सत्यमेव जयते

Land Based Fiscal Tools and Practices for Generating Additional Financial Resources

August, 2013

Supported under

Capacity Building for Urban Development project (CBUD)

A partnership program between

Ministry of Urban Development, Government of India

&

The World Bank

Acknowledgment

I am grateful to Capacity Building for Urban Development project (CBUD), Ministry of Urban Development for the opportunity to study the Land Based Fiscal Tools and Practices - an important aspect of urban development.

I acknowledge with appreciation most able assistance rendered by Sahil Gandhi and Vaidehi Tandel the Ph.D. candidates in the Economics Department of Mumbai University under the guidance of Prof. Abhay Pethe. I am also grateful to Prof Pethe for reviewing some of the earlier drafts of this report. The shortcomings are of course only mine. In addition Mr. Mallikarjun Setty in Hyderabad, Mr. K Mukundan in Chennai, Mr. Prashant Dhavan in Bengaluru and Ms. Shirley Ballaney in Gandhinagar most willingly extended their help in seeking access to concerned Government officials. Their help is gratefully acknowledged.

Inputs from Ms. Nisha Singh Joint Secretary (Mission) and CBUD Team - Mr. Nabaroon Bhattacharjee, Prof Gangadhar Jha and Mr. Hitesh Vaidya have been invaluable in finalising the report.

Vidyadhar K. Phatak
30 August 2013

Land Based Fiscal Tools and Practices for Generating Additional Financial Resources

Table of Contents

List of Figures

List of Tables

Abbreviations

AUDA	Ahmedabad Urban Development Authority
BDA	Bengaluru Development Authority
BOT	Build Operate and Transfer
CBUD	Capacity Building for Urban Development Project
CEPAC	Certificate for Additional Construction Potential
CIDCO	City and Industrial Development Corporation of Maharashtra Ltd.
CIP	Capital Improvement Plan
CMDA	Chennai Metropolitan Development Authority
CPWD	Central Public Works Department
FSI	Floor Space Index
GDCR	General Development Control Regulations
GHMC	Greater Hyderabad Municipal Corporation
HMDA	Hyderabad Metropolitan Development Authority
IDF	India Development Foundation
IT and ITES	Information Technology and Information Technology Enabled Services
JnNURM	Jawaharlal Nehru Urban Renewal Mission
LRS	Layout Regulation Scheme
LA & R & R	Land Acquisition and Resettlement and Rehabilitation
LVIT	Land Value Increment Tax
MCGM	Municipal Corporation of Greater Mumbai
MMRDA	Mumbai Metropolitan Region Development Authority
PPIAF	Public Private Infrastructure Advisory Facility
PPP	Public Private Partnership
SFC	State Finance Commission
TDR	Transfer of Development Rights
UDA	Urban Development Authority
UIBT	Urban Infrastructure Benefit Tax

Land Based Fiscal Tools and Practices for Generating Additional Financial Resources

0 Executive Summary

0.1 Introduction and Scope of the Study

Cities are known to be engines of economic growth. Efficiency of these engines depends upon the infrastructure services available and the way in which they are financed. HPEC and The Working Group on Urban Development for the Twelfth Five-Year Plan have recognised land based fiscal tools as a promising avenue of augmenting financial resources for urban infrastructure financing. Accordingly, Ministry of Urban Development, Government of India commissioned this 'Study of Land Based Fiscal Tools and Practices for Generating Additional Financial Resources' under the aegis of Capacity Building for Urban Development Project (CBUD).

Property Tax and monetizing public land can be considered as land based tools. The former has been studied extensively and JnNURM has already adopted a specific reform agenda for the property tax. Monetizing public land is in fact a strategy of asset management and disposal and not strictly a fiscal tool. This study therefore does not cover both these aspects. The study covers fiscal tools including urban land tax, land value increment tax, development charges, indirect fiscal tools like Transfer of Development Rights (TDR), premium or chargeable FSI and charges for regularisation of unauthorised development. (The last tool should not be a fiscal tool but is prone to be perceived so.) Both international and Indian experience in this regard is surveyed. Impact Fees as are practiced in North America is a way of recovering incremental cost of public infrastructure necessitated by proposed development and is therefore not in the nature of a tax but a 'Fee' satisfying the test of 'rational nexus'. However given the general interest in this tool and the use of the label 'Impact Fee' in some Indian states this tool is explored in some depth.

0.2 Public Finance, Land Policy and Legal Perspective

Fiscal tools can be classified as 'General Taxes', 'Benefit Taxes' and 'Compensatory Fees' by their intent and use. Notwithstanding the labels such as premium, cess, charge being used the real intent of the fiscal tool has to be considered. According to the Indian Constitution no tax (fiscal tool) can be levied without the authority of law. The exception is the regulatory fee. Power of levying regulatory fee is seen to be integral part of regulatory function. However, regulatory fees have to be limited to the administrative cost of regulation.

While considering the land based fiscal tools it is necessary to note the evolution of property in land in the Constitution and related legislation. Initially 'to acquire, hold and dispose of property' was a Fundamental Right. Consequently it could be compulsorily acquired only for the public purpose and by paying just and fair compensation. Later provisions were made to enable the state to follow the Directive Principle of achieving equitable distribution of resources for common goods and the word 'compensation' was replaced by 'amount'. Based on this Constitutional provision law of Urban Land Ceiling was enacted in 1976 that declared that vacant land in excess of prescribed limit will vest in Government. The act is however repealed in most states by 2008. In 1978 the Fundamental Right to property was deleted and was converted into a meagre legal right. However, the macroeconomic ethos that emerged since 1991 has made state intervention in private property in land anachronistic. The new bill regarding Land Acquisition and Resettlement and Rehabilitation has more narrowly defined the 'public purpose' and has strengthened the notion of compensation. During 1960s and 1970s it was believed that large-scale public ownership of land is the prerequisite of achieving land policy objectives including that of capturing the land value gains occurring on account of public action. This is no longer feasible.

Land is a multi-dimensional resource. Raising financial resources is one of the aspects of land policy. Obtaining land for public purposes, promoting inclusive housing, redeveloping slums and inner city areas, bringing about planned expansion of cities, preventing unauthorised development in per-urban areas and enabling expansion of formal urban land, real estate and housing market are the other urban development themes that are closely dependent on land. Consideration of land based fiscal tools has to be seen in this context.

Every fiscal tool causes supply curve to move backward causing reduced supply for the given price level. The incidence of the tax falls on both suppliers and consumers. The relative share depends upon the elasticity of demand and supply. In case of urban real estate there are two sub markets, one where developers purchase land and the other where they sell the constructed buildings or floor space to final users. Empirical evidence suggests that in most cases the incidence of land based tax gets passed on to final purchasers of floor space. Neither the landowners nor the developers tend to absorb the taxes, except in very competitive markets which are rare in most Indian cities.

0.3 International Experience

In North America the common model of financing capital improvement in cities was of raising funds from the capital markets by way of municipal bonds that were largely tax-free. Such bonds were serviced through property tax and user fees. However from 1970s onwards, existing taxpayers contested such increase in property tax as it was used for servicing the new development. This led to the practice of charging Impact Fees on new development to finance incremental expansion of off-site infrastructure. The US Courts established 'rational Nexus' as the test for legal acceptability of Impact Fees. The requirement of establishing rational nexus was satisfied through the practice of preparing capital improvement plans. Laws enabling Impact Fees in the states of USA and Ontario, Canada ensure 'quid pro quo' or the 'rational nexus'. (US also follow a practice of Tax Increment Financing – TIF. But that is a variant of property tax and is therefore not covered in this study).

In UK three unsuccessful attempts were made since 1947 to tax betterment or 'unearned income'. In early 1980s the development control moved away from regulatory to negotiated style of development control. Planning obligations could be imposed that restrict development, require specific activities to be carried out in relation to the land, require monetary payments to help mitigate the impact of development, or require land to be used in a certain way. However later Government guidelines to limit the scope of negotiations were issued. These came to be known as 'necessity test' bringing the planning obligations closer to American impact fees with 'rational nexus'. Finally in the Planning Act of 2008 the concept of 'Community Infrastructure Levy' was introduced and has become operational since 2010. The procedure of determining the CIL in terms of 'Pounds per square meter of proposed development' requires publication of draft charging schedule and public consultation. This requires estimates of new development, investments required for servicing such development, other sources of funds available and proposal for CIL that does not become a disincentive for development. By 2014 planning obligations would cease to operate.

For conservation of farmland and heritage buildings, cities in US devised the scheme of Transfer of Development Rights. Landowners were enabled to use their development rights at other locations on the condition that they will conserve the farmland or heritage buildings. The plans created receiving zones for TDRs where normal FSIs could be exceeded. TDR thus became an indirect fiscal tool where landowners are compensated by the market for environmental conservation.

San Tiago, Chile has used Impact Fees. But these were imposed without a legal framework and without following the discipline of 'rational nexus'. Moreover environmental fees were also levied on the same tax base.

Sao Paolo, Brazil has used Certificate for Additional Construction Potential (CEPAC), which meant sale of development rights through public auctions as a fiscal tool. This has been used within a planning framework and to promote development according to plan. This of course implied that the state owns the development rights that it can auction.

Two land based tools are used in Colombia viz. betterment fees (valorización) and land-value capture (plusvalía). To estimate the benefits of the project, a multidisciplinary team works together. Economic, transport road network, urban, and real estate studies are developed jointly to determine benefits in specific areas. Finally, the method of dividing the amount of levy to be paid by each party is determined. However methodological issues involved in assessing the land value gains and regulatory complexities have undermined these tools.

0.4 Thematic Survey of Indian Practices

Indian states of Tamil Nadu, Andhra Pradesh, Karnataka, Maharashtra and Gujarat have experimented with a large number of land based fiscal tools. Most states have legislations that *inter alia* provide for assessment of land for non-agricultural use. Tamil Nadu has a separate legislation called Urban Land Tax Act. However tax on land is seen as a state source and is not shared with ULBs.

The notion of capturing land value gains on account of urban development was introduced way back in the late 19th Century through the Improvement Trust Acts. Later in 1915 betterment levy was reintroduced in conjunction with Town Planning Schemes. Provisions for capturing land value gains on account of specific projects were also included in the Mumbai Metropolitan Region Development Authority Act 1974. However none of these are in active use today. In Gujarat though Town Planning Schemes have been successfully revived as a way of assembling land, reconstituting plots and appropriating land for public purposes, the land value gains are not captured instead only the cost is recovered through a uniform per sq.m. charge at the time of granting development permission. Methodological problems of measuring land value increases attributable to a particular cause have bogged down this otherwise attractive fiscal tool.

The most widely prevalent land based fiscal tool is the area based development charge. Most town planning laws provide this one time levy to be collected at the time of granting development permission. This is easy to administer, as there is no ambiguity in measuring tax base. Scope for avoidance is limited as the tax is recovered at the time of granting development permission. The real constraint has been rather low rate of charge prescribed in the act. However instead of periodically revising the rates most states have opted for adding supplementary levies linked to the same tax base. The original development charge is overshadowed by such levies to an extent where the tool initially conceived as a benefit tax is now relegated to a position of a regulatory fee as in case of Gujarat. Being linked to area this tool intrinsically lacks buoyancy.

Maharashtra amended the town planning act in 2010 to change the rate of development charge from 'Rs per sq.m.' to 'percent of land value'. Deciding land value in each case by the authorities responsible for granting development permission would have been administratively very difficult. Land values are therefore those determined in the Stamp Duty Ready Reckoner. The limitation is that the rate is linked to land value alone and not the value of built property. However being linked to land value certain degree of buoyancy is ensured.

Mumbai in 1991 pioneered the use of Transfer of Development Rights (TDR) first as a substitute for monetary compensation for acquisition of land designated for public purpose in the Development Plan. Later incentive FSI with TDR was used for many planning objectives such as redevelopment of slums, redevelopment of rent controlled chawls, promoting schools, hospitals, star hotels and buildings for IT and ITES. The apparent success of this indirect fiscal tool in Mumbai is due to natural constraint on land and regulatory constraint of low base FSI (1.33 and 1). Other cities that attempted to emulate Mumbai without having or creating scarcity of land and development rights have not been so successful.

Courts have declared Maharashtra's attempt to charge premium for allotting extra FSI as illegal in the absence explicit provision in the town planning act. However Chennai and Mangalore have incorporated similar provisions in their zoning regulations and Ahmedabad has proposed chargeable FSI in the draft Development Plan without having provision for levying such premium in the respective town planning acts. Maharashtra has now amended the town planning act by inserting a provision for charging premium in the section that enables a planning authority to formulate development control regulations.

Many states have experienced substantial unauthorised development (as distinct from slums). The reasons might be unrealistic planning standards, complex procedures involving high transaction costs and weak enforcement. In many cases the present occupants are considered as 'innocent victims' and to help them various amnesty schemes are devised with some fees and penalties being charged. This should not in fact be considered as fiscal tool. But the risk is that it might be perceived as fiscal tool, which needs to be scrupulously avoided.

0.5 Summary of Land Based Fiscal Tools

Various land based fiscal tools in practice both internationally and in Indian States are summarized below:

Land Based Fiscal Tool	International Practice	Indian Practices
Urban Land Value Tax	US, Australia and Taiwan use it as variant of property tax with higher rates for land than for improvements.	Tamil Nadu has 'Urban Land Tax'. Others levy Non-Agricultural Assessment
Impact Fees	Impact Fees are levied in US with legislative mandate that uses 'rational nexus' as the test. Canada has similar scheme called Development Charge. Chile amongst developing countries charges Impact Fees. Planning obligations in UK came closer to Impact Fees with the 'necessity' test.	Hyderabad and Ahmedabad use the label of Impact Fee. In former it is an area based charge and in the latter it is the fee for regularising unauthorised development.
Land Value Increment Tax (LVIT) or Betterment Charge	UK attempted without success. Colombia deploys valorización as benefit tax and plusvalía as LVIT.	Improvement trusts and their descendents have provisions for betterment charge. Town Planning schemes also provide for betterment levy. Project linked

		betterment charge is provided in MMRDA Act but not used.
Area Linked Development Charge	UK has adopted Community Infrastructure Levy in the nature of area based benefit tax.	Most Indian states have area based development charge. These have suffered from lack of buoyancy because of reluctance to vary the rates. Instead numerous levies on the same tax base have been added. The discipline of benefit tax is not scrupulously followed.
Value linked Development Charge		Maharashtra has in 2010 graduated from area based rate of development charge to land value linked rate of development charge.
Sale of Development Rights	Sao Paolo, Brazil sells additional development rights through auctions.	Mumbai, Chennai, Mangalore and Ahmedabad provide for charging premium for additional FSI. Mumbai secured a rather tenuous legal backing after a landmark High Court Judgment. Other states have assumed the powers under town planning regulations.
Incentive FSI and TDR	Used in US mainly for conservation of natural and built heritage.	In Maharashtra it is used as substitute for monetary compensation for acquisition with legal provisions. In addition Incentive FSI is used for slum rehabilitation and other development objectives. Other cities also have similar provisions.
Regularization of Unauthorised Development	No international experience	Some states have adopted legislative measures to regularise unauthorised development by charging a fee. This seems to have acquired the status of a fiscal tool

0.6 Urban Infrastructure Benefit Tax

The notions that unearned income accruing to landowners on account of public investment in infrastructure or that the development rights could be assigned to landowners at a fee, though conceptually attractive have not worked. Though provisions for Land value Increment Tax have been on the statute books for over a century in India they have not worked in practice. FSI should essentially be used as a tool of managing physical development and not as a fiscal tool. Marketability of TDR, Incentive FSI or Premium FSI depends upon creation of regulatory scarcity of development rights and is therefore distortionary. This tool used if at all should be on a limited scale and in no case base FSI is artificially kept low to exact value of additional FSI.

Based on the review of international and Indian experience it appears that the land based fiscal tool that has clearly defined tax base, that is easy to administer, has no scope for avoidance and yields buoyant revenue, captures land value gains on account of infrastructure provisions, is equitable and does not distort the real estate market would be the ideal tool. Considered from this perspective Urban Infrastructure Benefit Tax (UIBT) in the form of a one time benefit tax levied at the time of granting development permission on the value of proposed development seems to be the most promising. Being a benefit tax the law providing for that should clearly define the purpose for which the proceeds of the tax be applied. As the tax is in the nature of capital receipt it should also be deployed for capital expenditure (including debt servicing). The law should make suitable provisions for accounting, budgeting and auditing to ensure that the tax is used for intended purposes with accountability and transparency. UIBT could be efficiently administered as the Tax Base – value of proposed land and buildings could be unambiguously measured particularly where system of periodic valuation for stamp duty purposes is well established. Since UIBT is levied at the time of granting development permission, the risk of avoidance in minimal particularly where system of development control is efficient. Being linked to value of land and buildings UIBT will be buoyant source however its revenue will still be subjected to cyclical variations in the real estate market. Where dual authorities like ULB and UDA operate, the primary responsibility of granting development permission and therefore levying UIBT should be that of ULB. The law could make provisions for a specific surcharge to be levied on UIBT to help finance UDAs' and other para-statals' investments.

Key Features of UIBT

Tax Base: Value of proposed development
Collection: At the time of granting development permission
Efficient Administration: Easy to administer, no scope for avoidance
Buoyancy: Buoyant revenue
Benefit Tax: Revenues reserved for capital expenditure in infrastructure

The revenue potential of UIBT would significantly vary with the prices in the real estate market in the given city and the extent of development undertaken. However it could be illustrated by the case of Mumbai. Till 2010 development charge was levied at Rs. 350 per sq.m. of built-up area proposed. In 2010 the rate was change to 2.5 percent of land value (alone) applied to built up area. This caused the revenue from development charge to increase from Rs. 87 crores in 2008-09 to Rs. 307 crores in 2011-12. Had the rate been linked to market price of built-up property (land + building) the revenue could have been over Rs. 800 crores in 2011-12.

The institutional considerations are important, as the agency responsible for granting development permission will be collecting UIBT. In many states the Urban Development Authorities (UDA) are responsible for granting development permission and would therefore collect the UIBT. In the first instance provisions for sharing the revenues with the ULBs should be introduced in the UDA legislation. Eventually the responsibility of granting development permissions should be assigned to ULBs in keeping with the Constitutional provisions. At that time provisions may be introduced to enable levying of surcharge on UIBT for financing the capital improvements undertaken by the UDAs. Unlike the current practice of prescribing maximum rates, UIBT legal provisions may stipulate minimum rates with an option for the ULBs and UDAs to propose periodic revision of rates justified through the Capital Improvement Plans and corresponding financing plans. Legal provisions may then require public consultation and government sanction before bringing revised rates into force.

Salient Legislative Provisions for UIBT

Comprehensive provisions may be inserted in Town Planning/UDA legislation by consolidating multiple charges and fees into single UIBT
Minimum rates be prescribed instead of maximum. ULB/UDA may be enabled to propose revision of rates of UIBT justified through a CIP
Scope and Content of CIP be either defined in the law or by making rules provided for in the law.
Revenue sharing. Where UIBT is levied and collected by UDA, law may provide for its sharing with the ULBs
Surcharge. Eventually ULBs should levy and collect UIBT. Law may provide for surcharge to be levied for financing capital improvement programmes of UDA or functional agencies.

However, UIBT has to be seen as one of the sources amongst inter-governmental transfers, borrowings and private investments. UIBT should not be seen as a substitute for any of the other sources.

0.7 Way forward

Assuming that there is a general consensus on UIBT, following next steps could be pursued

(a) As the initial status varies considerably amongst states, it may not be possible to bring about single model legislation. Ministry of Urban Development therefore could send an advisory to state governments on UIBT with a view to initiating a dialogue.

(b) Based on the responses to the advisory, the Ministry of Urban Development could engage with individual state governments about the legislative and institutional changes that could be brought about in a time bound programme.

(c) States that rely upon the UDAs to perform the function of granting development permission may not like to transfer that function immediately to ULBs. In such cases though UIBT is collected by UDAs, provisions could be made for sharing the proceeds with the ULBs in the UDA's jurisdiction. Two possibilities could be considered. First, a proportion of UIBT collected from respective areas of UIBT may be devolved to the ULB. Second, a proportion of total UIBT collected may be distributed in proportion to the population of the ULBs.

(d) States where the primary responsibility of granting development permission is that of the ULBs, (e.g. Maharashtra) legal provisions could be made for levying a surcharge on UIBT which could be collected by ULBs and passed on to UDAs or para-statals implementing infrastructure projects.

(e) Town planning acts and UDA acts may be suitably amended to enable imposition of UIBT. The provisions could cover;
    - Consolidation of multiple levies into a single UIBT
    - Definition of tax base (either the area or the value of proposed development)
    - Minimum rate of tax (if area is the tax base rates may vary with land use)
    - Empowering ULB / UDA to propose revision of rate based on the CIP and the financing plan
    - Use of funds only for capital expenditure or servicing the debt raised for capital expenditure
    - Accounting, budgeting and auditing provisions to help monitoring the use of funds in a transparent manner

(f) The responsibility of granting development permissions within the ULB area should clearly be that of ULB. Apart from area wide planning, UDA's functional domain may cover development of regional road network, development of mass transit facilities, water resource development, common waste disposal facilities etc, and execution of town planning schemes in non-ULB areas. All other functions should be with ULBs. ULBT can then be administered as spelt out in (d) above.

(g) UIBT can only supplement and not substitute other sources of funds such as ULB's own surpluses, intergovernmental transfers and borrowings. The rates of UIBT also have to be carefully decided to see that it does not lead to tax avoidance and therefore unauthorised development or contraction of real estate or housing market. For this purpose the legally mandated CIP and corresponding financing plans will be useful.

Chapter I

1 Introduction

1.1 Background

Cities are known to be engines of economic growth. Efficiency of these engines depends upon the infrastructure services available and the way in which such services are financed. The Ministry of Urban Development appointed the High Powered Expert Committee (HPEC) to examine the status of urban infrastructure, estimate the investment requirements to attain certain benchmarks of service delivery and suggest ways of financing the required investments. The HPEC in its report in March 2011 has projected the urban infrastructure investment requirements of Rs. 39.2 lakh crores in 2009-10 prices for the twelfth to fifteenth five year plans i.e. from 2012-13 to 2031-32. The HPEC had estimated the urban population in 2010 as 353 million. The census figures for 2011 later turned out to be 377 million. Similarly HPEC had assumed the GDP for the base year of 2011-12 as Rs. 7,268, 038 crores and the GDP growth arte of 8% per annum. Based on these estimates HPEC has also projected annual requirement of investment as 0.75 percent of GDP in 2012-13 increasing up to 1.5 percent of GDP. (HPEC 2011) Figure 1 shows the annual investment requirements.

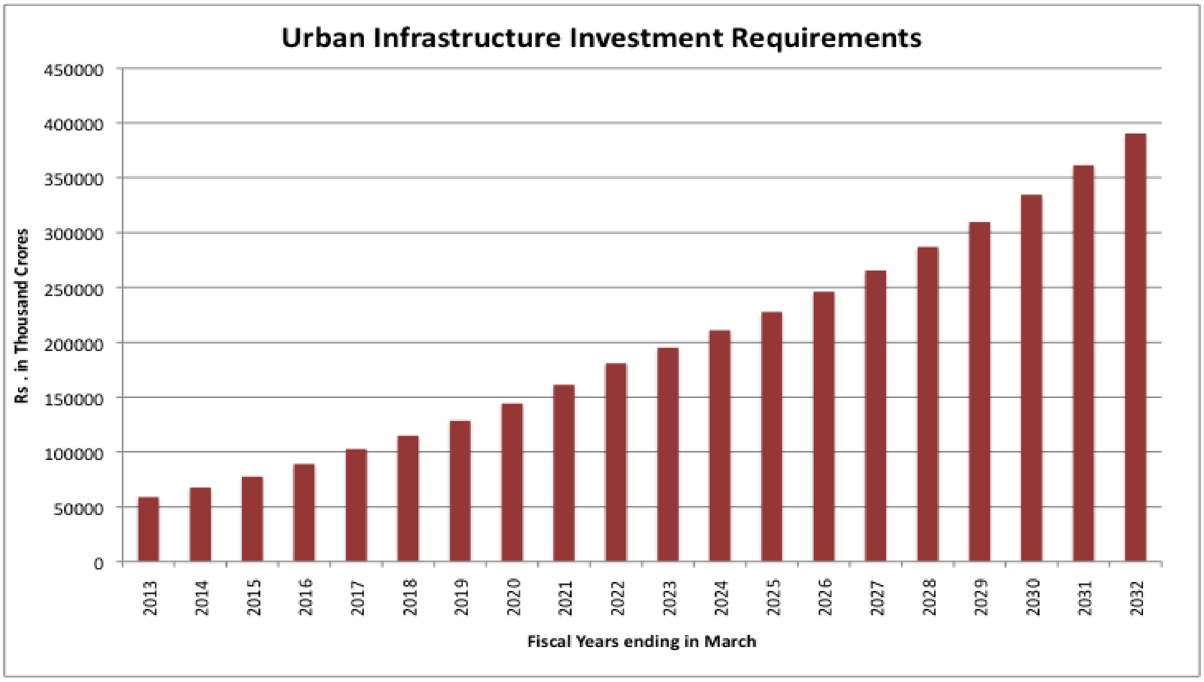

Figure 1: Annual Requirements of Urban Infrastructure Investment.

To attain this scale of investment a multi-pronged strategy will be required. The HPEC also therefore identified a number of measures to augment the resources available for financing urban infrastructure. In case of ULBs the HPEC has observed the constraints on conventional sources like the local taxes, shared revenues based on the recommendations of the State Finance Commission (SFC) and borrowings from the institutions or the capital market. HPEC has therefore *inter alia* proposed introduction of a 'Local Bodies Finance List' in the Constitution and has provided an indicative Municipal Finance List that includes 'FSI charges, Betterment Charge, Impact Fee and Development Charge.'

The Working Group on Urban Development for the Twelfth Five Year plan has also identified land based financing (not confined to fiscal tools) as a promising revenue source for urban infrastructure. (Planning Commission 2011)

At present the urban infrastructure development is the responsibility of Urban Local Bodies (ULBs), Urban Development Authorities (UDAs), and the functional para statals like the water supply and sewerage boards or the state road development corporations.

1.2 Scope of the Study

Urban local public finance or financing urban development has been extensively studied in the past. (Zakaria Committee (Government of India 1963), Financing Urban Development –Planning Commission Task Force (Planning Commission 1983), National Commission on Urbanisation (Ministry of Urban Development 1988), Rakesh Mohan Group on Commercialization of Infrastructure Projects, (NCAER 1996) and the most recent is HPEC report) The present study is naturally not as exhaustive in scope as these. It is more narrowly focused on the 'Land Based Fiscal Tools'. It is however noted that urban local finance comprises inter-governmental transfers, local taxes and fees or own revenues and the borrowings. Land based fiscal tools would be one of the ways in which local finance could be strengthened. But it may not be seen as a substitute for others. Given the divided responsibility the distribution of resources raised through land based tools would also become important.

Property tax is essentially a land based fiscal tool that has been almost universally deployed by local governments as a primary revenue source. Consequently, it has been extensively studied and reforms of property tax have been included in the Jawaharlal Nehru National Urban Renewal Mission (JnNURM). The mandatory reform with respect to property tax included in the JnNURM is "Reform of property tax with GIS, so that it becomes major source of revenue for Urban Local Bodies (ULBs) and arrangements for its effective implementation so that collection efficiency reaches at least 85% within next seven years." (Ministry of Urban Development 2005) HPEC has also made a number of recommendations in respect of property tax. It has emphasized vacant land tax as a variant of property tax. (HPEC 2011) The present study therefore dos not cover property tax though it is a land based fiscal tool.

Unlocking or monetizing value of public land is increasingly being proposed as a fiscal tool. (Peterson G. 2009) The Committee on Fiscal Consolidation has noted that there is considerable potential given the under-utilized prime lands of PSUs, Port Trusts, and Railways etc. For realizing such potential the Committee has considered it as a part of disinvestment and has recommended setting up of a group to work out the policy framework and institutional modalities. (Kelkar Committee 2012) At the same time India Development Foundation (IDF) and Public Private Infrastructure Advisory Facility (PPIAF) of the World Bank have jointly initiated 'Formulation of a Public Policy Framework for Monetizing Excess Public Lands'. HPEC has also recognized that monetizing underutilized public land can be a source of generating finances with a cautionary alert that it can provide only a one-time solution. The Committee has called for judicious and transparent use of the instrument of unlocking land value and has recommended that the following steps be taken before 'sale of land' is used as an instrument for financing urban infrastructure:

- A systematic city-wide inventory of land assets must be made to be able to identify core and non-core land assets, and proposing the best use of public land assets must be part of comprehensive planning for the city;
- A transparent and accountable mechanism for sale of public land must be put in place;

- Proceeds from land sales must be used only for capital investment projects/ housing for the poor via creation of a 'Land Capital Fund' whose governance and operational mechanisms are designed in such a manner as to ensure total transparency; and
- A mechanism for sharing revenues between the public agency owning the land and the infrastructure development agency must be established. (HPEC 2011)

Recognizing these difficulties, it appears that the Ministry of Urban Development, Government of India has proposed to establish 'Land Authority of India' chaired by the Finance Secretary. Surplus land of Defence, Railways, Central Public Works Department (CPWD), Delhi Development Authority, it is proposed will vest in the Land Authority which in turn could suitably monetize it. (Economic Times 2013) In view of this coverage and initiatives, the present study does not explore further the monetizing of public land as a land based fiscal tool. Furthermore, monetizing public land is more akin to disinvestment or disposal of assets than to a fiscal tool.

Impact Fee has evolved particularly in North America as an instrument of recovering the incremental cost of off-site infrastructure attributable to new development. In the strict sense of the term, therefore, Impact Fees are not land based fiscal instruments but a cost recovery mechanism. However the phrase Impact Fee is being used in Indian Cities with different connotations. The present study therefore covers Impact Fees in some details.

The study has three distinct aspects viz. 'public finance', 'legal feasibility in Indian context' and 'impacts on inclusive urban development'. The study attempts to survey the land based fiscal tools from all these perspectives wherever relevant.

1.3 The structure of the report

The rest of the report is structured to comprise:

Chapter II: Land as a multi-dimensional resource

Chapter III: Historical roots of land based fiscal tools

Chapter IV: International Experience

Chapter V: Thematic Survey of Indian Practices

Chapter VI: Learning and way forward; and

Annexes

References

Chapter II

2 Land a Multi-Dimensional Resource

Land in an urban context is an asset owned by private individuals, firms and public entities and is transacted in the real estate market. However at the same time land is required for providing common infrastructure services, which enhance the productivity of the remaining land. Since land is an immovable asset the legal framework that protects the private rights and circumscribes the state's rights of intervention are important. The study of fiscal tools for augmenting financial resources has three important dimensions viz. public finance, urban development policy and law related to land.

2.1 Types of Fiscal Tools

For the purposes of this study, the fiscal tools are divided into following broad categories.

General taxes: can be defined as "*mandatory levies that are not related to any specific benefit or government service*". The most common example of such a tax in urban public finance is the property tax. These are suitable for financing general public goods or services where individual beneficiaries are difficult to identify and individual costs and benefits difficult to measure.

Benefit taxes: are those that are "compulsory levies applied to individuals (or institutions such as corporations) who are assumed to be benefited from certain government services. These taxes are not directly related to the receipt of specific services but the revenues are required to be spent by law for particular purpose or service. " An example of a benefit tax would be a development charge levied on all new development for provision of infrastructure. The distinguishing feature is that the revenue is spent on a specific service though its delivery to an individual taxpayer cannot be measured.

Fees/User Fees: are "payments levied to recover the cost of a particular government service that is received by a specific person but mandated for public purposes". A common example in urban public finance is consumption charge for water supply measured through meters. In this case the quid-pro-quo is clearly measurable. (Bird and Tsiopoulos 1997; Bahl R and Linn J, 1992) The Supreme Court of India has further distinguished between 'Compensatory Fees' and 'Regulatory Fees' and has observed that the latter can be levied in exercise of power to regulate but such a fee must be related to the cost of administering the regulation. (State of West Bengal vs. Kesoram Industries)

2.2 Land as the Tax Base

Land based fiscal tools are being used both as general taxes and benefit taxes. Land as the base for application of these fiscal tools takes many forms – Land Value Tax (LVT), Land Value Increment Tax (LVIT) or betterment levy, Area of Land and Construction (at the time of seeking development permission), Value of land and construction (at the time of seeking development permission), Cost of Infrastructure required to be incurred to service proposed development. (This is impact fee for recovering infrastructure cost and not strictly a 'land based' fiscal tool), additional Floor Space Index (FSI) – for which premium is charged and indirect fiscal tools like Transfer of Development Rights (TDR)

Similarly many labels are in vogue – tax, charge, cess, premium, levy, fee etc. not necessarily conforming to the definition and purposes defined above.

2.3 Constitutional and legal perspective

It needs to be appreciated that consideration of land based fiscal tools is intrinsically linked to the way in which the concept of property in land is understood. This in turn requires understanding of how property has been constructed in law and the philosophical and constitutional underpinnings of such construction. (Booth, P. 2012) Legal and constitutional perspective about property in land has evolved over the years in India. A summary of this evolution is presented in the following paragraphs.

The notion that land is a private property and its transaction needs to be regulated and if it is to be acquired for public purpose the process has to be just and fair was recognized well before the adoption of Constitution in 1950. Transfer of Property Act 1882 and Land Acquisition Act 1894 reflected these concerns. However the property in land was viewed in British feudal tradition. (Also present in Indian Jamindari tradition). Sometimes this view still reflects in adages like 'all land belongs to Crown' or 'Sab bhumi Gopalki'.

However the way private property was viewed in the Constitution evolved over the years. Article 19 (f) of he Constitution recognized "to acquire, hold and dispose of property" as one of the fundamental rights of citizens. Consequently, Article 31 (2) provided for compensation at the market price for compulsory acquisition of any private property by the state. Considering right to own property as enshrined in the Constitution was a distinct break from the British legal tradition and more in tune with the fifth amendment to the bill of rights in the American Constitution that reads 'No person shall inter alia be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.' This was perhaps more inspired by the French tradition in which ownership of land became the 'inviolable and sacred right' of citizens under the Declaration of Rights of Man in 1789 and has remained a key provision of the French Constitution ever since." (Booth, P. 2012) However, along with the fundamental right to property Indian Constitution also included the Directive Principles of the State Policy (Article 39(b)) that required that the "ownership and control of the material resources of the country are so distributed as best to subserve the common good; and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment"

The 25th Constitutional amendment of 1971 made any legislation enacted to suserve the Directive Principle non-justiciable. The amendment declared "Notwithstanding anything contained in Article 13, no law giving effect to the policy of state toward securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or abridges any of the rights conferred by Articles 14 or 19, and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy." This amendment further replaced the word 'compensation' by the word 'amount' in Article 31(2) and adequacy of amount was made non-justiciable.

By the 44th Amendment of 1978, Article 38 (2) was added which states that "the State shall, in particular, strive to eliminate inequalities in status, facilities and opportunities, not only amongst individuals, but amongst groups of people residing in different areas or engaged in different vocations". By the same Amendment "to acquire, hold and dispose of property" was deleted as a Fundamental Right and a new Article 300A was added that reads, as "No Person shall be deprived of his property save by authority of law." Thus the fundamental right was reduced to a mere legal right.

During the pre-independence era, the legislative provisions followed the British law. The British Housing and Town Planning Act 1909, provided for collecting 'betterment value'. Similar provisions were included in the Indian legislation for establishing City Improvement Trusts. Such improvement trusts were set up in many cities from Karachi to Dhaka throughout the sub-continent and were predecessors of many present day development authorities. Provisions for improvement schemes and collection of betterment levy remain on many statute books. The process of planning for urban expansion was formalized in the Bombay Town Planning Act 1915 that provided for Town Planning Schemes. This enabled achieving of three objectives:

- Expanding land supply for urban growth in a planned manner
- Appropriating land for public purposes and
- Capturing betterment by treating 'compensation' and 'betterment' as the two sides of the same coin.

25th Constitutional Amendment was crucial in empowering government to obtain land without paying compensation at market rate or demonstrating its public purpose, on the ground that the action subserves the Directive Principle of the Constitution. The key Directive Principle in this regard is "that the ownership and control of the material resources of the community are so distributed as best to subserve the common good" As a result of this amendment many legislative initiatives provided for 'amount' instead of 'compensation' enabling more aggressive intervention in land. For example Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act 1971 (Maharashtra 1971) provided for 'amount' equal to 60 times the monthly rent for acquiring slum land. In case of Maharashtra Housing and Area Development Act 1976 (Maharashtra 1976) and the Mumbai Metropolitan Region Development Authority Act 1974 (Maharashtra 1976) the scale of 'amount' provided is 100 times the monthly rent in urban areas.

Urban Land (Ceiling and Regulation) Act 1976 (India 1976) was considered to be the most progressive piece of legislation of the time. Its principal objectives were:

- Preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein
- Bringing about an equitable distribution of land to subserve the common good

Under the provisions of this act vacant Land in excess of the ceiling could be taken over by paying an amount at the rate not exceeding Rs. 10 per sq.m. and total amount not exceeding Rs. 2 lakhs. For the first time the criterion of public purpose was not mentioned for expropriating property rights in land. However the law was repealed by the Central Government in 1999. In Maharashtra and Andhra Pradesh the repeal of the act was delayed and finally took place in 2007 and 2008 respectively after it had become a mandatory reform under JnNURM.

After the Constitution was amended to strengthen the state's power to intervene in the land market, Land Acquisition Act 1894 (India 1894) was amended in 1984 to make the process fair. The amendments provided for

- time limit to complete the acquisition within 3 years at the end of which the process will lapse
- interest at the rate of 12 % p.a. from the date of notification
- Increased solatium at the rate of 30%

The Land Acquisition, Rehabilitation and Resettlement Bill, 2011 now proposes to more clearly define the scope of public purpose, exclude acquisition for private entities not engaged in producing public goods or services and re-enshrine the principle of compensation at market value with 100% solatium. (Ministry of Rural Development 2011)

It would thus be seen that the Constitutional provisions that initially recognized right to property as the Fundamental Right in 1950, diluted the principle of compensation at market price in 1971 leading to legislation like Urban Land (Ceiling and Regulation) Act 1976. In 1978 the right to property as the Fundamental Right was deleted. However Urban Land (Ceiling and Regulation) Act has been repealed in 1999 and the Land Acquisition Rehabilitation and Resettlement Bill, 2011 is trying to re-establish the principle of compensation at market price without exceptions. Property rights are also proposed to be assigned to the slum dwellers. In a way the circle has been completed as depicted in Figure 2.

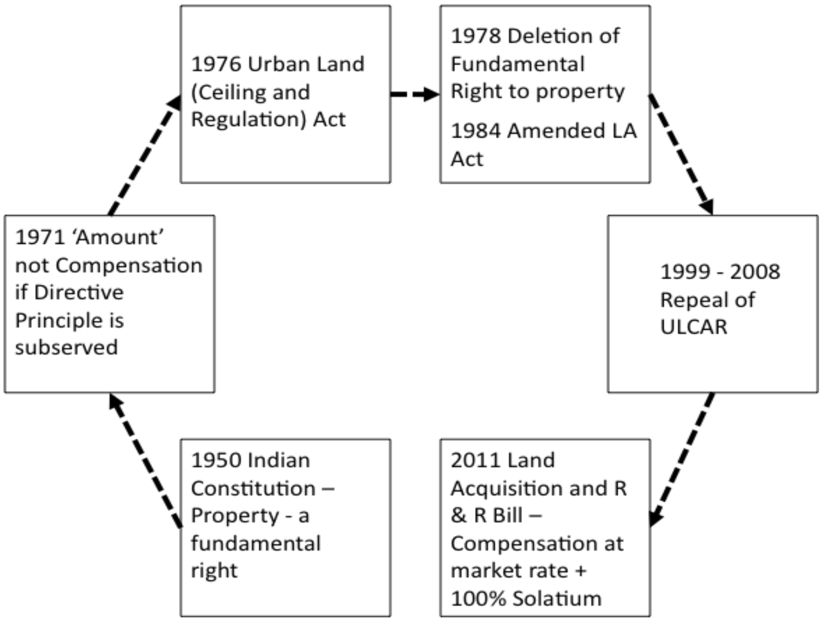

Figure 2: Evolution of Constitutional and Legal Perception of Land

With this evolution, a notion that was dominant during the 1960s and 1970s that large scale public ownership of urban land should first be established to capture land value increment has lost its validity.

On this background, while considering land as a fiscal tool it is also necessary to specifically note that that according to Article 265 of the Constitution 'No tax shall be levied or collected except by the authority of law.'

2.4 Land Policy objectives and evolution

Land based fiscal tools have to be seen in the context of overall urban land policy. It would therefore be instructive to note the evolution of urban land policy apart from the legal and Constitutional perspectives on land.

The objectives of urban land policy were first articulated in 1965. These were:

i. To achieve optimum social use of urban land
ii. To make available land in adequate quantity at right time and at reasonable price to both public authorities and individuals
iii. To encourage cooperative community effort and bona fide individual builders in the field of land development, housing and construction
iv. To prevent concentration of land in a few private hands and especially to safeguard the interests of the poor and under-privileged

The Task Force on Planning of Urban Development appointed by the Planning Commission recommended that the phrase "To prevent concentration of land in a few private hands " be replaced by "To widen the base of land ownership and". The Task Force also recommended addition of two more objectives viz.

v. To encourage the socially and economically efficient allocation of urban land such that land development is done in a resource-conserving manner and that the magnitude of land used is optimal.
vi. To promote flexibility in land use in response to changes resulting from a growing city. (Planning Commission 1983)

In addition a commonly accepted objective is "To use land as resource for financing urban development by recouping the unearned income which otherwise accrues to private landowners". (MMRDA 1999)

It was believed that the best way to achieve these objectives was to have public ownership of urban land. Many urban development authorities therefore adopted the instrument of compulsory acquisition of land for 'planned' urban expansion. Delhi Development Authority (early 60s), City and Industrial Development Corporation of Maharashtra (CIDCO) for Navi Mumbai in early 70s, Bangalore Development Authority are examples of large-scale acquisition of land. Development of new state capitals like Chandigarh, Gandhinagar or Naya Raipur relied on large-scale land acquisition. State Housing Boards also resorted to compulsory acquisition of land. Apart from the large-scale land acquisition, most master plans relied on compulsory acquisition of land required for serving public purposes – education, healthcare, recreation, transport, fire protection, police and postal services and other public utilities.

From mid-80s (particularly after the amendment of Land Acquisition Act), large-scale acquisition of land became increasingly expensive. The demand for the rehabilitation and resettlement of displaced persons and general resistance to compulsory acquisition, large-scale public ownership of land began to lose its status as the main plank of urban land policy. The provisions of the LA, R& R Bill 2011 would further erode the feasibility of a model that relies on large-scale public ownership of land. The changing ethos of macro economic management particularly from 1991 has rendered large-scale intervention in the land market incongruent and anachronistic.

On this background Current themes of land policy discourse are:

- How to obtain land for public purposes?
- How to bring about redevelopment of slums and aging housing stock in central cities (In cities like Mumbai this problem is further aggravated on account of rent control),
- How to bring about land assembly and planned development of green field areas (along with provisions for affordable housing)
- How deal with illegal sub-divisions in peri-urban areas?
- How to expand formal real estate and housing market? and
- How to raise finances from urban land development?

These themes are phrased in the language of urban planning and development and respond to the perceived immediate problems. However the basic constitutional framework is not recognized and the resultant disbelief in the inevitable existence of the urban land markets is overlooked. It is possible to identify that the underlying causes for the first three themes is the legal constraints imposed on urban land market. The fourth is a result of unrealistic plans and development controls that are impractical to enforce. The last theme belongs to the genre of capturing land value increments that occur on account of infrastructure provisions.

Figure 4 illustrates the linkage between known land based fiscal tools and the land policy themes described above.

Land policy and fiscal tool	Mobilize funds	Obtain land for Public Purposes	Redevelopment of slums	Planned Greenfield city expansion	Expansion of formal real estate and housing market
Land value tax	✓				
Improvement schemes – betterment levy	✓				
Town Planning Schemes	✓	✓		✓	✓
Incentive FSI, TDR		✓	✓		?
Premium or Chargeable FSI	✓				?
Development charge related to area of development	✓				?
Development charge related to value of land or land+improvement	✓				?
Impact Fees	✓				
Regularising unauthorised development with compounding fees	✓				

Note: ✓ denotes positive impact. ? denotes risk of negative impact.

Figure 3: Interrelation between land based fiscal tools and land policy objectives

Although the main focus of the present study is on Land Based Fiscal Instruments, it cannot be undertaken in isolation of the other land policy themes. For example, if land is obtained for infrastructure provision, value of adjacent land will increase that could be recouped through fiscal tools. On the other hand the incidence of fiscal measure will have distributional impact and may influence real estate and housing market. The outcomes in such cases could be counter-intuitive.

2.5 Incidence and Distributional Impact of Land Based Fiscal Tools

Every fiscal instrument causes a monetary burden that has to be borne by the market. The effect of a tax levied on any good is a backward shift in the supply schedule, and hence, a rise in price and a fall in quantity. Typically, these taxes are shared by both the buyers and sellers of the good. The proportions shared between the two depend upon the demand and supply elasticities for the good that is being taxed. Thus, Bb/Bs = Ed/Es, where Bb/Bs is the ratio of burden on buyer and burden on seller, and Ed/Es is the ratio of demand and supply elasticities (Musgrave and Musgrave 1989: 253). In other words, if the demand is more inelastic than the supply, the seller will pass on the tax to the buyer – through increased price - and if the demand is less elastic than the supply, higher share of the burden will be borne by the seller. Further, elasticity is different for different income classes and hence there is a differential impact in terms of incidence and burden sharing. For instance, if the good being taxed is inelastic in demand a higher share of the tax will be borne by the buyers, and if the relevant expenditure forms a higher proportion in the incomes of the poor the poor will be disproportionately affected as compared to the rich (ibid.).

2.6 Theory of Incidence of Land Taxes

The theory of incidence of taxes like development charge or impact fees levied at the time of undertaking development on urban land and real estate indicates that incidence could be on landowners, developers or final real estate purchasers like home buyers. Thus, we can envisage a market comprising two sub-markets one in which we have developers as buyers and landowners as sellers and the other with buyers of homes and commercial properties and developers as sellers. The relative incidence on each of the three actors depends upon the competitiveness of the market and the demand and supply elasticities.

It is conceptualized that (development) impact fees are shared between consumers (homebuyers and tenants) and suppliers (developers and landowners) as shown in Figure 4. (Huffman et.al. 1988)

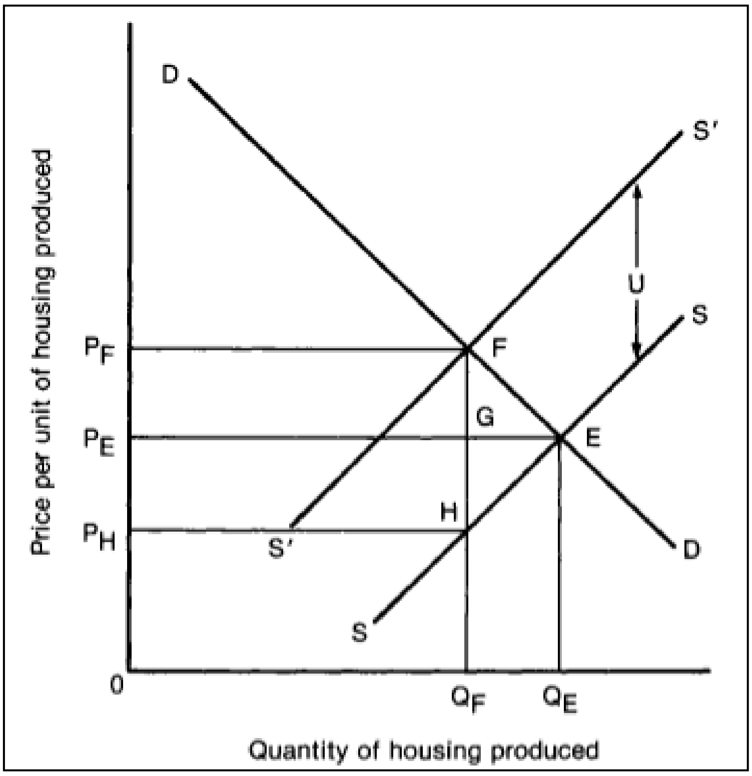

Figure 4: Incidence of Development Impact fees
Source: Huffman et.al. (1988)

The figure shows that at equilibrium, QE is the quantity of housing being sold at price PE. An impact fee of U will result in a backward shift in the supply curve to S'S'. The new equilibrium quantity is QF and price is PF. The total tax paid to the community is given by the rectangle PFFHPH of which PEPFFG is borne by the buyers and PEGHPH is paid by the developer. In general, the extent of sharing would depend upon the elasticity of demand and supply. Issues of incidence are discussed in the context of three conditions: demand is relatively inelastic and there are no barriers to developer entry, demand is inelastic and there are barriers to developer entry, demand is elastic and there are no barriers to developer entry. They also examine incidence in the short run and long run. They argue that in the case of impact fees, it is the homebuyers that pay the largest share of the fee.

Tax incidence in the case of inelastic demand is illustrated in Figure 5.

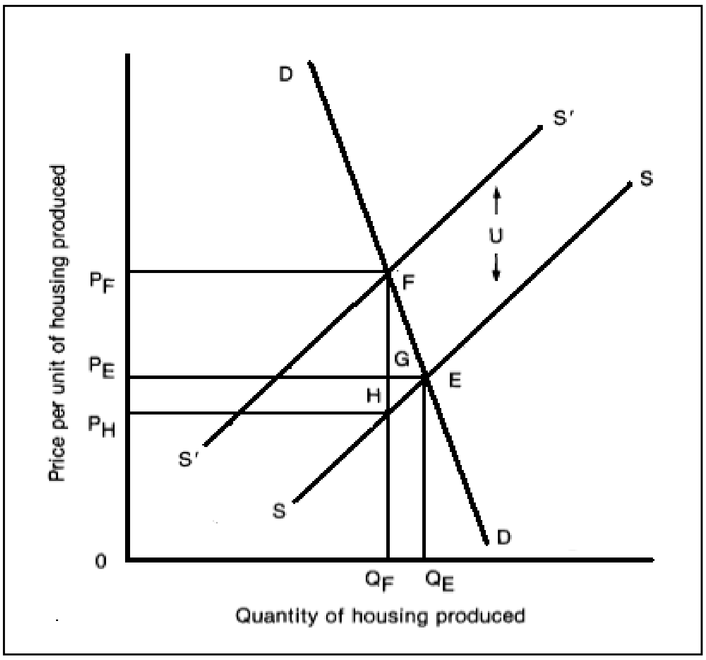

Figure 5: Tax Incidence in the case of inelastic demand

When buyers are insensitive to price changes, the demand curve will be inelastic. In this case, most of the burden of the tax will be borne by the buyers. From Figure 2, we see that PFFGPE is the share of buyers and PEGHPH is the share of the sellers. Cases of inelastic demand are prevalent in desirable urban areas (Huffman et.al. 1988).

Formal analysis of incidence of development fees and special assessments that are used to finance infrastructure shows that homebuyers bear some burden of development fees but with mobile households, competitive housing markets, and infrastructure investments made with a benefit-cost test, one quarter or more of the share could fall on the owners of undeveloped land. The developers, on the other hand, do not bear the burden of the impact fee. It is also found that the increase in house prices also reflect the benefit from provision of infrastructure to the homebuyers and can reflect incidence of fees when they are clearly linked to such provision. (Yinger 1998)

In competitive market conditions, developers earn normal profits and hence a tax is not paid from their profit, but is passed to the homebuyers or landowners. Where market conditions are such that the demand for housing is inelastic, the tax is most likely going to be passed to the homebuyers. Developers will try to pass the fee to the landowners in the form of lower land prices, in the following market conditions: demand for housing is elastic or the supply inelastic, thus making it difficult to pass the fee to the homebuyers. However, it is often the case that landowners would hold out if they receive a low price for their land and hence, any shifting back of tax could result in shortage in land supply.

2.6.1 Empirical Evidence on Incidence of Land Based Tools

Much of the empirical literature on land based tools attempts to establish the extent of increase in house prices following the levying of impact fees. This literature also assumes the existence of competitive markets. Empirical studies from the U.S. show that an increase in impact fees by a dollar results in an increase in house prices by greater than one dollar – a phenomenon known as "over-shifting" (Burge 2008). This may be attributed to "demand driven willingness" to pay a higher price because impact fees offset future tax liabilities and provide infrastructure (ibid.). The empirical literature is also concerned with the differential effects of impact fees on different housing sub-markets. Ihlanfeldt and Shaughnessy (2004), who endorse the 'new view' pioneered by Yinger (1998), wherein benefits to new homebuyers from the infrastructure provided are capitalized into their house prices, show that a dollar increase in impact fees leads to an increase in new and existing house prices by about $1.60 and a decline in land prices by approximately a dollar. Thus there is some evidence of the burden being passed back to landowners.

2.6.2 Learning for India

The recent trends in India's urbanization show that suburbanization is on the rise (Lall 2012). As a result, new development is happening at the periphery of cities. This would necessitate the introduction of land based tools that could finance infrastructure provision in the peri-urban areas. Hence, there is a need for studying the implications of land based fiscal tools such as impact fees that are already in use in other countries.

Prud'homme (2007), while proposing the introduction of development charges for funding infrastructure in Mumbai, argues that since the development charges are taken from the land rent, they do not lead to increase in house prices. However in India, urban land markets are less competitive – especially in highly urbanized areas. There is a large unmet demand for housing especially at the lower income segment and mobility of potential homebuyers is constrained. There is a high chance that any land based fiscal instrument will be pushed forward to the homebuyers resulting in pushing up house prices. This will present a biting constraint for housing demand especially for the lower end homebuyers who are already resource starved. In order to mitigate the adverse effects of land based tools on the poor, it is necessary that first the regulatory constraints are reformed to make urban land market more competitive and strategies such as targeted housing subsidies are devised.

There is an urgent need for raising finances for infrastructure improvements. In that context land based fiscal tools have a role to play. However in designing such fiscal regimes incidence of fiscal measure, its distributional impact and possibilities of avoidance have to be evaluated.

Chapter III

3 The Historical Roots of Land Based Fiscal Tools

3.1 Legacy of Evolution in US and UK

Conceptually, most of the land based fiscal tools have their roots in two strong propositions put forward in the 19th and 20th Century in US and UK respectively. The former essentially stated that landowners have no right to the rent as it is not a result of his efforts, and therefore the rent could be entirely appropriated by the state. Whereas the latter stated that landowner has no intrinsic right to development value, it has to be assigned by the state through plan-led process and the landowner should therefore pay development charge to the state. Since present day land based fiscal tools (except Impact Fees) essentially belong to one of these roots they are discussed in some details below.

3.2 Henry George

Henry George an American political scientist put forward his theory in his book "Progress and Poverty" first published in 1877. (George, H. 1877) His main thesis could be stated as follows.

- Surplus generated in the process of production is distributed as Rent, Wages and Return in respect of Land, Labour and Capital.
- However land being a privately owned monopoly, rent claims first charge on the surplus. Wages and Return therefore do not grow in proportion with production.
- Value of land is not a result of the labour of the owner but of the community efforts. The rent must therefore be taxed fully; and that can be the only tax. This will ensure right wages and returns and help reduce poverty.
- Taxing land rent provides incentives for better use of land unlike other taxes on income or productions that prove to be disincentives.

However, he did not favour public ownership of land and argued that it is not necessary to purchase or confiscate private property in land. Let those who now hold land retain possession, if they want. They may buy and sell or bequeath it. Let them even continue to call it "their" land. 'We may safely leave them the shell, if we take the kernel.' It is not necessary to confiscate land only to confiscate rent. Taking rent for public use does not require that the state lease land; that would risk favouritism, collusion, and corruption. (ibid)

He further argued that the value of land expresses a monopoly, pure and simple. The value of a railroad or a telegraph line, or the price of gas or a patent medicine may partly express the cost of monopoly. But it also expresses the effort of labour and capital. On the other hand, the value of land does not include labour or capital at all. It expresses nothing but the advantage of appropriation. It is, in every respect, tailored for taxation. A tax on land (unless it exceeds actual rent) cannot check production in the slightest degree unlike taxes on commodities, or exchange, or capital, or any of the tools or processes of production. The value of land does not express the reward of production. It is not like the value of cattle, crops, buildings, or any of the things called personal property and improvements. Land value expresses the exchange value of monopoly. It is not in any way the creation of the individual who owns the land. It is created by the growth of the community. Hence, the community can take it all without reducing the incentive to improvement, and without decreasing the production of wealth. Taking the entire rent in taxes will not reduce the wages of labour or the reward of capital one iota. Nor will it increase the price of a single commodity. It will not make production more difficult in any way. (ibid)

Neither the mainstream economists nor the Marxists accepted George's argument. Nowhere entire land rent is taxed and nowhere that is the only tax. However countries like New Zealand, Australia, and Taiwan do follow land value or site value taxation; and some differentially tax land at higher rate than that of improvements. Land value increases on account of planned development and infrastructure improvement came to be called as 'unearned income' in UK. Attempts were made to tax such land value increases or 'betterment' and became a tax base under the Town and Country Planning Act 1909. (Booth. 2012)

3.3 Uthwatt Committee[1]

The English Town and Country Planning Acts of 1909 and 1932 enabled preparation of improvement schemes and betterment levy that would exact a part of betterment. When land was compulsorily acquired or development permission denied landowners demanded compensation at the market rate. The amount of compensation demanded became a matter of concern in the post World War I period. A committee of experts on 'Compensation and Betterment' was appointed in 1941 under the chairmanship of Justice Uthwatt. The report of the committee submitted in 1942 came to be called as Uthwatt Report.

Town and Country Planning Act 1932 placed a liability on local authorities to compensate landowners for the deprivation of development value. This led Uthwatt to articulate the principle of floating land value. Development value "floats" over all land. When permission is granted to develop a particular part, the development value settles on it in full. Uthwatt stated that wisely imposed planning control does not diminish the total sum of land values "but merely redistributes them". But when paying compensation for individual pieces of a large compulsorily acquired area, the probabilities of a part being developed exceed the possibilities and so the value of individual pieces of land taken in aggregate exceeds the floating value.

The indefinite liability of planning authorities to pay compensation if they forbade development was identified by Uthwatt as unquestionably the greatest obstacle to really effective planning. And it was the potential for over-valuation rather than principle of compensation, which was the problem.

As a solution Uthwatt proposed that for undeveloped land outside the towns there would be a prohibition on all development of undeveloped land outside town areas without the consent of the Central Planning Authority. Compensation for loss of development value would be paid from a pot representing the fair value to the State of development rights as a whole. It would be distributed according to the development value of the various holdings. Where lands were to be developed either publicly or privately, the owner's interest would be compulsorily acquired for its value, as it stood. As development value had already been paid there would be no development value paid on acquisition. If the land were required for a private development a lease would be granted for a period chosen by reference to the nature of the development. It would be a type of building lease with an obligation to develop, enforceable by forfeiture if the development were not carried out. Personal residential development was to be an exception; there would be no compulsory acquisition, but a license granted for the erection of a house. (Uthwatt exempted the areas within towns from this principle, as redevelopment of war-damaged areas was the immediate concern).

Betterment meant the increase in value of land arising from central or local government action. The Committee traced an impressive line of statutes dating from 1427, which recovered some proportion of value increase attributable to public actions. These included the Town Planning Acts 1909 and 1932, which extended recovery to the effects of planning Schemes. Under the

[1] This is largely based on "The Uthwatt Report" David Brock Mills and Reeve Breifing Note 2010

1932 Act, 75% of betterment could be recovered by local authorities and in Parliamentary debates, the principle had been accepted even by opponents. However, for various reasons, including the difficulty of identifying just the betterment element, it had not worked well and little betterment had been recovered. So Uthwatt recommended cutting the Gordian knot and obtaining a fixed proportion of the increase in value, whatever the cause. There would be a periodic levy on annual increases in annual site values. It would work like this. The annual site value of all developed land would be ascertained following the passing of the legislation. There would be a periodic revaluation, every five years. The increase would be subject to 75% levy in each of the following five years. It is important to note that the value being ascertained is annual site value not capital value.

Recommendations of the Uthwatt Committee were translated into Town and Country Planning Legislation1947 that became effective on July 1, 1948. After July 1, 1948, ownership of land carried with it nothing more than the bare right of to go on using it for its existing purposes. The owner had no right to develop it, that is to say, he has no right to build upon it and no right to change its use. A land owner selling his land could get (at least in theory) only its existing use value, because whatever development value the land had was expropriated by the state.

The financial provisions of the 1947 Act were:

- To provide for levying by a new body, a Central Land Board, of development charges payable on the carrying out of any kind of development
- To expropriate for the state the development value in all land and, in consequence, to enable landowners to make claims on a Pound Sterling 300 m fund for the loss of value of their land.

However both these financial provisions were undone by the subsequent legislation in 1953 and 1954. (Brock, D 2010 and Heap, D. 1973)

There were two subsequent efforts in 1965 and 1976 but both did not succeed. British planning till recently believed that development rights and values are nationalized and 'planning gains' that occur on grant of development permission can be charged.

Chapter IV

4 International Experience

4.1 Impact Fees in North America

USA followed a model of raising finances for capital investment for urban infrastructure through Municipal Bonds – both general obligation and revenue. Debt financing of infrastructure addressed requirement of indivisible or lumpy investments and also ensured inter-generation equity. The servicing of these bonds was by property taxes and user fees. Property tax when well administered could capture the land value gains occurring due to infrastructure provision. However by 1970s this model came under stress and Impact Fees were introduced in the USA in 1970s and became increasingly popular by the 1980s (Zegras 2003). The rise of impact fees in the USA may be attributed to shrinking federal funding to the states and local governments, increasing suburbanization, difficulties faced by the government in meeting the demands for new services, and reluctance of existing taxpayers to contribute to providing services to new development through property taxes. (Bauman and Ethier 1987) Impact Fees were first introduced then to make growth pay for itself. Impact fees, variously known as infrastructure charges or development impact fees, are one-time charges levied on developers for new development in order to cover the cost of providing infrastructure in the areas where the development is taking place. Impact fees were first introduced in the U.S. and continue to be widely used there. The American Planning Association (1997) issued policy guidelines for the use of impact fees. The guidelines expressly state that impact fees are levied to finance only the new infrastructure services related to the needs of new development; they cannot be used to fund any infrastructure backlog or for the operation and maintenance of infrastructure services. The guidelines also assert "*Impact fees should only be utilized when a connection can be made between the impact of new development and the need for new infrastructure to accommodate that development.*" (These guidelines are reproduced in Annex 1 and the Impact Fee Standards are shown in Box 1). Impact Fees when initially introduced were legally challenged. The US Courts then proposed a "Rational Nexus" test for the legal acceptance of Impact Fees. (Stroud, Nancy 1988) Thus, the existence of a "rational nexus between the fee and the needs created by development..." is crucial for justifying an impact fee. Further the guidelines require community wide capital improvement planning, which chart out the long term infrastructure investments and maintenance, to be a necessary precondition for levying impact fees. This would ensure that the fees "are not used to finance improvements that are legitimately within the purview of the local government..." Impact fees are used for the provision of basic infrastructure facilities such as water and sewer systems, roads, schools, among others (Carrion and Libby 2004). Nelson and Moody (2003) found in their study that, at minimum, impact fees are not a drag on local economies and at most, impact fees are the grease that helps sustain job growth in the local economy.

4.1.1 Florida, USA

Impact fees have been in use in states that have areas of high growth (Burge and Ihlanfeldt 2007). They have been used to a moderate extent in the states of Arizona, Colorado, Georgia, Illinois, North Carolina, New Mexico, Oregon, and Washington whereas their use in California, Maryland, and Florida is prolific (ibid.). Florida, due to its rapid population growth rates and new development along the coastlines (Jeong 2006), was one of the first states to resort to impact fees.

Impact fees were first introduced in Florida in Broward County in 1977 (ibid.). Unlike other states, impact fees in Florida are levied and administered at the county level. Initially there were some apprehensions regarding the legality of impact fees as instruments for providing infrastructure services. However, several court judgments backing the use of impact fees gave them the required legitimacy, and they were then adopted by many more counties (ibid.).

Box 1: Imapct Fee Standards

- The imposition of a fee must be rationally linked (the "rational nexus") to an impact created by a particular development and the demonstrated need for related capital improvements pursuant to a capital improvement plan and program.
- Some benefit must accrue to the development as a result of the payment of a fee.
- The amount of the fee must be a proportionate fair share of the costs of the improvements made necessary by the development and must not exceed the cost of the improvements.
- A fee cannot be imposed to address existing deficiencies except where they are exacerbated by new development.
- Funds received under such a program must be segregated from the general fund and used solely for the purposes for which the fee is established.
- The fees collected must be encumbered or expended within a reasonable timeframe to ensure that needed improvements are implemented.
- The fee assessed cannot exceed the cost of the improvements, and credits must be given for outside funding sources (such as federal and state grants, developer initiated improvements for impacts related to new development, etc.) and local tax payments, which fund capital improvements, for example.
- The fee cannot be used to cover normal operation and maintenance or personnel costs, but must be used for capital improvements, or under some linkage programs, affordable housing, job training, child care, etc.
- The fee established for specific capital improvements should be reviewed at least every two years to determine whether an adjustment is required, and similarly the capital improvement plan and budget should be reviewed at least every 5 to 8 years.
- Provisions must be included in the ordinance to permit refunds for projects that are not constructed, since no impact will have manifested.
- Impact fee payments are typically required to be made as a condition of approval of the development, either at the time the building or occupancy permit is issued.

Currently, 40 out of 67 counties in Florida levy impact fees. Impact fees are changed fairly regularly as more services are brought within their ambit or when fees on a specific service are revised upwards (ibid.). Burge and Ihlanfeldt (2007) find that impact fees in Florida are set below the marginal cost level. They also find that there is a wide variation in impact fees within and among counties. For instance, in 1991, the median of the total impact fees charged for a 1500 sq. ft single family dwelling was $419 and the range was between $6 and $3483 (Florida Advisory Council 1991 as cited in Been 2005).

The long engagement with impact fees has made Florida a fertile ground for research regarding the effects of impact fees on different attributes such as supply of affordable housing (Burge and Ihlanfeldt 2006), house prices (Ihlanfeldt and Shaughnessy 2004), price of undeveloped land

(Burge 2012), among others.

4.1.2 Canada

In Canada Impact fees are also known as Development Cost Charges and lot levies (Slack and Bird 1991). They were implemented due to financial constraints faced by municipalities and the consensus that "growth should pay for itself" (Slack 1994). They were also implemented to avoid existing residents being burdened of paying increased property taxes (Skaburskis and Tomalty 2000). They are levied for different land uses such as residential, commercial, industrial and institutional. Municipalities in all the provinces have used them. (Slack 1994) The charges were introduced through a separate legislation in the province of Ontario whereas in other provinces they have been included within the planning or municipal acts or have been introduced as government policy (ibid.).

In British Columbia, development cost charges are leviable where development leads to new capital cost burdens on the municipal governments and are placed in a reserve fund used to recover capital costs that result from the development (Slack and Bird 1991). Various considerations determine the development cost charges, which may differ for different areas. The Development Cost Charges need to be approved by the provincial inspector of municipalities (ibid.). In Ontario, development charges have been levied since 1950s. Municipalities levied development charges on developers in order to be able to finance off-site services. There was much contention between developers and the municipal authorities regarding the manner and extent of development cost charges. While developers preferred the marginal cost or site specific approach for determining development cost charges, municipalities argued for an average cost pricing method (Tomalty and Skaburskis 1997). The Development Charges Act of 1989 attempted to resolve these conflicts and bring about uniformity and predictability in the application of development charges throughout the different municipalities. The Act upheld the position of the municipalities by allowing the average cost mechanism and thus curtailed site specific negotiations between the developers and municipal authorities (ibid.). The Act permitted all municipalities to levy charges on both hard and soft services, recovering 100 percent of hard service costs and lower proportions of the costs for soft services (ibid.).[2] Development charges levied differ considerably across municipalities in Ontario but are based on the dwelling characteristics. Development Charges Act 1997 of Ontario Canada enabled municipalities to decide on levying development charges and also laid down a transparent process of determining the development charges. This process is shown in Figure 6.

[2] Hard services include water, sewerage, storm, road and utility infrastructure whereas soft services refer to community centers, police stations, libraries etc (Bailey 1990)

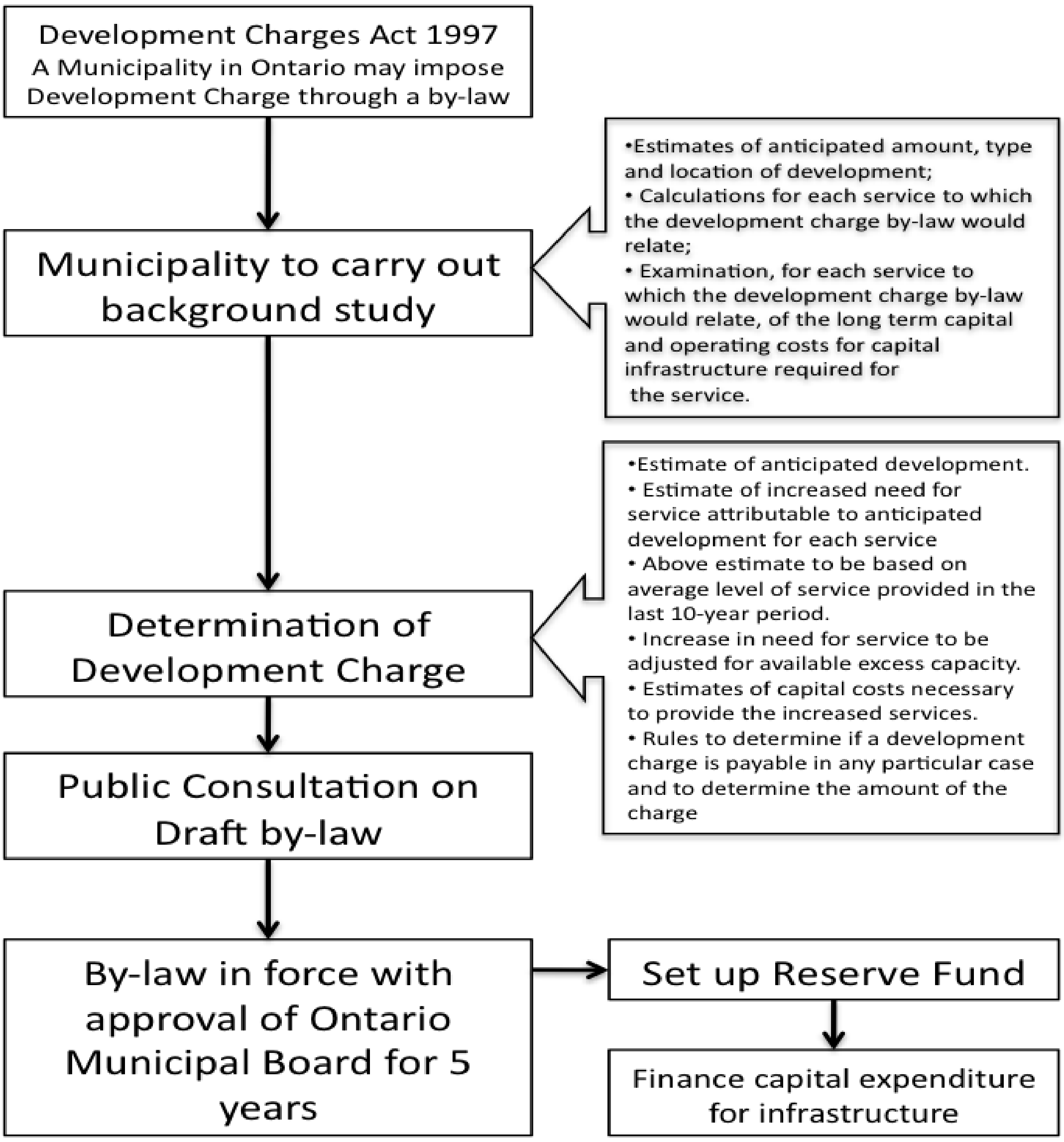

Figure 6: Process of Designing Development Charge Regime

4.1.3 Conclusion

The use of impact fees has been prolific in North America but has not spread to other countries, with the exception of Chile. One of the main reasons for this is that the system of Impact Fees that has evolved in the US on account of the 'rational nexus' test is rather sophisticated. The main components of the system are;

- An enabling legislation that permits local municipalities to have an ordinance about levy of Impact Fees and lays down the procedure to be followed in adopting an Impact Fee ordinance.
- State authorities laying down manuals and technical guidance to be followed by the municipalities in preparing ordinance. The practice of preparing capital improvement plan in conjunction with city plans has been found useful in this regard.
- Legal requirement for public consultation prior to adoption of ordinance
- Separating Impact Fees receipts from the general fund and ensuring the use of impact fees for purpose for which they are collected and making provisions for refund of fees

that remain unused after ten years. (Maine State Planning Office 2003, City of Austin, Texas; Austin Water Utility 2007)

Applying Impact Fees in India, similar to those applied in North America: would face many challenges. (World Bank 2013) Firstly, the existing deficit in infrastructure services is so severe that isolating fiscal revenues only for meeting incremental needs of new development would be both conceptually and operationally difficult; secondly the practice of preparing capital improvement plans in conjunction with other plans for expected growth has not yet taken roots in Indian urban management. (JnNURM attempted to introduce capital investment plans as parts of City Development Plans. However such practices have not yet become part of the mainstream); thirdly most Indian cities have about 40 percent of their people living in slums. Any impact fees charged on new development would increase house prices and would adversely affect lower income groups, and finally many cities and their peripheries have substantial unauthorised development. If that continues there would be no revenues from impact fees but such fees would be a cause for increased scale of unauthorised growth. (Phatak 2009)

4.2 TDRs in US

Like in UK, some of the US cities also faced the challenge of compensating landowners who were subjected to restrictions on development of their land on account of environmental considerations or for heritage conservation. However unlike the Uthwatt Committee US cities devised a more market-oriented approach to the problem by way of Transfer of Development Rights or TDR. The Fifth Amendment to the U S Constitution reads, "… nor shall private property be taken for public use without just compensation," Traditionally a taking was defined as physical seizure of property by the state. However in 1922 U S Supreme Court ruled that excessive regulation might be so burdensome to a landowner, as to have same effect as an actual physical invasion thus establishing regulatory taking. Zoning regulations may fall under such regulatory taking. The zoning regulations for preservation of farmland or heritage structures are likely to be construed as regulatory taking and landowners could demand compensation. TDR programmes were devised to enable the market to pay such compensation, which would save the claims on municipal finances. In TDR programmes the sending areas are defined where restrictions are placed on development for preserving open spaces, agriculture, historical buildings and housing. The landowners in this area are allowed to sell their development rights that can be used in receiving areas with appropriate ratios with increased density / FAR. In some cases municipalities purchase such development rights to create a rights bank and then sell them when the market demand is appropriate. Thus the main purpose of TDRs in U S is that they are the instruments of preserving farmland or historical buildings and not as substantive fiscal tools. However as they help save municipal finances, they have limited fiscal benefits. (Hanley-Ford J. et.al. 2012)

As will be discussed later, the TDR programmes as have evolved in Mumbai are distinctly different from the U S programmes. However the criteria used for evaluating the TDR programme could be of wider application.

Effectiveness:	Depends upon the market for Development Rights. If there are no buyers the programme cannot succeed. To overcome the cyclical fluctuations in the market, planning authority could purchase the development rights to create a 'development right' bank. TDR is considered as more effective than zoning for the purposes of preservation as it establishes binding contracts as compared to zoning regulations that can be easily changed.
Efficiency:	The administrative costs are higher than the cost of traditional zoning administration as it involves defining sending and receiving areas, increased density in receiving areas, entering into contracts for

	preservation etc. However it saves costs of compensation and helps preservation objectives through market mechanism.
Equity:	Although landowners in sending areas are compensated for sacrificing their development rights, residents in receiving areas may feel subjected to costs of increased densities.
Manageability:	TDR programmes are complex to manage. It involves defining sending and receiving areas, density planning, deciding credit ratios for use of TDRs, managing TDR banks, tracking the preservation contracts.
Legitimacy and Political acceptability:	As TDR programme compensates landowners it is inherently politically acceptable. But associated zoning regulations if perceived to be very restrictive may face some resistance. Consensus building is therefore very important. (ibid.)

There is substantial professional and academic literature on design of TDR programmes as also about their effectiveness as public policy instruments. However, since TDRs are not directly a fiscal tool, above review is deemed to be adequate.

4.3 Planning Obligations and Community Infrastructure Levy in UK

4.3.1 Planning Obligations

The failure of comprehensive schemes for collection of betterment was one of the factors, in the early 1980s that stimulated levying of charges on developers. However the motivation was not purely fiscal. The general dissatisfaction with the then prevalent development control system also caused the move from regulatory to a negotiated style of development control. Planning Gain is a term used with two different meanings. It can denote the provision of facilities, which are an integral part of a development, but it could also mean 'benefits' which have little relationship with development but which are required by the local authority as the price of planning permission. (Cullingworth B. and Nadin V. 2006)

Planning Obligations are used in the UK under Section 106 of the 1990 Town and Country Planning Act. Their purpose has been to "make acceptable development which would otherwise be unacceptable in planning terms"[3]. These obligations can restrict development, require specific activities to be carried out in relation to the land, require monetary payments to help mitigate the impact of development, or require land to be used in a certain way.[4] If there is a new development taking place, the planning obligations may be used to make the developer contribute, either in cash or kind, for the required additional infrastructure, community services, and facilities. Planning obligations may be made through negotiations between the developer and the local planning authority or as a unilateral undertaking by the developer. Government policy in respect of planning obligations was set out in DOE Circular 1/97. This requires fair, open and reasonable negotiation of planning obligations, so that the obligations enhance the quality of development and enable proposals to go ahead which might otherwise be refused. The Circular advised that the local authority should not seek a contribution through a planning obligation unless it is:

- Necessary;
- Relevant to planning;
- Directly related to the proposed development;
- Fairly and reasonably related in scale and kind to the proposed development; and
- Reasonable in all other respects.

[3] https://www.canterbury.gov.uk/planning/planning-obligations/ (Accessed on 21 August 2013).
[4] https://www.canterbury.gov.uk/planning/planning-obligations/ (Accessed on 21 August 2013)..

This policy has become known as the 'Necessity Test'. (ODPM 2004) The similarity of 'Necessity Test' and 'Rational Nexus' in case of Impact Fee in US is noteworthy.

Since 2003, there have been three reports assessing the performance of planning obligations in the UK. According to the latest report, the value of planning obligations agreed by the local planning authorities in the UK has increased from £1.9billion in 2003-04 to £4.9billion in 2007-08. Approximately half of the planning obligations in 2007-08 were for new affordable housing. Through analysis of different case studies, the report found that delivery was in accordance with what was negotiated.

However there was virtual unanimity about the manifest deficiencies of the planning obligations, 'variously described as opaque, slow, unfair, complex and reactive'. (Cullingworth B. and Nadin V. 2004). A consultative document published by the ODPM in 2003 (ODPM 2003) observed that the current system has been criticised for:

- *slowness:*
  since protracted negotiations over section 106 agreements can delay development and are costly in terms of staff salaries and legal fees.
- *unpredictability:*
  since developers are unclear about the size and purpose of obligations they are likely to be asked for.
- *lack of openness:*
  since obligations have been agreed in private and not published in the past, giving rise to suspicions that planning permission are bought and sold by developers and local authorities.
- *lack of accountability:*
  since there is uncertainty over how funds gathered by s106 agreements are spent.

The same document (OPDM 2003) therefore proposed reform in the system of planning obligations to achieve the following:

- *help deliver high quality, sustainable development that provides social, economic and environmental benefits to the community as a whole;*
- *continue to provide affordable housing as well as the facilities and infrastructure needed to accommodate the demands of new development;*
- *help deliver the physical investment needed to secure high and stable economic growth and higher productivity;*
- *be more transparent to all stakeholders in the planning process so that all can see what contributions are being secured though planning obligations;*
- *provide an effective mechanism for delivering desirable development without causing delays;*
- *not impose financial burdens on developers which in themselves deter desirable development; and*
- *be sufficiently flexible to reflect the circumstances of individual proposed developments.*

In order to achieve these objectives the document (OPDM 2003) proposed following principles for the reformed system:

Clarifying the relationship between contributions and development

Provided the legal test is met, planning obligations can contribute to a range of impacts, for example local public transport initiatives such as 'green travel plans', education, health services, flood defences, open spaces and affordable housing. This would bring policy in line with case law. This will provide greater clarity for local communities, developers and local planning authorities.

Providing greater transparency, predictability and accountability

The new policy could require local authorities to set out what contributions they are likely to seek through a planning obligation in their development plans. These policies should include:

- when the planning authority will seek contributions from developers;
- what factors will be taken into account when they consider the likely scale and form of negotiated contributions;
- when contributions could include commuted sums towards ongoing maintenance costs;
- where development will not normally be asked to make contributions via a planning obligation; and
- how the contributions will be allocated.

Promoting flexibility to meet the needs of sustainable communities

With the developer's agreement, local planning authorities will be able to use planning obligations to secure on-going contributions (agreed at the outset, related to defined dates, events and triggers) where this will improve affordability or reduce risks to one or both parties. This will help ensure desirable development is not deterred and that local planning authorities are able to secure reasonable contributions.

The new policy could also encourage voluntary pooling of planning obligation contributions. Pooled contributions could be used across two or more authorities. This approach could be used to make the best use of available contributions to a range of areas, including affordable housing and local transport infrastructure. Local planning authorities should also consider preparing joint Local Development Documents (LDDs) where there are significant regional issues that could be addressed though pooling.

Reducing delays

Clearer local planning obligations policies in development plans about the contributions that could be sought could play a significant role in reducing the delays sometimes associated with the negotiation of planning obligations. (ibid)

Planning obligations have been criticized for exacerbating the delays in planning permissions. According to Barker (2006: 122), 45 percent of the cases took longer than six months to complete and 11 percent took more than a year.

The consultative document, concerned about the delays that occur in the negotiated planning obligations proposed a new optional planning charge. The new charge would be used by local planning authorities to secure the same range of contributions as the established system of negotiated Section 106 agreements, but the amount would be set in advance by the local planning authority. The principles of new optional charge would be:

- Providing greater transparency, predictability and accountability
- Promoting flexibility to meet the needs of sustainable communities
- Reducing delays (ODPM 2004)

It would be noted that the planning obligations that began as discretionary exactions by planning authorities in 1990, came closer to American Impact Fees by the circular 1/97 and the optional planning charge made it a benefit tax, which finally culminated in introduction of Community Infrastructure Levy in 2010 as discussed later.

4.3.2 Planning Gain Supplement

The Barker Review of Housing Supply recommended the introduction of a planning gain supplement in order to "extract some of the windfall gain that accrues to landowners from the sale of their land for residential development" (Barker 2004a: 87). The planning gain supplement was to be set as a proportion of the value of development land in the concerned local authority and was to be levied at the time of granting development permission (Barker 2004b: 25). The incidence of the planning gain supplement was to fall on the landowner in the form of lower price bids for lands (Barker 2004a). The introduction of the planning gain supplement was to be accompanied by a reduction in the use of planning obligations, which, according to the Review, were causing considerable delays in development (ibid.). It was also suggested that in order to compensate the local planning authorities for the loss in revenues they would face following a reduction in planning obligations, some proportion of the development gains generated from the planning gain supplements should be given directly to them.

However, after much consideration, in 2007 the proposal of introducing the planning gain supplement was abandoned (Barker 2008).

4.3.3 Community Infrastructure Levy[5]

The Planning Act, 2008 in its Part 11 provided for the local authorities to charge Community Infrastructure Levy (CIL). Accordingly the CIL was introduced in the UK in April 2010 through the Community Infrastructure Levy Regulations 2010. CIL is charged by local authorities on new development in their area in order to fund the infrastructure needs that arise as a result of the development. Revenues raised in this manner should be used to fund only the provision of new infrastructure and not for filling in existing shortfalls. If crucial to support new development, they may also be used for increasing capacity of existing infrastructure. The levy is charged by the local councils such as district and metropolitan councils, London borough councils, and is collected by the authority that grants development permission. It is levied on an individual or organization (such as the developer), or the landowner since he is the ultimate beneficiary of the development. The rates of the levy are to be set after public consultation with the community as well as the developers, thus bringing about transparency in the process. Moreover, the rates should be set at a level such that they do not adversely impact the incentive to develop in that area. Once the rates are determined, they should be explicitly stated in a charging schedule, bringing about predictability and certainty to the developers regarding their contributions. Since this levy is primarily concerned with raising funds from new development rather than addressing the acceptability, in planning terms, of new development, planning obligations will continue to be used alongside the community infrastructure levy. The following precautions have been taken to ensure that the two are complementary:

- Making it statutory for planning obligations to satisfy the policy tests listed in the government circular.
- Ensuring that there is no overlap in the local use of planning obligations and the levy
- Pooled contributions from planning obligations for infrastructure that could be funded by the levy should be limited.
-

[5] This note is primarily based on information provided by the Communities and Local Government (UK) in the following report: http://www.communities.gov.uk/documents/planningandbuilding/pdf/1897278.pdf (Accessed on 12.10.2012)

The planning obligations will cease to operate in 2014. It is estimated that the levy could raise an additional £1billion for infrastructure funding by 2016.

According to the CIL Regulations, in setting the charging schedule, (charge is to be expressed in terms of 'pounds per square meter of development'), charging authority must aim to strike what appears to the charging authority to be an appropriate balance between—

> (a) the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and
> (b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.

The CIL Regulations also stipulate an elaborate procedure of publication of draft charging schedule and public consultation before the charging schedule is approved for implementation. (CIL Regulations 2010)

It would be pertinent to note the evolution of land based fiscal tools in UK. The fiscal provisions in the Town and Country Planning Act 1947 that were based on the Uthwatt Committee's recommendations regarding development charge and compensation for loss of development rights had a very short life. However by 1990 through negotiated development (Section 106 of the Town and Country Planning Act 1990) developers were obliged to carry out certain activities or make monetary contributions. However, by 2004 many limitations of this system were exposed – particularly the uncertain and unpredictable nature of obligations and considerable delays involved. In 2005 'necessity test' was prescribed to decide the scope of the planning obligations. This brought it closer to the American system of Impact Fees. The Planning Act 2008 and the Community Infrastructure Levy finally introduced what could be termed as a benefit tax.

4.4 Experience of Other Countries

4.4.1 Land Value Tax

With direct or indirect influence of Henry George, many countries have adopted land value tax (LVT) in their urban areas. However nowhere in the world neither the entire rent is taxed nor is LVT the only tax. The experience is summarized below:

USA[6]

Land value tax was introduced in the USA in 1913. It has generally been levied at the local level as a two-rate tax. In a two-rate tax there are distinct tax rates on the value of land and the value of improvements, typically with the rates for the former exceeded the rates for the latter. It was first implemented in Pittsburgh and Scranton in Pennsylvania when it was felt that landowners were keeping lands out of development for making speculative gains. Thereafter, two-rate taxes were adopted by different towns, cities, and school districts. In 2001, the two-rate tax in Pittsburgh was repealed following inaccurate assessments of land values and ineffective rate setting that resulted in large increases in the tax bills of homeowners. As of 2008, sixteen Pennsylvania communities continued to levy the two-rate tax albeit with vastly divergent tax rates.

In 1963, the two-rate property tax was introduced at the state level in Hawaii. However, it met with severe criticism from the local population who blamed the construction boom in Hawaii

[6] This is based on Dye and England (2010).

that took place in the 1960s and 1970s, on the tax. As a result, the tax was repealed in 1977. In 2002-03, two local governments in Virginia were permitted, through state legislation, to levy the two-rate property tax. However, the tax is yet to be introduced in these cities. In Connecticut, tax reforms that could allow for land value taxation are on the anvil.

Australia[7]

The land tax was first introduced in Victoria in 1877 and was thereafter adopted in other parts of the country. Initially, the rental value of property was set as the tax base. However, it was later changed to an unimproved capital value system of rating since the earlier regime was creating disincentives for improvements. Queensland was the first to adopt the unimproved capital value as a tax base. In 1911, the Federal government of Australia enacted the Land Tax Act, based on the unimproved capital value. It was repealed in 1952 since it did not succeed in providing additional tax base to local governments or in breaking up large estates (Dye and England 2010). Land value taxation is still present in some form in all the Australian states. While some states levy the tax on the value of unimproved land, others levy it on the value of improved land. It may be characterized as being highly progressive in nature; with larger land holdings being charged higher tax rates. Granting exemptions of various kinds, notably, setting a floor limit below, which no tax is, payable and exempting owner occupied residential land, has resulted in erosion in the tax base. In some states, local authorities charge differential rates on residential, rural, commercial, and industrial land. These practices and exemptions have resulted in serious flaws in the land value tax system in the country.

Conclusion

Land value tax has been adopted as a variation of property tax with higher rate for land than that of improvements. Moreover, political opposition influenced by strong lobby of large landowners has often prevented the use of land value tax. In taxation of land is seen as the 'state' revenue as distinct from the property tax, which is reserved for the municipalities. As property tax is not included in the scope of the present study land value tax is therefore not further explored.

4.4.2 Impact Fee in Chile[8]

So far, Chile has been the only developing country to levy impact fees. Impact fees were initially introduced in two municipalities in the Santiago Metropolitan Area in Chile in the early 1990s. The impact fees were levied on developers in order to finance road connections to other urban areas. This was done owing to pressures for real estate development accompanied by limited resources for financing road connectivity to the rest of the city. Impact fees were later introduced in the Chacabuco Province, a rapidly growing area lying to the north of the Santiago Metropolitan Area. Real estate development in this area was bound to have significant impact on the surrounding road networks. The impact fee levied on the development was expected to cover majority of the cost for constructing the necessary highways and roads connecting the development area.

An evaluation of impact fees in Chile reveals that they have no legal basis in terms of legislation and do not demonstrate a clear link to the infrastructure financing sources. Moreover, the authorities that levy the transport impact fees do not take into account the environmental impact fees, which are also being levied on the same real estate projects. In the case of Chacabuco, there is a possibility that the impact fees would be passed on to homebuyers.

---

[7] Source: http://www.earthsharing.org.au/2006/09/15/land-value-taxation-in-australia/ (Accessed on 17.10.2012)

[8] This is based on Zegras (2003)

For better implementation of impact fees there is a need to establish a "legal guidance" to codify and homogenize the use of impact fees. Further, there is also the need to understand the relation of these fees to others such as environment impact fees and their distinction from other transport finance sources. Issues of incidence, and the possibilities of extending the fees to non residential uses also need to be resolved.

4.4.3 Sale of Development Rights: The Case of Sao Paulo

Certificate for Additional Construction Potential (CEPAC) is a tool that was created in 1995, aimed at providing the administration with funds to be used for public works through the sale of additional building rights to contractors and developers. A CEPAC can only be used within the boundaries of the Urban Operation (UO) for which they were issued (Sandroni, 2010, Siqueira 2012). An Urban Operation essentially means an area within the city with potential of attracting private investment and in need of infrastructure improvements and/or additions (Biderman et al, 2006). The idea behind UO is to provide incentives for private players to invest in a way that conforms to the overall plan of development for the area. Within the area of the UO, CEPACs are sold at auctions and the total amount of CEPACs that can be sold for a given UO is predetermined.

CEPACs were created in 1995, however, it was not until 2004 that they were put to use in two Urban Operations of Sao Paulo: Faria Lima and Agua Espraiada (Sandroni, 2010). The instrument was then over the years sold through a number of public and also private auctions. The private auctions are used as a means of settling bills due to suppliers in the form of CEPAC at a determined price; each supplier is transferred CEPACs in proportion to their claim, if they accept it as a mode of payment (ibid.). Public auctions were used a number of times in both Faria Lima and Agua Espraiada over the years with mixed success. It is observed that the amount of money raised through the various auctions over the years has been variable depending upon various local factors and even extending to the global financial crisis. However, what is undisputed is the fact that the auction of CEPACs has shown the potential to be a substantial revenue source to cash strapped local governments.

4.4.4 Charges for Building Rights[9]

The instrument of charging for additional building rights or FSI are based on the separation of building rights from land ownership rights, which allows the public to recover the land value increment resulting from development rights over and above the baseline. Similar discourse took place in Italy, Spain, and UK. French legislation of 1975 sought to enhance land use control efficiency, reduce social inequalities and promote more citizens participation. It set FAR of 1 by right for most of France and 1.5 for Paris. Brazil initially found it difficult to legally accept the notion of separation of ownership of land from ownership of building rights. However eventually in 1988 it found place in the constitution. The charges now apply to any additional FAR above a common baseline as provided in the master plan.

4.4.5 Experience in Colombia

Innovation in land-based financing instruments is already underway in Colombia's largest cities, and there is much to learn from these cases. In fact, some of the land-based instruments used in Colombia are cited as innovative and successful in the international arena. However, in many cases, the application and implementation of these instruments has been beset by methodological ambiguity, unclear institutional roles and responsibilities, and a myriad of legal issues. Cities such as Bogotá, Cali, and Medellín have learned from their own experiences and adopted instruments that reflect their local context and experiences. However, the lessons from these experiences have not been widely or systematically shared across cities in Colombia.

[9] This section is largely based on Smolka M. O. (2013)

An overview of two land-based financing instruments is presented in the following paragraphs. These have been used in several Colombian cities and have been considered good practices worldwide: betterment fees (valorización) and land-value capture (plusvalía). The main characteristics of these tools as well as their key limitations are highlighted below.

Betterment levy (valorización): Colombia has a long history of using "betterment fees" or "valorización" to finance public infrastructure and urban development. This instrument has been used as an important source of local financing in Colombia since the 1920s. It has financed about 50 percent of road networks in Bogotá and has constituted up to 32 percent of the municipal income of Cali during its peak in the 1980s. In Bogotá alone, more than US$1.0 billion was collected from 1997 to 2007 to finance city streets and bridge improvement programmes. Colombia's betterment levies follow two methodologies, one based on Bogotá's model and one on Medellín's. The Bogotá model relies on calculating the benefit of an infrastructure project and charging commensurate levies. The Medellín model, which has also been used in cities such as Manizales and Bucaramanga, uses a dual appraisal approach, which relies on pre-assessment and post-assessment values to determine the value capture increment. In this model, the betterment plan is enacted first. This involves defining the financial and construction plan, identifying the properties that will benefit from the betterment and will be subject to levy and, finally, assessing these properties. To identify the properties that benefit from the infrastructure project, authorities look at proximity and accessibility to the project. Properties in a comparable area are also assessed to provide the hypothetical increase in values. These estimated changes in value are then used to create a map of changes in prices in the area of influence that is then used to distribute the betterment levy. To estimate the benefits of the project, a multidisciplinary team works together. Economic, transport road network, urban, and real estate studies are developed jointly to determine benefits in specific areas. Finally, the method of dividing the amount of levy to be paid by each party is determined.

While valorización continues to be an important tool to finance public works in an environment where public resources are limited, reliance on the instrument has declined since the 1990s to the point that, in some cases, it became an insignificant contributor to municipal finance. Between 1968 and 1978, municipal revenue from valorización declined by almost 50 percent in real terms. Between 1980 and 1990, municipal revenue from valorización fell from 15 percent of total municipal revenues to 5 percent. The importance of the betterment levy as a source of revenue in Bogotá and Cali fell even more precipitously. One reason for the declining use of valorización can be attributed to the difficulties faced during actual implementation. In recent years, the implementation processes in Bogotá of Agreement 180, the largest valorización package ever structured, has been plagued by implementation delays and accusations of a lack of transparency. Delays have been caused by a series of legal challenges to the a priori formulae used to estimate land-value gains from public investment, which often produced results at odds with actual market values. There has also been a large time gap between resource mobilization and actual implementation, where private landowners have paid far in advance for works that took too long to start. The use of valorización has also become less frequent as municipalities have gained access to alternative financial sources. (Case study of Bogota is presented in Box 2)

Value capture contribution (plusvalía): Value capture contribution (plusvalía) is based on capturing land value increases derived from land use changes linked to the introduction or updating of land-use norms or government-led investment. Unlike property tax, land-value capture tends to be more dynamic and linked to urban and social changes. Seventy percent of revenues from plusvalía is earmarked for social housing (vivienda de interes prioritario tipo I), and the remaining 30 percent is earmarked to support recreation, parks, public space and environmental protection.

While land-value capture in Colombia is often cited, as an international example of success, the use of this instrument has been limited to Bogotá and Pereira. Further, that the impact and overall revenue in Bogotá from this instrument has been marginal in relation to the size of the investment projects underway in the city. Additionally, the transaction costs associated with collecting plusvalía is high, often exceeding the actual revenues obtained.

Successful implementation of plusvalía has been undermined by methodological limitations and complex regulatory norms. As is the case with betterment levies, plusvalía suffers from the lack of a precise methodology for measuring changes in property prices. Currently, it is determined by actual norms (such as floor area ratio, number of floors, or zoning) in place when the property or the land was last acquired, as opposed to the real-time market value. Measuring plusvalía based on market price is not a difficult task for many Colombian cities where such information is available. A large number of decrees, laws, and legal instruments that apply to land use in Colombia is however a limiting factor. This regulatory complexity makes it difficult for homeowners and contractors to understand and can result in subjective interpretation and application of plusvalía. (Samad T. et al 2012)[10]

[10] For more extensive survey of practices in Latin American countries see Smolka M.O. (2013)

Box 2: Case Study of Valoizacion in Bogota, Colombia: Agreement 180 of 2005

Agreement 180 was the most-ambitious public works plan financed by valorización in Colombia. It levied a tax on real properties within the city boundaries that benefited from the implementation of public sector works. The agreement specified (1) a levy collection timeline; (2) a work plan for the public works that would be financed through the levy; and (3) related costs, including technical studies and designs, properties or lots needed to be acquired, and construction and administrative costs. This agreement also made clear that the source of such payments would be private properties inside the boundaries of the city that benefit from public works of general interest.

The most controversial aspects of the agreement were establishing the "zone of influence" and the methodology for calculating contributions. The zone of influence was determined as the area that would benefit from the works, taking into account factors such as (1) the socioeconomic conditions of the owners and (2) the physical characteristics and land uses of the properties or lots. The radius of influence was established at 2.0 kilometers for metropolitan works, 1.0 kilometer for zonal works, and 0.5 kilometer for local parks.

The payments or contributions for all properties subject to valorización were determined by an algorithm that incorporated plot size, the social strata (1–6) of residential units, the number of floors of the buildings, the land use or zoning, as well as distance from the works, among others. For example, in the case of sidewalk construction, a distribution of benefits is measured according to the size or front/facade of the buildings using a conversion factor ratio per meter of works. For works such as water and sewerage, which will have a uniform effect per meter of land in any point of the zone of influence, the conversion factor is obtained by dividing the total cost of the work by the number of square meters of area benefited. A "combined method" was also used, where the total cost of the work is distributed in proportion to 50 percent fronts and 50 percent in proportion to the areas of the properties benefited. Agreement 180 is worth more than US$1.13 billion. This amount is defined by Agreement 389 of 2009 that modified Agreement 180. Of this amount, US$1.09 billion correspond to infrastructure works and the remaining US$35.0 million in public space investment. The investment includes construction of 137 public works including pathways, intersections, pedestrian bridges, sidewalks, and parks. Specifically, the city will invest in 45 roads, 26 intersections (road bridges, tunnels, level crossings, or roundabouts), 31 pedestrian bridges, 19 sidewalks, and 16 new parks. Nearly 80 percent of the valorización was levied on residential properties, 13 percent on commercial properties, and less than one percent on industrial property. Contributions were collected locally, and depending on the amount to be paid, taxpayers could use several months to pay the entire cost. Agreement 180 was to be collected in four phases and cover four large groups of investments. In two-year phases starting in 2007, the collection process had been largely a success. However, the pace of construction had not been equivalent.

Construction in many cases started two years after payments were made and some projects had been caught in the middle of corruption scandals involving politicians and developers. The valorización process had been legally challenged many times and some works have been revised or canceled. As a result of these issues, the government had to pay back taxpayers, with interest, for all works that were not completed. Most of the Agreement 180 works are located in high-income areas. These residents, with the ability to pay, have benefited mainly along the corridor between downtown and the city's north. However, it is in the south that public investment is most needed. Local valorización is highly effective in areas of high income, emphasizing the social inequality existing in the city between poor families in the south and the rich in the north.

Chapter V

5 A Thematic Survey of Indian Practices

The empirical survey could have been presented state wise. However since the purpose of the study is to identify typical land based fiscal tools as they are practiced in various states, the findings are presented as a thematic survey by first identifying the types of fiscal tools in use and then observing the state-wide nuances.

5.1 Listing of Indian Practices

A large number of land based fiscal tools are in practice in various states and cities. Before presenting the state and city specific details a generic list of land-based tools is given below:

1. Urban Land Tax (LVT)
2. Tax on conversion of land use particularly from agriculture to non-agriculture
3. Land Value Increment Tax (LVIT) in the form of betterment levy in case of improvement schemes
4. LVIT in conjunction with Town Planning Schemes
5. LVIT in case of specific projects
6. Area based development charges
7. Value based development charge
8. Transfer of Development Rights and incentive FSI
9. Premium on relaxation of rules or additional FSI
10. Charges for regularization of unauthorised development

The above fiscal tools as they prevail mainly in Tamil Nadu, Andhra Pradesh, Karnataka, Gujarat and Maharashtra are described below based on available resources and brief personal discussion with state officials. (Mohanty P. 2003, Nallathiga R. 2010) Examples from other states are quoted wherever available.

It would be pertinent to note the Constitutional context before considering these fiscal tools in further details. List II – State List included in the Seventh Schedule of the Constitution has following entries related to land:

- Land, that is to say, rights in or over land, land tenures including the relation of land and tenant, and the collection of rents, transfer and alienation of agricultural land; land improvement and agricultural loans; colonization (entry 18)
- Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and record of rights, and alienation of revenues (entry 45)
- Taxes on lands and buildings (entry 49)

Schedule Twelve to the Constitution indicates the functions of the municipalities. However powers and particularly those in respect of taxation are not directly devolved on to municipalities. In fact article 243X of the Constitution states "The legislature of a state may, by law

- authorize a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedures and subject to such law and
- assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits."

Municipalities are typically authorized to levy land-based taxes and fees under the municipal legislation (property taxes and building permit fees) and town planning legislation (development charge). In addition urban development authorities are also endowed to levy betterment charge or development charge.

However, the intrinsic power to tax land is retained by the state governments.

5.2 Land Value Tax (LVT)

Land records, valuation, assessment and revenue collection is perhaps the oldest governance system in India. In most states the systems are administered for rural agricultural areas and non-agricultural uses are treated as exceptions.

5.2.1 Maharashtra

In case of Maharashtra tax related aspects of land are governed by the Maharashtra Land Revenue Code, 1966. (Maharashtra 1966). The principal provisions of the Code related to taxation are as follows:

- The land revenue leviable on any land under the provisions of this Code shall be assessed, or shall be deemed to have been assessed, as the case may be, with reference to the use of the land, -(a) for the purpose of agriculture, (b) for the purpose of residence, (c) for the purpose of industry, (d) for the purpose of commerce, (e) for any other purpose. (Section 67)
- The fixing of the assessment under the provisions of this Code shall be strictly limited to the assessment of the ordinary land revenue, and shall not operate as a bar to the levy of any cess which it shall be lawful for the State Government to impose under the provisions of any law for the time being in force for purposes of local improvement, such as schools, village and district roads, bridges, tanks, wells, accommodation for travellers, and the like (section 71)

Land Revenue legislation typically requires prior permission for instituting non-agricultural use and subsequently enables levy of land revenue at higher rate. The non-agricultural land assessment is levied in both rural and urban areas. The procedure for determining the non-agricultural assessment as laid down in the Maharashtra Land Revenue Code is as follows:

- An urban area is divided into blocks of having similar market values.
- A standard rate that does not exceed 3 percent of market value is decided for each block
- The use wise variation in rate is determined as follows:
  - Residential use – equal to standard rate
  - Industrial use – One and a half times the standard rate
  - Commercial use – Three times the standard rate
- The standard rate once determined is to be valid for ten years and can be revised thereafter.

These seem to be typical provisions prevailing in most states. The revenue generated through NA Assessment is essentially seen as the revenue source of the state government and is not very buoyant. Whether such revenues are devolved on to the ULBs and whether State Finance Commissions make specific recommendations in this regard apparently varies across states.

5.2.2 Tamil Nadu

Tamil Nadu, however, has a distinct legislation for taxing of urban land. The Tamil Nadu Urban Land Tax Act was enacted with a view to augment the resources of the State to carry out the slum clearance scheme, for housing scheme relating to low income group in the state and to rationalise the scheme of taxation of land in urban areas put to non-agricultural use and to secure a return commensurate with the pronounced increase in land values. The Act came into force in the City of Chennai from the 1st July 1963. The Act was struck down by the Madras High Court on two occasions. The validity of the Act was upheld by the Supreme Court and normal collections were resumed from 1969 onwards.

The urban land tax payable under this Act in respect of any urban land is in lieu of

- the ryotwari assessment ;
- the assessment levied under the (Tamil Nadu Inams (Assessment) Act, 1951Tamil Nadu Act XL of1956) or under the Andhra Inams (Assessment) Act, 1955 Andhra Act XVII of 1955);
- the ground rent;
- the quit rent;
- any amount due under the Madras City Land Revenue Act, 1851 (Central Act XII of i851).

The applicable rates of tax are shown in Table 1:

URBAN LAND TAX WITH EFFECT FROM 1ST JULY 1975 (CHENNAI, COIMBATORE, SALEM, TIRUCHIRAPPALLI AND MADURAI CITIES)

Extent of lands	Rate of Tax
First two grounds	Nil
Where the aggregate extent exceeds 2 grounds, but does not exceed 5 grounds	0.7 percent of market value
Where the aggregate extent exceeds 5 grounds, but does not exceed 10 grounds	One percent of market value
Where the aggregate extent exceeds 10 grounds, but does not exceed 20 grounds	1.5 percent of market value
Where the aggregate extent exceeds 20 grounds	2 percent of market value

Note: Ground is equal to 2400 sq.ft.

Table 1:Tamil Nadu Urban Land Tax

The market value once determined is to be valid for 10 years. The Urban Land Tax was assessed on the market value of land as on 1st July 1963 for the assessment up to June 1975 and the basis of market value of land as on 1st July 1975 in respect of Chennai City. In other areas the rate of tax on the basis of market value as on 1.7.1971. Tamil Nadu Urban Land Tax Act 1/1992 rationalized the levy of tax uniformly on the basis of market value prevailing on the 1st July 1981, in all the urban areas of Chennai, Madurai, Coimbatore, Tiruchirappalli, Salem and Tirunelveli and new areas of 23 Municipalities. However Government have directed that in all such cases where the revised Urban Land Tax was levied based on the market value as on 1st July 1981 exceeds 5 times that of the tax already levied based on the market value as on 1.7.1971, the revised urban land tax shall be limited to 5 times of the existing tax now levied on the Urban Land as per the market value as on 1st July 1971 vide G.O.Ms.No.578, Revenue, Dated: 20.5.1992. (Tamil Nadu 1992)

This shows that the fiscal tool that is potentially buoyant could not be used in that manner. Moreover whether the revenue was seen as that of state government alone or has been a subject of devolution to municipalities as recommended by the State Finance Commission is not very clear. The SFC Report does not explicitly recommend devolution of the revenue from Urban Land Tax to the local authorities. (Tamil Nadu 2006)

5.3 Tax on conversion of land use

Land revenue codes provide for procedure to obtain permission for conversion of agricultural use to non-agricultural use and related fees. However conversion of one urban use to another urban use are not commonly taxed. Two exceptions to this observation, which finally did not work as intended, are described below:

5.3.1 West Bengal

West Bengal Urban Land Taxation Act 1976 -West Bengal Act VIII of 1976 (West Bengal 1976) envisaged to levy two taxes, viz., Land tax and Urban Land tax and two charges, viz. Development charge and Conversion charge in urban area as listed in the Schedule to the Urban Land (Ceiling and Regulation) Act, 1976. The rates of conversion charge were proposed to be as given in Table 2:

Conversion	Maximum rate as percent of Increase in Value of Land and Buildings
From agriculture to commercial use	35
From agriculture to industrial use	50
From commercial to industrial	25
From residential to commercial	30
From residential to industrial	40

Note: No conversion charge is levied where the area of land or building does not exceed 500 sq.m.
Table2: West Bengal Conversion Charges

While the two taxes were in vogue till 31.03.1999, the State Government did not issue necessary notifications for imposition of the Development and Conversion charges, and The Act itself has been repealed with effect from the 1st April 1999.[11]

5.3.2 Karnataka Land use conversion tax

Karnataka Town and Country Planning Act, 1961 provides under section 18 that where permission for change of land use or development of land or building is granted and such change of land use or development is capable of yielding a better income to the owner, the Planning Authority may levy a prescribed fee not exceeding one-third of the estimated increase in the value of the land or building in the prescribed manner for permitting such change of land use or development of land or building. In practice however rates of fees are so prescribed that they are linked to area of development and varied according to population size of the city and the land use. These rates are prescribed by Karnataka Planning Authority Rules 1965 (Karnataka 1965) the table prescribing such rates for change of use was last revised in 1993 and is reproduced in Table 3:

[11] As reported at http://wb.gov.in/portal/banglarMukh/Government/FinanceDirectoratePage/FinanceDirectoratePortletWindow;jsessionid=0641FBFFF969FE74B247247D662A784F.node1?spaceName=Agricultural_Income_Tax&action=e&windowstate=normal&Info=Taxes+Applicable&mode=view and accessed on 10 December 2012

In the Local Planning Area of		Fee in Rs. per square meter of total land		
		Residential	Industrial	Commercial
1	A town of population of 10 lakhs and above	20.00	10.00	75.00
2	A town of population of 1 lakh and above but less than 10 lakhs	4.00	8.00	12.00
3	A town of population of 50,000 and above but less than 1 lakh	3.00	5.00	6.00
4	A town of population of 20,000 and above but less than 50,000	1.50	2.00	4.00
5	A town of population of less than 20,000	0.60	1.00	2.00

Table 3: Karnataka Land Use Conversion Charges for Land

The rates of fee for development of buildings are given in Table 4:(Karnataka 1965)

In the Local Planning Area of		Fee in Rs. per square meter of floor areas of all the floors of the building		
		Residential	Commercial	Industrial
1	A town of population of 10 lakhs and above	2.00	4.00	10.00
2	A town of population of 1 lakh and above but less than 10 lakhs	1.50	2.50	4.00
3	A town of population of 50,000 and above but less than 1 lakh	1.00	2.00	2.00
4	A town of population of 20,000 and above but less than 50,000	0.50	1.00	2.00
5	A town of population of less than 20,000	0.25	0.50	1.00

Table 4: Karnataka Land Use Conversion Charges - Buildings

It is obvious that these rates have not referred to increase in value. The prescribing rates were apparently guided by popular acceptability and have not been revised since 1993.

Bangalore Development Authority's revenue under this source has been around Rs. 10 to 12 crores. During 2005 to 2007 when real estate market was more active the annual yield was more.

5.4 Land Value Increment Tax (LVIT)

Land value increment tax or betterment tax is perhaps the oldest land based fiscal tool that was introduced in the legislation related to city improvement trusts in the last decade of the nineteenth century. Later the concept was incorporated in the town planning schemes. Provisions also exist to capture land value increments in case of specific projects. All the three instruments are described below in further details.

5.4.1 Land Value Increment Tax (LVIT) in the form of betterment levy in case of improvement schemes

Legislation for constituting Improvement Trusts typically provided for preparation of 'improvement schemes' and enabled Improvement Trusts to recoup part of the land value gains accruing to landowners on account of the implementation of improvement schemes. Nagpur Improvement Trust Act, 1936 (Maharashtra 1936) envisages following types of improvement schemes:

- A general improvement scheme

- A re-building scheme
- A re-housing scheme
- A street scheme
- A deferred street scheme
- A development scheme
- A housing accommodation scheme
- A future expansion or improvement scheme
- A drainage or drainage including sewage disposal scheme[12]

The Act further provides for recovery of contribution under section 69 of the Act:
" When by making of any improvement scheme any land in the area comprised in the scheme which is not required for the execution of thereof, will in the opinion of the Trust be increased in value, the Trust in framing the Scheme may in lieu of providing for the acquisition of such land declare that a betterment contribution will be payable by the owner on the land or any person having interest therein in respect of the increase in the value of land resulting the execution of the scheme.

Such betterment contribution shall be an amount equal to one-half of the amount by which the value of the land on the date of deemed completion of the scheme estimated as if the land were clear of buildings, exceeds the value of the land on or immediately before the date on which the scheme was first published "

The procedure for determining the contribution requires assessing the land value increment, allowing landowners to represent their say, hearing them and then recover the contribution after the approval of the government. (Maharashtra 1936)

Similar provisions exist in the Mumbai Municipal Corporation Act 1888, as Bombay Improvement Trust was merged with MCGM in 1933. The provisions related to betterment charges in case of Improvement Schemes were included by way of sections 354UA – 354 UC in 1954. However since the coming into force of Maharashtra Regional and Town Planning Act 1966, the improvement schemes and related betterment charges have not been in vogue. (Maharashtra 1888)

Bangalore Development Authority Act 1976 repealed the City of Bangalore Improvement Act 1945 but has retained the provisions for preparation of Development Schemes and levy of betterment tax at the rate of 1/3 of the land value increment. (Karnataka 1976) However such schemes have not been used in Bangalore since 1985. Instead BDA uses the land acquisition model with 40% land returned to the landowners.

Madhya Pradesh too had Madhya Pradesh Town Improvement Trust Act, 1960 and probably had provisions similar to those present in Nagpur (Maharashtra 1936). Similar provisions have been incorporated in Madhya Pradesh Town and Country Planning Act 1973 (Madhya Pradesh 1973). The provisions allow recovery of development charge in the nature of betterment levy. Where it is adjudged that on account of implementation of Improvement Scheme a betterment in the nature of increase of land value is likely to occur, the planning authority can recover minimum of one fourth or maximum of one third of such increased land value as the development charge.

5.4.2 LVIT in conjunction with Town Planning Schemes

The earliest provisions related to Town Planning Schemes that are still in force are found in Andhra Pradesh Town Planning Act, 1920. (Andhra Pradesh 1920) Similar provisions were

[12] Section 27 of the Nagpur Improvement Trust Act 1936

available in Bombay[13] Town Planning Acts of 1915 and 1954. These provisions were then continued in the Maharashtra Regional and Town Planning Act 1966 and the Gujarat Town Planning and Urban Development Act 1976 (amended in 1999) and Karnataka Town and Country Planning Act 1961 and Punjab Regional and Town Planning and Development Act 1995 incorporate similar provisions.

The main purpose of Town Planning Schemes was to (a) convert farmland into planned layouts for town expansion (b) secure land for public purposes and (c) treat 'compensation' and 'betterment' as the two sides of the same coin. The Acts therefore while providing for the compensation for the land appropriated for public purpose also provided for exacting part of the land value increment that occurs on account of planned layout – called betterment contribution. Prior to statutory master plans coming into force Town Planning Scheme was a substantive planning exercise. After master plan became more common, Town Planning Schemes lost their popularity. Main reason for that was the legal procedure laid down for Town Planning Schemes was long drawn and time consuming. In terms of its fiscal aspects, measuring the land value increase attributable to the scheme became contested and recovery of betterment charge no longer remained substantial. (Maharashtra 1966, Kopardekar and Keskar 1987)

Gujarat by the amendment in 1999 attempted to overcome many of the difficulties.

(a) Development Plan and Town Planning Schemes were seen as two tier substantive planning exercise.
(b) The proportion of area to be allocated for public purpose was laid down in the act.
(c) In addition, allocation of land for low income housing and land bank of the planning authority was also legislated

The legal provisions are reproduced below:

"The reservation of land to the extent of ten percent; or such percentage as near thereto as possible of the total area covered under the scheme, for the purpose of providing housing accommodation to the members of S.E.W.S.

The allotment of land from the total area covered under the scheme, to the extent of

(i) Fifteen percent for roads.
(ii) Five percent for parks, playgrounds, garden and open space.
(iii) Five percent for social infrastructure such as schools, dispensary, fire brigade, public utility place as earmarked in the Draft Town Planning Scheme.
(iv) Fifteen percent for sale by appropriate Authority for residential, commercial or industrial use depending upon the nature of development.

Provided that the percentage of the allotment of land specified in paragraphs (i) to (iii) may be altered depending upon the nature of development and for the reasons to be recorded in writing."

The proceeds from the Sale of land referred to in (iv) are required to be used for the purpose of providing infrastructural facilities. Though not as legal requirement, in practice the burden of appropriation of land is equitably cast on all landowners. The process of taking possession of land required for critical infrastructure is streamlined. (Gujarat 1976)

These features of Gujarat experience are well documented. However the difficulties of assessing land value increments and then recovering betterment contributions have been overcome

13 Bombay then referred to Bombay Presidency covering parts of present day Gujarat, Maharashtra and Karnataka

through practical approach. Instead of calculating the market value of individual final plot, a uniform rate (per square meter) is charged that can recover the cost of the scheme. Consequently it loses the character of being a LVIT and remains a weak tool of cost recovery. Moreover this is charged at the time of granting development permission with a facility to pay the contribution over a period of ten years. (Ballaney S. 2008, 2009, CGG 2010, Kopardekar and Keskar 1987)

Madhya Pradesh (1973) – Section 50 provides for 'Plot Reconstitution' as one of the town improvement schemes. The development charge in the nature of betterment levy is stipulated to be not more than 50 percent of the difference of value of the reconstituted plot and the original plot.

5.4.3 LVIT in case of specific projects

Mumbai Metropolitan Region Development Authority (MMRDA) Act, 1974 –section 26 to 30 provide for levy of betterment charges. Section 26 states that

"*Where, in the opinion of the metropolitan Authority as a consequence of any development project or scheme having been* ***executed*** *by the metropolitan Authority in any area the value of land in that area has increased or will increase, the metropolitan Authority shall be entitled to levy upon the owner of the land a betterment charge in respect of increase in value of land resulting from the execution of the development project or scheme.*" The betterment charge is limited to 50 percent of the increase in value of land attributable to the execution development project or scheme.

The process of determining the betterment charge as laid down in the MMRDA Act 1974 is shown in Figure 7. (Maharashtra 1974)

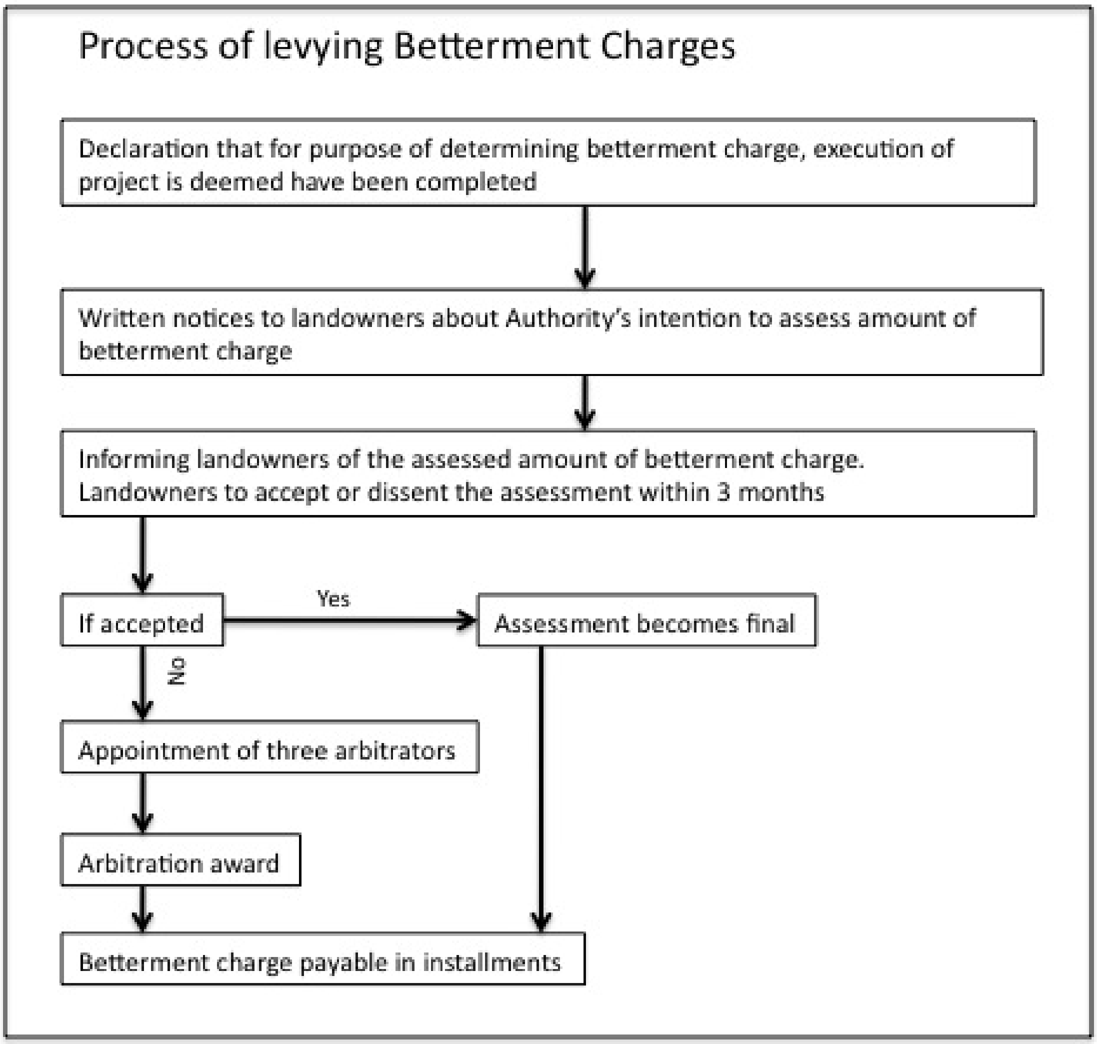

Figure 7: MMRDA - Procedure for Determining Betterment Charge

Although the provision has been in existence since 1974 and MMRDA has been involved in execution of development projects, the provisions for levying betterment charge have not been used so far. The reasons for this could be visualized as follows:

- The law uses the phrase 'executed' by the Metropolitan Authority. This limits the scope as there might be ambiguity as to whether projects financed by MMRDA but executed by other agencies or projects implemented under the PPP arrangement could be covered by the legal stipulation.
- The process of determining the betterment charge as laid down by the law is also rather involved and may turn out to be time consuming. Many issues in determining the betterment could be contested such as:
- The extent over which the benefits of the development project will accrue and cause increase in value of land
- Measurement and quantification of betterment and its specific attribution to the development project, particularly when real estate market is subjected to cyclical changes.

5.5 Area based development charges

Area based development charge is the most widely used land based fiscal tool in many states. (TCPO 2009)

5.5.1 Andhra Pradesh

Perhaps the earliest provision for such development charge was made in the Andhra Pradesh Urban Areas (Development) Act 1975. Chapter VII 'Levy, Assessment and Recovery of Development Charges' enabled the Urban Development Authority constituted under the said Act to levy development charge on institution of use or change of use of land or building or development of any land or building. The use of land and building was classified into five categories viz. Industrial, Commercial, Residential, Agricultural and Miscellaneous

The maximum rate of development charge in case of development of land was Rs. 40000 per hectare of land area and in case of building it was Rs. 10 per square meter of floor area. The Act also provided for setting up of tribunals to settle disputes arising out of levy of development charges. The proceeds of the development charges are to be credited to the Fund of the Authority; and the Fund can be applied 'towards meeting the expenses incurred by the Authority in the administration of the Act and for no other purpose'. (Section 22 (2) of the Act) Thus the development charge could be said to be in the nature of a Benefit Tax. (Andhra Pradesh 1975)

Since then many charges linked to area of development are being levied under following Acts in Andhra Pradesh:

- A.P. Municipalities Act, 1965.
- Hyderabad Municipal Corporation Act, 1955.
- A.P. Urban Areas (Development) Act, 1975.
- A.P. Agricultural Land (Conversion to Non Agricultural Purposes) Act, 2006.
- A.P. Town Planning Act, 1920.
- Government Orders issued from time to time.

Fee and Charges being collected in Municipal Corporations are given below:

1. Permission to obtain Layout / Sub-division of Site / Plot:
   (Under Section 388 of HMC Act, 1955 & Layout Rules 1965 issued under HMC Act, 1955)

   Every person who intends to sell the land to erect buildings thereon or to divide the land into building plots or use any land or a portion thereof or permit the same to be used for building purposes or to make a layout a private street whether it is intended to allow the public a right of passage or access over such street or not shall obtain the permission under section 388 of HMC Act, 1955 from the Municipal Corporation. Under the said provisions he shall pay the drainage, betterment charges as fixed by the Corporation. Under these provisions in order to process the layout application the fee is fixed which has to be paid in advance to process the application.

2. Betterment Charges for Internal Amenities / Works for site / Plot area.
   (Under Section 388 of HMC Act, 1955 & Layout Rules 1965 issued under the said Act.):

   As stated above it is mandatory to pay the betterment charges along with the layout application.

3. External Betterment Charges (for Arterial roads, Lung spaces, other city wide amenities)
   (Under Section 388 of HMC Act, 1955 & Layout Rules 1965 issued under the said Act.):

   Under this the Municipal Corporation is empowered to collect External Betterment Charges at the time of according approval to layouts or sub-division of plot or issue of building permit. These charges are collected for the laying of major infrastructure such as major roads, flyovers, regional parks etc.

4. Permission to Construct or Reconstruct or Additions or Alterations
(Under Section 428 & 433 of HMC Act, 1955 & Building Bye Laws, 1981)

   Every person who intends to erect a building or reconstruct / alter shall obtain the building permission from the Municipal Corporation under sections 428 and 433 of HMC Act, 1955 respectively. In such a case under 5.2 of Municipal Corporation Building Bye laws, 1981 it is mandatory to pay the Building Permit Fee by the Applicant.

5. Betterment charges for Built up area (for internal amenities)
(Under Section 444 (a) of HMC Act, 1955)

   Under Section 444 (a) of HMC Act, 1955, it is mandatory to pay the betterment charges along with the Building Application.

6. External Betterment charges for Built up area (External-City-wide amenities (Under Section 444 (a) of HMC Act, 1955)

   HMC Act has been amended to enhance the scope of levy of betterment charges to include external betterment. Under this concept it is empowered to collect external betterment charges at the time of according approval to layouts or sub-division of plot or issue of building permit. These charges are collected for the laying of major infrastructure Such as major roads, flyovers, regional parks etc.

   The Betterment Charges, External Betterment Charges, Sub-Division Charges and Open Space Contribution Charges on Plot area are collected where the sites are not covered by Approved Layouts / Approved Sub-Divisions and previous Sanctioned Plan.

   The Betterment Charges, External Betterment Charges on Built up area are collected in all cases i.e. whether the previous approved plans are available or not for the site or building.

7. Development Charges (Revised)
(Under Section 27 & 28 of AP Urban Areas (Development) Act, 1975)

   In case of the site that falls in the jurisdiction of Urban Development Authority area and when person intends to change the use of the land or building or development of any land or building for which permission is required under the AP Urban Areas (Development) Act, 1975, shall pay the Development Charges under Sections 27 & 28 of the said Act and the rules made there under. The use of land and buildings is classified into the following categories: Industrial, Commercial, Residential, Agricultural and Miscellaneous. The fee is prescribed for the land and building for institution or change of use from one use to the other.

8. Impact Fee (as prescribed by Government from time to time):
(G.O.Ms No.766 MA & UD dt: 18/10/2007)

   Government of AP permitted the MCH to levy impact fees to mitigate the impacts of construction of commercial buildings that lead to increased traffic and necessitates decongestion measures. This fee is levied for the sites abutting to certain important potential roads where there is demand for commercial activity. Distinction is made between on-site and offsite development cost and citywide impact. The facilities financed out of impact fees may include on-site and off-site infrastructure such as roads, water supply, sewerage, storm water drainage, flood control measures, open space, solid waste management, fire protection, libraries, schools, police services, public buildings and administration. The impact fees are meant to address citywide problems emanating from high-density commercial development. The fee collected is utilised for implementation of capital improvement and decongestion plan i.e. for works such as Road Widening, Link Roads, Slip Roads, Parallel Roads, Junction improvements, Flyovers etc. Impact fees are 'one-time' charges collected to pay for public infrastructure required by new developments. They are imposed as a condition for approval to proceed with development. (Please see Annex 2)

9. <u>City Level Infrastructure Impact Fee</u>:
(G.O.Ms No.86 MA & UD deptt. dt: 03/03/2006 (Under rule17) vide

With a view to ensuring development of City Level Infrastructure facilities and levy of Impact Fees, buildings are categorized as follows:
Type I: Buildings up to height 15 m excluding stilt parking floor.
Type II: Buildings of height above 15 m (excluding stilt floor).
The City level Infrastructure Impact Fees would be levied for Buildings under Type II above as follows:
First 15 m or 5 floors (whichever is less): No levy of Impact fee.
For any additional floors or part thereof: at differential rates specified in the GO will be collected.

The amount levied and collected under above Rule is credited and maintained in a separate escrow account maintained by the concerned sanctioning authority and 50% utilised for development of infrastructure in the same area and balance utilised towards improvement of city level capital infrastructure in the area. An Infrastructure Plan and Action Plan for implementation are required to be undertaken by the competent authority and the said Fund utilized accordingly.

10. <u>Special Fees & Other Provisions</u>
(G.O.Ms No.86 MA & UD dt 03/03/2006 (Under rule16) As prescribed by the Government from time to time)

The Sanctioning Authority with the specific approval of the Government may, when implementing such Projects, levy Special fees and other fees / charges for lands / sites / premises abutting or in the vicinity of the Ring Road or other highways / major roads or the Mass Rail Transit System / Light Rail Transit / MMTS route indicated in the Master Plan, at the rates and procedure prescribed by the Government.

11. <u>Value Addition Charges in CDA Area</u>. (Serelingampalli Circle (CDA area)

In case of the area falling in the jurisdiction of Cyberabad Development Authority, for the developments coming up in this area will be levied @ Rs.310 per Sq. m. of built up area.

12. <u>Rain Water Harvesting Charges</u>:

For all categories of buildings an amount of Rs. 2000 to 10000 per sq. m built up area is levied.

13. <u>Vacant Land Tax</u> (as per Registration Value in Sale Deeds)

As per G.O.Ms No. 538 MA dt: 29/10/2001 Vacant Land Tax is levied @0.5% on the prevailing Registration value + Library Cess @ 8% on vacant land cost.

14. Open Space Contribution

MCH has introduced open space contribution to be collected from persons applying for development permission. This is required only in the case of lands belonging to layouts, which have not provided 40 percent statutory open space for roads and parks. The contributions are used to take up parks, avenue plantation and compensatory greening. (Reddy B.P. 2010)

It may be noted that though phrases like betterment charge or impact fees are used they are essentially area-linked charges. Betterment levy is not a tax on increased land value (LVIT) and Impact Fee is not an explicit cost recovery mechanism with 'rational nexus' between what is charged and what is proposed to be spent on public infrastructure. Furthermore some of the tools have legal authority while others are introduced through executive orders.

Informal inquiries suggest that some developers have reservations about Impact Fees, as evidence of expenditure is not visible. However measures introduced only through executive decisions have not been questioned in the Court of Law as yet. On the other hand officials feel that there is acceptance of such measures as landowners have experienced land value increases on account of infrastructure provisions particularly roads made out of the proceeds of such levies. At the same time there is a case when a Development Authority has pleaded for reduction in development charge, apprehending increased unauthorised development if such a step is not taken. (Andhra Pradesh 2009)

5.5.2 Tamil Nadu

Provisions identical to those in Andhra Pradesh exist in the Tamil Nadu Town and Country Planning Act, 1961 except that maximum rate for land is Rs. 1 lakh per hectare of land Rs. 25 per square meter of floor area in case of building. In addition to this general development charge, section 63-B of the Act requires the planning and the local authorities to levy an Infrastructure and Amenities Charge at the time of granting development permission. The maximum and minimum rates are to be prescribed by rules. The present rates as prescribed in 2012 are given in Table 5:

Sr.No.	Type of Building	Chennai Metropolitan Development Authority	Commissioner of Town and Country Planning		
		Chennai Metropolitan Area	Chengalpattu	Coimbtore Tirupur and Kuruchi	Other Areas
		Rs. per sq. m.			
1	Multi-Storeyed Buildings Commercial or Information Technology or Industrial or Institutional or any combination of these activities.	750	750	563	375
2	Multi-Storeyed Residential	375	375	375	375
3	Other than multi-storeyed buildings – Commercial buildings, Information Technology buildings, Group development and Special Buildings	375	375	285	188
4	Institutional Buildings (not covered under 1)	150	150	113	75
5	Industrial Buildings (not covered under 1)	225	225	169	113

Table 5: Tamil Nadu Infrastructure and Amenity Charges

According to provisions of section 63-C the proceeds of this charge are to be credited to a **"State Infrastructure and Amenities Fund"** constituted by the state government. Sections 63-B and 63-C were added by an amendment in 2007[14]. The purpose of creating the fund instead of allowing the planning authorities and ULBs to retain proceeds of Infrastructure and Amenities Charge is not very clear. Apparently the concern was to ensure utilization of fund for capital improvement project and prevent use of fund for revenue expenditure of ULBs. A Committee of secretaries operates the fund. The total size of the fund since its inception is Rs. 1888 Crores and Rs. 1349 Crores have been deployed for infrastructure projects like roads and sewerage. In case of Chennai Metropolitan Area, the Act makes provision to the effect that the development charge or part thereof that is related to the provision of water supply and sewerage service, the development authority will pay such proceeds to the Chennai Water Supply and Sewerage Board. (Tamil Nadu 1961)

5.5.3 Maharashtra

Maharashtra Regional and Town Planning Act, 1966 was amended in 1992 to introduce a separate chapter on ' Levy Assessment and Recovery of Development Charge'. The law required that the planning and development authorities levy and recover development charge. For the purposes of levying development charge the user of land is classified into four categories viz. Industrial, Commercial, Residential and Institutional. The minimum and maximum rates at which development charge is to be levied were also stipulated that varied for different classes of cities and different classes of uses. The rates as initially prescribed are shown in Annex 3.

The Act required that

- *There shall be established and set apart a separate fund to be called " the Development Fund " and an Authority shall separately show the same in its budget.*

[14] Sections 63-B and 63-C inserted by Act 34/07 w.e.f.1st day of June 2007

- *All moneys received by the Authority as development charge together with interest thereon, if any, shall be credited to the Development Fund.*
- *The moneys credited, from time to time, to the said Fund shall be applied only for the purposes of providing public amenities in the area and maintenance and improvement of the area under the jurisdiction of the said Authority.*

The Act also provides for dispute resolution mechanism and penal action for undertaking development without paying the development charge.

The purpose of deployment of Development Fund is specifically mentioned but it also includes 'maintenance and improvement of area'. This does not limit its uses to capital expenditure and in turn becomes general revenue. Thus though the development charge had the potential to become a benefit tax, it has not been realized.

One of the major limitations of this system was that the charge was related to area and therefore had no buoyancy to keep pace with inflation. In 2010 the tax base was changed to market value and described in detail in the next section.

5.5.4 Gujarat

Gujarat Town Planning and Urban Development Act, 1976 (Chapter VII) enables planning authorities to levy and recover development charges on land and buildings at rates approved by the state government. However the maximum rates are also laid down in the act as Rs. 50,000 per hectare for land and Rs. 10 per square meter in case of buildings. Within the confines of these limits, the Gujarat Town Planning Rules, allowed the Planning Authorities to propose the rates of development charge substantiated by statements, plans and estimates of development works likely to be undertaken in the area. These rates after going through the process of public consultation and with the sanction of the State Government could be brought into force. It is clear that the charge was conceived as a benefit tax. However the maximum rates stipulated in the Act were never revised. Over the years they have turned out to be 'pittance'. Ahmedabad Urban Development Authority (AUDA) does not even charge at the maximum rates permissible in the Act. The current rates are given Table 6:

Land Use	Land / Building	Within AUDA Urban Area	Growth Centres	New -69 Villages
		Rs. per sq.m.		
Residential	Land	1.5	1.0	1.5
	Built-up	3.0	2.0	3.0
Commercial	Land	3.0	2.0	3.0
	Built-up	6.0	4.0	6.0
Industrial	Land	3.0	2.0	3.0
	Built-up	6.0	4.0	6.0
Others	Land	1.0	0.5	1.0
	Built-up	2.0	1.0	2.0

Table 6: AUDA - Rates of Development Charge

Gujarat Town Planning and Urban Development Act, 1976 through an amendment of 1995 enables levy and collections of "fees" for execution of works in connection with water supply, sewerage and other services and amenities as may be prescribed by the regulations. (Section 23 (1) (vii-a). (Gujarat 1976) These fiscal provisions were added in the 'Powers and Functions' of the Development Authorities and are now being charged at rates per sq.m. of built-up area higher than that of Development Charge. Consequently these do not seem to be in the nature of 'fees' but as 'benefit tax'. In case of AUDA 22 types of fees, charges and deposits are levied at the time of granting development permission.

5.5.5 Madhya Pradesh

Madhya Pradesh Nagar Tatha Gram Nivesh Niyam 1975 and Madhya Pradesh Bhumi Vikas Rules 1985 specify fees to be recovered along with the application for development permission. These fees are based on the area of proposed development. However, they are in the nature of regulatory fees to recover the cost of administrating the development control and not as benefit tax for financing a particular infrastructure or a service.

5.6 Value based development charge

5.6.1 Maharashtra

As described in 5.5 above the area linked development charge has been more prevalent. However since it is not politically feasible to update the rate of charges to reflect the change in cost of development, the revenue soon loses its buoyancy and relation to actual cost of development. Linking the charge to the market value of land could help overcome the problem of buoyancy. Administratively it is difficult to assess the market value every time development application is received. Many states have adopted a policy of carrying out a periodic valuation exercise to arrive at the market price of land and built up properties to prevent avoidance of Stamp Duty by registering lower value. These are called 'Ready Reckoner' in Maharashtra, 'Jantri' in Gujarat and 'Guidance Values' in Karnataka and are increasingly being used for other purposes. The basis for deciding compensation in the proposed Land Acquisition and Resettlement and Rehabilitation Bill is also such assessments of market values.[15] Government of Maharashtra, to overcome the difficulty of buoyancy and periodic revision the rates, changed the unit rate from Rs. per sq.m. of area to % of land value in 2010 by amending the provisions in the Maharashtra Regional and Town Planning Act, 1966. The rates specified are 0.5 percent of land value when development is in the nature of change of use of land or lay-out and sub-division of land and its development and 2.0 % of value of land when development is by way of construction of buildings. The amended schedule of rates is given in Annex 4.

MMRDA based on its Business Plan (MMRDA 2009), had proposed that local planning authorities in MMR be enabled to levy development charge at the rate of 2.5 % of the value of the proposed development (land + building) and a surcharge at the rate of 7.5% to be passed on to the MMRDA for financing regional infrastructure which involved regional road network, mass transit network, regional waste disposal facilities and water resource development. However, this proposal has not yet been accepted by the state government.

5.6.2 Karnataka

Karnataka Town and Country Planning Act, 1961, under section 18A provides for levy of cess and surcharge for following purposes at the rates prescribed by government by rules.

- a cess for the purpose of carrying out any water supply scheme;
- a surcharge for the purpose of formation of ring road;
- a cess for the purpose of improving slums; and
- a surcharge for the purpose of establishing Mass Rapid Transport System

The total of all the above levies cannot exceed one tenth of the market value of land or building. However government has not yet prescribed the required rules. The cess and surcharge is therefore not being levied.

[15] The Land Acquisition, Rehabilitation and Resettlement Bill, 2011 as introduced in Lok Sabha bill no. 77 of 2011

5.7 Transfer of Development Rights and Incentive FSI

5.7.1 Maharashtra

In US TDR is used mainly for conservation of heritage buildings and preservation of areas of natural heritage or farmlands. The original landowners are allowed to transfer their development rights in other receiving areas without losing their ownership of land. In India, Mumbai has pioneered the use of TDR in a conceptually different manner. The 1967 Development Plan of Mumbai had liberally designated land for public purposes, which was supposed to have been compulsorily acquired. However the financial resources available with the Municipal Corporation did not permit such acquisition. While revising the Development Plan in 1991, an alternative to monetary compensation was sought by way of TDR. In case of land designated for public purpose, the landowner was given an option of accepting TDR in lieu of monetary compensation provided that he is ready to hand over possession of land free of all encumbrances to Municipal Corporation. (D'Souza 1987, DCR 1991, Phatak V. 2000) The Maharashtra Regional and Town Planning Act, 1966 was also amended to legitimise alternative form of compensation in lieu of monetary compensation. The amendment of 1994 made the following option of paying compensation retrospectively legal from 1991. (Maharashtra 1966)

"Floor Space index or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide"

The Development Plan, 1991 of Mumbai reduced the land available for development by introducing 'No Development Zone'. Coastal Regulation Zone prescribed by the Ministry of Environment and Forest of Government of India prohibited development of coastal wetlands further reducing the land available for development. At the same time the Plan prescribed uniformly low FSI of 1.33 in the Island City and 1.00 in the Suburbs. This created scarcity of development rights. Consequently development right acquired scarcity value. The public policy that emerged thereafter used grant of extra development rights in the form of additional FSI *in situ* or in the form of TDR to help achieve variety of social and economic development objectives. Some of the ways in which this instrument has been used are listed below:

- Slum Rehabilitation

In 1995, considering the rising housing prices, proposed that constraint of FSI can be selectively released to finance rehabilitation of slum dwellers free of cost. Developers ready to rehabilitate slum dwellers in 225 sq.ft.(later increased to 269 sq.ft.) dwelling units will get incentive development rights equivalent to 100% to 133% of the rehabilitation floor space. Of the total FSI, 2.5 (later increased to 3) could be used at the slum site and remainder could be used as TDR. With the TDR the receiving plot could get total of FSI 2 (that is 1 in addition to permissible FSI of 1). Similar schemes now prevail in most major cities of Maharashtra.

This was seen as off-budget measure for helping the poor. In reality with very little opportunities available for green field development, it meant a tax equivalent to cost of construction on every new development right of 1 sq.m. In that respect it became land based fiscal tool finally transferring the incidence on to the new homebuyers.[16]

- Redevelopment of Cessed Buildings

16 This is not an exhaustive evaluation of FSI based slum rehabilitation policy but explanation of how it functions as a land based fiscal tool.

Inspired by the Slum Rehabilitation experience, similar policy was extended to rent controlled residential buildings[17] in the Island City in 1999. Under this scheme, a developer ready to provide new dwelling units having minimum area of 300 sq.ft. or equal to existing area whichever is more but not exceeding 700 sq.ft. free of cost gets additional development rights ranging between 50 to 80 % of rehabilitation space for use on the same site without any limit on the final FSI.

- Conservation of Heritage Building

Owners of listed heritage buildings can get balance of the permissible FSI as TDR as incentive for conservation of heritage building. In this case it acts as a subsidy.

- Building schools and hospitals

Schools and hospital buildings are allowed double the permissible FSI (later increased to 4) to increase the student capacity and hospital beds given the scarcity of land in Mumbai

- Promoting tourism by allowing incentive FSI for star category hotels

Dearth of rooms in star category hotels was perceived as constraint on promoting tourism. FSI for star hotels was therefore doubled to overcome this constraint.

- Promoting IT and ITES

By 2000 granting FSI had become a very attractive off-budget tool. It was extended to buildings that intended to house IT and ITES by doubling the permissible FSI.

Thus FSI, which is a planner's tool for managing physical development, is thus converted into a fiscal tool with attendant risk of perpetuating regulations that distorted the market in the first place.

5.7.2 Gujarat

Maharashtra and Mumbai example of FSI incentive for slum rehabilitation is found to be very attractive by many states. Gujarat has also emulated Mumbai policy. According to 'Regulations For The Rehabilitation and Redevelopment of the Slums 2010' (Gujarat 2010) minimum area of rehabilitation dwelling unit is 36 sq.m. and incentive FSI of 100% of rehabilitation space is available.

However, since Ahmedabad does not have severe constraints on land supply and the base FSI is also 1.8, this scheme has not found favour with the market.

5.7.3 Karnataka

By an amendment in 2004, Section 14 B was inserted in the Karnataka Town and Country Planning Act 1963 allowing for incentive FAR for surrendering land for public purpose free of cost. Excerpts of section 14B are reproduced below:

*"**14B. Benefit of Development Rights –** Where any area within a local planning area is required by a Planning Authority or local authority for a public purpose and the owner of any site or land which comprises such area surrenders it free of cost and hands over possession of the same to the Planning Authority or the local authority free of encumbrances, the Planning Authority or the local authority, as the case may be, may notwithstanding anything contained in the Act or the regulations but subject to such restrictions or conditions as may be specified by notification by the State Government, permit development rights in the form of additional floor area which shall be equal to one and half times of the area of land surrendered. The development right so permitted*

[17] Also called 'Cessed Buildings' as 'Repair Cess' is levied on these buildings to finance structural repairs or reconstruction of these buildings through state agency.

may be utilized either at the remaining portion of the area after the surrender or anywhere in the local planning area, either by himself or by transfer to any other person, as may be prescribed. The area remaining after surrender shall have the same floor area, which was available before surrender for the original site or land as per regulations.

***Explanation** – For the purpose of this section*
Public purpose means
- *Widening of existing road or formation of new roads*
- *Providing for park or playground or any other civic amenity*
- *Maintaining or improving heritage buildings or precincts notified by the State Government*

Development Right means the right to carry out development or to develop land or building or both.

It is noteworthy that the legal provision is substantive and not merely enabling. It is uniformly applicable across the state and independent of the provisions related to land acquisition. Moreover the scale of incentive is also prescribed in law and not left to the regulations that could be city specific.

5.8 Premium on relaxation of rules or additional FSI

Relaxing rules including grant of additional FSI by charging 'Premium[18]' has emerged as fiscal tool. The phrase 'premium' seemed to have been invented to avoid the phrases like 'tax' or 'fee', which require legal authority and an explicit rationale rooted in 'quid pro quo' in case of a fee.

5.8.1 Maharashtra, Mumbai

In 1991, Mumbai decided to exclude certain areas from FSI computation such as those of staircases, lifts and related passages, balconies etc. However such exemptions were available by paying premium that was related to prevailing 'Ready Reckoner' rates. The real estate market had accepted this practice.

However in 2008, Government in its budget proposed to allow additional FSI of 0.33 in the Suburbs of Mumbai by charging 'premium' linked to 'Ready Reckoner' rates. The revenues were to be shared in equal proportion between the state government and the Municipal Corporation of Grater Mumbai. The scarcity of development rights created by constrained FSI regulations was sought to be exploited by turning it into a fiscal tool. (Phatak V. 2008)

When this was translated into amended DCR, it was contested by way of a Public Interest Litigation No. 94 of 2008 and a Writ Petition No. 2443 of 2008. (Mumbai High Court 2008). After elaborate discussion of the tax and fees – regulatory and compensatory, the Court came to the following conclusion:

" In our opinion, therefore, Section 22 which falls under Chapter III and which requires what must be the contents of the development plan, does not expressly confer any power on the State Government or the Planning Authority to make a provision for imposing a fee whether regulatory or compensatory. Modification under Section 37, is modification of the plan. Providing for imposition of a premium, which is nothing but a fee, will have to be held to be ultra vires, the provisions of the MRTP Act. Once the legislature has provided for development charge under Section 124A, which charge has to be kept in a separate fund to be used for providing amenities, it is not open for the State or the Planning Authority to contend that under the guise of giving grant

[18] Interestingly the term 'premium' though widely used has not been defined in any of the town planning acts or the related regulations. Dictionary meaning of noun premium is 'additional sum'.

of additional FSI of 0.33 they are entitled to a charge or a fee for the purpose of providing amenities.

The Respondents/State Government has not been able to show any provision in the MRTP Act expressly/specifically authorizing the levy of such premium based on the Ready Reckoner value of land per sq. meter and ranging from Rs.7000/- to Rs. 23000/- sq. meter in different areas and localities of suburbs and extended suburbs.

The question is, whether it is possible to severe the notification from grant of additional FSI and charge of premium. In our opinion, it is not possible to do so. The exercise of grant of additional FSI is only on payment of premium. The object behind amending the D.C. Regulations and for granting additional FSI is reflected in the budget speech. Even otherwise the regulation is for raising of revenue. In the light of that, we have to hold that the entire notification dated 3rd October, 2008 is ultra vires the MRTP Act and consequently the notification on that point has to be struck down.

For the aforesaid reasons, the petitions have to be allowed. Rule made absolute to the extent that the impugned notification dated 3rd October, 2008 is ultra vires the provisions of the MRTP Act and hence declared null and void."

This judgment has extensively cited the case law regarding distinction between, tax and fees and the legislative mandate to legislate in that regard. As such judgments would be very relevant in designing the land based fiscal tools they are reproduced in Box 3.

Box 3: Excerpts from High Court Judgment in Public Interest Litigation 94 of 2008

Government of Maharashtra had attempted to introduce the premium for extra FSI by amending the DCR formulated under the provisions of Section 22 (m) of the MR & TP Act 1966. The judgment had the following to say on this proposition.

"Section 22 falls in Chapter III, under Development Plan. The entire chapter deals with proposition of a development plan and the contents of the plan. Section 22(m) therefore provides for provisions to be made for granting permission, the controlling and regulating development of land. In the matter of charging for development of land the Legislature has provided Section 124A. Therefore, the provisions of what should be contained in the Development Plan and the provisions for controlling and regulating the development of land cannot be said to be an extra power to tax or levy a fee or a charge or premium."

The judgment also clarified the distinction between tax and fee.
"A fee is a payment levied by an authority in respect of services performed by it for the benefit of the fee payer unlike a tax which is payable for the common benefits conferred by the authority on all tax payers. A fee is a payment made for some special benefit enjoyed by the payer and the payment is proportional to such benefit. Money raised by fee is appropriated for the performance of the service and does not merge in the general revenue. While there is no quid pro quo between a tax payer and the authority in case of a tax, there is a necessary correlation between fee collected and the service intended to be rendered. The quid pro quo need not be understood in mathematical equivalence but only in a fair correspondence between the two. Broad corelationship is all that is necessary. See Srikrishna Das v/s Town Area Committee, Chirgaon, (1990) 3 SCC 645. In."

Box 3: Continued

In Ahmedabad Urban Development Authority vs. S.J.Pasawalia, (supra), the Supreme Court upheld a Gujarat High Court judgment where it had been held that in the absence of any express/specific provision in the Gujarat Town Planning & Urban Development Act authorizing the levy of a development charge on plot holders who carried out any development/ construction regulations framed by the Ahmedabad Urban Development Authority purporting to levy a development charge were illegal. Both the High Court and the Supreme Court negated the contention that even in the absence of any specific provision, a power to recover a fee for the purpose of development of the area in question & for implementing schemes of development, could be implied in the Act as being incidental or ancillary to carrying on the functions for which the Development Authority had been constituted under the Town Planning Act. The Supreme Court held "*in a fiscal matter it will not be proper to hold that even in the absence of express provision, a delegated authority can impose a fee or a tax. In our view, such power of imposition of tax and/or a fee by a delegated authority must be very specific and there is no scope for implied authority for imposition of such tax or fee. It appears to us that the delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power in the matter of exercise of fiscal power.*"

"It has been constantly held by this Court that whenever there is compulsory exaction of any money, there should be specific provision for the same and there is no room for intendment. Nothing is to be read and nothing is to be implied and one should look fairly to the language used"

Although a "regulatory fee" can be levied in exercise of the power to regulate, it is well settled that *" in the garb of exercising the power to regulate, any fee or levy which has no connection with the cost of or expenses of administering the regulation cannot he imposed"*. See State of West Bengal vs. Kesoram Industries:

In paragraph 104 and 106 of the judgment of the Supreme Court in the case of State of West Bengal v/s Kesoram Industries Ltd. , it is set out as under:

"104. There is nothing like an implied power to tax. The source of power, which does not specifically speak of taxation cannot be so interpreted by expanding its width as to include therein the power to tax by implication or by necessary inference. States Cooly in Taxation (Vol. 1, 4th Ed.) "There is no such thing as taxation by implication. The burden is always upon the taxing authority to point to the act of assembly which authorizes the imposition of the tax claimed."

"106. The judicial opinion of binding authority flowing from several pronouncements of this Court has settled these principles; (i) in interpreting a taxing statute, equitable considerations are entirely out of place. Taxing statues cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency; (ii) before taxing any person it must be shown that he falls within the ambit of the charging section by clear words used in the section; and (iii) if the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject. There is nothing unjust in the taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly."

Worried about the questions of legality of the premia recovered since 1991 arising out of the judgment of Mumbai High Court, the State Government brought about an amendment to the Maharashtra Regional Town Planning Act with retrospective effect first through an ordinance 2010, which has later been converted to an amending Act. Despite the Court's elaborate judgment indicating the principles to be followed in designing a legislation for levy of a tax or fee, government chose to amend Section 22 (m) of MR & TP Act 1966 by inserting the following:

"*Imposition of fees, charges and premium, at such rates as may be fixed, by the State Government or the Planning Authority, from time to time, for grant of an additional Floor Space Index or for the special permission or for the use of discretionary powers under the relevant Development Control Regulation.*"

It may be noted that 'fees, charges and premium' have been used without appreciating or recognising the nuances in their meaning and implications.

Based on this legal provision, premium for additional FSI has been brought in force in 2011. Excerpts from relevant government order are given in Annex 6.

5.8.2 Tamil Nadu

The Chennai Metropolitan Development Authority, in their Development Control Regulations, made the following provision. (CMDA 2010)

<u>Premium FSI</u>
The Authority may allow premium FSI over and above the normally allowable FSI subject to a maximum of 1 (one) relating the same to the road width parameters as follows: -

S.No.	Road Width	Premium FSI (% of normally allowable FSI)
(i)	18 metres and above	40%
(ii)	12 metres – below 18 metres	30%
(iii)	9 metres – below 12 metres	20%

Table 7: Chennai - Scale of Premium FSI

The Premium FSI is allowed in specific areas as may be notified, subject to Guidelines and on collection of charge at the rates as may be prescribed by the Authority with the approval of the Government. The amount collected towards the award of Premium FSI is remitted into Government account allotted separately for this purpose for utilising it for infrastructure development in that area as may be decided by the Government.

The prescribed normal FSI is 1.5 (except for industrial use where it is 1.25). For multi-storeyed buildings fronting roads of width more than 18 m the normal FSI is 2.5. In addition, premium FSI in the range of 20% to 40% of normally prescribed FSI can be obtained by paying a premium for notional additional land at the registration rates. Thus 2.5 FSI can increase up to 3.5.

The Tamil Nadu Town and Country Planning Act 1971, does not explicitly provide for charging premium for grant of additional FSI. But the legality of premium FSI has not yet been questioned. Real estate market seems to have accepted it.

The limitation of this measure is that the guideline values are not periodically updated. Initially in 2009 the scheme had a good response. However when the guideline values were updated in 2012 and market resistance to premium FSI was experienced.

5.8.3 Karnataka

Zonal Regulations of Mangalore 2011 provide for premium FAR defined as additional FAR permitted by collecting additional fee as prescribed. The base FAR varies according to road width and permissible uses. For roads 6 m wide (existing width < 6 m) the base FAR is 1.3. In addition, premium FAR of 0.3 and TDR of 0.1 is permitted making a total FAR of 1.6. For proposed road width of 24 m (existing road width of 12 m) the base FAR is 2.5. Additional premium FAR of 1 and TDR of 0.5 are permissible making a total FAR of 4. (Mangalore 2011). However as informally learnt there is no demand for premium FSI at present.

5.8.4 Gujarat

According to the General Development Control Regulations (GDCR) applicable in AUDA area permissible FSI varies between 1 and 2.25 and the maximum height of buildings is 40 m. Regulation 12.3.3.B allows additional FSI under certain circumstances. It states that *"In case of new construction, according to sanctioned revised development plan in residential use – I, commercial use – I and commercial use – II, where permissible height is not achieved even after consumption of permissible FSI, additional FSI up to 25 % of the permissible FSI may be permitted subject to other provisions of the regulations. Such additional FSI may be permitted on payment of an amount towards additional Infrastructure Charge at the rate of Rs. 1500 per sq.m. in AMC area and Rs. 1000 per sq.m. in AUDA area, for additional FSI area."*

Ahmedabad Urban Development Authority (AUDA) in its draft Comprehensive Development Plan 2021 has proposed a concept of Chargeable FSI. The extent of chargeable FSI proposed is summarized below:

Zone	Base FSI	Chargeable FSI	Total FSI	Location
Residential Zone I	1.8	0.9	2.7	Inside the Ring Road
	1.8	0.45	2.25	Outside the Ring Road
Residential Zone II	1.2	0.6	1.8	Inside the Ring Road
	1.2	0.6	1.8	Bopal, TP 1 and TP 3
	1.2	nil	1.2	Outside the Ring Road
CBD	1.8	3.6	5.4	

Table 8: AUDA – Scale of Chargeable FSI

Areas already densely developed like the Walled City and Gamtals will not have additional chargeable FSI. The charge to be paid for additional FSI will be at 40 % of the Jantri rate.

Chargeable FSI has been proposed without having an explicit provision in Gujarat Town Planning and Urban Development Act 1976

5.8.5 Some issues related to premium FSI

Charging 'premium for additional FSI' seems to be emerging as a popular fiscal instrument. However it raises some basic issues both in the realms of town planning and public finance and therefore of related law.

- The fundamental issue is the nature of right in property of urban land. Is right to develop (i.e. construct buildings) an integral part of ownership of urban land? If that were the case rationale for restricting the development right by way of FSI would essentially be for managing externalities (mainly of congestion.)
- However, premium FSI may imply (though not explicitly stated) that the development rights are owned by the state and they can then be allocated (or sold), as the state may desire. This in an extreme case would render ownership of land only the ownership of the surface. This would not be conducive to free and fair land and real estate market.

- The above position would restore what was considered undesirable in monopoly ownership of land through Urban Land (Ceiling and Regulation) Act, by way of state monopoly of development rights. Moreover if allocation of development rights were used as a fiscal tool, there would be incentives to create scarcity of development rights by specifying lower base FSI. This is a big risk in turning a physical planning tool into a fiscal tool.
- Furthermore if state governments see this as their tax base (e.g. Maharashtra, Mumbai) it would amount to erosion of legitimate tax base of local governments.
- Under the weak enforcement of development regulations, this might lead to unauthorised construction to avoid payment of fees for extra FSI.
- The nature of premium as a fiscal tool is also not very clear as in many cases it is introduced as a part of the Development Control Regulations of the Master Plan prepared under the Town Planning legislation. To be legally justifiable it has to be structured as a "benefit Tax" if not as a "Compensatory Fee".

Uthwatt Report had proposed nationalization of development rights in UK. But that was never put to practice. In fact attempts to charge development value received some sharp criticism. *"The state does not compensate for restricting property rights. It cannot properly add insult to injury by charging for the exercise of those rights, particularly when it has decided the circumstances and imposed the restrictions under which those rights can be exercised. That really would be theft – as becomes clear if we express it as an equation. The state expropriates property rights and then charges those from whom it has taken those rights for granting permission to use them on its terms."* (Gummer J. 2004)

5.9 Charges for regularization of unauthorised development

There is considerable development taking place without obtaining formal permission. This is not only in the form of slums that of course do not conform to development control regulation, but also development that would otherwise conform to building standards. The reasons are unrealistic regulations, complex and time consuming procedures and weak governance. The proportion of such unauthorised development becomes so large that punitive action to remove such development becomes impractical. In democratic context persons who occupy such developments are considered to be innocent victims who should not be deprived of the shelter or severely punished. Many states have therefore introduced schemes of 'amnesty' or 'condonation' to regularize the unauthorised development by charging fee. In fact more effective enforcement should lead to reduced revenue from such a source. But it could also create incentives to perceive this as fiscal source.

5.9.1 Maharashtra

Regularisation of unauthorised development by charging a fee had been in practice through executive orders almost since 1960s. A formal legislation called 'Maharashtra Gunthewari Developments (Regulation, Upgradation and Control) Act was enacted in 2001. Guntha is one fortieth of an acre (121 sq.yards or approximately 100 sq.m.) and is a common size of plot for homes in peri-urban areas. Gunthewari development is defined in the Act as *"plots formed by unauthorisedly sub-dividing privately owned land, with buildings if any, on such plots, including excess vacant land under the Urban Land (Ceiling and Regulation) Act 1976, not vested in the State Government but excluding land under encroachment."*

The Act declares that all Gunthewari developments existing as on the 1st January 2001, on application being made in that regard shall be eligible for regularization. However this will not extend to developments in Mumbai Metropolitan Region and environmentally sensitive areas. The Act tried to achieve improved layout and generate finance for improved infrastructure by stipulating following conditions:

- In the layout, ten percent of the plots shall vest in the planning Authority, free of cost, provided that such plots are unsold and unbuilt,
- Setback areas are surrendered to achieve roads of minimum width,
- Planning Authority will not be required to provide for any alternate plots or any compensation to plot holders,
- Regularisation shall not confer any additional title or claim not already enjoyed by the plot holder; and
- Regularisation shall be subject to prior payment of compounding fee and development charge as determined by the State Government from time to time

Further, the Act requires that the amount accruing to the Planning Authority on account of compounding fee is kept by the Planning Authority in a separate head of account, layout-wise and is utilised for on site infrastructure in the layout. The Act further provides for on site development of the layout in proportion to the amount of compensation received by the Planning Authority. (Maharashtra 2001)

It seems that the Planning Authorities are deciding the rate of compounding fees. Nagpur, Solapur, Amravati and Sangli municipal corporations charge Rs 193, Rs 189, Rs 118, and Rs 93 per square metre, respectively, for regularisation. In 2001, Pune Municipal Corporation initially decided a rate of Rs. 69 per sq.m. But later reduced it to Rs. 40 sq.m. Similarly the cut off date 1st January 2001 also seems to have been extended. Despite this, it is not known whether majority of unauthorised layouts have applied for regularization and substantial revenues have been raised for extending infrastructure to such areas.

5.9.2 Gujarat Regularisation of Unauthorised Development Act 2011

Gujarat brought out a new legislation called "Regularization of Unauthorised Development Act" in 2011 by repealing 2001 law of same name. The new law in its preamble recognizes hardship that would be caused to large number of persons if all unauthorised development were to be removed as one of the reasons why the new law had to be enacted.

The Act suspends actions initiated under other laws against unauthorised development, requires the landowners or the occupiers to apply for regularization. The Municipal Commissioner can be a Designated Authority for administering the Act. The Act provides for developments on certain types of lands that cannot be regularized. These include government owned lands, lands designated for public purposes in Development Plans or Town Planning Schemes, environmentally sensitive lands such as riverbeds. It also specifies the kind of deviations form the rules that can be condoned. These include ground coverage, built up space, height of buildings, change of use, common plot, and sanitary facilities if the facilities already provided are found to be satisfactory and parking if the deficiency is made good elsewhere. It lays down the deviations that cannot be regularized, and these include; projection beyond plot boundary, construction obstructing the path of utilities, use that may cause health hazard.

The Act by Section 7 empowers the state government to prescribe the scale of fees payable and mode of calculation for regularization of unauthorised development. The revenue on account of such fees are to be credited to "Infrastructure Development Fund" held by the designated Authority in trust for purposes of augmentation, improvement or creation of an infrastructure facility.

A notification laying down the fees in case of Ahmedabad is attached as Annex 8.
Interestingly these rates are called Impact Fees.

5.9.3 Andhra Pradesh

In Andhra Pradesh a variety of fees are in practice - some enabled by the provisions in the municipal acts. Regularising unauthorised development is seen as win-win situation yielding substantial revenues for public agencies and helping the innocent victims.

- Compounding Fee

Under Section 399 of HMC Act, 1955, the Compounding fee for violation of Building Regulations or for starting the construction before permission (if necessary) is released may be levied.

The Act provides the penalty for such violations as stipulated in Schedule U & V.
In case a building is constructed without permission but satisfies the rules then and on filing the application for permission, enhanced fee (@33%) is collected by the Corporation under Section 455 (a) of the said Act.

- Demolition Expenses

Under Section 452 (2) & 636 of HMC Act, 1955 if persons resorting to unauthorised construction face demolition they shall have to pay for the demolition of their own buildings.

Under Section 456 (4) of HMC Act, 1955 in respect of Removal of Dilapidated Structure or Demolition, the cost and administrative expenses towards such demolition is recovered from the owners.

- Unobjectionable Sunshades, Balconies, Canopy, Steps, etc. Projecting into Street Margins (For one Year)

(Under Section 440 of HMC Act, 1955) As fixed by the Government from time to time) (Under Schedules "U" & "V" of HMC Act 1955)

Under the municipal laws, provisions exist for collection of projection charges from unobjectionable projections into the footpaths or streets by way of balconies, sheds, etc. Permissions for such projections should be issued only if there are no objections from the traffic point of view.

- Building Penalization / Regularization Fee:

There are number buildings constructed with deviation or without approval in many of the urban areas. The existing statutory provisions may not contain any such mechanism to allow regularizing such structures. In the absence of this many buildings remain illegal and due to this many of the building owners suffer as they may not either sell or go for any additional constructions. The local body is also helpless as they can either demolish such structures or officially allow such structures to remain like this. But in Andhra Pradesh under previous BRS or present BPS schemes could regularize many such buildings.
In the recent BPS, it yielded almost Rs.1000 crores, which is a win-win situation for both the Local Body and the building owners.

- Layout Regularization Fee:

Similarly there are number of plots / layouts without approval. Due to this the plot owners are unable construct in an authorized manner. In Andhra Pradesh in the recent LRS, not less than one lakh applications were cleared which yielded about Rs.350 crores. (Reddy B.P. 2010)

Urban Land (Ceiling and Regulation) Act 1976 was repealed in Andhra Pradesh in 2008 (9 years after it was repealed by Government of India). Exemption under section 20 of the Act were granted on account of hardship by charging a fee that also condoned violation of the provision of the Act. This then had become an attractive source of finance.

5.9.4 Karnataka

While Maharashtra has attempted to regularize unauthorised development on private lands, Karnataka confronts large-scale unauthorised development on government land. State Government tried to bring in legislation to regularize unauthorised developments by also charging fee. (Popularly called Akrama Sakrama). However it has not yet been brought into force.

5.9.5 Tamil Nadu

Section 113A and section 113B of the Tamil Nadu Town and Country Planning Act 1971 (Tamil Nadu 1971) empowered *the Government or any officer or authority authorised by the Government, by notification, in this behalf may, on application, by order, exempt any land or building or class of lands or buildings developed on or before 31st day of March 2002 in the Chennai Metropolitan Planning Area from all or any of the provisions of this Act or any rule or regulation made thereunder, by collecting regularisation fee at such rate not exceeding twenty thousand rupees per square metre, as may be prescribed. Different rates may be prescribed for different planning parameters and for different parts of the Chennai Metropolitan Area.*

5.9.6 Should Regularisation Fees be a Fiscal Tool?

There are many reasons why town planning regulations are not scrupulously enforced. The regulations make the smallest legal dwelling unit unaffordable to a large population that is forced to seek shelter in unauthorised layouts and slums. In some states the tendency is to seek formal permissions only when loans from formal institutions are raised and administrative machinery is too weak to control such large-scale unauthorised development. Plans and particularly extension of primary infrastructure does not cover peri-urban areas in a timely manner, which prompts unauthorised layouts (e.g. Gunthewari in Maharashtra). Thus unauthorised development is both a failure of planning and an outcome of governance deficit. This then is turned into a fiscal tool justified on the ground of 'helping the innocent victims' or 'win win' solution. This may be an expedient solution of short-term relief. In the absence of attention to long-term planning and governance aspects, the risk is that if as a fiscal tool it succeeds, it could create vested interest in overlooking the real problems - unrealistic planning and unwillingness to enforce regulations.

5.10 The Revenue Potential of Land Based Fiscal Tools

The data about the revenue earned through the land based fiscal tools are not readily available in the public domain. Moreover to assess the fiscal efficacy of these tools it is also necessary to understand the proportion of such earnings to total budget size and to the proposed capital expenditure. This cannot be rigorously analysed for want of systematic data. Nevertheless some attempt has been made to assess these aspects.

5.10.1 Andhra Pradesh

All the ULBs and Urban Development Authorities in Andhra Pradesh together earned, by way of land based fiscal tools, Rs. 311 crores in 2009-10 and Rs. 227 crores in 2010-11. The break-up according to main tools and share of GHMC is shown in Table 9: (Reddy B.P. 2010)

Revenue earned through land based fiscal tools (Rs. in Crores)

Sr.No.	Fiscal Tools	Revenue earned in ULBs and UDAs		Revenue earned in GHMC	
		2009-10	2010-11	2009-10	2010-11
1	Building permit fee	72.42	56.59	51.55	39.07
2	Development Charges	79.00	52.25	40.19	27.52
3	Betterment Charges	74.75	55.80	58.92	41.26
4	Impact Fees	41.08	24.18	39.81	22.14
5	Other tools	43.75	38.18	14.34	15.83
	Total	311.00	227.00	204.81	145.82

Table 9:Andhra Pradesh – Revenue Earned from Land Based Fiscal Tools

The share of Development Charges in the Income of Hyderabad Metropolitan Development Authority (HMDA) is given in Table 10. Development Charge constituted a major share of income ranging between 44% and 79% of the total income. However the Development Charge itself fluctuated from Rs. 51 crores to 271 crores during the four years. Since the extension of GHMC a large jurisdiction over which HMDA directly exercised development control got transferred to GHMC for exercising the development control as well as collection of development charge as delegated powers of HMDA. The development charges collected by GHMC are expected to be transferred to HMDA. However considerable delay is experienced over such transfer.

In Rs Lakhs

Particulars	**2006-07**	**2007-08**	**2008-09**	**2009-10**
Development Charges	5148.31	13197.87	27328.25	16739.88
Other Receipts	6421.66	6032.84	7334.96	9143.75
TOTAL INCOME	**11569.96**	**19230.71**	**34663.21**	**25883.64**
Development Charge as % of Total Income	**44%**	**69%**	**79%**	**65%**

Table 10: HMDA – Share of Development Charge in Total Income

The variation in the revenue clearly brings out the susceptibility of the revenue to changes in real estate market. However it is not possible to assess the adequacy in terms capital investment needs.

5.10.2 Municipal Corporation of Greater Mumbai (MCGM)

Revenue accruing to MCGM through land based fiscal tools is given in table below:
The total revenue accruing to MCGM from the land based fiscal tools is estimated to be around Rs. 2900 crores. This includes value based development charge, premium for granting 0.33 FSI, premium for 35% extra FSI that was earlier treated as free of FSI, and premium for treating areas of staircases, passages as free of FSI.

MCGM: Land Based Revenue						Rs. in Crores
Sr.no.	Land Based Fiscal Tool	2009-10	2010-11	2011-12	2012-13 (RE)	2013-14 (BE)
1	Development Charge	132.78	225.14	306.85	307.63	317.63
2	Premium for additional 0.33 FSI	28.14	0.01	229.85	275.00	325.00
3	Cpmpensatory Fungible FSI				910.00	915.00
4	Other Premium Charges	646.05	845.05	710.03	1005.47	1005.47
5	Miscellaneous Fees, Fines & Charges	320.46	353.85	234.15	372.33	384.31
	Total	1127.43	1424.05	1480.88	2870.43	2947.41

Table 11: MCGM – Income from Land Based Fiscal tools

The budget estimates of capital expenditure for 2012-13 were Rs. 9359 crores but have been revised downwards to Rs. 6521 crores. Thus the land based revenues are likely to account for 44% of capital expenditure. The Budget estimates for 2013-14 indicate the capital expenditure to be Rs.9369 crores. Overlooking the long-term trend of not achieving the capital expenditure targets, the land based revenues during 2013-14 would account for 31% of capital expenditure. However the budget does treat the income from land based fiscal tools as capital receipts. Such revenues reflect exceptionally high real estate prices prevailing in Mumbai and would not be realizable in other Indian cities.

5.11 Remunerative Use of Land

As explained in paragraph 1.2 above, monetizing public land is not considered to be within the scope of this study. Remunerative use of land belongs to 'asset management and use' and not strictly to the domain of 'fiscal tools.' Nevertheless many development authorities continue to deploy various models of land assembly, appropriate land and then dispose of the land for achieving planned development and raising financial resources. Some of the prevalent generic models are summarized below:

(a) Large-scale bulk land acquisition: DDA, CIDCO (in case of Navi Mumbai) used this model. In these cases land was acquired in 1960s and 1970s (prior to amendment of Land Acquisition Act in 1984). The land was developed and disposed over a long period of time with entire land value gain accruing to development authorities.

(b) Sharing of land: BDA deploys land acquisition but with a clear indication that 40 percent of land will be returned to the landowners. Disposal of corner plots by auction yield substantial revenues to BDA. Indore Development Authority using the provisions of Madhya Pradesh (1973) for preparing and implementing town improvement scheme for implementation of master plan acquires and disposes land for raising finances. (Planning Commission 2011)

(c) Town Planning Schemes in Gujarat: Realizing the difficulties of large-scale land acquisition, Gujarat adopted the town planning scheme approach to assemble land and appropriate 40 to 50 percent of the land for public purposes including "up to 15 percent for sale by development authority". This in case of AUDA has emerged as an important source of funds.

(d) Apart from the development authorities, Housing Boards and Industrial Development Corporations also use acquisition of land for their developmental objectives and simultaneously use acquired land for raising finances.

However, since acquisition of land is increasingly coming under stress and would increasingly become expensive, using land, as fiscal resource in the traditional manner would become increasingly difficult. In any case ULB have had very little access if any to such ways of acquiring and using part of the land for remunerative purpose.

Notwithstanding the above observation, large and old cities have land assets built over a long period of time for variety of purposes. In the recent past many ULBs have begun to use some of these in the so-called PPP format (simply conditional leasing of land) to build assets for public purpose and services. Typically, hospitals, markets and public parking have been developed in this manner. This though serves the public purpose, does not become direct fiscal tool.

Every ULB should carry out a GIS based inventory of lands owned by it. The inventory should cover Tenure (if leased, lease period, covenants, lease rents etc.), current use, if built constructed area and consumed FSI, permissible built-up area at permissible FSI, assessed value of land etc. Based on such inventory, vacant lands, plots with obsolete use and plots with underutilized FSI could be identified. This in turn should provide the basis for using ULB lands for generating additional financial resources. Competitive bidding would perhaps be the best option to realise the potential of such lands. Forthcoming study carried out on similar lines for

Ahmedabad would demonstrate that ULB lands when monetized could garner significant amount of finances.

Chapter VI

6 Learning and Way Forward

6.1 Notion of property in land

The land based fiscal tools are conceptually based on a continuum that at one end believes that individual land owner has no right to land rent and that can be fully taxed for community benefit (George, H. 1879); and at the other end the notion that development rights are owned by the state and can be taxed on allocation to individual land owner. (Uthwatt Report) Clearly both are extremes and fiscal tools have not been successfully designed and practiced based on such extremes. However the notion of property rights in land has to be clearly understood both in legal and economic sense. In the present Indian context, though ownership of property is no longer a fundamental right, evolution of law seems to support that the state can compulsorily acquire land only for clearly defined public purpose and by paying fare and just compensation. The macroeconomic ethos also seems to commit to the notion of private property in land. Ownership of land and ownership of development rights have not yet been legally dissociated. It is necessary that this context be borne in mind while designing land based fiscal tools.

6.2 Land based fiscal tools in India

The main land based fiscal tools currently in practice in India could be identified as follows:

(a) Land value increment tax or betterment levy on the increase in value of land on account of implementation of improvement scheme or town planning scheme or specific project
(b) A one time charge on area of land and/or buildings at the time of grant of development permission
(c) A one time charge on value of land at the time of granting development permission
(d) Transfer of Development Rights as indirect fiscal tool as a substitute for monetary compensation in case of acquisition of land for public purpose or as an incentive to achieve planning objectives.
(e) Impact Fees. (There are tools labelled as such but are not in the sense they are used in North America)
(f) Fees for regularization of unauthorised development.

Land value tax is not included in the list, as internationally it has become a variant of property tax where land is taxed at a higher rate than the improvement or buildings. In Indian context it is seen as the revenue source of state government and not of the ULBs. Similarly vacant land tax when applied is a variant of property tax and hence not covered in this study.

It is necessary that a fiscal tool be clearly defined in terms of whether it is a general tax, a benefit tax, a compensatory fee or a regulatory fee. The case law in India has unambiguously emphasized that the first three must have explicit legislative mandate. According to judicial pronouncements regulatory functions may be construed to include power to charge fee but in that case fee must relate to cost of exercising regulatory functions. In Indian context various phrases like tax, charge, cess, surcharge, fee, and premium are used without a clear definition and intent. In most cases the tool is applied to the area of development and the event of charging is the grant of development permission. It is therefore not the label but the intent of the tool that should matter.

6.3 Evaluation of land based fiscal tools practiced in India.

The land based fiscal tools mentioned in 6.2 above are evaluated with respect to following parameters.

(a) Tax Base: The measure (value or area) of taxable assets.
(b) Efficiency: whether the tool is non-distortionary, and incentive compatible.
(c) Equity: Equal groups are treated equally; lower income groups are not more affected than higher income groups.
(d) Adequacy: Revenue generating capacity, stability, and buoyancy.
(e) Manageability (including risk of avoidance): Implementability/Enforceability, and administrative costs.
(f) Legal feasibility

The evaluation is presented in a series of tables below:

Fiscal tool	Land value increment tax
Tax base	Land value increment accruing due to improvement schemes, town planning schemes or specific projects
Efficiency	It is non-distortionary and incentive compatible.
Equity	A uniform proportion of land value increase (or unearned income) is levied as tax across all landowners. This is a regressive tax as the tax forms a greater share in the income of the lower income groups and a relatively smaller share in the incomes of the higher income groups.
Adequacy	In theory it could be a buoyant, and stable source of revenue, but in practice due to methodological problems it does not yield expected revenues.
Manageability	Assessing land value increase attributable to particular cause is methodologically difficult and always likely to be contested.
Legal feasibility	The idea of capturing land value increase accruing to private landowners on account of public investments has been very attractive. It has been on the statute books for over a century but now it is no longer in practice in its true spirit.
General Remarks	Landowners who do not wish to transact in land see this as unjust and resist imposition. In practice it tends to be charged at the time of granting development permission.

Table 12: Land Value Increment Tax - LVIT

Fiscal tool	Area based development charge
Tax base	Area of land and construction proposed for development
Efficiency	Tax base can be unambiguously measured. Under reasonable enforcement, tax avoidance is not possible as it is collected at the time of grant of development permission.
Equity	Conceptually it is argued that incidence of tax in a competitive market would be on landowners and therefore homebuyers will not be affected. However in practice the incidence of tax is on homebuyers. Houses of identical area in two different locations having different prices and therefore being purchased by homebuyers of different income pay the same development charge and therefore the tax could be considered iniquitous.
Adequacy	The area-linked rates of taxes once decided do not get periodically revised. Consequently revenue is not buoyant. The revenue is not stable since it is susceptible to cycles of real estate market.

Manageability	Where development control is reasonably effective, the fiscal tool can also be managed well. Where such control is weak, the charge could become additional reason for continued unauthorised development.
Legal feasibility	Most town planning acts now provide for levy of area-linked development charge. Legislation has structured this tool as benefit tax by stipulating accounting and budgeting requirements and the purpose for applying the funds.
General Remarks	There is not much resistance to pay such a charge.

Table 13: Area based Development Charge

Fiscal tool	Value based development charge
Tax base	Value of land and buildings proposed to be developed
Efficiency	For tax avoidance, some unauthorised development might happen making the tool distortionary.
Equity	Since the development charge is linked to market value of the asset the tax is equitable.
Adequacy	By linking development charge to value of land / buildings, buoyancy of revenue can be ensured. However, the revenue is not stable since it is susceptible to market cycles.
Manageability	The management difficulty relates to determining the value of land. Assessment in individual cases at the time of granting development permission is not administratively feasible. Periodic assessment of land and property prices carried out by an independent and separate agency is necessary.
Legal feasibility	By amending the Maharashtra Regional and Town Planning Act, 1966 in 2010, the Government of Maharashtra changed the rates of assessing the development charge from rupees per unit area to percentage of market value of land.
General Remarks	Amongst the six states only Maharashtra has adopted such a system of development charge based on the valuation carried out every year for Stamp Duty (called Ready Reckoner).

Table 14: Value based Development Charge

Fiscal tool	Transfer of Development Rights - TDR
Tax base	There is no specified tax base
Efficiency	TDR works only when there is scarcity of development rights in the market. The risk is of creating artificial scarcity by keeping the base FSI low and thereby distorting the market.
Equity	The cost is passed on to the homebuyers where the TDRs are used. Moreover where TDRs are used the residents are likely to suffer congestion and related dis-benefits.
Adequacy	Success of TDRs depends on factors such as business cycles, and supply of land and particularly the prescribed base FSI.
Manageability	TDR certificates need to be managed as stocks. The records and data systems have to be managed with same degree of security. This may require skills not normally available in ULBs.
Legal feasibility	Maharashtra’s town planning act provides for TDR as a substitute for monetary compensation for acquisition of land. But award of incentive development rights that can be used *in situ* or as TDR is only through development regulations. Karnataka town planning act also provides for DR for land surrendered for public purpose at 1.5 times the land so surrendered. Such Development Rights can be used on the remainder of the plot or transferred elsewhere.

General Remarks	This is essentially a tool to obtain land for public purposes or subserve other planning objectives such as slum redevelopment or heritage conservation by transferring the cost to the market. It does not directly yield monetary revenues

Table 15: Transfer of Development Rights

Fiscal tool	Impact Fees
Tax base	Impact fee is a fiscal tool in the nature of a compensatory fee.
Efficiency	This is an efficient fiscal tool for recovery of marginal cost required to be incurred for servicing the new development.
Equity	Such fees are in most cases passed on to homebuyers.
Adequacy	It is designed to be adequate for cost recovery.
Manageability	Impact Fees have to be justified on the basis of 'rational nexus'. This is possible through periodically revised capital improvement plans.
Legal feasibility	There is no legislative provision in India to charge Impact Fee as understood in North America.
General Remarks	Impact fees would not work in India since there is a serious infrastructure backlog and since there is no practice of making and periodically revising capital improvement plans that can help satisfy the test of 'rational test'.

Table 16: Impact Fees

Fiscal tool	Fees for regularizing unauthorised development
Tax base	The extent of unauthorised development.
Efficiency	It might encourage unauthorised development since developers face no punitive consequences but can get the construction regularized by paying the fee.
Equity	Deciding rates for authorizing unauthorised development is delicate. Punitive rates may not get adequate response if benefits of authorization are not appreciated. Nominal rates may receive better response but may not be a deterrent for continued unauthorised development.
Adequacy	This is not a desirable source of revenue.
Manageability	Managing the tool suffers from the same inadequacies that first tolerated the unauthorised development. In most cases it depends upon voluntary disclosure. Unless clear benefits are seen as compared to fees charged the voluntary disclosure will fall short.
Legal feasibility	Many states have enacted laws to provide for regularizing unauthorised development. Most acts contain a sun-set clause after which the regularizing is supposed to stop. But once enacted expectation is of continued regularization and can command political support.
General Remarks	This practice must be strongly discouraged. It rewards developers who undertake unauthorised development and the buyer occupants who are termed 'innocent victims'.

Table 17: Fees for Regularisation of Unauthorised Development

Based on the above evaluation and the present status of planning and management for urban infrastructure, desirable fiscal tool should meet the following criteria:

- Has clearly defined tax base,
- It is easy to administer,
- Has no or little scope for avoidance,
- Should have buoyant revenue,
- Captures land value gains on account of infrastructure provisions,
- Its incidence is equitable and
- It does not distort the real estate market.

In this context value based development charge is the most promising land based fiscal tool, which could more appropriately be called 'Urban Infrastructure Benefit Tax' (UIBT). However there are many finer points and nuances that need to be considered in designing the tool. These are discussed in later sections.

6.4 The role of land based fiscal tools

It is necessary to recognize that revenue from land based fiscal tools is one of the sources available for infrastructure finance. Each of the available sources has a specific role and may not be substituted for the other. The predominant model of financing urban infrastructure at municipal level is shown in Figure 8:

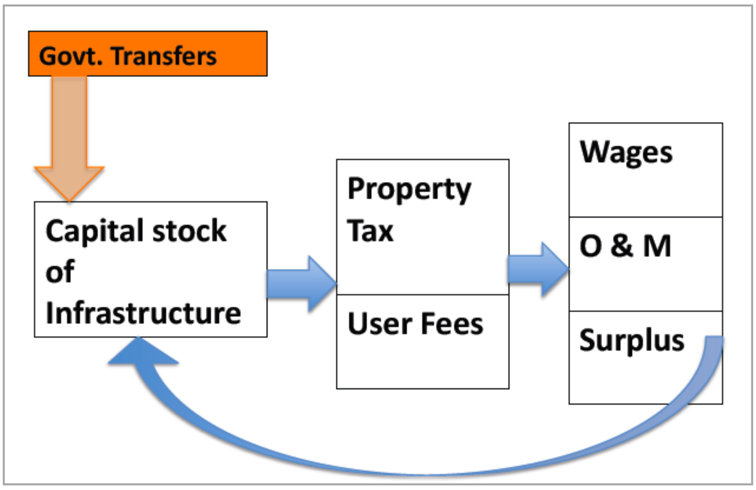

Figure 8: Financing Urban Infrastructure – Dominant Model

In this model, limitations of charging user fees and taxes and committed costs of wages and operations and management, has hardly any scope for generating surpluses for capital investment. Borrowings have augmented the resources for capital investment where demonstrated debt servicing capacity is present. Agencies like LIC or HUDCO have provided access to institutional debt, agencies like TNUDF have acted as intermediaries to access capital market through pooled finance and individual cities like Ahmedabad have directly accesses capital market through municipal bonds. Borrowings have an important role in financing indivisible capital works that generate long-term service benefits. Borrowings help achieve inter-generation equity by spreading costs in tune with the benefit streams. This model is shown in Figure 9:

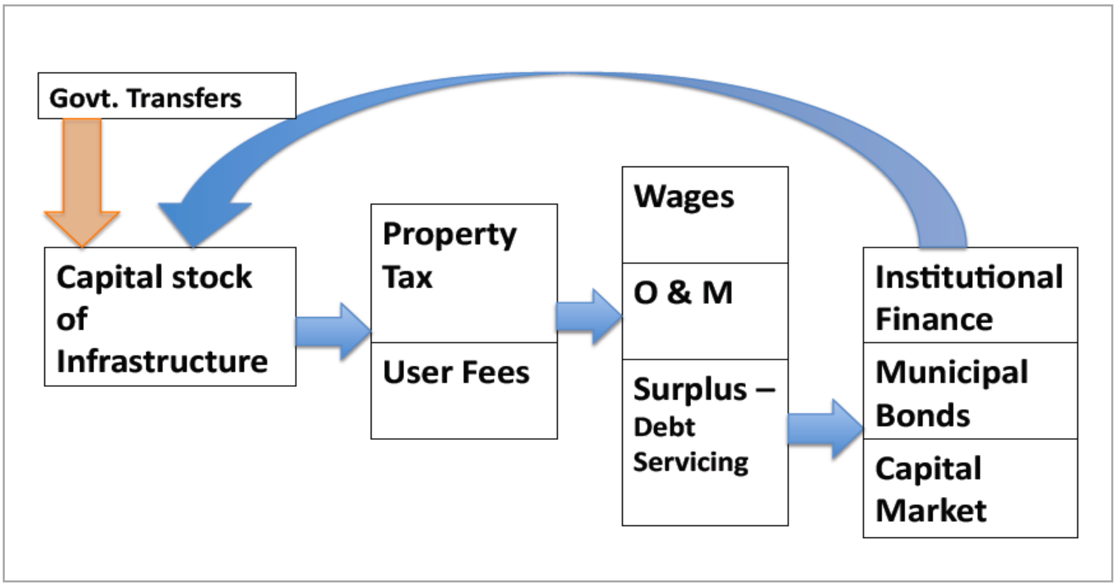

Figure 9: Financing Urban Infrastructure – Use of Institutional Finance and Capital Market

Despite efforts of USAID through FIRE (D) the concept of accessing capital market for municipal infrastructure investments has not taken roots. (MoUD and USAID, 2011) In US this was the dominant model till 1970s. However where substantial new growth was occurring, existing citizens opposed paying additional taxes to service the debt required to finance the additional infrastructure required to service new growth. This led to slogans like 'growth should pay for growth' and practices like impact fees. In the Indian context the problem is not confined infrastructure required for new growth but includes infrastructure deficit too. All sources of funds *viz.* intergovernmental transfers, taxes and user fees that service debt and land based fiscal tools have to be used in a complimentary manner as depicted in the Figure 10:

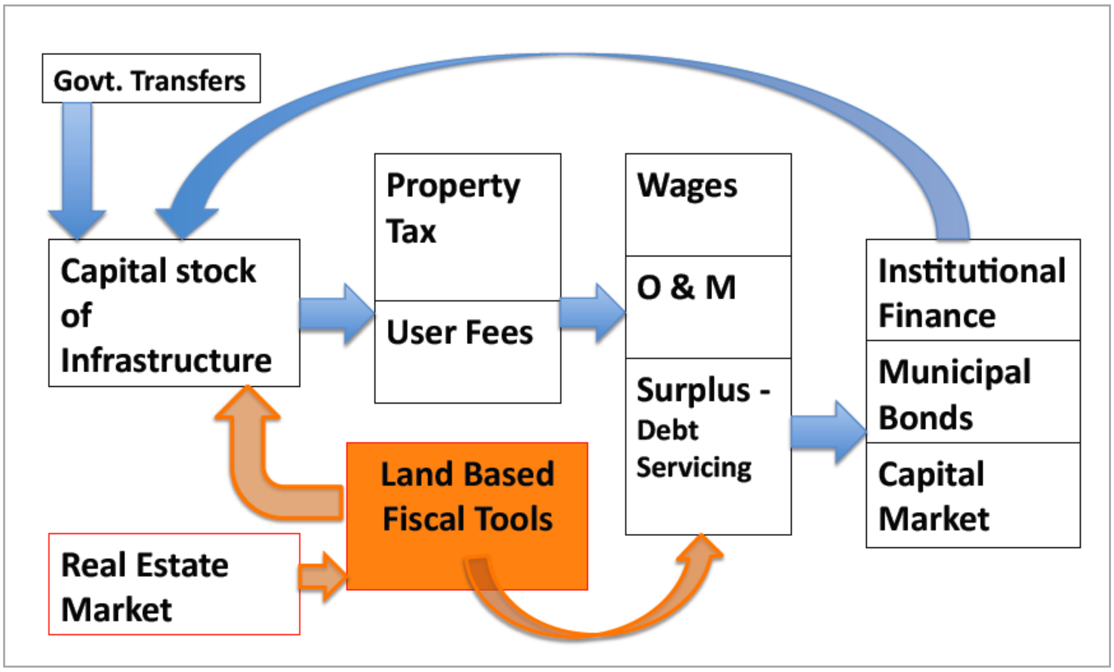

Figure 10: Role of Land Based Fiscal Tools

The land based fiscal tools have to be essentially seen as benefit tax used for financing capital investment (or also to service debt when required), but certainly not for general administrative or O & M expenditure. Land based fiscal tools that are one time receipts at the time of granting development permission are in the nature of capital receipts and should legitimately be used for capital expenditure. (Capital investment likely to occur through PPP is not shown in the above figure, but could also be considered wherever feasible). Implicit in this arrangement is a well functioning and expanding real estate market. The fiscal tool has to be therefore designed in such a manner that it does not inhibit growth and expansion of the real estate market.

6.5 Design of land based fiscal tool – Urban Infrastructure Benefit Tax (UIBT)

Design of land based fiscal tool should begin by understanding that fiscal tool by whatever name must have a legislative support. Introducing such tools through executive orders of state government or incorporating them in development control regulations formed under the town planning acts would both be questionable in law. Following principles could be used in designing the legal provisions:

(a) Effective collection of land based fiscal exactions will be facilitated when it is linked with the process of granting development permission. It will minimize the risk of avoidance of exaction. In the present circumstances tax is most likely to be passed on to final buyers. As the market becomes competitive the incidence may move to landowners and developers. (However in the absence of effective development control, tax avoidance might lead to increased occurrence of unauthorised development.)

(b) The authority that will assess the tax and authority that will collect the tax should be clearly defined with provisions for dispute resolution.

(c) The tax base, the rate of tax, the mode and event of payment should also be defined. Many states have prescribed maximum rates of Development Charge. It would be more appropriate to prescribe minimum rates so that authorities do not take a populist stand of favouring low rates. Planning authorities could be empowered to propose revision of rates based on the Capital Improvement Plan, every five years after the initial introduction of UIBT.

(d) Since the exaction is in the nature of Benefit Tax, the purpose for which the funds can be used should also be explicitly defined. Use for capital expenditure for urban infrastructure including servicing debt raised for particular capital works should be the legitimate uses of fund. Financing revenue expenditure like establishment or O&M should be avoided.

(e) Accounting, budgeting and auditing provisions that ensure use of funds according the legislative intent should also be incorporated. Creating a separate Fund and maintaining separate accounts would be necessary. The annual budget estimates of the authority should be required to separately show the estimated receipts and payments of the Fund. Similarly the Annual Accounts should be required to show income and expenditure and balance sheet of the Fund. More explicit provisions for auditing the Fund in terms its compliance with the legal provisions should also be made.

(f) The most promising fiscal tool would be the value based development charge or more aptly called Urban Infrastructure Benefit Tax (UIBT). This would be possible in states where there is an established practice of assessing and publishing land and property prices every year. Otherwise an area based tax would also work with inherent limitations of buoyancy.

(g) Many states have numerous fees and charges all linked to the area of proposed development. Instead a single benefit tax will be easier to administer, well understood by taxpayers and would not increase the transaction cost to an extent that makes avoidance attractive.

(h) Land based fiscal tools require that the land, real estate and housing markets grow and expand for garnering increased resources. It is therefore imperative to ensure that tool does not restrict or distort the markets.

There is an increasing tendency to use FSI as a fiscal tool. It is however essentially a tool of managing physical development and should not be deployed as a fiscal tool. Marketability of TDR, Incentive FSI or Premium FSI depends upon creation of regulatory scarcity of development rights and is therefore inherently distortionary. This tool used if at all should be on a limited scale and in no case base FSIs be artificially kept low to exact higher value of additional FSI.

6.6 The institutional implications

In many states the primary responsibility of granting development permissions is that of the Development Authorities consequently the exactions are also collected by the Development Authorities. Only in Maharashtra the primary responsibility of granting development permission rests with the ULBs. In some cases this function is delegated to the ULBs along with the authority to collect exactions on behalf of the Development Authority. In some states planning permissions are granted by Development Authorities and the Building Permissions are granted by the ULBs under the municipal law. This institutional complexity could give rise to many problems such as increased transaction cost for undertaking development as also scope for unscrupulous developers to evade regulatory requirements, reluctance of the agencies to pass on the funds collected as a result of delegated powers etc. Such variations in taxing powers is also linked to responsibilities of capital works. In most states Water Supply and Sewerage Boards carry out capital works in the water and sanitation sector within the ULB areas. In some states major roads and drainage works are built by UDAs, PWDs or state road development corporations. There would be merit in streamlining institutional responsibilities as envisaged in Schedule 12 to the Constitution. The functional domain of the metropolitan and urban development authorities could then be very clearly defined at the scale of metro-region as distinct from the local or municipal scale.

Land as a base for fiscal tools will be common for both ULBs and Development Authorities. How this base is shared between the two types of authorities will essentially be politically determined. However from legal and administrative perspective it would be efficient to provide for a surcharge to be levied on the basic UIBT levied and collected by the ULBs for transferring it to the Development Authorities.

6.7 Significance of the Capital Improvement Plans

Experience shows that many land based fiscal tools are seen as sources of revenue income. The rates of tax are therefore decided on considerations of popular and political acceptability. Such rates are not periodically revised, with the result that real value of the revenue erodes over time. This is obviously true of area-based taxes but could also be true of value-based taxes at the time of initial introduction. It would be desirable that one time land based fiscal tools are seen as sources of capital receipts. Their adequacy then can be judged with reference to capital investment required to attain certain benchmarks of service delivery, in the context of other possible capital sources such as intergovernmental transfers, net owned funds of the planning authority or ULB, access to borrowings and possibilities of private financing.

Capital Improvement Plan (CIP) is crucially important in this context. Cities in US use this for justifying the ‘rational nexus’ in case of Impact Fees. JnNURM required preparation of City Development Plans including Capital Investment Plans. However these have not become mainstreamed as a standard procedure. A need or bench marked based CIP prepared every five years along with a corresponding financing plan which *inter alia* proposes the rates to be charged for land based fiscal tools will be a desired reform. To begin with it could be made mandatory for the Municipal Corporations to prepare CIPs.

An integrated CIP could also be used as a vehicle of determining the allocation revenues raised through UIBT.

6.8 Quantifying UIBT Revenues

UIBT revenues of a city will depend upon the extent of development, market value of development being undertaken and the rate of UIBT. The first two parameters vary widely across the city. The extent of development also varies with market cycles. Moreover the time series data on extent of development is not compiled and disclosed by the ULBs or UDAs. Third parameter viz. rate of UIBT being a legislative matter has to be politically determined. This makes quantification of UIBT revenues with any degree of certainty virtually impossible.

Nevertheless a case of Mumbai could be presented to illustrate magnitude of benefits that might accrue if UIBT is adopted. The rate of development charge prevalent since 1992 till 2010 in Mumbai was Rs. 350 per sq.m. (Please refer Annex 3). This rate in 2009-10 was less than 0.11 to 0.58% of market value. The revenue earned on account of development charge in 2007-08, 2008-09 and 2009-10 was Rs. 61.44, Rs. 87.13 and Rs. 132.8 crores respectively. As the rates remained unchanged the growth in revenue was purely on account physical expansion of development area. In 2010 the rate was changed to 2.5% of land value as determined in the Ready Reckoner. (Please refer Annex 4). The development charge revenue increased to Rs. 225.1 crores in to 2010-11 and Rs. 306.9 crores in 2011-12. (Please refer Table 11). It may be noted that the rate was linked to the value of land alone. Had it been linked to the market value of property (land and building) as proposed for UIBT the revenues could have been over Rs. 800 crores per year in 2010-11 and also increasing with the property prices thereafter.[19]

In Ahmedabad development charge for residential use is charged at Rs 4.5 per sq.m. (Please refer Table 6). In addition Rs.150 per sq.m. is charged as amenities fee. According to the 2011 Jantri the land + construction rate for residential properties varies between Rs. 5000 to Rs. 12000 per sq.m. [20]Thus the rate works out to be 1.25% to 3% of Jantri value. If the UIBT rate of 2.5% of Jantri rate is adopted the revenue would double in a more equitable manner. It is generally apprehended that Jantri rates are underestimates as compared to real market values. If the system of assessing Jantri rates is improved that could substantially improve the UIBT revenues.

These are of course very broad indicative assessments and more detailed city specific assessments will be necessary for more definitive estimates of UIBT.

6.9 Next Steps

Based on the above discussion next steps to be followed short, medium and long term programme particularly from the perspective of providing additional financial resources to ULBs are outlined below:

6.9.1 Short Term Actions

The short term action programme could include the following:

(a) As the initial status varies considerably amongst states, it may not be possible to bring about single model legislation. Ministry of Urban Development may therefore an

[19] This is based on the Author's analysis carried out for MMRDA with Lea Associates South Asia Ltd. 2010.
[20] Jantri rates are generally lower – about a third of the real market rates. If the Jantri valuation is improved to reflect real market rates, the revenue from UIBT could be substantially higher.

advisory on UIBT to state governments with a view to initiating a dialogue. A draft advisory is enclosed as Annex 7

(b) Based on the responses to the advisory, the Ministry of Urban Development could engage with individual state governments about the legislative and institutional changes that could be brought about in a time bound programme.

(c) States that rely upon the UDAs to perform the function of granting development permission may not like to transfer that function immediately to ULBs. In such cases though UIBT is collected by UDAs, provisions could be made for sharing the proceeds with the ULBs in the UDA's jurisdiction. Two possibilities could be considered. First, a proportion of UIBT collected from respective areas of ULB may be devolved to the ULB. Second, a proportion of total UIBT collected may be distributed in proportion to the population of the ULBs.

(d) States where the primary responsibility of granting development permission is that of the ULBs, (e.g. Maharashtra) legal provisions could be made in the UDA Acts for levying a surcharge on UIBT which could be collected by ULBs and passed on to UDAs.

(e) At present the institutional context for infrastructure development is quite complex. Schedule 12 of the Constitution expects ULBs to be comprehensively responsible for civic services. However in many states the planning and development control is still with UDAs, Water Supply and Sewerage Boards are responsible for water and sanitation services and major roads and transport investments are carried out by the UDAs or state road development corporations. It would be necessary to bring about clarity in functional domain of various agencies.

(f) State Governments may amend the town planning acts and UDA acts to enable imposition of UIBT. The provisions could cover;
    - Consolidation of multiple area based levies into a single UIBT
    - Definition of tax base (either the area or the value of proposed development)
    - Minimum rate of tax (if area is the tax base rates could be land use specific)
    - Legally mandating preparation of CIP once in five years
    - Empowering ULB / UDA to propose revision of rate based on the CIP and the financing plan
    - Ring fencing the UIBT revenues in separate 'fund' used only for capital expenditure or servicing the debt raised for capital expenditure
    - Accounting, budgeting and auditing provisions to help monitoring the use of funds in a transparent manner

(g) States may improve the system of evaluation of market value of land and built properties and ensure that market values are regularly assessed and published every year.

6.9.2 Medium Term Actions

The mid term action programme may comprise:

(a) As a mid term reform, a functional clarity may be targeted. UDAs may prepare area wide plans which may cover ULB areas as well or ULBs may prepare detailed 'Local Plans" within the framework of UDA plans. The responsibility of granting development permissions within the ULB area in the either case should clearly be that of ULB. Apart from area wide planning UDAs functional domain may cover development of regional road network, development of mass transit facilities, water resource development, common waste disposal facilities etc, and execution of town planning schemes in non-ULB areas. All other functions should be with ULBs. UIBT can then be administered as spelt out in 6.9.1(f) above.

(b) UIBT can only supplement and not substitute other sources of funds such as ULB's own surpluses, intergovernmental transfers and borrowings. The rates of UIBT also have to be carefully decided to see that it does not lead to tax avoidance and therefore unauthorised development or contraction of real estate or housing market. For this purpose the legally mandated CIP and corresponding financing plans will be useful.

(c) ULBs may prepare 5-year capital investment plans including the financing plans that take into account intergovernmental transfers, ULB's own funds, borrowings and UIBT revenues including proposal for revision of rate of UIBT.
(d) Based on the inventory of its own lands, ULBs can carry out a programme of monetizing the land in a phased manner by resorting to competitive bidding as the basic mode of disposal of surplus land.

6.9.3 Long Term Actions

In the long term perspective, graduating to Impact Fees could be considered.

(a) Once the backlog of infrastructure is removed and CIP system is well established, remodelling UIBT on the principle of "growth should pay for itself" could be considered. This would require a separate legislative framework for introducing Impact Fees. Fees will have to meet the test of 'rational nexus'. Since ULBs will be responsible for granting development permission, they will evaluate the impact and decide the fees to be charged on the basis of CIP - thus satisfying the test of rational nexus. Where multiple agencies are involved in infrastructure augmentation, the principles of sharing impact fees could be laid down in the CIP and corresponding financing plan.
(b) Simultaneously the practice of preparing CIP should stabilize and become the basis of deciding the scale of fees to be levied as Impact Fees on the proposed development.

6.9.4 Conclusions

It would thus be seen that UIBT designed as the benefit tax and not as general tax or compensatory fee is the most appropriate fiscal tool for the Indian cities in the present circumstances. It would be the least distortionary, easy to administer yielding buoyant revenues and capturing land value gains. In case of other tools, it would not be out of place to record certain caution in adopting them. Firstly, FSI is a tool of managing physical growth and should essentially be used so. It should not be used as a fiscal tool since it can succeed as fiscal tool only by distorting the real estate market. Premium FSI or chargeable FSI if at all should be a short-term measure till value based UIBT is adopted in any case base FSI should not ne kept artificially low with sole purpose of exacting high FSI charge. Secondly, fees and charges for regularizing deviations from rules or regularizing unauthorised development should never be seen as fiscal tools. Revenue from such sources should in fact reduce over the years as realistic rules and effective development control mechanisms are adopted. Thirdly, compensatory fees as practiced in North America are not suitable for Indian Cities at present. Infrastructure investments are required not only for meeting the needs of new development but also for clearing the backlog. It is difficult to isolate these investments and practices that can conclusively establish the rational nexus are not in place. Fourthly LVIT though conceptually attractive and available in the statute books for nearly a century are difficult to administer and international experience also seems to corroborate this.

A single Urban Infrastructure Benefit Tax (UIBT) would be the most promising land based fiscal tool. This should be a one time tax collected at the time of granting development permission related to the value of the proposed development. Being structured, as a benefit tax the law should define the purposes for which the proceeds of the tax could be applied i.e. mainly for capital expenditure and also make appropriate provisions for accounting, budgeting and auditing. Simultaneously, five year Capital Improvement Plans should be made mandatory so that they can form the basis for revision of rates of tax every five years. UIBT should be seen in conjunction with other sources of funds for capital expenditure like inter-governmental transfers, net owned funds, institutional or market borrowings and private investment. Excessive reliance on UIBT that distorts market and increases transaction cost causing tax avoidance or reduced development should be avoided.

Annexes

Annex 1: Policy Guides on Impact Fees by the American Planning Association

Ratified by Board of Directors, Cincinnati, Ohio, October 1988 Revised and updated, San Diego, California, April 1997 Ratified by Board of Directors, San Diego, California, April 1997

FINDINGS

Impact fees are payments required by local governments of new development for the purpose of providing new or expanded public capital facilities required to serve that development. The fees typically require cash payments in advance of the completion of development, are based on a methodology and calculation derived from the cost of the facility and the nature and size of the development, and are used to finance improvements offsite of, but to the benefit of the development.

Local governments throughout the country are increasingly using impact fees to shift more of the costs of financing public facilities from the general taxpayer to the beneficiaries of those new facilities. As a general matter, impact fees are capitalized into land values, and thus represent an exaction on the incremental value of the land attributable to the higher and better use made possible by the new public facilities. Some commentators have argued that, under certain circumstances, others may instead bear the incidence of the fee (these may include the original landowner, the developer, or the consumer). There has been little to demonstrate that the imposition of a fee system has stifled development. The fees supplement local government resources that otherwise have decreased because of diminished state and federal transfers of funds. Local governments have also used impact fees to delay or as a substitute for general property tax increases.

Impact fees, when based on a comprehensive plan and used in conjunction with a sound capital improvement plan, can be an effective tool for ensuring adequate infrastructure to accommodate growth where and when it is anticipated. It is important that communities rely on zoning and other land use regulations, consistent with a comprehensive plan, to influence patterns of growth and to more accurately predict new infrastructure needs. However, in areas facing development moratoria because of the lack of adequate public facilities, impact fees may be viewed not as growth stopping measures, but rather as growth facilitators. Impact fees should not be considered a panacea for the funding of general capital improvements, nor should they be used to "stop growth." They can do neither.

Local government experimentation with impact fees has been paralleled by increasing state court involvement in the review of these fees. A general trend in the state courts has been to require a "rational nexus" between the fee and the needs created by development and the benefits incurred by the development. This analysis is a moderate position between a standard that requires that the fee be "specifically and uniquely attributable" to the needs created by new development, and the relaxed standard that the fee be "reasonably related" to the needs created by development.

Impact fees have been criticized as being an inequitable means to finance public facilities. By requiring new development to pay for new facilities without benefiting from existing facility capacity, local governments may be bypassing the traditional practice of intergenerational contribution toward public facilities. Some commentators have argued that, when set at high levels, impact fees may also tend to be regressive. Certain public facilities may be considered "public goods" that should be financed by the entire community, such as general government, police, or schools. To the extent that impact fees are paid by those who are most likely to benefit from the public facilities provided therefrom, however, impact fees are equitable.

Many local communities have expanded the use of impact fees to finance a wide variety of public facilities. The most widespread use of these fees is for sewer and water facilities, parks, and roads. Impact fees are also being used for schools, libraries and public facilities. In recent years, rulings at the state court level have defined how impact fees may be applied and utilized. Thus, there are numerous standards and guidelines available to assist local and regional governmental agencies on the planning processes that must be undertaken to develop a legally defensible impact fee programme. Approximately half the states have enacted enabling legislation for impact fees, some of which have specifically included language that governs how these programmes are to be implemented. To be most effective and legally valid, impact fees must be carefully designed and documented.

POLICY GUIDE

POLICY 1. APA National and Chapters support state enabling legislation that establishes clear and concise standards for the adoption and use of impact fees consistent with this policy.

Reasons to Support #1 Since there is substantial case law on impact fees around the country, the courts have been specific in developing the criteria for an equitable and legally defensible impact fee system. By encouraging enabling legislation that delineates these standards, state, regional and local government will be required to follow the planning process needed to develop the proper methodology for calculating fees that are valid and well documented. While following these standards will not eliminate costly litigation challenging the fees, it places a greater burden of proof on the party challenging the imposition of the fee. Further elaboration on specific issues can be found in the following policies.

POLICY 2. APA National and Chapters encourage consideration of the use of impact fees as a means to provide additional resources for an adequate public infrastructure and services only as they relate to the needs of new development.

Reasons to Support #2 Given the diminishing level of support for infrastructure improvements from state and local governments, coupled with the significant costs involved, regional and local governments are limited in where they can turn to secure funding for new infrastructure projects to accommodate new growth. Moreover, since impact fees cannot be used to cover the staggering costs of maintaining and repairing the existing infrastructure, they can augment resources available for new infrastructure necessary to accommodate new growth, for which general revenue funding must be made available.

POLICY 3. APA National and Chapters support the use of impact fees as a standardized method for ensuring that new development pays its fair share of the cost of public infrastructure.

Reasons to Support #3 While the development community has yet to rally behind the concept of impact fees, it seeks predictability and consistency in the permitting and approval process. When local governments attempt to obtain off-site improvements that do not relate to the impacts of a specific development, a system of negotiating exactions with developers is created that has no "rational nexus" because it is not based upon a sound planning process. Impact fee programmes designed as described in this Policy Guide must be based on a planning process for capital improvements to ensure that the infrastructure needs of new development are met. This lends credibility to the planning process.

POLICY 4. APA National and Chapters encourage the use of impact fees to pay for facilities where a rational nexus can be established.

Reasons to Support #4 Impact fees should only be utilized when a connection can be made between the impact of new development and the need for new infrastructure to accommodate that development. Proper planning and analysis can demonstrate the nexus between future build-out and the capital needs to support that growth.

POLICY 5. APA National and Chapters believe that impact fees should be used in the context of community-wide plans and programmes for financing public facilities and services, and ensure the adequacy of public facilities to serve future development.

Reasons to Support #5 New development should not be responsible for financing an inordinate share of the expense of the future facilities and services needed by the municipality. Community-wide capital improvement planning is necessary in order to properly plan for required improvements and long-term maintenance. This type of planning process should be a pre-requisite to the imposition of impact fees to ensure that fees from new development are not used to finance improvements that are legitimately in the purview of the local government and will benefit the community-at-large.

POLICY 6. APA National and Chapters oppose requiring voter approval to establish fees for mitigation of impacts on public facilities and services where such fees are imposed pursuant to a legislatively approved programme in compliance with APA standards for the adoption and use of impact fees.

Reasons to Support #6 If an impact fee programme has been adopted and implemented in a manner that is consistent with this Policy Guide, and has already been approved as a matter of law, such programmes can be subverted by requiring voter approval. In addition to being administratively cumbersome, it raises constitutional issues of fairness and equal protection. This issue has been raised in several states.

POLICY 7. APA National and Chapters support continued dialogue between local planning agencies, the general public, and the development community to discuss the public costs associated with new development, reaching an understanding on the calculation of such costs, and establishing alternative means for financing these costs, including the use of impact fees.

Reasons to Support #7 APA should continue its training and educational efforts on impact fees and capital improvement planning in order to build a better body of knowledge about the planning, economic, and legal implications of the varying methods of financing major infrastructure improvements.

POLICY 8. As a framework for imposing fees, local jurisdictions are encouraged to develop, adopt, and implement capital improvement programmes consistent with an adopted comprehensive plan with consideration given to other funding alternatives.

Reasons to Support #8 Only a capital improvement plan can provide a comprehensive summary of the capital requirements of the jurisdiction. Impact fees will only be able to finance a percentage of those needs. The plan is necessary in order to prioritize expenditures and should relate them to the source of funding.

IMPACT FEE STANDARDS

- The imposition of a fee must be rationally linked (the "rational nexus") to an impact created by a particular development and the demonstrated need for related capital improvements pursuant to a capital improvement plan and programme.
- Some benefit must accrue to the development as a result of the payment of a fee.
- The amount of the fee must be a proportionate fair share of the costs of the improvements made necessary by the development and must not exceed the cost of the improvements.
- A fee cannot be imposed to address existing deficiencies except where they are exacerbated by new development.
- Funds received under such a programme must be segregated from the general fund and used solely for the purposes for which the fee is established.
- The fees collected must be encumbered or expended within a reasonable timeframe to ensure that needed improvements are implemented.
- The fee assessed cannot exceed the cost of the improvements, and credits must be given for outside funding sources (such as federal and state grants, developer initiated improvements for impacts related to new development, etc.) and local tax payments, which fund capital improvements, for example.
- The fee cannot be used to cover normal operation and maintenance or personnel costs, but must be used for capital improvements, or under some linkage programmes, affordable housing, job training, child care, etc.
- The fee established for specific capital improvements should be reviewed at least every two years to determine whether an adjustment is required, and similarly the capital improvement plan and budget should be reviewed at least every 5 to 8 years.
- Provisions must be included in the ordinance to permit refunds for projects that are not constructed, since no impact will have manifested.
- Impact fee payments are typically required to be made as a condition of approval of the development, either at the time the building or occupancy permit is issued.

Annex 2: Andhra Pradesh: Rates of Impact Fees

EXTRACT OF G.O.Ms.No. 766 M.A&UD, Dt.18-10-2007

Commercial activities will be allowed subject to payment of Impact Fee as given below which will be levied and collected by the Commissioner, Greater Hyderabad Municipal Corporation while granting development / building permissions along the notified commercial roads:

Category	Impact Fee per sft for Ground and First Flor (for 2nd floor and upper floors the rate is 50% of the rates given hereunder)
Category A (along roads given in Annexure I)	Rs. 400 per sq.ft. of total built up area
Category B (along roads given in Annexure II)	Rs. 300 per sq.ft. of total built up area
Category B (along roads given in Annexure III)	Rs. 200 per sq.ft. of total built up area

Where an owner proposes to develop commercial activity under Category B on roads notified under Category C the Impact fee will be 3 times the rate given in Category C

Where an owner proposes to develop commercial activity under Category A on roads notified under Category B the Impact fee will be 3 times the rate given in Category B Commercial activities which are permitted under Category A are not permitted on the roads notified under Category C viz., change from Category C to Category A is not permissible.

Apart from the above categorization of Commercial areas, commercial uses will be considered only as Category "C" on a case to case basis as regular Change of land use case, subject to site abutting a minimum road width of 18 m (60 ft.) and levy of impact fee of 3 times the rate given in Category C of above Table.

The above Impact fees will be over and above the City level Infrastructure Impact fees given in the Hyderabad Revised building Rules, 2006 and will be levied and maintained separately.

Annex 3: Maharashtra: Rates of Development Charge

Second Schedule to Maharashtra Regional and Town Planning Act, prescribed the rates of area linked development charge. The schedule is reproduced below:

Sr. No.	Area	Nature and Particulars of Development	Range of the Rate within which development charges in rupees per sq.m. to be levied	
			Minimum	Maximum
1	2	3	4	5
1	Area under the jurisdiction of Municipal Corporation of Brihan Mumbai	(a) Development of land for residential or institutional use not involving any building or construction operation	40	100
		(b) Development of land for residential or institutional use involving only building or construction operation, where development charge under clause (a) has already been paid	100	250
		(c) Development of land for residential and institutional use involving both development of land building and construction operation	140	350
2	Areas in the jurisdiction of Municipal Corporations other than Municipal Corporation of Brihan Mumbai	(a) as above (b) as above (c) as above	20 40 60	60 60 120
3	"A" Class Municipal Councils	(a) as above (b) as above (c) as above	15 30 45	40 60 10
4	"B" Class Municipal Councils	(a) as above (b) as above (c) as above	10 20 30	30 50 80
5	"C" Class Municipal Councils	(a) as above (b) as above (c) as above	5 10 15	15 30 45
	Areas in the jurisdiction of Special Planning Authorities and New Town Development Authorities	(d) as above (e) as above (d) as above	30 40 70	100 250 350

The rates for industrial and commercial uses shall be one and a half times and two times the rates prescribed above respectively.

Annex 4: Maharashtra-Rates of Value Based Development Charge

Excerpts from the Second Schedule to Maharashtra Regional and Town Planning Act as amended in 2010.

Sr.No.	Area	Nature and Particulars of Development	Rate at which development charge to be levied (in Rs. per square meter)
(1)	(2)	(3)	(4)
1	Areas under the jurisdiction of the Municipal Corporations constituted under the Mumbai Municipal Corporation Act 1888, the Bombay Municipal Provincial Municipal Corporation Act 1949,and the City of Nagpur Corporation Act 1948, Municipal Councils constituted under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act 1965; and the Special Planning Authorities and New Town Development Authorities constituted under the Town Planning Act	(a) Development of land for residential of institutional use not involving any building or construction operations.	0.5 per cent of the rates of developed land mentioned in the Annual Statement of Rates prepared under the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 made under the Bombay Stamp Act, 1958 (hereinafter in this schedule referred to as "the Stamp Duty Ready Reckoner")
		(b) Development of land for residential or institutional use, involving only building or construction operations:-	
		(i) where development charge under clause (a) has been paid	2.0 per cent of the rate of the developed land mentioned in the Stamp Duty Ready Reckoner
		(ii) where development charge under clause (a) is not required to be paid as land has been developed before the commencement of the Maharashtra Regional and Town Planning (Amendment) Act 1992	2.0 per cent of the rate of the developed land mentioned in the Stamp Duty Ready Reckoner
		(c) Development of land for residential or institutional use also involving building or construction operations	
		(i) for development	0.5 per cent of the rate of the developed land mentioned in the Stamp Duty Ready Reckoner
		(ii) for construction	2.0 per cent of the rate of the developed land mentioned in the Stamp Duty Ready Reckoner

The development charge for industrial and commercial use will be charged at one and a half times and two times respectively of the charges mentioned in table above.

The Planning or Municipal Authorities may with the prior approval of the government enhance the above rates.

Annex 5: Maharashtra: Mumbai – Premium Rates for extra FSI

Excerpts from Urban Development Department Notification No TPB 4308/776/CR - 127/2008/ UD-11 dated the 24th October 2011

Premium rates for additional 0.33 FSI

Sr.No.	Land Rate/Sq.m. as per Ready Reckoner 2008	Illustrative list of areas covered under these rates (Not all the areas)	Proposed premium rates/sq.m.
1	Up to Rs. 7000 per sq.m.	Manori, Gorai, Turbhe, Mankhurd	70% of land rate
2	Rs. 7001 – Rs. 10000 /sq.m.	Madh, Aarey, Dindoshi(pt), Erangal, Akse, Marve, Mahul, Chembur(pt), Deonar	Rs. 4900 + 30% of RR rates exceeding Rs. 7000/sq.m.
3	Rs. 10001 – Rs. 15000 /sq.m.	Gorai(pt), Pahadi Eksar(pt), Malad, Malawani(pt), Kurar(pt), Borivali(pt), Dahisar(pt), Anik(pt), Ghatkopar(pt)	Rs. 5800 + 30% of rates exceeding Rs. 10000/sq.m.
4	Rs.15001 – Rs. 20000 /sq.m.	Chakala(pt), Vileparle(pt), Kandivali(pt), Oshiwara(pt), Kurla (pt), Mulund (pt)	Rs.7300 + 30% of rates exceeding Rs. 15000 /sq.m.

Annex 6: Gujarat-Ahmedabad – Rates of Fees for Regularising Unauthorised Development

NOTIFICATION

Urban Development and Urban Housing Department

Block No. 14, 9th Floor, Sachivalaya, Gandhinagar.

Dated 18th February 2012

THE GUJARAT REGULARISATION OF UNAUTHORISED DEVELOPMENT ACT 2011

NO.GH/V/ **18** of 2012/PRC-102011-5319-L**:** In exercise of the powers conferred by the section 7 of the Gujarat Regularisation of Unauthorised Development Act 2011 (Gujarat Act No.26 of 2011), the Government of Gujarat hereby prescribe the rates of fees payable for regularisation of unauthorised development and the manner of calculation as specified in the schedule appended hereto;

SCHEDULE

1. Rates of fees for unauthorised development shall be as shown in the table below:

Category	**Fees**
1. Ground Coverage	a. 35% of the jantri for residential use b. 60 % of the jantri for non- residential use
2. Built-up area of any floor, including cellar but excluding ground coverage	a. 20 % of the jantri for residential use b. 40 % of the jantri for non- residential use
3. Height of Building	For the built-up area for which the height exceeds with respect to as approved or approvable at 10 % of jantri rates of land.
4. Common Plot	For the built-up area for which the use is changed with respect to as approved or approvable at 100% of the jantri rates of land. Provided that such change may be permitted with the consent of the occupants or owners who share interests through an approved layout or shared ownership.
5. Change of use	40% of the Jantri Rates of land
6. Deficit parking space	The fees for deficit parking area decided by the committee shall be calculated as under: At 1.5 times the Jantri Rates for deficit parking area which does not exceed 25 % of the required parking or 100 sq.m. whichever is less or as decided by the committee in other cases.
7. Other than 1 to 6	As decided by the state government in general or specific order

Note: On receipt of the recommendation from the Committee if the designated authority decides to regularize the deficit parking in such cases the rates shown at sr.no. 6 above shall apply and accordingly the fee shall be charged which shall be in addition to the fees applicable for other violations.

(b) The fees, for each category mentioned in table above, shall calculated in such manner that:-

1. In cases where no permission has been granted earlier, for such portion of unauthorised development which in permissible under the prevailing GDCR, the fees shall be calculated at 25 % of the rates mentioned in table above and for the remaining portion which is not permissible it shall be calculated at the rates mentioned in the table above
2. In cases where permission has been granted earlier, the portion of unauthorised development, which is permissible under prevailing GDCR, the fees shall be calculated at 25 % of the rates mentioned in table above and for the remaining portion, which is not permissible, it shall be calculated at the rates mentioned in the table above.

(c) Notwithstanding anything contained in GDCR, for the purpose of calculation of required parking the FSI shall be determined as 90 % of the total built up area.

Annex 7: Advisory to State Governments

Background.
High Powered Expert Committee and the Working Group on 12th Five Year Plan had recognised the significance of land based fiscal instruments in augmenting the financial resources of the ULBs. Ministry of Urban Development under the World Bank funded Capacity Building for Urban Development Project undertook a detailed study of land based fiscal tools and practices covering international and Indian practices. The study reviewed the international experiences and more particularly examined the following generic tools as practiced in Andhra Pradesh, Tamil Nadu, Karnataka, Maharashtra, Gujarat and to some extent Madhya Pradesh.

1. Land Value Increment Tax (LVIT) in the form of betterment levy in case of improvement schemes
2. LVIT in conjunction with Town Planning Schemes
3. LVIT in case of specific projects
4. Area based development charges
5. Value based development charge
6. Transfer of Development Rights and incentive FSI
7. Premium on relaxation of rules or additional FSI
8. Charges for regularization of unauthorised development

LVIT though attractive faces considerable difficulties in assessing LVI and related administrative problems. Area based development charges are inherently not buoyant as rates tend to stagnate. TDR is not a direct fiscal tool and work when base FSI is artificially kept low creating scarcity of development rights. Finally regularisation of unauthorised development should not be used as fiscal tool. Consequently the study recommends that the most appropriate and promising land based fiscal tool would be Urban Infrastructure Benefit Tax or UIBT, which could replace multiple area, based development charges currently in practice.

UIBT
UIBT will be a one time levy collected at the time of granting development permission. The tax base will be the market value of the proposed development. It should be distinguished from the Stamp Duty, which is a tax on each transaction of every asset. UIBT has to be structured as a benefit tax with uses of the revenue being clearly defined - mainly for capital investment in local infrastructure. Such a tax will be equitable as smaller cities that have lower property prices pay less similarly low income housing, prices of which are subsidised can be taxed at subsidised prices. Being linked to property values there would be buoyancy of revenue. Moreover when property prices increase on account of provision of infrastructure UIBT will help capture the land value gains.

Legislative Requirements
As required by the Constitution (Article 256) UIBT will require specific legal authority. Most state governments in their town planning acts have provisions for levy and collection of development charge related to the 'area' of development at the time of granting development permission.

For introduction of UIBT following reforms in the legislative provisions will be necessary:

(a) The tax base should change from 'area' to 'value' of development. Most state governments have adopted a practice of periodic valuation and publishing of land and property prices for the purposes of Stamp Duty. (Variously called as Ready Reckoner Rates in Maharashtra, Jantri in Gujarat, Guidance Values in Karnataka, Circle Rates in Delhi). These can be adopted for determining the tax base with administrative ease.

(b) Where such a practice of valuation is not established 'area' may continue to be the tax base with a time bound programme to adopt value of the proposed development as the tax base.

(c) In some states the rates of development charge were first introduced in the 1970s. These were not revised but new taxes were added to the same tax base (as in case of Tamil Nadu and Gujarat). It would be necessary that such multiple levies are consolidated in one single UIBT.

(d) Where development permissions are granted by the UDAs, following reforms would be necessary:
   - Functional domain of UDA in terms of investment in infrastructure may be clearly defined. Investments in remaining infrastructure will then be the responsibility of ULBs.
   - Provisions may then be made for devolution of UIBT collected by UDAs to ULBs; either on the basis of population of ULB or the UIBT collected from the respective area of ULB.

(e) In some states planning or layout permissions are granted by the UDAs and building permissions are granted by the ULBs. In such cases some provisions are either introduced in the municipal legislation or brought about by executive orders enabling ULBs to levy some area linked charges.(e.g. Andhra Pradesh).

(f) However in the medium term, in keeping with the intent of schedule 12 of the Constitution the function of granting development permissions should unequivocally be assigned to the ULBs. Necessary reforms in the town planning acts will have to be brought about for that purpose. UIBT would then become ULB's own source of funds.

(g) In case of Maharashtra, as provided in the Town Planning Act, development permissions are primarily granted by the ULBs. However MMRDA has substantial investment programme in regional infrastructure. To support such a programme, provisions could be made in the MMRDA Act to enable the state government to levy a metropolitan surcharge on UIBT to be charged and collected by the ULBs and then transferred to MMRDA. Other state governments could eventually adopt similar model.

(h) Being a benefit tax, the purposes for which the proceeds could be used, needs to be clearly defined in the law. In the first instance, the proceeds may be used for capital investment in core infrastructure viz. streets and street lights, storm water drainage, solid waste management, public sanitary facilities, water supply and sewerage. Primary health care and primary education could also be considered where they are recognized as municipal functions. (Other facilities like swimming pools, gardens, fountains, auditoria, community centres etc. could perhaps be deferred). Since UIBT is in the nature of a capital receipt its deployment for capital expenditure alone would also be justifiable.

(i) In order to protect UIBT as benefit tax, it would useful to establish a fund to which all proceeds of UIBT are credited. The fund shall be subjected to separate accounting, budgeting and auditing provisions to transparently monitor and evaluate the operations of UIBT.

(j) The rate of UIBT could be specified as the minimum rate to ensure minimum level of resource mobilisation. ULBs may be enabled to propose higher rates of UIBT based on a Capital Improvement Plan - CIP and corresponding financing plan.

Capital Improvement Plans

Considering the need of substantial investments in basic urban infrastructure it is necessary that 5 year CIPs and corresponding financing plans. These should then form the basis of proposals for increasing the rates of UIBT. It would therefore be desirable to make such plans legally mandatory for the UDAs and Municipal Corporations to start with. The proposals of increase in rates of UIBT could then be specifically subjected to wider public consultation before seeking.

UIBT should however be seen as one of the available sources such as intergovernmental transfers, borrowings and ULB's own revenue surpluses. These should get adequate consideration in CIP and the financing plan.

UIBT Implementation Plan

State Governments may consider the above proposal and prepare an implementation plan that covers drafting of legislation, sanction of legislation and proposal for capacity building if required.

References

American Planning Association	1997	*Policy Guide on Impact Fees,* http://www.planning.org/policy/guides/adopted/impactfees.htm (Accessed on 08.10.2012).
Andhra Pradesh	1975	*The Andhra Pradesh Urban Areas (Development) Act 1975*
Bahl R. and Linn J	1992	*Urban Public Finance in Developing Countries* Oxford University Press
Bailey, Stephen	1990	*Charges for Local Infrastructure*, *The Town Planning Review*, 61(4): 427-453.
Ballaney S.	2008	*The Town Planning Mechanism in Gujarat, India,* World Bank Institute Washington DC 2008
Ballaney S. et. al.	2009	*Development Plan—Town Planning Scheme' Mechanism to Appropriate Land and Build Urban Infrastructure* in *India Infrastructure Report 2009,Land a Critical Resource for Infrastructure*, 3 I Network, Oxford University Press New Delhi 2009
Barker, Kate	2004 a	*Delivering Stability: Securing our Future Housing Needs: Final Report—Recommendations, Review of Housing Supply*, London, HM Treasury.
Barker, Kate	2004 b	*The political and economic case for a planning gain supplement* in *Building Sustainable Communities: Capturing land development value for the public realm*, Peter Bill (ed.), The Smith Institute: London, 19-28.
Barker, Kate	2006	*Barker Review of Land Use Planning: Final Report—Recommendations*, London, HM Treasury
Barker, Kate	2008	*Planning Policy, Planning Practice, and housing supply*, *Oxford Review of Economic Policy*, 24(1): 34-49.
Basu, Durgadas	?	*A Shorter Indian Constitution of India*
Baumann, Gus, and William Ethier	1987	*Development Exactions and Impact Fees: A Survey of American Practices, Law and Contemporary Problems*, 50 (1): 51-68.
Been, Vicki	2005	*Impact Fees and Housing Affordability*, *Cityscape*, 8(1): 139-185
Biderman, Ciro, Paulo Sandroni, and Martim Smolka.	2006	*Large-scale urban interventions: The case of Faria Lima in São Paulo*. *Land Lines* 18(2):8–13
Bird, Richard M. and Thomas Tsiopoulos	1997	*User Charges for Public Services: Potentials and Problems*, *Canadian Tax Journal,* 45(1):25-86
Booth, P.	2012	*The Unearned Increment: Property And The Capture of Betterment Value In Britain And France*
Brock, David	2010	*The Uthwatt Report* Briefing Note Mills and Reeves
Bryant, Lyndall & Eves, Chris	2011	*The impact of infrastructure charges on new housing costs: an international comparison.* In Wang, Yaowu, Pang, Yongshi, & Shen, Geoffrey Q.P. (Eds.) *Proceedings of 2011 International Conference on Construction and Real Estate Management*, China Architecture and Building Press, Guangzhou University Business Hotel, Guangzhou, China, pp. 894-899.
Burge, Gregory and Keith Ihlanfeldt	2007	*Documenting the Rise of Impact Fees in Florida* in C.E. Connerly, T.S. Chapin, and H.T. Higgins (Eds.), p. 283-302, *Growth Management in Florida: Planning for Paradise*. Ashgate Press: Burlington
Burge, Gregory S.	2008	Impact Fees in Relation to Housing Prices and Affordable Housing Supply. Available at: http://facultystaff.ou.edu/B/Gregory.S.Burge1/Publications%20and%20Working%20Papers/Impact%20Fees%20in%20Relation%20to%20Housing%20Prices%20and%20Affordable%20Housing%20Supply.pdf (accessed on 25th September 2012).
Burge, Gregory S. and Keith Ihlanfeldt	2006	*Impact Fees and Single-Family Home Construction. Journal of Urban Economics,* 60(2006): 284-306
Burge, Gregory S. and	2006	*The Effects of Impact Fees on Multifamily Housing Construction,*

Keith Ihlanfeldt		*Journal of Regional Science*, 46(1): 5-23.
Carrion, Carmen, and Lawrence W. Libby	2004	*Development Impact Fees: A Primer*, http://www.impactfees.com/publications%20pdf/dif.pdf (Accessed on 27.09.2012).
CGG	2010	*Managing Urban Growth using the Town Planning Schemes in Andhra Pradesh* Centre for Good Governance Hyderabad 2010
CIL Regulations	2010	*Community Infrastructure Levy Regulations*
City of Austin, Texas Austin Water Utility	2007	*Impact Fee Reports: Impact Fee Land Use Assumptions and Impact Fee Capital Improvements Plan*
CMDA	2010	*Second Master Plan for Chennai Metropolitan Area 2026, Volume II Development Regulations as amended up to December 2010*, Chennai Metropolitan Development Authority, 2010
Cullingworth B. & Nadin V.	2006	*Town and Country Planning in the UK 14th Edition,* Routledge, London and New York
D'Souza J.B.	1987	*Report on Bombay's Second Development Plan, 1981-2001,* Bombay Development Advisory Committee (Chairman J.B. D'Souza), 1987
DCR	1991	*Development Control Regulations for Greater Mumbai, 1991*
Dye, Richard and Richard England	2010	*Assessing the Theory and Practice of Land Value Taxation, Policy Focus Report,* Lincoln Institute of Land Policy: Cambridge, MA.
Economic Times	2013	Economic Times 18 January 2013
Gujarat		General Development Control Regulations of Ahmedabad Urban Development Authority
Gujarat	1976	*Gujarat Town Planning and Urban Development Act 1976*
Gujarat	1976	*Gujarat Town Planning and Urban Development Act, 1976*
Gujarat	2010	*Regulations For The Rehabilitation and Redevelopment of the Slums 2010* introduced by the Order of the Urban Development and Urban Housing Department, Government of Gujarat dated the 4th March 2010
Gummer J.	2004	The moral argument against a development levy *in Bill P. (Ed) Building Sustainable Communities: capturing land development value for the public realm* The Smith Institute 2004
Government of India	1963	Report of the Committee of Ministers (Dr. Rafique Zakaria Committee) *Augmentation of Financial Resources or Urban Local Bodies*
Heap, Sir Desmond	1973	*An Outline of Planning Law* Sixth Edition, Sweet and Maxwell, London pp 12-15.
Henley-Ford J. et.al.	2012	*Transfer of Development Rights Programme – Using Market for Compensation and Preservation* www.government.cce.cornell.edu/doc/html/transfer%20of%20Development%20Rights%20Programmes.htm accessed on 19 October 2012
HPEC	2011	*Report on Indian Urban Infrastructure and Services,* High Powered Expert Committee, Ministry of Urban Development, Government of India, New Delhi
Huffman, Forrest E., Arthur C. Nelson, Marc T. Smith, and Michael A. Stegman.	1988	*Who Bears the Burden of Development Impact Fees? Journal of the American Planning Association* 54 (1): 49-55.
Ihlanfeldt, Keith R. and Timothy M. Shaughnessy	2004	*An Empirical Investigation of the Effects of Impact Fees on Housing and Land Markets*, *Regional Science and Urban Economics*, 34(6): 639-661.
Ihlanfeldt, Keith R. and Timothy M. Shaughnessy.	2004	*An Empirical Investigation of the Effects of Impact Fees on Housing and Land Markets, Regional Science and Urban Economics*, 34(6), 639-661
India	1894	*Land Acquisition Act 1894*
India	1976	*Urban Land (Ceiling and Regulation) Act 1976*
Jeong, Moon-Gi.	2006	"Local Choices for Development Impact Fees." *Urban Affairs Review*. 41(3): 338-357.

Karnataka	1976	*Bangalore Development Authority Act 1976*
Kelkar Committee	2012	*Report of the Committee on Fiscal Consolidation* Ministry of Finance, Government of India. www.finmin.nic.in
Kpoardekar H. and Keskar J.	1987	*Land Pooling and Readjustment Schemes: A Tool for Planned Urban Development* All India Institute of Local Self-Government Mumbai
Lall, Somik	2012	*India: Urbanization Beyond Municipal Boundaries Nurturing metropolitan economies and connecting peri-urban areas*, presentation based on the India Urbanization Review, The World Bank
Lozano-Gracia N et al	2013	*Leveraging Land to Enable Urban Transformation Lessons from Global Experience* Policy Research Working Paper 6312 The World Bank 2013
Madhya Pradesh	1960	*Madhya Pradesh Town Improvement Trust Act 1960*
Madhya Pradesh	1973	*Madhya Pradesh Town and Country Planning Act 1973*
Madhya Pradesh	1975	*Madhya Pradesh Nagar Tatha Gram Nivesh Niyam 1975*
Madhya Pradesh	1984	*Madhya Pradesh Bhumi Vikas Rules 1984*
Maharashtra	1888	*Mumbai Municipal Corporation Act 1888*
Maharashtra	1936	*Nagpur Improvement Trust Act 1936*
Maharashtra	1966	*Maharashtra Land Revenue Code 1966*
Maharashtra	1966	*Maharashtra Regional and Town Planning Act 1966*
Maharashtra	1971	*Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act 1971*
Maharashtra	1974	*Mumbai Metropolitan Development Authority Act 1974*
Maharashtra	1976	*Maharashtra Housing and Area Development Act 1976*
Maharashtra	2001	*Maharashtra Gunthewari Developments (Regulation, Upgradation and Control) Act, 2001*
Maine State Planning Office	2003	*Financing Infrastructure Improvements through Impact Fees – A Manual for Maine Municipalities on the Design and Calculation of Development Impact Fees*
Mangalore	2011	*Final Zonal Regulations Of Mangalore (Vide Notification No: UDD 305 MyAaPra 2010, dated 07.05.2011)*
Mathur, Shishir, Paul Waddell and Hilda Blanco	2004	*The Effect of Impact Fees on the Price of New Single-family Housing. Urban Studies,* 41(7)**:** 1303-1312.
Ministry of Rural Development	2011	*Land Acquisition, Rehabilitation and Resettlement Bill, 2011* Ministry of Rural Development, Government of India.
Ministry of Urban Development	1988	*Report of the National Commission on Urban Development*
Ministry of Urban Development	2005	*Guidelines For Jawaharlal Nehru National Urban Renewal Mission (JnNURM) (Sub-Mission For Urban Infrastructure And Governance) December, 2005* Government of India Ministry of Urban Development New Delhi
Ministry of Urban Development USAID INDIA	2011	*Developing and Inclusive Urban Infrastructure Service – A Guidebook for Project Implementers and Policy Makers of India* TCG International Available at http://www.urbaninfrastructureindia.org/guidebook.html as accessed on 4 April 2012
MMRDA	1999	*Regional Plan for Mumbai Metropolitan Region 1996-2011*, Mumbai Metropolitan Region Development Authority available at www.mmrdamumbai.org
MMRDA	2009	*Business Plan for Mumbai Metropolitan Region* prepared by LEA International Ltd. and LASA Pvt. Ltd. for MMRDA, 2009
Mohanty P K	2003	*Financing Urban Infrastructure: Some Innovative Practices of Local Resource Mobilisation* Working Paper 6 Centre for Good Governance, Hyderabad 2003
Mumbai High Court	2010	Judgment in Public Interest Litigation No 94 of 2008 and Writ Petition 2443 of 2008 by FERDINO I. REBELLO & A.A. SAYED, JJ , June 10, 2010

Musgrave, Richard and Peggy Musgrave	1989	*Public Finance in Theory and Practice*, 5th edition McGraw-Hill New York, NY:
NCAER	1996	Expert Group (Rakesh Mohan Group) on Commercialisation of Infrastructure Projects *India Infrastructure Report Policy Initiative for Growth and Welfare*
Nallathiga R.	2010	*Land-based Resource Mobilisation for Urban Development Some Options for and Experiences of ULBs in India* Revised version of background paper prepared for the national workshop on "Utilizing Land as a Resource" organised by the CGG with the funding support of Ministry of Housing and Urban Poverty Alleviation, Government of India on December 20-21, 2010.
Nelson and Moody	2003	*Paying For Prosperity: Impact Fees And Job Growth* A Discussion Paper Prepared for The Brookings Institution Center on Urban and Metropolitan Policy June 2003
Office of the Deputy Prime Minister	2003	*Contributing to sustainable communities – a new approach to planning obligations,* Department for Communities and Local Government, London. www.communnities.gov.uk accessed on 17 October 2012
PA	2008	*Planning Act*
PCPA	2004	*Planning and Compulsory Purchase Act*
Peterson, George	2009	*Unlocking Land Values to Finance Urban Infrastructure* The World Bank Public Private Infrastructure Advisory Facility Washington D.C.
Phatak V.	2000	*Developing Land and Real Estate Market: A case of Mumbai Metropolitan Region* Paper Presented at WBI Training Programme at Goa 2000
Phatak V.	2008	*Is it money space index finally? Hindustan Times March 31, 2008*
Phatak, Vidyadhar	2009	*Charges on Land and Development Rights as Financing Resources for Urban Development* in *India Infrastructure Report 2009 Land*: *A Critical Resource for Infrastructure* 3iNetwork, IDFC, Oxford University Press, New Delhi
Planning Commission	1983	*Report of Task Forces on Urban Development: I Planning of Urban Development*, and II Financing of Urban Development Planning Commission, Government of India
Planning Commission	2011	*Report of the Working Group on Financing Urban* Infrastructure*, 12th Five-year plan Steering committee on Urban Development & Management* October 2011, Planning Commission, Government of India, New Delhi
Prud'homme, R.	2007	*Seven Notes on Mumbai's Growth and How to Finance It.* Notes for the World Bank and the Mumbai Transformation Support Unit.
Reddy B.P.	2010	*Land As A Financial Resource For Sustainable Urban Development.* Paper presented at National Workshop on Land as a Resource: Land Related Taxes and Charges as Instruments for Financing Affordable Housing and Infrastructure in Cities on the 20thDecember 2010 at Centre for Good Governance, Hyderabad.
Samad T. et al	2012	*Colombia Urbanization Review Amplifying the Gains from the Urban Transition* the World Bank Washington DC 2012
Sandroni, Paulo	2010	*A New Financial Instrument of Value Capture in São Paulo.* In Ingram, Gregory K. and Yu-Hung Hong. (Ed.) *Municipal Revenues and Land Policies*, : Lincoln Institute of Land Policy Cambridge, MA
Siqueira Marina Toneli	2012	*Urban Operations: Public–Private Partnerships Globalizing São Paulo*, in Carol Camp Yeakey (ed.) *Living on the Boundaries: Urban Marginality in National and International Contexts (Advances in Education in Diverse Communities: Research, Policy and Praxis, Volume 8)*, Emerald Group Publishing Limited, pp.389-413
Skaburskis, Andrejs and Ray Tomalty	2000	*The Effects of Property Taxes and Development Cost Charges on Urban Development*: *Perspectives of Planners, Developers and Finance Officers in Toronto and Ottawa, Canadian Journal of Regional Science*, 23(2): 303-326.

Slack, Enid	1994	*Development Charges in Canadian Municipalities: An Analysis*. Paper prepared for the Intergovernmental Committee on Urban and Regional Research. Toronto: ICURR Press.
Slack, Enid and Richard Bird	1991	*Financing Urban Growth Through Development Charges*, *Canadian Tax Journal*, 39(5): 1288-1304
Smolka, Martim O.	2013	*Implementing Value Capture in Latin America – Policies and Tools for Urban Development* Lincoln Institute of Land Policy, Cambridge MA
Stroud, Nancy	1988	*Legal Considerations in Development Impact Fees Journal of the American Planning Association* winter 1988, Volume 54 Number 1 pp.29-37
Tamil Nadu	1971	*Tamil Nadu Town and Country Planning Act 1971*
Tamil Nadu	1992	*G.O.Ms.No.578, Revenue, Dated: 20.5.1992*
Tamil Nadu	2012	*Topic 3 Urban Land Tax* Accessed on 28 December 2012 from http://www.tn.gov.in/budget/12thfincomm/topic_3.pdf
Tamil Nadu	2006	*Report and Recommendations of Third State Finance Commission Tamil Nadu, 2 0 0 7 – 1 2*
TCPA	1990	*Town and Country Planning Act*
Tomalty, Ray and Andrejs Skaburskis	1997	*Negotiating Development Charges in Ontario: Average Cost versus Marginal Cost Pricing of Services*, *Urban Studies,* 34(12): 1987-2012.
Town and Country Planning Organisation TCPO	2009	*Report on Development Charges (To be levied under section 22of Dadra Nagar Nagar Haveli Town and Country Planning Act 1984) TCPO, Government of India*
University of Sheffield		*The Incidence, Value, and Delivery of Planning Obligations in England in 2007-08 – Final Report*, University of Sheffield. http://www.communities.gov.uk/documents/planningandbuilding/pdf/1517816.pdf (Accessed on 10.10.2012)
West Bengal	1976	*West Bengal Urban Land Taxation Act 1976*
World Bank	2013	*Planning, Connecting & Financing Cities–now Priorities for City Leaders-Now, Washington D C*
Yinger, John	1998	*The Incidence of Development Fees and Special Assessments*, *National Tax Journal* 51 (1): 23-41
Zegras, Christopher	2003	*"Financing Transport Infrastructure in Developing Country Cities: Evaluation of and Lessons from Nascent Use of Impact Fees in Santiago de Chile"*. *Transport Research Record* 1839 (Abril): 81–88