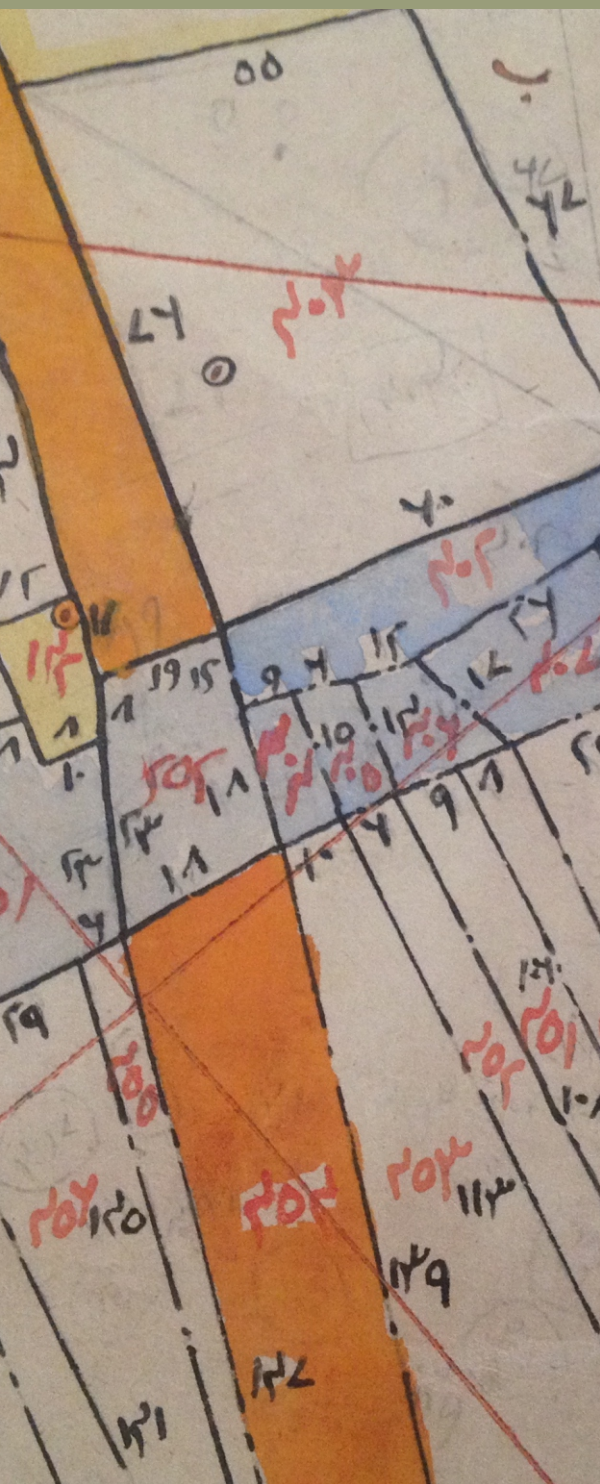


Land Records Modernisation



The effective management of land resources is central to a nation's social and economic prosperity. Updated and comprehensive land records play an important role in administering this scarce resource efficiently. In India, land records have existed since the pre-colonial period, which were overhauled under British rule. The colonial system, comprising the deeds-based registration and presumptive land records, is still in use.

The benefits of an efficient land records system are manifold.

- Clarity and transparency allow land markets to function efficiently. Financial institutions such as banks benefit if property offered as collateral has no ambiguity in terms of ownership, use and encumbrances. Efficiency in taxation systems is premised on comprehensive records, with accurate details of spatial extent and property classification.
- The judiciary can potentially resolve land disputes faster if updated records are available and recording practices are fair, transparent and allow claims and objections to be heard and resolved.
- The citizen benefits from a clear and transparent land record system available in the public domain.
- Poverty alleviation programmes and planning initiatives can be better delivered by the government if there is clarity on beneficiaries and location particulars (Draft National Land Reforms Policy, 2013).
- In 'Eminent Domain' related land acquisition, updated and comprehensive land records can facilitate the monetisation of various claims and benefits, and facilitate smoother compensation payments as per the law of the land.

Systemic & Legal Characteristics of Land Records

State Subject: As per the Indian Constitution, maintenance of land records and related aspects such as land revenue, survey and record of rights, are State List subjects. This makes the respective Indian state governments-and not the central government - the primary actors in the record modernisation process. Various central initiatives since the 1980s have attempted to modernise land records in states. Central initiatives, such as a proposed revamped National Land Records Modernisation Programme (NLRMP) should attempt to incentivise state action, while incorporating various state particularities that stem from complex and layered histories of land tenureship, settlement and recording of rights.

Revenue Function: Land records have historically served a revenue function and were created for taxation purposes during colonial and pre-colonial times. The primary function of maintaining land records is still held by the Revenue Department in most states. Colonial records were created through extensive surveys and settlement exercises, which mapped agricultural land holdings and linked the holdings to owners and tenants. Most states continue to have a Survey and Settlement Department, closely linked to the Revenue Department. Any land record modernisation effort has to take into account the role of the Revenue Department, while encouraging coordinated action among various other departments. Since land revenue no longer holds much significance, land records have fallen into disuse and need urgent updating. However, with increasing urbanisation, land records have once again assumed critical significance.

Deeds-based Presumptive System: India has a deeds-based registration system and presumptive land records. When property transactions/ transfers occur using non-testamentary documents, a deed with the transaction details is registered by the Registration Department. Subsequently, the title change caused by the transaction is updated in the land records via a mutation process by the Revenue Department. Changes in ownership occurring through testamentary documents such as wills, do not need to be registered and mutation can occur directly and land records are updated. The Revenue Department's land records are presumptive, i.e. they may be challenged in court.

Courts therefore play a central role in adjudicating property claims and disputes.

Basic Types of Land Records: Land records typically comprise:

- **A textual record:** A Record of Rights (RoRs), called '*Jamabandi*' in many states comprises 12 to 13 columns to record details such as ownership, possession, extent of the land holding etc. Most RoRs have a 'remarks' column, significant in many states, since it allows for a place to note details that other columns cannot capture, including transactions of built-up property in both urban and rural settings. RoRs are land records, not property records. Any change in the ownership of land via sale, gift, inheritance, partition etc is reflected in the RoR through a 'mutation'

process. In some states, mutation also includes incorporating other changes such as court stays, leases and mortgages. In practice however, transactions are often formalised by simply registering the sale deed, without a follow-up mutation process, especially in urban areas. Further, the registration process does not verify if the parties engaging in a transaction have the legal right to do so. Caveat Emptor, or 'let the buyer beware' is the operative principle. Registrations are not title transfers and are not reflected in land records. Further, many types of institutional transfers, usufruct rights and tenurial arrangements are also not recorded in the RoR. With increasing transactions in land, RoRs provide an incomplete and often non-updated snapshot of legally, financially and socially relevant property rights in an area.

- **A spatial record:** The property details in the RoR are supported by a property level sketch (called '*Tatima*' in some states) and a larger map showing land holdings and revenue estates that comprise the village. Typically, spatial records are not as updated as the RoR. Furthermore, spatial records often have high error margins. Courts do not accept spatial records as a legal record of spatial extent of a land holding. Often in the case of disputes, the area recorded in the textual RoR is considered. Recent modernisation efforts, driven by the Centre, have aimed at digitising the RoR, and the spatial records. In particular cases, some states have attempted a real time updating of the spatial and textual records with mixed results.

The property-level sketch in the spatial record is drawn and updated at the same time that a new entry is made into the RoR. In many states, there is an onsite visit by ground-level revenue functionaries, who also verify that the transfer is legal and that possession has been handed over. Though the procedures and protocols to update the larger village map differ from state to state, they typically involve regular updating of records by the incorporation of new sketches by revenue functionaries, as well as periodic surveys by the Survey and Settlement Department.

Land Records in Urban and Peri-Urban Areas

Revenue departments in most states typically have poor records for urban, peri-urban and village settlement areas. Since agricultural land was the main source of tax revenue in the colonial period, the land records of the time focused only on agricultural land and did not cover urban, peri-urban and village settlement areas. Even today, settlement areas of many villages (*Abadi* areas) and cities (which existed in the colonial period) appear as one aggregated revenue estate with a single survey number in land records without internal subdivision and ownership details.

A few city surveys were conducted in the Bombay and Mysore regions in the colonial period and some urban records exist in these areas. Post-independence coverage of urban areas has remained incomplete, given high levels of transactions, high rate of urban spatial expansion and the overlapping and expanding jurisdictional boundaries of multiple urban authorities.

Some states such as Himachal Pradesh, do not distinguish between urban and rural areas and therefore have some urban records. Some other states such as Karnataka and Gujarat have initiated a system of urban property ownership cards. Most cities have municipal tax records, maintained by urban local bodies (ULBs), which enumerate urban properties. But they do not validate ownership and cannot be used in court in case of ownership disputes. The primary incentive in municipal efforts to modernise land records is the need to enumerate properties for taxation purposes and not to identify ownership details, since the latter is also fraught with litigation questions.

Land Records Modernisation Initiatives

The National Land Records Modernisation Programme (NLRMP) was initiated under the central administration of the Department of Land Resources (DoLR), Ministry of Rural Development, in 2008 (DoLR, 2011). The NLRMP succeeds the 'Computerisation of Land Records' scheme initiated in 1988–89 and the 'Strengthening of Revenue Administration and Updating of Land Records' scheme initiated in 1987. The NLRMP incorporates the objectives of both schemes, which is the computerising of paper records and streamlining administrative processes. Additionally, the NLRMP advocates a shift from the present legal practice of registering deeds via presumptive land records to a system of guaranteed and conclusive title-based registration.

The DoLR compiles state-wise status of computerisation under the NLRMP. As per their latest statistics, out of a total of 35 states and UTs, a majority has computerised their registration process and RoRs (24 and 23 states respectively) (DoLR, 2015). However, details are still awaited as to the quality and extent of such efforts. The DoLR (2013) also notes that 21 states have accorded legal sanctity to computerised copies of RoRs and that 20 states have initiated the computerised mutation process. The manual issue of RoRs has been stopped in 18 states, and 19 states have placed the RoR data on their website (DoLR, 2015). Significantly, as per DoLR, only 10 states have integrated land records with the registration process. Similarly, only 7 states seem to have digitised their cadastral maps (DoLR, 2013).

There are also challenges of traction, utilisation and implementation. As of September 2014, state governments submitted a budget of ₹4298.4 crores (around \$716 million) to the central government to implement the NLRMP (DoLR, 2014). The central government approved ₹2,874.7 crores (around \$479 million). Of that amount, by the end of March 2015, only approximately ₹1131.1 crores (around \$188.5 million) had been released by the central government. Out of this amount, it seems, only 38.7 per cent has been utilised by the states (DoLR, 2015a).

Challenges of Land Records Reform

Access, comprehensiveness, facilitating real-time updating and designing replicable protocols to address data mismatches are the four main issues in land records reform that require attention. The Department of Land Resources (DoLR) estimates that 80 per cent of 30 million pending disputes across courts in India are land and property related (DoLR, 2011). Ambiguities and non-updated land records contribute to the high level of pendency.

Key characteristics of land records and their management that pose challenges:

- **Data mismatch:** In most states, there are mismatches between spatial and textual components of land records, especially as spatial changes are not validated and updated at the time of transaction. There are further mismatches between digitised records and real time information.
- **Record of Rights are not comprehensive**
 - ✧ All areas are not covered, such as high value rural and urban settlement areas.
 - ✧ All types of properties are not captured, such as built-up properties, mineral rights, air rights etc.
 - ✧ All transfers and transactions are not captured, such as lease agreements, power of attorney arrangements, mortgages, etc. which could clarify encumbrances, mitigate fraud and facilitate credit access.
 - ✧ Different property and use rights, which have legal, financial and social relevance, are not captured, including community rights, usufruct arrangements, lease markets in urban areas, rights over public amenity areas in cities, rights over forest land, common lands.
 - ✧ Institutional land holdings and inter-institutional land transfers are often not recorded.
 - ✧ Land classification categories are mostly rural and there is often no data bridge between land classification in urban areas, statutorily defined by planning and development authorities and those that are legally recorded in revenue records.

- **Record updating processes are not comprehensive**
 - ✧ Individual transactions are not recorded, often because mutation does not usually happen after registration, particularly in urban areas. Several states also face the issue of delays in processing mutation applications.
 - ✧ Institutional land holdings, acquisitions, transfers are often not updated in land records.
- **Lack of institutional integration**
 - ✧ Revenue, Registration and Survey Departments are separate in many states, without adequate data bridges between the three departments. States such as Haryana and Himachal Pradesh have integrated these functions right up to the district level, which reduces institutional friction.
 - ✧ Urban areas: In urban and peri-urban areas, the lack of institutional integration is particularly significant as land data and land administration are spread across many authorities with overlapping jurisdictions. Urban data therefore often exists in institutional data silos.
- **Share system:** Land ownership in many states is recorded as 'shares' in the RoR, without physical demarcation. On the ground, legacy practices of possession prevail, which is not reflected in the RoR. The situation can get complicated in the events of transfer, transaction, physical construction, land acquisition, payment of compensation etc. The 'share' system is different from common land or lands with community rights, where joint rights prevail.
- **Challenges with technology transitions:** Data migration, designing robust modules to capture on-ground differences in recording practices, land transactions and use, creating data bridges between registration and mutation functions and other institutions etc. present significant challenges.

- **Capacity challenges:** There are also capacity building challenges to encourage an older generation of ground-level revenue functionaries to become conversant with new technologies. At the same time, newer officials adept with technology need more experience to understand the complexities of revenue functions, without which the technology changes are ineffective.
- **Lack of protocols:** Protocols and procedures for dispute resolution to address data mismatches in revenue records are yet to be developed at the level of the state. Mismatches are being compounded where geo-referenced cadastral surveys are being undertaken to update spatial records. Without clear institutional protocols that provide opportunities for claims, objections and dispute resolution, courts are unlikely to give legal credence to the new records and new recording practices being adopted. Clear institutional protocols would also assist officers engaged in the settlement of multiple and discrepant claims on site.

Efforts to modernise land records include digitisation of paper records and making them available and operational through new technology interfaces. These initiatives help in reducing delays, simplifying procedures and improving administrative efficiency, thus improving overall access to records. There is a clear sense that mere technology upgradation without taking into account specificities of revenue processes in respective states will not work. A one-size fits all approach is unlikely to succeed in land records modernisation in a country as diverse as India. The challenge is to work out particular incentives focused on outcomes such as reducing litigation, based on the particularities of specific states.

Broadly, there is a need to further improve the clarity and comprehensiveness of land records in terms of:

- a) spatial coverage,
- b) type of properties recorded,
- c) type of rights and tenurial arrangements recorded, and
- d) type of transactional instruments recorded.

A five-fold typology of classification in terms of ownership, possession, extent, classification and encumbrances could be considered. There is also the need to build systems that will encourage real-time updating of individual, community (village owned) and institutional land and property transactions. These details and challenges have specific state-level characteristics, which need to be recognised and built upon. Procedures and protocols to address these issues need to be developed at the state-level, with reference to *Tehsil* and district-level differences in order to be successful and sustainable over the long term. This approach has been taken in certain states, such as Himachal Pradesh, with some degree of success.

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