

Land Registration: Indian Experience and Learning from Global Practices



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Outline of Talk

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- What is Land Registration ?
- Why is it needed ?
- Systems of Land Registration in the World
 - ✦ Deed Registration
 - ✦ Title Registration
- Indian System
- Problems in the Indian System
- Whether change-over to Title Registration is a solution ?
- Improvements required in existing system in India

Land Registration

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- **Registration: Recording a Private Transaction in Public Record**
- **Need of Registration of Rights in Land**
 - Difference in Ownership of Land and Other Properties
 - Character of Rights in Land
 - Notice to the World
 - Priority in Case of disputes
 - Facilitates Title Search

System of Land Registration

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- ❑ Deed Registration

- ❑ Registration of Title

(Registration of Title is also referred to as Torrens Sytem,
Conclusive Title or Guaranteed Title)

Deed Registration

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- Registration of Deed after Execution
- Validity of Transaction not Examined by Registrar
- Principle of *Nemo dat quod non habet*
- Registration only an Evidence of Transaction
- Title Verified through Search of Historical Records by Grantee
- Granter-Grantee Index and Tract-wise Index
- No Land Parcel-wise Register

Title Registration

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- Registration w.r.t. a Property
- Title by Registration
- Registration Conclusive Evidence of Title
- Entry in Register Indefeasible, Even if Wrong
- Mirror, Curtain, Insurance Principles
- Right over 'Mud' and 'Money'

Prevalence of Two Systems

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- Almost Equal Following of Both Systems
- Among Top Ten Economies:
 - The USA, Japan, Italy, France, India, Brazil- Deed Registration
 - Germany, the U.K. – Title Registration
 - Canada- Both Systems are Followed
 - China – Title Registration in the Process

Registration In India

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- Deed Registration Under Registration Act 1908
- Registration Compulsory having Constitutive Effect
- Many Exemptions- Inheritance, Court Decree, Government Grant etc.
- Granter-Grantee and Tract Indexes Maintained

Record-of-Rights

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- Record of Ownership of Each Land Parcel
- Maintained under Land Revenue Acts of States
- Contains Textual Records and Cadastral Map
- Law Applicable to Both Urban & Rural Area
- Legal Duty of Every Person to Report Acquisition of Right in Land
- Presumption of Truth Attached to ROR
- Change in ROR Through Qausi-Judicial Process
- A Reliable Public Record of Ownership in Land

Problems

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- Land Related Litigation
- Non Updating of ROR in Urban Area
- Multiple Transaction of Same Land
- Claims on Land after Registration of Sale Deed
- Difficulty in Search of Old Registration Records

Title Registration as Solution

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- Some Experts Propose Title Registration for India
- Introduction of Guaranteed Conclusive Title is Policy of GOI since 2008
- National Commission to Review Working of Constitution 2002 Recommended Title Reg.
- Niti Ayog Working on Title Guarantee
- Rajasthan passed Title Registration Act in 2016
- Maharashtra Proposing Title Registration Bill

Complete Change-Over Not Advisable

- Poor updating of record is main problem
- Both systems have widespread following
- Many Countries have improved their deed registration system
 - The USA has introduced title insurance by private companies
 - France has provided a 'Real Estate File'
 - The Netherlands has given protection to bonafide buyer against later claims

Complete Change-Over Not Advisable

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- Conclusiveness is theoretical concept. No where title register is absolutely conclusive.
- In title registration getting claim from indemnity fund is long drawn process
- Title registration prefers bonafide buyer over a genuine owner
- Implementation of title registration requires wide ranging changes in legal and administrative system.

Complete Change-Over Not Advisable

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- Bringing all lands on title register is huge challenge
 - Australia continued with dual system for about 100 years
 - The UK could bring about 85% lands under title registration since 1875
- ✦ The USA tried to adopt title registration but reverted to deed registration. It failed in most part of Latin America. Hong Kong passed law in 2004 but kept in abeyance.

Complete Change-Over Not Advisable

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- Deed registration in India is a century old. No example of converting a well established deed registration to title registration.
- Instead of experimenting with a new and alien system, existing system should be reformed.
- While reforming present system, incremental changes can be introduced.

What Can Be Done ?

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- Strong Linkage Between ROR and Deed Registration
- Description of Property on the basis of ROR
- Power to Registrar to prima facie verify title of seller
- No Transfer of Share without Making New Map of Part Property
- Remove All Exemptions from Registration

What Can Be Done ?

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- Amendment in Transfer of Property Act regarding Pending Litigation
- Compulsory Registration of Wills
- Reduce Time for Registration and Entry in ROR
- Prompt Disposal of Disputes by Revenue Officers
- Changes in Transfer of Property Act

Thanks