

# The Encroachment Debacle in Pakistan

Saima Bashir

(Senior Research Demographer PIDE)



## Definition

**'Encroachments' are the bane of life in most Third World countries and Pakistan is no different.** They create overcrowding of public areas, block safe and easy access to services and shops, and are a nuisance to the citizenry and city administration alike. And what are 'Encroachments' you say? Merriam-Webster defines "ENCROACH" as a "*gradual or stealthy entrance upon another's territory or usurpation of another's rights or possessions*". So, we're talking about violating the property rights of our neighbors' space by occupying it illegally. For example, building a wall crossing into one's neighbors' property is an encroachment, whether deliberate or in ignorance. Another type of encroachment, in fact the focus of this article, is trespassing onto public areas. This means if a structure extends onto a pavement, park, or road, the city development authority is legally entitled to remove it without any compensation. ➡

► In Pakistan, when we talk about 'encroachment', we are referring to street vendors with their carts selling their goods on the road, small shops that have extended display and placement of their wares on the sidewalks, and roadside stalls selling food and other products. All this commercial activity is conducted without any proper licensing or allowances from the city authorities. This is the time-honored method for poor people to make a living. This section of our society does not have the means to invest in premises and other fixed assets to conduct their business. In the absence of financial stability, with lack of infrastructural support from government, this is the only recourse for a livelihood for the poor of our society.

However, the 'encroachment' factor makes this thriving business sector a focus of prosecution by authorities, backed by the legal system of the country.

As we can see in the Capital Development Authority Encroachment Laws, available on the CDA website, encroachment is defined as

: *“No person shall encroach on the land under the charge of the Authority or put up an immovable structure, hut or khokha or overhanging structure under any circumstances. Free flow of pedestrian traffic in circulation verandahs of all the Markets of Islamabad shall not be obstructed by stacking articles or in any other manner. Articles so stacked shall be liable to be removed and confiscated at the cost and risk of the defaulter”.*

The law also sets out regulations governing the licensing of movable carts and stalls:

- Carts/stalls owners have to have a monthly license for their business activities
- The license can be revoked at any time with a 12-hour notice to the owner
- Such a license is non-transferable
- In case the license is revoked “the articles of sale and furniture etc., will be removed by the licensee within 12 hours or these shall be removed by the authorized officials of the Directorate to their stores at the cost and risk of the licensee and no compensation shall be granted in this behalf
- Movable encroachment for which a license is issued shall not be more than an area of 16 sq. ft.
- Rent at the rate of Rs.1/sq. ft. per month shall be payable in advance
- Any person committing a contravention of any of the bye-laws in this Chapter shall on conviction be punishable with fine which may extend to five hundred rupees and in the case of a continuing contravention with an additional fine which may extend to twenty rupees for every day during which contravention continues after conviction for the first of such contravention

### Property Usage According To Zoning

Another area of concern for the CDA is usage of premises according to zoning regulations. Property zoned as residential, cannot be used for commercial activity. According to Residential Sectors Zoning (Building Control) Regulations-2005, *“non-conforming use means the use of a plot or structure thereon not conforming to the purpose authorized or permitted under this regulation”.* Currently, many residential properties are being used as guesthouses, hostels, schools, offices, and boutiques in violation of Islamabad Residential Sectors Zoning (Building Control) Regulations-2005 and CDA Ordinance 1960. This is considered “non-conforming activity”, and as such is subject to closure, and fines.

### The Courts Weigh in on the 'Encroachment' problem

In July 2019, the Islamabad High Court ordered the removal of all *khokhas* in the city, as part of the anti-encroachment drive.

In its decision, the Court observed that since *khokhas* were not part of the original Islamabad Master Plan prepared in 1962 by Doxiadis and Associate, they are all liable to be demolished. As per court order, all *khokhas* were given up to 30 days to clear out their belongings and products. Similarly, in October 2019, the Supreme Court directed all the provincial and local governments, and cantonment boards, to remove encroachments on amenity spaces across Karachi. The focus of the directive were buildings and 'plazas' being used for commercial purposes, such as marriage halls and shopping malls. The objective was to shut down businesses run by land-grabbing mafia who had obtained government lands from Karachi Metropolitan Corporation through underhand deals. The Safa Gold Mall case in Islamabad is another such example of egregious misappropriation of properties.►►







## Anti-Encroachment Drive and its Effect on the People

In Islamabad, approximately 485 *khokhas* were removed. This translates to upwards of 25,000 people affected directly and indirectly. This includes the *khokha* owners, their families, and workers employed by them. These numbers are estimates from “Excluding the Poor”, a conference held at PIDE. The intended, or unintended, consequences of the 'anti-encroachment' drive have been to spur unemployment in urban areas that are thriving centers of small business activities. The questions to ask after the dust settles are:

- Should the law be used to implement policies which are detrimental to a huge sector of our society?
- What are the responsibilities of the state towards providing livelihood support to the poor?
- Why are state officials, who are facilitators of encroachments for personal benefit, not apprehended before the state prosecutes the 'encroacher', who has no means to defend himself?

Although the State action is within the law, it can become counterproductive, as it has in this instance. After several appeals and protest rallies staged by those affected, there has been no action taken to alleviate the problems faced by them. The affected localities have lost their livelihoods with no state agency capable, or willing, of providing an alternative means of income. Although the weak and vulnerable have been held responsible for the encroachment phenomena, the blame should be proportionately distributed among all the responsible parties, namely the encroachers as well as the agencies allowing the encroachment for personal financial benefit.

Although the court's position on such encroachments seemed to be justified, the injunction allowed the authorities to demolish small businesses, and even houses, in impoverished localities. Actually the authorities i.e. CDA, KDA etc., had allowed the encroachments and facilitated water and power supply to such small business, having been paid off under the table. In these cases, the local government authorities should have penalized the government agencies who allowed such encroachments. Almost all such small businesses, when asked, responded that they were paying a monthly stipend to the officials to carry on their commercial activities.

The courts passed a judgment based on the city development authority's laws. In reality, the judgement's implementation shut down the businesses of the poor sector but the wealthy and powerful contraveners of the law were able to circumvent the regulations with impunity. The bottom line is that the actual targets of the judgement went scot-free and the disenfranchised paid the price. The same scenario was seen in the other cities of Pakistan such as Lahore and Faisalabad.

### Why Do We Need To Worry About Encroachment?

In Pakistan, encroachments are ubiquitous and pose many challenges. This problem highlights the dismal governance system and the socio-economic fabric of the society. Some causes are listed below:

- Pakistan is a poor country with a minimum wage rate of PKR17, 500 (or USD 113) per month. In 2016, over 39% of its population lived below the poverty line. In the 2017 Global Hunger Index (GHI), and again in the 2018 GHI, Pakistan ranked 106th out of 119 qualifying countries. With a score of 32.6, its status is 'serious' (bordering on 'alarming').

- Land prices have gone up significantly in the last few years, making it almost impossible for most people to purchase land for business or residential purposes.
- The unavailability of sound financing systems further contributes to this problem.
- Governments have adopted policies that promote deregulation, liberalization, reduction of state's role in the provision of services, removal of subsidies, and regressive taxation with no attention paid to infrastructure development.
- Despite the high rate of taxation, infrastructure development has been neglected due to lack of planning and vested interests favoring the influential and well connected people. The resultant crisis is reflected in all sectors: education, health, city planning and development, transportation, and so on.

### Flaws in Land Regulation System

It is common knowledge that CDA, KDA, LDA etc., are partners with encroachers in land misappropriation. These agencies facilitate encroachers due to the financial benefit they receive on a personal level. An expanding middle class (there were 32 million registered cars in Pakistan in 2019) is looking for residential accommodation in newer and cheaper areas, making land development a lucrative business. With our Corruption Perception Index ranking of 117 out of 180 countries in 2017, it is no surprise that housing authorities and property developers work together and take possession of land, legally or illegally, wherever possible.