

THE SYMBIOTIC RELATIONSHIP OF MUD & CRYSTALS IN INDIAN PROPERTY LAW

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ABSTRACT

The article explores the complexities of property law, which is defined as a collection of rights that belong to an individual, and provides further details on the strict and permissive legal theories that underpin these rights. According to the conventional perspective, property law is a "crystal" structure with precise, rigid regulations that specify certain results, including property loss from delinquent loans or unregistered deeds, or the sale of properties that aren't really good without disclosure. But by combining both strict "crystal" and flexible "mud" principles, the Indian Transfer of Property Act presents a more balanced picture. The goal of this coexistence is to guarantee the effective administration of property law by striking a balance between the stability of rights and obligations and flexibility in response to changing conditions. With a fresh perspective on how these doctrines work within the legal system, this study seeks to offer a thorough understanding of these ideas. It looks at how these components interact in order to further our knowledge of the dual nature of property law and how it affects jurisprudence and legal practice.

I. INTRODUCTION

Hohfeld¹⁰¹² defines property as a collection of rights held by an individual. According to Black's Law Dictionary¹⁰¹³, the concept of property law involves the ownership or possession of this collection of rights and the exclusion of others from accessing it.¹⁰¹⁴ Scholars & Jurists tend to argue that property law is a rigid legal framework characterized by strict conditions, failing to fulfil which, can result in the loss of one's rights associated with this collection. It is known for its clear and strict rules that dictate outcomes. For instance, failing to pay your loan means losing the property and previous payments. If you forget to register your deed, a subsequent buyer can purchase the property without your claim. You can sell a house with defects without disclosing them. These rigid

rules, termed "crystals," define property relations by outlining obligations and opportunities clearly and distinctly. They are considered essential as they provide certainty about rights and responsibilities.

However, the Transfer of Property Act encompasses stringent as well as flexible doctrines co-existing with each other in the legal framework. Property law in India comprises not only the aforementioned strict doctrines, referred to as "crystals," but also more flexible doctrines, referred to as "mud" by some authors. These doctrines are intended to coexist for the efficient operation of property law and a new perspective is offered to view to functioning of these doctrines.

II. CRYSTALLINE RULES

Humans perceive everything in the world through certain lenses, which influences the way a thing is treated and valued. The availability of a resource is one of the determining factors of its value, i.e., the scarcer

¹⁰¹² Penner JE, 'The "Bundle of Rights" Picture of Property Revisited' [2020] Property Rights: A Re-Examination 3

¹⁰¹³ 'Property Definition & Meaning - Black's Law Dictionary' (*The Law Dictionary*, 4 November 2011) <<https://thelawdictionary.org/property/>> accessed 14 April 2024

¹⁰¹⁴ Rose CM, 'Crystals and Mud in Property Law' (1988) 40 Stanford Law Review 577

the resource, more people will want possession over it. According to Carol M. Rose¹⁰¹⁵, the law relating to transfer and ownership of property has been evolved primarily through the usage of the scarcity principle due to high value tag attached to property. It is characterised by hard edged doctrines, that make it easier to determine who owns what, facilitate trade, and avoid misunderstandings and conflicts. Several authors have come to refer to these doctrines as "Crystalline Rules", due to the clarity they provide. These crystals provide clear guidelines for exercising rights, making it straightforward to understand and definite in its requirements. For instance, in *Street v Mountford*¹⁰¹⁶, a license agreement wasn't considered valid because the agreement did not fulfill the clearly required essentials required by the crystalline rules, showing their definite nature of requirement of fulfillment of every criteria.

A. CRYSTALS IN THE INDIAN CONTEXT

In India, Property Law is mainly governed by the *Transfer of Property Act*¹⁰¹⁷ (hereinafter 'TPA'), which was codified incorporating English Common Law and Equity principles, laced with hard-edged doctrines which are crystalline in nature. Balganes¹⁰¹⁸ also emphasised on the fact, that Lord McCauley, while drafting the TPA, intended limited judicial interpretation using singular meaning words and illustrations which would narrow the way of thinking, adding on to the crystalline nature of property law in India.

B. THE CRYSTALLINE NATURE OF THE TPA

Chapter II of the TPA, lays down various provisions which ascertain legal validity of transfers and subsequent entitlements. In line with its crystalline character, the TPA distinguishes between legally valid transfers such as Sale, Lease, Gifts etc.¹⁰¹⁹, while does not consider transfers such as those of Partition,

Relinquishments, Easements etc. TPA lists the kind of entitlements valid to be transferred in India¹⁰²⁰, while also holding that transfers can only be completed by individuals meeting certain criteria¹⁰²¹. While these provisions crystallise transfer of property from within the TPA, there are certain provisions which crystallise transfer of property in India by laying down other extensive criteria, to satisfy the scarcity principle in whole. In addition to fulfilment of the strenuous conditions under the TPA, The Registration Act¹⁰²² also requires for transfers to be registered properly to have a valid legal effect under the TPA itself¹⁰²³. Furthermore, the TPA doesn't always have power in determining ownership of property, such as when the limitation act¹⁰²⁴ kicks in, in cases of adverse possession imposing harsh and strict criteria, to make sure that property doesn't stay ownerless and entitlements can clearly be defined, following the scarcity principle. The objects of these other acts are in direct alignment of the TPA, i.e. to crystallise the provisions relating to property, making property rules void of confusion.

III. MUDDY DOCTRINES

Unlike the saying of the quote, crystalline rules do not solely make up property law, but are supplemented by interpretations of the law arising out of jurisprudence. Judiciary in its decisions doesn't merely apply the letter of the law, but rather applies its mind to expand or contradict on the meaning of the provisions. Even though, these decisions are equally binding in nature, they are more situation specific, which makes them a loosely applicable law and are referred as 'Muddy Doctrines'. For instance, in the case of *Mahabir Gope vs Harbans Narain Singh*¹⁰²⁵, the court interpreted Section 76(a)¹⁰²⁶ & (e)¹⁰²⁷ of the TPA, to provide an exception to the general working of the

¹⁰¹⁵ Rose CM, 'Crystals and Mud in Property Law' (1988) 40 Stanford Law Review 577

¹⁰¹⁶ *Street v Mountford* (1985) UKHL 4

¹⁰¹⁷ Transfer of Property Act 1882

¹⁰¹⁸ Balganes S, 'Codifying the Common Law of Property in India: Crystallization and Standardization as Strategies of Constraint' (2015) 63 American Journal of Comparative Law 33

¹⁰¹⁹ Transfer of Property Act 1882 s 5

¹⁰²⁰ Transfer of Property Act 1882 s 6

¹⁰²¹ Transfer of Property Act 1882 s 7

¹⁰²² Registration Act 1908

¹⁰²³ *Ananda Behera v. State of Orissa* (1955) 2 SCR 919

¹⁰²⁴ *Rao GS* [2018] Effect of Claim of Adverse Possession in Declaratory Suits

¹⁰²⁵ *Mahabir Gope vs Harbans Narain Singh* 1952 AIR 205

¹⁰²⁶ Transfer of Property Act 1882 s76(a)

¹⁰²⁷ Transfer of Property Act 1882 s76(e)

mortgage doctrine given the facts of the case, even though the section did not specify such an interpretation.

These muddy doctrines are interpreted mainly from the equitable principles underlying the crystals and constitutional provisions of article 300A¹⁰²⁸. As seen in the case of *Sadik Husain v. Hashim Ali*¹⁰²⁹, the court expanded the benefit of the doctrine of election to even Muslims using the equitable principle under section 35¹⁰³⁰.

A. PARALLEL WORKING OF CRYSTALS AND MUD

These broadly classified doctrines form the governing part of property law. The Legislature lays down clear and definite crystalline rules while the judicial decisions through their situation-specific rules play a crucial role in shaping our society. Crystalline Rules result in a better and more effective governance of the scarce resource of property by clearly defining all the rights and duties associated with TPA. Whereas, only permitting muddy rules provides tailor-made justice to every individual, because the court takes into consideration the facts and circumstances of each case to adjudicate based on equity. Thus, muddy rules uphold our collective moral values, particularly if the rules applied are designed to benefit the wealthy and powerful without transparency.

However, the fact that Indian Property Law jurisprudence has never had to choose a single doctrine over the other, showcases the importance attached to the use of both doctrines simultaneously. Throughout history, evidence suggests that there hasn't been a singular preference for either crystals or mud. Instead, there appears to be a parallel evolution of appreciation for both¹⁰³¹. The reason behind this is the apparent malfunctioning of property law that would occur due to the inherent disadvantages in each doctrine. Thus both types of doctrines are essential for a proper

functioning of the TPA and other relevant doctrines.

In other words, Crystals and Mud can be seen to have a symbiotic relationship between each other, where they are not alternatives but rather a matched pair, complementing each other. The TPA entails various equitable principles evolved in the courts of chancery in England. While assessing how to interpret these provisions, Lord Haldane held¹⁰³² that, in the interest of justice, substantive compliance should replace literal compliance of these crystals, provided that the compliance complies with the instrument's overall design.

B. SYMBIOTIC RELATIONSHIP OF CRYSTALS AND MUD

1. Mud Supporting the Crystals

Crystals might be acknowledged for their clear and definite nature of working, however, excessive usage of crystals leads to overwhelming the law, where a simple rule attracts too many users or complex applications, and it becomes a trap. This trap, where one party suffers disproportionately, drives courts to complicate clear rules with exceptions and subjective judgments afterward.¹⁰³³ This brings in the reason for the courts to read into the crystalline rules in a loose nature to save an innocent person from being stuck in the indefinite procedural and onerous conditions given by the TPA and related acts. Reading in Mud essentially helps the crystals by:-

i. Providing Clarity

Crystals have been critiqued for not having clarity regarding their applicability and causing confusion. This can especially be seen while dealing with similar cases to which different provisions might apply. Such lack of clarity can be seen between Sections 6(a) and 43 of the TPA¹⁰³⁴. While S.6(a) holds transfers by heir-apparent to be void, S.43, contemplates,

¹⁰²⁸ The Constitution of India 1950, art 300A

¹⁰²⁹ *Sadik Husain v. Hashim Ali* (1916) 38 All 627; 36 IC 104

¹⁰³⁰ Transfer of Property Act 1882 s 35

¹⁰³¹ Rose CM, 'Crystals and Mud in Property Law' (1988) 40 Stanford Law Review 577

¹⁰³² *Brown v. Greekson*, 1920 AC 860 (868)

¹⁰³³ Rose CM, 'Crystals and Mud in Property Law' (1988) 40 Stanford Law Review 577

¹⁰³⁴ Transfer of Property Act 1882 s 6, 43

transfer by unauthorised person becoming applicable if he acquires subsequent interest in the property. On bare reading these provisions may seem contentious, but in the case of *Jumma Masjid Mercara v Kodimaniandra Deviah*¹⁰³⁵, the court clarified a thin line of difference, explaining that S.43 is a rule of estoppel, dealing with evidentiary aspects while S.6(a) is substantive in nature. If S.6(a) is given preference over S.43 then the provision of Spes Succession would get vague and lose its dignity. Thus S.43 was given preference to be applied over 6(a) only when subsequent interest is acquired, thus maintaining the sanctity of both the provisions and drawing a clear distinction between them. It can be seen how judicial interpretations have helped clear the ambiguity ironically caused by crystals.

ii. Providing Flexibility

As stated earlier, crystals are hard-edged, where a person needs to fulfil the onerous requirements to avail his property rights, failing which his claim holds nil value. This rigidity of the crystalline doctrines could be counter-intuitive in nature while adjudicating cases, where an honest person might cover all bases, but still face loss due to non-fulfilment of minor specificities crystalized in the TPA. Muddy Doctrines kick in to protect these persons in line of equity and follow the principle of natural justice, helping the innocent person not to take the fall.

Such a flexible expansive interpretation can be seen in the case of *Santosh Kumar Gupta v Smt. Chinmoyee Sen*¹⁰³⁶, while interpreting S.103 of the TPA, as the definition of the notice in that section seemed to be quite narrow, given its requirements such as getting it signed and delivered by a registered post. However, the court deemed the definition of notice under S.103 to include the idea of a constructive notice, thus making the requirements more flexible for the users to fulfill, showing that judicial interpretations have helped the innocent

persons who may fall into the trap of hard-edged crystals unintentionally.

iii. Fixing the Statue

The TPA was codified in a very narrow and single-directional way, intending not to provide scope for the judiciary to amend the weaknesses or modernize the law. The persistent refusal to either fix or evolve inevitably undermines the long-term functionality of the TPA. The mud doctrines produced by the court may not directly amend these mistakes, but they do notify the legislation to make such amendments.

This can be seen in tracing the history of S.53A. The court, in the case of *Mohammad Musa v Aghore Kumar Ganguli*¹⁰³⁷, introduced the doctrine of part performance, which was codified in 1929 after a special committee was formed¹⁰³⁸. This statue was further amended as the 2001 amendment due to *Mian Pir Bux v Sardar Mohammad Tahir*¹⁰³⁹ as the legislature removed a certain part of the section to prevent conflict from the registration act¹⁰⁴⁰, thereby fixing the ambiguities in the section and at the same time making property law jurisprudence much more equitable in functioning.

2. Crystals Supporting the Mud

The Muddy doctrines might be acknowledged for their situation-specific standards which are loosely applied in nature as it ensures tailor-made justice to be done, but there is an evident bias towards crystals than towards mud due its arbitrary and uncertain nature. However, this need not pose a problem, especially within the framework of the Indian Legal System. This is because the origin of the Muddy doctrine lies within the very Crystals it serves to enhance. The Muddy doctrines are drawn from the

¹⁰³⁵ The Jumma Masjid, Mercara vs Kodimaniandra Deviah 1962 AIR 847

¹⁰³⁶ Santosh Kumar Gupta vs Smt. Chinmoyee Sen AIR 1966 CAL 615

¹⁰³⁷ Mohammad Musa v Aghore Kumar Ganguli (1914) 42 Cal. 801; 28 IC 930

¹⁰³⁸ (*The-crystallization-of-section-53-a-of-the-transfer-...*)
<<https://www.ijlr.com/wp-content/uploads/The-Crystallization-of-Section-53-A-of-the-Transfer-of-Property-Act-and-the-Role-of-Laws-of-Equity-in-doing-so.pdf>> accessed 14 April 2024

¹⁰³⁹ Mian Pir Bux v Sardar Mohammad Tahir AIR 1934 PC 235

¹⁰⁴⁰ (*The-crystallization-of-section-53-a-of-the-transfer-...*)
<<https://www.ijlr.com/wp-content/uploads/The-Crystallization-of-Section-53-A-of-the-Transfer-of-Property-Act-and-the-Role-of-Laws-of-Equity-in-doing-so.pdf>> accessed 14 April 2024

crystals i.e. the codified provisions in the TPA and related acts. Having such crystals as the main source helps in the case of:-

i. Shift in Position of Law

One of the biggest critiques of Muddy doctrines is its inability to shift with the position in law, given its loose and equity-based standards¹⁰⁴¹. In the Indian system, this cannot be held to be a sound critique, because the property law in India has had some significant changes, which do not seem to be conflicting with the previously held equitable judgments but have operated in harmony. Indian muddy doctrine is based on the crystal rules themselves whose position changes, unlike the operation in UK Property Law.

One of the historical examples can be seen in this regard in the form of the case of *Kameshwar Singh*¹⁰⁴², which held the land acquisition laws to be unconstitutional under Article 19(1)(f). However, after the 1st Amendment in 1951, the legislature added such acquisition laws to be out of scope of judicial review under 9th Schedule. Due to such a shift, the SC in the same case reversed the decision.

This shows that the muddy doctrines may also be easily shifted in the position of law, given the source of these doctrines is the already shifting crystalline doctrines.

2. Reducing the non-exclusiveness of muddiness

Authors argue that the open-ended and non-exclusive nature of these muddy doctrines grants entitlement to such a multitude of people that reaching a deal becomes practically unattainable¹⁰⁴³. Such a notion is attached due to certain occasions such as the previously mentioned cases where parties got a relief despite the violation of the crystalline rules. This makes it impossible for an accurate

analysis of one's legal position, making it difficult especially during commercial transactions.¹⁰⁴⁴ However, the Indian crystal doctrines mandates the use and application of the muddy doctrines to give a relief to only those people who acted in good faith. This rule bounds the court from producing arbitrary and legally baseless judgments that support the people who perform with malicious intent. This shows that the muddy doctrine's non-exclusive and open-ended nature is limited to a certain extent due to the crystalline rules that are in place, thus working in harmony.

IV. ALTERING THE SYNONYMS ATTACHED

As seen from the above discussions it can be seen that both doctrines are interdependent on each other. Thus, the symbiotic relationship between the Crystal Rules and Muddy Rules, can be considered as brick and cement combining together to lay a strong foundation for the 'building' of property law. It cannot ever be considered that law laid down by the legislature is absolute with no scope of judicial scrutiny in changing it to include more justiciable precedents. Therefore, it is pertinent to examine the various weaknesses of crystalline rules and the way 'mud' has kicked in, to stabilise it and vica-versa.

V. EXTENDING ANALYSIS BEYOND THE TPA

This 'Cemented Brick' relationship is not retracted just to the TPA but other closely related legislations on property law as well. For Instance, the idea of adverse possession over property kicks in through the Limitation Act, which has been developed and evolved along the same lines of mud and crystals that TPA has gone through. In cases of adverse possession, acting over the provisions of TPA, the provisions entailed in the limitation act have been heavily critiqued. These provisions have been described as "irrational, illogical and wholly disproportionate"¹⁰⁴⁵. The law relating to adverse

¹⁰⁴¹ Rose CM, 'Crystals and Mud in Property Law' (1988) 40 Stanford Law Review 577

¹⁰⁴² The State Of Bihar vs Maharajadhiraja Sir Kameshwar Singh [1952]1SCR889

¹⁰⁴³ Holderness CG, 'A Legal Foundation for Exchange' (1985) 14 The Journal of Legal Studies 321

¹⁰⁴⁴ Baird & Jackson, *Information, Uncertainty and the Transfer of Property*, 13J. Legal Stud. 299, 312-18 (1984).

¹⁰⁴⁵ Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan and others, A.I.R. 2008(41) SCW 6996

possession is considered to be extremely ambiguous in nature. The courts in line with this ambiguity trying to provide more clarity, have held in cases such as *Ravinder Kaur Grewal v Manjit Kaur*¹⁰⁴⁶ that once the 12 year period as prescribed by the limitation act for adverse possession to come in effect, the power to file for declaratory suits can be used both as a sword and a shield, in contrast to just being used as a shield earlier¹⁰⁴⁷. Furthermore, to make the law regarding adverse possession more equitable in nature, in the case of *Bhimrao Dnyanoba Patil v State of Maharashtra*¹⁰⁴⁸, the court muddled up provisions of the limitation act governing adverse possession of property, where it read in the requirement of *Adverse Animus Possidendi*¹⁰⁴⁹ as an essential to give effect to adverse possession of property, thus making the law less cruel on innocent victims. Thus it can be seen that not just Limitation Act but other legislations dealing with property law in India, benefit from the symbiotic relationship between crystals and mud.

VI. Conclusion

In conclusion, the concept of property law as a doctrinally rigid framework is partially true within the context of the Indian legal system, as these crystalline doctrines themselves generate the need for muddy doctrines. These flexible doctrines, although criticized by many authors, prove essential for the efficient functioning of property law and other related legislations like the limitation act, as they share a symbiotic relationship. Thus, there needs to be a shift in the analogy from crystals and mud to brick and cement, as both combined uphold the structure of property law.

¹⁰⁴⁶ *Ravinder Kaur Grewal v Manjit Kaur* (2019) 3 ICC 641

¹⁰⁴⁷ *Dharampal v. Punjab Wakf Board* (2018) 11 SCC 449

¹⁰⁴⁸ *Bhimra Dnyanoba Patil Vs State of Maharashtra*, 2003 (1) Bom. L.R. 322

¹⁰⁴⁹ Intention to acquire property