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"CRITICAL ANALYSIS OF MOVABLE & IMMOVABLE PROPERTY."

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1. ABSTRACT:

The paper "A Critical Analysis of Movable and Immovable Property" examines the numerous elements associated with the concept of property within the Indian legislative structure. The initial chapter briefly introduces the subject property and its application to The Transfer of Property Act. The Act's particular legislative elements are presented in the subsequent section, which outlines the distinctions between moveable and immovable property. The researcher also addressed how ambiguous terms and concepts have resulted in ambiguity in establishing clear delineations among the two types of property structures within the legislative system of India. The author also examines the debate in the Law Commission's findings over what characterises "movable and immovable property". The fifth and the last section explore the legal decisions which opened ground for the development and evolution of the moveable versus immovable property conflict. It also distinguishes English and Indian law. In addition, Indian cases have been thoroughly discussed later, where the Judiciary has articulated specific rules to clarify the ambiguity about this property categorisation.

KEYWORDS: Movable, Property; Immovable, Law Commission, Transfer of Property Act.

INTRODUCTION:

Before actually digging into the depths of The

Transfer of Property Act 1882, it's critical to understand what property represents. Property is defined as "something peculiar or proper to any person; that which belongs solely to one; in the strict legal sense, an accumulation of rights secured and safeguarded by the government," according to Black's Law dictionary²⁹⁶. According to the definition, "valued property rights and interests" refers to a wide range of valuable property rights and interests²⁹⁷. More explicitly, ownership is defined as "the unrestricted and exclusive right to a thing; the right to dispose of an item in any lawful way, to possess it, use it, and prevent others from interfering with it"²⁹⁸

Property is a terminology used in everyday English and should not be regarded as a word of art. It should be interpreted in its immediate context, with no extraneous meanings.²⁹⁹ Property can be characterised into "Tangible"/"Intangible," "Incorporeal/ "Corporeal," "Personal"/"Private," or "Movable"/"Immovable." Although more comprehensive categories might be devised, the purpose of this study endeavour is confined to moveable and immovable property; hence the emphasis will lie solely on these two properties. Similarly, if the property in question is immovable, The Transfer of Property Act, 1882 governs the transfer of property in India. The first Indian Law Commission developed a set of draught legislation in 1870 (seven to be explicit). The last legislation was ratified in 1882, giving origin to the law as we recognise it presently. The Code of Civil Procedure³⁰⁰ regulates the majority of procedural law. This legislation primarily deals with substantive law.

The Transfer of Property Act is founded on equality, a good conscience, and justice. It

²⁹⁶ BLACK'S LAW DICTIONARY 1382 (4 ed. 1968).

²⁹⁷ *Fulton Light, Heat & Power Co. v. State*, 138 App. Div. 931 (N.Y. App. Div. 1910).

²⁹⁸ *McAlister v. Pritchard*, 230 S.W. 66, 67, 287 Mo. 494 (1921).

²⁹⁹ *Queensbury Industrial Society v. Pickles*, L.R.I Exch. 1 (1865).

³⁰⁰ VEPA P. SARATHI, G.C.V. SUBBA RAO'S LAW OF TRANSFER OF PROPERTY (2008).

extends to the entire country of India, except the states of "Bombay, Punjab, and Delhi"³⁰¹. Immovable property is regulated by different statutory provisions in these three states. Yet, the principles controlling The Transfer of Property Act can be observed in the states' laws mentioned earlier, although with minor variations. It's essential to note that property transfers are mainly engaged with inter vivos transfers³⁰². When the Act's guidelines could not be implemented explicitly, Courts of Justice are authorised to use the general principle of equity in Indian and English provenance judicial precedents. Still, such regulations must not be enforced in violation of the Act.³⁰³

CHAPTER-I

I. DIFFERING APPROACH: FACETS OF MOVABLE AND IMMOVABLE PROPERTY UNDER THE INDIAN PROPERTY REGIME

The word property is fraught with ambiguity in the Indian framework, owing to the absence of a precise interpretation of the concept in a singular piece of legislation, notably when transferring such property. According to jurisprudential analysis, the property is conventionally built on the principles of duties and obligations³⁰⁴. Furthermore, the property has progressed from its theoretical underpinnings to today's modern potential ramifications.³⁰⁵ Furthermore, the property is mostly about periods such as possession, ownership, incentives, exclusions, usage, and, most significantly, transfer under any particular structure and framework.³⁰⁶ The difference between movable and immovable property holds a powerful stance in the property. In everyday conversations, these phrases should have no more than a material meaning,

whereas, on a conceptual level, many essential variances are regulated by various laws.

1.1 THE CONUNDRUM CONCERNING MOVABLE AND IMMOVABLE PROPERTY UNDER THE TPA 1882

In furtherance of the assertion mentioned above, Section 3 of Chapter 1 of the Transfer of Property Act specifies immovable property in a relatively narrow and ambiguous sense as "anything that does not include standing timber, growing crops, or grass". Merely examining this Clause makes it apparent that the Transfer of Property Act does not categorise immovable or movable property; instead, it simply specifies what does not constitute immovable property and consequently could also be relied on as the primary source of legislation on the term immovable property.³⁰⁷

On the other hand, movable property is administered by The Sales of Goods Act³⁰⁸, which classifies movable property as "any type of property other than actionable claims and general property, and never only a single special property".³⁰⁹ These statutes cannot precisely classify moveable or immovable property, necessitating a review of other property-related legislation.

Concerning this problem, the General Clauses Act³¹⁰ might be of some help. In Section 3³¹¹ of the Act, immovable property is defined as "to include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth". Concerning this description, movable property is classified as "movable property shall mean property of every description, except immovable property". This Act is more comprehensive than the Transfer of Property Act, although terms like "attachment" and "permanently affixed" can still be perplexing. The

³⁰¹ § 1, The Transfer of Property Act, 1882.

³⁰² SARATHI, supra note 6.

³⁰³ Raj Narain v. Sukha Nand Ram Narain, (1980) A.I.R. 78 (All.) 82".

³⁰⁴ "Patrick Riordan, Property Rights and Property Duties, Studies, 77, AN IRISH Q REv. 84-98 (1988).

³⁰⁵ Jeremy Waldron, Property and Ownership (Oct. 21, 2016, 20:08 PM), <http://plato.stanford.edu/entries/property/>.

³⁰⁶ Michael Weir, Concepts of property, 7(1) NAT'L LEGAL EAGLE Art. 6.

³⁰⁷ Balvantrav v. Purshotam, (1872) 9 (Bom.) 99; See also Shiv Dayal v. Puthelal, (1932) 54 (All.) 437

³⁰⁸ Act No. 3 of 1930.

³⁰⁹ j. Sai Deepak, What constitutes "Property" according to the Supreme Court, Oct. 21, 2016, 20:08 PM, <http://thedemandingmistress.blogspot.in/>."

³¹⁰ "Act No. 10 of 1897.

³¹¹ § 3 (26), The General Clauses Act.

term "fixed to the ground," which repeatedly occurs in this law, has been explicitly described in The Transfer of Property Act; thus, the Registration Act and the General Clauses Act would be used to determine the definition of "immovable property" as specified in The TPA 1882³¹². The concept of the property also finds an honourable mention in The Registration Act³¹³, which defines 'immovable property' as something which "includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of the land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass."³¹⁴ In addition, 'movable property' is defined as "standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immovable property".³¹⁵

1.2 ANALYSIS OF LAW COMMISSION REPORTS-

The Transfer of Property Act has been modified three times, and a fourth Amendment Bill is presently awaiting in Parliament, yet no advancement has been reached. Additionally, the "Income Tax Act³¹⁶, the Representation of the People Act³¹⁷, and the Indian Penal Code"³¹⁸ incorporate explicit immovable and movable property provisions. Initially, the immovable property was specified in the Indian Trustees Act, but it was limited to tenements, hereditaments and messuages. Consequently, it is undeniable that the statutory framework falls short of adequately describing the flawed classification system. The Law Commission recommended a series of changes to the statutory provisions and several reports that

must be reviewed since they are crucial to the current subject to address this shortcoming.

The first such commission of independent India was founded in 1955-1958, with M.C. Setalvad as its first chairwoman, to quicken the standardisation, elaboration, and integration of legislative reforms.³¹⁹

(a) "Law Commission on The Registration Act, 1908":

-Since the concept of moveable property is a counter-part to that of immovable property, and it was proposed that the terminology of 'immovable property' be restructured to render the meaning unambiguous about what constitutes immovable and movable property.³²⁰ Additionally, it was advised that 'Standing Timber' be recognised as movable property, regardless of whether judicial views on whether it should be detached or not are disputed³²¹. Even while the parties' intentions have a crucial role, 'machinery' embedded in the earth or attached should be treated as immovable property³²² when transferred individually from the land.³²³ In light of the judgement in Shantabai v. State of Bombay³²⁴ the Thirty-Fourth Report on The Indian Registration Act, 1908³²⁵ indicated that the previous amendment³²⁶ recommended by the Law Commission's sixth report is no longer appropriate because 'Standing Timber' should be perceived as movable property for most purposes. The study also reaffirmed the sixth report's position that fruits and juice should be constituted as moveable property and determined that 'Machinery' can be regarded as moveable property in addition to land³²⁷.

³¹² § 3, The Transfer of Property Act; "attached to the earth" means-

(a) rooted in the earth, as in the case of trees and shrubs;
(b) imbedded in the earth, as in the case of walls or buildings; or
(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

³¹³ Act 16 of 1908.

³¹⁴ § 2 (6), The Registration Act.

³¹⁵ § 2 (9), The Registration Act."

³¹⁶ "6 § 269UA (d) (i) and (ii), The Income Tax Act [Defines Immovable Property]; No mention of Movable Property.

³¹⁷ Act 67 of 1951, § 75A (5) (i), [Defines Immovable Property] and § 75A (5) (ii) of the Act [Defines Movable Property].

³¹⁸ § 22, The Indian Penal Code [Defines Movable Property]".

³¹⁹ EARLY BEGINNINGS, LAW COMMISSION OF INDIA (JUNE 18, 2022, 18:04),

<http://www.lawcommissionofindia.nic.in/main.htm#al>.

³²⁰ SIXTH REPORT ON THE REGISTRATION ACT, 1908, LAW COMMISSION OF INDIA 9 (1957).

³²¹ English Law does consider Standing Timber as part of Real Property; See ASHIQ HUSSAIN, AID To PASSING C.P.A.

³²² Supra note 17.

³²³ Duncans Industries Limited v. State of U.P., A.I.R. 2000 S.C. 355.

³²⁴ A.I.R. 1958 S.C. 532; The Hon'ble Supreme Court differentiated 'Standing Timber' with trees by drawing corollary with the concept of "Sustenance by the Soil"; See MULLA, TRANSFER OF PROPERTY ACT 16, 21 (1950).

³²⁵ THIRTY-FOURTH REPORT, INDIAN REGISTRATION ACT, 1908, LAW COMMISSION OF INDIA 7-8 (1967).

³²⁶ SIXTH REPORT, supra note 30, at 18, paragraph 21(b).

³²⁷ Khan Chand v. Nur Muhammad, (1966) A.I.R. (Lah.) 242.

Furthermore, the earth-attached apparatus must pass the "degree and object of annexation" test.³²⁸

(b) "Law Commission on The General Clauses Act, 1897": - The Law Commission, in the present context, stated that there is no need to add a new definition or interpretation to The General Clauses Act, 1897's moveable and immovable property description, effectively stopping any revision from elucidating the Act's property stance.³²⁹

(c) "Law Commission on The Transfer of Property Act, 1882": -The differences between English and Indian law have been observed.³³⁰ One such distinction in English Law is dependent on personal and real property, with an early sort of action called 'actio realis'³³¹ as a result. In analysis, it was also mentioned that property under the law must be expressed in rights instead of engineering, wherein objects must have a precise interpretation.³³² The Limitation Act doesn't recognise standing crops as movable property³³³. Under The Provincial Small Causes Courts Act and Code of Civil Procedure, trees and growing crops were considered immovable property.³³⁴ Furthermore, immovable property isn't limited to tangible property and includes all potential real property under English law and beyond.³³⁵

What defines immovable or moveable property was described concerning Rights under Hindu Law³³⁶, Shares in Registered Companies³³⁷,

Standing Timber³³⁸, Growing Crops³³⁹, and Fixtures³⁴⁰. Lastly, the law of fixtures³⁴¹ was outlined extensively, with analogies drawn to English law³⁴² and the instance of the Calcutta Letters Patent³⁴³. Despite their importance in recognising the questionable nature of the classification method, the findings failed miserably to address the fundamental legal problem.

CHAPTER-II

2. "TRANSFER OF PROPERTY DEALS ONLY WITH IMMOVABLE PROPERTY?"

The Transfer of Property Act is primarily concerned with the transfer of immovable property, but it does not engage with it solely. The Act's broad principles extend to moveable and immovable property and are included in sections 1 through 37. Following that, the Act's entire section deals with the transfer of immovable property.

The Act's 137 sections were arranged into eight chapters. Indeed, the Act does not define "what is a transfer of property." However, Section 5 describes 'transfer' as a stand-alone term. The Act contains several ways of property transfer, while it does not include provisions for all methods of transfer currently in use. The absence of the word 'consolidate' from the Act's Preamble indicates that it doesn't profess to be a formal expression.

According to the Act's Preamble, the Transfer of Property Act, 1882 is intended to change or control the rules concerning property transfer by the parties' actions. The Act establishes a transparent, methodical, and standard legal framework for the transfer of immovable

³²⁸ MULLA, TRANSFER OF PROPERTY ACT 6 (1950).

³²⁹ SIXTIETH REPORT ON THE GENERAL CLAUSES ACT, 1897, THE LAW COMMISSION OF INDIA 24, 27 (1974).

³³⁰ Reversioner who has a lease in a property is has an interest which arises out from the land and hence an immovable property under Indian Law but English Law regard it as a 'chattel real'; See Matilal Raga v. Ishwar Radha Damodar, A.I.R. 1936 (Cal.) 727.

³³¹ Meaning, 'if the action is real'; See ALEXANDER MANSFIELD BURRILL, A NEW LAW DICTIONARY AND GLOSSARY 27 (1998).

³³² Seventieth Report on The Transfer of Property Act, 1882, Law Commission of India 34 (1977).

³³³ Pandah Gazi v. Jenuddi, I.L.R. 4 (Cal.) 665; See Nattu Miah v. Nandrani, B.L.R. 8 509.

³³⁴ Madaya v. Venkata, I.L.R. 11 (Mad.) 193; See Cheda Lal v. Mulchand, I.L.R. 14 (All.) 30.

³³⁵ Futtehsangji v. Desai, B.L.R. 13 254 (P.C.).

³³⁶ Angurbala Mullick v. Debabrata Mullick, AIR 1951 SC 293; See Raghoop Pandey v. Kassy Parey, I.L.R. (1884) 10 (Cal.) 73; See also Ram Rattan v. Bajrang Lal, A.I.R. 1978 S.C. 1393, wherein it was stated "That whatever is classified as immovable property in ordinary sense does not matter when the position concerns rights of Hindus till it is clearly defined in Hindu Law.

³³⁷ Doorga v. Poreen, 5 W.R. 141.

³³⁸ Ram Ghulam v. Manohar Das, A.W.N (1887) 50.

³³⁹ Washbourne v. Burrows, L.J. Ex. (1847) 10 226

³⁴⁰ Perumal v. Ramaswami, 1969 A.I.R. (Mad.) 346.

³⁴¹ § 3, The Transfer of Property Act, 1882 has defined the terms 'rooted in earth', 'imbedded in earth' and 'attached to the earth'.

³⁴² The English Law of Fixtures is based on the maxim 'quicquid plantatur solo, solo credit' and 'quicquid inaedificatur solo, solo credit' meaning whatever is planted into soil falls into or becomes part of the soil.

³⁴³ Jnan Chand v. Jugal Kishore, 1960 A.I.R. (Cal.) 331; See Washbourne v. Burrows at 38.

property. Because it is an authorised statute for transfers in pursuance of a contract, the Act fulfils the Code of Contract. The TPA 1882, which includes provisions for inter-vivos transfers, creates a statute similar to the current testamentary and intestate transfer statutes. When any law component does not regulate a specific problem, the Act allows for applying the principles of Good Conscience, Justice and Equity.

1.1 PROPERTY AND INTEREST IN PROPERTY-

Although the law hasn't managed to describe the term "property," often used in the Transfer of Property Act of 1882, in its broadest and most basic legal context³⁴⁴. Section 6 states that any property can be transferred. An executable claim, like a right to re-conveyance of lands, is a property³⁴⁵. The subject of ownership is property, which comprises the right of ownership, dominium, and partial ownership.³⁴⁶

A property can be classified into movable and immovable-

- a) **IMMOVABLE PROPERTY:** The Transfer of Property Act elucidates that "Immovable Property does not include standing timber, growing crops or grass".³⁴⁷ The General Clauses Act defines "Immovable Property" as: "Immovable property shall include land, benefits to arise out of the land, and things attached to the earth, or permanently fastened to anything attached to the earth."³⁴⁸ An equity of redemption is immovable property³⁴⁹, and subsequently mortgagee's interest is considered as immovable property mortgaged.³⁵⁰

There have been differing opinions on whether a mortgage indebtedness constitutes an immovable property. Nonetheless, since Act 2 of 1900 exempted mortgage debt from the

concept of enforceable claims, it appears that a mortgage debt would be immovable property. The attachments, on the other hand, were classified as movable property³⁵¹. A division jury of the Rangoon High Court has ruled that a "mortgage is immovable property because it entails the transfer of an interest in immovable property". Under the Letters Patent of the Chartered High Courts, a lawsuit to recover a debt would be a property claim³⁵². Since standing timbers are trees, these would not meet the criteria of immovable property. On the other hand, a fruit-bearing tree isn't really a standing timber and is thus categorised as immovable³⁵³.

- b) **MOVABLE PROPERTY:** The Transfer of Property Act, 1882 contains no description of movable property. The General Clauses Act of 1897 defines moveable property as "property of every sort except immovable property." Movable property, which includes standing timber, grass and growing crops, is characterised as property of any sort other than immovable under the Registration Act of 1908.³⁵⁴
- c) **INTEREST IN PROPERTY-** The numerous interests and needs for ownership could be entrenched in separate contexts, such as a lessor and a lessee, a mortgager and a mortgagee, or a tenant for life. Absolute ownership is made up of several different rights, including the right of possession, the right to enjoy the usufruct of the land, and so on. The subordinate rights, which form absolute ownership, are referred to as interest in the property under the Transfer of Property Act. However, section 58 uses the term "interest" interchangeably with "absolute ownership."

1.2 "DIFFERENT WAYS IN WHICH PROPERTY CAN BE TRANSFERRED UNDER TPA 1882"-

³⁴⁴ *Matta Din v. Kazim Hussain*, (1891) ILR 13 All 432 p.473

³⁴⁵ *Narasimgarji v. Panaganti*, (1921) Mad WN AIR 1921 Mad 498.

³⁴⁶ <http://thepeopleschronicle.in/?p=1289> [last accessed: 06/10/2015].

³⁴⁷ Section 3, Transfer of Property Act, 1882.

³⁴⁸ Section 3(26), Transfer of Property Act, 1882.

³⁴⁹ *Mahalavu v. Kasuji*, (1984) ILR 18 Bom 739; *Parasram v. Govind*, (1987) ILR 21 Bom 226; *Kanti Ram v. Kutubuddin*, (1895) ILR 22 C 133.

³⁵⁰ *Paresh Nath v. Nabogopal*, (1902) ILR 29 Cal 1.

³⁵¹ *Taruadi v. Bal Kashi*, (1904) ILR 26 Bom 305.

³⁵² *Vermnct Chettyar v. ARARRM Chettyar Firm*, (1934) ILR 12 Rang 370.

³⁵³ *Alisaheb v. Mohidin*, (1911) 13 Bom LR 874.

³⁵⁴ *Seeni Chettiar v. Santabantham*, (1897) ILR 20 Mad 58.

The Transfer of Property Act elucidates the different ways a property can be transferred, and they are mentioned below-

- (i) Sale of immovable property: A sale of immovable property can be considered as a Transfer of ownership in return for a sum paid or guaranteed, or partly paid and partly promised under Chapter III of the Act. A contract for the sale of immovable property is a document that states that the property will be sold on the parameters agreed upon by the parties. When the seller hands over the tangible immovable property to the buyer or another person he specifies, it is said to be transferred.³⁵⁵
- (ii) Mortgage of immovable property: A mortgage is a loan-securing instrument as outlined in Section 58 of Chapter IV. The transferor is a mortgagor, while the transferee is a mortgagee. Mortgage money includes the principal amount to be paid and interest on which payments are insured for a specific time frame. The mortgage deed is a specific document (if any) by which the transfer is effected.
- (iii) Leases of immovable property: According to Chapter V, a lease of immovable property is a transfer of a right to enjoy such possessions for a prescribed time frame in exchange for an amount paid or did promise, or for cash, a share of crop, service or any other items of importance, that is produced periodically or as indicated by the transferor and the transferee's contract.³⁵⁶
As the term indicates, a lease is a transfer of an interest in an immovable property rather than a transfer of ownership. The right to use or enjoy immovable property is the interest. Because an 'interest' in an immovable property is considered property, a lease is a property transfer. Nevertheless, a lease is merely a partial interest transfer; it isn't an absolute interest transfer.

(iv) Exchange of property: According to Chapter VI, an "exchange" occurs when two people exchange the ownership of one object for the possession of another, with neither thing nor both things being money. The property is transferred in executing an exchange within the manner specified for the transfer of such property by the sale can.³⁵⁷

(v) Gift of Immovable Property: Chapter VII of the TPA incorporates property transfer by gift. As a result, a gift is voluntary and with no consideration conveyance of existing movable or immovable property from one person, the donor, to another, the donee, and recognised by or on behalf of the donee³⁵⁸. The Act provides that state governments exempt clauses under Section 54, paragraphs 2 and 3, 107, and 123 by notifying them in the official gazette. However, these exemptions do not apply to any district or tract of land not encompassed by the Indian Registration Act, 1908.³⁵⁹

The Act addresses the primary importance of rights conferred through transfers in particular³⁶⁰. It states that whenever an individual undertakes to acquire ownership in or over the same immovable property by transferring rights at different dates, each later formed right is subject to the rights already acquired in the absence of a special agreement or reservation constraining the previous transferees.³⁶¹

A property cannot be transferred to any individual when the dispute related to the property (when the entitlement about an immovable property is in question) is pending in any competent jurisdiction within the territory of India, excluding the State of Jammu and Kashmir or formed over and above such limitations by the Central Government, "of any suit or proceeding which is not collusive and in

³⁵⁵ Section 4, Transfer of Property Act, 1882.

³⁵⁶ Section 105, Transfer of Property Act, 1882.

³⁵⁷ Section 118, Transfer of Property Act, 1882.

³⁵⁸ Section 122, Transfer of Property Act, 1882.

³⁵⁹ Section 1, Transfer of Property Act, 1882.

³⁶⁰ Singh Avtar, "Textbook on The Transfer of Property Act", Universal Law Publishing Co. Pvt. Ltd., New Delhi, Third edn., 2012, p. 130.

³⁶¹ Section 48, Transfer of Property Act, 1882.

which any right to immovable property is directly and specifically in question." A party to the case or judicial proceeding may not transfer or otherwise deal in a manner that affects the other party's right to the case or proceeding under any decree or order which could be rendered therein, but only with the Court's permission as well as on those conditions as it may enforce.³⁶²

A legal proceeding is presumed to begin on the date of the filing of the plaint or the institution of the proceeding in a court of competent jurisdiction and to continue until a final decree has disposed of the writ petition or proceeding and complete satisfaction or discharge of such decree or order has been obtained or has become unobtainable due to the expiration of any limitation period prescribed for the subsequent proceedings.

CHAPTER-III

2. "UNDERSTANDING THE COMPARISON BETWEEN MOVABLE AND IMMOVABLE PROPERTY WITH THE AID OF JUDICIAL DECISIONS": -

The ensuing analysis is on the Judiciary's concepts and modalities of interpretations throughout the country's long history. Standing timber, intangible property, trees, grass, fixtures, bushes, fishery, and other types of categorisation has been extensively researched.

2.1 PRE-INDEPENDENCE DECISIONS-(1800-1947):

In the case of "Re: Hormasji Irani v. Unknown"³⁶³, there were two significant questions at stake: first, whether growing grass should be classified as moveable or immovable property, and second, whether the contract in the case at hand is for the sale of goods or the leasing of goods. Justice Nanabhai, who delivered the Court's ruling, stated, "*I do not believe that the instrument in question is a*

lease because the party in whose favour it was undertaken took the form of specific pasture land at Poona". It was upheld that the agreements do not meet the lease criteria outlined in Act I of 1879, Section 3, Clause (12). As a result, it was implicit that "*grass was regarded as a movable property*."

Although "*the huts were expressly covered under the ambit of movable property or chattels both under the Provincial and Presidential Small Courts Acts of Bengal of 1865 and 1850*," it was affirmed in the case of "Nathu Miah v. Nand Rani"³⁶⁴ that "a hut would comprise a fixture" even before passing of The Transfer of Property Act. The Supreme Court initially articulated this perspective in "Kali Prasad Singh v. Hulash Chand"³⁶⁵.

The Hon'ble Jury, in a suit that involves the parties "State of Indore v. Visheshwar Bhattacharya and Ann"³⁶⁶, elucidated that "as the owner of the soil is also the owner of the space above it, the space above the land is property, whether movable or immovable, and it is self-evident that this is not movable. Consequently, it seems to be a foregone conclusion that it is immovable property." The Court dismissed the eulogy of a slew of Bombay Court rulings holding similar projections to be trespassing. Instead, it ruled in favour of the defendants, citing "Rathinavelly Mudaliar v Kolandavelu Pillai"³⁶⁷.

2.2 "POST-INDEPENDENCE DECISIONS- (1950-99)":

The dispute underlying the case "State of Orissa v. Titaghur Paper Mills Co. Ltd"³⁶⁸ was the bamboo and timber contracts between the respondents, a pulp-producing company, and the State of Orissa. The petitioners' arguments were earlier validated by the Orissa High Court and dismissed the legislature's notifications

³⁶⁴ Nathu Miah v. Nand Rani (1872) 8 Beng. LR 508.

³⁶⁵ Kali Prasad Singh v. Hulash Chand 20 W.R. 8.

³⁶⁶ State of Indore v. Visheshwar Bhattacharya and Ann 1934 A.I.R. (All.) 1054.

³⁶⁷ Rathinavelly Mudaliar v Kolandavelu Pillai 219o6 A.I.R. (Mad.) 29 511.

³⁶⁸ State of Orissa v. Titaghur Paper Mills Co. Ltd 5 1985 A.I.R. 1293; See Baijnath v Ramadhar, 1963 A.I.R. (All.) 214.

³⁶² Section 52, Transfer of Property Act, 1882.

³⁶³ Re: Hormasji Irani v. Unknown I.L.R. (1889) 13 (Bom.) 87.

under the Orissa Sales Tax Act. The main sticking point was the taxation of royalties paid by the respondent firm, which they claimed was unlawful because the bamboo contract was a lease of immovable property rather than a sale of products.

The High Court ruled in favour of the appellants. It delineated that "trees that are ready to be felled would be standing timber and, therefore, movable property," citing Sections 2 of The Sales of Goods Act, 2 of The Registration Act, 3 of The Orissa General Clauses Act, Section 3 of The Transfer of Property Act, and the case of "Shrimati Shantabai v. State of Bombay and Ors"³⁶⁹. Whilst trees (which includes bamboos) entrenched in the earth are immovable property. When they are standing, timber constitutes movable property; trees (which include bamboos) embedded in the ground that is intended to be detached before the sale or under the agreement of sale are not only movable property but also commodities. (Bamboo and wood are movable elements).³⁷⁰

The entitlement to catch fish has earlier been held in the case of "Ananda Behera and Anr. v. The State of Orissa and Anr."³⁷¹ that it is an advantage emerging from the land, and thus "as fish do not come under that category..... the meaning in the General Clauses Act holds, and as a '*profit a pendre*' is considered as a beneficial originating out of the land it continues to follow that it is immovable property within the connotation of The Transfer of Property Act". The petitioners were granted an oral licence to access and capture fish in the Chilka Lake in exchange for large sums paid to the proprietor Raja Parikud. Still, the authorities failed to acknowledge them when the Orissa Estate Abolition Act was passed, placing the property in jeopardy.

³⁶⁹ *Shrimati Shantabai v. State of Bombay and Ors* 6 1958 A.I.R 532 (India).

³⁷⁰ SUDHIR NANDRAJOG, HARI SINGH GOUR COMMENTARY ON THE TRANSFER OF PROPERTY ACT 58-69 (2014).

³⁷¹ *Ananda Behera and Anr. v. The State of Orissa and Anr* AIR 1956 17; *Bihar E.G.F Co.-op. Society v. Singh*, A.I.R. 1973 S.C. 964; *Chetlal Sao v. State of Bihar*, 1986A.I.R. (Pat.) 267.

2.3 "THE MODERN INTERPRETATION (2000-2016)":

In the particular instance of "Sunrise Associates v. Government of NCT of Delhi and Ors"³⁷², the Hon'ble Court struck down the Court's position in *H. Anraj v. Government of Tamil Nadu*³⁷³ as well as *Vikas Sales Tax Corporation and Anr. v. Commissioner of Commercial Taxes and Anr*'s"³⁷⁴, holding that "lottery tickets would not be considered movable property for tax consideration." The Court depended on Sections 2 and 3 of The Bengal Act and The Transfer of Property Act to define the movable property.

In the case of "Velayudhan Padmanabhan v. K. Thyagarajan"³⁷⁵, it was ordered that "mango and jack tree outputs do not constitute producing crops." The case concerned an action for mortgage redemption in which 'Sammathapatham' was ruled inadmissible as proof. This established that the plaintiff was lawfully challenged for the mortgage under Section 61 of the Transfer of Property Act because the Sammathapatham is required to be documented under Section 17 of the Registration Act.

Furthermore, in the case of "Telefonaktiebolaget LM Ericsson (PUBL) v. Competition Commission of India and Others"³⁷⁶. According to the Hon'ble Delhi High Court... "Exclude without the right to use - did not exclude patent rights from the purview of 'goods' as specified by the Sale of Goods Act, 1930. Many types of property (excluding actionable claims, money, and immovable property) would be included in the concept of 'goods,' including intangible and incorporeal

³⁷² *Sunrise Associates v. Government of NCT of Delhi and Ors* A.I.R. 2006 S.C. 1908; See *Commissioner v. Triveni N.L. Ltd.*, (2014) 72 V.S.T. 448 (All) (India) for comparative discussion on movable and immovable property regarding plant and machinery; See also *Sirpur Paper Mills Ltd. v. Collector of Central Excise, Hyderabad*, A.L.D. 2002 (4) 344 (India).

³⁷³ *H. Anraj v. Government of Tamil Nadu* A.I.R. 1986 S.C. 63.

³⁷⁴ *Vikas Sales Tax Corporation and Anr. v. Commissioner of Commercial Taxes and Anr* A.I.R. 1996 S.C. 2082.

³⁷⁵ *Velayudhan Padmanabhan v. K. Thyagarajan* K.L.J. 2011(3)146.

³⁷⁶ *Telefonaktiebolaget LM Ericsson (PUBL) v. Competition Commission of India and Others* 2016 (66) P.T.C. 58 (Del.); Copyright is also a beneficial interest in movable property and thus itself a movable property; See *Tata Consultancy Services v. State of Andhra Pradesh*, A.P.S.T.J. (1997) 2553.

property like patents." Utilising Section 3 of The General Clauses Act, Interpretation in Black's Law Dictionary, and the case of "*Vikas Sales Corporation v. Commissioner of Commercial Taxes*"³⁷⁷, the tribunal found that patent rights are primarily movable property, refuting the complaint about patent infringement and offering relief to the accused persons on the subject of the petitioner's infringement of competition norms.

The contribution of the legal system should be acknowledged throughout the previous century or more of burgeoning litigation since they were meticulous in defining the principles controlling the categorising of property. Even though the courts were mainly competent in filling in the gaps in the legislation, the prevailing scenarios necessitate a systematic reform of the statutory prerequisites.

CHAPTER-IV

3. CONCLUSION & SUGGESTIONS:

Over decades, India's judicial system has been stagnant, outdated, and oppressive. The scenario isn't any better when it comes to property laws. As this research has shown, jargon employed in property law, particularly in India, is unclear and perplexing, requiring rapid modification. One of the most significant impediments to categorising movable and immovable property in India is that, unlike property laws in other common law countries such as Australia, Canada and England, Indian property law does not operate on any hard - and - fast principles. Therefore, no solitary doctrine could be adopted in various factual contexts. That's why courts have periodically found themselves trapped in shallow waters. Despite the Courts' great rationale in most instances, there is always a requirement for a long-term solution to this defective classification scheme. On the same point, harmonising the principles contained in the

myriad of statutes outlined in the study above into uniformity would be a better state of affairs for the legal system. Consequently, there'll be no necessity to examine various statutes to discover answers to genuine concerns that arise in a case-by-case scenario.

Consequently, it may be ascertained that the most significant potential answer to this flawed dogmatic categorisation is a transparent and fundamentally proficient descriptive regulation. As a result, there is a critical requirement for the government to act affirmatively to fix legal inconsistencies. It would not only secure an ideal governing system but also offer much help to the judicial system, which is already stretched to the limit.

The following are possible legislative amendments that should be adopted as an outcome of the research:

- Incorporate the "intention of the contracting parties" to ascertain whether the property is movable or immovable.
- The meaning of 'movable property' should be included in the Transfer of Property Act to eliminate the ambiguity induced by a questionable counter-part interpretation and judicial pronouncements. It would facilitate the ability to determine the scope of the application clearer.
- The Transfer of Property Act should be amended to encompass the word "incorporeal property" to explicitly regulate the transfer of such property under the common law principles of Restraint on Alienation (Section 10) and Condition Repugnant to Interest Created (Section 11).
- When it comes to 'fixtures,' the Legislative Framework must be realigned to accommodate the English Doctrine of 'Mode and Object of Annexation' as a crucial criterion for distinguishing between chattels and immovable property.

³⁷⁷ *Vikas Sales Corporation v. Commissioner of Commercial Taxes* S.C.C.(1996)4433.

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