
Transfer of Property Act (1882)

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ABSTRACT:

Transfer of property Act, 1882, The Law relating to transfer of property was in bits and pieces and scattered. An Act to amend the law relating to transfer of property by act of parties, it only deals with inter-vivo transactions between two living persons, into harmony with the rules effecting its devolution upon death of a person and thus furnish the completion of the work commenced in framing the law relating to intestate , testamentary succession, and inheritance. This Act only regulates transfer by “Act of parties ” and not by “Act of court” and not by “Act of law”. The necessary Consequence was that there was no uniformity in case laws and it became confused and conflicting. To come out of such a situation, substantive law for India relating to transfer of property law is being established. As would appear from the preamble of the transfer of property act, the same applies only to transfer by act of parties. A transfer by operation of law is validated or invalidated by anything contained in the act. A transfer who takes place by operation of law therefore, need not meet the requirement of the provisions of the transfer of property act or the Indian Registration Act. Transfer by operation of law takes place in several ways e.g. Testamentary and intestate succession, forfeiture, insolvency, and court sales. Specific transfer by way of sale of immovable property, exchange of both classes of properties, lease, Mortgage and gift of immovable property includes in transfer of property. It also deals with actionable claim. Transfer of property does not include Family Settlement, Compromises, Partition, Surrender, Relinquishment, and Charge.

Key Words:

Property, Transfer, Act of parties, Act of court, Operation of law, Substantive law, Inter-vivos, Testamentary , Intestate Succession, Forfeiture , Insolvency, Mortgage, Actionable Claim, Immovable Property, Relinquishment, Surrender , Instrument , attested, Attached to the Earth.

1. Introduction:**1.1. What Is Property?**

Property is the material thing which have the capacity of a movable property and interest arising out of that property will be movable and immovable and here the material things and the interest, right of ownership is also known as property. All rights in a property denote the ownership or absolute interest.

1.2. What is Transfer?

The term "Transfer" means a process or an act by which something is made over to another. It does not however, mean that the making over of the thing should always be absolute. For Example: I may transfer my book to you for a day. I may also transfer it to you absolutely either by sale, gift, and exchange of your book. In either case, what is primarily essential is that I have to handover the book to you, and that act of handing over the book to you is the transfer of the book.

1.3. What is living person?

Living person is wider term than natural human beings. It includes juristic persons like company and other like associations or body of individuals whether registered or not registered, Here the act use the word Inter – Vivos i.e. between two living person.

1.4. What Constitutes Transfer of property?

Transaction is a conveyance of property so as to constitute a "Transfer of property "within the meaning of Section 5, is whether it is in favor of a person who has no title to the property which is the subject matter of transaction. It has been clearly held that, Transfer of property by a person who has a title in the said property to another who has no title.

2. Review of Literature

LITERATURE

The research paper has mainly online references but the author has also referred to following literary sources:

BOOKS

Mulla: Transfer of Property Act, By: Poonam Pradhan Saxena , Publishers Lexis Nexis , Eleventh Edition (2013).

V.P. Sarath's Law of Transfer of Property, By: Malika Taly.

Dr. R.K. Sinha: Transfer of Property Act.

STATUTES

- Transfer of Property Act, 1882
- Transfer of Property (Amendment) Act,1929
- Transfer of Property (Amendment) Act,2002

CASES

- Collector of Gorapur V. Panatdhari, 1908 (Allahabad) ILR,P 55
- Samsuddin V. Abdul Husein (1906) , ILR 31 BAM, 165
- Naranjan Singh V. Dharm Singh , 129 IC 29
- Re Davis Co. V. Ex Parte Rawlings,(1889) 22 QBD 193

3. RESEARCH METHODOLOGY

The author has primarily referred to online sources that are available for the purpose of research work on the subject. The research has its orientation towards the governmental portals and the authentic legal websites along with the articles in the blogs of legal experts. The research has begun from exploring the history of Transfer of Property Act and has gradually progressed through the emergence of laws and the changes experienced them in the light of need of the hour. Hard work has been made to undertake the study case research methodology and to attain the goal. The researcher has undertaking the study of doctrinal sources and other sources

Primary sources:

Secondary sources:

A Primary source consists of different laws and acts such as Transfer of Property Act 1882, Indian Registration Act, 1908 and the common law systems and bare acts etc.

A Secondary source refers to the books, magazines, online sources, etc. The researcher, due to partial absence of authentic literature sources, the author has not primarily but referred to some online sources that are available for the purpose of research work on the subject, some of the books referred are- **Mulla: Transfer of Property , By : Poonam Pradhan Saxena , Publishers Lexis Nexis , Eleventh Edition (2013), V.P. Sarath's Law of Transfer of Property, By: Malika Taly** of The research has its orientation towards the governmental portals and the authentic legal websites along with the articles in the blogs of legal experts. The research has begun from facts and issues of the property laws. The content available online is in its full capacity can be regarded as authentic and duly recognized in this research paper work. For any reference, the footnotes can be looked into.

4. OBJECTIVE OF RESEARCH

This research work is conducted as a part of academic semester project work. This author has carried out research to highlight the major development of Transfer of Property Act since the period of 1882-1956. Special emphasis has been put on the recent amendments in the Transfer of Property Act, 1882 under the newly enacted and enforced Transfer of property (Amendment) Act of 2002.

The major objectives of research are enumerated herein under:

1. To recognize the importance of emergence of property in the national regime.

2. To bring forth the developments in country's judiciary in the dispute resolution fraternity.
3. To outline the major case laws those involved creation and recognition of transfer of property.
4. To explore the depths of functioning of property laws in the country.
5. To emphasize on the need of amendments.
6. To critically evaluate the provisions of the statutes.
7. To devise solutions for the existing problems in the property mechanism.
8. To Duration of certain leases in absence of written contract or local usage.

TRANSFER OF PROPERTY ACT:

The Transfer of Property Act 1882 is an Indian legislation which regulates the Transfer of Property in India. It contains specific provisions regarding what constitutes a transfer and the conditions attached to it. It came into force on 1 July 1882. According to the Act; 'transfer of property' means an act by which a person conveys the property to one or more persons, or himself and one or more other persons. The act of transfer may be done in the present or for the future.¹ The person may include an individual, company or association or body of individuals,

¹ See note "In Present or in future" under section.5

and any kind of property may be transferred, including the transfer of immovable property. Transfer of property act no. 4 of 1882 Signed by lord Rippon, passed on 17th February 1882, enforced on 1st July 1882, includes entry 6 of concurrent list 7th schedule of Constitution of India. Transfer of property only includes act of parties by a region of Inter vivos, Inter vivos means transfer of property between two living persons these are governed by transfer of property act. The act is not a complete codification not only the laws related to transfer of property but related to transfer provision of law. Transfer of property fully depends upon interest of the person, generally property has absolute interest, they have complete ownership on material things of a person whether movable or immovable and special property has limited interest. In Transfer of property act, Interest is intangible and material is tangible. For example, gift, sale of transfer of property is absolute interest, but lease has limited interest, will also immovable and movable than interest will be movable.

Transfer of property includes: Act of parties – Inter vivos.

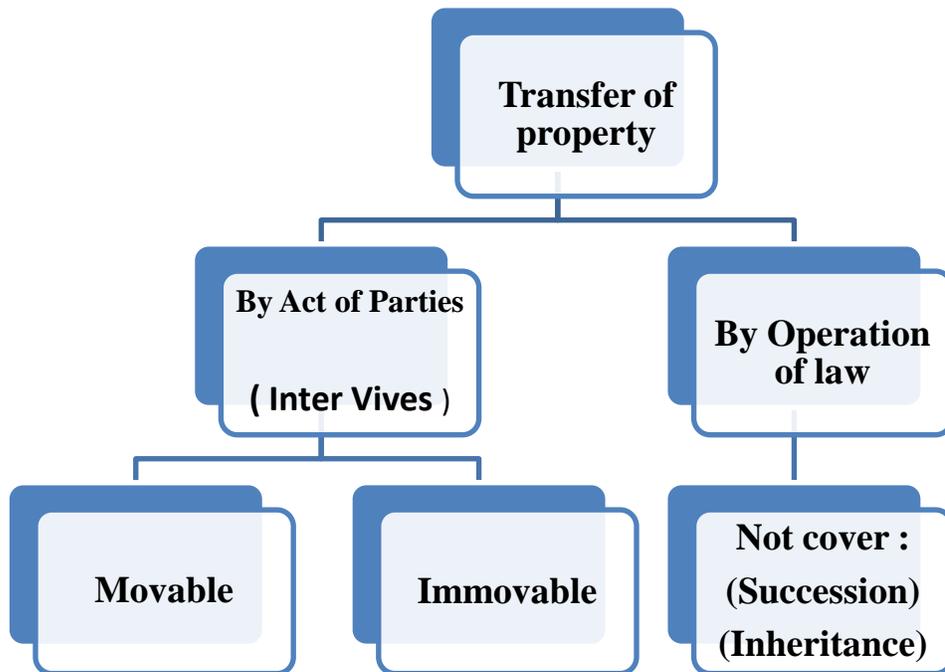
Act of law – Not include Inheritance, Succession.

Act of Court – Not include act of court.

Case law:

Collector of Gorakhpur Vs panatdhari 1908 Allahabad, the court held that act is not a complete codification on the matter of law related to transfer of property act.

OBJECT OF THE ACT:



Transfer by Act of Parties

Transfer inter vivos alone are included as Transfer in Transfer of property Act, e.g. Transfer from living person or persons to living persons or persons.² Transfer can be present or future but transferor and transferee must be a living person.³

Transfer by Act of Court:

Where, therefore, provisions of the Act are not applicable to a case the courts in India are entitled to apply rules of English law not inconsistent with the act on the basis of the principles of "justice, equity and good conscience."⁴

² See note "In Present or in future " under section.5

³ Abdul kazoo V. Abdul Razack (1958) 2 Mad L J 492

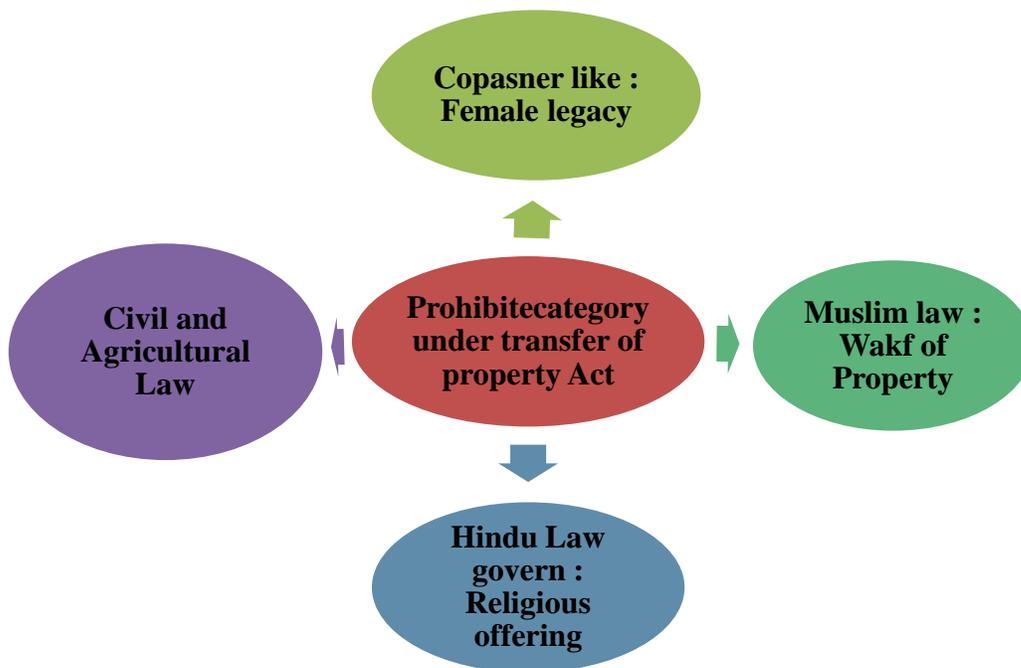
⁴ Kirkness V. John Hindson Co. Ltd. (1995) 2 All ER 345.

Transfer by Operation of law:

A transfer by operation of law is validated or invalidated by anything contained in the act. A transfer who takes place by operation of law therefore, need not meet the requirement of the provisions of the transfer of property act or the Indian Registration Act. Transfer by operation of law takes place in several ways e.g. Testamentary and intestate succession, forfeiture, insolvency, and court sales.⁵ Keeping above policy of law in view section 6 enacts "property of any kind may be transferred except as otherwise provided by this Act or by any other law for the time being in force."

Prohibited Categories of Transfer under Transfer of property Act, Section 6.

⁵ Section 2 Government Grants Act,1895.



PROPERTY OF ANY KIND

The onus of proof is on the person alleging that any kind of property is not transferable, some of the exceptions are similar to those made in section 60 of the civil procedure code, 1908 as to the property which cannot be attached, e.g. service tenure or right to future maintenance or a public office or pension are not transferable in transfer of property act.⁶The Rajasthan high court has held that a gift, being a transfer without consideration is not hit by section 6 (h) which inter alia invalidates a transfer which his section 23 , Indian contract act 1872.Future property not included in transfer of property act, at that time specially performed come Into existence.⁷

Clause 1. Spes Succession:

⁶ Pyre Mohan Vs Narayani AIR 1982 Raj.43

⁷ Phulwant Kunwar V. Janeshwar Das (1924) All 625 (Contingent Interest)

Sec 6 includes:

Chance of an heir succeeding to an estate,

The chance of a relation obtaining a legacy (a gift by will) on the death of a kinsman,

Any other mere possibility of a like nature.⁸

ILLUSTRATION:

A Hindu owning separate property dies leaving a widow B and a brother C.

C has only bare chance of succession in case he survives B, and this spes successionis he cannot transfer.

The law was stated in *Re Parsons*⁹, as follows:

It is indisputable law that no one can have any estate or interest at law or in equity, contingent or other, in the property of a living person to which he hopes to succeed as heir at law or next of kin of such living person.

ILLUSTRATION:

A has a wife B and a daughter C. C consolidated 1000 paid to her by A, A dies and C supervises 1/3 rd share in the inheritance, E is entitled to her one third share, but is bound to bring into account than 1000 received from her father.¹⁰ An agreement by reversionary heir to transfer or to relinquish his right of succession is void.¹¹ Or by reversionary by his conduct if he has consented to alienation by a widow or other limited heir.¹²

⁸ Balwant Singh V Joti Prasad (1918) I L R 40 ALL 692

⁹ (1890)45Chd51,P 55 ; Re Mudge (1914) 1 CH115

¹⁰ Annada V. Gour Mohan (1923) AIR50 PG.239

¹¹ Abdul kazoo V. Abdul Razack (1958) 2 Mad L J 492

Mohammedan Law and Transfer of Spas succession:

It has been held that in the case of Mohammedans the transfer of expectancy by a heir presumptive is void¹³ – ab – initio and that no question of an estoppels can therefore arise by reason of the heir renouncing her claims before the expectancy opens.

Object:

The protection of any party could be the object underlying such a rule;

The protection of possibilities transferees, so that they may know what is and what is not a legally enforceable transfer.¹⁴

Transfer of spas succession in Punjab:

The H.C. court of Lahore has held that the transfer of expectancy is valid in Punjab where the TP act does not apply and that a declaratory suit with reference to a spas succession is main table.¹⁵

Chance of a Legacy:

The chance of a relation or a friend receiving a legacy is a possibility even more remote than the chance of succession of an heir and is not transferable.¹⁶

¹²Bajranji V. Manokarnika (1907) AIR 30

¹³ Indar Pal Singh V. Sarman Singh AIR 1950 All 833

¹⁴ Gulam Abbai V. Hozi Koyyum Ali (1973) 2 SLR 300 AIR 1973, SC 554 (1974) 2 SCJ 173

¹⁵ Naranjan Singh V. Chote Singh (1906) 90 C55

Clause 2. Transfer of Right of re entry:

This is the right referred to in section 111 (g) which the lesser has against the lessee for breach of an express condition, which provides that on its breach the lesser may re entry.

Right of re entry is not a valid contract, because it has a conditional subsequent not a conditional precedent.

At the time of conditional precedent it is a valid contract because in it conditions are mentioned before contract.

The transfer of the reversion, i.e. of the less or's interest carries with it the right of re entry.

The transfer of less or's interest including a right to re entry is not a transfer of a mere right of re entry and is valid.¹⁷

Clause 3. Easement:

An easement is a right to use, or restrict the use of land of another in some way. **Examples** of easements are rights of way, rights of light and rights of water. An easement involves the existence of a dominant heritage and a servient heritage. It follows therefore that an easement cannot be transferred without the property which has the benefit of it.¹⁸

It has clearly held that Patna high court in *Zobair Ahmad Vs Jainandan*¹⁹ following a decision of privy council and earlier decision of high court , that the right of Mohamedan widow to retain

¹⁶ CF Pag Dat V. Dharm Singh 129 IC 29

¹⁷ Chundak Churn V. Shib Chundak ILR,5 Cal 945

¹⁸ Indian Easement Act , Sec.4 illustration D.

¹⁹ Rangeley Midland Rly Com (1868) 3 chapter

possession of her husband 's property in lieu of her dower debt is personal to her and it is restricted interest meaning of section 6(d).

Illustration: A, the owner of a house X, has a right of way over an adjoining plot of land belonging to B. Transfers this right of way to C. The transfer is a transfer of easement and therefore invalid. But if A transfers the house itself, the easement passes on to C on such transfer.

Clause 4. Mere right to sue:

A mere right to sue, as for instance, in respect of damages for breach of contract, or for tort, cannot be transferred. The object of the prohibition is to prevent gambling in litigation. Moreover, a right to sue is personal to the party aggrieved.

The real reason why equity does not allow the assignment of a bare right of action, whether legal or equitable was on the ground that if savored of or was likely to lead maintenance.²⁰

Illustration: A contract to buy goods from B. On due date a fails to take delivery and B sells the goods in the market at a loss of Rs.10000. B transfers the right to recover the damages to C. The transfer is invalid.

Clause 5: Restricted Interests

This clause states, a person cannot transfer an interest restricted in its enjoyment of him. A transfer of such interest would defeat the object of the restriction. As an example, if a house is lent to a man for his personal use, he cannot transfer his right of enjoyment to another. Under this clause, the following kinds of interest have been held not to be transferable:—

(a) A religious office

²⁰ Channu Datta V. Swami Gyannandiji AIR 1926 All 130

(b) Emoluments attached to priestly office.

(c) A right of pre-emption.

(d) Service tenures

Clause 6. Office and Salaries

According to this section, a public office cannot be transferred. The prohibition is based on the grounds of public policy. A public office is held for qualities personal to the incumbent, and obviously it would be against public interest to permit alienations of public office. A gratuity payable to the legal representatives of a public office may be transferred.²¹

Clause 7. Stipends: Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred. The term 'pension' means a periodical allowance or stipend granted not in respect of any right of office but on account of past services of particular merits or as compensation to dethroned princes, their families and dependants.²² Illegal tenancy, Inadequate Price, Person disqualified to the transfer, Minors and Lunatics.²³

Clause 8. Maintenance

A right to future maintenance is solely for the personal benefit of the person to whom it is granted and, therefore, cannot be transferred. It was held in Madras that it was, and in Calcutta that it was not.²⁴

²¹ Thakur V. Putti (1924) L 611 : state 317

²² Seth Veshindas V. Thawardas (1925) (Sec 18,20)

²³ Arbuthnot V. Norton , 3 MLA 155

²⁴ Abdul Kazoo V. Abdul Razack (1958) 2 Mad L J 492

Conclusion:

The Civil Procedure Code and Transfer of Property Act embody what is referred to as the backbone of civil law in India, and the notions in question, those of Transferable Property and Attachment are key concepts with regards to the functioning of the civil litigations in the country.

It is thus of crucial importance that these concepts are well understood by both lawyers and the parties concerned. This paper has attempted to bring out such distinctions as were found relevant for the present discussion, and the more important portions of such legislations have been incorporated for the purpose of a meaningful analysis of the issues at hand. The researcher is optimistic that the discussion ushered in this paper will go the distance in clarifying the murky areas of these pivotal provisions and help elucidate the position taken by the Hon'ble Court in this regard.

The researcher has tried to incorporate the difference in position in this regard between the said provisions of the Code and the Act, illustrating how though the conceptual similarity is apparent on the face of the matter, there is a great difference in terms of the meaning and content of the two statutory provisions. Also, it has been concluded that though in general, 'all property may be transferred', this is subject to the exceptions mentioned in Section 6(a) to (i) of the Act. Thus, one may safely assume that, due regard being given to such exceptions, expressly mentioned in the Act, transfer of all other categories of property is possible and this Act is in furtherance of the selfsame objective of arriving at the desired level of uniformity in terms of regulating property issues throughout the length and breadth of this diverse nation.

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