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STATE REGULATION VS MARKET FREEDOM IN REAL ESTATE LAW: A COMPARATIVE ANALYSIS OF INDIA, THE UNITED STATES, AND VENEZUELA

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Abstract

The real estate sector is in a special place where market economics and social welfare collide, and states must constantly debate the extent to which they should control the market or leave it to the market. This paper compares legal regulation of the real estate business to the autonomy of the market regulation through state regulation of the business, specifically with references to the Real estate (regulation and development) Act, 2016 (RERA), the market-oriented regulation of the United States, and the state-minded housing regulation of Venezuela. It is based on this analogy that the paper will analyze the impacts of differing levels of state intervention on consumer protection, contractual freedom, property rights and market efficiency.

RERA in India symbolizes a shift in perspective between light regulation to an aggressive regulation framework to redress endemic asymmetries in the relationship between developers and home buyers. This model has been supported by judicial interpretation so as to rationalize the consumer-focus of RERA with the constitutional rights to property and freedom of trade. Conversely, disclosure norms, contractual freedom, and judicial enforcement are very important in the United States, which is a high level of freedom of the market with minimum regulation. Venezuela is the extreme of the situation, with too much state control, rent regulation, and expropriatory policies that have seriously weakened the rights of property owners and distorted the property market.

Placing these three jurisdictions in a regulatory spectrum, the paper contends that neither an unregulated market freedom nor total state control should be desirable in the regulation of real estate. Rather, it builds the thesis that the calibrated regulation with the help of an independent judiciary is a necessary means of the balancing of consumer protection and market efficiency. The paper concludes that although the RERA framework in India has been mostly effective in

achieving this balance, the judicial regulation and further development of the regulatory framework are needed to avoid over-regulation and to maintain market dynamism.

***Kwywords:** Real Estate Regulation; Market Freedom; RERA 2016; Comparative Property Law; Consumer Protection; Judicial Intervention; State Control; United States Real Estate Law; Venezuela Housing Law*

1. Introduction

The law of real estate is in a unique position as it is at the cross road between the private market transactions and the regulatory control. Whereas the traditional premises of property deals are based on the principles of the contractual autonomy and the efficiency of the market, land, and housing have never been considered as commodities. They have deep roots in social welfare, city planning goals and constitutional property and human dignity. Consequently, the real estate markets in different jurisdictions exist under different levels of state regulation, which characterizes a constant conflict between the freedom of markets and the state regulation¹.

The past records indicate that real estate markets based on minimal regulation have shown great structural vulnerabilities. Problems that have been witnessed to occur regularly include information asymmetry between developers and purchasers, speculative pricing, project delays, misappropriation of funds and the absence of effective dispute resolution mechanisms especially in the developing economies². Such failures are a challenge to the classical free-market assumption that the fairness and efficiency of transactions in the property market can be achieved through a sole-source of order by the private market. As a result, states have been growing to legitimize regulatory intervention in terms of consumer protection, economic stability and the social significance of housing³.

India Before the passage of the Real Estate (Regulation and Development) Act, 2016 the real estate industry was a patchwork of regulation laws, including the Indian Contract Act, 1872, in addition to the Consumer Protection Act, 1986, and state-specific laws on apartment ownership. This piecemeal law was not sufficient to deal with systematic exploitation of homebuyers. Late delivery, one-sided clauses of a contract towards developers, absence of project transparency and ineffective remedies were some of the features that characterized the pre-RERA regime⁴. With the implementation of RERA, the statutory regulatory model became

a significant move to establish state control in the registration of projects, disclosure procedures, fund management, and dispute resolution procedures⁵.

The issue of state regulation of real estate, however, does not lack significant normative issues. The heavy regulation can hamper the efficiency of the market, deter the investment by the individuals and contractual freedom. This issue is especially apparent in those jurisdictions that value high property rights and low government intervention. A good example is the case of the United States. Although the U.S. is characterized by some statutory disclosures and consumer protection in conducting real estate transactions, the overall legal system is highly akin to a market-oriented system. The rights to property are constitutional and the judicial doctrine is key in curbing excessive regulation. The history of the regulatory takings doctrine under the Fifth Amendment is an example of how the courts have become watchdogs over the state encroaching too much on the rights of property owners⁶.

On the other end of the spectrum is Venezuela where real estate control has been influenced by a welfare-based and state-centric constitutional philosophy. The social ownership, rent control, and intervention of the state can be discussed as the tools of social justice in the Venezuelan housing laws. Although the Venezuelan Constitution acknowledges the existence of the private property, it also imposes a lot of restrictions on the rights to property in the presence of the interest of the common good and welfare⁷. In the long run, this high level of regulation has been linked to market shrinkage, less private investment, housing crunch and poor judicial checks and balances, leading to questions on the sustainability of highly state controlled property regimes⁸.

The choice of the comparative jurisdictions of India, the United States, and Venezuela is thus not random. India is a good case study of regulatory corrective action, where the intervention of the state aims at correcting market failure without taking away the ownership and investment by the individual. The United States is a classic example of a market-based model which depends on the disclosure, freedom of contract and judicial adjudication instead of full regulatory control. An example of a state-dominant model is Venezuela, in which real estate regulation is directly related to ideological pledges toward social control and redistribution. These jurisdictions combined create a regulatory range within which a significant comparative evaluation of the role of law in mediating the relationship between the state and the market in the governance of real estate is possible.

2. Conceptual Framework: State Regulation and Market Freedom in Real Estate Law

This is the conceptual tension of the state regulation and market freedom that is central to the modern property and real estate law. Unlike the common-day commercial markets, real estate markets entail immovable property, long-term investment, and a necessity in human being like shelter and city stability. As a result, there has been a conflict between legal systems of defining which principle of laissez-faire economics or greater regulatory control in the public interest governs real estate⁹.

Essentially, market freedom in real estate is the freedom of the individual players (developers, sellers, buyers, and investors) to engage in property transactions without much interference by the state. This freedom is based on classical liberal economic theory, which presupposes that free markets through voluntary exchange based on supply and demand achieve the efficient market results. Market freedom in the law is manifested by the high level of protection of property rights, freedom of contract, and the unwillingness of the judicial system to intervene in the work of private bargains, except in the case of fraud, coercion, or illegality¹⁰. According to this scheme, property is seen more as a business asset, the value of which and distribution of which should be left to the market.

The perfect market conditions are however not often applicable in real estate market. The equality and efficiency as envisaged by the free-market theory is usually compromised by structural inequalities, information asymmetry, unequal bargaining power, and speculative behavior. There is usually no access to correct information about the land titles, project approvals, the quality of construction, and the delivery schedule by homebuyers, and the developers have a high level of knowledge and control over the execution of the project. This kind of asymmetries undermines the assumption of informed consent which informs the freedom of contract¹¹. States respond to this by increasing their justifications of intervention as a corrective mechanism and not a distortion of the market.

The scope of state regulation in real estate law includes legislative, administrative and judicial controls with the intention of overseeing, regulating or guiding transactions involving property. Regulatory intervention can be either licensing, or compulsory disclosure, escrow, land-use planning controls, rent regulation or the creation of specific adjudicatory bodies. Such

regulation is commonly normatively justified by the focus on welfare economics, consumer protection, and the fact that housing is considered a social good, but not an economic commodity only¹². In this light, regulation is not opposite to market efficiency, it is rather needed to make sure that markets operate in a fair and sustainable way.

The regulatory state model has mainly been outstanding in those jurisdictions where urbanization and housing demand are fast. Unregulated markets in these settings have in most cases, resulted in speculative bubbles, housing shortages and social exclusion. In turn, legislatures have aimed at institutionalizing the notion of accountability among the population when making real estate transactions by enforcing statutory obligations of the private players. The RERA in India is one such notable example, in which the regulatory requirements are not put in place to take away the market, but to chastise it¹³. Compulsory registration of projects, standardization of disclosures and time-limited requirements are just one of the efforts to help to reconcile the interests of the private profits with consumer protection and trust.

The judicial institutions are very instrumental in the balancing of the state regulation and the freedom of the market. Courts are often asked to determine whether regulations are reasonable restrictions or unconstitutional encroachment on property and trade rights. In some countries like the United States, this balance has been expressed by doctrines like regulatory takings, where the courts investigate whether the state regulation has reached the extent of effectively denying the owners the economically viable use of their property¹⁴. In such situations, judicial review acts as a protection against too much regulation whilst recognizing the validity of controls in the interest of the public.

On the other hand, where the judiciary is feeble or constitutional rights of property are watered down, state regulation can slip into excess. Extreme intervention, e.g. by imposing price controls or expropriating assets without sufficient compensation, or even by placing permanent limits on alienation, can reduce investor confidence and cause market mechanisms to work improperly. The example of Venezuela housing regime exemplifies such a danger, with the large-scale state intervention in property ownership being defended on social welfare basis, yet at the same time limiting individual involvement in housing sector¹⁵. This points out the significance of institutional checks and constitutional balance in regulations.

One conceptual difference in the area of real estate regulation is regulation as facilitation and

regulation as control. Facilitative regulation aims at enhancing transparency in the market, standardization of practices and enhancing dispute resolution without overriding private autonomy. In comparison, control-oriented regulation is based on the state priorities like redistribution, affordability or social ownership, and these are usually at the cost of market mechanisms. Much of the effectiveness of a regulatory regime is determined by its position to the left or right of this spectrum and its ability to incorporate judicial oversight¹⁶.

Therefore, the idea of the state regulation and the freedom of the market in the context of this study is not considered as the two opposing forces, but as the two sides of the coin. The real estate law should find a dynamic balance between regulation and market failures that would not suffocate the normal economic life. This framework forms the analytical background to the jurisdiction-specific analysis which will then follow whereby a comparative evaluation of how India, the United States and Venezuela conceptualize and operationalize the balance between regulatory power and market freedom can be conducted.

3. Real Estate Regulation in India: The RERA Framework

3.1 Background and Legislative Rationale of RERA, 2016

In 2016, the implementation of the Real Estate (Regulation and Development) Act, 2016, led to a radical reorganization of the regulatory environment of the Indian real estate. Before RERA, the industry was run in a private contractual basis by general legislation including the Indian Contract Act, 1872, the Transfer of Property Act, 1882 and the Consumer Protection Act, 1986. Although these laws offered solutions to the breach and shortage of service, they did not deal with the systemic and structural issues of real estate dealings, specifically the imbalance of power between developers and home purchasers.¹⁷

Courts were overwhelmed with challenges associated with late deliveries, unilateral changes in project specifications, misappropriation of funds and unilateral builder buyer deals. In Lucknow Development Authority v. M.K. Gupta, the Supreme Court identified homebuyers and consumers, and admitted the malpractices common in the housing industry.¹⁸ With these judicial interventions even in the absence of a dedicated regulatory framework, there was a lack of coherent enforcement and the litigation process was not easy. According to the Law Commission of India in several reports, it was noted that there was a dire need to formulate a sector specific legislation to safeguard homebuyers and enhance transparency.¹⁹

The above objectives that were set in RERA to ensure accountability of the promoters, safeguard consumer interests, increase transparency, and create an effective dispute resolution mechanism have been achieved. The Act symbolizes a transition between post-facto remedial litigation and ex-ante regulatory oversight, which indicates the state preference to interfere at the point when real estate development is underway instead of settling disputes after they have arisen.²⁰

3.2 Critical Regulatory mechanisms in RERA.

RERA presents an elaborate regulatory framework that changes the operations of the Indian real estate markets substantially. The mandatory registration of real estate projects and agents by the concerned State Real Estate Regulatory Authorities is one of its most significant characteristics. Section 3 of the Act forbids promoters to advertise, market or sell units in a real estate project before they are registered and this makes the entry of the market to be subject to regulatory approval²¹. This is because it helps to limit the number of speculative projects that are launched in the market and only legally approved projects are allowed in the market.

The other focal mechanism is the disclosure regime. Promoters are expected to provide wide disclosure of land title, approvals, project layout, schedules and financial information on the Authority web site. Such a statutory transparency requirement is in response to information asymmetry which is a fundamental market failure in real estate transactions. The Supreme Court in Pioneer Urban Land and Infrastructure Ltd. v. Union of India affirmed these disclosure requirements noting that they are reasonable restrictions made in the interest of protecting the homebuyers and keeping the market disciplined²².

The regulation of financial is also supported by the escrow account provision under Section 4(2) (1) (D) that requires seventy percent of the project funds received by allottees to be deposited in a separate bank account to be used exclusively on construction and land expenses. This clause directly focuses on the fund diversion practice in various projects, which was the main contributor to project delays during the pre-RERA period²³. This is a mechanism which has always been identified by the courts as a consumer protective measure and not an unreasonable interference with the freedom of business.

RERA also uniforms the contractual requirements, by ensuring that they follow the stated schedules and punish unilateral modifications. Section 18 allows allottees a statutory right to

compensation or refund in the event of delay thus transforming what was once an expectation of contract into a legally binding right. This is a very important provision that reweighs the bargaining balance between the promoters and the consumer²⁴.

3.3 Institutional Structuring and Adjudicatory Mechanisms.

The Act provides a multi-level institutional framework, which includes the Real Estate Regulatory Authority, the Adjudicating Officer and the Real Estate Appellate Tribunal. These institutions are empowered to enforce, penalize and settle disputes. A legislative acknowledgement of the technical and industry-specific nature of real estate disputes can be observed in the establishment of specialised forums which were deemed by the legislature to be better equipped to deal with such cases²⁵.

This institutional design has been found to be constitutional on the basis of judicial review. The Bombay High Court in the case of Neelkamal Realtors Suburban Pvt. Ltd. v. Union of India ruled out the objection to the composition and powers of the RERA authorities because the Act provides a reasonable balance between regulation and freedom in business²⁶. The Court pointed out that the specialised tribunals are more efficient and they save time in litigation cases and thus build confidence in the market instead of killing it.

3.4 Constitutional Balancing and Interpretation by the Judiciary.

The Indian courts have been decisive in determining the regulatory boundaries of RERA by aligning it with the stipulations of the Articles 14 and 19(1)(g) of the constitution. One of these issues has been whether RERA is an unwarranted state intrusion into the freedom of trade and conduct of business. The Supreme Court in Pioneer Urban made a categorical decision that RERA was a welfare law that aimed to secure a vulnerable group of consumers and that such regulation was not in any way beyond the reasonable and permissible scope of Article 19(6)²⁷.

The other important school of thought is dealing with the relationship between RERA and insolvency law. In Pioneer Urban and subsequent to it in Manish Kumar v. The Supreme Court accepted the claim of homebuyers as financial creditors in the Insolvency and Bankruptcy Code, 2016, but stated that RERA and the IBC are in different but complementary arenas²⁸. Such a judicial solution does not undermine the regulatory role of RERA to the outcomes of insolvency that are entirely market-based.

The courts have also made it clear that RERA does not impair the vested rights in a retrospective manner but relates to the current projects to the degree of safeguarding consumer interests. This kind of interpretation supports a judicial inclination towards the purposive interpretation, that regulation promotes fairness without creating regulatory uncertainty²⁹.

3.5 RERA as a Model of Calibration Regulation.

In theory, RERA is a model of controlled state regulation, in which the market is neither left to the self-organizing processes of market relations, nor placed under overall state control. Although promoters have the right to ownership, price setting and profit motives, their independence is predetermined by the norms of transparency, responsibility, and enforceability. The fact that the judiciary has been steadfast in its support of this framework implies that the real estate markets are considered important in the social and economic sense to be accorded an increased level of regulatory oversight³⁰.

Simultaneously, there are still the issues of over-compliance, state implementation disparities, and regulatory capability. These problems demonstrate that a further judicial review and administrative clarification is necessary as opposed to withdrawal of regulation. RERA is therefore placed between regulation and freedom in the spectrum, which preconditions comparative analysis of the United States and Venezuela in the following sections.

4. Real Estate Regulation in the United States: A Market-Oriented Legal Framework

4.1 Federal–State Structure of Real Estate Regulation

The real estate law in the United States is decentralised and market-oriented in nature, with state law dominating the entire law over the property as opposed to full federal control. The legislative authority to regulate property law, land use, and real estate transactions has long been historically a part of individual states, which is due to the federal form of U.S. Constitution³¹. Consequently, no single and homogenous real estate regulatory law exists as in the case of RERA in India. Rather, regulation is developed by a mixture of state property statutes, zoning statutes, precepts of the contract law, and restricted federal consumer protection laws.

The influence of the federal government in the real estate transactions is usually limited to

certain areas like mortgage lending, settlement process and anti discrimination standards. Such laws as the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA) are designed to promote transparency in the financing process and safeguard the consumer against fraudulent lending practices, and not to govern the real estate development or construction itself³². It is an intentional policy decision to maintain market independence and deal with the discrete consumer vulnerabilities.

Real estate governance is considered at the state level through licensing of brokers, disclosure requirements and land-use planning by zoning regulations. Zoning, as maintained as a legitimate exercise of the police power of the state, *Village of Euclid v. Ambler Realty Co.*, allow local governments to control land use based on the goals of the public welfare like urban planning and conservation³³. The controls are, however, carried out at a land use level instead of direct control of the contractual relationships between the developers and the purchasers.

4.2 The Focus on Contractual Freedom and the Regulation through Disclosure.

The U.S. real estate system is marked by the use of contractual freedom with the help of disclosure-based protections. Negotiated contracts are mainly used in transactions of real estate and courts can only intervene when there are fraud, misrepresentation or unconscionability. In contrast to the Indian RERA system, the American law does not require the registration of projects, the construction funds to be kept in escrow, or the state-controlled timeframes of project completion. The developers have considerable freedom in organizing the projects and agreements, which are governed by the general contract law and consumer protection standards³⁴.

Compulsory disclosures, in turn, are an imperative regulatory instrument. The sellers and the agents must reveal material defects in property, which they are aware of, and otherwise the civil liability can occur. These obligations have always been imposed by courts, who have appreciated that disclosure is a remedy to address the information asymmetry without compromising the efficiency of the market. In *Johnson v. The Florida Supreme Court, Davis*, concluded that sellers possess a proactive obligation to reveal facts that are material to the value of the property, which cannot be easily observed, which underlines the consumer protection on the basis of the judicial doctrine and not a statutory regulation³⁵.

This regulatory ideology is indicative of a favoring ex post judicial redress to ex ante

administrative oversight. The U.S. system does not focus on preventing disputes, but instead on litigation and damages to punish market behaviour by use of regulatory approvals. The assumption made under this approach is that the bargaining power and access to legal redress is relatively equal- an assumption that has been both justified and criticised in comparative scholarship³⁶.

4.3 Protection of Property in the Constitution and Regulatory Restraints.

The American market-based real estate system is based on the constitutional safeguards of property interests. The Takings Clause of the Fifth Amendment, which the states are bound by the Fourteenth Amendment, is the forbidding of the seizure of personal property without just compensation to serve the common good. This provision has been construed broadly so as to place restrictions on the regulation intervention that overly encumbers the property owners³⁷.

The U.S. Supreme Court stated the principle of regulation of *Pennsylvania Coal Co. v. Mahon*, according to which the regulation can be a taking when it is excessive, thus establishing that excessive regulation by the state can result in the infringement of constitutional rights to property even in the absence of actual expropriation³⁸. In *Penn Central Transportation Co. v.*, this doctrine was perfected. The Court, in New York City, where it thought appropriate to introduce a balancing test based on economic impact, interference with reasonable expectations in investment and the character of the government action³⁹.

These rulings highlight the importance of the judiciary as a protector of market freedom that the regulation in the public interest does not unduly impair the rights of the privately owned property. Where even the regulations are aimed at achieving legitimate goals, like historic preservation or city planning, the courts examine their effect on the owners economically. This judicial stance is quite unlike in jurisdictions where judicial courts have a broad deference to the legislative policy on housing regulation.

4.4 Judicial Response to Consumer Protection and Market Balance.

Although the courts of the U.S. are very strict in safeguarding the rights of the property, they also acknowledge the validity of reasonable regulation. In *Kelo v. The Supreme Court*, in *City of New London*, approved the application of eminent domain to serve economic development purposes, indicating judicial deference to legislative judgments on the existence of public use, even though there was huge controversy⁴⁰. The case depicts the delicate balance that the courts

seek to create between the market freedom and the national interest, even in a market-based system.

Notably, judicial doctrines of protection of consumer rights in real estate dispute matters are a major achievement as opposed to specialised regulatory bodies. Misrepresentation, breach of contract, negligence or unfair trade practice claims are heard in civil courts. The litigation-based model is more effective in strengthening personal rights but can also lead to a rise in transaction costs and restrict access to remedies of economically weaker buyers⁴¹.

4.5 The United States as a Market-Centric Regulatory Model.

Compared to other countries, the United States is a market-oriented regulatory paradigm with a selective, constitutionally limited, and facilitative and not supervisory interference of states. The regulation is about transparency, land-use planning, and safeguarding against outrageous abuse, and maintaining wide latitude to the private actors to organize transactions and investments. The judiciary is the key balancing institution and resolves the conflicts between the market freedom and regulatory goals on a case-by-case basis.

This model will provide useful comparative lessons to other jurisdictions such as India. Although the U.S. experience shows that a robust judicial enforcement can replace an intensive regulation, it also reveals the weaknesses of market reliance in the settings with an uneven bargaining power. These differences are more striking against the state-based system of Venezuela, discussed in the following section.

5. Venezuela: State-Dominated Real Estate Regulation and the Erosion of Market Freedom

5.1 Constitutional Foundations of Property and Housing Regulation

Venezuela Real estate regulation is based on a constitutional framework which specifically places social welfare and state control over market autonomy. The Constitution of the Bolivarian Republic of Venezuela, 1999 acknowledges the right to own property but at the same time impose a wide range of restrictions that are in favor of the public utility, social justice, and the common good⁴². Article 115 secures property rights and authorizes expropriation on grounds of social or public interest, which is liable to compensation, but Article 82 relates housing to a social right and places on the state a responsibility of providing a decent home⁴³.

This design of the constitution represents the break of classical liberal theory of property. In Venezuela, property cannot be considered a sacred individual right but a socially conditioned right, and it is the state policy interests that are of priority. The social right of housing as embedded in the constitution has been the normative basis of the broad state intervention in real estate markets, such as rent regulation, eviction restriction and massive state programs on housing⁴⁴. Although these measures are fair, according to the distributive justice, they provoke some essential questions about the extent of market freedom and predictability of property rights.

5.2 Legal Regulation and State Regulation of Real Estate.

The real estate industry in Venezuela is also regulated by a number of laws which together provide a blanket state control on the real estate and property deals. Most prominent of these would be the Law on Regulation and Control of Housing Leases which instills stringent rent controls, restricts contractual freedom and greatly inhibits the capacity of landlords to repossession of property⁴⁵. These legal restrictions are meant to avoid speculation and cushion tenants but at the expense of discouraging individual investment in housing.

Also, the state-led housing programs like the Gran Mision Vivienda Venezuela represent one such policy orientation in which the state plays a key role as a regulator and provider of housing. Although such programmes are meant to solve the shortage of housing and inequality, it further discriminates against the private developers and diminishes market participation⁴⁶. In contrast to regulatory models which aim to discipline markets but leave the enterprise in the hands of the business, the framework in Venezuela is gradually substituting markets with the state.

And the state control of real estate has also been increased by expropriation laws and emergency decrees. Everywhere, in a number of cases, individual housing projects and landholdings have been expropriated or forced to be acquired on general public interest grounds. Despite the constitutionally guaranteed compensation, delays, underestimation, and ineffective remedies have been reported far and wide and this has diminished the trust of the legal system in the protection of property rights⁴⁷.

5.3 Institutional Limitations on the Judiciary.

One of the key aspects that differentiate the real estate regime in Venezuela in comparison with

the one in India and the United States is the fact that the judicial oversight is limited. Although constitutional and statutory provisions explicitly permit judicial review, the issue of judicial independence and institutional capacity has limited the ability of courts to act as mediators between the power of the state and individual rights⁴⁸. In contrast to the active involvement of the U.S. judiciary with the regulatory takings doctrine or the Indian Supreme Court with the welfare laws and judicial freedoms, Venezuelan courts have mostly left the executive and legislative decisions in housing policy.

This has been a great implication on property owners and players in the market. Objections to rent controls, eviction laws and expropriation have rarely led to any significant relief. The lack of a solid doctrine on restricting regulatory overreach has facilitated the state to increase its control with the least judicial scrutiny, which has almost caused the destruction of the legal safeguards that traditionally surround market autonomy⁴⁹.

Global human rights organizations have been concerned about the deterioration of property rights and absence of proper solutions in Venezuela. Inter-American human rights system has observed that non-arbitration in interfering with property and inadequate compensation systems can infringe the regional human rights norms⁵⁰. The above criticisms highlight the significance of a functional balance between regulation and the protection of rights which is achieved through independent judicial institutions.

5.4 Effect of Over-Regulation on the Working of the market.

The effects of the Venezuelan state-dominated real estate regime are reflected in the shrinking of the private housing markets, dwindling construction sector, and underdeveloped housing shortages. Though designed to enhance affordability, rent control policies have also discouraged maintenance and new investment which has resulted in a decaying housing stock⁵¹. There is a high level of regulatory uncertainty among the private developers which discourages long-term investment and innovations in the industry.

Comparatively, Venezuela is a clear example of the dangers of over-regulation in the absence of institutional balance. When the regulatory intervention takes the form of displacing market mechanisms rather than correcting market failure, it may be counterproductive in terms of efficiency, supply, and creating informal or unregulated market. The Venezuelan experience is in that sense a warning sign of how regulation of the real estate market, without the restraint of

judicial checks and balances and market-based considerations, can actually worsen housing crises⁵².

5.5 Venezuela as a Compensatory to the Comparative Spectrum.

Venezuela is the state-dominant extreme of real estate regulation, in the comparative context of this paper. In contrast to the RERA regime in India, which aims at punishing the private players, but leaving them to participate in the market, or the market-based approach in the United States, the model in Venezuela focuses on state dominance as a goal in itself. This has been coupled with the marginalisation of the private autonomy and a weak judicial check leading to the creation of a legal environment in which the market freedom is greatly limited.

This is why Venezuela is a crucial comparative reference position. It emphasizes the significance of the moderated control, which shows that the goals of consumer protection and social well-being cannot be attained sustainably in the context of excessive state control. The Venezuelan example supports the thesis that to have good real estate governance, it is necessary to have not only the intent of regulation but also an institutional balance, judicial independence, and an appreciation of market dynamics.

6. Comparative Analysis: State Regulation and Market Freedom in India, the United States, and Venezuela

Comparative analysis of real estate regulation in India, the United States and Venezuela demonstrates that three different legal approaches to the conflict between state intervention and free market can be identified. These jurisdictions do not stand as discrete models, but they take various positions on a regulatory spectrum, determined by constitutional philosophy, institutional design and judicial involvement. This analogy allows a more in-depth view of how the legal systems tune the regulatory power according to the market failure, social goals, and economic ideology⁵³.

The RERA framework in India is a corrective regulation model at the structural level. The Indian legislature stepped in to address market failures, as demonstrated by systemic delays, information asymmetry and consumer exploitation, but it retained ownership and market involvement in the hands of a single person. The Indian regulation is both ex ante and supervisory and centers upon transparency, accountability and enforceability, as opposed to

price control or state ownership⁵⁴. On the contrary, the United States embraces a more market-oriented strategy, which considers freedom of contract and court intervention to punish market behaviour. Intervention by the regulator is selective, constitutional, and mainly facilitative, focused on correcting discrete weaknesses to the market as opposed to reorganizing the market itself⁵⁵. Comparatively, Venezuela is indicative of a state-dominant model in terms of which real estate regulation is closely intertwined with social policy and ideological obligations, and in many cases, replaces market regulation entirely⁵⁶.

The judicial branch of power is one of the key areas of divergence between the three systems. In India, courts have been proactive in determining the balance of regulation by applying RERA as a welfare-based law and making sure that it conforms with constitutional rights in Articles 14 and 19. The legal interpretation has not allowed RERA to become an overreach in terms of control by laying stress on proportionality and legislative intent⁵⁷. The U.S. judiciary, in its turn, operates as a constitutional gatekeeper by using the so-called regulatory takings, making sure that the state intervention is not pushed to the point where the uncompensated deprivation of property rights is involved. This robust judicial stance enhances trust in the market taking into account that there are predictable boundaries to regulation⁵⁸. The situation in Venezuela is different where the lack of judicial independence and institutional submissiveness to the executive branch have limited effective scrutiny in the exercise of regulatory overreach, whereby state control has been expanded with limited legal check⁵⁹.

The other axis of comparison is the mechanisms of consumer protection. The RERA regime in India institutionalises consumer protection by providing statutory rights, special adjudicatory bodies and compliance obligations to be imposed to promoters. The regulatory structure therefore incorporates consumer protection⁶⁰. In the US, consumer protection is more litigation-based, which is based on disclosure and post-sale judicial remedies. Although this maintains contractual freedom, it presupposes access to legal resources and more or less even bargaining power - presumptions that fail to hold in reality in all cases⁶¹. The model of Venezuela, despite being rhetorically consumer-focused, focuses on protection in the form of rent controls and state distribution, which tends to detract housing provision and market responsiveness, negatively affecting long-term consumer welfare⁶².

Compared to the results in terms of market efficiency and investment climate, the comparative results are radically different. The measured control used in India has led to a level of

transparency and trust in buyers yet the compliance cost and state-level disparities remain a matter of concern.

The system of the U.S. still appeals to the foreign investors because of its predictability, good property rights and minimal administrative obstacle. Venezuela, however, has also experienced a decline of the private investment in the housing sector, which can be seen as an example of how highly regulated and unpredictable legal environments can destroy the involvement of the market and the availability of housing⁶³.

Notably, the comparison has shown that regulation in itself does not necessarily distort markets. Instead, the direction of regulation is determined by nature, extent and institutional environment. The Indian experience indicates that regulation to correct certain market failures with the assistance of independent adjudication can achieve the desired outcome to protect the consumer as well as to improve market stability. The example of the United States demonstrates that the markets could be effective and highly regulated in case of the high enforcement of the judiciary and constitutional protection. Venezuela is a good example that demonstrates the dangers of excessive regulation when there is no institutional balance, the market efficiency and property rights are compromised by the state control⁶⁴.

This comparison argument supports the main premise of the paper: the best regulatory framework of the real-estate is not on one end regarding the overall freedom of the market or a complete state control, but rather on a moderated compromise between the two. This balance needs not only legislative will but also institutional ability, independence of the judiciary and appreciation of market forces. The following part of the paper will develop this comparative observation and analyze whether the RERA framework in India is somehow close to this middle way, and how it can be improved based on the experience of other countries.

7. Conclusion and Recommendations

The proposed paper aimed at analyzing this long-standing conflict between state regulation and market freedom on the law of real estate by comparing India, the United States, and Venezuela. Two key questions directed the inquiry: how far ought the state to intervene in real estate markets; and, second, is it more a consumer protection mechanism or a market efficiency-distorting mechanism? The comparative evidence indicates that the solutions which have a chance of providing a sustainable legal solution are neither absolute market autonomy nor

pervasive state control. Rather, the efficacy of real estate regulation rests on its calibration, institutional structure and judicial control⁶⁵.

The Indian experience of the Real Estate (Regulation and Development) Act, 2016 shows that structural market failures can be addressed through a specific regulatory intervention without destroying the private enterprise. The emergence of RERA was triggered by observable consumer harm due to the information asymmetry, lateness in possession and the asymmetric bargaining power. Judicial interpretation has always defined RERA as a welfare law which puts reasonable limits in the interest of the people and therefore upholding the ideology that regulation in a reasonable manner only improves market credibility and not destroys it⁶⁶. The Indian model therefore disproves the notion that regulation would always lead to the distortion of market efficiency.

On the contrary, the United States exemplifies the advantages and shortcomings of a market-centric policy. The existence of property rights that are well safeguarded by the constitution, judicial principles restricting the powers of the government to regulate excessively and the dependence on contractual freedom provides a conducive environment that is predictable and conducive to investment. Nevertheless, the American model assumes the relatively equal opportunity of access to the legal remedies and bargaining power- presumptions that might not be true in every housing market. Although market freedom is still quite high, consumer protection is commonly obtained at the expensive cost of expensive and lengthy legal proceedings, which shows the shortcomings of ex post remedies⁶⁷.

Venezuela, which ranks on the other end of the spectrum, highlights the risks of excessive regulation which is not accompanied by institutional balance. Weak judicial review coupled with the subordination of property rights to the broad social policy objectives has undermined market participation and has also led to housing shortages and regulatory uncertainty. The Venezuelan experience illustrates that regulation, when inverted into a wholesale state control, can endanger the market effectiveness as well as the welfare of consumers in the long term, frustrating its own social goals⁶⁸.

Three fundamental conclusions are drawn out of the comparative analysis. To begin with, real estate markets need to be controlled, but this control should be problem-oriented and supported by evidence instead of the ideological point of view. Second, the courts play a crucial role in

ensuring that there is a balance between the regulation and the freedom of the market; in the absence of effective courts, regulation can easily turn into arbitrariness. Third, consumer protection and market efficiency are neither mutually exclusive, but mutually reinforcing in the case of regulation which is not suppressive but facilitative⁶⁹.

Normatively, the RERA system in India is a fairly effective effort to find the golden mean. Nevertheless, it has to be refined further. The regulatory bodies should make sure that there is consistency in the implementation across the states, prevent procedural overreach, and enhance ability to prompt adjudication. The judicial review should be further maintained to avoid regulatory overload and still maintain the consumer-focused goals of the Act. The experience of the United States indicates that predictability and judicial clarity are essential to investor confidence, whereas the experience of Venezuela is a warning about the excessive power of the state without institutional control⁷⁰.

Finally, the paper confirms that the ideal tension between state regulation and market freedom in the real estate law is not fixed but a dynamic phenomenon. It should develop in line with economic forces, urbanisation forces, and maturity of institutions. The effectiveness of real estate regulation is not in the number of control measures of the state, but in the quality of legal design, the proportionality of intervention, and the quality of judicial control. Research can be taken to the future in terms of expanding this comparative investigation to the emerging economies or analyzing the empirical findings on the application of RERA to further streamline the legal framework of real estate governance.

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