

**Workshop on Urban Land Governance & Planning (Jan22-24, 2020)**  
**National Center for Urban Affairs, LBSNAA, Mussoorie**

**Address by Sh. B.K. Agarwal, IAS on Land Title Issues**

Dear friends,

I am very thankful to the organizers for giving me an opportunity to speak to a knowledgeable and experienced audience like you. We have gathered here to discuss a very important contemporary issue 'Urban Land Governance and Planning'.

**Land is an essential resource for any economic activity in a country.** It is one of the important factors of economic production. Therefore, the management of land resources is considered, an important component of the economic policy of any country. To quote Margaret Mitchell in *Gone with the Wind*:

**"Land is the only thing in the world that amounts to anything, for it's the only thing in this world that lasts. It's the only thing worth working for, worth fighting for-worth dying for!"**

Land Governance in the cities is a complex issue because of limited availability of land and also due to competing interests of multiple stakeholders. The Urban local body would always like to develop more and more commercial spaces to increase its income. Planning authority wants strict regulation for sustainable development. Development authorities require land for infrastructure development. The poor in the city always struggle to get their occupation regularized.

It is a challenge for a country to establish land governance policies in urban areas to cater for all the stakeholders. I am happy that almost all the stakeholders are represented here. I am sure that discussion in these three days will lead to conclusions with far reaching implications.

Maintenance of title records and managing land transactions is an important component of land governance. If it is managed efficiently, all the stakeholders can utilize the full potential of land with minimum conflict. However, it is felt that in our country, especially in urban area systems in this regard are not working as desired. About two third of the cases pending in the courts involve disputes over property. Everyone would agree that for faster development of the country, **some way has to be found to reduce title disputes relating to land.** This will attract investors, developers and financiers towards urbanization projects, as risk towards title will be reduced. I will mainly cover this aspect of land governance in my talk today.

The present narrative in the country is that, we should switch over from the present system of maintenance of land records to the Title Registration System, which is also referred as Conclusive Title System or Guaranteed Title System.

Department of **Land Resources had circulated a draft of the Land Title Bill** to the states in 2011. **Now, Niti Ayog is working on another draft** for introducing the title registration system in India. It appears that there is almost a consensus among the policy makers and the academicians that all our problems would be solved only if we switch over to the new system.

However, the law regarding title registration is to be enacted by the individual states that are not very positive about this change. **Until now, only Rajasthan has taken some definite action in this direction by enacting a law in 2008 and then in 2016.** However, as far

as I know, this act has actually not been implemented and the present system is still continuing there. This inaction on the part of the state is perhaps because they know the complexities in changing over to a completely new system.

### **International Experience**

Though, a decision to select a system of registration by a country should be based on the internal factors, but it is a reality that **international experience** does play a part in building an opinion in this regard. Therefore, before going further I would like to give certain facts regarding prevalence of these two systems in other countries.

1. Both the systems have a widespread following in the world and there are examples **of very successful land markets under both the systems**. The majority of countries in the world still practice deed registration system.
2. **Among the top ten economies of the world**, the USA, Japan, Italy, France, Brazil and India have deed registration system, Germany and the UK have title registration, Canada follows both the systems and China is in the process of implementing a title registration system.
3. There are very few examples of countries **switching over from a well-established deed registration system to title registration system** in a 20th or 21st century. The USA has seen rather a reverse trend. While 19 states introduced title registration between 1895 and 1917, only eight states are using it now. Others have abolished title registration laws.
4. Title registration was introduced in **Brazil and other parts of Latin America, but was a failure**.
5. **In Hong Kong**, Land Title Ordinance issued in 2004, has been kept in abeyance, because of many objections raised by their Bills Committee of Legislative Council.
6. **Australia and the England are considered as best examples of a successful title registration system**. However, there are certain facts which must know before following their example.
7. **In Australia**, title registration was introduced immediately after introduction of deed registration system. For example, in South Australia, deed registration was first time introduced in 1841 and, Title Registration Law was enacted in 1858. **Even then, the new law was made applicable only on the lands granted by the Crown after enactment of new law**. The owners of the land granted earlier were allowed to make subsequent transactions under deed registration system. Therefore, even after a century, dual system continues in most of the states in Australia.
8. **In England, before the introduction of title registration in 1862 there was no registration at all**. Land was transferred through the private Conveyancing without any registration. Title Registration was voluntary in the beginning and was extended to various parts of the country gradually. **After more than a century** in 1990, registration could be made compulsory in the whole of England and Wales. Until now the whole of the land is not registered there. About 15% of the land is still out of the land register in England and Wells.

## Difference between the Two Systems

With these facts about the international experience, I would now discuss the **fundamental differences** between the two.

Deed Registration and Title Registration are two broad classifications being used by the academicians to describe land registration systems. Otherwise, there is **no standard typology or taxonomy** of these systems. Title registration in the UK, Australia, and Germany are quite different from each other. The same is true for deed registration in the USA, France, the Netherlands and India.

There are many jargons on this subject used by the academicians. Like Title Registration is '**title by registration**' and Deed Registration is '**registration of Title**'. Theodore Ruoff said that Title Registration follows **Mirror, Curtain and Insurance** principles. Norman classified registration systems as Positive and Negative. The Scottish Law Commission calls them **Bijural and Monojural** systems.

The Ontario Law Reform Commission says '**Each is not a single system, but rather is composed of different alternatives, and the combined alternatives form a continuum**. According to James Hogg '**The two classes shade off into each other** and it is a matter of some difficulty to distinguish with complete accuracy between registration of title and registration of deeds.

Let me try to simplify this issue. There are two basic principles of law will be applicable in respect of land transactions. No one can deprive a real owner of his land without his valid consent. Second, no one gives what he does not have viz. **Nemo dat quod non habet**. Both these principles are applicable in a deed registration system. Therefore, if a deed violates any of these two principles, it will not transfer a good title even if it is registered. In a deed registration system, land parcel-wise record is generally not maintained.

**Title registration system creates a land parcel-wise ownership record**, which makes easy to know status of ownership of a particular piece of land at any time. This is the most important characteristic of Title Registration. '**Mirror**' principle refers to this characteristic and says that the record is the true image of the ground situation. **The 'curtain' principle** is a specific legal rule, which overrides two basic rules of law which I mentioned earlier. This legal rule declares that whatever is written in the record is true and cannot be challenged. The record may not always be the true image of ground reality due to fraud, mistakes or time-lag. However, a legal fiction is created which overrules the general law and declares that whatever is written in the register is true image of the ground situation.

Notwithstanding this strict legal provision, everyone knows that there would be cases where an entry in the record is wrong and a genuine owner is deprived of his land by operation of title registration law. **For such situations, insurance is provided for**. A genuine owner cannot get his land back, but can get compensation if he proves his claim.

I would try to elaborate this concept through an example. Suppose a conveyance deed in respect of the property of A has been got executed by B in his favour by misrepresentation of facts, without the consent of A, and B subsequently transfers this property in favour of C. The transaction in favour of B is void in the eyes of the law because it was done without the consent of A. Further transaction by B in favour of C is also void because B was not the real owner at the time of the transfer and therefore was not competent to transfer the property. **In a deed registration system A can retrieve his**

**property from C** through the legal process and see, despite being a bona fide purchaser, has no protection under the law.

**In title registration system, A cannot retrieve his property** because title registration law protects a registered owner and a bona fide purchaser. A can claim monetary compensation from the Insurance Fund but cannot get back his property. Thus, in deed registration system a bona fide purchaser is left unprotected while in title registration system a bona fide but unregistered owner is without protection.

**A title registration system has no inherent or intrinsic power** to ensure that a record is always mirror image of the ground situation. Correctness of records depends on many other legal and administrative, factors. If we make appropriate reforms in the law and improve administrative efficiency, record in a deed registration system may reflect the ground situation better than that in a title registration system.

### **Existing System in India**

Let us now understand how the present system of keeping land title records and land transaction works in India.

1. India is classified as deed registration country. Under the **Registration Act 1908** registration of deeds is compulsory in the case of most of the transactions, but many transactions like compromise decree, grants by government, instrument of partition etc. are **exempted from compulsory registration**. Thus, not all the transactions, creating rights in land, are recorded in the registry. Further, there is no record of transfer by inheritance in the registry.
2. **Substantive law on property** is mainly contained in the Transfer of Property Act 1882. Then there is host of laws like Trust Act, Indian Succession Act, Hindu Succession Act, Land Reform laws, Contract Act etc. under which land rights are created.
3. One of the main shortcomings of deed registration is that it does not have parcel-wise ownership records. However, **we have record-of-rights**, which records all the transactions in the land against a uniquely identified land parcel. One can see right over any parcel of land easily and location of the parcel can be traced to ground with the help of the map. **It should also be noted that as per law record-of-rights is to be made for rural area as well as in urban areas**. It is a different matter that it is not being updated in urban areas because of many administrative reasons.
4. **This record is made under Land Revenue Acts of the states**, which prescribe a **quasi-judicial procedure** for ascertaining the correctness of entries to be made in the records. The law provides that entries in this record will be presumed to be true unless proved otherwise. This kind of record is not maintained in a typical deed registration country. It was not available in Australia or England when they decided to go for title registration. It is not maintained in the USA also.
5. Therefore, though India is defined as deed registration country, it actually has **two sub-systems of maintaining records of ownership**, which are operated by separate authorities under a separate set of laws. In my opinion, our deed registration combined with record-of-rights can be called **title, registration with a lesser degree of affirmation** for the entries in the title register. **Record-of-rights is actually a title register**, where rights are recorded against individual land plots through a quasi-

judicial process. Further, the law recognizes these entries as true until proved otherwise.

6. Unfortunately, these **sub-systems are working independently** without utilizing the synergy between each other. **France and the Netherlands have effectively used this synergy** to improve their deed registration system. With some improvements in the existing system, quality of title records can be upgraded to a very large extent. If quality of record improves, land disputes will reduce even without a certificate of conclusiveness. **Ultimately, what matters is the correctness of the record not the certificate of conclusiveness.**
7. The main problems in the present land registration system in India are poorly updated land records, especially in urban areas, heavy litigation, difficulty in assessing the encumbrance on land at the time of purchase and an inefficient delivery system. **These problems are mostly related to poor implementation of existing laws.**

### **Problems in Changing over to a New System**

I have **my reservation** on the need to change over to title registration system on two accounts. **First**, there is not enough evidence that it will solve all our existing problems. **Secondly**, many unforeseen legal and administrative issues will arise when we go for such a fundamental change in the legal system. It may happen that a lot of effort is wasted in solving these new issues. **Many of the positive features of title registration system can be implemented to improve our record-of-rights which is almost like a title register.** This can be done very easily and perhaps states will be more positive towards such changes. I will briefly mention a few of my observations on this issue.:

1. Statements like land records are in bad shape, huge amount of litigation, two-third cases in courts relate to land disputes, etc. **do not give enough insight into the actual problem.** For people, land is an important possession, a factor of production, and a status symbol. What else will people fight for? So **land is bound to be the dominant cause of civil litigation in any country.**
2. The title registration system appears to be superior to the deed registration system because the concept of the conclusiveness of a registered title. **However, experience has shown that nowhere is the title register, absolutely, conclusive.** In England, over-riding interests, and in Australia many subsisting interests, do not appear on the title register but bind the purchaser of the property.
3. In the title registration system, getting a claim from the indemnity fund is not as simple as it appears to be. **An owner losing his land without any fault of his has to go through litigation in the civil court** to get compensation from the government.
4. Introduction of the title registration system in India will require wide-ranging changes in the present legal principles. The central and state governments will have to amend many existing laws and enact new ones to implement title registration.

Such **wide-ranging changes in the law will involve huge effort on the part of the central and state governments.**

5. The most crucial part of the implementation of the title registration system is **bringing all the properties on the title register for the first time.** At the time of first registration, the registrar has to examine in detail all the documents forming the basis of the title claimed by the applicant. In fact, the registrar has to do a job, which is normally performed by a professionally qualified attorney in a deed registration system. The examination of all the documents relating to a title at the time of every transaction will place **enormous powers in the hands of the registrar.** There is a danger of some officials using these powers either inefficiently, or dishonestly. In both the situations, the public will suffer.
6. The experience with the system of deed registration and record-of-rights in India demonstrates that **hereditary rights are a major source of litigation.** This is so because succession laws are very complex in India. Because of the nature of succession laws, this problem will remain even if the title registration system is adopted.
7. **Title registration introduces new legal rule which may not be accepted by the civil courts.** For example the civil courts in the USA held that first registration of title can be done only by the order of the civil court not by the registration officer. In England civil courts order correction of land register which against the principle of conclusiveness.

In view of the above facts, it is not advisable that India change over to the title registration system from the present deed registration system. The present problems relating to land registration are not likely to be solved by a change in the system. Rather, such a change may invite more administrative and legal problems. Instead of wasting its effort in experimenting with an alien system, **India should reform its deed registration system as has been done by many other countries.** The advantages of reforming the present system is, that **incremental improvements** can be made in it. The effect of such improvements will be visible early and corrective measures can be

**A large number of developed countries in the world are using the deed registration system successfully.** They, however, have made certain improvements in the basic deed registration as per their specific requirements. The USA has introduced Title Insurance through private companies; France has **provided 'Real Estate File'** and the Netherlands has made certain changes in the law to give **protection to a bona fide buyer.** India can also reform the existing system without going altogether for a new system.

### **Recommendations for improvement**

1. **In the Registration Act, it is mentioned here that wherever possible, property should be described with reference to the government map or survey but this has not been made mandatory.** This leaves the description of the property to the discretion of the parties. In urban areas, mostly property is described vaguely with

reference to structures located on its boundaries. This practice makes the resolution of future disputes regarding dimension and boundaries of the property very difficult and parties have to go for long-drawn litigation. Law Commission in its report in 1957 had recommended amendment in Registration Act on these lines. It should be mandatory to describe property as per entry in record-of-rights.

2. **The present deed registration system can be made more reliable if the registrar is allowed to verify prima facie the ownership of the seller.** This prima facie verification will be taken care of if attachment of a copy of the record-of-rights and cadastral map with the deed is made compulsory under the law. **A deed should be accepted for registration only when the name of the seller appears in the record-of-rights.** In the Netherlands, which follows deed registration, if the registrar thinks that the seller does not have a valid title, he informs the parties about his observation. In such cases, the notary normally withdraws the deed submitted by him on behalf of his client. In the unlikely event of the parties insisting on transfer of such deed, the registrar is obliged to register it. **This change will also help in updating the record-of-rights on a regular basis.** An owner would have to get his ownership recorded in the record-of-rights without which he will not be able to sell his property in the future.
3. It should be provided in the law that a **sale deed in respect of a part of the property will not be registered unless a new map** showing a clear division of the property between the seller and purchaser is attached with the sale deed.
4. The sale of his share by one of the owners in a joint property also leads to disputes later. To prevent such types of disputes, **one of the shareholders in a joint property should not be allowed to sell his share unless a formal partition is done as per law** and the boundaries of his share are clearly demarcated. **This procedure is followed in the title registration systems of Australia, England, and Germany and in the deed registration system of France.**
5. Under the Registration Act, 1908, a large number of documents are exempted from registration. Due to these exemptions, many documents, which affect the rights in a property, do not appear in the record of the registry. Therefore, **all the transactions in the property must be registered without any exemption** so that the records of the registrar reflect the true status of rights in the property. **The first Law Commission of India has also recommended this in 1957.**
6. In India, there is no way of knowing about any **pending litigation** in relation to a property by a prospective buyer. This situation is a major source of litigation in the sale and purchase of a property. The gravity of the matter has been recognized by the highest court of the country. The Supreme Court in T. G. Ashok Kumar vs. Govindammal & Others case in 2011 has suggested that the **Parliament should enact suitable amendments in the Transfer of Property Act.** Interestingly, in 1998, the **Law Commission had also recommended** amendments in sec. 52 of the Transfer of Property Act, 1882 and sec. 18 & 78 of the Registration Act.
7. Inheritance of property through a Will overriding the normal rules of inheritance is a constant source of litigation in India. This situation can be improved if **registration of a will is made compulsory** under the law. **The Standing Committee** of Parliament on Rural Development in its report on Registration (Amendment) Bill 2013 has recommended compulsory registration of Wills.

8. The Transfer of Property Act provides for the creation of equitable mortgage on property by simply depositing the title deeds with the lender without registering any kind of deed. This provision needs review because such a mortgage does not appear in the records of the registry and therefore there is no notice to a subsequent purchaser or the mortgagee.
9. **The Registration Act allows four months for registration with the provision of further extension of four months** with the permission of the registrar. This is too long a time in today's world of fast communication. During this period, which is termed as '**Registration Gap**', there is a possibility of execution of another deed by the grantor hiding the execution of an earlier deed. There is also **possibility of filing a suit in a court** by a person claiming that property without knowing that it has already been disposed of. In such cases, litigation is bound to take place. Therefore, the time allowed for registration should be reduced to one month.
10. Similarly, there is also a need to reduce the gap between acquisition of a right and entry of that right in the record-of-rights. Time for reporting about acquisition of a right should be reduced to one month from the present three months.
11. At present, there are provisions in some state laws to initiate **amendments in the records by the officials themselves to correct clerical mistakes**, to record undisputed changes, to implement orders of revenue officers, to update the record based on the information from sources other than a right holder and other similar reasons. These provisions make the record vulnerable to the genuine errors as well as deliberate manipulation by the vested interests. **All such provisions should be removed from law or their scope should be severely restricted.**
12. The **biggest strength** of the record-of-rights is that it is subject to **an adjudication mechanism** to resolve any dispute regarding entries made in the record. However, over the years, this adjudication mechanism has also become one of the weaknesses of the record-of-rights. Provisions in the law for multiple appeals, review, and revision is the main reason for the huge pendency of cases with revenue officers. In West Bengal and Karnataka, only one appeal has been provided for and there is no provision for review or revision of orders either on an application of a party or on the motion of the revenue officer. This pattern should be followed by other states also to avoid prolonged litigation resulting in uncertainty to the entries in the record-of-rights.
13. It has been experienced that **hereditary rights are a major source of litigation in India**. This is so because succession laws are very complex in this country. Different succession laws, viz., the Hindu Succession Act, Indian Succession Act, Shariat laws, etc., govern the law on succession for different communities in India. One of the peculiarities of Hindu succession law is that a person has full rights to dispose of his self-acquired property, but his rights to alienate the ancestral property are severely limited by the law. Any alienation of the ancestral property by him in violation of the law can be disputed by other co-parceners at a later stage affecting the title of a bona fide purchaser. However, in the record-of-rights only the name of the person holding the land is recorded without mentioning whether it is his self-acquired property or the ancestral property. The revenue laws should provide for a **separate folio for self-acquired property and ancestral property**. Any limitation on the right of the owner to dispose of his property should also be mentioned in the record-of-rights.



14. There may be certain circumstances in which a person has a genuine objection to transfer of a property. **At present, there is no provision in the law to record such objections.** The only option before an aggrieved person is to acquire an injunction from a civil court to stop such transaction. To avoid unnecessary litigation, a provision should be made in the law to record objections in the record-of-rights on the basis of an application by a person claiming a right in the property. In the case of such objections, **three month's time may be given to the applicant to bring an order of the competent court.** If he fails to bring such an order, the objection should be removed from the records. **Such provision exists in the German law.**
15. As per Transfer of Property Act, **registration of a deed is a deemed notice to the whole world** about the status of that property. Due to this provision, in case of any dispute in the future, the purchaser cannot take a plea that he was not aware of earlier transactions. The record-of-rights is also a public document where the rights of people are recorded after due inquiry. Therefore, **entries in the record-of-rights relating to a particular property should also be considered as deemed notice to any person** acquiring that property. An **appropriate amendment in the Transfer of Property Act** should be made to incorporate this principle.
16. Record-of-rights and deed registration are dealt by separate agencies which is one of the reasons for low synergy between two sub-systems. **If both the jobs are given to a single authority things will improve to a large extent.** This can be done without any change in existing laws. **In the Netherlands they have adopted this approach.** There is a good case to **try it first in urban areas**, where presence of revenue authorities is otherwise minimal and record-of-rights are generally not being updated.
17. Further, for urban areas there is a need to revise the formats for making record-of-rights because present formats are not capable of recording rights in multi-storied structures.

I have mentioned some points which can improve the existing system without any drastic change in the legal rules. There can be many more such points. My intention is to emphasize that even if we decide to go for the title registration system, we should not stop improving our existing system. Many of the improvements suggested by me are already endorsed by Law Commission or Supreme Court and are within the purview of the Central Government. If nothing else these improvements will prepare a better foundation for introduction of the title registration system.