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Records of Rights of Indian States as Title Registers: An Assessment

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Abstract

In the Land Governance space, a meaningful conversation on the issue of ‘How’ and in ‘What’ format should Title Registers (generally called Record of Rights - RoRs, in rural India) be maintained in India, has been missing. Literature is very scanty on a subject that has considerable bearing on the utility of land records as a credible evidence of both title and the ground-level situation. More meaningful and comprehensive records could forestall a lot of litigation and avoiding redundant information could aid in the efficiency of record maintenance. These aspects about the form in which the RoRs are kept have received very little attention and recent discourse has been dominated by ‘Which’ Land Registration System (presumptive or conclusive) should be the goal rather than ‘What’ form will be more effective. This paper tries to bridge the gap in the literature by studying the format/practice of maintaining Land Records both internationally and within India. For this purpose, two distinct samples, i.e., Domestic and International, are laid out/assembled. The Indian sample consists of 28 Indian States/UTs, whereas the international sample has 21 countries. Samples are collected for the respective states and country wise title registers to study their formats and information included within them. The study was conducted based on an a priori understanding that there is merit in title records including 5+1 parameters, i.e., Ownership, Possession, Land Area, Land Use and Encumbrance, plus an Unique Id. Therefore, the record-keeping systems were assessed against this touchstone. ‘Other’ information included within these documents is also considered. The study revealed significant differences in the formats/practices amongst various countries and even amongst the Indian States. This analysis provides suggestions on how the Record of Rights could be improved for better land governance in different Indian States.s aimed at promoting more equitable gender outcomes pertaining to land ownership in India.

Keywords: Registration, Record, Torrens, Deed, Information

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1.0. Introduction

Land plays a central role in the economic development strategies of the country (Janvry, 1981). However, land as a resource could not contribute in its full capacity in India as the land records often do not reflect the on-ground reality and are inaccurate (Sanan and Gupta, 2020). In order to secure more accurate information (e.g. ownership, size) about any land parcel, one is required to go through a long list of archives which are often disorganised and incorrect (Mishra and Suhag, 2017), thereby leading to legal disputes. Out of all civil court cases filed in India, 66 per cent are associated with land disputes. The situation is made worse by the average time taken to resolve a single dispute, i.e. 20 years (Wahi, 2019). India's poor quality of land records leads to land market inefficiency (Sebastian and Ajay, 2009) and creates risk for a considerable amount of investment. One estimate places land dispute related investment at \$200 billion (Wahi, 2019) (at an exchange rate of Rs 70.4 per US dollar, which prevailed in 2019, this translates into Rs 14 lakh crore). In effect, the poor quality of land records acts as a barrier to investments related to agricultural (World Bank, 2007) and non-agricultural (Reserve Bank of India, 2015) uses of land. This, in turn, can affect the country's overall growth, thus emphasizing the pressing need to improve the quality of land records.

NCAER's Land Records and Services Index (NLRSI) presented in the NLRSI 2020 report (Sanan and Gupta, 2020) created the groundwork underpinning this paper. The report highlighted various aspects that detract from quality in land records across states. Both accuracy and comprehensiveness are compromised, thereby creating scope for disputes. Real-time updating of the record, identity of control and ownership, reflection of the on-ground use, and noting encumbrances attached to land are inadequately addressed. At the same time, the data gathered for the report enabled a study of the features exhibited by the RoRs in various States and UTs of India, helping pinpoint both the features that are absent and those which are redundant.

The literature does not provide much guidance on good practice in maintaining a title register and is instead focused on discussing which land titling system is dominant. Therefore, there is an urgent need for more research that could help in bridging this gap in the literature and in creating more effective formats for land records. This has a bearing on improving the quality of records, which would help reduce the extent of litigation and improve conditions for land transactions. To accomplish the objectives, two separate samples were made, i.e. 1) For Indian States, 28 were included out of 36 (some States/UTs were excluded due to non-availability of Digitized RORs), and 2) Title registers of 21 countries were also studied to understand international experience in this regard. As a crucial step towards suggesting how to improve the quality of land records, the aim is to provide for the following.

- 1) Comparative analysis of the practices and formats that are currently employed in India and in various countries to maintain their respective title registers.
- 2) Suggestions for a way forward to fulfil the objective of developing a better format for the RORs in the country.

This paper is structured on the following lines. Section 2 explores the economic significance of good and efficient land records and highlights some of its critical elements in India. Section 3 discusses the evolution of land registration

systems in selected countries worldwide. Thereafter, international and Indian practices in maintaining title registers (in Indian Records of Rights - RoRs) have been examined in Sections 4 and 5. Section 6 draws on the previous sections for comparison and makes suggestions to improve the quality of RoRs in India, followed by conclusions in Section 7.

2.0. Economic Significance of Good and Efficient Land Records

In a contemporary market economy framework, there are diverse ways through which poor land records can affect future transactions involving land. While India was an agrarian country using land predominantly for agricultural purposes, it has witnessed significant changes in recent decades (Chand et al., 2017). The use of land as a resource has increasingly extended to manufacturing and service sectors (Rathee, 2014). Land as a source to obtain credit was prevalent even in colonial times (Swamy, 2011), and this situation persists. However, the ambit of activities for which credit is sought has widened considerably. Use of land as collateral is one of the significant modes through which loans/credit are secured. (Panchapagesan et al., 2016). In around 50 per cent of the total retail loans and more than 80 per cent of the total agricultural loans, land has been used as collateral (Reserve Bank of India, 2014). But, the absence of quality land records especially affects the ability of marginal farmers to gain access to credit from formal institutions (Reserve Bank of India, 2015), suppressing a significant channel of credit and capital to the agricultural sector. This, in turn, impacts the economic prospects of poor farmers and consequently the agrarian sector as a whole (World Bank, 2007).

Diversified economic growth brings urbanisation and complex infrastructure needs in its wake. This extends the requirement of land from being a form of collateral to change of use to which it is put. Various projects and the real estate sector emerge as major users (Mishra and Suhag, 2017). This diversification in land use usually requires a change of ownership and rights. It can also involve settling competing claims and addressing environmental concerns. For all this, credible land records that contain all relevant information are critical. For example, the real estate sector is primarily based on land as a resource. Without accurate information about ownership, encumbrances, and land valuation, investment in real estate projects becomes unsafe and risky (Planning Commission, 2002-07) (Ministry of Finance, 2012). Due to inexact land records, land-related issues can become one of the main reasons hindering development of projects. This situation can arise due to several reasons. In the case of roads, it has been noted that 1) lack of encumbrance free land, 2) failure to update records promptly, and 3) filing many arbitration cases by landowners are major impediments (NHAI, 2017-18). World Bank pointed out that close to 50 inexact of all the pending court cases in India are associated with controversy over land.(World Bank, 2007). More recently, NITI AAYOG, which is the premier policy ‘Think-Tank’ of the Government of India, has mentioned that by and large, it takes 20 years for a land-related dispute to get settled among the concerned parties (NITI Aayog, 2016). Due to litigation related delays, several projects linked with land become dysfunctional. Recent figures reveal that due to the high incidence of conflicts related to land in India, an investment worth INR 19.7 trillion has been affected (Land Conflict Watch, 2020). India loses 1.3 per cent in annual GDP growth due to land market distortions (Mckinsey Global Institute, 2001). These numbers are high and lead to inefficiency and unproductive use of land as a resource for

development purposes. Ensuring productive use of land as a factor of production requires paying heed to the important role which clean and transparent land records can play by providing requisite information. For example, evaluating a land parcel and judging whether it qualifies as a collateral becomes less cumbersome for the borrower and lender if the desired information is readily available in the land records (Narayana and Chakraborty, 2019). Feder and Nishio (1999) suggested two benefits of quality land records intimately linked to economic progress: 1) tenure security 2) and its role in collateral arrangements. Both these benefits are compromised if there is uncertainty about the information available in the records. Empirical evidence suggests that farmers with a formal/uncontested title are more productive than those without (Feder and Nishio, 1999). Also, considerable evidence shows that where land offered as collateral is backed by clear land title records, it expands avenues for obtaining finance and promotes investment in the economy (Karas et al., 2015).

According to the World Bank, India improved from 142nd to 63rd position on the Ease of Doing Business Index. India could do even better if it focused on enhancing Land Governance and Management Systems (Sinha, 2019). As stated in the World Bank's Ease of Doing Business (2020) report, land parcels with uncontested land records regarding the dimension and area are accompanied by 23-43 per cent higher chances of getting long-term investments compared to the cases where the land titles are in dispute (The World Bank Group, 2020). As a natural and scarce resource, land holds a dominant place above all other resources for economic and non-economic progress (United Nations Convention to Combat Desertification, 2015). To retain such a dominant position, refining and producing lucid land records, which would offer greater scope for uncontested ownership rights/tenure rights and coherent information related to the land parcel, is of utmost importance (World Bank, 2020).

3.0. History of Land Registration, Land Titles and Land Records

Historically, in pre-modern times, all land belonged to the sovereign (Powelson, 1987). Land was often granted as a prize for services rendered. In order to substantiate a claim over such land and avoid disputes at a later date, some form of deed or document which could be shown as a legitimate proof of rights or serve as a basis for further transfer became necessary (Powelson, 1988).

In due course, the idea of registering such deeds or documents with an agency or authority gained currency. The Roman Empire extended to the islands of Great Britain between 43-410 CE (The Editors and Ray, 2020). During this time, one of the many developments was establishing a land registration system that became the framework for collecting land tax in the region (Pemberton, 2000). This framework became a widely employed system worldwide, including parts of America, Asia and Africa and in Latin cultures in Europe, for example, France, Spain and Italy (Enemark, 2005).

Holland (Netherlands) introduced land registration in 1529, which heralded the start of the registration of deeds in land administration, given the advantages it would have in land-related transactions (Mayer and Pemberton, 2000). This registration system of deeds or land faced some criticism in the 17th century. The relevant documents were produced by notaries and were often subject to fraud and forgery and not considered legally reliable (Ito, 2013). The critics advised a county

registry, where everyone would register their land and its title and deeds to be recorded in short standard forms (Mayer and Pemberton, 2000). After several attempts and arguments, registries were established, and registration of title “of sorts” was brought forth in 1715 (Mayer and Pemberton, 2000).

Historically, conveyance of land in England was conducted by physically handing over the land in the presence of an eye-witness. A Statute of Uses (a law that prevented the landholders from evading royal fees/tax) was introduced in the 16th century and enabled a recording of transactions. The deed registration system further substituted this in the early 18th century (Husain, 2018) influenced by the land registration system already prevalent in Holland since the 16th century (Mayer and Pemberton, 2000). A series of past documents were required to ensure the conclusiveness of the title itself. Soon, it was realised that such a detailed process to prove legitimacy might be too cumbersome and yet not accurate. Hence, a Register of Titles, maintained by the central registry in London (also known as Her Majesty’s land registry (Mayer and Pemberton, 2000), was introduced in the 19th century, which would guard the vendee against any future uncertainty regarding the information.

The Land Ordinance Act of 1785 marked the dawn of land rights (Geib, 1985) in America, after it gained independence from Britain in the 18th Century. Due to various shortcomings, this was soon substituted with the Recording System (VAN, 1917). This new system was somewhat similar to the system introduced in Britain during the 19th century. It required interested parties to get together a complete file, including a chain of documents such as past deeds and mortgage information, to avoid any defaults in future (Thorne, 1916). Credit for this framework is often given to the Dutch System (Patton, 1955), but the system implemented in the USA is not widely employed worldwide (Beale, 1907).

Even the classical conclusive titling system introduced in Victoria, Australia in the 19th century ((Mishra and Suhag, 2017), required that a chain of title deeds had to be present at one place, initially. This suffered from similar drawbacks as the older American and British systems, i.e., if some of the documents within the chain were either missing or inaccurate, it would halt the process of registration. Brickdale (1897) reported that the history of land and mortgage registration systems displays a uniform course of development, divisible into three main periods.

(1) To understand the earliest methods, one needs to study the old records existing in Vienna and Prague (Brickdale, 1897). The appropriate authority made a brief and concise summary for which both the seller and the buyer in the transaction had to be physically present during the conveyance process. Also, different volumes were distinctly maintained, each containing information about ownership, encumbrance and liens, and land.

(2) As time passed, the relationship between humans and land became more complex. Separate written records became necessary but were kept together within a single folder or register, for example, Register of Deeds.

(3) The last of these three periods is the latest one (marked with the development of systems and a better understanding of the issues) where the formal registration of titles by a statutory authority came into existence. Under this system, precise records are maintained for each parcel and any information that could affect that parcel of land in future transactions. It is interesting to note that the system of holding land

records under the English Land Registry Act of 1862 corresponds to the first period referred here.

From the discussion so far, the trend followed by the land records systems could be said to have followed a trajectory that comprised: 1) a period in which there was no recording or registration of any proof of rights or title, 2) followed by a period in which registration of rights occurred in some form usually for revenue purposes, 3) this evolved into a system that began recording and registering evidence of titles, i.e. chain of documents, and 4) finally, systems were introduced that created registers of titles (Torrens system) as conclusive or a hybrid system of deed registration and ownership records which remained presumptive.

The Torrens Title system, introduced by Sir Robert Richard Torrens for the first time in 1858 in South Australia, is employed/adopted by several countries worldwide, e.g. Australia, New Zealand. (Patton, 1935). The situation originated from the imperfect nature of the old system (Torrens, 1859), where the proof of ownership and security relied upon a matter of how good the purchaser is in being able to collect an accurate and complete chain of older deeds/records associated with the parcel of land. Unlike the deeds system, the Torrens System made it possible to avoid collecting and maintaining a series of documents, which were otherwise difficult to be kept safely for an extended period for conveyance. “Now, instead of registering the evidence, registration of titles was carried out” (Walker, 1916).

A unique Certificate of Title exists for every individual land parcel under the Torrens System. Included within these titles are the name of the owner, folio number, tenure, encumbrances, easements and/or rights of way affecting the land, price of the land (the majority of the cases), court orders, land area and other units, boundaries and any other kind of liens (Hanstad, 1998) that are associated with the parcel of land. Similar systems of maintaining title registers with comprehensive information can exist even under other titling systems. In other words, the difference may not be much in the way the records are kept as in the attributes attached to the title. In Torrens system, the critical difference is that the record is conclusive. It cannot be changed (since it is meant to mirror the actual situation and a veil has been drawn on the past), and the titling authority guarantees the title. In a deeds-based system, the record is presumptive and subject to challenge.

Maintaining land records in India can be traced back to the Mughal era (Bijimol, 2012). Raja Todar Mal, one of the Navaratnas of Akbar’s court, is credited with introducing a land revenue and record system. One can still find some of the concepts devised by him in use today, e.g. the concept of Patwari as a village-level revenue official is said to have been introduced by Raja Todar Mal. When the British came to India, the land record system they encountered was unique, something they had not seen elsewhere (Bandyopadhyay, 1993). They did not replace this entirely but only modified it to suit their need and made such changes as they considered necessary over time. As a result, different land systems were employed in various parts of the country. The Zamindari system was prevalent mostly in the states of the erstwhile Bengal Presidency. The Ryotwari system was dominant in the erstwhile Madras Presidency and parts of the Bombay Presidency. The Mahalwari system was present in the North and in the far East (Mearns, 1999). Under the Zamindari, Mahalwari and Ryotwari systems, different elements were included in the calculation of the ‘lagaan’ (tax/rent) and its mode of collection, which was a necessary obligation to be fulfilled under the colonial rule (Husain and Sarwar, 2012). What was common under all the systems was the concept of a record of rights that would contain details

of all matters relating to land revenue, such as the person liable to pay and the amount payable based on the type and extent of land. The RoR, in effect, became a title register for rural land. As a parallel development, the British first introduced a Deeds Registration System in 1793. However, registration of documents was only made compulsory under an Act passed in 1866, which was finally replaced by the Registration Act, 1908 (Agarwal, 2018). These systems have continued to exist till today. Although there has been some debate in recent years about introducing a conclusive title register, it is not clear how this will happen in practice and what innovation, in the form of the title register, such a development will bring about.

4.0. International Practice

What should a good title record look like? To answer this question, information was collected on the title registers/deeds/certificates in use in different countries worldwide. The documents were analysed to understand the extent to which they catered to five key parameters comprising a comprehensive record as outlined in the N-LRSI 2020 report: Ownership, Possession, Land Area, Land Use and Encumbrances. Apart from this, the analysis looked for one additional parameter, i.e. Unique Identification number for a land parcel. A sample of 21 countries was studied for this purpose. The list of countries in the sample is as follows; Netherlands (European Land Registry Association: Netherlands), Finland (European Land Registry Association: Finland), Spain (European Land Registry Association: Spain), Belgium (European Land Registry Association: Belgium), Sweden (European Land Registry Association: Sweden), Russia (Land Registry in Russia, 2020), Ireland (Land Registry Ireland) (European Land Registry Association: Ireland), Singapore (Singapore Land Authority), New Zealand (Reading and Interpreting Titles, 2013), Australia (Landgate, 2020), Canada (ISC: The Title and How to Read It), Germany (Introduction to the land register in Germany (Grundbuch, 2016; The Land Registry in Germany, 2015), United Kingdom (Home, 2009), Thailand (Land Laws: Land Title Documents), (Sample Content Land Title Deed), Philippines (Certificate of Title, 2016) (Pena, 2001), Kenya (The Land titles Act, Chapter 282, Rev. 2010 (1982)), Nigeria (Certificate of Occupancy, 2020), Jamaica (How Jamaica's Registered Land Title System Operates?, 2019), Portugal (European Land Registry Association: Portugal), Romania (European Land Registry Association: Romania), Croatia (European Land Registry Association: Croatia).

In the first place, these countries have been grouped based on the respective title registration systems followed in each of them. The Land Registration Systems used/employed by the countries in the sample were diverse. Countries within the sample were divided into four categories based on the type of systems they operate. In total, 13 countries follow the Torrens System, five countries follow Registration of Deed System (Nigeria is currently trying to move towards the Torrens System), two have adopted the German Land Title Registration System, and Romania has a Systematic Registration System (transiting to this new system from Deed and Land Book System). German Land Title Registration System records more in-depth information regarding the financial burden resulting from a mistake in the record. The basic principle is that the person who makes the error bears the loss. This could be a transacting party, a solicitor or notary, or a registry official (Raff, 2012). In effect, it is not conclusive in the sense of a guarantee by the titling authority alone and yet does not follow a buyer beware model that the presumptive system implicitly follows. In Romania, two types of land registration systems were prevalent, i.e. Land

Book System and the Deed System (SavoIU et al., 2015). Yet both had one common characteristic, i.e. lack of formal documents (SavoIU et al., 2015). In order to secure better quality records and record-keeping, the Romanian government, with the help of the World Bank, introduced the Systematic Registration process in 2011 (SavoIU et al., 2015), which included identification, description and recording of constructions in cadastral documents, the measuring of land boundaries, the representation of structures on cadastral plans and the storage of data on informatics support, as well as the identification and recording of all owners of buildings and individual units of the condominium (Grecea et al., 2013).

In the second place, the title registers maintained in these countries were analysed to understand the practices concerning recording the 5+1 parameters. Table 1 below enumerates the results of this exercise.

Table 1: Status of 5+1 parameters in the title records of 21 countries

Sl. No.	Country	Land Registration System	Name of the Document	Features/parameters reflected in title records					
				Ownership	Possession	Land Area	Land Use	Encumbrances	Unique ID
1.	Australia	Torrens System	Certificate of Title	Yes	No	Yes	No	Yes	Yes
2.	Belgium	Deed Registration System	Land Register	Yes	No	No	No	Yes	Yes
3.	Canada	Torrens System	Land Titles Register	Yes	No	No	No	Yes	Yes
4.	Croatia	German Land Title Registration System	Land Register	Yes	No	Yes	Yes	Yes	Yes
5.	Finland	Torrens System	Cadastre Information Sheet	Yes	No	Yes	Yes	Yes	Yes
6.	Germany	German Land Title Registration System	Land Register	Yes	No	Yes	Yes	Yes	Yes
7.	Ireland	Torrens System	Land Registry Folio	Yes	No	No	No	Yes	Yes
8.	Jamaica	Torrens System	Certificate of Title	Yes	No	No	No	Yes	Yes
9.	Kenya	Deed Registration System	Title Deed	Yes	No	Yes	No	Yes	Yes

Sl. No.	Country	Land Registration System	Name of the Document	Features/parameters reflected in title records					
				Ownership	Possession	Land Area	Land Use	Encumbrances	Unique ID
10.	Netherlands	Deed Registration System	Kadastre Register	Yes	No	Yes	No	Yes	Yes
11.	New Zealand	Torrens System	Record of Title	Yes	No	Yes	No	Yes	Yes
12.	Nigeria	Deed Registration System	Certificate of Occupancy	Yes	No	Yes	Yes	No	Yes
13.	Philippines	Torrens System	Certificate of Title	Yes	No	Yes	No	Yes	Yes
14.	Portugal	Deed Registration System	Permanent Certificate	Yes	No	Yes	No	Yes	Yes
15.	Romania	Systematic Registration	Land Book	Yes	No	Yes	No	Yes	Yes
16.	Russia	Torrens System	Land Register	Yes	No	Yes	Yes	Yes	Yes
17.	Singapore	Torrens System	Land Register	Yes	No	Yes	Yes	Yes	Yes
18.	Spain	Torrens System	Land Register	Yes	No	Yes	Yes	Yes	Yes
19.	Sweden	Torrens System	Land Register	Yes	No	No	Yes	Yes	Yes
20.	Thailand	Torrens System	Land Title Deed	Yes	No	Yes	No	Yes	Yes
21.	UK	Torrens System	Title Register	Yes	No	No	No	Yes	Yes

Overall, Table 1 reveals that it is not as if all the countries adopting the Torrens or Deeds Registration System follow a similar practice of recording various parameters in their title registers. There are marked differences among the countries regarding the content of their respective Title Registers. For example, among the countries having Torrens System, in the United Kingdom, the Title Register records neither 'Land Use' nor 'Land Area' while Spain records both details in their land register. Among countries following the Registration of Deed System, Nigeria is the only country that does not record 'Encumbrances'. At the same time, it is the only country in this group that records 'Land Use'. Only Croatia and Germany, which follow the same titling system, record similar content in their respective Land Registers. Since 2015 (after a successful pilot project in 2012), Romania has begun work on the 'Systematic Registration Project' with the help of the World Bank and has evolved its pattern (Savoiu et al., 2015). The titling system and the data contained in the title register do not necessarily correlate. Clearly, other factors like historical evolution have more to do with the form of the title register.

An analysis of the information in Table 1 shows that the name by which the land document is known often varies from country to country. The document is known as 'Land Register' in 1/3rd of the total countries in the sample including Belgium, Croatia, Germany, Russia, Singapore, Spain and Sweden. Among the other countries, it is known as 'Certificate of Title' in Australia, 'Land Registry Folio' in Ireland, 'Kadaastre Register' in the Netherlands, 'Permanent Certificate' in Portugal and so on as listed in column 1 of Table 1. Insofar as the information on the 5+1 parameters is concerned, it is clear that every country assigns and records an easily comprehensible unique identification number to immovable property which makes it easy to track title documents. In some countries within this sample, the number is also linked with other associated documents, such as cadastre maps (and possibly land use maps). All the information need not be recorded in the title register.

Every country in the sample, other than Nigeria, includes details associated with any limitations, liens, mortgages and other forms of encumbrances affecting the property/land parcel. Interestingly, no country considers it necessary to record encumbrances like ongoing litigation or restrictions on land use. Possibly, better records and swift dispute resolution obviate the need to make a note of litigation. At the same time, restrictions on use are probably documented elsewhere and well known, and universally accepted.

A striking feature of the data in Table 1 is that while every country in the sample records ownership details, none recorded information regarding possession. Clearly, possession through tenancy or otherwise is not considered an appropriate parameter for recording a title document in any country. The reasons for this could be multiple. The relation of tenant and owner is possibly demarcated and the records of possession as the tenant are maintained in some other form. Possibly possession does not confer rights that need any protection or cast duties included in a title related document. Whatever the reason, it does bring out the unusual situation in the Indian subcontinent where possession, mainly as tenants, has traditionally been recorded. Historically, this has recognised rights and the duty to pay rents and often land revenue.

Another interesting finding in this analysis is that the land title document does not include land/parcel/property area in six countries. These are Belgium, Canada, Ireland, Jamaica, Sweden and the United Kingdom. For example, in Ireland, the folio contains information regarding ownership, dates of recording or

cancellation, description of the property/land, folio number, mortgages, charge for present and future advances, etc., but land area is not mentioned anywhere. The practice in these countries appears to leave it to separate documents (deeds or cadastral maps) to mention land area. Land Use information does not seem to be a vital parameter that gets documented by the authorities, again possibly because this information is contained in a separate record. Within the sample, only eight countries included this parameter: Croatia, Finland, Germany, Russia, Singapore, Spain, Nigeria, and Sweden. For example, in Finland, the cadastre information sheet provides information about land area, land use, Registry Data, and the graphic information associated with the land records information (map).

Overall, it is clear that it is not the adopted title registration system but a historical evolution of custom/tradition blended with what is considered most suitable for the circumstances of a country that dictate the parameters recorded in title registers. In effect, any single model need not be followed/no one model ought to be followed. However, there are clear indications that it is considered necessary that, barring possession, all other parameters ought to be recorded in the title register itself or in associated records that can be easily located by conferring a unique identification to a property.

5.0. Practice in India

With the understanding gathered through the analysis undertaken in Section 4, this section looks at the formats and information exhibited in the RoRs (in essence, Title Registers) adopted in various parts of India. For this purpose, the RoRs' used in 28 States/UTs have been analysed based on the same parameters used to study International practice. There are different terms used for RoRs in the states of India; for example, in Haryana, the official word for RoR is 'Jamabandi', in Odisha it is 'Khatian', in Uttar Pradesh it is 'Khatauni', in Maharashtra saat bara/'7/12', etc. (Sanan and Gupta, 2020). The summary position as shown in Table 2 brings out the status of 5+1 parameters that prevails in States/UTs in relation to the land revenue settlement that had evolved in colonial times. The grouping reflects the predominant system of land settlement that existed historically in the British held territories of the present-day States/UTs. It does not consider the variations resulting from the amalgamation of princely states into many of these units.

Table 2: Status of 5+1 parameters in the title records of 28 States of India

S. No.	Pre-independence Land Tenure System	States	Features/parameters reflected in title records					Unique digital ID
			Ownership	Possession	Land Area	Land Use	Encumbrances	
1.	Mahalwari	Haryana	Yes	Yes	Yes	Yes	Yes	No
2.		Madhya Pradesh	Yes	No	Yes	Yes	Yes	No
3.		Punjab	Yes	Yes	Yes	Yes	Yes	No
4.	Ryotwari	Andhra Pradesh	Yes	No	Yes	Yes	Yes	No
5.		Assam	Yes	No	Yes	Yes	Yes	No
6.		Gujarat	Yes	No	Yes	Yes	Yes	No
7.		Himachal Pradesh	Yes	Yes	Yes	Yes	Yes	No
8.		Karnataka	Yes	No	Yes	Yes	Yes	No
9.		Maharashtra	Yes	No	Yes	Yes	Yes	No
10.		Tamil Nadu	Yes	No	Yes	No	No	No
11.	Zamindari	Bihar	Yes	No	Yes	No	Yes	No
12.		Jharkhand	Yes	No	Yes	Yes	Yes	No
13.		Rajasthan	Yes	No	Yes	Yes	Yes	No
14.		Odisha	Yes	No	Yes	Yes	Yes	No
15.		Telangana	Yes	Yes	Yes	Yes	Yes	No
16.		Tripura	Yes	Yes	Yes	Yes	Yes	No
17.		Uttarakhand	Yes	No	Yes	No	Yes	No
18.		Uttar Pradesh	Yes	Yes	Yes	Yes	Yes	Yes*
19.		West Bengal	Yes	Yes	Yes	Yes	Yes	No
20.	Others	Andaman and Nicobar Island	Yes	No	Yes	Yes	Yes	No
21.		Delhi	Yes	No	Yes	No	Yes	No
22.		Dadra and Nagar Haveli	Yes	Yes	Yes	Yes	Yes	No
23.		Chhattisgarh	Yes	No	Yes	Yes	Yes	No
24.		Daman and Diu	Yes	Yes	Yes	Yes	Yes	No
25.		Goa	Yes	Yes	Yes	Yes	Yes	No
26.		Lakshadweep	Yes	Yes	Yes	Yes	Yes	No
27.		Manipur	Yes	No	Yes	Yes	Yes	No
28.		Puducherry	Yes	No	Yes	No	Yes	No

Source: Compiled by the Authors.

Note: *Unique to the land records but not all relevant databases.

Table 2 reveals that regardless of the land revenue settlement system adopted in colonial times, most of the 5+1 parameters were recorded across India. Variations in format existed, but barring a significant exception like Tamil Nadu, there was considerable uniformity in the important details shown in all the RoRs. Detailed analysis showed that although the pattern of recording the information could be different, the nature of information, i.e. columns recording name of the owners, extent / area, agricultural land use, etc., still has great consistency among the states under the same land revenue settlement systems. There is considerable uniformity in the type of information recorded, with only a few columns/ information differing within each group.

Every State/UT records ownership details. A careful analysis also revealed that most states are consistent in how ownership details are recorded, i.e., the owner/possessor. Only in some states like Rajasthan, Gujarat and Maharashtra, the owner's name (s) alone, is shown. Among the more complete documents is the Record of Rights, Tenancy and Crop (RTC) used in Karnataka. It includes the current lawful owner's name and the latest accurate measurement of the land, water rate, tenancy, crop details, etc. (Chawla and Bhatnagar, 2004).

As pointed out earlier, unlike the international practice of not recording possession details, this has, traditionally, been a practice in India. Recording of tenancy as a possession has been discontinued in many States/UTs consequent to the passage of laws in the 1970s that conferred title to the tiller. In many of the States/UTs, possession and ownership are now considered to be the same and thus, only ownership details are recorded rather than both (Sanan and Gupta, 2020). Even so, Table 2 shows that in 11 States/UTs, recording of possession details is provided explicitly. Rekha Bandyopadhyay (1993) has mentioned that the 7th five-year plan suggested recording the tenant's name in land records to protect their rights. In many places, this caused forceful eviction (in the name of surrender) of tenants by the landlords to vacate their land and avoid mentioning tenants in the records. In a few states, legislation was enacted to prevent landowners from getting such land back in their names (Bandyopadhyay, 1993). In the context of this chequered history of recording possession, even where this is explicitly provided for, it is no longer an accurate or updated record of the ground-level situation. NCAER, in 2017 also reported this incongruence as found in the pilot project carried out in the state of Himachal Pradesh (NCAER, 2017).

All the states record land area associated with the RoRs. However, there are differences in the units used to record these areas. For example, in Bihar, the land area is recorded in 'acre dismil'. In contrast, Maharashtra records land area in 'square meters'.

Analysis reveals that Bihar, Delhi, Puducherry and Uttarakhand do not record land use information in their respective RoRs while others do. Among the states that record this information, some states have a separate column for this purpose, while others record them under a common 'Remarks' column. For example, Haryana has a separate column named 'kism zameen' under which they record land. In contrast, Himachal Pradesh records this information under the land area itself. The critical point to note is that land-use details are almost entirely recorded in categories from an agricultural angle. This reflects the rationale for the inclusion of this detail in the RoR. The agricultural productivity of the land was the basis of land revenue assessment and non-agricultural uses meant no land revenue was payable, so details of such uses were often sketchy in the record. On the other hand, agricultural land

could be described quite extensively. The RoR format in MP has as many as seven columns (5 to 11) to record information pertinent to the type of crops sown in the different cropping seasons. Karnataka also records the cropping pattern in its RTC (Records of Rights, Tenancy & Crops) record. In contemporary times though, such information may not be updated frequently in most RoRs and in many states can often date back to the last settlement undertaken.

Out of all the states/UTs studied, only one state does not record encumbrance within the RoRs, i.e. Tamil Nadu. In the case of Bihar, the traditional RoR has lost importance, and the 'j=Jamabandi', which is now the title register in practice, also does not record encumbrances. Encumbrances are generally recorded in the 'Remarks' column of the RoRs. Out of all the states, only Karnataka has a separate column for this purpose. In India, mortgages are the only encumbrance traditionally recorded in RoRs. Other restrictions and conditions that might affect ownership or use, like legal disputes, land acquisition proceedings or statutory land use planning rules are seldom mentioned in all RoRs (details of encumbrances recorded can be found in Sanan and Gupta, 2020).

All land records in India do have a way of uniquely identifying every plot of land. But this requires a protracted search knowing the name of the state, district, tehsil and revenue village within which the property is located. Moreover, these numbers are unique only to the land record and may not hold for other relevant documents such as those used in spatial planning. In 2019, an inter-ministerial committee consisting of the ministries of rural development, IT, Agriculture and Law decided to link digitised RoRs with a unique Aadhar like Land Parcel Identification Number (ULPIN) with immediate effect/as early as possible (Mishra, 2019). Pilot projects in this direction have been undertaken in Bihar, Haryana, Maharashtra, Gujarat, Odisha and Jharkhand. Pilots are also proposed in other states like Karnataka, Tamil Nadu, Tripura and Sikkim. Even though the pilot projects have been completed in six states, as mentioned above, none of them has started employing any unique identification numbers. In this study, we could not find such a code in their respective RoRs. From the analysis of available online RoR of each state, it is observed that only Uttar Pradesh provides a unique number for each plot (16-digit code). The 16-digit code is named the "Gata" number where the first two digits determine the State/UT; the next two digits specify district, the following four digits signify sub-district/tehsil, and the last eight digits are the village code (NIC-LRISD, 2008). The RoR portal of Uttar Pradesh can search the document using this unique number. The key to securing gains from this unique identification is to ensure that it is used across all relevant databases enabling easy search and linkage.

An attempt was also made to understand the nature of information in RoRs other than the 5+1 parameters and their relevance in contemporary times. Most states would include details of land revenue payable. In current times, this insignificant tax resource is a legacy record that can easily be hived off as a separate record to streamline the title register. Similarly, minute details of agricultural use and crops sown appear unnecessary. On the other hand, more attention is required to ensure that more valuable non-agricultural uses like built-up property are recorded in more detail.

The above analysis of the practice regarding the information contained in RoRs (title registers of rural land) in India reveals that in relation to international practice, the most important gaps are not so much of form as of substance. The absence of a digitally useable unique identification number used across databases is

an important gap in Indian practice. Only Uttar Pradesh has made progress in making a digital Unique Identity number available to access land records. Similarly, while some encumbrances are recorded in most of India, there is a need to link databases and ensure a more comprehensive recording of all relevant databases. Recording possession details appears unique to India, but the practice has rendered this parameter redundant. As already stated, these roots lie in the historical events that might have led to the conflation of possession with ownership in some states as the evolution of laws and records has been a state-specific affair (Deshpande, 2003).

In theory, RoRs in India have features that show them to be more comprehensive than title registers used internationally. In practice, our possession, land use and encumbrance data cannot fulfil the use they can and ought to be put to, in modern times.

6.0. Improving RoRs and Associated Records

A key criterion for relevant and useful RoRs is to ensure that the record contains all the information to reduce litigation and improve tenure security. Digitised unique ID and linked databases can perform this function. At the same time, redundancies should be eliminated. Land tax was the major source of revenue for the British Government in India (Banerjee and Iyer, 2005). India's land records were explicitly designed to collect land taxes from the people. To do this accurately, land records included information regarding all the parameters related to land, such as soil type, crop details, etc. But with an accent on modernising our economy and shifting its base away from agriculture, land tax as a proportion of total tax accruing to the states has declined significantly. This has affected the need to maintain land records with the same level of accuracy in the traditional mould (Saxena, 2005). At the same time, the new requirements of land use planning and details of various encumbrances have not been factored into creating a new kind of record. Over the years, the governments have taken many steps, yet the quality of land records remain poor (Deshpande, 2003). After closely investigating the respective title registers of each state, various aforementioned shortcomings and redundancies were identified. The information is often not presented in a universally accessible form. Thus, the RoRs for many states are not available other than in the local language or the terms used in the RoR are archaic and understood only by a few today. This might not be a great problem at first sight, but it does mean that any outsider wishing to transact in the land needs to either hire a translator or a local broker to understand even the basic terms that are present in that particular record of right. There is a real need to simplify language and provide a reliable online translation facility into a more universally understood language. In addition, different attribute codes are used to record information for the same parameter across different states. This presents a difficulty for an average person to understand them accurately (NIC-LRISD, 2008). Addressing issues like these could act as a catalyst in decreasing the cost and time for an investor in dealing with the land without seeking any fundamental change in systems. It enables a layperson to understand the accuracy of the information in the RoRs. Although land is a state issue (Deshpande, 2003), there is an urgent need to update the land records and system in a much more unified way at the national level such that it serves the purpose of today and brings efficiency to the land market which in turn would be very useful to boost the economy.

Based on the analysis undertaken above, some suggestions have been made below that could improve the quality of the record of rights in India for better land governance. For this, recommendations have been listed in two buckets: 1) Improvements within the RoRs as currently available in India and 2) Inclusion of parameters based on the study of international title registers that can add value to these title registers.

6.1. Within Record of Rights

- a) *Ease of access*: In India, one of the major sources of litigation is conflicts related to land (Burman, 2019). We need to ensure that maintenance of land records in India helps to reduce litigation because this is a severe constraint to investment in the country (Wahi, 2019), affecting our economic growth. To ensure this, it is crucial that all relevant land-related information can be accessed without undue delay and undergoing needless formalities. One way to make this happen is to have all this information contained in one document, i.e. Record of Rights. Our analysis shows differences in the information recorded in the respective RoRs of respective states/UTs in India. The current situation of RoRs is poor, and they do not inform about the up-to-date details of relevant parameters (Mishra and Suhag, 2017). It would be very useful if these records include all the relevant parameters which are deemed important for transaction purposes and of course, are an accurate reflection of the on ground situation. This would serve the role of i) Being a single document which is a comprehensive and complete record thereby assisting access to all the relevant information in one place and ii) Help to quickly identify any inaccuracies or complications that attach to the same land recorded under different data bases. Ensuring this would help reduce litigation.
- b) *Remove Blank columns*: Some columns in the record of rights of many states, including Delhi, Goa, Himachal Pradesh and Madhya Pradesh, are always blank. For Delhi, Himachal Pradesh and Madhya Pradesh, close observation revealed that column/row dedicated for recording information regarding tax/rent is always blank. For Madhya Pradesh, the column meant to record Father/Husband name is always blank. Such a scenario is seen in Goa's case for Khata/Khewat number. If no information is recorded within the respective columns for each of the respective states, then they should be removed from the RoRs to make them easier to read.
- c) *Better representation of information related to Encumbrances*: In RoRs, information regarding different encumbrances is usually recorded in the 'remarks' column (most of the time, this is the last column in the record of rights). Encumbrances in India could be of many types (NIC-LRISD, 2008). Encumbrances are a very important part of the land records, affecting information about the rights, restrictions and mortgages related to the land, which plays a very important role in future transactions. It is not possible/inefficient to include all encumbrances within the same column as it lacks clarity, and it gets challenging to read the document. Separate fields for different types of encumbrance would make sense.
- d) *Database Linkages*: Talking about land records, a question that needs to be addressed is, how can a comprehensive land record be created? It is important to have a record that is an up-to-date document. Due to various systemic shortcomings and inefficiencies in upkeep, land records often do not reflect the on-ground situation (Saxena, 2005), leading to many legal suits (Wahi, 2019). To

achieve this goal, the suggestions include linking the vast and distinct databases related to land, such as mutations, mortgages, registration, etc. For example, it would be great if provisions and software would enable real-time linking of litigation when instituted with the land records. This would facilitate an automatic entry to be created within the respective record, by linking with the court record, thereby increasing the level of information available to those proposing to transact in the concerned property (Sanan and Gupta 2020).

6.2. Scope for New Parameters in Record of Rights

- a) *Unique Identification Number*: Every title register in the foreign sample has a unique code in the form of folio/title number with which the document is associated. This helps to identify and locate the title without delay or confusion. The unique code is also used to create an efficient link between information regarding the land area, encumbrances and cadastral maps that are often stored within different registers across the departments. This provides accuracy to the information included in their respective title registers, especially in situations like buying and selling of property and court cases. Knowing the current situation about the legal suits and incorrect information in the record of rights, introducing such a parameter would be very useful. Although such a step is already in process, both state and central governments have to ensure the timely completion of this project (Sharma, 2019). Uttar Pradesh has come up with a 16-digit land unique code to identify each land parcel, and such a code for Delhi (14-digit code) is under process (pilot project completed successfully) (Sharma, 2020). In the future, the government has also planned to link this unique number with other data sources to ease the flow of information from one database to another and make records efficient enough to serve as a comprehensive document to avoid inaccuracy in information (Sharma, 2020).
- b) *Include Purchase value*: While going through the RoRs, it is found that many states include information related to tax/rent. Although its relevance in modern India is not very clear yet, the suggestion is to include the transaction/ purchase value of the land/property instead in a specific column. Currently this information may occur in some states in the remarks column at the time of a registration being incorporated in the land records. However, it will not be accessible with the issue of a fresh, updated iteration of the land records. Some of the foreign countries within our international sample, including Canada, Russia, Romania, the UK, Spain, and Sweden, include such information in their registers. Advocates for recording this type of information point out its merits as: i) Useful to calculate taxes accurately (Gorlenko, 2014), ii) Provide transparency and financial swiftness in future transactions (World Bank, 2019), and iii) Security for the buyer in case of default.
- c) *Include the address of the owner/possessor*: Including the complete contact address of either the owner or the possessor could be helpful to send notices by the concerned department/person in case of any query. We found that this information is included in RoRs of Manipur and West Bengal but not in other cases within the Indian sample.
- d) *Matrimonial Regime*: Including this type of information would be helpful to settle the disputes quickly between spouses regarding who is currently managing the estate and how it would be divided if the marriage ends as per the given laws that prevail (Moldovan, 2015). This may be useful in some cases in India.

7.0. Conclusion

This paper attempts to describe and reflect on the ongoing practices in the forms in which title registers/RoRs in different countries across the globe and the States/UTs in India, are maintained. The initial portion of the paper focused on past record-keeping practices in order to develop an understanding of how the systems and practices evolved. Thereafter, it analysed the current practices (both national and international) in relation to information contained in title registers. The study focused on 5+1 parameters, i.e. ownership, possession, land use, land area and unique identification. International comparisons were also made in the context of the titling system followed in a country. The study also analysed the practices to maintain RoRs by categorising India's states based on the legacy of their respective land tenure systems before independence. Studying title registers in these multiple ways was an attempt to gain a better understanding of current practices. Based on these reviews, following were some suggestions to improve the utility of RoRs as title registers.

- 1) A consensus on a comprehensive format across India.
- 2) Removal of blank/unnecessary columns
- 3) Inclusion of separate columns for different encumbrances
- 4) Database linkages
- 5) Inclusion of a Unique Id number for each property
- 6) Inclusion of a column for purchase value
- 7) Inclusion of the address (contact detail) of the owner/possessor
- 8) Inclusion of a matrimonial regime

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Annexure 1 (International Analysis)

Other than the core 5+1 parameters, further step is to look into the title registers of the respective countries on some other aspects too, i.e., regarding what additional information is possibly recorded within the document. After closely analysing them for this purpose, some interesting differences among the countries in the sample were found. Starting with the most distinct characteristic, it was found that the Netherlands is the only country in the sample that records the 'Date of Birth' of the owner/s (if known). This exciting feature is recorded in the Kadastre Register of Netherlands, which is provisioned as per the Cadaster Act (Bulletin of Acts, Orders and Decrees 1991, 571) (Cadastre and Public Registers Agency, 1996). One of the important things that came across was that six countries, including Canada, Russia, Romania, the UK, Spain, and Sweden, recorded title value/purchase price while others did not. In the United Kingdom, it is believed that the main benefit of this would be to promote transparency and financial swiftness of transactions involving land/property (United Kingdom's HM land Registry Price Paid Data). The purpose behind this practice in Sweden gave us a better insight into its importance. Two prime reasons were found for this, 1) Recording purchase price helps to calculate property tax, and 2) it offers security to the buyer for compensation, including the actual (as per the respective purchase value recorded) plus damage amount by the seller/government in case the title turned faulty at some future date. Recording purchase/title value helps provide transparency and security in the transactions (World Bank). Russia (Gorlenko, 2014), Spain (Real World Law, Sale and Purchase, 2019), Romania (National Association of Romanian Valuers, 2010) and Canada, thus, for the same purpose, records these values in their respective title registers. Also, Belgium, Ireland, Portugal, Romania and Spain record 'Matrimonial Regime' within their respective title registers. Apart from these, Ireland and New Zealand also mention the title type and record type. Title type is mentioned based on the period of the tenure for which the title is held valid in Ireland ('F' is mentioned if valid 'forever' and 'L' for 'Leasehold') (European Land Registry Association: Ireland). In New Zealand, the title type is mentioned at the top of their document, which varies from Freehold to Proclamation (nine classes) (Record of Title, 2018).

Annexure 2 (Indian Analysis)

Analysis beyond the 5+1 core parameter to locate the differences in the respective RORs was also carried out. Record of Rights of every state/UT within the sample included details regarding four broad categories: 1) Name of district 2) Tehsil and village 3) Plot or Khasra number and 4) Khata/Khewat number. Nine states, including Andaman and Nicobar Islands, Assam, Bihar, Delhi, Haryana, Himachal Pradesh, Manipur and Madhya Pradesh, included information regarding 'tax/rent' in a separate column (it is ironic that in some states, although they have a separate column, they are always blank, i.e. no information is present). One exciting thing that came across was that in Lakshadweep, instead of recording 'tax/rent' information, 'paimash number' are recorded for the same purpose. Paimash in Lakshadweep is a form of a register that specifies the count of trees that an individual possesses of the Government land. The individual pays tax to the authorities (Census of India, Lakshadweep, 2011). For Bihar, it was spotted that 'caste' of the owner is also mentioned within the record of rights and for Jharkhand name of the 'police station' under which the parcel of land falls is also recorded. Seven States/UTs, including Chhattisgarh, Dadra and Nagar Haveli, Daman and Diu, Goa, Maharashtra, Madhya Pradesh and Tripura, also record the 'crop details' which are being grown on the respective parcel of land. Along with the crop details, some states/UTs also include details about whether the land is 'irrigated' or 'non-irrigated and, if irrigated, its source. These are Chhattisgarh, Daman and Diu, Haryana, Himachal Pradesh, Karnataka, Maharashtra, Madhya Pradesh and Punjab.

During the colonial rule, RoRs included information deemed important to determine the land tax in the form of a share of the output. The land tax levied used to differ based on certain characteristics of each land parcel like soil type, access to irrigation, etc. (Banerjee and Iyer, 2005). After independence, tax on agricultural land and output was abolished (Bhattacharjee, G. 2020). But it is still a practice to record details related to land use, irrigation details, type of land, etc. One of the reasons for this is for better land-use planning. Land is a scarce and limited resource over which human life is dependent. Over the years, due to the population boom, pressure on land as a natural resource has increased in different ways (Mishra and Suhag, 2017). This has led to land degradation. Including such parameters could be very important to promote better land use governance to prevent further degradation (Umesh and Nautiyal, 2013).



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