claimed that the land acquisition was undertaken after assessing the strategic public purpose and appropriate consultation with the stakeholders. The Bullet Train Judgment also raised constitutional issues[104] but these are beyond the scope of this article, the reason being that we focus on the subset of human issues and the competing narratives in the legal process and judicial determination.

In its decision, the High Court of Gujarat favoured the 'development' discourse and declared the bullet train project both valid and legal. The court stated:

> Mumbai Ahmedabad High Speed Rail Project is linear in nature and also for industrial growth and other ancillary benefits including manufacturing of various components and generating employment needs special treatment and timely execution of the project … persons and property affected by determining criteria of computation of compensation and rehabilitation and resettlement is to be undertaken in accordance with law, we find that there is no arbitrary exercise of powers … [and] appropriate level consultation before making acquisition of the land in the scheduled area for development purpose is being undertaken.[105]

Discontented and dissatisfied, 50 special leave petitions were filed in the Supreme Court of India representing about 2500 affected farmers[106] and they await a hearing date.

By focusing on human stories and lived experiences, we examine accounts, some contradictory, regarding the Bullet Train Judgment on

104 These include arts 73, 200, 254(2), 258, 300A, Entry 42 List III Seventh Schedule.

105 Bullet Train Judgment (n 16 above) 36, 48 and 49.

106 D Dhar, 'Supreme Court issues notice to all stakeholders of bullet train project' *News Click* (18 January 2020).

land acquisition in Gujarat. Decoding the experiences of the farmers whose lives and livelihoods are intimately connected with the land, we investigate and fill knowledge gaps about the ground realities regarding the reach, effectiveness, and impact of the court's interpretation of the Gujarat State amendment of the LARR Act 2013. This living account provides greater receptivity to the many voices within the affected communities (farmers in this case) and unravels social reality within the matrix of domination and inequitable structural systems. The creative dialectic discourse makes the '"invisible" become "visible" ... stories of underdogs challenge the status quo ... open new windows of reality ... quicken and engage conscience'.[107]

By unearthing these contradictory stories, we examine law as written and law as experienced and explore the complexities and ambiguities of law. Our position is best summed up by Massaro's emphasis on story-telling as a 'part of an overall "call to context" which is directed at jurisprudential and normative ends'.[108] From the jurisprudential end, Toni Massaro states:

> academics, judges, and lawyers often juggle concepts and spar with abstractions, without consulting the human concerns actually at issue in their deliberations. Stories can shock them back into sensation, into life as it is versus how we talk about it. Stories are one way to bring law down to life, to the people, 'to the ground'.[109]

The normative end focuses on:

> all voices are equal, and that diversity of voice should be a paramount political value. Human dignity – each storyteller is an end, not a means – seems to be an implicit normative principle of the legal storytelling approach.[110]

Thus, mindsets, or the underlying assumptions that shape legal discourse, can be challenged using storytelling and lived-experience narratives.[111]

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107 R Delgado, 'Storytelling for oppositionists and others: a plea for narrative' (1989) 87 Michigan Law Review 2411–2441, 2414–2415.

108 T M Massaro, 'Empathy, legal storytelling, and the rule of law: new words, old wounds?' (1989) 87 Michigan Law Review 2099–2127, 2105.

109 Ibid.

110 Ibid 2106.

111 Delgado (n 107 above) 2413.

Excavating

To understand the 'rest of the story',[112] various sources of materials play a key role in exposing the legal landscape of the case. As a prepared plan, these materials, identified as 'artefacts',[113] provide different and helpful insights often obscured by the official narrative.

We investigated the Bullet Train Judgment by examining the 'artefacts' that include the official judgment, government notifications and reports, papers of lawyers, newspaper reports, and empirical stories data. These 'artefacts' helped map the way in which 'legal disputes become cases – coming before a judge for adjudication ... and were reshaped by legal processes ... we should not ignore the specific dynamics of the way in which cases develop'.[114]

Importantly, this article builds upon and examines original empirical fieldwork data collected in Gujarat from 2022–2024. A qualitative method was employed to obtain valuable, indepth research data and insights. The data was collected from the Ahmedabad, Bharuch and Surat districts in the State of Gujarat affected by the bullet train project. These districts as field-work sites provided a unique multi-level lens to examine the project beyond the official judgment of the bullet train case.

The main focus of empirical research is 'on analysing how legislators enact and implement legal regulations and how these regulations affect the behaviour of those to whom they are applied'.[115] Empirical enquiry contributes to the belief that 'it is better to have more systematic knowledge of how the legal system works rather than less, regardless of the normative implications of that knowledge'.[116] It opens up realities of contrasting paradigms in the process of acquiring knowledge. An explanation of why people approached the court brought us closer to understanding and revealing their experiences about their journeys within dominant powers and institutional structures. In this context, the key actors, namely, the affected farmers, agriculturists, holders of land, farmers' union (Khedut Samaj), village councils, activist non-governmental organisations (NGOs), and lawyers representing the farmers provided a wide range of perspectives and insights. Maximum variation stratified sampling was employed to capture a variety of perspectives and insights affected due to land acquisition proceedings. The second and third authors, through their well-established grassroots

112 Nottingham (n 18 above) S24.

113 Ibid.

114 Jones and Montgomery (n 25 above) 5.

115 A J Wulf, 'The contribution of empirical research to law' (2016) 29(1) Journal Jurisprudence 29–49, 32.

116 T T Eisenberg, 'The origins, nature and promise of empirical legal studies and a response to concerns' (2011) 5 (974) Cornell Law Faculty Publications 1713–1738, 1720.

activities, are known to the local village farmers, and they effectively acted as our bridgebuilder to collect the data. Consequently, local farmers chose to participate in the research to share their experiences of the land acquisition process. Methods including field visits, observations, contextual inquiry, the narrative interview approach and interactive focus-group meetings with the farmers, farmers' unions, village councils and NGOs were employed for data collection. These methods provided information that deepened our understanding of the rural farmers' concerns, interests and hardships of their shared struggle. For the lawyers involved in the land acquisition litigation, semi-structured and open-ended interviews were used to collect the data. In total, 70 interviews were undertaken. The interviewees – classified as 'FU' (farmers' union), 'AFAHL' (affected farmers, agriculturists, holders of land), 'ANGOs' (activist NGOs), 'L' (lawyers) with corresponding numbers – voiced their opinions which helped us address the legal epistemology of the Bullet Train Judgment. The interviews were recorded and subsequently transcribed. Individual permission to use all recorded material was obtained.

Unfortunately, accessing governmental and regulatory authorities and bullet train project officials was unsuccessful. The meeting and interview requests were responded to either negatively or ignored. The official position in this article is gathered from counsel's arguments and evidence submitted to the High Court of Gujarat and reflected in the Bullet Train Judgment.

The empirical Indian fieldwork demonstrates the value of 'illuminating legal struggles'[117] faced by the key actors within the 'porous'[118] legal institution (High Court of Gujarat in this case) that is not apparent by reading the judgment. Human stories and lived experiences provide a rich ontology and bring fresh perspectives to analyse land acquisition and contexts with a view to understanding the extent of contradictory stories and the impact of the land acquisition on the lives of the affected farmers. 'Injustices in material conditions and normative expressions, within societal structures and institutions … [that are] lived, expressed, and reproduced'[119] as experienced during land acquisition proceedings prompted us to examine the 'official' versus 'contradictory' narratives through objectivity and logic. Thus, legal archaeology provides insights from 'critical studies of law and society … to understand legal institutions as fluid entities through which ideologies, cultural values and state policies interact'.[120]

117 Novkov (n 19 above) 348.

118 Ibid.

119 A Kaijser and A Kronsell, 'Climate change through the lens of intersectionality' (2014) 23 Environmental Politics 417–433, 419.

120 Novkov (n 19 above) 348.

On-site interpretation

This phase focuses on constructing a narrative that involves unravelling facts that, as Nottingham states, 'acknowledges factual indeterminacy. These sorts of accounts present a very different picture from the fact patterns discovered in case reports.'[121] By using our 'artefacts', especially the interviews with key actors, we document their stories and lived experiences thereby conceiving a coherent narrative, although variability and subjectivity cannot be ruled out. Through the 'mess of raw data',[122] contradictory stories highlight that 'law is a site for contestat[ion]'[123] and legal archaeology helps analyse 'the conflicts among the amalgam of narratives'.[124]

Legal archaeology augments the suppressed voices of key actors by providing an expressive and listening platform for their struggles and challenges. This is further strengthened through public domain materials including newspaper reporting. In this context, this sub-section examines three aspects of the Bullet Train Judgment, namely: grassroot movement versus legal proceedings; participatory parity (public hearing and consultation); and compensation. These aspects reflect how counter-stories 'open a window of reality … quicken and engage conscience … and stir imagination'[125] that a doctrinal or official discourse is unable to provide. We now move to locating and reviewing the lived experiences of these three aspects through semi-structured narrative interviews and focus group interactions and corroborated by publicly available material.

Grassroot movement versus legal proceedings

Is recourse to the law courts the most effective way to solve *lis inter-partes*? In the Bullet Train Judgment, the conflict was not simply about affected individuals but also between interest groups. The fundamental question was whether the land acquisition conflict could be resolved by relying on a grassroot protest movement or within a court of law. We unpick the bifurcated approaches that explain the strategies and tactics of how the bullet train case originating in a grassroot movement ultimately reached the court. It reveals the role of farmers' networks (farmers, agriculturists, landholders, farmers union, activists, and lawyers) in the construction and development of the case. This expands

121 Nottingham (n 18 above) S 2.

122 Threedy (n 37 above) 146.

123 A Shalleck, 'Pedagogical subversion in clinical teaching: the Women & The Law Clinic and the Intellectual Property Clinic as legal archaeology' (2003) 13 Texas Journal of Women and the Law 113–131, 129.

124 Ibid.

125 Delgado (n 107 above) 2415.

the frame and provides a richer account, 'not only in social, political, and doctrinal contexts, but also when considered over time'.[126]

Opposition to land acquisition for the bullet train project, a controversial contestation, commenced as a social movement with grassroot organisations acting as the *messiah* of the farmers' networks. Based on the 'ethos of solidarity, collectivity, and accountability',[127] the bullet train case initially gained momentum as the 'collective process of ideation and struggles for social change'.[128] A bottom-up approach acts as an incubator of social change to address local problems. It quickly gained traction due to involvement of 'local actors who understand the multifaceted contexts and issues … while also creating a sense of trust in a community …'.[129]

By galvanising hope and collective action, the local farmers' organisations and unions movement resisted land acquisition, planned future protest strategies, and adopted a solidarity stand. These activities built and deepened understanding and coordination of public receptiveness towards the challenges of land acquisition and the lived realities of the lives of the affected people. By focusing on a shared and larger vision, the grassroot movement encouraged a transformative commitment to equality and fairness. For instance, media reports highlighted the farmers' union Khedut Samaj along with activists organisations such as Paryavaran Suraksha Samiti that led the protests against the possible loss of livelihoods and unfair compensation.[130] The President of the farmers' union stated:

> 192 villages spread across six districts in Gujarat, and with nearly 2,500 families, are among those that will be affected by the bullet train project … It is not a question of compensation alone; the farmers do not want to leave their land and livelihood … The farmers are not willing to give their fertile land for the bullet train.[131]

Our interviews with the members of ANGOs exposed layers of complexity within the demands of contemporary developmental challenges. ANGOs 1 and 2 stated:

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126 Jones and Montgomery (n 25 above).

127 A A Akbar et al, 'Movement law' (2021) 21 Stanford Law Review 821–884, 822.

128 Ibid.

129 A Bettencourt, 'Grassroots organizations are just as important as seed money for innovation' (UNHRC 2025).

130 A Patil, 'Farmers protest Mumbai–Ahmedabad Bullet Train project, fear loss of livelihood, unfair compensation' *Land Conflict Watch* (April 2018); PTI, 'Gujarat: face of farmers' protest against bullet train joins BJP' *Times of India* (Ahmedabad 27 July 2020).

131 Kisansabha, 'Farmers in Central Gujarat continue protests against Bullet Train land acquisition' *AIKS News* (24 June 2018).

> on 9th August 2018 we created pressure by gathering. 70–75,000 affected farmers and tribal people to protest land acquisition for Bullet Train ...it started as an agitation but later became a movement ... the mass was connected through trust and a non-partisan movement to protect their fertile land. The true strength and dedication of farmers was witnessed when they said that they will give their life but not their land.

ANGOs 3 to 5 said:

> The Bullet Train was resisted. In the beginning (south of Baroda) it was possible to resist it. Resistance was possible by strengthening the grassroot movement through participation and inclusivity. Securing and sustaining people participation was never an issue. Court should have been the last resort.

Similarly, ANGO 3 opined:

> we should not have gone to the court. It was a strategic blunder. The movement's aggression and force are usually slowed down when people think the matter is pending in the court. The governmental authorities also do not investigate the demands as the matter is sub-judice. It dilutes the whole purpose. The option of going to the court was not good.

On the other hand, L1 provided a different account of why the legal option was the preferred way to protect the rights of the farmers. According to L1:

> the agitation never became a movement. There were fragmented voices without a collective vision and with limited people's involvement. There were only 8–10,000 farmers agitating. The grassroot activists fought more on WhatsApp and less on the ground. They did not have people's support. In fact, the affected people came to me to secure their land rights. This is only possible through court litigation by questioning the constitutionality and legality of law, as well as compensation issues. I filed more than 1,000 affidavits in the court to protect the rights of affected people.

These story-telling experiences and counter-experiences present a disconnected dialectic with an inability to ascertain the best, correct or truthful construction of social reality. These alternative versions provide insights of the reason and context about the structural conflicts between interest groups and the process by which the case formed its identity for legal contestation. Legal archaeology, thus, creates a narrative and provides an understanding against a background where a legal choice was preferred as a communal act in the top-down and bottom-up frameworks.

Participatory parity: public hearing and consultation

Participatory parity ensures that 'institutional and procedural norms guarantee all people equal opportunity … the right to participate as equal partners at every level of decision-making'.[132] Nancy Fraser asserts that the normative core of participatory parity involves the satisfaction of both objective and intersubjective conditions.[133] The objective condition entails that the 'distribution of material resources must ensure participants' independence and voice'.[134] The intersubjective condition requires that the 'institutionalized patterns of cultural value express equal respect for all participants and ensure equal opportunity'.[135] This approach ameliorates issues of inequality, recognition, and questions of citizen and community participation linked to the capabilities approach.[136]

The exercise of SIA[137] encompasses the elements of public hearing and consultation thereby reflecting objective and intersubjective conditions. In this context, the bullet train litigation must adhere to both the Indian and Japanese SIA laws. The LARR Act 2013 mandates SIA before any land acquisition for public projects.[138] One of the legal requirements of SIA includes a public hearing and consultation to ascertain the views of affected people after giving adequate publicity about the date, time and venue.[139] The public hearing involves understanding and collating the grievances and objections of project-affected communities and addressing their concerns. It ensures that 'the governed should engage in their own governance' and that 'proposed developments are compatible with, and do not compromise, the environment and interests of those affected'.[140] The public hearing and consultation also reflect good governance, which includes transparency and accountability. As stated above,[141] the Gujarat State Amended Act 2016 exempted SIA for linear projects and this included the bullet train.

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132 K Shrader-Frechette, *Environmental Justice: Creating Equality, Reclaiming Democracy* (Oxford University Press 2002) 27–28.

133 N Fraser, 'Recognition without ethics?' 2001 18(2–3) Theory, Culture and Society 21–42, 29.

134 Ibid.

135 Ibid.

136 D Schlosberg, *Defining Environmental Justice: Theories, Movement and Nature* (Oxford University Press 2007) 29–33.

137 F Vanclay, 'SIA principles: international principles for social impact assessment' (2003) 21(1) Impact Assessment and Project Appraisal 5–11.

138 LARR Act 2013, ch II.

139 Ibid s 5.

140 U Etemire, 'Public voices and environmental decisions: the Escazú Agreement in comparative perspective' (2023) 12 Transnational Environmental Law 175–179.

141 Gujarat Act (n 93 above).

The bullet train project is funded by the Official Development Assistance (ODA) loan-assistance scheme. Japan's ODA Charter 2003[142] aims to enhance the strategic value, flexibility, transparency, and efficiency of developmental projects. It assures fairness and respect of the socially vulnerable and encourages wide public participation in environmental SIAs in developing countries. Further, the Japanese Government investment agency, the Japan International Cooperation Agency (JICA), is a signatory with the Indian Government for the bullet train project. JICA's Guidelines for Environmental and Social Considerations (ESC Guidelines)[143] are mandatory for loan-aid, grant-aid, and technical cooperation projects. The ESC Guidelines state that the participation of local stakeholders[144] is crucial to the execution of developmental and infrastructure projects. Thus, the project proponents should conduct a series of consultations with local stakeholders in an interactive and meaningful manner to elicit their inputs.[145] This would help plan appropriate measures to address their concerns, avoid conflict, and achieve improved results with their support. ESC Guidelines also instruct the adoption of a standard that better serves the purpose of attaining a higher level of ESC if the standard set by the host country differs from the international standards. Consequently, JICA carried out the SIA through an independent private agency, M/S Arcadis, and according to the ESC Guidelines and ODA Charter 2003.

The official narrative in the Bullet Train Judgment explicitly refers to the SIA, including the public hearing and consultation. The petitioners argued that, under the LARR Act 2013, SIA is a basic feature to retain in all cases of land acquisition. The SIA cannot be ignored on the ground that the procedure is lengthy, or the state perceives hindrances. According to the petitioners, though M/S Arcadis was commissioned under the provisions of JICA ESC Guidelines to undertake a similar exercise of SIA, there was no interactive and meaningful involvement, hearing, and consultation with local stakeholders. The respondents, on the other hand, claimed that, because of the exception of a SIA due to the amended Gujarat Act 2016, the land acquisition exercise is valid. Further, M/S Arcadis had carried out the public hearing and consultation requirements. A structured procedure akin to the provisions of the Act of 2013 was followed under the JICA ESC Guidelines. For instance, at the district level, public hearing consultations were held with interested persons. In Kheda, a public hearing was held on 25 March 2018 with

142 Government of Japan, *Japan's Official Development Assistance Charter* (2003).

143 Japan International Cooperation Agency, *The Basics of the Environmental and Social Considerations: Introduction to JICA Guidelines for Environmental and Social Considerations* (JICA 2013).

144 Ibid.

145 Ibid.

155 interested stakeholders. The High Court of Gujarat in its judgment upheld that the SIA requirement was satisfied by M/S Arcadis by undertaking an extensive survey. According to the court, 'the State Government was alive and conscious of the situation which may arise upon acquisition of land for the project of national importance … the machinery of hearing the objections was taken care of'.[146]

We critically analyse the Bullet Train Judgment from a legal archaeological aspect for ignoring critical evidence of key stakeholders, namely the AFAHL. The open-ended interviews and newspaper reporting offer an alternative narrative by identifying the judgment's factual inconsistency regarding public hearing and consultation. Through 'reconsidering what is lost when something is considered as irrelevant'[147] and barely touched upon in the judgment, we decode the stories and lived experiences of the affected AFAHL and FU. The narrative of public hearing and consultation was suppressed within the legal arguments, thereby adding 'persuasive force to the doctrinal reasoning deployed to explain judicial decision'.[148] AFAHL groups 1 to 5 each consisting of 10 to 15 members stated:

> there was no SIA undertaken including public hearing and consultation. We received no information about these hearings … all the information provided to the court is bogus or wrong. The farmers had no right to speak. Our lawyers asked us to submit an affidavit stating that no hearing process is being followed. We did the same … but the court did not bother about the same. We are devastated … where should we go.

AFAHL group 6, consisting of 17 farmers, shared their experience and felt cheated because the poor farmers had no voice in the land acquisition process. According to them:

> there was no notice or any sort of prior consultation. The authorities came and simply said your land will be acquired for the bullet train project. Get ready and prepare yourself for acquisition. We did not know anything about land acquisition. No information was provided to anyone. It has impacted on our well-being including mental health. We are in pain and demoralised.

On the other hand, AFAHL group 7, consisting of about 57 affected farmers, stated:

> there was some sort of stakeholder consultation published in a local newspaper. But these were announced on a noticeably brief period of notice … and so many people did not know about it. We were unaware about any documentation or report. We sat as mute spectators oblivious to the consequences of losing our mother (land) and livelihood.

146 Bullet Train Judgment (n 16 above) 30 and 33.

147 Nottingham (n 18 above) S23.

148 Jones and Montgomery (n 25 above) 8.

The FU leader expressed disappointment and frustration about the way the land acquisition process was undertaken without consulting the affected farmers. According to him:

> SIA, public hearing and consultation processes were simply on paper ... a farce exercise. If the public hearing meeting was fixed, the notice came in the evening one day prior to the meeting ... there was no adequate time given for affected people to know about the same. Personally, I was not given the opportunity to speak ... often I was not allowed to enter the public hearing venue ... the police detained me and other farmers leaders.

Media reporting supports the farmers' claims of being ignored by an opaque and unaccountable process. Several thinktanks and newspaper reports[149] stated that the farmers made representation to the JICA officials about non-disclosure of information and about no or ineffective hearings and consultation with the local stakeholders about the adverse impacts of the project on their lives. The authorities did not satisfactorily answer their questions. The minutes of the consultation and video documentation were not made public. Further, the authorities notified the affected persons that they were not allowed access at the consultation.

In contrast, the authorities had a different version about undertaking proper stakeholder consultation and implementing participatory processes according to the law. They stated:

> we conduct[ed] public stakeholder meetings across project-affected districts in Gujarat and Maharashtra ... we did not announce stakeholder meetings at short notice – we put out advertisements in papers well in advance ... the decision to prohibit 'unauthorised persons' from stakeholder meetings was taken to prevent 'politically motivated people, like NGOs' from "creating a ruckus" at the consultations'[150] and not 'allowed to make presentation'.[151]

Further, the authorities stated that district-wise consultation meetings were held with the affected farmers. To quote:

> We've begun district-wise consultation meetings for farmers whose land will have to be acquired. We'll have taluka-level meetings after this. The

149 R Khanna, 'Bullet train: Gujarat activists take fight to the Japanese side' *Down to Earth* (17 June 2019); Special Correspondent, 'JICA team finds norms "flouted" in Mumbai–Ahmedabad bullet train project' *The Hindu* (Ahmedabad 10 December 2018); Express News Service, 'Bullet train project: "JICA team shocked to find govt didn't follow land acquisition norms"' *Indian Express* (Surat 9 December 2018).

150 A Johari, 'Bullet train project violates Japanese investor's guidelines, claim Gujarat environment activists' *Scroll.in* (28 August 2018).

151 TNN, 'Consultancy meet for bullet train turns stormy' *Times of India* (Mumbai 10 April 2018).

> exercise is to determine the compensation that farmers will have to be paid for their land … despite farmers complaining that they were not intimated in advance, 60–70 farmers did turn up for the meeting … some 'opposition party' members tried to disrupt the meeting.[152]

Excavating this 'site' unearths a wider contestation between the legal requirements and social existence in real terms that impacted on the lives of people. Looking through the legal archaeology framework, we found that AFAHAL and FU attempted to undertake legal action on public hearings and consultation but were unsuccessful. We explored how these alternative narratives 'can be traced … not only through legal argument and commentary but also through the personnel involved, in ways that are obscured by formal records'.[153] Analysing these narratives shows how legal judgments become disconnected from litigants' reality. Judges and lawyers may argue about abstract ideas and concepts in their jurisprudential jungle without considering the human concerns at stake.[154]

Compensation

Compensation is at the 'heart of land acquisition. The amount being paid must be sufficiently fair so as to ameliorate the forcible and involuntary nature of acquisition.'[155] The Indian judiciary recognises a fair and reasonable compensation is the *sine qua non* for any land acquisition process.[156] The state and statutory authorities are legally bound to pay adequate compensation. The non-fulfilment of this obligation under the garb of industrial development is not permissible for any welfare state as that would be tantamount to uprooting a person and depriving them of their constitutional and human rights.[157] Determining and disbursing compensation amounts expeditiously within a reasonable time is central in land acquisition proceedings.[158]

In the bullet train case, the critical question about the determination of just and fair compensation was argued intensely by both the petitioners and respondents. Section 26 of the LARR Act 2013 designates the Collector to assess and determine the compensation upon market value of the land on either i) the market value as specified

152 R Seal, 'Mumbai–Ahmedabad bullet train: Gujarat farmers protest against land acquisition process' *NewsBytes* (9 April 2018).

153 Jones and Montgomery (n 25 above) 10.

154 Watkins (n 46 above) 90.

155 Ramesh and Khan (n 80 above) 48.

156 *Ultra-Tech Cement Ltd v Mast Ram* 2024 SCC OnLine 2598; *Kolkata Municipal Corporation* (n 74 above).

157 *Tukaram Kana Joshi through Power of Attorney Holder v MIDC* (2013) 1 SCC 353

158 *Kukreja Construction Company v State of Maharashtra* 2024 SCC OnLine SC 2547; *Bernard Francis Joseph* (n 62 above).

in the Indian Stamp Act, 1899 for the registration of sale deeds where the land is situated; or ii) the average sale price for a similar type of land situated in the nearest village or nearest vicinity area; or iii) the consented amount of compensation by the parties, whichever is higher.[159] The Collector before initiation of any land acquisition proceedings in any area shall take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area.[160]

According to petitioners, the determination of compensation violated the statutory law. The law mandates the revising and updating of market value by the Collector before initiation of land acquisition. The annual statement of rates or Jantri rates[161] in the State of Gujarat was last revised in the year 2011. The market value was not revised and updated by the respondent Collector. It was claimed that the failure to follow the legislative mandate made the land acquisition process arbitrary and illegal. It defeated the purpose of enhanced compensation as envisioned under the LARR Act 2013. The respondents, on the other hand, denied and disputed the interpretation of legislative mandate under section 26 of the LARR Act 2013. Any one option, as mentioned above, can be used under section 26 of the LARR Act 2013 subject to awarding higher compensation. Accordingly, the State Government issued a 2018 resolution stating that the 'indexation formula', based upon the 2011 annual statement of rates, would be adopted for farmers who have consented to give their land. The indexation formula has its roots in the 'cost inflation index' as notified by the Central Government. By applying the cost inflation index to the annual statement of rates, the farmers would receive compensation approximately 50 to 60 per cent on the higher side. It was claimed by the respondents that many landowners consented to land acquisition, and 80 per cent of the compensation was already paid to them. For the consenting landowners, the compensation included the provision of the cost inflation index and additional payment of 25 per cent on land value.

The Gujarat High Court dismissed the petition and upheld that the non-revision of the annual statement of rates is not a ground to hold that the compensation is inadequate, unfair and unjust. The LARR Act 2013 provides any of the three criteria to be adopted for determination of market value subject to whichever is higher. According to the court:

> the usage of the words 'whichever is higher' and the market value can very well be determined on the basis of the available options ... the section is to be read comprehensively ... It is not necessary for the

159 LARR Act 2013, ss 26 and 27.

160 Ibid s 26 (3).

161 Jantri rates refers to the minimum price set by the Gujarat Government for property transactions.

> land acquiring authorities to follow all three criteria as indicated in the clauses for determination of market value, if but, it is noticed that according to either of the criteria, the market value is higher, then they can adopt that particular criteria ... there is no arbitrary exercise of power.[162]

However, the Gujarat High Court provided partial relief and prospective hope to the petitioners by stating that the judgment shall have no bearing on future issues which may arise about adequacy of compensation. According to the court '[an] important factor which should weigh with the authorities is about fair, adequate and reasonable compensation to be paid by following a transparent procedure under the provisions of the [Gujarat] Amended Act read with Central Act, 2013'.[163] Thus, the issue of higher compensation remained open and farmers could approach the authorities to seek more money against their land.[164]

Understanding what worked and what did not by applying the legal archaeology framework reveals whether the law operates to the letter and spirit to ensure fair and just outcomes. For example, the consent to give land and receive compensation was a contentious issue. The court pleadings show that some landowners voluntarily consented to land acquisition. However, an FU leader revealed a starkly different picture of the landowners who gave consent for land acquisition. The FU leader stated that 'a systematic approach was used to get consent. I say with great responsibility that measures including personal and political influence, coercion, and economic incentives were employed to get consent. It was not hundred percent voluntary consent.' Some of the affected landowners from AFAHL group 5 felt 'cheated and let-down as there was breach of trust by the authorities'. According to them, giving consent for land acquisition was a big mistake. They cooperated with the authorities on the promise that high and timely compensation would be awarded that would transform their lives. However, they received a very small amount of compensation with no clarity about the total amount. The affected group felt that there was a message:

> cooperate with the authorities and then suffer. If one does not give consent and fights with the authorities, then the compensation is higher. This is so dissatisfying and demoralising. We went to the authorities to ask about our remaining compensation but we had no answers.

Disparity in compensation due to non-revision of market value remained controversial. According to the FU leader, the use of the indexation formula as approved by the Gujarat High Court is unsatisfactory. He stated:

162 Bullet Train Judgment (n 16 above) 39, 41 and 48.

163 Ibid 52.

164 Ibid 51.

> the 2013 Act nowhere mentions the indexation formula to be applied and hence it is totally unacceptable. In some cases, a piece of land, the jantri rate of which was Rs 20 per square metre, was sold to the government for Rs 4,000 and the market value was about a crore [10 million].[165]

Some farmers, AFAHL group 7, from Bharuch district expressed disappointment and stated:

> we are not against the Bullet Train project. We welcome the project but give us our due share. This land belongs to our ancestors, and our future generations are dependent on it. We are asking for fair compensation. The jantri rates have not been revised in our area since 2011. The farmers of Surat district have got the highest compensation as compared to us. Every district must be treated equally. We are totally demoralised.

Similarly, AFAHL group 8 were disappointed in the land acquisition process. Their fertile land was acquired by an imbalanced diagonal selection thereby leaving the remainder of the fertile land less functional. The compensation awarded was low and not according to current market value.

The AFAHL groups 4 and 5 from Surat district also felt they were victims of unfair compensation. The jantri rates were low in their areas but they refused to part with their land unless the rates were revised reflecting the current market value. Interestingly, the state established a committee of three senior ministers, the chief secretary and the revenue secretary to study the jantri rates and make suggestions for farmers getting appropriate compensation in the land acquisition process for the bullet train project.[166] Consequently, the rates were revised and the same were increased four times.[167] According to AFAHL groups 4 and 5:

> we received considerable compensation that led to significant changes in our lives. Overnight we had the money to buy house, land, cars and also save for our future generations. The land acquisition for us was indeed a boon and blessing. We are very happy and reaping benefits now. We have become rich and can afford houses, cars, and have bank deposits but feel emotionally weak. The generational land is given away for the sake of economic security.

There are similar stories in newspaper reports how villagers have become 'billionaires' due to the bullet train project, thereby providing

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165 R Gupta, 'Mumbai–Ahmedabad bullet train: why farmers call it unfair' *Down to Earth* (11 October 2019).

166 Sangeeta Singh, 'Gujarat Govt forms committee for speedy disposal of land issues of Bullet train project' *Metro Rail Today* (Ahmedabad 3 October 2020).

167 Express News Service, 'Land for bullet train: 7 times hike in jantri rates proposed' *Indian Express* (Surat 16 November 2019).

them economic security and social status.[168] By receiving hefty compensation for their land, the struggling landowners, now rich people, reflect proudly on their role in the development and prosperity of the country. Their economic prosperity led to social uplift and development and overall progress in their area. The authorities have paid 'compensation amounting to Rs 6,104.46 crore [£508,705,000] to landowners of 6,248 private plots in Gujarat'.[169]

Thus, the legal archaeology framework provides the opportunity to examine the compensation process of the lived experiences of the stakeholders that failed to appear in the written opinion. This alternative account based on interviews and newspaper reports gives a different perspective on how compensation, a complex and diverse exercise, offers a range of both positive and negative consequences within the discursive structure of statutory law. The invisibility of personalised human stories and experiences, and the need for rich understanding of factual accounts, asks if justice has been served.

Post-excavation analysis

Post-excavation analysis involves formulating conclusions and includes that one should:

> make novel observations, challenge current assumptions about a case, and help to make sense of patterns of events for which we do not already have a record. Conclusions might be drawn through a comparison of the new 'unofficial' narrative with the 'official' narrative in the case report.[170]

Paraphrasing Threedy, the new insights may shed light on the litigation procedure itself and expose the structural flaws in the litigation style, demonstrate how legal procedures both influence and are influenced by political, social, or economic changes, and shine light on the implicit biases and unquestioned assumptions of the process participants. It might confirm or refute the case's outcome. It might accomplish all of the above.[171]

Analysing the context of the Bullet Train Judgment reveals a wider social and economic conflict in land acquisition cases. The ineffective implementation of the important legal protection mechanisms, namely stakeholder engagement and fair compensation, raises serious concern about the:

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168 G S Mengle, 'How villagers turned billionaires with the upcoming Mumbai–Ahmedabad bullet train project' *Mid-day* (Surat 11 June 2023); ET, 'How Ahmedabad–Mumbai bullet train project has turned many into crorepatis' *Economic Times* (27 April 2023).

169 ET (n 168 above).

170 Nottingham (n 18 above) S27.

171 Threedy (n 37 above) 135.

> existence of 'livelihood rights'. These are sometimes articulated as 'livelihood security … [and] governance rights' … a combination of precisely specified state obligations and highly detailed procedural mechanisms that empower citizens to engage in accountability-seeking through institutions designed to advance particular aspects of their well-being.[172]

This often leads to 'turmoil, legal disputes, and land conflicts with long-lasting negative consequences'.[173] It marks a resurgence of contestation with an impact on the local communities, especially the socially, politically and economically vulnerable. The Gujarat High Court in the judgment missed the opportunity to accurately interpret the meaning and statutory purpose of the land acquisition legislation. The 2013 Act is regarded as rights-based, welfare legislation committed to upholding the mandate of a more humane, participative, informed and transparent process of land acquisition. The affected persons are intended to become partners in development, leading to an improvement in their post-acquisition social and economic status.

It is established law that adherence to the purposive interpretation is to prioritise legislative intent, serve its intended purpose, and promote fairness and transparency in land acquisition processes.[174] According to Lord Bingham:

> every statute … is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.[175]

Similarly, for Lord Hodge:

> words and passages in a statute derive their meaning from their context … they are the words which Parliament had chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained.[176]

Thus, the purposive interpretation helps the court realise the context and purpose of the legislation.

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172 R Jenkins, 'Land, rights and reform in India' (2013) 86(3) Pacific Affairs 591–612, 593–594.

173 Maria et al (n 14 above) 2.

174 *Pushpaja M v State of Kerala* 2018 SCC OnLine Ker 7424; *Tata Motors Limited v The State of West Bengal* 2012 SCC OnLine Cal 5828; *Gopal v State of UP* (Allahabad High Court Order 21 November 2024).

175 *R (Quintavalle) v Secretary of State for Health* [2003] UKHL, para 8.

176 *R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department* [2022] UKSC 3, 29 and 30.

The Gujarat High Court's reluctance to fully appreciate and address the central provisions of the LARR Act 2013 is evidenced through our legal archaeology artefacts, namely, official and unofficial sources. We offer and acknowledge the different stories and lived experiences of key stakeholders that were detrimentally filtered through the legal process. The judgment is illustrative of 'performative adjudication' wherein the court engaged in a 'symbolic gesture with a lack of substantive action'.[177] It gave the 'illusion that what happened can be temporarily frozen for interrogation and correction. This mastery of illusion implies the ability to control any injustices.'[178] It was an adjudication for show and unmasked instances of judicial insensitivity to the important features and language of the LARR Act 2013. We argue that the 'language chosen by the legislature, the internal scheme of the statute and the background context in which the statute was made … are incommensurable ingredients … relevant for a legal solution'[179] which would provide the provenance to the High Court judges to inject more action and performance to address and solve the problems of rural distress and livelihood. This kind of '[judicial] craft performances … [would] felicitously lead to effective change'[180] and promote good welfare and social justice outcomes.

We also employed legal archaeology to examine the quality of the judicial reasoning. It offered us a platform to challenge the assumption that judicial decisions provide coherent responses and promote transformative changes for the welfare of the society. To understand decisions, it is necessary to uncover the:

> calibre of court's opinion … the determinations of the court, then, to have legal quality must be 'entirely principled,' and a 'principled decision … is one that rests on reasons with respect to all the issues in the case, reasons that in their generality and their neutrality transcend any immediate result that is involved.[181]

A good judgment should provide a public record of the logical process that leads to an outcome that betters wider society. The essential requirements in the judgment focus on the reasoning and brevity. The court's duty to give reasons is a:

177 E Lees and O Pedersen, 'Performative environmental law' (2025) 88(1) Modern Law Review 124–154, 125.

178 S Young, *The Structural Limits of the Law: The Event Horizon of Legality* (Routledge 2025) 11.

179 Lord Sales, 'The role of purpose in legislative interpretation: inescapable but problematic necessity' Oxford University and University of Notre Dame Seminar on Public Law (19 September 2024) 1–19, 6.

180 A F Thimsen, 'What is performative activism?' (2022) 55(1) Philosophy and Rhetoric 83–89, 88.

181 E H Levi, 'The nature of judicial reasoning' (1965) 32(3) University of Chicago Law Review 395–409, 403.

> function of due process, and therefore of justice. Its rationale has two principal aspects. The first is that fairness surely requires that the parties – especially the losing party – should be in no doubt why they have won or lost. This is especially so since without reasons the losing party will not know ... whether the court has misdirected itself, and thus whether he may have an available appeal on the substance of the case. The second is that a requirement to give reasons concentrates the mind; if it is fulfilled, the resulting decision is much more likely to be soundly based on the evidence than if it is not.[182]

The requirement of brevity demands conciseness that leads to efficiency, clarity, and thoroughness. The Indian Supreme Court in *In Re Right to Privacy of Adolescents*[183] stated that 'a judgment must be in simple language and should not be verbose. Brevity is the hallmark of quality judgment. We must remember that judgment is neither a thesis nor a piece of literature.'[184] According to Sir Robert Megarry, former Vice-Chancellor of the Chancery Division, brevity is a virtue and makes the law more accessible.[185] For:

> the most important person in a court room ... is the litigant who is going to lose. Naturally, he will usually not know this until the case is at an end but when the end comes, will he go away feeling that he has had a fair run and a full hearing? ... But take the reasonable defeated litigant ... and see whether he feels that he has had a fair crack of the whip. One of the important duties of the courts is to send away defeated litigants who feel no justifiable sense of injustice in the judicial process.[186]

The Bullet Train Judgment falls short of the elements of reasoning and brevity. Reasoning and brevity are substituted by the extensive reproduction of the statutory law, official notifications and counsels' submissions, and the lengthy and the prolific use of a 'cut and paste' function of referenced cases with associated long quotations. These interrupt the flow of the opinion and fail to present the judges' reasoning process. A basic obligation is to explain publicly how the decision has been reached, thereby reflecting the critical thinking of the judges. Ls 2 to 4 expressed their disappointment about the quality of the judgment. According to these lawyers:

> the High Court judgment is classic in character as the judges are more executive than the executive themselves. The judgment is irrational and lacks conciseness. It runs to 361 pages out of which 352 pages cover the arguments presented in the court from both sides. The remaining ten pages fail to disclose the courts' reasoning, and its conclusion is

182 *Flannery v Halifax Estate Agencies Ltd* [1999] EWCA Civ 811.
183 *In Re Right to Privacy of Adolescents* 2024 INSC 614.
184 Ibid 14.
185 R Megarry, 'Temptations of the bench' (1978) XVI Alberta Law Review 406–416.
186 Ibid 410.

> unconvincing. The court was the spokesperson of the respondents. It is not a judgment in the eyes of law.

Similarly, L5 remarked: 'there was no need to cite verbatim several decisions and that too in detail. These citations created confusion rather than clarity. Brevity must be observed as far as possible and crisp reasoning should have been provided.'

Activists in the media regarded the judgment as:

> bad in law, spirit, and undesirable ... reads like a recording of the proceeding and at the end opinion of the court and not like a well-conceived comprehensive judicial order ... A critical and complex matter has been narrowed down to simple opinion by the court without a sound basis, critical examination of all the facts, factors, democratic process of decision making, social and environmental impacts.[187]

Thus, the judgment reflects an approach which overuses the 'opinions with factual detail, quote[s] heavily from previous judicial opinions, prefer[s] the familiar to the unfamiliar and stick[s] rigidly to all the conventions and current norms of political correctness'.[188] The court failed to recognise the full impact upon the case of conflicting values and central legal concepts in the LARR Act 2013. Hence, we stress the importance of a well-conceived and good judgment, and its accessibility to the affected litigant-in-person.

Further, we believe applying the legal archaeology framework highlights those alternative positions and power inequalities that created discrimination. The value-laden concepts of equality and parity of participation and their distortions in land acquisition exercises, especially in public hearings and consultation, and compensation, exposed the layers of complex inequalities found in relations of 'hierarchisation and stratification'.[189] It also increases understanding of how the reproduction of discrimination and inequality occurs in an institutional forum, namely the courts, thereby identifying recognitional and participatory injustices.

In the Bullet Train Judgment, we uncovered facts that were either ignored or misrepresented in the official narrative. This alternative narrative pays attention to the social construction of the dispute wherein some weak and marginalised people's positions were discounted or ignored by the judges. This case study helped us to analyse:

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187 R Shah, 'Gujarat High Court Bullet Train Judgment dubbed bad in law, spirit, undesirable' *Counterview* (19 September 2019).

188 Lord Burrows, 'Judgment-writing: a personal perspective' Annual Conference of Judges of the Superior Courts in Ireland (20 May 2021).

189 F Anthias, 'Intersectional what? Social divisions, intersectionality and levels of analysis' (2012) 13(1) Ethnicities 3–19, 10.

> how the judicial process comes to a decision and how that process is susceptible to error. The dissonances between a full and rich factual record and the abstracted facts stated in an opinion can sometimes be explained by such errors.[190]

As a normative principle, 'all voices are equal ... individuals should be noticed, heard, and respected by the law, and that current legal discourse may undermine or undervalue these concerns in serious and painful way'.[191] By contextualising the case study through stories and lived experiences, we argue that land acquisition litigation must include the local voices and hear of their collective struggles.

CONCLUSION

The formal recognition that judges interpret and even make law presents the opportunity to similarly recognise legal archaeology as a 'tool' to appreciate and build an understanding of legal events which may or could have affected judicial thinking and the decision-making process. A wider and deeper evidence perception field by looking beyond the courtroom door might result in different conclusions.

People live in a world of competing, sometimes acrimonious, realities. When experiences and expectations clash, formal institutions are available to arbitrate, negotiate or adjudicate. One such institution is the court of law. It provides a binary judicial decision where there are winners and losers. The compulsory acquisition of land by the state for the bullet train project resulted in the successful application of public interest over private property rights. However, the simplicity of the binary judicial conclusion through its monocular vision and reasoning masks multiple stories, experiences and expectations.

Looking into the 'how', 'why' and 'what' of the Bullet Train Judgment through the framework of legal archaeology, we analysed the stories and lived experiences of the affected people. By dissecting the case study, we discovered facts that 'outline new layers of understanding'.[192] There were 'facts' out there, 'waiting to be discovered, preordained, and immutable; we speak of "finding the facts" and "fact gathering," not "fact-constructing"'.[193] By using 'artefacts' (official and unofficial sources) we discovered new information about how the farmers' network transferred its grassroot actions into legal strategic action as a collective movement for social justice. Further, by comparing the official case report with the unofficial stories and lived experience, we explored how competing narratives underpin 'tensions and incoherences in the

190 Threedy (n 34 above) 1208.
191 Massaro (n 108 above) 2106.
192 Nottingham (n 18 above) 3.
193 Threedy (n 37 above) 141.

legal discourse at crucial moments'.[194] This resulted in 'suppressing one possible narrative construction of the dispute in favour of another … within structured legal arguments'.[195]

The use of legal archaeology changes the content of legal knowledge in the Bullet Train Judgment. The contextual and experiential findings from the judgment establish that the case study is a site full of complexities, contradictions, and ambiguities that affected people's lives and exposed the relationship between law and social power. Issues of participatory parity and adequacy of compensation, alongside the court's judgment, which was marred by lengthy formal repetition and unclear reasoning, replaced the expectations of clarity and brevity with verbosity and opacity. Thus, by digging both down and back in time to unearth the original stories of the key stakeholders, we unravelled facts that were not found, or were ignored or misrepresented in the official Bullet Train Judgment. The tunnel-visioned judgment is not singular but prismatic.

194 Novkov (n 19 above) 352.
195 Jones and Montgomery (n 25) 8.