

TPA

Act 4 of 1882

Commencement - 1 July, 1882. Amendment - 1929 Imp & 2002.

Extent - whole India except Punjab.

Total Sec - 137

Total chapters - 8

Not applicable to - Mohammedan Law (II Chapter)
Maintenance
Will
Transfer by operation of law.

The br. of prty Act have many parts -

1. Sec 5 to Sec 37 - Both movable & imm.
2. Sec 38 to Sec 53 - (1) only imm.
3. 54 to 117 - only imm.
4. 118 to 137 - Both.

Preamble

An act to amend the law relating to the br. of prty
by act of parties.

Transfer of Property Act 1882

enacted - Feb 1882

VIII - Chapter

Sec-13-17 Sec

enforcement

1 July 1882,

Transfer of Property Act was enacted to amend the law relating to transfer of property by an act of parties.

The chief object is to bring the rules which regulate the transmission of property between living persons and to complete the contract law which relates to immovable property.

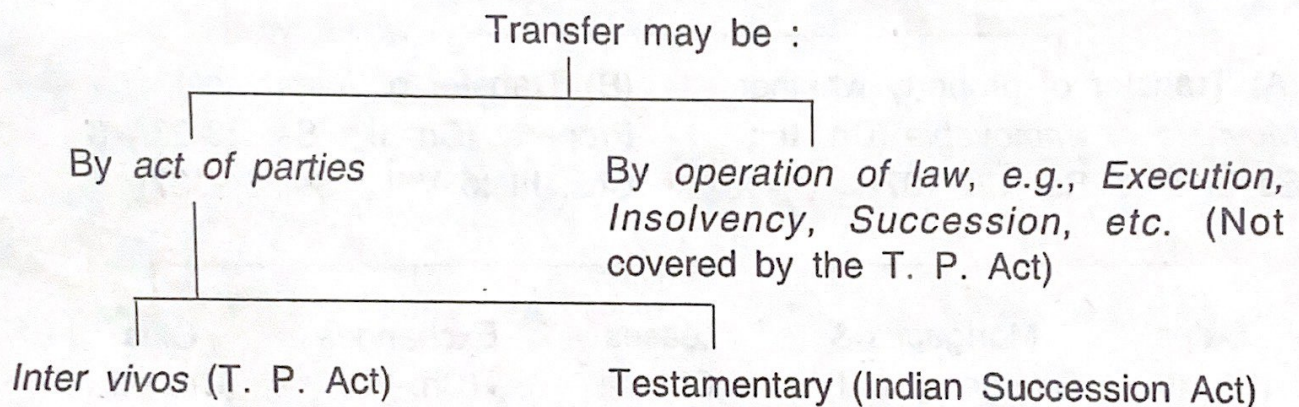
Act not exhaustive - It does not cover entire dimension of transfer of property.

Scope The act is limited to transfer of property by act of parties not by operation of law.
eg:- Inheritance, insolvency, forfeiture or Sale of Goods.

It relates to transfer of property inter vivos, voluntary transfer between living persons and no application to the disposal of property by will.

transfer of property.

SCOPE OF THE ACT.—The Act is limited to the transfer of property ^[P. Uni] by act of parties, as distinguished from a transfer by operation of law, e.g., in case of inheritance, insolvency, forfeiture or sale in execution of a decree. It relates to transfers of property *inter vivos*, i.e., voluntary transfers between living persons, and has no application to the disposal of property by will. Thus,—



The Act applies only to transfers *inter vivos*, i.e., transfers by one living person to another. Transfer of property is either *by act of parties* or *by operation of law*. If X sells or mortgages or gifts away his house, it is a case of voluntary transfer *by act of parties*. But, if X becomes an insolvent, his property vests in the Official Assignee or Receiver, whether X likes it or not. So also, if X's property is sold in execution of a decree against him, it would be a case of a transfer much against the will or desire of X. This is, therefore, known as transfer *by operation of law*.

Now, transfer by act of parties is of *two kinds* :

- (i) Transfer *inter vivos*, and
- (ii) Transfer by *will*, i.e., testamentary disposition of property.

by this Act.

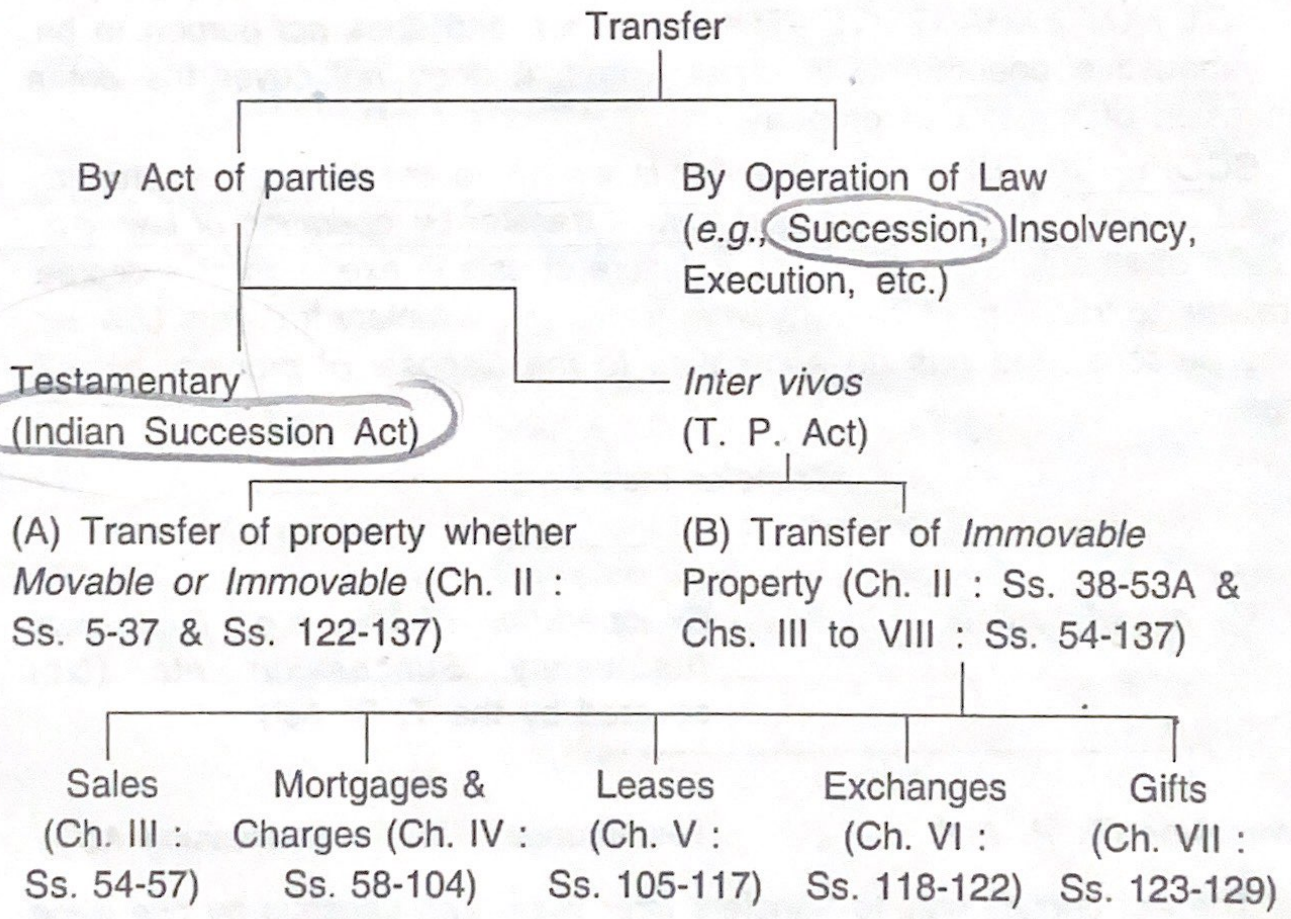
THE SCHEME OF THE TRANSFER OF PROPERTY ACT

Want by
as per
? State
effect

r. 2001

explain
modes
of im-
property,
at their
natures.

Oct. 97
Apr. 98
Apr. 99



not applicable on - Muslim law
- Maintenance
- Will
- Operation of law

Extension and exemption - Sec 1

Under Sec 1 of TPA 1882, Bombay, Punjab and Delhi have been excluded from the applicability of this Act.

However, governments of these states have power to extend whole or any part of the Act, to these states.

Punjab Govt has made ~~of~~ only Sec- 54 (2) (3),

(1) 54, para (2), (3)

(2) Sec-59

(3) Sec-107

(4) Sec-123 applicable to the state

Gyan Chand Shamchand of Gattan Lala Krishan Kumar (1969)

para Singh of Kehar Singh (1989)

TPA does not apply to Punjab as such but principles enunciated by TPA do and necessarily apply on grounds of justice, equity and good conscience.

Saving clause Sec 2

TPA shall not affect

(1) provisions of any act not expressly repealed

(2) provision which are consistent with it

(3) legal relations liability arises before this act

(4) Sec-57 Chapter II of this act shall not apply on Muslim law

Immovable Property

The Transfer of Property Act, 1882 has not defined this term. It only says that "immovable property" does not include

- ① standing timber
- ② growing crops
- ③ grass.

neither comprehensive
nor exhaustive } negative
definition

Registration Act, 1908

Property shall include land, building, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land or things attached to the earth or permanently fastened to anything which is attached to the earth but not standing timber, growing crops or grass.

General clauses Act, 1897 3 (26)

property shall include land, benefit to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.

1 -> IMMOVABLE PROPERTY

- Notice.

Im. pty does not include standing timber, growing crops & grass. (negative defi)
neither ~~exclusive~~ nor comprehensive

Sec 2 (26) of General clauses Act

Im. pty includes land, benefits to arise out of land & things attached to earth.

Babulal vs Bhawanee (1912)

Things attached to earth has been separately defined in S. 3 of T.P. Act.

"attached to the earth" means

1. rooted in the earth as trees & shrubs
2. Imbedded in earths as walls or buildings
3. attached to what is so imbedded for permanent beneficial enjoyment

Sec 2(26) of
General clauses
Act, 1897

- 1- Land
- 2- Profits a prendre (Benefits to arise out of land)
- 3- Things attached to earth

Sec 3 of
A.P. Act
1882

- 1- Things imbedded in the earth
- 2- Things attached to what is so imbedded
- 3- Things rooted in earth
 - a) - Standing timber
 - b) - Growing crops
 - c) - Growing grass

1- LAND

Land means surface of the earth. It includes everything upon ~~the~~ surface of land, under the surface of land & also above surface of land.

- Soil, mud deposited on the surface of earth
- water collected in a pit or accumulated in the pond or lake
- water flowing in the river
- sub-soil, minerals, coal & gold mines

Am State of Orissa vs Tilaguch Paper Mills Co. Ltd
A profit a prendre
State of M.P. vs Orient Paper Mills Ltd - (1977)

2. Profits a prendre (Benefits to arise out of land)

Every Benefit arising out of im. property & every interest in such pty is also regarded as im. pty.

The Reg. Act includes as im. pty

Benefits arise out of land such as

- hereditary allowances, right to ways, lights,
ferries & fisheries

○ Ananda Behera vs state of Orissa Or

Rgt to catch fish from Chilka lake

○ Shanta Bai vs state of Bombay Or

Rgt to enter land, cut & carry wood

Rgt to collect dues from fair or lat.

office of a hereditary priest of temple

Hindu widow's life interest in income of husband's pty.

Jalkar rights is immovable property.

3. Things attached to earth (Sec. of fixtures)

1- Things imbedded in earth

houses, buildings, walls, electricity poles

2- Things attached to what is imbedded

doors, windows, shutters, electric bulbs, window screens

3- Things rooted in Earth

Trees, plants or shrubs which grow on land are rooted in earth with the help of their roots, they keep themselves fixed in the earth & become part of land.

Therefore a general rule in respect of all trees, plants, ~~shrubs~~ herbs & shrubs is that they are imm. ppty.

There is an exception to this general rule standing timber, growing ~~crops~~ crops & grass, though rooted in earth, are movable ppty.

- A) Standing Timber

Standing timber is movable ppty. a green tree rooted in the earth is 'standing timber' provided its woods are generally used for timber purposes as making door, windows.

Sheestam, Neem, Babool or teak trees are immovable

Orissa v/s Titagarh paper Mills Co Ltd (1985)

Fruit bearing trees are imm. not standing timber

Mahua tree is immovable

palm & date tree is immovable pr.

There are certain trees both fruit bearing tree & standing timber - Kango tree

then it's nature depend on the intention of owner.

Growing Crops

G. Crops means crops standing in the field.

Wheat & barley are nothing but collection of plants rooted in field. yet they are not Im. bcz every crop is bound to be cut in future

Growing Grass

Grass in the field has no other utility except that it could be used as fodder for the cattle.

Ex. of Im. property

- 1- Beneficial interest arising out of land ex. right to way
- 2- Rgt's under lease or tenancy
- 3- Rgt to extract gold
- 4- Rgt to fishery
- 5- Rgt to ferry i.e. right to transport through rivers
- 6- Rgt to collect dues from fair or hat
- 7- Rgt to hold exhibition or fair on one's land
- 8- Rgt to collect lac.
- 9- Mortgage debt
- 10- Equity of redemption
- 11- Hereditary priest right
- 12- Rgt of Mahabrahmin.

Movable property

It includes stocks & shares, growing crops, grass, & things attached to ~~or~~ or forming part of the land & which are agreed to be severed before sale, or under Sale of Goods Act

- Ex - stocks & shares
- growing crops
- " Grass
- Standing timber
- Rgt to recover maintenance
- Royalty
- A decree of sale of im. propy
- looms, a machinery which is not permanently attached to earth
- Right of purchaser to have land attached to ~~earth~~ reg. in his name.
- Rgt of worship

Imp Immovable propy defined in Ind. Reg. Act 1908

Sec-2(6)

Im. propy includes land, buildings, hereditary allowances, rgt to way, lights, ferries, fisheries or any other benefit to arise out of land & things attached to the earth or permanently fastened to anything which is attached to the earth but not standing timber, growing crops & grass.

- Holland v/s Hodgson -

benches were attached to the stone floors by nails
so they are fixtures

Law of fixtures things attached to the earth

Based on Maxim

quicquid plantatur solo, solo cedit

whatever is planted on the soil belongs to the soil

Hussain Khan v/s Sadat Khan 1990

Right to jagir income is immovable property

Moti Singh v/s Deoki Singh ✓ Int

It was held that fruit bearing tree would not
be a standing ~~to~~ timber.

Sheikh John Mohammad v/s Uma Nath Mishra (1962)

Mahua tree is not standing timber.

NOTICE

Notice means knowledge or information of a fact.

If it is established before the Court of Law that a person has notice of some fact or transaction, the knowledge of that fact is binding on him.

He can't deny the knowledge of that fact if it goes against him.

Notice may be either

1- Actual or Express Notice

Actual notice means direct or express knowledge or information about something.

Express notice is binding on the person.

2- Constructive Notice

- Doc. of constructive Notice is based on Equity.

- In it the Court of Law would construe or presume that the person concerned is bound to know that fact.

- (1) wilful Abstention from an inquiry or search

(2) Gross Negligence.

Lloyds Bank Ltd v P.E. Gunder & Co.

(3) Registration Notice.

(4) Actual Possession as Notice of title

(5) Notice to agent is Notice to principle.

Imp of Notice

- The doc. of notice is an equitable doc.
 - Other instances where under the T.P.D., interests of transferees for value without notice have been protected under the doc of notice are given in Sec-40, 41, 53, 53-A
- It may be noted that the doc of constructive notice is applicable also against the Govt.

Attestation

Eng law - Both wit. must be presented at some time actually see the execution

Ind law - It is not necessary to see the actual execution

essentials -

- 1- Applied only on non-testamentary instrument
- It will not apply on will
- 2- Min two attesting witnesses are needed
- 3- Three modes of attestation -
 - a- Each see the executant sign
 - b- In the presence & direction of executant
- 4- Sign in presence of executant
- 5- No particular form of attestation

Legal effect -

Here attestation of doc. does not show that the attestation had notice of its contents.
attester.

GrKD

Case - Gomdi vs Krishna

Parties to the transaction & deed shall not be attesting witness to the deed.

Case - Kewar Harishchond vs Banshidhar Hebtli

Creditor by whom credit has been drawn by the purchaser is not the party to the transaction & such creditor ~~is~~ may be a good attesting witness.

Case - Dwar Sahu vs Parmanand Sahu.

Deed writer may be a good attesting witness.