

Reforming Land markets: Issues and possible solutions

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1 Introduction: Problems in the land market

Land is a factor of production, and the smooth functioning of the land market has important cascading effects on agriculture, access to credit, capital investments and economic growth. As India has transitioned to a market economy over the past three decades, land has become an important source of contestation due to urbanisation and migration patterns, as well as the need for land for industrial development and commercial activity. There is some evidence to show that the land reform efforts undertaken after independence have contributed to poverty reduction.¹ However, laws that implemented such measures are not necessarily adequate for the requirements of today's economy.² There is therefore a need for reconsidering the legal and administrative structures that currently affect the functioning of the land market.

There are three kinds of issues related to the efficiency of land markets in India today:

1. *Sub-optimal quality of land records*: India has historically had bad land records.³ This continues to the present day despite multiple interventions by the Central and state

¹Timothy Besley and Robin Burgess, "Land reform, poverty reduction and growth: Evidence from India", in: *The Quarterly Journal of Economics* 115.2 (May 2000), pp. 389–430, URL: <https://www.isid.ac.in/~tridip/Teaching/DevelopmentMicroeconomics/Readings/Besley&Burgess-QJE2000.pdf> (visited on 11/09/2016).

²Michael Lipton, *Land Reform in Developing Countries: Property Rights and Property Wrongs*, Reprint, Routledge Priorities in Development Economics, Routledge, 2009.

³D.C. Wadhwa, "Guaranteeing Title to Land", in: *Economic and Political Weekly* (Nov. 23, 2002), pp. 4699–4722.

governments.⁴ The poor quality of records hinders the development of the land market in the following ways:

- (a) The lack of reliability of records inhibits investment (both for agriculture and industry), since possible investors are not able to determine the precise nature of rights and encumbrances on a piece of property.
- (b) The inaccuracy of land records is a significant cause of litigation, which slows down land transactions and investment in land.
- (c) The poor quality of records often leads to financial exclusion, since those with unrecorded rights are often unable to provide land as a collateral.

2. *Restrictions on transferability, including leasing:* Many state laws limit the transferability of land, depending on the type of land, proposed land use, and the occupational or residential profile of the interested buyer.⁵ For example, in many states, agricultural land can only be sold to agriculturalists. Many states prohibit sub-tenancies, while others prohibit bank foreclosures on land owned by Scheduled Tribes.⁶ These legal restrictions often work counterproductively, by preventing inefficient landowners from transferring land to those who can use it more efficiently. In addition, such restrictions incentivise informal transactions, give rise to informality and unclear titles, and inhibit lending against land as collateral in some cases. Land ceiling and land use restrictions in urban areas create artificial scarcity, drive up land prices and hinder important objectives such as affordable housing.

3. *Property-related litigation and administrative delays:* There is a high degree of litigation related to immovable property or other rights in land. In 2018, a survey of more than nine-thousand litigants across 170 districts found that two-thirds of civil disputes in courts were related to land and property.⁷ The overwhelming impact of such litigation is on the poor. Ninety percent of those surveyed had an annual income of less than Rupees 3 lakhs, and eighty percent had not studied beyond school.⁸ Litigation slows down economic activity, and hampers the ease of doing business. As land is a factor of production, delays owing to litigation have a cascading effect on overall productivity and growth.

In addition, administrative compliance requirements hinder efficiency in the land market. This increases the time taken to complete land transactions, but the fragmented nature of land administration also increases the scope for introducing errors into land records. For example, while a land sale transaction may be completed between the parties by registering the sale deed, the transfer of rights and liabilities is not complete until the rights of the buyer are entered into the land revenue records by *mutation*. In many

⁴McKinsey Global, *India: The Growth Imperative*, 2001, p. 705, URL: <https://www.mckinsey.com~/media/mckinsey/featured%20insights/india/growth%20imperative%20for%20india/mgi.the.growth.imperative.for.india.ashx>, at page 4.

⁵Klaus Deininger, Songqing Jin, and Hari Nagarajan, "Efficiency and Equity Impacts of Rural Land Rental Restrictions: Evidence from India", in: *European Economic Review* 52 (2008), pp. 892–918, URL: <https://papers.ssrn.com/abstract=2466857> (visited on 01/10/2019).

⁶See discussion in Besley and Burgess, see n. 1.

⁷Daksh India, *Access to Justice Survey 2015-16*, Survey Report, India: Daksh India, URL: <http://dakshindia.org/wp-content/uploads/2016/05/Daksh-access-to-justice-survey.pdf> (visited on 01/10/2019).

⁸Ibid.

cases, parties fail to complete the mutation process either through negligence or deliberately. India therefore continues to rank 166 on the “registering property” parameter in the Ease of Doing Business rankings.

As can be seen, all three issues are interrelated. Therefore, there is a need to address all three issues simultaneously in order to create a more efficient land market.

2 Proposed solutions

Land being a state subject, there are limited policy tools in the hands of the Central Government. The Central Government has traditionally played the role of (a) being a knowledge expert (model laws, framework for draft laws, etc), and (b) providing fiscal transfers and incentives (DILRMP). This role can be re-oriented towards a holistic reform of land markets. In addition, the Central Government can identify areas of reform in central laws such as the *Registration Act*⁹ in order to reduce litigation and improve the ease of complying with legal and administrative requirements.

2.1 Improving land records

The Central Government’s flagship project, the Digital India Land Records Modernisation Programme (DILRMP) must be re-oriented towards outcome-based incentives. Since 2006, the DILRMP (earlier known as NLRMP) has provided central assistance to state governments for updating and creating digitised land records by funding specific *inputs* such as computerised land record systems. Progress has however been slow due to varying constraints in different states. A combined study by NCAER, NIPFP and IGIDR highlighted the fact that in many cases, progress on DILRMP has been slower than reported, and many lacunae and errors in records remain in spite of digitisation.¹⁰

The DILRMP must be geared towards measuring outcomes as opposed to measuring outputs. This can be done by increasing flexibility in the implementation of the DILRMP, creating fiscal incentives for better performing states, and reserving a proportion of the disbursement of funds based on the score of the individual state on an index for “Property record and services”.¹¹

In addition, non-state alternatives to improving land records such as title insurance must be initiated. The *RER Act, 2016* has allowed state governments to require title insurance for real estate projects.¹² However, there is no title insurance available in the Indian market yet. Title insurance is a private, market based mechanism that in its objectives, is similar to the conclusive titling system sought to be implemented by the Government of India under the

⁹Republic of India, *Registration Act, 1908*.

¹⁰NCAER, *A Pilot Impact Assessment of the Digital-India Land Records Modernisation Programme: Synthesis Report*, 20171102, National Council of Applied Economic Research, 2017, URL: http://www.ncaer.org/publication_details.php?PID=284 (visited on 01/09/2019).

¹¹D.B. Gupta, Deepak Sanan and Prerna Prabhakar, “DI-LRMP Impact Assessment Synthesis: Report Release”, NCAER, November 13, 2017. Available at: http://www.ncaer.org/uploads/photo-gallery/files/1513677735Synthesis%20Report_PPT.pdf, accessed on January 11, 2018.

¹²See section 16(1)(i) of the Republic of India, *Real Estate (Regulation and Development) Act, 2016*, URL: <http://www.indiacode.nic.in/acts-in-pdf/2016/201616.pdf> (visited on 12/13/2017).

Digital India Land Record Modernisation Programme. Under title insurance, a private insurer conducts an examination of the relevant property and compiles a thorough report of the rights and encumbrances on that piece of property. Based on this report, the insurer undertakes to indemnify the title insurance holder against any defects in the title of the property that the insurer was not able to discover during its examination.¹³

Title insurance therefore provides financial security to land title holders against defects in their title. The additional benefit of title insurance is that the process of underwriting insurance helps discover previously undiscovered defects in land titles, and therefore contributes to the improvement of land records without requiring any fiscal or other resource mobilisation by the state. The Insurance Regulatory and Development Authority of India (IRDAI) has published a report on the concept of title insurance that provides a starting point for discussions on the regulatory framework for title insurance.¹⁴

Lastly, there is a role for incorporating open access technology for allowing start-ups and entrepreneurs to access land records and build customised products through open APIs, etc. This can be used for creating private title databases, collateral registries, etc., which will help create better land records for commercial investors. Such records and products will also reduce the scope for litigation due to the availability of better information prior to the conclusion of a land transaction.

2.2 Reducing restrictions on transferability

Restrictions on land transfers such as those on renting, ownership and leasing distort the land market. While the ostensible objectives of such restrictions is to protect small land owners and farmers, they are among the most significantly impacted due to these restrictions.¹⁵ There is therefore a need to immediately liberalise restrictions on land transfers.

These include restrictions on sub-tenancies and the leasing and sub-leasing of agricultural land. Doing so would allow consolidation of land holdings, and incentivise long-term investment in land. The Land Leasing has called for a reform of the land leasing market, and proposed a model land leasing law that can be adopted by state governments. While the model law is a welcome step, there is scope for further rationalisation of such laws by completely doing away with requirements for state permissions in leasing. The distinction in compliance requirements between agricultural and non-agricultural land can be done away with.

In urban areas, there is scope to reduce the restrictions imposed on rental agreements. There is considerable evidence internationally to show that rent control laws raise prices for real estate,

¹³See David Keleher, "Title Insurance: Overview and Key regulatory concerns", in: *CIPR Newsletter* (2012), URL: http://www.naic.org/cipr_newsletter_archive/vol4_title_insurance.pdf (visited on 12/30/2015); and American Land Title Association, *Title Insurance: A comprehensive overview*, tech. rep., URL: <https://www.alta.org/about/TitleInsuranceOverview.pdf> (visited on 12/29/2015)

¹⁴Working Group on Title Insurance in India, *Title Insurance in India*, Insurance Regulatory and Development Authority of India, Oct. 26, 2016, p. 146, URL: <https://www.irdai.gov.in/ADMINCMS/cms/frmGeneralLayout.aspx?page=PageNo3349&flag=1> (visited on 05/29/2018).

¹⁵See Chapter 4 of Antonio Salazar P. Brandao and Gershon Feder, "Regulatory Policies and Reform: The Case of Land Markets", in: *PSD Occasional Paper, The World Bank* (Jan. 1996), URL: <http://documents.worldbank.org/curated/en/602141468179929468/pdf/multi-page.pdf> (visited on 01/11/2019).

and negatively affect poor households.¹⁶ This is contrary to the Central Government's stated policy of providing affordable housing. Allowing better freedoms to tenants and landowners to contract freely will encourage renting and better investments in residential and commercial property.

In addition, restrictions on bank foreclosures with respect to land belonging to marginalised groups need to be liberalised progressively. For example, the *Rajasthan Tenancy Act, 1955* prevents landowners belonging to Scheduled Castes and Scheduled Tribes from selling their lands to persons other than SCs and STs.¹⁷ It also regulates mortgages strictly by providing that mortgages cannot exceed a period of five years, after which the land shall vest back to the borrower without any other encumbrances.¹⁸

While these restrictions are ostensibly for the benefit of SC and ST landowners, they prevent them from accessing credit on commercial terms, and inhibit investment in lands belonging to them. Such restrictions therefore directly affect the economic growth of members of such groups.

The Jawaharlal Nehru National Urban Renewal Mission (JNNURM) provided conditional fiscal transfers to state governments for building urban infrastructure.¹⁹ The conditions included the repeal of rent control legislation as well land ceiling laws. However, the applicability of the scheme was limited to a small number of cities. A similar conditional fiscal transfer mechanism can be developed to repeal land rental, leasing and ownership restrictions in both urban and agricultural land. This will encourage private investment and improve productive capacity in both cities as well as in agriculture.

2.3 Reducing litigation and administrative costs

The first step towards reducing litigation is to mandatorily include a record of ongoing litigation in all land records. In order to do this, courts need to be encouraged to publish cause-lists and decided cases in a manner that can be easily accessed by state revenue departments and municipal bodies to update land records. Most High Courts and many lower courts already publish this information, but not in an easily accessible manner. Case-related information provided in this manner would also reduce litigation, since any potential buyers of property would have better information about ongoing litigation, and the precise encumbrances on the relevant property.

In order to improve the efficacy of the recording of court cases as encumbrances, any person resident in India should be allowed to "highlight" a litigation related encumbrance on the land record through the online portals of revenue departments. This can then be verified and included in the relevant land record by the revenue or municipal departments.

In addition, there is a need for research and identification of the causes of land disputes, by systematically examining court cases and identifying legal provisions that lead to disputes in courts. This can then be used to incentivise states to reform laws that lead to a major number of

¹⁶Brandao and Feder, see n. 15.

¹⁷See section 49A of the Rajasthan, *Rajasthan Tenancy Act, 1955*.

¹⁸See section 43 of the *ibid*.

¹⁹Ministry of Urban Development {and} Poverty Alleviation, *Jawaharlal Nehru National Urban Renewal Mission: Overview*, URL: [http://mohua.gov.in/upload/uploadfiles/files/1Mission%20Overview%20English\(1\).pdf](http://mohua.gov.in/upload/uploadfiles/files/1Mission%20Overview%20English(1).pdf) (visited on 01/12/2019).

disputes related to land and property. While the Daksh India survey highlights the prevalence of property related cases, the precise legal origins of such disputes are not known.

Information generated through this process will help generate evidence for re-examining the *Registration Act*²⁰, the *Transfer of Property Act*²¹, and other central legislation. For example, the *Limitation Act, 1963* allows challenges to land transaction agreements to be made on grounds of fraud up to twelve years from the date the fraud was discovered, even if the fraud was committed significantly earlier.²² This creates legal uncertainty regarding the sanctity of land records, and makes land titles less secure. This also increases risk premiums for real estate insurance, and makes real estate development more expensive and litigious. There is therefore a need to define an upper limit for land related agreements in the *Limitation Act, 1963*.

Lastly, the Central Government should identify causes for delays in land related transactions in the land administration process, for example at the stage of survey, registration, taxation and mutation. These administrative processes must be streamlined in each state for ease of transactions in land. An “Ease of Land Transactions Index” can be developed in order to encourage state governments to take progressive steps to implement such reforms.

3 Capacity to implement reforms

While land is a state subject, the Central Government has an important role in providing knowledge-transfers, and fiscal support. The reform measures proposed above will require significant capacity addition and in technical expertise and human resources. It is therefore important for the Central Government to develop knowledge-sharing platforms for state governments to compare and learn from each other’s policy successes and failures on land reforms. Such platforms where all state governments and the Central Government can collaborate to develop expertise on land-related issues can support administrative strategies of state government in implementing land reforms in the areas discussed above.

²⁰India, *Registration Act*, see n. 9.

²¹Republic of India, *Transfer of Property Act, 1882*.

²²Republic of India, *Limitation Act, 1963*, URL: <http://www.advocatekhoj.com/library/bareacts/limitation/index.php?Title=Limitation%20Act,%201963> (visited on 12/21/2017).

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