



Puzzles for improving land title assurance in India: Will state-led title insurance work?

ANIRUDH BURMAN

NATIONAL INSTITUTE OF PUBLIC FINANCE AND POLICY

NEW DELHI, INDIA

Why study this?

- There is a market failure in India's land market i.e. information asymmetry. This is becoming prominent given India's growth, urbanisation and migration trends. Title insurance will be one of the first market based mechanisms for providing better certainty of land titles in India.
- India liberalised its economy in 1991. The claim is that we are a market economy now. However, as this case study shows, we are still highly restrictive. This has important consequences for how markets develop.
- Title insurance will be novel to India; the method of introduction is state-led rather than market-led. This presents an opportunity to study state-led development under restrictive legal conditions.

India's land title record – Legal structure

India's legal system does not provide a guarantee/ assurance of land titles.

Land is a subject for the states, but change in title governed by federal Indian Registration Act, 1908.

Registration is presumptive evidence of title.

Revenue records (RoR) maintained by state governments under state revenue laws act as proxies for title records.

RoR records maybe of presumptive evidentiary value, conclusive value, or conclusive value for revenue purposes depending on the state.

Courts are final adjudicators of title to land.

India's land title record problem

Many instances of buyers defrauded owing to forgery, fraud.

Large number of court disputes owing to poor records, mistakes in records (estimated to be anywhere between 30-66 % of court disputes).

Large informal land market due to legal restrictions on ownership, possession and transfer. Many rights are unrecorded, hence hard to discover.

Significant differences in land record systems for rural and urban areas.

Many urban/ urbanising areas have very poor records.

There is a demand for better assurance of land titles.

Trends in urbanisation, land use

31 percent of India's population is now urban (2011 Census), up from 27 percent in 2001.

Absolute increase in urban population overtakes increase in rural population for the first time.

Number of towns increased from 5,161 to 7,935 (2001-2011).

Number of towns without municipalities increased from 1,362 to 3,894 (2001-2011).

Real estate market size expected to grow seven times by 2028.

Rapid change in land use – from agricultural to commercial and residential.

Rapidly increasing exchange of land titles.

If the problem of information asymmetry is not solved, this process of urbanisation will be affected.

Steps taken to improve land records: DI-LRMP

- Land recording systems are under pressure trying to cope with this system.
- The Government of India launched the National Land Records Modernisation Program (2006-07).
- Aim was to move towards conclusive titling throughout India.
- Four components:
 - computerisation of property records,
 - survey and spatial mapping using modern technological systems,
 - computerisation of registration under the Registration Act, and
 - capacity building
- Low to moderate progress in 10 years. Many states have not yet finished computerisation of records.

Title insurance as a market-based alternative

“title insurance is an opinion as to the history and current status of the title of real property (something that has always been the domain of attorneys), backed by the financial wherewithal of an insurance company...” (Antetomaso 2008)

Originated in USA in 1886.

Demand arose due to:

- requirements of non-resident institutional investors – for indemnification against defective titles due to poor land records.
- creation of the secondary mortgage market.

Eighty five percent of residential sales had title insurance by the end of the 1990s. (Arrunada 2002)

Today present in sixty five countries. Pre-dominant in the USA.

Factors leading to development of title insurance in USA

The need for indemnification against faulty opinions regarding land titles given by lawyers,

Increasing investments by institutional investors across state boundaries who required indemnification against poor land records, and

The development of the secondary mortgage market.

Many of these conditions exist in India today:

- Urbanisation is driving up land values and speculative activity by non-resident investors is increasing in many states.
- FDI in real estate has increased significantly.

Utility of title insurance in India

India's land market exhibits all the characteristics of the USA market at the time title insurance developed:

- Rapid urbanisation and transactions across state boundaries.
- Presence of institutional investors, high inflow of FDI in real estate – requires risk indemnification instruments.
- Development of mortgage markets.
- Poor land records.

Title related risks to large real estate developmental projects may be reduced.

Risks to retail consumers can be reduced.

Title records can be improved if title insurance companies take efforts to reduce defects.

Highly restrictive regulatory environment

- No title insurance is offered in India at present.
- Insurance law (Insurance Act, 1938) prohibits foreign insurers from offering insurance in India.
- No insurance product can be sold without the approval of the insurance regulator (IRDAI). (IRDAI Act, 1999)

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- **Real Estate Regulation Act, 2016** –
 - Provides that state governments may make title insurance mandatory in their states.
 - All developers will have to buy title insurance for the land and the property.
 - This cannot be done unless title insurance is available in the market.
- Insurance regulator (IRDAI) set up a working group in June 2016. Report not published yet.
- IRDAI will frame nationally applicable guidelines for title insurance.
- Title insurance can be sold post IRDAI approval.

No Title Insurance under RERA

- State governments have introduced rules and regulations under RERA, requiring developers to file documents relating to projects.
- There is no requirement of title insurance at present.
- Andhra Pradesh is the only state to have required title insurance – unclear as to how developers are getting insurance.
- Most states have chosen to require an opinion from an experienced attorney.
- This system is prevalent in some countries, was prevalent in the USA till late 19th century.
- Case in Philadelphia which held lawyer not liable for negligent title opinion (Watson v. Muirhead) – led to creation of first title insurance product.
- Difficult to hold lawyers in India accountable as well.
- Will title insurance be a natural progression?

Central planning of land title insurance

- Structured interviews with members of the IRDAI working group:
 - Domestic general insurance companies are likely to be "requested" to commence this business.
 - National security concerns were raised when entry of foreign title insurance companies was discussed.
 - While title insurance is intended to help improve land titles by overcoming problems in land recording systems, title searches and underwriting titles will be difficult owing to poor condition of land records with government departments.
 - Lack of domestic expertise is likely to be overcome by mandating re-insurance requirements for the time being.
 - Other legal impediments to the efficient functioning of this market need to be addressed.

Issues with the state-led process

Controlling for exogenous factors – Limitation law

- Allows title to be challenged on grounds of fraud or mistake for 12 years from date of discovery.
- Insurance may be extremely difficult to price efficiently, or may lead to over exclusion.

Most important,

- Title insurance is a specialised line of business. Some states in the USA prohibit title insurers from other insurance business.
- IRDAI-led process will most probably ask existing insurers.
- Nature of business is very different:
 - Extensive field-work for underwriting.
 - Administrative costs much higher than normal lines of business.

Issues with the state-led process

Regulatory priorities also matter:

- IRDAI's focus is on market growth: Market density increased from 11.5% in 2001 to 55% in 2014 (Annual Report 2014-15).
- However, misselling is rampant – A paper estimates losses of USD 30 billion on account of misselling between 2004-05 to 2011-12 (Sane, Halan, Thomas 2013).
- This may have serious impact on title insurance business. Failure to protect consumers of title insurance may have greater political economy consequences.

Lessons

State – led market development is desirable in certain situations

- Estimation of latent demand.
- Latent demand fails to result in the creation of market based solutions.
- In this case, happens as a result of restrictive regulatory environment.

Developing new markets requires state to think about objectives of the market e.g. soundness of the market or protection of consumers.

- Incorrect thinking about objectives could skew the market in undesirable ways.
- Land title insurance could grow rapidly, but with a lot of abuse of consumers.
- This could have serious implications for the political economy of land.

Thank you

