

# **Refugee Sufferings: The Role of the Custodian, Civil Bureaucracy, and Litigation in the Punjab**

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## **Abstract**

The study focuses on bureaucratic flaws in the post-partition 1947 rehabilitation of refugees in the province of Punjab. It discusses refugees' evacuee property issues and the litigation they initiated in order to secure the property they believed they were entitled to. Many scholars have discussed refugee rehabilitation and settlement in the Punjab but they have generally neglected institutional manipulations and its repercussions on the third generation of refugees. The study explores why the rehabilitation process in the Punjab took so long and was excruciating experience for the refugees. The Federal government of Pakistan passed laws for establishing an administrative department to facilitate the claims of displaced persons. The portfolio of the Custodian commanded a key position in the department. The laws that should have addressed the grievances of refugees in the Punjab created obstacles for pursuit of property. Influential refugees got their desired allotments, whereas poor refugees were subject to lawsuits. For them, partition brought a never-ending slew of troubles that made their life even more difficult for than the migration from India to Pakistan. The research employs both primary and secondary source material.

**Keywords:** refugees, rehabilitation, custodian, bureaucratic violence and evacuee property, settlement commissioners.

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## **Introduction**

The Partition of Indian subcontinent, with the transfer of power to India and Pakistan in 1947 resulted in displacement of millions of people on both sides of the border. Many refugees faced a number of hardships and remained traumatized for a long period. Many of them did not received their rightful properties position in the new state. There was institutional corruption at the Custodian level as well as in Revenue Department of the West Punjab. The roles of Custodian, the Settlement Commissioner, and the Tehsildar were very important as they misinterpreted refugees' documents and also demanded a personal share in many of the valuable evacuee properties. Those refugees who knew any influential

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government official received their allotment quickly and received more than their fair share while those who neither knew anyone in public department nor had any relatives in the state machinery got only small pieces of land. Lamentably, the rehabilitation process is still ongoing, as many cases of refugee settlement are still pending. The research shows that the majority of outstanding cases are the consequence of the Punjab revenue department's mishandling and bureaucratic action. In the first section, the study highlights the incompetence and mismanagement on the part of officials. The second section looks at how the government's laws and regulations affected overnight the status of its citizens' property. Even some legal provisions for refugees were deliberately misinterpreted for the benefit of the bureaucrat's personal interests.

Similarly, bureaucrats exercising their powers to the fullest extent, and even beyond, caused anxieties not only among displaced persons who were subject to their decisions but also to the state which created the institution.

Academic scholars have produced a wide range of scholarly works on partition studies, very few of them focused on violence, and the refugees search for a new home in 1947. However, few scholars have discussed the role of the Custodian taking into account the issue of evacuee property until Vazira Zamindar's intervention in 2007. She claimed that the partition of India and Pakistan was a long process of the demarcation of states and the declaration of new borders. She discussed the role of the Custodian and bureaucratic violence on both sides of the border.<sup>1</sup> Another scholar, Rotem Geva, builds a strong narrative of how the Custodian in New Delhi encroached on evacuee properties of Muslim in the aftermath of Partition. She brought the institution of the Custodian in Delhi into the discussion. She highlighted the bureaucratic politics involved in administering evacuee property.<sup>2</sup> Another eminent scholar, Ilyas Chahtta, discusses the emergence of corruption in Pakistan in the case of evacuee property left by Hindus and Sikhs in West Punjab. He

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<sup>1</sup> Vazira Fazila-Yacoobali, Zamindar, *The Long Partition and the Making of Modern South Asia: Refugees, Boundaries, Histories* (New York: Columbia University Press, 2007), 120-22.

<sup>2</sup> Rotem Geva, 'A Scramble for Houses: Violence, a factionalized state, and informal economy in post-partition Delhi,' *Modern Asian Studies*, 51:3 (2017), 769-824.

emphasizes that local political leaders and members of the civil administrative boldly looted the evacuee properties.<sup>3</sup>

The article discusses evacuee property distribution cases in the Punjab. It emphasizes the role of the patwari, bureaucratic aggression, and refugees' hardships. It also examines the Custodian's extra-judicial powers, which have complicated the cases for refugees. Author example is of a dispute where a refugee challenged a high rank official, resulted in judicial struggle.<sup>4</sup> Moreover, the article examines some outstanding cases that are related to the Punjab's revenue department, mishandling of cases and injustice. Several cases are still undecided in the court of the Chief Settlement Commissioner in Faridkot Court House Lahore.

### **Extra powers of the custodian and the settlement process in the Punjab**

The emergence of the position of the Custodian was the result of the spontaneous displacement of refugees across the borders between India and Pakistan after 1947. To manage the day-to-day life of these refugees, Pakistan formed a new institution for the protection and management of evacuee property. With limited resources and day-to-day administrative obstacles, Pakistan's federal government began enacting new laws and regulations for refugee rehabilitation. Under the new laws, extraordinary powers were given to the Custodian and members of the upper civil bureaucracy in order to speed up the normalization of refugee lives under the evacuee laws.<sup>5</sup> In a Joint Defence Council meeting in Lahore on August 29, 1947 India and Pakistan established an office of custodian for the management of resettlement and the protection of displaced persons.<sup>6</sup> The West Punjab Evacuee Property Ordinance mentions the custodian's

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<sup>3</sup> Chattha, Ilyas, 'Competitions for Resources: Partition's Evacuee Property and the Sustenance of Corruption in Pakistan', *Modern Asian Studies* 46:5 (2012), 1182-1211.

<sup>4</sup> A particular case has been discussed in this research paper describing how a military official treated a refugee unfairly in Lahore. That military officer utilized his influence to obtain a certain property for his own benefit. He succeeded in passing an ordinance against the impoverished refugee's property and used it without paying rent to that refugee with the support of the Martial Administration of Zone B, Lahore.

<sup>5</sup> Punjab Refugee Council meeting, 8 November 1948, File No, 346-CF-48, National Document Center (NDC), Islamabad.

<sup>6</sup> Chaudhuri Mohammad Ali, *The Emergence of Pakistan* (Lahore: The Research Society of Pakistan, 1998), 262-64; Jyoti Bhusan Das Gupta, *Indo-Pakistan Relations, 1947-1955* (Amsterdam: Djambatan, 1958), 190.

function as a keeper of all evacuee property until peace is restored and when evacuees are no longer able to return to their property.<sup>7</sup>

In the Punjab the Custodian's function was to preserve houses, and lands and their owners' rights for requisition of property for the state's rehabilitation process. Later on, legislation on evacuee property empowered the Custodian to allot any evacuee property to any refugee. Also they had been authorized to order any person to vacate the evacuee property.<sup>8</sup> Moreover, the Custodian was authorized with the equal powers of a civil court to summon and to cross examine anyone involved with the possession or claims on evacuee property.<sup>9</sup> Initially the allotment of evacuee property to the refugees was temporary, for the period of one year to three years only. The subject of evacuee property remained a matter for discussion between India and Pakistan from 1947 to 1958. Over the years, a systematic process was launched in Pakistan for the permanent settlement of refugees and refugees were asked to submit claims against their vacated property in India. Later on selected claims were verified by the Indian authority and legitimate claims were recognized.<sup>10</sup>

The first step was taken in 1955 towards the implementation of a scheme for quasi-permanent allotment of immovable property in Pakistan on the basis of similar property that a displaced person had left in India.<sup>11</sup> The Registration of Claims (Displaced Persons) Act, 1956<sup>12</sup> authorized the Claim Officer, Deputy Claim Commissioner and Claim Commissioner with powers to hold an inquiry in any case under review, take evidence, exam documents, and make a judgement in the case.<sup>13</sup> If a refugee filed a case for a review of his application, the review was considered only due to an omission of evidence or clerical error. No application could be reviewed once it had been declared bogus or fake. The displacement Act of 1956 further empowered the civil bureaucracy under the Act of 1908 (Act V of 1908) in respect to the following matters:

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<sup>7</sup> Joseph B. Schechtman, 'Evacuee Property in India and Pakistan', *Pacific Affairs*, 24:4 (1951), 407.

<sup>8</sup> Inter-Dominion Discussions, 8th December 1947: on Treatment of Evacuee Property File No. 19-CF-47, National Documentation Wing (NDW), Islamabad.

<sup>9</sup> *Ibid.*

<sup>10</sup> Chattha, *op.cit.*, 1191.

<sup>11</sup> Cabinet Meeting, Displaced Persons Act 1956, 24 March 1956, File No. 315-CF-53, NDC, Islamabad.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

- (a) Summoning and enforcing the attendance of any person and examining him on oath
- (b) Compelling the discovery of any document and its production
- (c) Requisitioning any public record from any Court or Public Office
- (d) Establishing a commission for the examination of witnesses.<sup>14</sup>

General Ayub Khan (1907-1974), the first Chief Martial Law Administrator (October 7-26, 1958) was keen to settle the issue of refugee settlement and their remaining verification of claims. He intended to finish this settlement problem before the introduction of the 1962 Constitution.<sup>15</sup> For this purpose, the process of settlement of refugees in the Punjab was expedited. His government, in October 1958, empowered the Custodian with extraordinary powers and his judgment was considered a legal one.<sup>16</sup> His government also amended The Pakistan (Administration of Evacuee Property) Act, 1957 to delete the provision which required the Custodian of Evacuee Property to be a serving or a retired Judge of the High Court.<sup>17</sup> It enabled more members of the civil bureaucracy to fill this position.

The Custodian's office was also protected from the courts and the normal publication of their verdicts. The office became a focal point for illegitimate and illegal political and bureaucratic practices. The Act of 1957 protected the claim officer, the deputy claim officer, and the additional claim officer that 'no civil court shall have jurisdiction in respect of any matter which a claim officer is empowered. No suit, prosecution or other legal proceeding shall be against the Central Government or Provincial Government or any Person who has been appointed under this Act in respect of anything which he did in good faith'.<sup>18</sup> The result was that the policeman conducting the investigation, the prosecutor, the trial and the appellate court judge, and above all, the Custodian could examine any aspect of a refugee's life. Refugees were intimidated, if someone's claim was found to be fake or based on a half-truth, the claimant would be punished and no court could reverse the decision.<sup>19</sup> This was the vital point which defined the constitution, it guaranteed the independence of the executive, and established the

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<sup>14</sup> Ibid.

<sup>15</sup> Ministry of Finance, Case of Displaced Person-Repeal of Old Martial Law Regulation, 84, 89, File, No, 403-CF-70, NDW, Islamabad.

<sup>16</sup> Ministry of Refugee Rehabilitation and Work, Amendment of Displaced persons (Land Settlement) Act, 1958, File, 472-CF-64, NDW.

<sup>17</sup> Ibid. File, 475-CF-65, NDW.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

separation of the executive from the judiciary. The sanctioning of such extraordinary powers to the bureaucracy led to the misuse of power.

### **Institutional predatory behaviour and the allotment of evacuee property**

Despite the fact that corruption was condemned by all the administrations in the country and many examples of it have been brought to the public's attention, institutional predatory behaviour on a regular basis made lives of many refugees difficult. The ultimate power of deciding on the transfer of evacuee movable and immovable property brought this institution into the public spotlight and the the department's credibility was brought into question by the refugees in the 1950s. The Cabinet Files of Rehabilitation and Work Division exposed the fact that forty-eight cases of corruption were registered in six months in 1960. In these, six were against Gazette Officers. An Accounts Officer of the Capital Development Authority was alleged to have demanded and accepted illegal payments from four persons for issuing cheques as compensation for acquisition of their lands. An Executive Officer of the Cantonment Board was accused of misappropriating Rs. 3,000.00, the fee of an Architect. He was also alleged to have unlawfully got cancelled the auction of a cinema and leased it out to a party after becoming a shareholder, this had fetched him Rs. 90,000.00.<sup>20</sup> Apart from the official's files, evidence of how people reacted can be seen through newspaper articles writing on the brutality of government servants.

A number of editorials and letters to editors in Urdu and English language newspapers exposed the rehabilitation department's inequity and mismanagement. Some of them published editorials with harsh language such as 'Corrupt officials in government offices draining the blood of the people'.<sup>21</sup> The marginality of refugees' positions and the misconduct of government officials ruined refugees' desires to get a home and property. A letter to the editor of the newspapers stated 'I am a peasant who has remained a victim of Patwari in Manawa, Lahore. In terms of settlement concerns, this Patwari has harmed God's creation. He was born into a Patwari household and received all of the blood sucking characteristics from his ancestors. For our pending cases, we must pay a visit to this government official at his house. I'm pleading with the

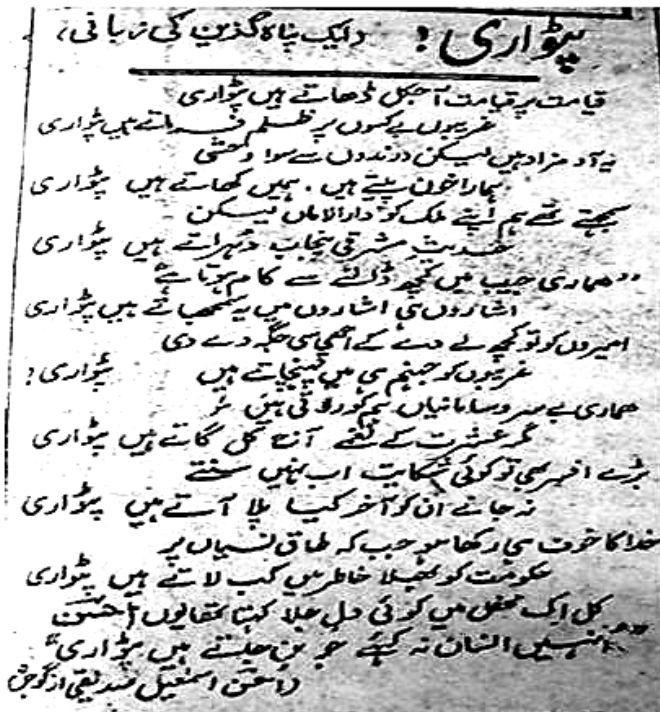
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<sup>20</sup> Ministry of Refugee and Rehabilitation, File No.66 CF 1964 IV, NDC, Islamabad.

<sup>21</sup> *Karachi Weekly Press Analysis*, September 27th – October 3rd (inclusive) – Despatch No. 229, 5<sup>th</sup> October 1953, NND 938750, NARA.

authorities to save us'.<sup>22</sup> The newspaper *Daily Saadat* published a poem titled Patwari that addressed refugee difficulties and commented on the Patwaris involvement in the rehabilitation process. Here is a summary of the poem

By oppressing the poor, patwaries are thriving now. They are more vicious than animals in the wild. They are consuming us and devouring our blood. We have always believed that our nation is an asylum, but these patwaries are determined to divide it. They stipulate that we must perform our duties only after receiving gratitude. The wealthy received excellent evacuee property and poor have been sent to hell. Oh 'Ahsan (writer Name) do not call them 'Humans', if someone becomes a Patwari.<sup>23</sup>



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In 2005, a story of migrants being ejected and afterwards their property assigned to state department personnel was revealed. *Dawn* reported a case that The Punjab Refugees Rehabilitation Department removed refugees from their homes and gave it to an officer in 1960.

<sup>22</sup> Ibid.

<sup>23</sup> *Saadat*, 7 January 1948.

<sup>24</sup> Ibid.

One of the cases that had been pending since 1970 was decided by the Lahore High Court in 2005.<sup>25</sup> It involved approximately 100 persons and eighteen families who travelled to Pakistan in 1947 to flee the East Punjab catastrophe. They were given properties at Ghazi Kakka, Ferozewala Tehsil and Sheikhpura, in exchange for their claims. The Punjab Revenue Department, on the other hand, did not issue allotment letters. Despite this, it issued letters to them in 1967 claiming that the Border Area Committee made some alterations their land was in the border zone. They had been told that before their final eviction order, the government would provide them with an alternative allotment. After being ejected, the department assigned them to a wilderness place in Lodhran area which they would not be able to cultivate. They couldn't help but turn down the offer. The land from which they were ousted was afterwards granted to prominent military officers, notably the late Lt-Gen Ghulam Jilani Khan and Lt-Gen Akhtar Abdur Rehman. In 1970, the ousted families petitioned in the Lahore High Court.<sup>26</sup> In 1979, the Lahore High Court ordered the concerned department to grant alternative lands to the refugees' families. This was after a seven-year wait. The government allocated lands in several regions across Punjab, but the petitioners were never given their property rights in writing. After that, the refugee families filed another contempt of court petition in the High Court. In 1994, the department formed an inquiry team led by Chaudhry Muhammad Sarwar, which decided in favor of refugees. Letters to claimants followed in 1995.<sup>27</sup> For the aforementioned case, the Revenue Department went to the Supreme Court. The court not only ruled in favor of the refugees who had been suffering, but also imposed a fine of Rs 90,000 on the government department responsible, along with orders that the refugee families be paid within a month and receipts be sent to the SC registrar for the court's records.<sup>28</sup>

So, unlike in a traditional court, the Custodian, the Claim Officer, and the Deputy Claim Officer were not constrained by law or procedure and might pursue whatever line of inquiry he thought relevant. There are many lawsuits taken out by refugees which are still lingering in the Punjab courts. Rana Kashif, a Thesildar of the Punjab Revenue Department in Lahore, remarked, 'We should strive to comprehend the function of Custodian and Claim Officer who were empowered to settle

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<sup>25</sup> *Dawn*, 1 Jun 2005.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*



the refugees' settlement cases'.<sup>29</sup> In the Punjab, this institution laid the foundation for corruption and property fraud. He said, in the 1950s Custodians searched refugees and asked them to file complaints against any vacant property, and if the property was not transferred, they would have an equal stake in it. Furthermore, some refugees were ejected at the request of other refugees who paid officers a large sum of money in exchange for the allotment of a desirable home.<sup>30</sup> The cases that are still unresolved at Lahore's Settlement Court reflect fraud against innocent individuals, and many of them are against the Punjab Government's Revenue Department, which either delayed or misinterpreted their claims.

### **A glimpse into a few cases**

The region's Custodians had informers, who use to tell them about any empty Hindu or Sikh family's property in the areas. In many evacuee property cases, the custodian, without verification, either transferred those properties to others or declared them evacuee property in the state's record without visiting the property. There were various cases of bureaucratic manipulations in regard to claiming any property as evacuee property and in dealing with the claims of refugees. There was a popular belief, particularly in the Punjab, that the bulk of minorities' properties were classified as evacuee properties, and that no formal registration was required.<sup>31</sup> Custodian judgments against Hindus whose property status was abruptly changed led to this widespread perception. Could the decision of a parent to move to India or their death in riots change the property rights of children? Was it enough for any property to change into evacuee property as it belonged to a Hindu family? Could the state depend on a custodian's decision without a system of checks and balance? This was especially true when the federal government passed legislation on evacuee property that applied to all localities, including those that had not experienced partition violence. Furthermore, Pakistan's remaining Sikh and Hindu minorities encountered numerous legal challenges in establishing their property rights. It also had an impact on the life of the minority in Pakistan, depriving them of their property. The

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<sup>29</sup> Ibid.

<sup>30</sup> Rana Kashif, Thesildar, Interview by author, *Farid Court House*, Lahore, 20-8-2020.

<sup>31</sup> M. Yaseen, Reader to Settlement Commissioner Lahore, Interview by author, *Farid Court House*, Lahore, 28-9-2020.

current case against Anneballah Kaul (Maryam Bibi), daughter of Dr. Balkishan Kaul, is a perfect illustration of bureaucratic brutality.<sup>32</sup>

### **Anneballah Kaul (Maryam Bibi) vs the custodian, west Punjab**

The custodian and Maryam Bibi were at odds over her personal property, which had been labelled an evacuee property by the custodian due to a personal feud between them. Her father left his land to her mother, who passed it on to her only child (Anneballah Kaul), which was registered in the revenue department in 1951 under her name. The mutation was adopted in the Jamabandi (record) for the year 1954-55; entries were followed in the subsequent Jamabandi for the year 1957-58, where the aforementioned Khasra Numbers were shown as the property of Dr. Anni Brown and she was listed as owner in the Jamabandi. On December 17, 1935, she left this land to her only child, Anneballah Kaul (Maryam Bibi). In 1940, Anneballah Kaul embraced Islam and married a Muslim boy. Her father's family was settled in East Punjab; hence she did not leave Pakistan for India after Partition.

Her background as a member of a Hindu family brought forward a claim against her property and the custodian publicized it as an evacuee property. The matter came to her notice when Maryam Bibi sold her property to the Burewala Bus Company. She was informed that the 'property was evacuee property'. She applied to the Additional Custodian for review of this status. However, the custodian denied the application, and the property was classified as evacuee property from 1963 onwards under Section 22 of the Act of 1957.<sup>33</sup> She made an appeal

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<sup>32</sup> Dr. Bal Kishan Kaul was born in 1866 in the Lahore city. He had his initial education in Government College, Lahore. He then did his M.B.B.S. from the King Edward Medical College, Lahore and became the first Kashmiri Pandit to have that qualification. He was a very popular medical doctor of Lahore with a roaring practice. He also taught Medicine for some time in King Edward Medical College. His position and status in Lahore was the same as that of Pt. Moti Lal Nehru at Allahabad. Dr Kaul was also an active member of Dharam Sabha of Lahore and was more conservative and traditional unlike Nehru who was more liberal and modern in his views. He always worked for the unity and prosperity of the community and always tried his best to save it from disintegration. He died in Lahore in 1937 at the age of 71 years. The British conferred upon him the title of Rai Bahadur for his outstanding contribution to the field of medicine.

<sup>33</sup> No court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorized in this behalf by the Central Government or the State Government.

to the Deputy Custodian of Evacuee Property, Lahore but it got in vain.<sup>34</sup> Meanwhile, the property had been transferred to a number of applicants as a result of the state's sale and purchase policy for local buyers. In 1974, the successor custodian issued a declaration to Maryam Bibi's family stating that he understood the property was not evacuee property, but he was unable to obtain, after a decade, an order declaring the land was not evacuee property. The failure to follow rules and regulations and the way the bureaucracy functioned added to the complexity of the situation. Until 1980, the Custodian's verdict was unchallengeable in civil agencies.<sup>35</sup>

A case against a Custodian's order was filed in the Lahore High Court. In 1985, a final verdict by the Supreme Court was rendered in Maryam Bibi's favor. 'On careful analysis of the order of the Custodian dated 7-02-1964, declaring the entire property of the Maryam Bibi into Evacuee property is entirely illegal and contrary to the circumstances borne forth by the records'.<sup>36</sup> The Court believed the learned Custodian misinterpreted the case. Dr. Balkishan Kaul left the land to Dr. Anni Brown in his will. The fact that the appellant and her mother remained in possession of the land that had not been treated fairly after the will weighed against the decision; the disputed area was just 1 kanal, 2 marlas, but the custodian's ruling proclaimed the entire property to be an evacuee property.<sup>37</sup> Following this decision, the court requested that the property's status be restored Maryam should be given sole ownership rights. The Lahore High Court's judgement was contested in the Pakistan Supreme Court in 1987 by other claimants who had been granted Transfer Orders on this land in the 1960s.<sup>38</sup> After hearing the issue, the Supreme Court of Pakistan again decided this matter in favor of Maryam Bibi and her family.<sup>39</sup> The decision in this case took nearly 70 years to settled, yet it has yet to be implemented. Maryam Bibi's third generation is battling for their rights. She had to pay the price for her father's

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<sup>34</sup> *Writ Petition No. 298/R of 19851*, Mrs. Maryam Bibi (Anneballah Kaul) vs. The Custodian, Evacuee Property, Punjab, Lahore and 166 respondents.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Final Decision of Lahore High Court dated 21-1-1986 passed against, *Writ Petition No. 298/R of 19851*, Mrs. Maryam Bibi (Anneballah Kaul) vs. The Custodian, Evacuee Property, Punjab, Lahore and 166 respondents.

<sup>38</sup> Appeal from the judgment and order of the Lahore High Court, Lahore, Dated 21-1-1986, against its decision on, *Writ Petition No. 298/R of 19851*, Mrs. Maryam Bibi (Anneballah Kaul) vs. The Custodian, Evacuee Property, Punjab

<sup>39</sup> *Supreme Court Monthly Review (SCMR)* 1483, 1996.

religion; her property had been listed in government documents as Hindu evacuee property, and the Caretaker saw an opportunity and saw himself having the authority to decide her case.

The Custodian's power permitted him to intrude into the lives of non-migrant minorities. The Custodian's office was a body located within the bureaucracy but was practically autonomous, being answerable to neither political masters nor the judiciary. It caused anxiety not only to citizens who were subject to its authority but also to the state which had entrusted with responsibilities to this institution.<sup>40</sup> If there was a 'competent forum' that could deal with these types of matters within the law, and the Custodian's decisions could be challenged then it would have been ideal. There would have been and be no need for civil courts to handle these cases. According to Supreme Court, Chief Justice Mian Saqib Nisar, this view accurately portrays the system's flaws. The allotment orders are being added to the record of rights, but the petitioner is the aggrieved party and cases against the State are still continuing.<sup>41</sup>

### **b) Naseer Ahmed Khan vs. West Pakistan**

The present case of a refugee named Naseer Ahmed Khan against West Pakistan is an example of the bureaucracy's total authority.<sup>42</sup> Naseer Ahmed Khan was an uprooted refugee who fled from India to West Pakistan to protect his family from the riots. Under the Compensation and Rehabilitation Act of 1958, he was given two residences. He preferred the Lahore house to the Quetta one, and had to pay 96,000 rupees to make up the difference in the value of the property he left in India. The refugee was later issued a provisional transfer order in response to the Lahore house. Colonel Mukhtar currently occupies the allocated evacuee home, and he is obligated to pay rent to Naseer Ahmed.

The designated residence was occupied by Mukhtar, who was a military officer and Secretary to the Governor of the Punjab. Naseer Ahmed requested him to pay the rent in accordance with the law. He refused and said the house had been requisitioned by the government, and that he should contact the Punjab government. The officer in the government told Naseer that the house was not in the Estate office pool. Accordingly, Naseer Ahmed approached Col. Mukhtar for the rent once

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<sup>40</sup> The Transfer of the Deposit Act 1951 and Power of Custodian under this Law, File No. 138-CF-51, NDW.

<sup>41</sup> *The News*, 25 July 2015.

<sup>42</sup> *Writ Petition I. C. A (Intra Court Appeal), No. 411/R of 1980*, Naseer Ahmed Khan vs. The West Pakistan Government

more. This time, Col. Mukhter became irritated and asked Naseer Khan to sell this property to him, but Naseer Khan refused. Mukhter replied, 'I will see this property will not remain with you either'.<sup>43</sup> Following this incident, within a few months the West Punjab Settlement Department stopped receiving any further instalments from Naseer Ahmed. The Punjab Government informed Naseer Ahmed that the house had been acquired by the provincial government in line with government requirements. According to the law, the state might buy any location or house for its own purposes, but it had to pay the owner of the house rent and could not take away ownership rights.<sup>44</sup>

The case took a new turn when Naseer Ahmed approached Central Government regarding the decision of the West Punjab Government. The Federal Government Refugee Rehabilitation department informed that they had allotted this property to him after consulting the Provincial Government. They did not express any desire to acquire this house. The Central Government did not agree on the acquisition as the house had already been transferred to the refugee. They further wrote to Naseer Ahmed that neither the Central Government nor the Provincial Government need this property. After this, the remaining amount and a letter from the Central government was submitted to the Settlement Department and in 1960 it issued a transfer order in the name of Naseer Ahmed Khan. Three months later, Naseer Ahmed got another letter in which he received a 'Martial Law Order' Number 115 by the Martial Law Administrator, Zone B,<sup>45</sup> Lahore, on 24<sup>th</sup> Feb, 1962,<sup>46</sup> that incorrectly mentioned the petitioner name as Nasir-ur-Din instead of Naseer Ahmed. It declared that 'house is an evacuee property'. It was required by the West Pakistan in the Public interest for the use of a government official and acquired it for the amount of 96,000 rupees. This particular ordinance was considered mala-fide on account of the activity of Col. Mukhter Hasain. The Governor had issued an order to please his friend and later on, this ordinance was presented before the Provincial legislature which had approved it through a resolution that made this part of the legislation.<sup>47</sup>

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<sup>43</sup> Ibid.

<sup>44</sup> Cabinet Meeting, 13 June 1950, File, No, 129-CF-50, NDW.

<sup>45</sup> After the imposition of Martial Law, the country was divided into two Zones for administration purpose. The province of West Pakistan was in Zone-B of the Martial Law Administrator.

<sup>46</sup> *The Punjab Acquisition of Property* (Residence of the Government Officials) Ordinance, 1963, (W.P. Ordinance XXV of 1963).

<sup>47</sup> *Supreme Court Monthly Review* (SCMR), 442, 2010, 439-42.

Naseer Ahmed Khan filed case in Lahore High Court on 20 March 2001.<sup>48</sup> After going through the facts and considering the constitutional rights of the common man, the Lahore High Court passed a judgment in his favour and ordered the state to restore the status of the house. The judgment was made under the guarantee of fundamental rights under article 2-A of the Constitution of 1973. The court further stated that ‘Whereas the legislatures are expected to act like a mother, to protect the deprived child/class of persons rather than to those who enjoy power and privileges. It is admitted that no law can be made against the provisions of the Constitution and that if any law is unreasonable and it offends any of the fundamental right, the same can be struck down’.<sup>49</sup> The judgment of 2001 was challenged by the government in the Supreme Court of Pakistan in 2009 and was dismissed in favour of the refugee. But the order of ownership has still not been implemented in favor of Naseer Ahmed Khan. His struggle has lasted sixty years. His family has filed the case again in the Lahore High Court as the Rehabilitation Department of Punjab did not implement the order of ownership.<sup>50</sup> The Supreme Court needs time to consult and to obtain further instructions from the Punjab Settlement Department. The case goes on.

These examples clearly demonstrate the strength of the bureaucracy and how it manipulates facts. A state within a state is at work, ready to use any means necessary to deny a common immigrant his ultimate right of possession. A rent dispute with Colonel Mukhter turned into a confrontation pitting an ordinary resident against the state. The ruling elites issued orders and ordinances overnight to claim the houses of refugees. The Naseer Ahmed case demonstrates the real bureaucratic viciousness that occurred in 1960. His family is still waiting for justice and implementation of the order. Furthermore, his case raised concerns about the functioning of Pakistan's judiciary as it took 50 years to resolve the issue and another ten years to put its decision into effect. This example also demonstrates the exact situation that refugees have faced all across the Punjab where orders were issued to uproot settled refugees overnight at any official's request.

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<sup>48</sup> *Writ Petition I. C. A, No. 411/R of 1980, Naseer Ahmed Khan vs. The West Pakistan Government*

<sup>49</sup> *Supreme Court Monthly Review, 442.*

<sup>50</sup> *Writ Petition No. 9869 of 2011, Mubashera Khan Modi (Daughter of Late Naseer Ahmed Khan) vs. Govt. of Punjab.*

### c) Nawab Iftikhar Hussain Khan Mamdot VS West Pakistan

Another example is a case of Nawab Iftikhar Hussain Khan Mamdot, the first Chief Minister of Punjab, who was convicted by the Punjab Revenue Department. His family is still in court awaiting for final order for the land they left behind in Ferozepur Tehsil, east Punjab, in 1947.<sup>51</sup> His claim for urban property has remained unresolved. After Nawab Iftikhar Khan Mamdot's death, his legal heirs, Pervaz Khan Mamdot, Jamshed Khan Mamdot, Arshed Sultana and Perveen Khan Mamdot, filed a petition in the Court of Zakaullah Naik, PCS Lahore in 1978 to expedite the evacuee property matter, claiming that they had not been given any property against their 36000 P.I.US urban claims property. Later, the administration in Harbunspura village, Lahore, confirmed an additional Kanal and 14 Marla on 28 April 1973. The Chief Settlement Commissioner in Lahore in 1978 asked Awais Khan Family, 'I am ready to decide in your favour but what would be my share of the property'?<sup>52</sup> They declined the offer, and the Settlement Commissioner distributed their claim to a number of other officials. Despite the fact that the dispute was still in the court, he transferred a piece of land there and established the 'Nazir Garden' at Harbunspura.<sup>53</sup>

The Chief Settlement Commissioner of Lahore, agreed that the revenue official was guilty of committing an illegal practice. The key culprit in the dispute was the Thesildar who changed property records and allotted many valuable pieces of property to the landlords.<sup>54</sup> 'The Thesildar personally informed the landlords and others about the evacuee property and told them to make a fraudulent claim against the particular evacuee property as it had not yet been given to anyone', This is what Rana Kashif, the Thesildar of Lahore, said in an interview.<sup>55</sup>

The case of Nawab Iftikhar Hussain Khan Mamdot is also a case when a powerful member of the bureaucracy creates obstacles in a way not only common man, but land lords were also deprived of their due

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<sup>51</sup> M. Awais Khan Mamdot, Grandson of Nawab Iftikhar Hussain Khan Mamdot, Interview by author, Mamdot Villa Habibulla Road, Lahore, 20-8-2019.

<sup>52</sup> The offer to Mamdot's family was disclosed to the Researcher by Awais Khan.

<sup>53</sup> To confirm the truth of the story, the Researcher himself went to find the garden in Harbunspura. The Researcher found the garden there. Later on, the garden was divided into many plots and sold to different persons in cash.

<sup>54</sup> M. Yaqoob, Settlement Commissioner Multan, Faridkot House Lahore, 21 April 2020.

<sup>55</sup> Rana Kashif, *op.cit.*

property of evacuee property claims. Unnecessary delays in allotments discouraged many needy families from filing claims against their properties. Furthermore, number of laws, acts, and file processes changed overnight, requiring refugees to file new applications to meet the requirements of new government policies. As a result, migrants quickly learned that their battle was a lengthy process which consumes considerable time, and money.

A similar case was recently decided in favor of Shadi Ahmed, who came from India and received forty-seven acres of land that was recognized as evacuee property by the Pakistan Supreme Court. After some time, the Punjab Revenue Department allotted the same piece of land to the wife of one of its former officers. Shadi Ahmed and the Revenue Department were in a judicial struggle. In 2015, the case was finally closed. The Pakistan Supreme Court ruled in favor of the refugee and upheld its final decision.<sup>56</sup>

## Conclusion

In the Punjab, evacuee property problems were the product of incompetence and systemic corruption at different levels. Unfortunately, the state failed to handle this situation appropriately. Thousands of cases, notably in Lahore, are still languishing at the Settlement Commissioner Court. These lawsuits can be classified into four groups.

- i) Twenty-five percent of the cases are those in which the State wrongly allocated one evacuee property to a large number of refugees, who then filed lawsuits against each other. The legal fight between refugees has not ended in 74 years of partition.
- ii) Thirty-five percent of the cases include people who were given houses and agricultural property but were removed from the property by state decrees shortly afterwards. They were neither compensated nor given any property in exchange.
- iii) Another 35% of cases concern properties that are still occupied by refugees but have not yet been restored to their rightful owners.
- iv) Five percent of the cases are still pending in courts because the state has yet to decide on the basis of the law, and the records provided by the refugee, or the negligence of the staff who mismanaged or manipulated the claimant's information.

Custodians, Settlement Commissioners, and Thesildars all played important roles in defrauding refugees. Institutional corruption arose as a result of the unchallengeable power of the bureaucrats to decide the destiny of refugees. The hardships of refugees were multiple. To obtain a

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<sup>56</sup> *The News*, 25 July 2015.



desirable piece of property, officials used evacuee laws, temporary orders, and state requisition requests to seize property. A small number of destitute refugees and their children are still facing legal action. Several judgments were decided in favour of refugees by the Supreme Court of Pakistan and the Lahore High Court, decades ago, but their decisions have yet to be executed. Several factors have slowed this process, including the state's decision to keep 'quiet' after the 1970s or the adoption of a 'slowdown policy' for the remaining cases. The time has come that such cases should be settled as it is already very late.