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PRACTICE AND PROCEDURE OF VOLUNTARY TRANSFER OF IMMOVEABLE PROPERTY: LEGAL ISSUES AND CHALLENGES IN URBANISATION AND INFRASTRUCTURAL DEVELOPMENT IN INDIA

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CHAPTER 2

LEGAL FRAMEWORK GOVERNING LAND RIGHTS AND TRANSFERS IN INDIA

Legal provisions on land rights and transfer in India are based on the constitutional provisions, statutory and judicial interpretations. The Constitution of India also forms the basic foundation of property rights in India. First, the right to property was identified as one of the fundamental rights in Article 19(1) (f)¹⁸ and Article 31¹⁹. This right was however deleted off the list of fundamental rights by the Forty-Fourth Amendment Act, 1978, and was added as a constitutional legal right under Article 300A²⁰. Other than the provisions in a constitution, statutory laws are also important in controlling land transfers. The principles that govern the voluntary transfer of immovable property including sale, mortgage, lease, exchange and gift are established in the Transfer of Property Act, 1882. Also, there are laws like the Registration Act, 1908 and Indian Stamp Act, 1899 which govern the procedures involved in transfer of property by means of registration and stamp duties which in turn provide the legal validity and authenticity of property transactions. Together, these constitutional and statutory provisions, provide a systematic legal framework which regulates ownership, transfer and protection of land rights in India.

2.1 Right to Property as a Fundamental Right under the Constitution of India

According to the original design of the Constitution of India, the right to property was a fundamental right and was safeguarded. This was mainly secured by Article 19(1)(f) and Article 31 that created a constitutional guarantee to protect the right to own property privately and limit

¹⁸ *Constitution of India*, art 19(1)(f)

¹⁹ *Constitution of India*, art 31

²⁰ *Constitution of India*, art 300A

the State in arbitrary interference. Such provisions were based on the idea of the framers of the Constitution that the property ownership was strictly interrelated with the individual liberty, financial and social stability.

Article 19(1) (f), ensured all citizens the right to purchase, possess and sell property. This was a provision that guaranteed that people were free to own property and dispose of it at their will. It also affirmed the concept of voluntary transactions in property later to be fully regulated in the statutes like the Transfer of Property Act, 1882. The right of the Article 19(1)(f) was not absolute, however, it could be limited by the reasonable restrictions that could be made by the State in the interests of the general population. Article 31 also offered further protection by guaranteeing that no individual could be deprived of his property unless he was authorized to do it by law. It also stipulated that in cases where the State was forced to take over the private property to serve the State interest, the concerned owner must be compensated. This was a preventive measure against arbitrary expropriation, because it provided that the State must act within the due process and pay compensation to persons when their property was expropriated to be used by the State.²¹

Before the amendment, in the case of *Kavalappara Kottarathil and Kochunni Vs. States of Madras and Kerala*²², it was established that a law depriving a citizen of property under Article 31(1)²³ must still satisfy the 'reasonable restrictions' test under Article 19(5)²⁴, thereby affirming the fundamental nature of property rights against arbitrary state action even when deprivation was by law. This case is pivotal for understanding the scope and limitations of the right to property as a fundamental right before its deletion. The Supreme Court, in early judgments like *Dwarkadas Shrinivas of Bombay vs. The Sholapur Spinning and Weaving Co. Ltd.*²⁵, interpreted Article 31(2)²⁶ broadly, holding that substantial deprivation of property, even without formal title transfer, required compensation. Similarly, the *State of West Bengal vs. Subodh Gopal Bose*²⁷ distinguished between the abstract right under Article 19(1)(f) and concrete property rights

²¹ M Kumarappan, 'Right to Property and the Constitution of India' (2023) 8(11) IJNRD c711

²² *Kavalappara Kottarathil and Kochunni Vs. States of Madras and Kerala* 1960 KLT 31 (SC)

²³ *Constitution of India*, art 31(1)

²⁴ *Constitution of India*, art 19(5)

²⁵ *Dwarkadas Shrinivas of Bombay vs. The Sholapur Spinning and Weaving Co. Ltd.* AIR 1954 SC 119

²⁶ *Constitution of India*, art 31(2)

²⁷ *State of West Bengal vs. Subodh Gopal Bose* [1954] 1 SCR 587

Under Article 31, while *Virendra Singh vs. State of Uttar Pradesh*²⁸ affirmed protection against arbitrary state action.

Articles 19(1)(f) and 31 formed a powerful constitutional framework that guaranteed property rights. Article 19(1)(f) provided the freedom to own and transfer property whereas Article 31 guaranteed that the State could not unlawfully deprive people of property. This two-fold security made property rights a subject of individual freedom as well as a constitutional right against State intervention.

2.2 Land Reform Policies and Conflict with Fundamental Right to Property

After independence, the Government of India came up with some land reform policies aiming to curb the economic disparity, eliminate exploitative landholding structures, and enhance the principle of social justice. The reforms were deemed necessary to change agrarian organization of the country and to change the situation of landless farmers and tenants.²⁹ It was, however, clashing with the fundamental right to property that was guaranteed by the Constitution of India at the time of the implementation of these policies.

A key aim of these land reform policies was the elimination of the zamindari system in which the land had been concentrated in the possession of a small group of landlords, with the majority of cultivators as tenants who had minimal security of rights. Different governments of states issued regulations that were aimed to abolish the intermediaries and hand land over to cultivators. These legislations were also aimed at putting ceilings on the size of land a person could own, redistributing excess land to the landless, and controlling tenancy privileges.³⁰ A lot of these reform laws were however, taken to court and opposed by land owners. The landowners claimed that such a legislation amounted to contravention to their fundamental right to property, especially to the safeguards given to them by Articles 19(1)(f) and 31. They argued that the policy of acquisition of land and

²⁸ *Virendra Singh vs. State of Uttar Pradesh* AIR 1954 SC 447

²⁹ Anshu Yadav, 'Land Rights in India: Contemporary Legal and Policy Challenges' (2026) 14(1) JLRS 7

³⁰ Sulaja RS, 'Right to Land and Land Reforms in India' (2021) 6 *Law & Political Review* 291

ceilings and the redistribution policy had meddled with their constitutional right to purchase, retain, and sell property. Also, there were disputes on the sufficiency of compensation that the State offered upon acquisition of land under these reform laws. The courts were thus often left to consider the correspondence of the land reform laws with constitutional property rights.³¹ In some instances, the same land reform laws were declared to have some provisions invalid on the basis having been declared to have trespassed the basic human right to the right to have property.

The constitution was amended by the First Constitutional Amendment Act, 1951 in order to overcome those challenges and to provide the effective work of land reforms. This amendment introduced special provisions like Article 31A³² and Article 31B³³ that protected some of the types of land reform legislation against judicial rulings on grounds that it interfered with fundamental rights. Article 31A explicitly safeguarded the laws pertaining to the acquiring of estates and agrarian reforms whereas Article 31B certified the specific laws by making them in the Ninth Schedule of the Constitution.³⁴ The persistent conflict between land reforms and fundamental right to property led to many constitutional amendments. The case of *Kesavananda Bharti vs. State of Kerala*³⁵ had extensively discussed how the constitutional amendments protecting such reforms were aimed to strike a balance between the need for socio-economic transformation through land redistribution and the preservation of constitutional integrity

Therefore, land reform in India was instrumental in redefining the constitutional status of property rights. This clash between the aims of the government to create societal and economic equality on the one hand and the fundamental right of property, which was safeguarded by the Constitution, on the other hand led to the significant constitutional reforms that transformed the character and domain of property rights in India.

³¹ Anshu Yadav, 'Land Rights in India: Contemporary Legal and Policy Challenges' (2026) 14(1) JLRS 7

³² *Constitution of India*, art 31A

³³ *Constitution of India*, art 31B

³⁴ Namita Wahi, 'Understanding Land Conflict in India and Suggestions for Reform' (Centre for Policy Research, 26 June 2019)

³⁵ *Kesavananda Bharti vs. State of Kerala* AIR 1973 SC 1461

2.3 Constitutional Amendments Affecting Property Rights

The right to property was initially accepted as being a fundamental right in the Constitution of India in Articles 19(1)(f) and 31. It authorized the citizens to purchase, own and sell property and provided that the state could only purchase private property on a public purpose and by paying compensation. But post independence, the government wanted to carry out far reaching agrarian reforms and land redistribution as a way of establishing social and economic justice. These reforms tended to go against property rights constitutional protections.

The start of making significant changes to the constitution regarding property rights was the First Constitutional Amendment Act of 1951. The amendment came into existence with the main aim of promoting land reform policies including the repeal of the zamindari system and redistributing agricultural land³⁶. In order to accomplish this goal, Articles 31A and 31B were incorporated in the Constitution through the amendment. Article 31A protected laws affecting the acquisition of the estates and agrarian reforms against attack on the ground of the violation of fundamental rights including equality or right to property. Article 31B created a new schedule termed as the Ninth Schedule that put some of the laws out of judicial review. The Ninth Schedule contained laws which could not be pronounced unconstitutional regardless of the fact that they violated fundamental rights. This amendment enabled the legislature to disarm the judicial review of land reform laws and it led to the start of a long-standing war between the judiciary and the legislative body in terms of property rights and interpretation of the constitution.³⁷

The government enhanced its powers to procure personal property in the name of the government with the introduction of the Fourth Constitutional Amendment Act 1955. This amendment came into effect following a series of decisions in the Supreme Court which had construed Article 31 to mean that the state was obligated to make fair compensation in the acquisition of property. The amendment changed the provisions to

³⁶ Tom Allen, 'Revival of the Right to Property in India' (2015) 10(2) *Asian Journal of Comparative Law* 1

³⁷ Deepakshi Joshi Bisht, 'Emerging Need for a New Right to Property' (2025)

do with compensation and restricted the ability of the courts to decide on the sufficiency of the compensation given by the state. In such a way, it was able to make sure that government policies with respect to economic development and land reform could not be easily struck down by the courts.³⁸ Moreover, the amendment further broadened the array of legislation under the coverage of the Ninth Schedule by including more acts of land reforms and farm measures.

Another significant move towards restricting property rights and increasing the state control over the economic resources was the Twenty-fifth Constitutional Amendment Act of 1971. Among the most important changes brought about by this amendment was the changes that were made on the Articles 31(2) whereby the term “compensation” has been replaced with “amount”.³⁹ The implication of this change was that when the government took possession of the private property it was not obliged to give compensation similar to the market value of the property. Rather, the amount to pay could be decided by the state itself on the basis of its policy considerations. This modification was aimed at making the judiciary unable to dispute the sufficiency of the payment made on the purchased property as discussed in the document. Another amendment was the insertion of Article 31C⁴⁰ which stated that a law enacted to enforce some of the Directive Principles of State Policy could not be struck down based on the fact it infringed some fundamental rights. The clause played a very crucial role in enhancing the capacity of the government to implement socialist economic policies and limited the judicial review of such laws.

The Supreme Court in the case of *Waman Rao vs. Union of India (UOI)*⁴¹ upheld the validity of these amendments made before April 24, 1973 affirming that they did not damage the basic structure or essential features of the Constitution. These developments eventually led to the ultimate constitutional change by the Forty-fourth Amendment Act of 1978, which amended the Constitution to deem the right to property as a constitutional legal right under Article 300A as against it being a fundamental right previously.

³⁸ Dr. Shreemanshu Kumar Dash, Ms. Isha Tiwari, ‘An Analysis of Land Acquisition Policy in India: Balancing Property Rights and Land Laws’ Justice and Law Bulletin (Vol.3, Issue 1, 2024)

³⁹ M Kumarappan, ‘Right to Property and the Constitution of India’ (2023) 8(11) IJNRD c711

⁴⁰ *Constitution of India*, art 31C

⁴¹ *Waman Rao vs. Union of India (UOI)* AIR 1981 SC 277

2.4 Transformation of Property Rights after the 44th Constitutional Amendment and the Emergence of Article 300A

Following the 44th Constitutional Amendment, the Right to Property was inserted in Article 300A that stated that no man should be deprived of his property, unless by the force of the law. This is to say that the government cannot arbitrarily deprive a person of his property, it has to act in accordance with a valid law enacted by the legislature. Property, though no longer a fundamental right, is a constitutional legal right, which is to say that people still have the constitutional protection of the illegal deprivation of property. Article 300A was introduced and transformed the property rights in India. Previously as a fundamental right, a person used to directly approach the higher courts like the High Courts or the Supreme Court to have their rights to property enforced in case their rights to property were infringed. Following the amendment, property cases are typically resolved by using ordinary civil procedure and courts, as opposed to the special protections of fundamental rights.⁴² Article 300A however provides that the state cannot take possession of property without the appropriate legal authorization. The acquisition or deprivation of any property should be founded on a valid, reasonable and enacted law as per due process of law. This is to ensure that there is a balance between the government acquiring the land to serve the people and the right of the individual to own the property. While Article 300A does not explicitly mandate 'just' or 'adequate' compensation, judicial pronouncements, as seen in cases like *Elizebath Samuel Aaron vs. State of Kerala*⁴³ and *Balraj Ahuja vs. State of Punjab*⁴⁴, have clarified that the requirement for compensation. The Supreme Court in *B.K. Ravichandra vs. UOI*⁴⁵ reiterated that Article 300A prohibits executive action without legislative backing for property deprivation.

As time went by, the role of the courts in interpreting Article 300A and drawing the boundaries on state authority in relation to the property of the individuals have become significant. Courts have made it clear that the term “authority of law” in Article 300A

⁴² Sathvika J, ‘Judicial Interpretation of Article 300A: Erosion or Evolution of the Right to Property in India?’ (2025) 4(4) JLRJS 1528

⁴³ *Elizebath Samuel Aaron vs. State of Kerala* AIR 1991 Ker 162

⁴⁴ *Balraj Ahuja vs. State of Punjab* AIR 1989 P&H 273

⁴⁵ *B.K. Ravichandra vs. UOI* (2021) 14 SCC 703

implies that the government cannot take away a person's property using executive power and that there should be a duly enacted law by the legislature.⁴⁶ Moreover, the law should not be arbitrary, unjust, and unreasonable.

Further, despite the fact that Article 300A does not directly provide the guarantee of the compensation, courts have tended to note that fair and reasonable compensation is a significant aspect of fair land acquisition procedures. The 44th Constitutional Amendment act of 1978 was a significant change in property right status in India where the Right to Property is no longer mentioned among the fundamental rights. The adoption of Article 300A however, made sure that the constitutional protection of property rights was not fully eliminated.

2.5 Framework of Property Transfers under the Transfer of Property Act, 1882

The law relating to property rights and transfers is mainly governed by the Transfer of Property Act, 1882. The Act was enacted during the colonial era and was aimed to formalize and integrate the provisions that were associated with transfer of the property between living individuals. It establishes the broad principles, terms and procedures that govern the manner in which property rights can be transferred legally between one individual and another.⁴⁷ The Act primarily covers immovable property and it offers an extensive legal framework which ensures certainty, fairness and transparency in transfer of property.

Under the Act, transfer of property is the act whereby a living person transfers property either in the present or in future to one or more living persons, or to him and others. The law provides some of the key requirements of a valid transfer. Firstly, the transfer has to be done by an individual who is an adult and able to enter into a contract with the law and is not prohibited by law to transfer the property. Secondly, the property that is transferred

⁴⁶ Aman Kumar and Priya Sharma, 'Right to Property in India: A Constitutional and Judicial Analysis' (2025) 6(11) IJRPR 1423

⁴⁷ Santosh Kumar Thakur, 'Analytical Study of Section 5 under the Transfer of Property Act, 1882' (2021) 8(5) NVEO 13716

should be transferable property. The Act specifies that some of the interests cannot be sold, including the mere right to sue, government offices, or anti-public policy property. Thirdly, the transfer has to be made in a legally approved mode, and has to be in accordance with the formalities like written document and registration where required. The Act also provides general rules in property transfers, such as rules on conditional transfers, limits, and operation of future interests. It acknowledges that it is possible to make transfers conditional or limited so long as the conditions do not violate the law or go against the general policy of the people.⁴⁸ The Act also deals with vested and contingent interests, under which rights in property are to be created, when and how. It also controls transfers that become effective when certain events occur and also prevents arrangements that limit undue restraint of alienation or enjoyment of property. The Act through these provisions aims at balancing the freedom of the property owners to dispose of their property with the need to uphold legal certainty and safeguard legitimate interests.

The framework also includes principles that safeguard the interests of both parties in a transaction. The rights and liabilities of the seller and buyer, the rights of the mortgagor and the mortgagee, and the responsibilities of the lessor and the lessee are provided in the Act. It also provides for doctrines like *lis pendens* which provides safeguard against the transfer of property during the pendency of a litigation of a given property and the doctrine of part performance which grants protection to a transferee who has performed actions upon a contract even though the formalities of transfer have not been properly fulfilled.⁴⁹ Such provisions make sure that there are fair transactions and no transfer of fraud or unfairness.

The framework laid down under the Transfer of Property Act, 1882 is one of the building blocks of property law in India. Its provisions guarantee that transfer is done in an orderly and legally binding fashion, and hence, contributes to stability in the property relations as well as the economic and social development.

⁴⁸ Parvathy S, 'Concept of Sale under Transfer of Property Act' (2023) 10(5) (TIJER)

⁴⁹ Sheetal Shukla, 'Transfer of Property Act, 1882 and its Civil Code Implications' 13(10) IJCRT

2.6 Modes of Voluntary transfer of immovable property

The Indian law of voluntary transfer of immovable property is mainly regulated by the Transfer of Property Act, 1882. The Act establishes the various legal modes of transfer of ownership or interests of immovable property by one person to another by the free will of the parties involved. These transfers are said to be voluntary since they are made by the consent and agreement of the parties and not by operation of law, by inheritance or compulsory acquisition by the State.⁵⁰ The Act acknowledges the various ways by which immovable property could be transferred and these have different legal features, formalities and the rights and obligations of the parties. The major forms of voluntary transfer of immovable property are sale, gift, mortgage, lease and exchange.

2.6.1 Sale

Provided under Section 54⁵¹ of TPA, sale refers to the assignment of ownership in immovable property at a price paid or promised or part paid and part promised. The concept of sale under the Transfer of Property act, 1882 entails absolute transfer of ownership rights by the seller (vendor) to the purchaser (vendee). In case of immovable property that is worth more than one hundred rupees, transfer should be done using a registered instrument under the Registration Act, 1908. After the sale has been made, ownership rights such as possession, enjoyment, and other rights to transfer the property are transferred to the buyer as well. It also provides the rights and liability of both the seller and buyer making the transaction between the seller and the buyer fair and transparent.

2.6.2 Gift

Provided under Section 122⁵² of TPA, gift refers to the voluntary and gratuitous relinquishment by one individual (the donor) to another (the donee) of property and it is

⁵⁰ Ishikaa Seth and Toyesh Bhardwaj, 'A Comparative Study of Judicial Trends and Case Analysis under the Transfer of Property Act, 1882' (2023) 3(3) IJIRL 1

⁵¹ *Transfer of Property Act 1882*, s 54

⁵² *Transfer of Property Act 1882*, s 122

subject to acceptance by the donee, at least in the lifetime of the donor. Under the provisions of the transfer of property act, 1882, a gift of immovable property should be accomplished by means of a written instrument registered, and signed by the donor, and witnessed by not less than two witnesses. A gift is made without consideration thus it shows the aim of the donor to give property due to love, affection or goodwill. The property is deemed to have been properly executed and accepted then the ownership of the property is transferred to the donee and the transfer was made valid.

2.6.3 Mortgage

Provided under Section 58⁵³ of TPA, mortgage is the assignment of an interest in particular immovable property to the purpose of obtaining the security of the discharge of a loan or the discharge of an obligation. Under this structure, the mortgagor (borrower) conveys a limited interest on the property to the lender (mortgagee) as security to a debt. Under the Transfer of Property Act, 1882, numerous forms of mortgages are known such as simple mortgage, mortgage by conditional sale, usufructuary mortgage, English mortgage, equitable mortgage and anomalous mortgage. Though the property is usually retained by the mortgagor, the mortgagee gains some rights to repayment such as the power to make the property to be sold in the event of default.

2.6.4 Lease

Provided under Section 105⁵⁴ of TPA, leasing is assigning the right to enjoy immovable property to live within a specific duration with a consideration of payment or promise of payment of some price, like rent. By the Transfer of Property Act, 1882 the transferring party is referred to as a lessor whilst the party who accepts the transfer is referred to as a lessee. In contrast to a sale, a lease does not involve ownership transfer, just giving a right to use and enjoy a certain property within a certain period. The rights and obligations of the lessor and lessee are also listed in the Act such as paying the rent, ensuring the property is well maintained, and the conditions under which the lease can be terminated.

⁵³ *Transfer of Property Act 1882, s 58*

⁵⁴ *Transfer of Property Act 1882, s 105*

2.6.5 **Exchange**

Provided under Section 118⁵⁵ of TPA, when two individuals involve the transfer of the ownership of one property to the ownership of another property, this is referred to as an exchange. In contrast to a sale, an exchange is not associated with a monetary consideration but as the trading of one property in place of another. The provisions of the Transfer of Property Act, 1882 suggest that the exchange provisions usually follow the sales provisions especially in the aspects of change of ownership and registration. Both parties in the exchange become a transferor and transferee and once the properties have been transferred between each other adhering to the legal formalities the transaction becomes complete.

2.7 **Procedural Safeguards by the Registration Act, 1908.**

Transfer of immovable property in India is not only regulated by the substantive provisions of the Transfer of Property Act, 1882 but also by the provisions of the Registration Act, 1908. The Registration Act aims to provide transparency, authenticity and legal certainty in property transactions through the registration of the documents regarding immovable property. Registration is a significant protection against fraud, forgery and ownership disputes. The Act safeguards the rights of transferors and transferees and enhances legal validity of property transfers by keeping official public register of the property transfers.

The mandatory registration of some of the documents regarding the immovable property is one of the main protections entailed in the Act. The sale deeds, gift deeds, a certain period lease and other documents that establish or assign rights over immovable property must be registered with the relevant authority. Registration helps to make the transaction a part of the public record and may be independently referenced as evidence of ownership and title.⁵⁶ In cases where registration is necessary but such documents are not registered, they have no effect on the property and cannot be accepted in a court of law as evidence.

⁵⁵ *Transfer of Property Act 1882*, s 118

⁵⁶ Rejeet Mathews, 'State-Led Alternative Mechanisms to Acquire, Plan and Service Land for Urbanisation in India' (2018), WRI India Working Paper.

This is to avoid the informal or fraudulent transfer and makes sure that property transactions are made following legally recognizable methods. Parties to the transaction would be required to come before the Sub-Registrar or any other authorized officer to verify the genuineness of the documents and voluntariness of transfer. The registering officer will confirm the identity of the parties and make sure that the document has been signed by the persons whose names are inscribed in the document. The process minimizes chances of forged signatures, impersonation or coercion in property transactions. It is also used to make sure that the parties have a clear understanding of the nature and implications of the transfer that is being undertaken.

Registration time limits and procedures are also prescribed by the Act. As a rule, documents have to be registered within a certain time frame after they are carried out. This is to avoid unnecessary delays as well as making sure that property transactions are registered in time. The Act also establishes mechanisms through which official registers and indexes can be maintained which establish a permanent public register of registered documents. Such records enable the individual to verify the ownership and past records of property prior to engaging in a transaction thereby enhancing transparency and minimizing the chances of conflicts. Given the fact that registration documents are in the nature of a public record, any individual that has an interest in a property transaction has the ability to access the records and certify a transfer legality.⁵⁷ Registered documents can also be obtained in certified copies which may be used as evidence in a court of law. This transparency in property records aids in accountability and avoids fraudulent transfer of properties.

The Registration Act, 1908 is very instrumental in aiding the legal framework in the area of voluntary transfer of property in India. The Act ensures that the property rights are safeguarded by obliging registration, document authenticity, keeping of records in a public place, and creating a means of examination and redress, it has created the necessary procedure requirement that safeguards property rights and integrity of property

⁵⁷ Vaibhav Agrawal, 'Documents Exempted From Registration under Section 17 of The Registration Act 1908: Legal Discourse' (2024) 12(1) JRHSS

transactions. These safeguards are especially important in the prevention of disputes and the legal certainty of transfer of immovable property.

2.8 Role of Stamp Duty under the Indian Stamp Act, 1899

Indian Stamp Act, 1899 is very vital in confirming the transactions of property and making sure that the documents associated with property transfer are legally binding. Stamp duty is a kind of taxes that is levied by the government on some legal documents such as property transaction documents, and its purpose is fiscal as well as to control. The Indian Stamp Act performs one of the key functions in regard to the legal validity and admissibility of the property transfer related documents. Sale deeds, mortgage deeds, lease agreements, gift deeds, and exchange deeds among others are supposed to be signed on stamped paper or stamp duty should be paid on it according to the law. In case a document, which concerns transfer of property, is not duly stamped, the same can not be presented as evidence in a court of law until such duty and penalties are paid. This is necessary to ensure authenticity and reliability in property dealings.

The stamp duty plays a significant revenue generating role to the government as well. There is a lot of financial value in property transactions and the stamp duties imposed on transactions are a major source of revenue to the central government and the state government. Practically, stamp duty rates that are subject to property transfers are usually set by the state governments and the rate to be paid usually varies with aspects like the value of the property, the nature of the transaction and the location of the property. Under this mechanism, the government can raise funds which can be utilized in bringing public welfare, development of infrastructure and administration. Stamp duty helps in enhancing transparency and control of property transactions.⁵⁸ The obligation to pay stamp duty by the market value of property deters parties not to undervalue property just to avoid tax. Numerous states have developed systems like circle rates whereby the minimum value on which stamp duty has to be imposed is fixed. This will deter tax evasion and the record of

⁵⁸ Terra Economics & Analytics Lab, *Stamp Duties for Property Transactions in India* (White Paper 2, September 2020)

property transactions will be done at realistic values. Consequently, the system enhances accountability and transparency when documenting the property.

The registration of the property documents is also closely associated with the Indian Stamp Act. The Registration Act has a provision that in most instances, a document cannot be registered unless the relevant stamp duty has been paid. Therefore, stamp duty is an initial legal prerequisite to registration. Such co-ordination between stamping and registration reinforces the legal system of transfers of properties by having a guarantee that the transactions are not only financialized but they are also registered. Moreover, the Act has adjudication, impounding, and recovery procedures in case of improper stamping on documents. The government can inspect documents and take fines in cases where one has not paid the prescribed duty. These enforcement mechanisms are used to maintain law compliance and guarantee property transactions integrity. As held in *Hari Prasad Tiwari vs. Board of Revenue*⁵⁹, an unregistered, compulsorily registrable sale deed does not confer title, and subsequent impounding and stamp duty payment do not grant retrospective validity. A later registered deed prevails over an earlier unregistered one. Similarly, *N.K. Surana vs. Ramu*⁶⁰ emphasized that an unstamped and unregistered sale deed, purporting to transfer immovable property, is wholly inadmissible for any purpose, including collateral, and its defects cannot be cured by subsequent payment of duty and penalty.

The Act makes sure that the stamping of the instruments relating to the property is legally binding, obtains government revenues, and enhances authenticity in the transactions. The Stamp Act along with the Transfer of Property Act and the Registration Act are important elements of the legal system that govern the transfer of property in India and how the transfer of immovable property shall be done.

⁵⁹ *Hari Prasad Tiwari vs. Board of Revenue* WP No. 3200 of 2018

⁶⁰ *N.K. Surana vs. Ramu* AIR 2016 Mad 91

2.9 Protection of Landowner Rights in Voluntary Property Transfers

During the period of the rapid urbanization and infrastructural growth in India, to protect the rights of landowners holds a considerable legal value. Voluntary sales of immovable property are those transactions where the parties are free to make a decision without any coercion or compulsory acquisition by the State. Free and informed consent is one of the most significant principles on safeguarding the rights of the landowners in voluntary transfers. Property transactions such as sale, gift, mortgage, lease, and exchange have to take place with the free will of parties. The transactions initiated through coercion, fraud, misrepresentation, or undue influence could be fought and nullified or voided. The principle applies especially when it comes to urbanization or infrastructural development projects, when the landowners will be pressured by their private developer, their middlemen, or the market forces to sell their land.⁶¹ The legality of a true consent is necessary so that the owners of the land can stay free to make independent decisions on the sale of their property.

The rights and liabilities of the parties in the property transfers are also established by the legal framework hence safeguarding the interests of the landowners in the transactions. An example that can be used is in a sale transaction, the seller has a right to obtain the agreed consideration and has a duty to inform the buyer about any material defects in the property. On the same note, in a mortgage transaction, the owner of the land still possesses the right of redemption where in an event where the owner repays the debt he/she can reclaim the property. In lease agreement, the ownership is retained by the lessor but the lessee is allowed to use and enjoy the property within a given time. These safeguards are sufficiently provided to guarantee that the landowners do not lose their rights. Protection of landowner rights in voluntary transfers is crucial. Similarly, the Rajasthan High Court in *Ranchha Ram Chaudhary vs. Suresh Singh Chaudhary*⁶² affirmed that transfers procured by undue influence or fraud are voidable, emphasizing the requirement of free consent.

⁶¹ Sheetal Shukla, 'Transfer of Property Act, 1882 and its Civil Code Implications' 13(10) IJCRT

⁶² *Ranchha Ram Chaudhary vs. Suresh Singh Chaudhary* S.B. Criminal Misc. (Pet.) No. 4773/2023

The problem of urbanization and development of infrastructure have become a new challenge to land owners despite the legal protections. Voluntary transfers do not affect the freedom of property ownership and constitutional safeguard of property rights as given under the constitution of India in Article 300A.⁶³ Even though property right is not among the fundamental rights, Article 300A provides that an individual cannot be dispossessed of his or her property except by the authority. Voluntary transfers ensure this right by allowing landowners the freedom of choice on when, how and what to transfer their properties. Voluntary transfers of immovable property are also a useful tool to secure the rights of landowners in the light of growing demands to make land available for urbanization and infrastructural development. The framework that has been instituted under the Transfer of Property Act allows transactions to take place on consent, on a basis of negotiation, and under the protection of the law thereby offering stronger autonomy and protection to landowners than the process of compulsory acquisition.



⁶³ Vaibhav Agrawal, 'Concept of transfer of movable properties in India: Legal discourse with reference to the transfer of property act 1882'(2024) (4)1 IJCLLR