

# Introduction of Land Title Certification System

State Level Reform

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## 1. Security of Tenure –land title certification system

Urbanising India urgently requires a robust system to protect land rights. There are two important aspects to land title: the first the formal recognition by the state of property rights through a system of titles; and second the facilitation by the state, of efficient trade in rights, through a process of registration. Both of these elements exist in India, but in incomplete form.

While Indian law requires compulsory registration of sale of land, the Indian Registration Act of 1908 doesn't ask the registration authority to verify history of the land or ownership from the seller, weakening the protection to the buyer. Hence land registration is not registration of title, but of deed of transaction. It is a fiscal instrument for the state, allowing it to collect a "fee", not providing the statutory support of certainty to title. Neither does the Transfer of Property Act, 1882 require verification of ownership.

In addition, Section 18 of the Registration Act does not demand compulsory registration of all land related transactions. State legislation on land acquisition, court decrees, land orders, heirship partitions, mortgages, agreements to sell, etc, do not require mandatory registration. The provision related to land in the Indian Contract Act of 1872, does not require contracts to be registered.

All of these forces combine to weaken land records and security of tenure. What we have in India today is a presumed ownership to land which is questionable and can be challenged on multiple fronts: ownership, extent of boundaries, clauses, financial encumbrances, inheritance subdivisions, etc. The formation of modern markets has required the replacement of traditional systems of common property rights and development, with a system that provides for individual rights and the ability to trade these rights. In such a scenario, it becomes important to strengthen formal system of registration and title, of individual property rights. For more information, refer to "Ground Rules" published by India Urban Space Foundation and Ministry of Urban Development, Government of India.

Irrespective of one's misgivings about the long-term implications of modern tenure systems, the edifice of a modern state/market ecosystem is premised on the paradigm of individual land and property rights. Any social or community concerns will have to find answers within this emerging paradigm; for example, the means of protecting group titles, or legal mechanisms of community ownership.

Implementing a system of land title certification is one of the mandatory reforms suggested in the Jawaharlal Nehru National Urban Renewal Mission (JNNURM or the Mission hereafter). States are expected to implement the reform within the Mission period.

## 2. Rationale for the reform

Guaranteed title certification systems that protect rights to land and property have been developed in most of the democratic, developed economies. The essential aspect to guaranteed title is that it relates to so many aspects of the functioning of both state and markets: it helps in social justice programmes like low income housing; it helps in more effective urban planning, and in the protection of specified land parcels like environmental or heritage assets; it helps faster implementation of infrastructure projects, it reduces delays in judicial processes and unnecessary

litigations; it helps in a more efficient mortgage market, with fewer delinquencies and greater transparency; and so on.

*Issues arising out of uncertain title to land*

The impact of lack of clarity on record of rights is felt most acutely in three key areas: in policies, planning and management. Some of the issues in each of these areas are described below:

## URBAN PLANNING

- With increasing urban growth, Master Plans for cities and Structure plans for districts focus on – among other aspects – planning to provide for the increasing appetite for residential land. This need is often inaccurate due to the artificial constraints on land availability. These artificial constraints could be the result of litigations on land that prevent productive use, speculative purchasing that create in-fill vacant sites, the lack of information on government land assets that can be utilised for social housing or for public amenities. The search for land with clear ownership and affordable prices, takes people further into city’s peripheral areas. The government is then constitutionally forced to extend urban amenities regardless of the inefficiencies of scale.
- The emergence of informal housing causes additional dilemma to planning processes since there is no clarity on whether or not to formally recognise them in plans. Similarly, the clustering of illegal enterprises along major roads makes plans ineffective in guiding quality and convenience. Environment planning is also degraded when tanks and wetland are illegally filled and buildings constructed. Often the lack of affordable housing results in illegal settlements that impact drainage systems and water bodies. Development controls will be ineffective in such situations. Without clarity of rights on public and private land and of legal and illegal use, even the best of master plans will be ineffective.
- When planning for urban infrastructure such as transit systems or road connectivity, states and burgeoning cities often need to acquire private land. This is a proposition fraught with difficulties due to the lack of proper land records. Planning decisions are frequently dictated by the availability of land that has clear ownership records.
- The presumptive nature of land ownership creates distortions in land market valuations and accessibility to land. Developers frequently purchase land that either has questionable ownership and rights, or pay exorbitant prices for land with clean records. A report by McKinsey in 2001 comparing India’s 6% economic growth to China’s 10% at the time, suggested that India’s GDP growth was hobbled by the government market regulations, government ownership in businesses and the distortions in the market for land due to lack of clarity on title. Impact on GDP by lack of title was estimated to be 1.3%.

## POLICY

- Policies that are directed towards economic growth, governance, environmental protection, etc, are often impacted by weak land management. For instance, the zoning and by-laws of master plans are policies that are dependent on cadastre data. The recent drives for regularisation of violations in Delhi and Bangalore require data on individual properties for recording applications, evaluation for regularisation, and transparent decision-making. The absence of such property data makes the implementation of such a policy an up-hill task.
- Environment protection: As urban centers expand and grow, they require more land, more water supply, more electricity, generate greater amounts of waste and ozone depleting carbon and often destroy forests and biodiversity. Disregard for wetlands, valleys, water bodies and

topography results. While some states have developed excellent environment policies, Environmental Impact Assessment (EIA), input is at the level of the plot or parcel of land and the lack of clear cadastre records impedes progress on this policy.

- The need for land acquisition for infrastructure development has resulted in states such as Maharashtra, Andhra, and Karnataka introducing new urban policy tools such as the Transfer-of-Development-Rights (TDRs). However the base for the success of such policy tools is built on efficient land pricing markets, clear title and records that are absent in urban areas.
- Even while the country has taken no steps towards clear title, India's GDP 2006-2007 was 9.2%. Foreign Direct Investment flows in 2006-2007, tripled from the previous year, to \$15.7 billion, but have required special instruments like Special Economic Zones (SEZ) to overcome policy and administrative hurdles including those on land. More than the tax holiday or infrastructure development, the SEZ's most valuable service to successful applicants is the access through government acquisition on their behalf, to land that is free of litigation and carries indisputable ownership. This is a striking example of a controversial policy initiative that was largely born because of the gaps in land title.

## GOVERNANCE

- While the planning and policy processes stop with the report they are printed on, enforcement of these plans and policies on the ground is an impossible task without dependable land records. This is true for the provision of services in municipalities as well. The quality and quantity of land-related data that needs to be collected and managed at the municipal governance level is enormous.
- Adequate policies and mechanisms need to be in place to ensure financial resource mobilization, equitable expenditure decisions, and reasonable compliance. The largest source of revenue for a city is property tax. Once a municipality or City Development Authority develops a certain area and sells it, subsequent developers profit off of the infrastructure of that developed pocket and sell similar developments at attractive rates. Buyers find the pricing affordable since they do not include the 18% cost of infrastructure provision. However, the lack of adequate infrastructure causes pressure on financial resources. Urban expansion into rural villages provides an opportunity for distributing political patronage. Without robust land records, there are no mechanisms by which an equitable levy of such infrastructure fees - or "betterment charges" as they are technically known - can be monitored and collected in a fair and equitable manner.
- In addressing the needs of the vulnerable, government programs for the poor are often linked to their place of residence. For example, the Public Distribution System is directly linked to the geographic identity of a formal postal address. Migratory flows and temporary residence make tracking those below the poverty line (BPL) a gigantic task without data on property records. Currently, there are multiple state agencies that deliver goods and services –housing, food, health, etc- to the BPL families. Each works with its own BPL list, with minimal overlap in the names on such lists.
- Poor land records management also results in enormous corruption and patronage, and inefficient delivery systems, where even the simplest projects get delayed, resulting in cost- and time-overruns. Land for urban use is today at its highest premium. The optional nature of registration on land related transactions and changes, creates multiple and conflicting

recording of data within government. In addition the country is witnessing increasing social cost, with civil courts back-logged for years and delayed dispute resolution on land-related legal cases. By some estimates more than 60% of India's civil courts, are related to disputes on land. There are remarkable cases where government itself has been mired in litigations related to land.

### **Benefits of the Guaranteed Title reform**

Clearly providing security of title through robust records, improved registration and guaranteeing title, are significant next generation reforms on land. After two decades of advocacy and recommendations from Planning Commissions, the country is ready to take a leap towards these reforms. The impact of these reforms will be significant.

#### *Social impact:*

There will be reliable data on property and land and hence a dramatic reduction in litigations, and encroachments will go down. Government records of land assets that are currently in shambles, will be vastly improved. This in turn will make land available for social development and infrastructure. There will be improved value to property assets, easier access to credit, increasing number of transactions. Transactions on land become simpler, cheaper, quicker, and will be accurate and secure.

#### *Governance impact*

Urban planning and management will be immeasurably improved with reliable data of the individual cadastre that will provide the smallest building block on which layers of data can be built. Data at the property level will be the building block for multiple uses - accurate assessment of land market valuation by street, updated voter lists, enforcement of zoning laws, etc. Tax and utilities collection will be better administered and allow fewer loopholes. Infrastructure projects will be done faster with clarity on title, and development policies like Transfer of Development Rights (TDR) will have an enabling environment.

#### *Financial impact:*

The access to credit through land and property assets is an on-going study. This is especially important for the urban poor, who currently cannot use their property as collateral to access credit, due to lack of certainty of tenure rights. Guaranteed title will unlock the potential of land to generate capital. While the small holdings of the poor might not individually attract credit from formal financial institutions, they could become attractive as aggregated land collateral. For example, the total value of informal urban and rural land Karnataka alone, is estimated to be \$90 billion, or Rs. 350,000 crores. (extrapolated from Hernando De Soto data on Asia in "Mystery of Capital")

Sources of revenue to the state and local governments - direct and indirect – will increase substantially - property tax collection, stamp duty for registration, building licenses, company and individual taxes with employment generation in an improved land development and construction sector.

Robust records and secure title bring informal land and property holdings into the formal system. The resultant benefits accrue to the property holders, improved sources of revenue to the local and state governments, and efficiency in social programmes of government.

**Rajasthan takes a lead in introducing a state guaranteed land title (GLT) with an Ordinance that was notified on 13 October 2008 and to be placed in the Assembly of the new Congress government voted into power on 8 December 2008.**

The salient features of the GLT in Rajasthan are the following:

- Addressing the challenges of urban land title separately from rural land title
- Making GLT entirely a voluntary process. Those who want to retain their land holdings in the current form can continue to do so. Letting market forces drive demand is the principle – dematerialisation of shares from paper to electronic is a good parallel.
- Taking an incremental approach – get all government distributed land and developments under guaranteed title. Simultaneously incentivise private owners through tax rebates. The state is prepared for the process of conversion to land title to take a decade or more.
- Guaranteed land title is eligible only to owners that have converted land from leasehold to freehold.
- Creation of a new Act for guaranteed land title instead of amendments in multiple acts.
- Linking the Registration process to GLT given that the central registration Act does not allow Registration to verify ownership in transactions.
- Mapping in complete detail the processes related to title on land: change in proprietorship, change in property, financial charges and lien and inquiry on land.
- Using technology as backbone to maintain records and manage the title system. The process of actual issuance of freehold and guaranteed title will depend on the quality of the documents held by the owners – the clearer the documents, the easier the issuance of the freehold and title papers. What it allows is building a database of land records and create a negative system that in itself will create a check.
- Granting provisional title for two years that converts to indisputable title if unchallenged. A 1% DLC fee is charged that goes into an indemnity escrow.
- Designing an institutional structure that moves towards a single repository of all records,

### Reform components

The TEN POINT agenda for title certification:

1. Provide for a conclusive title of ownership to land based on clear supporting documentation
2. Provide for clear boundaries to the land based on ground surveys
3. Reduce the scope for land disputes and civil litigations
4. Protect fairly, any genuine owner / purchaser from financial loss in case of erroneous title of certificate
5. Make transactions in land simpler, safer, quicker and cheaper
6. Merge / link the Registration and Title certification processes and data so that all land transactions details are current and easily shared / merged between the two.
7. Enable a seamless record management system between urban land, peri-urban land and rural land

8. Once land is under a title certificate, mandate recording of all transactions in land such as mutation, sub-division, inheritance, mortgage, power-of-attorney, etc
9. Build comprehensive coverage of continuously current record-of-rights on land. Either the state or city builds it itself, or if outsourced to private sector, ensure complete access to land records
10. Provide access to these record-of-rights by the public in an easy manner with appropriate security on the accuracy of data and level of access.

A Task Force on Property title certification system was set up in November 2008, headed by the Joint Secretary, MoUD, GoI. The recommendations of the task force on the first five strategic aspects of implementing guaranteed title certification are listed below:

- i. Decision on the type of land title system
  - a. State guaranteed title of certification system
  - b. Private insurance guaranteed title of certification system
  - c. Computerised system of registration and mutation record that would not be a formal title, but would act like a security of tenure

*MoUD, GoI, Title certification task force recommendation: State Guaranteed Title System is the most preferred since the protection of rights to property and maintaining land records should be the responsibility of the state. Private insurance would result in high premiums that the poor would not be able to afford. The Torrens system of Curtain, mirror, state guarantee insurance provides an accurate public record of conclusive title which needs no further verifications.*

*The rights under the State guarantee given to the owner are limited until the land, its dimensions and the interests in it are determined. Where neither the location nor boundaries of the land can be satisfactorily identified nor the right of the owner established completely, it could be placed in a "title processing ledger". In such a case, conversion to the State guaranteed system could occur but full title will not be given until the land and its dimensions could be ascertained with precision and the right of the owner established completely. A "possessory provisional title" where the land is identified but not the owner but where the land had been occupied for an extended time. Once twelve years of possession had occurred, the land passed by adverse possession to the person who has possession. Where ownership is validated but the land boundaries are still not established, a "dimension provisional title" can be given. Once ownership and dimensions are validated, a "conclusive title" guaranteed by the state is provided. Without conversion to a conclusive title, the State offers no guarantee of ownership. The assumption is that people will be prepared to deal with land in these titles, notwithstanding the lack of conclusive guarantee. They have, at least, a measure of certainty and can upgrade their rights to full State guarantee title system in their own time and at their own pace.*

*Once a purchaser is registered, his/her interest cannot be removed, even though he/she might have purchased from a fraudster. The person who lost his interest will be compensated. Registration of title by the State is what gains a purchaser his 'indefeasible' interest.*

*There are exceptions to this. A person who gains registration of an interest will still have to pay any outstanding land tax and charges. The State's right to claim these is not overcome by registration, just as easements and rights of way survive the registration. Similarly, if the land had already been lost to another by adverse possessor, that adverse possessor's interest will take*

*precedence over the registered interest. However, beyond this small group of saved rights, the holder of a registered interest, once registered, has an interest in land that cannot be defeated.*

- ii. Decision on transition to the system of Title
  - a. Replacing the non-title system to a mandatory titling system (Systemic titling)
  - b. Optional choice of both non-title and title systems (Incremental titling)

*MoUD, GoI, Title certification task force recommendation: Ideal if mandatory move to guaranteed title system. However, this reform requires a social change in the minds of the people as well. It also will entail process costs that the state will have to charge people for or include in their budgets. Hence, the committee recommends that for those states that decide to make guaranteed title a mandatory system, the Union government provides a financial subsidy for the processing costs incurred.*

- iii. Decision on land systems for rural and urban - land records, registration and title management
  - a. Institutional separation of rural and urban
  - b. Institutional integration of rural and urban

*MoUD, GoI, Title certification task force recommendation: As a stable solution, it is desirable to have one state institution managing all records – urban and rural. However, the processes for rural and urban land records management will be vastly different (given the size of holdings and frequency of mutation), especially when moving first time into a title system. Hence states may decide to have an iterative plan (as in the case of Rajasthan, with Jaipur Urban Area as its proposed pilot) of managing rural and urban titling transition separately initially, and merging the two into a single institutional structure over time (Andhra has decided to include both rural and urban in its proposed pilot district).*

- iv. Creating the Records of Title
  - a. Recording only the undisputed titles
  - b. Recording disputed as well as undisputed title
  - c. Recording charges, leins, covenants and restrictions

*MoUD, GoI, Title certification task force recommendation: Maintaining three registers that capture undisputed title, disputed title as well as charges, leins, covenants and restrictions. The disputed titles could move into undisputed once ownership and land location boundaries are verified. The creation of a land title Tribunal to resolve disputed land is recommended, along with an Appellate that can be approached for appeals on the Tribunal's judgement. Further appeals would be taken to the High Court.*

- v. Creating the institutional design if state runs the title system
  - a. Title certification anchored by existing agency – Stamps and Registration; Revenue; Survey and Settlements, local governments
  - b. Title certification managed by an quasi government but independent SPV
  - c. Title certification and records management contracted to a private agency
  - d. Securing data, assigning access privileges, sharing of data between departments
  - e. Assigning ownership of data and management of all data related to land

*MoUD, GoI, Title certification task force recommendation: A land Title Authority that is an independent SPV is recommended. It could well be merged into an existing structure. In such a case, the recommended institution for handling titling would be the Registration department since this captures both rural and urban transactions on land. The Revenue department's role is limited to rural land and its role has diminished over time with the diminishing tax collection from revenue land. The revenue records would take the registration data for accuracy in ownership. Urban areas have multiple departments holding fragments of land records. This entity would deliver a unified system of records, registration and surveys, once the central laws are appropriately amended.*

- vi. Providing enabling statutes (central and state) that include the following:
  - a. Amendment to Indian registration Act 1908, IRDA requiring compulsory registration of title instead of deed. (union government)
  - b. Amendment to Transfer of Property Act, 1882 requiring verification of ownership. (union government)
  - c. Amendment of Indian Evidence Act that require Revenue Records to be conclusive rather than presumptive
  - d. Resolving the conflicting role of the Revenue department as protector of government lands as well as adjudicator of rights against government
  - e. Amendment to section 18 of Indian Registration Act 1908 requiring compulsory registration of all land related transactions - land acquisition, court decrees, land orders, heirship partitions, mortgages, agreements to sell, power of attorney, etc. (union government)
  - f. Amendment to the Indian Contract Act of 1872, requiring contracts to be registered. (union government)
  - g. Safeguarding guaranteed title provisions from contrary provisions of other state laws.
  - h. Protecting the state and legitimate owners with “provisional title” that over a defined time converts to “conclusive title” protected by state.
  - i. Providing for legitimate counter-claims to land ownership or land features
  - j. Provision for an indemnity fund to provide for compensation for genuine counter-claims
  - k. Provision for an escrow account to safe-guard an indemnity fund
  - l. Ensuring timely and affordable transfer to title system

*MoUD, GoI, Title certification task force recommendation: Amending the Central Acts is most important to enable states to take guaranteed title forward without contradicting central acts. In the opinion of the committee, this is one of the most important requirements of this reform. States can then choose to either amend their existing acts related to land, or legislate a new title act. The recommendation of the task force is to simplify the process of amending required central Acts through state government requests.*

- vii. Mapping the process
  - a. Defining the transaction types
  - b. Defining a detailed process flow for each transaction type
  - c. Incorporating document verification and survey components
  - d. Assigning checks and balances for data verification and security
  - e. Assigning roles and responsibilities for each step of the process mapping

- viii. Developing the right technology based on the process map
  - a. Managing expected daily transactions with speed, security and reliability
  - b. On-line linking of titles and records across the state
  - c. Integration of data with different departments
  - d. Providing required data for property and proprietor identification
  - e. Linking to GIS
  - f. Providing biometric and photo identification of owner
  - g. Electronic storage of historical records of property
  - h. Scanning of site maps
  - i. Ability to link to GIS cadastre data
  - j. Addressing linguistic and phonetic challenges
  - k. Disaster recovery
  - l. Training for technical team to manage applications, records and titles
  
- ix. Incentivising public acceptance
  - a. Making land title certification optional
  - b. Using a pilot before scaling
  - c. Conducting awareness drives, media programmes, communication collateral, information access, etc
  - d. Using municipal tax rebates, stamp duty reductions for title holders
  - e. Bringing in financial institutions and developers to support attractive mortgage rates and pricing for land with title

### 3. Steps to implementing the reform

Some states will opt to create a new Act for Land Title Certification while others will consider amending existing Acts.

The more rigorous bar will be for a new Act. The checklist assumes a new Act, but the same can be applied for amendments to existing Acts. In order to frame the new statutory legislation for implementing land title certification, the following steps may be taken by the state government:

Process	Years			
	1	2	3	4
<ul style="list-style-type: none"> <li>• Resolution to be passed in the state assembly indicating state’s intent to frame laws for land title certification.</li> </ul>				
<ul style="list-style-type: none"> <li>• Setting up an inter-ministerial committee involving relevant ministries and departments of the state government. This committee would review the existing act, consider the impact and direction of the suggested reform, examine other examples, and initiate the process of formulation of the new act or amendments to existing. If needed, an advisor / consultant may be appointed for detailing processes and statutory requirements. The committee would also decide on ownership of the data and linking of all department databases with appropriate data security and access measures.</li> </ul>				

• Complete the process map to transition into a title certification system.				
• Draft technical requirements and hire technology firm to put technology back-bone in place.				
• Create consensus on the Institutional structure for operating guaranteed title certification				
• Draft act to be prepared and vetted by the committee/legislative department of Law Ministry.				
• The bill to be circulated widely for eliciting views of key departments involved in land– Registration, Revenue, Records and government land holding departments.				
• Launch an awareness campaign about the advantages and potential pitfalls of the reform and likely impact on various stakeholders.				
• Discussions with communities, developer and real estate community, financial institutions, infrastructure builders, civil lawyers, government departments involved with land.				
• Invite comments/suggestions from stakeholders and put them up for discussion in the committee.				
• Send the draft to legislative assembly.				
• Incorporate suggestions, if any, in the draft bill and resubmit to the legislative assembly for adoption.				
• Issue notification.				
• Draft rules and regulations for new Act				
• Technology platform completed and tested				
• Wider dissemination of the new act.				

**4. Measuring Achievement / Outcomes**

- Has the state government passed a resolution in the state assembly committing to land title certification within a specified period (in the forthcoming assembly session)?
- Has the committee involving relevant ministries/departments been set up within two months of passing the resolution?
- Has the ministry-in-charge engaged an advisor / consultant to help navigate choices in implementing title certificate? (2 months after committee is set up)
- Has a complete process mapping for title certification been developed and agreed upon by all concerned departments? (6-12 months after committee set-up)
- Has a legal consultant been appointed to frame the new law and submit it to the ministry-in-charge? (3 months after process mapping agreed upon)
- Has the draft bill / amendments prepared by the ministry-in-charge been submitted to the legislative department of the Law Ministry for checking and final drafting of the bill? (within 1 month)

- Has the bill been submitted to the cabinet for approval? (within 1 month after law ministry approval)
- Has the bill been passed by the cabinet? (within two months)
- Has the bill been introduced in the legislative assembly (forthcoming session)?
- Has the bill been brought to the assembly for consideration and passing?
- Has the bill been passed by the legislative assembly?
- Has the bill been sent to the governor for his assent?
- Has the government notified the bill and given the date on which the bill comes into effect?
- Have the rules and regulations been drafted? (2 months after passing of Act)
- Have the rules and regulations been passed by Assembly? (next assembly session)
- Has the government set up the institutional structure, the administrative team and technical machinery to support the implementation? (as soon as rules and regulations are passed comes to effect)