



Importance of land market for ease of doing business  
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# Digitising land record management in Maharashtra

 [ajayshahblog.blogspot.in /2017/12/digitising-land-record-management-in.html](http://ajayshahblog.blogspot.in/2017/12/digitising-land-record-management-in.html)

by Sudha Narayanan, Gausia Shaikh, Diya Uday and [Bhargavi Zaveri](#).

The 2006 Hindi film *Khosla ka Ghosla* narrates the story of one K.K.Khosla, who buys land on the outskirts of a city to only later find it squandered to squatters. Anecdotally, the story of K.K.Khosla [represents](#) the story of many plot buyers in India, for whom the idiom "possession is ninth-tenths of the law", is a harsh reality. Many of the problems associated with this idiom are a direct outcome of incomplete and inaccurate land title records.

Clear and accurate land title records underpin the protection of property rights in any state. Despite the state having conventionally monopolised the function of maintaining and updating land records, until [the late 1990s](#), land titling systems was not the world's "sexiest" topic and got sparse attention from policymakers (Zasloff 2011). As one of the participants at an [IGIDR roundtable on Land And Access to Finance](#) described it, a posting in the land revenue administration is commonly regarded as *punishment posting* for government officials. However, since the 1990s, the connection between clean title records and access to finance and overall economic development, has gained [traction](#).

## A new study on digitising land record management in Maharashtra

In India, the central and state governments have been making concerted efforts at improving the land record management systems and the delivery of clean title records to citizens. Many of these initiatives have largely focused on the digitisation of land records and have been launched under the auspices of the [Digital India Land Record Modernisation Programme \(DILRMP\)](#), formerly known as the National Land Records Modernisation Program.

In a [report](#) released in the public domain on 13th November, we record our findings of a field study in Maharashtra, which was aimed at understanding (a) the extent to which land record administration had been digitised; and (b) the efficiency of service delivery of accurate land title records to citizens. We designed this study in collaboration with two other institutions, which conducted similar studies in Himachal Pradesh and Rajasthan respectively. For the purpose of our study, we studied digitisation' of the following aspects:

1. existing land records;
2. the process for recording or effecting a change of interests in land;
3. the process for retrieval of copies of land records; and
4. the inter-connectivity between the different offices of the state administration that maintain land records.

### Absence of a centralised repository of title records

We find that in India, the land records administration systems pre-date independence, and have been largely driven by considerations involving the collection of land revenue, as opposed to the delivery of clean and accurate title records to the public. Although there are State-wise variations, land records in every State are generally spread across three offices of the State administration:

1. Deeds (contracts) registering the transfer of land (and built-up area) are maintained by the offices of sub-registrars (SROs) under the Registration Act, 1908.
2. Revenue records showing ownership and other interests in individual land parcels are maintained by the revenue records offices under the revenue codes enacted by States. Revenue records are commonly referred to Record of Rights (RoRs) for rural land and Property Register Cards (PR cards) for urban land in Maharashtra.

3. Cadastral maps of villages and land parcels are maintained by the survey offices, which are responsible for conducting State-wise land surveys and parcel-wise boundary demarcation. Cadastral maps are generally made for each village.

Currently, these offices are only partially interconnected, and the level of interconnectedness also varies from state to state. The absence of a comprehensive repository of information pertaining to the characteristics (such as permitted usage and current built-up status), ownership and all other interests created in respect of a land parcel, leads to incomplete or inconsistent land records. Further, it reduces the efficiency of service delivery of land records to the end-consumer. Consequently, buying and selling land and built-up area is more time consuming and expensive relative to other assets [such as securities](#).

## State, Tehsils and parcels

Our study investigated the abovementioned components of digitisation at three levels:

1. *State level:* At the state level, we studied the extent to which the land record management system has been digitised in the state. For this, we largely relied on state-reported data. We conducted in-person interviews with officials of the revenue ministry of Maharashtra. We also relied on the data reported by the Maharashtra Government in a [Management Information System](#) maintained by the Central Government to track the State-level progress of the Digital India Land Record Modernisation Program (DI-LRMP).
2. *Tehsil level study:* For the purpose of land revenue administration, Maharashtra is divided into six revenue divisions comprising of 36 districts, 181 subdivisions, 358 Tehsils (referred to as Talukas in Maharashtra) and 44,855 villages. After conducting a state-level study in the first leg of the study, we narrowed down two sample Tehsils, Mulshi and Palghar located in Maharashtra. This exercise focused at understanding the extent of digitisation at the level of the sample Tehsils.
3. *Parcel level study:* We further narrowed our focus to individual land parcels in the sample Tehsils, and studied 100 land parcels spread across 10 villages in each of the two Tehsils. This leg of the study aimed at comparing the land records of the sample parcels with the ground reality. The 100 sample parcels were selected through a stratified random sampling methodology. We inspected each land parcel in the sample and interviewed the owners and persons in possession of the land parcels. We asked questions such as whether a person claiming to be the owner on the ground was reflected as the owner in the records, whether the land was being utilised as per its classification in the land record. We also measured each parcel in the sample to ascertain the discrepancies between the area of the parcel as reflected in the land records and the area on physical measurement of the parcel.

This article gives an overview of our findings on the status of digitisation of land records in Maharashtra at the state level and the service delivery by the land record administration at the level of the Tehsils.

## Digitisation of existing records:

### Revenue records

We find that currently, throughout Maharashtra, RoRs are prepared digitally, that is, there are no hand written RoRs in Maharashtra, except for one Tehsil. Tables 1 and 2 show that Maharashtra has made significant progress on the digitisation of RoR, with the RoRs of three hundred fifty-seven out of three hundred fifty-eight Tehsils having been digitised and stored on state level servers. This has, however, not been accomplished for eighty-three villages of Jivati Tehsil in the Chandrapur District.

**Table 1: Digitisation of RoRs in Maharashtra**

Total Number of Tehsils	358
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Number of Tehsils in which the RoRs have been digitised	357
Number of Tehsils for which the RoRs are stored digitally	357

**Table 2: Digitisation of RoRs in Mulshi and Palghar**

	Digitised (as a % of the total RoRs in the Tehsil)
Mulshi	100
Palghar	92

It is important to distinguish digitisation from scanning processes. In Tables 1 and 2, digitisation refers to the creation and storage of the RoR in a text-searchable digital format.

## Cadastral maps

The digitisation of CMs may or may not be preceded by a survey or re-survey of the land. A survey of agricultural land, using traditional survey techniques such as plane table, in Maharashtra, was conducted before independence. The Maharashtra Government has not conducted a state-wide re-survey of agricultural land since independence. Non-agricultural land located in a village, town or city with a population exceeding 2000 persons, is commonly referred to as ‘Gaothan land’ (abadi areas). A state-wide survey of gaothan areas has *never* been conducted. Table 3, which summarises our findings on the status of digitisation of cadastral maps, shows that very little progress has been made on this front.

**Table 3: Digitisation of cadastral maps**

	Digitised (as a % of total CMs)
Maharashtra	3.79
Mulshi	7.59
Palghar	1.44

Here too, while 100% of the maps held by the state government have been scanned, Table 3 denotes the maps which are 'digitised' after vectorisation.

## A pilot re-survey with modern survey techniques

Recently, the State Government initiated a pilot re-survey of agricultural land in twelve villages, using modern survey techniques and equipment such as High Resolution Satellite Imagery (HRSI), Electronic Total Station (ETS) and Differential Global Positioning System (DGPS), in the Mulshi. We have been informed that the pilot has been completed and the State Government has proceeded to digitise maps of these re-surveyed villages. The RoRs of these re-surveyed villages are also in the process of being revamped to integrate the geo-co-ordinates and aerial images, of the individual land parcels. Figures 1 and 2 contain images of a hand-written RoR and a revamped digitised RoR with geo-co-ordinates and an aerial image of the land parcel integrated in it.



spatial information pertaining to a specific land parcel in a single document maintained by the state.

## Digitisation of the process of recording a change of interest in land

There are two processes involved in recording a change of interest in land. First, registration of the deed (contract) under which the change of interest is recorded. The Registration Act, 1908 mandates the registration of certain land transactions such as sales and mortgages, and requires the physical appearance of the parties to a contract before the SRO for the registration process. In 2013, Maharashtra made certain amendments to the Registration Act to allow registration through electronic means and issued [rules](#) to allow the e-registration of certain documents such as leave and license agreements.

While the State Government has undertaken three initiatives for digitising different stages of the registration process, the process can only be completed by physically attending the SROs, except for leave and license agreements in respect of built-up property. Table 4 summarises the status of digitalisation of each process involved in a land transaction, and gives a comparative overview of Mulshi and Palghar Tehsils.

**Table 4: Status of digitisation of the registration process**

Stage	Mulshi	Palghar
Title search	Not digitised	Not digitised
Determination of stamp duty	Digitised	Digitised
Payment of stamp duty and registration fees	Digitised	Digitised
Preparation of the transfer document	Digital facility available only for leave and license agreements in one SRO	Digital facility available only for leave and license agreements
Application for registration	Digitised in one SRO	Digitised
Verification of identity and documents	Digital verification of identity done for leave and license agreements in one SRO	Digital verification available only for leave and license agreements
Getting photographed	Digital facility available only for leave and license agreements in one SRO	Digital facility available only for leave and license agreements

The second process involves the updation of the RoR. In most states, the RoR is *prima facie* evidence of interests created in respect of land. We find that while the data-entry processes at the revenue offices have been digitised entirely, the process of applying for updation of RoRs continues to remain paper-based. Table 5 gives an overview of the status of digitisation of each phase of updation of RoR. While Table 5 gives a comparative overview of our findings in Mulshi and Palghar Tehsils, it represents the status of digitisation of the process for updating the RoR across Maharashtra:

**Table 5: Digitisation of the process for updating RoRs**

Task	Mulshi	Palghar
Application for updating the RoR	Not digitised	Not digitised
Data entry for updating the RoR	Digitised	Digitised
Generation of a notice inviting objections	Digitised	Digitised

Task	Mulshi	Palghar
Certification by the circle officer	Not digitised	Not digitised

## Digitisation of the process for retrieval of copies of land records

Easy access to title records is one of the fundamental tenets of a good land records administration system. We find that while copies of RoRs are easily retrievable from the web by keying in basic details of the land parcel such as the cadastral number, such copies are not certified or digitally signed, which creates challenges for their usage as evidence before courts and other authorities. However, we understand that digitally signed copies of RoRs for a few Tehsils in Maharashtra are available for web retrieval, although we have not been able to retrieve any. The state officials informed us that copies of registered deeds can be retrieved from the web by keying in basic details about the land parcel or the registered deed. However, we have not been able to retrieve any. Cadastral maps are not available for retrieval online. In a nutshell, the process of applying for certified copies of title records continues to be largely physical.

As part of the study, we conducted test checks for retrieving a copy of a document known as Index II (which is a record issued by the SRO containing an extract of the transaction in a registered deed) and RORs. Table 6 contains the results of our test checks for retrieval of land records in Maharashtra.

**Table 6: Digitisation of the process for retrieval of land title records**

	Online	Kiosk	Office retrieval
Index II	Facility available but we could not retrieve copies	No	Yes
RoR	Yes	Yes	Yes
Cadastral Maps	No	No	Yes

## Time for service delivery

We also studied the time taken for delivery of certain services to the citizens, namely: the time taken for registration, updation of land records and retrieval of certified copies of land records. For this purpose, we conducted test checks on randomly picked applications made in the last three years from each of the offices. Tables 7 and 8 contain our findings of such test checks conducted in Mulshi and Palghar Tehsil level offices.

**Table 7: Time taken to obtain certified copy of RoRs and CMs**

	Minimum (in days)	Maximum (in days)	Average (in days)
<b>RoRs</b>			
Mulshi (when original not digitised)	10	68	29.4
Mulshi (when original digitised)	2	2	2.5
Palghar	Same day	Same day	NA
<b>Cadastral Maps</b>			
Mulshi	Same day	Same day	Same day

	Minimum (in days)	Maximum (in days)	Average (in days)
Palghar	Same day	Same day	NA

**Table 8: Time taken for registration and updation of land records**

	Minimum (in days)	Maximum (in days)	Average (in days)
<b>Registration of land transfers</b>			
Mulshi	Same day	Same day	NA
Palghar	Same day	Same day	NA
<b>Updation of RoR</b>			
Mulshi (sale)	48	170	85.2
Mulshi (succession)	37	287	110.4
Palghar (sale)	38	111	52.6
Palghar (succession)	26	67	47.8
<b>Correction of entries in the RoR</b>			
Mulshi	33	311	137.25
Palghar	109	535	269.6

## Digitisation of the inter-connectivity between the various offices

As mentioned above, land records are currently maintained across three different departments of the Revenue Ministry. Clean title records require constant co-ordination between these departments. We find that the SROs (where land transaction deeds are registered) and the Talathis (who maintain RoRs at the village-level) are digitally interconnected, so that details of land transactions are regularly intimated to the Talathi, who then initiates the process for updating the RoRs. However, the co-ordination is often affected by breakdowns and power shortages. On the other hand, the connection between the survey department (which is in charge of preparing CMs) and the other two departments is weak. Also, we find that courts, which often pass orders affecting interests in land, are not connected to land records offices.

## Way forward

### 1. *Absence of a comprehensive land records repository:*

Title records to a land parcel comprise of the RoR, CMs and registered deeds. All of these are currently maintained by different offices. This inherently creates inefficiencies in the internal management as well as access to title records for the public. Moreover, since these offices are not connected to other forums which are empowered to pass orders affecting rights in relation to land (such as courts, and tribunals), a comprehensive repository reflecting all the interests subsisting in respect of a land parcel, is missing. While digitisation, as is being currently implemented, can increase the efficiency of these silos, the creation of a single repository reflecting all interests in land, will be game-changer.

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### 2. *Varying levels of progress in digitisation:* We find that while some components of the system are in reasonably advanced stages of digitisation, others are not. For instance, the digitisation of CMs has not

seen much progress in the state. Greater progress can be achieved on this front by either dispensing with land surveys for digitisation of CMs, or pursuing alternative survey techniques and easing government contracting processes for conducting surveys. Similarly, the processes of applying for registration, updating mutation entries and boundary demarcation, have not been digitised.

### 3. *Optimising interface platforms for service delivery:*

There is scope for bringing in efficiencies in the interface between the public and the land records administration by implementing some reasonably easy processes, such as allowing them to remotely track the status of their applications for land-related services.

Even the platforms currently available do not allow land-holders to access copies of title records that will be accepted before judicial forums. For instance, copies of land records, such as the RoR that can be accessed from the web, are neither digitally signed nor certified. While we understand the process of facilitating such access is underway, until such access is fully operationalised, the absence of certified copies would imply that there is no legal sanctity to land title records retrieved from the web.

### 4. *Infrastructure issues:* Throughout the duration of our study, we noticed infrastructure issues such as server breakdowns, slow connectivity, power shortages and shortage of survey equipment, which are major contributors to delays in the service delivery. We noticed the absence of good physical office infrastructure in several offices responsible for maintaining land records. For instance, we found that many of these offices lacked basic facilities such as restrooms and other resources necessary for any record-keeping unit such as photocopiers and printers.

## **Conclusion**

The average Indian household holds 77% of its total assets in real estate. Anecdotally, land and fixed assets constitute a significant proportion of secured lending in India. The World Bank's Ease of Doing Business Ranking 2018 ranks India in the bottom quartile for property registration. In short, as per these rankings, critical infrastructure for a land market in India, is at best, poor and at worst, non-existent. The recent focus in India on digitisation of land records administration is admirable and is a step in the right direction towards increasing the overall efficiency of land record administration in India.

Even as we seek to improve land records administration through a single-minded focus on digitisation, the next step in this field is to re-think the institution design for the maintenance land records by the state, and re-focus it on service-delivery, as opposed to the collection of land revenue.

## **References**

Jonathan Zasloff, India's Land Title Crisis: The Unanswered Questions, Jindal Global Law Review, Vol. 3, 2011.

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# Land market reform is an important enabler of bankruptcy reform

 [ajayshahblog.blogspot.in /2016/01/land-market-reform-is-important-enabler.html](http://ajayshahblog.blogspot.in/2016/01/land-market-reform-is-important-enabler.html)

By K.P. Krishnan, Venkatesh Panchapagesan and Madalasa Venkataraman

In India, it seems easy to lend money, but it is difficult to get it back. Just ask our banks. [New law, and associated institutional infrastructure, for bankruptcy](#) is in the pipeline, with the draft Insolvency and Bankruptcy Code by the T. K. Vishwanathan Committee. Will it work? What can the impediments be that could limit its effectiveness?

One of the key weapons in a lender's armoury is the collateral (or security) from the borrower. The quality of the collateral - how easy it is to collect, store, value and dispose of - determines the type and extent of credit that a lender is willing to provide. Land and associated real estate constitute a large part of collateral in India. More than 50 percent of corporate loans and 60 percent of retail loans have land and real estate as collateral. It is hence important to understand the complex nature of land markets to determine whether they would facilitate or undermine the effectiveness of these new laws. We examine this issue in a recent paper titled [Distortions in Land Markets and Their Implications to Credit Generation in India](#).

The land market in India is not a homogenous national market but a heterogeneous collection of various State markets with variation in laws and regulations. This is because land related issues fall under the State and Concurrent List under our Constitution. This poses the first big problem: it is not easy to provide credit across state boundaries unless lenders have local presence or partners to count on. Even when land is accepted as collateral, several factors exist that could raise costs and risks for lenders. Let's run through the list of challenges faced by the lender.

## Challenge 1: Does the land belong to the borrower?

It is hard to say because titles are not guaranteed by the State (like the Torrens system used in countries like Australia). Hence, all evidence of title is merely presumptive and can be challenged at any point by a person claiming to have better title to the land.

To mitigate the risk of future challenges to title, lenders spend considerable resources, including legal help, to conduct title searches, to protect themselves. A title search can be a fairly complex and expensive exercise in the Indian setting. This is because:

1. Indian law does not mandate the registration of every single transaction that affects rights in or the enjoyment of, property. Hence, records of some transactions that affect title or enjoyment of property will not be found in any public office.
2. Land records in India are spread across three offices - the Sub-Registrar's office, the revenue offices and the offices of the survey department. Time lags between these offices in updation of land records, often lead to inconsistencies in information obtained from these three offices.
3. Title related disputes in courts require a search process in the courts, as the status of the dispute may not be reflected in the records in the Sub-Registrar's office or the revenue offices.
4. A title search is necessarily a local exercise, as land records are maintained in local offices in local languages. The contents of land records across States are not standardised. Several State laws have restrictions on the transferability of land, depending on the land classification. For instance, in most States, agricultural land cannot be transferred to a non-agriculturist. The localisation of the title investigation process adds to transaction costs.

Lenders do not have recourse to a private title insurance industry in India. Interestingly, even in countries that follow Torrens system of state guaranteed titles, there is an increasing trend for lenders to seek private title insurance (Zasloff, 2011). Hence, lenders in India have to rely on title searches conducted by independent title investigators. This raises transactions costs and particularly hampers small loans.

### **Challenge 2: Has the land been already pledged with other lenders?**

There is no single point of information on all the processes and transactions that can encumber land. Again, some transactions which create encumbrances on land (such as the mortgage by deposit of title deeds) are not required to be registered. Consequently, the records of such mortgages cannot be found in any public office.

The Central Registry of Securitisation Asset Reconstruction and Security Interest of India, or CERSAI, was set up to consolidate information about mortgages against property. However, its scope is limited: it does not include reconstruction loans outside the purview of the SARFAESI Act or loans given out by entities other than banks. Nor does it have information about all loans issued prior to 2011 when CERSAI was set up. Further, since the registry requires identification of land clearly, the importance of accurately mapping land boundaries becomes critical for its success. Accurate mapping of land boundaries has its own set of problems as described next.

### **Challenge 3: Is the land properly identifiable in classified records?**

Land parcel identification is a challenge since cadastral maps are outdated and rarely reflect the reality on the ground. As mentioned above, record-keeping of various related aspects of land - titles and registrations, encumbrances, geographic information sources, revenue and taxation - is done in silos by various departments, often leading to conflicting information on the same land parcel. The problem is more acute in rural areas, where use of technology is still limited. The use of different units (acres, hectares etc.), terms (like Khata in Karnataka and Patta in Tamil Nadu) and bookkeeping standards across states present their own set of difficulties in identifying land across States, thus hampering the economies of scale of running a nationwide lending business.

### **Challenge 4: Do the constructions/settlements on the land adhere to local laws, and have all dues been properly paid?**

Important attributes such as flood plain, seismic zone, lake encroachments, easements and rights of way etc. also cannot be conclusively established given the siloed nature of record keeping. If not properly accounted for through pricing, these attributes could pose significant risk to lenders. The recent announcement in Bengaluru that several lake beds have been encroached by entities including the Bangalore Development Authority - the agency obligated to protect lake beds - shows the extent of risk to lenders who have financed development activity on such land.

The problem is exacerbated where the collateral is built-up property. In the case of built-up collateral, the lender is also required to verify whether the building complies with city-level zoning regulations and has the requisite building permissions. This is to avoid the possibility of the future demolition of the collateralised property which is not compliant with the local laws. The value of the collateral may also change depending on issues such as the area on the land, if any, earmarked for municipal road widening, changes in town planning norms, etc. This requires searches in the local municipal offices.

### **Challenge 5: Is the value of land sufficient enough to cover the loan in case of distress?**

Land valuation is done by lenders at the time of loan origination, and after the borrower has exhibited distress. Empanelled valuers use a combination of recent transactions and government estimates (called guidance values or circle rates) to derive land values that are used by lenders. Given the significant presence of black money in land transactions, getting true market values is more an art than science. Issues such as defective

land title and illegal developments, mentioned above, impede land values but are hard to account for at the time of origination of the loan.

## **Challenge 6: If there is default, can the land be sold to recover dues owed easily?**

The battle to recover the collateral really begins after default. The SARFAESI Act has shortened the recovery process for banks and financial institutions. However, it leaves out creditors who are not banks and financial institutions such as creditors of firms which have borrowed through secured bond issuances. For such creditors, a mortgage foreclosure suit will, under current law, have to go through the delays associated with civil courts. Moreover, the implementation and interpretation of the SARFAESI Act has not been free of problems. For instance, proceedings under the SARFAESI Act are often delayed through writ petitions or simultaneous proceedings which are pending in other fora (Ravi, 2015). Similarly, the SARFAESI Act does not resolve the problems of already encumbered collateral or collateral with no marketable title. For example, a bank or a financial institution cannot evict tenants of collateralised property under SARFAESI. This proposition was recently upheld by the Supreme Court in *Vishal Kalsaria v. Bank of India and Others*, January 2016.

## **Conclusion**

Bankruptcy reform is important and valuable in and of itself. Land market reform is important and valuable in and of itself. Given the prominence of land as collateral in the working of the Indian credit market, improved working of the land market is an important enabler of a better functioning credit market and improved working of the bankruptcy code. Parallel and simultaneous progress on both fronts will yield a magnified impact upon the economy.

While the [Bankruptcy Code](#) is expected to improve recovery proceedings, it will not help where the title to the collateral itself is challenged at the time of recovery. Unlike movable collateral, the ability of a creditor to monetise immovable collateral quickly is fettered. Indian lenders have, so far, rationally responded to these issues by protecting themselves through credit rationing and through solutions like personal guarantees. Also, due to the difficult process of establishing title and related encumbrances, urban lands - where recovery time and cost are high - are subject to higher loan to value ratios.

One part of the reforms agenda is structural, and involves significant fiscal outlays, for cleaning up land titles, improving the quality of land registry through digitisation, overhauling the land litigation system and creating efficient stamp duty and registration processes. In addition, in the paper, we propose many modest, feasible and less expensive reforms. To begin with, we must standardise land-related data capture across states and create a repository of valuers' data that can be shared across lenders. Similarly, States need to focus their energies on building capacity in land record offices to enable smooth and efficient updation of land records. While creating conclusive titles with state guarantees is a laudable and ultimate goal, there are numerous opportunities for front-loading gains by streamlining existing land records using modern technology, and facilitating private title insurance to mitigate risk from lending against land.

Most of the challenges described above relate to the structure of information. Modern technology -- computers, telecom networks, GPS, Aadhaar, ubiquitous digital cameras -- has created a new opportunity to build improved institutional infrastructure for creating, storing and disseminating information that would transform the land market.

## **References**

Aparna Ravi, [The Indian insolvency regime in practice -- an analysis of insolvency and debt recovery proceedings](#), Economic and Political Weekly, 2015.

J. Zasloff, [India's Land Title Crisis: The Unanswered Questions](#), Jindal Global Law Review, 2011.

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# Rajasthan's land title reforms: The need to identify the right interventions

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by [Bhargavi Zaveri](#).

India set up a depository system in the 1990s to deal with the problem of physical share certificates, reduce settlement time and increase the efficiency of the securities markets. Instead of establishing an electronic depository, imagine if the Government had appointed an authority for deciding whether the seller has title to a security every time a transfer takes place, for a fee. This would have led to numerous problems. It would have increased transaction costs and settlement time for securities transactions. The sanctity of title to securities would have depended on the adjudication capacity of the State. The cost of maintaining adjudication machinery would have been borne by the parties, or worse, by the State.

The Government sought to resolve this problem by providing for infrastructure in the form of depositories, which are a near-foolproof method of obtaining title to shares. In an earlier [post](#), we explored what the Indian land market could learn from the securities market. The problem of incomplete land records in India is similar to the problem of physical share certificates, only compounded by the complexity of multiple offices across which land records are kept.

The Rajasthan Assembly recently passed the [Rajasthan Urban Land \(Certification of Titles\) Act, 2016 \(Rajasthan Titling Act\)](#), which purports to be a shift from the presumptive titling system to the conclusive titling system for recording land titles. Popular discourse has praised this law as a big step toward a rules-based regime for land titling (see [here](#) and [here](#)).

In this article, we explain (a) why India needs to be more circumspect about adopting conclusive titling as its solution to the problem of incomplete land records; and (b) why the Rajasthan Titling Law, in its current form, is not a shift to conclusive titling.

## Conclusive titling v. Presumptive titling

Globally, there are two systems of recording land titles:

Conclusive titling (Title registration system)

The State registers and guarantees the title to land. If a person claims and proves that she had a better interest in the land than the title-holder registered with the State, such person is insured by the State. The titleholder registered with the State cannot be dispossessed. Variations of this system are followed in Australia, Canada and the United Kingdom.

Presumptive titling (Deed registration system)

The State registers the *deed* under which a person obtains title to land. The State does not make any enquiry as to the legitimacy of the claim made under the document. If there is a dispute, the deed registered with the State is only *presumptive evidence*. It can be defeated by someone proving better title. The United States (with the exception of few a counties spread across five States), India and France follow this system of recording land titles. The State does not insure title, a private industry does that job.

## The attraction of conclusive titling

At first glance, conclusive titling is appealing as it (a) protects property rights better than presumptive titling; and (b) makes title searches unnecessary as one only need rely on the State-issued title certificate. However, cross-

country studies of land recording systems have revealed the following (McCormack, 1992 and Zasloff, 2011):

1. In countries following conclusive titling, the title registered with the State is conclusive *subject to several caveats*. For instance, the State's records do not take notice of (a) government interests such as claims on account of tax dues; (b) possessory interests such as short term leases and easements and long term interests such as those acquired by adverse possession; (c) discrepancies due to fraud; and (d) local municipal claims such as setback areas for road-widening, etc. Hence, a prudent purchaser of land will, in any event, conduct a search exercise to ensure that she will be able to enjoy the land uninterrupted.
2. A private title insurance industry co-exists in countries where the State insures title. While the State only insures against defects arising due to the conduct of the State registry, private insurers typically also insure against claims not on the State's records, litigation costs, etc. This indicates that in countries where private title insurance is customary, State-insurance of title does not eliminate transaction costs associated with private title insurance.

Additionally, implementation of the conclusive titling system in India suffers from the following problems:

1. It requires the existence of a fully functional adjudication system at the level of each Tehsil (sub-district), to ensure that landholders have access to get their title registered by the State.
2. Depending on the location, a land parcel in India may have gone through innumerable transactions and the adjudicator will require to verify the legality of each of those transactions.
3. Adjudication is expensive, implying that people having better resources to get their title adjudicated by the State, will end up having better "title" to land.

### **Hybrid model proposed by the Rajasthan Land Titling Bill**

The substance of the Rajasthan Land Titling Bill is this:

1. The State Government will appoint an IAS officer who will adjudicate title to *urban land*.
2. A person who holds title to a parcel of urban land *may* apply to the IAS officer for a title certificate confirming her title to the parcel. The applicant must pay a certification charge, which is a percentage of the circle rate prevailing in that area.
3. The IAS officer must not issue the title certificate if (a) there are unpaid tax dues; or (b) where the title is disputed, whether before a Court or otherwise.
4. Where a person enters into an agreement with the owner of the land on the basis of the title certificate and later finds that there was a defect in the title of the certificate-holder, the State Government will compensate such person for any loss that she may suffer due to any title defect (except one that is recorded in the certificate).
5. The law proposes to set up land-tribunals for entertaining appeals against orders of the certification authority.

### **Half-baked attempt at conclusive land titling**

The Rajasthan Titling Law, though well-intended, will not resolve the problem of information asymmetry or transaction costs that burden land transactions today.

1. It is silent on whether the certificate will reflect encumbrances or interests such as grant of development rights or power of attorneys to sell, which are some common methods of alienating control over land in India today.

2. A large part of the land-related diligence in India pertains to the *nature of the land* (as opposed to the right of the seller), due to the [multiple restrictions on marketability of different kinds of land](#) . For example, if the land is agricultural, it cannot be sold to a non-agriculturist, or if the land is held in excess of the ceiling limits, it is susceptible to forfeiture by the State. The certificate issued under the Rajasthan Titling Law will not record the nature of the land. It will similarly not record the State's claims such as reservations under municipal laws for road-widening, etc. This means that purchasers of land will require to conduct their own diligence, despite the certificate.
3. The law allows the adjudicating officer to cancel the certificate if it is found to have been issued *under mistake*. This means that the certificate is not indefeasible and the purchaser will require to conduct an independent enquiry of the seller's title. Effectively, the title certificate will be no better than a Record of Rights (ROR) which has some presumptive value. It is also not clear what happens to third party rights created by the holder of a title certificate issued under mistake.
4. The law does not state that the title recorded by the State is conclusive and the person registered as the owner cannot be dispossessed. It merely insures persons who enter into any transaction on the basis of the title certificate issued by the State. Thus, the law does not pre-empt title-related litigation between the registered title-holder and a person claiming better title.
5. Finally, the law does not clarify the process for claiming insurance from the State for faulty certificates. Claiming such insurance from the State will, in itself, involve transaction costs.

## State capacity

The Rajasthan Titling Bill raises several other concerns relating to State-capacity:

1. Initial registration of title with the State is like adjudication of the applicant's title, as the registration process has involves determining the rights of parties to a land parcel. The registration will require the IAS officer to apply laws ranging from property law, contract law to hindu law. For example, where an applicant has obtained her title under a partition arrangement, the officer will require to dive into the legality and enforceability of the partition agreement, to adjudicate title. This will entirely depend on State capacity. A mistake in this process is a potential dent in the State's insurance fund.
2. Dependence on the State for proving one's title creates tremendous scope for rent seeking and corruption which is already [widely prevalent](#) in the area of maintenance of land records.
3. There is no publicly available information on whether the State of Rajasthan has considered the fiscal impact of setting up:
  1. The adjudication machinery; and
  2. The insurance fund for compensating those who suffer a loss by relying on the State-issued title certificates. (See McCormack 1992, noting that the entire assurance fund set up by the State of California was wiped out by one claim, which prompted the repeal of the California Torrens Act, the law which provided for conclusive titling in California).
4. Finally, there is no clarity on the process for deciding on insurance claims from the State for faulty title certificates.

## What is the right intervention?

Incomplete land records is an outcome of inefficient record keeping systems. Once we see it this way, the solution requires infrastructure and institutional fixes more than a legislative solution. Some immediate steps which form part of the solution are listed below:

1. Consolidation of land records maintained across several offices: For example, consolidating the offices of the Sub-Registrar (where land transaction documents are registered) and revenue authorities (where the State records title for the purpose of collecting land revenue).
2. Connecting platforms which deal with land-related claims with the offices primarily in charge of land record maintenance. For example:
  1. Connecting the court registry and tax offices to the land record offices, so that notice of any litigation and orders (such as attachment on account of tax dues) affecting interests in land, are updated real-time in land records;
  2. Connecting the municipal offices to the land records offices so that notice of any local reservations and set-back areas, etc. is updated in the land record offices;
  3. Connecting the survey and settlement offices to the land records offices; and
3. Digitalisation of (i) land records; (ii) the process of recording interests in land; and (iii) the process of accessing land records.

Several States have initiated some of these steps and are at different stages of their implementation. [Project Bhoomi](#) undertaken by Karnataka and [e-dhara](#) undertaken by Gujarat are examples. The [Digital Land Records Modernisation Program](#) of the Central Government, which has been underway for sometime, is also meant to incentivise States to digitalise land records and consolidate the land record offices. Fixing infrastructure is a much more difficult solution than enacting a law to fix the problem. It requires tremendous political will, sustained efforts through political cycles and strong ground level teams. However, the implementation of the Aadhar project has shown that dedicated implementation-level teams can achieve what a law, by itself, cannot.

## References

John L. McCormack, *Land Title Assurance in the Computer Age*, William Mitchell Law Review (1992).

Jonathan Zasloff, *India's Land Title Crisis: The Unanswered Questions*, Jindal Global Law Review, Vol. 3, 2011.

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