

# Chapter-1

## Introduction

### Background

Land is an essential resource for any economic activity aimed at creation of material wealth and therefore management of land resources is always an important component of economic policies of a country. Land issues assume special significance in a developing country like India, which has recently started on the path of fast economic growth. A rapid economic growth in last three decades or so has resulted in fast urbanization of India. It is estimated that by 2051, 48% of total population will be living in the cities. This demographic shift will generate huge demand for housing and other urban infrastructure in the cities and adjoining rural areas. Further, to sustain high growth rate of economy country needs rapid industrial development along with large investments in roads, railways, power, communication and other such infrastructure sectors. This requires not only availability of suitable land in rural and urban areas but also an efficient, equitable and environmentally sustainable land market, which may facilitate acquisition and development of this land.<sup>1</sup>

This is a well accepted fact that land markets in India are not working efficiently and require urgent intervention of the government by creating appropriate legal and regulatory framework to correct the present situation. According to McKinsey Global Institute land market distortions account for close to 1.3 per cent of lost growth a year. The land market distortions include unclear

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<sup>1</sup> (Town and Country Planning Organisation, Government of India 2007) p 1

ownership of land, counterproductive taxation, and inflexible zoning, rent and tenancy laws.<sup>2</sup> The Ministry of Urban Development Government of India has identified poor land management policies, slow provision of infrastructure and services, poor land information system, cumbersome land transaction procedures and under-regulation of private land development as factors inhibiting development of efficient, equitable, environmentally sound and compatible land market in urban area.<sup>3</sup> Thus the record of ownership and land transaction process contributes to better management of land markets but there are many more factors which also affect land markets.

In modern times most of the countries have a system of keeping the records of rights of the people over the property and transfer thereof, in some form or the other. However there are wide variations in the features of registration systems used by various countries because of different socio-economic history and also present condition of each country. Generally these systems are classified in two broad categories viz. Deed Registration<sup>4</sup> and Title Registration. Title Registration is also sometimes referred as 'System of Conclusive Title' and 'Torrens System'.

The deed registration system, in its simplest form provides for execution of a written conveyance deed by the parties in respect of a transaction in property and registration of this deed with some designated authority. The record of registration is an evidence of the transaction between the parties and can be referred in case of any dispute later on. The designated authority, generally called a registrar, examines only the formal requirements like identification of parties, signatures of the parties

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<sup>2</sup> (The McKinsey Global Institute 2001)

<sup>3</sup> (Town and Country Planning Organisation, Government of India 2007) p 17

<sup>4</sup> It is called 'recordation system' in the United States.

and witnesses, correctness of formats of deed etc. This system is practiced in a large number of countries including India, the United States, France and Netherlands.

In this system generally transaction is complete as soon as deed is executed between the parties and registration is only for the purpose of maintaining records for future reference. The record of registry is open to the public for inspection and getting copies if required. The registration of a deed is deemed to be a constructive notice to whole of the world in respect of the transaction contained in the deed, meaning thereby that any person intending to deal with that property is supposed to know the existence of the earlier registered transactions and the consequences thereof in respect of that property.

The other system is 'Registration of Title' which is prevalent in many countries like Australia, New Zealand, United Kingdom, Germany, and Canada. Though the title registration systems of various countries are substantially different from each other, certain common characteristics are found in all these systems which distinguish them from deed registration system.

When an application for transfer of ownership or any other right like lease, mortgage etc. in respect of some property is submitted to a registrar, unlike his counterpart in deed registration system, he plays an active role and goes on to examine the legal validity of transaction in detail. He registers the transaction in a public register only if he is satisfied that the grantor had a clear title to transfer his rights and there was no legal hindrance in passing the title to the grantee. Once an entry in the name of grantee is made in the register, it is considered as conclusive proof of his title over the property.

Though the provisions of law in different countries vary, generally an entry in the title register is considered sacrosanct even if it has been made due to some bona fide mistake on the part of registrar or the parties to the transaction. A genuine right holder, who loses his rights in the property due to an incorrect entry in the register, can claim monetary compensation for his loss but cannot get his property back. In some countries like Australia, New Zealand and the United Kingdom a fund has been created by the government to provide compensation in such cases. However, some countries like Germany, Austria, Israel, Malaysia, Sudan and Fiji do not have a government sponsored fund but an aggrieved person can claim compensation as per general law of the land.

### **Statement of Problem**

The issue of introducing conclusive title in respect of property in India has been under discussion since long. Some experts believe that only solution to solve problems related to the land markets and land administration in India is the introduction of a system of 'conclusive title' in place of existing system of 'presumptive title' on property. As the Chairman of One-man Committee on Record-of-Rights in Land, D. C. Wadhawa in his report submitted to Planning Commission in 1989 recommended replacing present system of presumptive rights over land with the system of conclusive title. The Venkatachaliah Commission has also recommended 'state guarantee of private and public land' as one of the administrative reforms.<sup>5</sup>

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<sup>5</sup> (National Commission to Review the Working of the Constitution 2002) (National Commission to Review the Working of the Constitution 2002)

The Department of Land Resources, Government of India, has launched National Land Records Modernization Program (NLRMP) in 2008 to 'modernize management of land records, minimize scope of land/property disputes, enhance transparency in the land records maintenance system, and facilitate moving eventually towards guaranteed conclusive titles to immovable properties in the country.'<sup>6</sup>

Under the scheme of division of subjects between the Union Government and the state governments under the Constitution of India, 'maintenance of land records' and 'survey for revenue purposes and records of rights' are the state subjects. Therefore any law relating to registration of conclusive title has to be enacted by the states only. While considerable progress has been made by the states in implementation of other components of NLRMP, they have not done much towards introduction of conclusive titling in the states.

Thus as the situation exists today, Department of Land Resources, Government of India has taken a policy decision to change-over to system of conclusive title in the country. As per constitutional division of powers and responsibilities, action for implementation of this policy can be initiated by the states only and they are not very confident in going for such massive change in legal system. Due to this, the issue frequently finds mention in the reports of the experts and the policies of the government, but not much is happening on the ground.

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<sup>6</sup> (The National Land Records Modernization Programme, Guidelines, Technical Manuals and MIS 2008-09)

## **Objectives**

1. To identify problems in the present system of land registration in India and analyse reasons thereof.
2. To study the experience of other countries regarding system of deed registration and system of title registration.
3. To examine suitability of system of conclusive land title as solution to the problems relating to land registration in India.

## **Justification**

The development and maintenance of land markets involves the interaction of complex political, economic, social and cultural issues, legal framework, fiscal policies and environmental controls. System of recording title over land is one among many factors affecting land markets and its actual impact would depend on the complex interplay of many other factors. A committee, constituted by the Department of Land Resources, to suggest a model and give a road map for implementation of land titling in the country has observed that 'a considerable amount of interest is generated towards titling among various states even though there is no clear direction as to where to begin and how to go about it.'<sup>7</sup> The observation of the committee describes the reasons for the slow action on the part of the states. To introduce system of conclusive title, the states will require large scale change in the administrative and legal set up relating to land records and transactions in land. This effectively means doing away with a well established

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<sup>7</sup> (land titling - A Road Map 2014)

system of deed registration and maintenance of record-of-rights, which is in use in the country for more than a century.

As implementation of any such measure would spread over a long time, results as to success or failure will be visible so late that it may not be possible to revert back. Therefore a state normally will not go for it unless the problems with the present system are very acute and it is certain that switching over to the new system will solve those problems.

This study has identified the problems in maintenance of ownership records and process of land registration India and analysed their causes. The systems existing in other countries and their experiences in this regard have also been studied. The experience of other countries has been interpreted in the context of Indian situation to have meaningful learning from their experience. The administrative and legal issues involved in adopting a new system have been studied to assess the relevance of such a change in India. The study has reached an evidence based conclusion on the issue of introduction of conclusive title in India. This study will help the Government of India and the states to review their policy on this subject.

## **Research Questions**

1. What are the problems in the present system of land registration in India and what are reasons of these problems?
2. What is the experience of other countries regarding system of deed registration and system of conclusive land title?

3. Whether India should change over from the present system of deed registration to the system of conclusive land title to solve its problems relating to land registration?

### **Limitations and Delimitations**

Due to time constraints empirical data regarding actual operation of various laws has not been collected. The problems regarding land administration have been identified on the basis of secondary sources only. The systems of the other countries have been studied on the basis of their published laws and research work of other scholars. While studying the systems of Germany, France and Netherlands, language has put certain limitations. However Google translation tool has been used to overcome this problem.

### **Literature Review**

While a large number of books, research papers and articles are available on working of deed registration and title registration in other countries, very few articles could be found which deal with this subject in the specific context of India. These articles have been reviewed. D. C. Wadhwa submitted a report 'Guaranteeing Title to Land-A Preliminary Study' as Chairman of One-man Committee on Record-of-Rights in Land to Planning Commission in 1989, published as an article in the Economic and Political Weekly.<sup>8</sup> This study deals with the 'question whether guaranteeing of title to land should be introduced in India and if so, what should be the manner in which further proceedings in this regard should be undertaken'. He has observed that under the deed registration system as practiced in India, a sale

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<sup>8</sup> Wadhwa, 1989



deed is only an evidence of transaction but is not the conclusive proof of title. Also an entry in the record-of-rights is not the conclusive proof of title because government does not guarantee the title as recorded in the record-of-rights. The ownership of a person recorded in the record-of-rights is only presumptive and can be challenged on various grounds.

He has identified following problems relating to land administration in India:

- a) In all parts of the country land records are in very bad shape. These are not updated timely hence do not show correct status of ownership.
- b) In many cases the government, the public bodies and the private persons owning the land as per record-of-rights are not in possession of those lands. Many persons in possession of land do not find mention in the record-of-rights.
- c) This situation has led to incessant litigation and clogging of judicial machinery.

He has described the features of systems of land title registration prevailing in Australia, England, The United States, Canada and few Afro-Asian countries. At the end he comments 'It is not proposed at this stage to make any final or even detailed recommendations. But tentatively it would seem that the time has come for a gradual, phased and well-planned change-over to the system of registration of title to land in India.' He also suggested detailed study of Australian, Canadian, American, English, German and Kenyan models of registration of title to select appropriate model for India.

This report while giving deep insight into the many important issues related to the subject matter of the present research has certain limitations also. The author appears to have made up his mind about the superiority of title registration system over the deed registration system. His preference shows up in the first paragraph itself when he writes 'For the present, it will suffice to say that if such a system is introduced, it would not only help those who have to deal with land by way of purchase or sale or other - modes of transfer, but also reduce a vast amount of work in the courts, facilitate management of records-of-rights in land and implementation of land reforms, improve the working of offices concerned in some form or the other with title to land and, in the end, benefit private individuals as well as the administration.'<sup>9</sup> The problems identified by the writer in the present system are mostly relating to implementation of present laws. However he has recommended comprehensive change in the legal system relating to land registration. The report has neither considered improving the present system to solve the identified problem nor has shown that present law is incapable of dealing with such problems. Also basis of conclusion that record-of-rights is in bad shape in all parts of the country is not brought out in the study which is the main justification for change-over to title registration system.

Wadhwa further wrote an article on this subject 'Guaranteeing Title to Land- The Only Sensible Solution' which was published in Economic and Political Weekly in 2002. This article is largely based on the facts and arguments given in his 1989 article. However certain isolated instances of poor maintenance of land records in a few states have been added. Additionally, opinions of some people from various

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<sup>9</sup> (Wadhwa, Guaranteeing Title to Land: A Preliminary Study 1989)

fields like economics, law, civil services, NGOs, judiciary have been included in this article. Finally he has recommended that 'the conversion of present system of presumptive titles to land into the conclusive titles to land is the only sensible solution to this problem. The sooner it is done, the better it will be for all of us.'<sup>10</sup> This article also has same limitation as mentioned about the 1989 article.

In an article 'Security of Title to Land in Urban Areas' published in India Infrastructure Report 2009, Swati Ramnathan recommends adoption of system of state guaranteed title registration in India because lack of clarity on records and rights, impacts urban policies, urban planning and urban management.<sup>11</sup> She observes that '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, financial encumbrances, inheritance subdivisions, etc.' The main problem due to present system is the non availability of land free of litigation for developing housing and infrastructure in urban areas. In urban areas records are not updated to account for new transactions and therefore there are no comprehensive record-of-rights on the basis of which ownership can be verified with certainty. Inadequate management of land records also results in corruption, patronage and inefficient delivery systems. She has recommended introduction of title registration system especially in urban areas. In this article whole justification for change-over to title registration system is the assumption that there is shortage of litigation free land in the cities and urban areas do not have up dated record-of-rights. The basis of these assumptions is not indicated in the article. Moreover problems identified in this work are mostly relating to implementation of present laws and it has not been

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<sup>10</sup> (Wadhwa, EPW 2002), p. 4722

<sup>11</sup> (Ramanathan 2009) p. 22

stated why implementation related problems require a total change-over of present legal system.

The policy of Government of India on this issue is contained in the guidelines of National Land Records Modernization Programme is to implement conclusive title in India. In the guidelines, reasons for taking a decision to change-over to title registration are not given. However a paper by Smt. Rita Sinha, the then Secretary Department of Land Resources, the Government of India gives some insight into the background of this policy decision.<sup>12</sup> She has mentioned following problems with the present system:

- i. Outdated cadastral maps and arrears of data entry in the record-of-rights. The records do not reliably reflect the reality.
- ii. At the time of registration of deed regarding land transaction, past ownership has to be probed to establish non-encumbrance.
- iii. Litigation is bane of presumptive titling in India. Litigation will be considerably reduced once the titles are conclusive.

This paper lists out steps being taken by the government of India to reach the final goal of conclusive title. There are four major principles involved in conclusive title on land viz. management of property records by a single agency, “mirror” principle, the “curtain” principle and title guarantee and indemnification. Implementation of final principle is possible only when first three are in place. For the establishment of first three principles, an ambitious programme to computerize all the land records in the country is under implementation with an estimated

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<sup>12</sup> (Sinha 2010)

investment of Rs. 56 billion. Title guarantee will be introduced when work on modernization and updating of land records is completed.

In an article 'India's Land Title Crisis: The Unanswered Questions'<sup>13</sup>, Jonathan Zasloff has called into question the National Land Records Modernization Programme of Government of India. He has opined that India should preserve and update the current deed registration system because Torrens registration is ill-suited to the current state of Indian governance. In his opinion, current system has problems but is still workable. A gradual reform will be better than a complete change-over to a new system.

From the literature reviewed above it appears that there are no ready answers to many questions regarding justification of change-over to title registration system, legal and administrative issues involved in its implementation and its impact on the land administration in India. A detailed analysis of registration system in India and other countries is required to find answers to these questions.

## **Research Design and Methodology**

The main objective of this study is to answer the research question 'whether India should change-over from the present system of deed registration to the system of conclusive land title to solve its problems relating to land administration? This has been done on the basis of analysis of present problems, present law and practices and international experience. It is a qualitative research employing multiple techniques during the research process.

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<sup>13</sup> (Zasloff 2011)

A major portion of research involves study of various laws relating to land administration in India and evaluating their effectiveness in present socio-economic situation. The administrative structure to implement the laws and its effectiveness has also been studied. For the state specific laws, four states, viz. Maharashtra, Karnataka, Punjab and West Bengal have been selected for detailed study. Further, relevant laws of six countries viz. the United States, France, the Netherlands, Australia, England and Germany have been studied to know experience of those countries in the field of land registration.

Most of the research is on the basis of secondary data with some interviews with the administrators, practitioners of law and such other experts. Laws, rules and procedures made by the Government of India, state governments and other countries have been obtained from the books, publications, government websites and other authentic sources. To study the documents available in languages other than Hindi and English, Google Translation Service has been used.

To summarise, this research has adopted an analytical approach to study the present state of affairs, international comparative approach to study the experience of other countries and normative approach to evaluate law and policy and suggest changes.

## **Organisation of the Report**

This report has been divided in the following chapters:

1. Introduction
2. Basic Concepts of Land Registration
3. Deed Registration: International Experience
4. Title Registration: International Experience

5. Land Registration in India
6. Prerequisites for Introduction of Title Registration in India
7. Relevance of Title Registration for India