**Strong property rights, equality under the law, and defence of liberty**

Swarna Bharat Party’s policies on property rights and freedom

*These policies should be seen in the context of the broader reform agenda outlined in* [*SBP’s manifesto*](http://swarnabharat.in/)*. Free markets require strong and effective governance. Without governance reforms detailed in the manifesto, that will build capacity and honesty in the government machine, the policies detailed below will not deliver the expected results.*

## Well defined and firmly protected property rights

Property accrues through our actions (including our thoughts) and the actions of our well-wishers (including parents). All property is an appropriately attributed asset, regardless of whether it is a gift (including bequests) or earned. The system of justice, among other things, keeps track of property ownership.

Without recognition by the state of property rights, one cannot distinguish between a thief’s ‘property’ and that of the rightful owner, thereby ending all prospects of trade, and hence of any civilisation. The role of the state in the free society is to precisely define the scope and extent of these rights, and how these are to be attributed and recognised.

We will define and strongly protect private property rights. In doing so, market and property rights-based solutions (such as mutually beneficial bargains suggested by the Coase theorem) will be applied in dealing with problems regarding pollution and other negative externalities. Patents will be strengthened and intellectual property rights enforced. (This will extend to sites accused of rampant copyright violation, e.g. torrent sites; once proven, and if feasible). Counterfeit goods will be weeded out. No progress can occur without enabling innovators to monetise their innovations.

In defining and clarifying property rights, we will seek to remove (or minimise) terms like ‘licence’, ‘permit’, ‘approval’, ‘authorisation’, and ‘dispensation’, that suggest that the government – our servant – owns our property and ‘permits’ us to use it, or to ply a trade or occupation – which is our fundamental right as a free citizen. (This will not apply to property owned by the government.) Where such requirements exist, they will be replaced, where possible, with a certificate of compliance.

### Reinstating property rights as a fundamental right

In 1978 the right to property was abolished by the Janata Party as a fundamental right through the 44th constitutional amendment. Subject to our government receiving an adequate majority, we will fully reinstate this right, and make it even stronger.

### Ensuring a land record system without corruption

The Indian real estate system (such as land transfer, mutation of land records, payment of stamp duty) is mired in corruption and black money. Almost all transactions are under-quoted: often a mere third (or less) of the value is declared. Therefore, only a small proportion of a land’s market value is paid through cheque, the rest in cash – sometimes in hundreds of crores worth of cash. And there is another serious problem with the current system: *benami* ownership.

The real estate industry is not just a source of corruption: it has become a font of criminality. Where significant development potential exists, real estate mafia have emerged, in league with government ministers and officials.

The low declared value lowers:

1) stamp duty payable by the buyer. There is a floor, however, determined by buyers who want to launder their black money. They prefer a value ‘high’ enough to launder some of their black money, while low enough to avoid paying stamp duty. So someone with an official income of Rs.3 lakhs per year (and crores in black income) prefers to launder Rs.20 lakhs of his black money, not the true market value of Rs.1 crore – which would invite the attention of income tax authorities; and

2) capital gains tax for the seller.

The combination of these two incentives prevents people from operating honestly in the system. Even the honest get roped in, being forced to receive cash payment upon the sale of their property.

#### Five pillars of a sound property rights system

One of the key failures in the Indian governance system is the absence of a well-thought out property rights system. A sound system includes numerous components, with the most important of them being:

1. independent surveyor and record-keeper of land ownership;
2. independent collector of stamp duty;
3. independent valuer of all lands;
4. independent private real estate agents, whose licence is conditional on ensuring integrity and probity; and
5. (of course) market-based salaries (and contractual accountability at senior levels) of government functionaries.

Successful land systems are operational across the world where the true market value is always disclosed. We will give this reform top-priority and move to this system within three years, thereby entirely eliminating black money and corruption in the real estate system. The first of these reforms is outlined below.

#### Independent record-keeper of land ownership

Successive State governments in India have failed to regularly update land records. Land revenue has fallen away into insignificance, so even the cost of running the land records system is not cost-recovered, which adds to the neglect and creates incentives and opportunities for corruption (people are known to pay bribes to even get their land revenue receipts).

A key problem with the system is the identification of land. Cadastral surveys, that identify the location, coordinates, owners and other details of land, are based on traverses starting and closing from a village tri junction. However, this system is not linked to any national reference system. Land parcels, therefore, cannot be located easily on the earth’s surface, leading to encroachments and litigation, and enormous suffering to land owners. Land disputes languish in courts for years. The National Land Records Modernization Programme needs a comprehensive review.

In particular, we will create a national organisation charged with directly maintaining land records and titles (a task to be removed from the purview of the States), including location, coordinates, owners and other details. Surveys (including by the use of digital technology such as GIS, aerial photography, GPS, etc.) will be conducted on a regular basis. We will also move to a Torrens title system of land registration from the current deed system. We therefore support the Land Title Bill.

Such a land records system will allow conclusive titles to be issued, make land acquisition easier, allow land owners to provide collateral for credit, support environmental management, and allow the States and local governments to impose appropriate land and properly taxes (through separate, independently operated systems).

### Dealing with encroachment on public land, particularly slums

A significant part of the slum problem arises from our tenancy laws and zoning restrictions. Both tenancy laws and zoning restrictions need to go. At the same time, enforcing property rights is important. It is not desirable to give away public land to those who encroach it, as it merely encourages further encroachment.

A simple solution is to not have any surplus government land in or around cities. By auctioning these away, governments can raise revenues and also prevent the development of new slums by harnessing the incentives of private owners to protect their land, and through increased supply of land for housing, thereby lowering land prices.

As regards existing slums, we will auction (public) slum land after appropriate zoning for residential use, with a contractual requirement that buyers (developers) temporarily resettle the displaced registered slum residents – appropriately identified through Aadhaar – and sell at building cost price (plus market value of land) a proportion of the new apartments to them for personal use. By ensuring a rolling system to build on such land, relatively few slum dwellers will be displaced during a given year, allowing this program – over the course of five years or so – to significantly recover value from public (slum) land.

### Land to be acquired only under extremely limited circumstances

Eminent domain gives the state the coercive right to abrogate or seize private property. This was intended originally for use in rare cases, mainly to acquire land for public infrastructure, with due compensation. However, as a result of the abolition of the fundamental right to property, we have seen the state seize land to provide it to private parties.

We will enact laws to drastically limit land acquisition by government to matters that clearly affect the wider community (such as public infrastructure or defence). Land in such cases should, in the first instance, be acquired through voluntary consent by offering prices higher than the market. Options should be available to any poor person whose land is being acquired to receive annuities instead of a lump-sum. Where the public interest involved is not wide-ranging, however, local governments will be required to verify the nature of the public interest through public consultation, including possibly through a local referendum. The whole process should, however, not take more than six months.

The current method to determine compensation (‘amount’), based necessarily on figures derived from nearby registered sales, is flawed since sale prices are significantly under-reported. We will consider innovative ways of proper valuation by applying experimental economics literature and modelling.

Compensation at current market value doesn’t, however, compensate the person whose land is acquired for the inconvenience of moving to another place, and loss of social networks. It also does not compensate for windfall gains that would have accrued to such land owner had his property not been the one to be acquired. Thus, a neighbouring land owner adjacent to the new road (say) being built receives windfall gains. Sharing a part of the benefits of such new infrastructure with those whose property is acquired must therefore form part of the compensation package. For example, if a net present value of Rs. 10 is created from new infrastructure, then up to Rs. 5 could be shared with those whose land is forcibly acquired, either as one-off payment or long-term annuity.

### Prohibition on grants of public land to private entities and organisations

Governments in India have often given land grants to private individuals or organisations, particularly to influential religious gurus. All charitable organisations already receive significant taxpayer support through the tax laws. Anything beyond such general support is inconsistent with trusteeship of public property. We will enact a law to ensure that government land is never gifted to any individual or group of individuals, but sold at full market price. An exception will, however, be made for educational institutions such as universities. However, such universities cannot be affiliated to any religious organisation or guru, and cannot be for-profit organisations. Any land so granted cannot be used for any purpose other than education, and in the event of closure of the university will revert to the state.

### Review and repeal of rent control and tenancy laws

Rent control laws dampen investment in rental property, thereby reducing new construction activity and harming India’s growth. Due to the inevitable incentives arising from such distortionary laws, many landlords do not repair their properties, while tenants (who pay almost nothing as rent) spend large sums to maintain these properties.

We will review the rent control and tenancy laws to ensure that ownership rights do not pass on to tenants under any circumstances. Subject to further analysis, we will allow landlords to compensate tenants for the present value of any repair costs they may have incurred over and above the present value of the market rent they would have otherwise paid (based on reasonable evidence), following which the tenancy can be dissolved and/or reset at market rate. In general, we intend, subject to further analysis and consultation with stakeholders, that rent controls be repealed across India.

## Equal treatment of all

Equal treatment of all citizens is a minimum expectation from the government, and applies equally to any activity funded by taxpayers. Merit is the main legitimate basis for appointing someone to a public office. Nationality, age limit, security clearance, or physical fitness might be required in certain cases. But all other grounds are irrelevant and must be taken out of the equation. Such grounds include:

gender identity; religious belief or activity; caste; political belief or activity; carer and parental status; disability (including physical, sensory and intellectual disability, work related injury, medical conditions, and mental, psychological and learning disabilities); lawful sexual activity and sexual orientation; marital status; physical features; pregnancy and breastfeeding; race (including colour, ethnicity and ethnic origin); or personal association with someone who has, or is assumed to have, one of these personal characteristics.

Unfortunately, certain short-term decisions inconsistent with the basic requirement to treat everyone equally were made early in independent India’s history (e.g. to create reservations on the basis of birth characteristics, and to create separate laws for Hindus and Muslims). Such actions amount to official discrimination.

We will bring an end to all forms of official discrimination amongst the people of India.

### Phasing out reverse discrimination by the state

‘Rights’ are the principles guiding an individual’s relationship with others. They link our private moral codes with the legal codes of society. They act as a bridge between private and public ethics. Individual rights thereby subordinate society to moral law.

The smallest minority is the individual. If the primacy of individual rights is established, we do not need any special rights. If individual rights are violated no justice or assumed justice can be done to any one or any group.

The reservations policy violates the foundational right of equal treatment under the law. It has become the cause for much desperation among those who are not even remotely associated (in their personal capacity) with the crimes it seeks to redress. Further, not every member of the caste or tribe allegedly discriminated against has necessarily suffered injustice in his or her lifetime. Arguments that seek to compensate for injustices committed by unrelated past generations with people long dead and gone violate the basic principles of equal treatment and justice.

There is nothing in this morally flawed policy that could not have been better achieved through policies of equal opportunity (of the kind detailed in this manifesto). Reservations are a bad policy without any redeeming features.

Dr. B. R. Ambedkar wanted reservations in government jobs only for ten years. The initial period of reservations, foreseen by Ambedkar, is more than six times over but this policy has acquired a momentum of its own. Some states have taken the concept of reservations to absurd extremes, such as Andhra Pradesh with up to 83 per cent reservations. As a result, caste certificates are sometimes wangled, even manipulated. Corruption has entered the system. Enormous injustice is the outcome of an inappropriate attempt to violate the equal rights of all Indians.

Today, this policy is a tool to divide the nation. For when even a government acts differently based on the caste of a citizen, what hope can there exist of unbiased action by such government? At a minimum, this policy is one more reason for many of India’s talented people to leave. Unfortunately, attempts are underway today to expand reservations even beyond caste and tribe, to women. And potentially to religions.

#### Equal opportunity for all, but no reservations on the basis of caste

Ongoing caste based discrimination is a social issue for religious leaders to bring to end. The defects of some religions are not grounds for a government to treat the people of the nation differently based on their religious or other identities. In any case, we believe that policies that increase economic opportunity and urbanisation will alleviate the caste problem.

Our policies, detailed elsewhere, will ensure reasonable equal opportunity to all children. This will take around three years or so to deliver. Once such equal opportunity has been ensured, we will abolish reservations, and all references to religious categories such as caste or religion, in all our laws.

#### Greater respect for the contributions of women, but no reservations

Women excel in every sphere of life (and often do better than men) given the right opportunity and enabling environment. We actively seek the greater participation of women in the political, policy making and economic development process.

Although a government is not well-placed to undertake social change, it is obliged to protect the equal rights of all, including women. We will empower women to rise based on their merit in the field of their choice. In particular, we will remove restrictions on women in government services, including the armed forces.

We believe that each political party should give greater representation to women. We are committed to greater political representation for women through Swarna Bharat Party processes. There is no basis, however, for any reservation based on gender.

#### Tribal India to engage with modernisation at its own pace, but without reservations

We believe that the tribes of India need continued protection and support to allow them to modernise at their pace. We believe that tribals have an unalienable right, like anyone else, to preserve their culture. Further, any economic development and exploitation of natural resources in tribal areas must protect their chosen way of life.

This also means that any additional protections or exemptions from ordinary laws will reduce for those tribals who have embraced modernistation and therefore achieved parity with the rest of India.

##### Well-defined property rights of tribals

Most tribal land is owned in common by the tribe, with families and individuals having the right to use certain plots of land (usufruct or possession property rights). We will encourage tribal societies to move towards individual private property rights, which create opportunities for long-term investment and increase mobility through sale of land. Without such rights, our tribal citizens will remain chained to their lands, without getting the value addition that individual property rights entails. We do not intend, however, to rush this matter, and will let each individual determine his or her pace of change.

## Defending freedom in every possible way

The prevalence of freedom facilitates the expansion of civil society and social capital and delivers not only prosperity but also social mobility, thus reducing (if not eliminating) discrimination based on prejudices of religion, caste and other real or perceived differences. Freedom helps create an inclusive society and adds to social cohesion, reducing misunderstandings amongst people. A good government – created purely for the defence of freedom – constantly monitors freedom. The Freedom Department will be responsible for monitoring and coordinating the increase in liberty in all areas of life in India. Some examples of freedoms we will promote are outlined in this section.

### Rights of women, children and systematically oppressed groups

We are deeply concerned that an estimated 14 lakh people in India are held in slavery, including sex slavery. In addition, over 15,000 girls are abducted each year (most of them for the sex industry). This calls for very stringent action.

We will significantly strengthen the fight against all forms of slavery (and trafficking) and enhance protections of women, children and oppressed groups.

Prosecution and punishment for crimes against these groups will be significantly increased through a building a much better police and justice system. For some such cases we will ensure in-camera proceedings, as appropriate.

We will also review laws on pornography and obscenity for consistency with freedom of expression, to ensure everyone is clear about any necessary limits (such as on child pornography). In particular, we will create an active prosecution system against child pornography, it being closely linked to human trafficking.

### Privacy

Individuals have the right (and obligation) to choose the way their data is used by private parties. They have the right, also, to voluntarily renounce their privacy to such private parties, after due consideration of the implications of such action. To the extent privacy involves two private parties, the government has no particular role except to ensure that people are informed and able to make their choices.

There are many additional protections needed against the invasion of privacy by government. People have a right to be secure in their houses, papers and effects, against unreasonable searches and seizures. We will legislate to prevent any unwarranted or unreasonable governmental intrusion and surveillance through the use of aerial or other means. Surveillance can sometimes become necessary in public places (including some workplaces) to prevent terrorist attacks or anti-social behaviour. However, any such security measures must be viewed through the lens of constitutional freedoms. If we trade liberty for security, we shall have neither.

Any government agency which collects data (all government data is collected coercively) must ensure that such data is kept entirely private. We will strengthen privacy laws relating to the storage and use of an individual’s data by the government. Personal data shared by individuals on the internet (e.g. posts on Facebook) will be protected from any government snooping unless there is a legal necessity to prevent or resolve a crime.

### Census

We will strengthen the Census machinery to allow a census to be conducted every five years, which would allow city planners and the private sector that serves the needs of the people to better target and plan their activities. The data collected, however, will not include any personal characteristics such as religion or caste. More broadly, no government correspondence or form will list or seek anyone’s religion or (upon abolition of the reservations system) caste. We will legislate to make clear that a government has no business to poke its nose into people’s religion or caste, if necessary through a Constitutional amendment.

Such data is also invariably used to divide the society, not to promote inclusion. Private organisations may conduct any sample surveys on such matters if they so wish, but the government has no role in this matter. We condemn the Caste Census undertaken by the Government of India and will ensure that all such records are permanently destroyed.