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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

EXCEPTIONS TO THE NON-TRANSFERABILITY OF PROPERTY IN INDIA

AUTHORED BY - MILAN DONSON & ASIF PASHA AB

The Transfer of Property Act, 1882 plays a crucial role in governing property transactions in India. It ensures a clear and fair process for transferring various types of property, both movable and immovable. However, there are exceptions to the general rule that all property is transferable. This paper explores those exceptions, such as Spes Succession, the Right of Re-Entry, Easements, and more. By examining real-life examples from case laws, the authors shed light on non-transferable benefits, gains, maintenance, and rights. In doing so, we demystify these complex aspects of Indian property law and provide a better understanding of how property transfers work in practice.

Introduction

The Transfer of Property Act, 1882 (the Act) is a vital civil law in India that governs various property-related transactions across the country. The Act aims to provide a consistent and comprehensive legal framework for different kinds of property transfers and transactions.

Property transfers and transactions are essential aspects of the Indian legal system, covering both movable and immovable property. They include various activities, such as selling, leasing, mortgaging, exchanging, gifting, and claiming property. The Act provides clear and certain rules and procedures for property transfers, specifies the rights and duties of the parties involved, and protects the interests of both the transferor and the transferee. ²

The Act aims to make property transfers easier by defining the essential requirements for a valid transfer. These include the transferor's ability to transfer the property, the method of transfer, and the registration of some types of transfers. The Act provides a transparent legal framework, which reduces the chances of disputes and ensures the property rights are enforceable.³

¹ THE TRANSFER OF PROPERTY ACT, 1882, No. of 4 of 1882, Acts of Parliament, 1882.

² Sumeet Malik. *PROPERTY LAW MANUAL* (Hard Bound) (2014 ed.). Eastern Book Company. pp. 1–968. ISBN 9789351451150.

³ Anirudh Singh Chouhan, *Transfer of Property Act, 1882: Laws of Transfer Movable/Immovable Property*, MAGIC BRICKS (July. 31, 2023) [Transfer of Property Act, 1882: Laws of Transfer Movable](#).

The Act also covers important concepts and principles related to property transfers. For example, it explains the rules regarding conditions and contingencies attached to transfers, stating the situations where a transfer may be conditional or contingent. This helps parties to a property transaction know their rights and duties in cases where certain conditions need to be met before the transfer is done.

The Act also gives guidance on the rights and obligations of the transferor and transferee. It defines the duties of each party and sets out the outcomes of any breach of these duties. This helps create a fair legal framework that safeguards the interests of both parties in the transfer.

The Act also covers the transfer of future interests and the transfer of property to unborn persons or contingent interests. These provisions are especially important in situations where property rights are transferred to individuals who are not yet born or where the transfer depends on the occurrence of certain events.⁴ By providing clear guidelines in such scenarios, the Act ensures that property transfers are done in a legally valid way.⁵

The Act also covers important concepts and principles related to property transfers. For example, it explains the rules regarding conditions and contingencies attached to transfers, stating the situations where a transfer may be conditional or contingent. This helps parties to a property transaction know their rights and duties in cases where certain conditions need to be met before the transfer is done.⁶ The Act also gives guidance on the rights and obligations of the transferor and transferee. It defines the duties of each party and sets out the outcomes of any breach of these duties. This helps create a fair legal framework that safeguards the interests of both parties in the transfer. The Act also covers the transfer of future interests and the transfer of property to unborn persons or contingent interests. These provisions are especially important in situations where property rights are transferred to individuals who are not yet born or where the transfer depends on the occurrence of certain events.⁷ By providing clear guidelines in such scenarios, the Act ensures that property transfers are done in a legally valid way.

⁴ Nishant Vimal, Detailed Study on Conditional Transfers under Transfer of Property Act, 1882, IPLEADERS (JULY. 31, 2023), [Conditional Transfers under Transfer of Property Act, 1882 \(ipleaders.in\)](https://www.ipleaders.in/conditional-transfers-under-transfer-of-property-act-1882/)

⁵ *Ibid*

⁶ SQUARE YARDS, [The Transfer of Property Act 1882 | Indian Property Law | \(squareyards.com\)](https://www.squareyards.com/blog/the-transfer-of-property-act-1882/) (July. 31, 2023)

⁷ SUNITA MISHRA, *Transfer of Property Act, 1882*, HOUSING CO (July. 31, 2023), [Transfer of Property Act, 1882: TPA Facts, Application, Features \(housing.com\)](https://www.housing.com/blog/transfer-of-property-act-1882-tpa-facts-application-features/)

Movable Property:

1. Movable property can be easily transferred from one place to another without changing its capacity or quantity.⁸
2. It refers to property that is not attached to the earth and can be moved, such as cars, books, etc.
3. In some cases, even trees like mango trees can be considered movable property if they are cut and sold for timber.
4. Registration of movable property is not mandatory under the Indian Registration Act of 1908.
5. Movable property is subject to sales tax and central tax, subject to certain restrictions under the relevant tax acts.

Immovable Property:

1. Immovable property cannot be easily transferred from one place to another without losing its originality or undergoing changes in shape, capacity, or quantity.
2. It refers to property that is attached to the earth and cannot be moved, such as buildings and trees.
3. In the case of immovable property, if mango trees are sold for nourishment and fruits, they are still considered immovable property.
4. Registration is mandatory for immovable property if its subject value exceeds Rs. 100 under the Indian Registration Act, 1908.⁹
5. Immovable property is not subject to sales tax, but stamp duty and registration fees need to be paid under the respective acts.
6. A mere delivery for transfer is not enough for a valid transfer of immovable property.

Section 6(a): Spes Succession¹⁰

The chance of an heir-apparent succeeding to an estate cannot be transferred.¹¹ This means that if someone is the designated heir-apparent, their inherent right to inherit the estate cannot be

⁸ N Pradhan, *Transfer of property Act (TOPA) (TPA)*, Legal Services India (July. 31, 2023), [Transfer of property Act \(TOPA\) \(TPA\) \(legalserviceindia.com\)](#)

⁹ Apurva, *What is the unregistered sale agreement validity period?*, NO BROKER (JULY. 31, 2023), [What is the Unregistered Sale Agreement Validity Period | NoBroker](#)

¹⁰ THE TRANSFER OF PROPERTY ACT, 1882, §6(A), No. of 4 of 1882, Acts of Parliament, 1882.

¹¹ B&B ASSOCIATES, [Doctrine of Spes Successionis - B&B Associates LLP](#), (last visited July. 25, 2023)

transferred to another person. The inheritance is tied to the specific individual designated as the heir, and it cannot be transferred or assigned to someone else. The chance of a relative obtaining a legacy on the death of a kinsman cannot be transferred,¹² suggests that if someone is a potential beneficiary of a legacy left by a family member, they cannot transfer their entitlement to another person. The right to receive the legacy is specific to the relationship or beneficiary and cannot be transferred to someone else. Any mere possibility of a like nature cannot be transferred¹³ indicates that any general possibility or potential opportunity cannot be transferred. This means that if there is a mere chance or possibility of something happening, it cannot be assigned or transferred to another person.

Section 6(b): Right of re-entry¹⁴

It is a legal concept that allows a landowner to regain possession of their land after it has been temporarily given to another person for a specific period. The right of reversion typically arises in situations where a landowner grants a lease or a license to someone else to use their land for a specified duration. During this period, the person using the land, known as the tenant or licensee, has a lawful right to possess and enjoy the property according to the terms agreed upon in the lease or license agreement.¹⁵

However, once the lease or license expires or is terminated, the landowner has the right to resume possession of their land and exclude the tenant or licensee from it. This is the right of reversion or the right of re-entry. The landowner can also transfer this right to another person for a certain period, which means that they can authorize someone else to take back the land from the tenant or licensee on their behalf. This may be done for various reasons, such as convenience, security, or financial benefit.¹⁶

¹² Abhyuday Tripathi, [Doctrines of Spes successionis, - LAW TIMES JOURNAL](#) (last visited July. 25, 2023)

¹³ Ruchika Mohapatra, [Spes Successionis under Transfer of Property Act, LAWCTOPUS](#), (last visited July. 25, 2023)

¹⁴ THE TRANSFER OF PROPERTY ACT, 1882, §6(B), No. of 4 of 1882, Acts of Parliament, 1882.

¹⁵ Aditya Saurabh, *Transferability of A Mere Right of Re-Entry For The Breach of A Condition Subsequent*, LEGAL SERVICES INDIA (July. 31, 2023), [Transferability of A Mere Right of Re-Entry For The Breach of A Condition Subsequent \(legalserviceindia.com\)](#)

¹⁶ Future Interests: Possibility of Reverter, Right of Entry & Reversion - Video & Lesson Transcript | Study.com, <https://study.com/academy/lesson/future-interests-possibility-of-reverter-right-of-entry-reversion.html> (last visited Feb. 7, 2023).

Section 6(c) : Easement¹⁷

An easement is a non-possessory interest in another person's land that allows the holder to use it for a specific purpose.¹⁸ The holder of the easement is called the dominant estate, while the owner or occupier of the land subject to the easement is called the servient estate.¹⁹ The easement grants the dominant estate a limited right to use or enjoy the servient estate, such as crossing it, accessing it, or occupying a portion of it.²⁰ An easement is usually attached to the land rather than the person, and cannot be transferred separately from the dominant estate.²¹

Section 6(d): Restricted Interest²²

A restricted interest is an exclusive right of enjoyment by the person with whom it is so vested. By this very nature, it is untransferable. The transfer of such a right would defeat its very purpose of entrusting exclusive interest in a person. For example, if A grants his land to B for performing a marriage of B's daughter for some days, B cannot transfer the land to C after the marriage. Such a transfer is invalid.^{23 24}

Section 6(dd): Right to future maintenance²⁵

The Transfer of Property Act, 1882, which governs the transfer of property in India, expressly states that a right to future maintenance is not transferable under section 6(d).²⁶ This provision is based on the principle that a personal right cannot be transferred to another person who has no connection with the original contract or relationship that gave rise to it. The courts have also held

¹⁷ THE TRANSFER OF PROPERTY ACT, 1882, §6(C), No. of 4 of 1882, Acts of Parliament, 1882.

¹⁸ See RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 1.2 (AM. L. INST. 2000) (defining an easement as "a nonpossessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the uses authorized by the easement").

¹⁹ See id. § 1.5 (explaining the terms "dominant estate" and "servient estate" and their relationship to an easement).

²⁰ See id. § 1.2 cmt. e (illustrating various types of easements, such as rights of way, rights of access, rights to light and air, rights to support, rights to water, and rights to occupy).

²¹ See id. § 4.8 (stating that "an easement appurtenant cannot be transferred except as part of a transfer of the benefited property or a portion thereof").

²² THE TRANSFER OF PROPERTY ACT, 1882, §6(D), No. of 4 of 1882, Acts of Parliament, 1882.

²³ See Transfer of Property Act, 1882, § 6(d) (India).

²⁴ See UNTRANSFERABLE PROPERTY AND CLAIMS UNDER THE TRANSFER OF PROPERTY ACT, 1882 (LexForti, July 11, 2020), [UNTRANSFERABLE PROPERTY AND CLAIMS UNDER THE TRANSFER OF PROPERTY ACT, 1882. - LexForti](#)

²⁵ THE TRANSFER OF PROPERTY ACT, 1882, §6(DD), No. of 4 of 1882, Acts of Parliament, 1882.

²⁶ Gururaj Udagi, *Critical analysis on Section 6 of Transfer of Property Act 1882*, LAW COLUMN (August. 6, 2023), [Critical analysis on Section 6 of Transfer of Property Act 1882 | Law column.](#)

that a right to future maintenance is not transferable and cannot be enforced by legal heirs.²⁷ The right to future maintenance is different from other rights that arise out of property, such as rights of way, lights, ferries, and fisheries, which are transferable under the Transfer of Property Act 45.²⁸

Section 6(e) : Right to sue²⁹

Section 6(e) of the Transfer of Property Act, 1882 (India) expressly states that “a mere right to sue cannot be transferred”.³⁰ This provision is based on the principle that a personal right cannot be alienated from the person who has it and that no one can litigate on behalf of another without any interest in the subject matter of the litigation.³¹ The courts have also held that a transfer or assignment of a mere right to sue for compensation is invalid and unenforceable.³² However, a right to sue may be transferred along with the property or interest that is affected by the injury or violation, as an incidental or accessory right.³³

Section 6(f) : Public Office³⁴

A public office is a position or occupation established by law or by the act of a government body, for the purpose of exercising the authority of the government in the service of the public.³⁵ A public office is not a property right that can be transferred to another person. Section 6(f) of the Transfer of Property Act, 1882 (India) expressly states that “a mere right to sue cannot be transferred”.

This provision is based on the principle that a public office is a personal trust or duty that cannot be alienated from the person who holds it and that no one can perform the functions of a public office without being duly appointed or elected.³⁶ The courts have also held that a public office is

²⁷ Namrata Kandankovi, *Section 6 of Transfer of Property Act, 1882*, Ipleaders (August. 6, 2023), [Transfer of Property Act- Section 6 \(ipleaders.in\)](https://www.ipleaders.in/section-6-transfer-of-property-act-1882/).

²⁸ N Pradhan, *Transfer of property Act (TOPA) (TPA)*, Legal Services India (July. 31, 2023), [Transfer of property Act \(TOPA\) \(TPA\) \(legalserviceindia.com\)](https://www.legalserviceindia.com/transfer-of-property-act-topa-tpa.html)

²⁹ THE TRANSFER OF PROPERTY ACT, 1882, §6(E), No. of 4 of 1882, Acts of Parliament, 1882.

³⁰ *Id.*

³¹ *Id.*

³² Sindhu A, *What are the general rules of transferability?*, Times Law Journal (August. 06, 2023), <https://lawtimesjournal.in/what-are-the-general-rules-of-transferability/>

³³ Prachul Sahu, *UNTRANSFERABLE PROPERTY AND CLAIMS UNDER THE TRANSFER OF PROPERTY ACT, 1882*, Lexforti (August. 06, 2023), <https://lexforti.com/legal-news/untransferable-property-and-claims-under-the-transfer-of-property-act-1882/>

³⁴ THE TRANSFER OF PROPERTY ACT, 1882, §6(F), No. of 4 of 1882, Acts of Parliament, 1882.

³⁵ See Public office - definition of public office by The Free Dictionary.

³⁶ GURBUX SINGH v. BHOORALAL [1964] INSC 133 (Supreme Court of India).

not transferable and cannot be assigned or sold.³⁷

The salary of a public officer is the compensation or remuneration paid to him or her for performing the duties of the public office.³⁸ The salary of a public officer is also not transferable because it is purely a personal benefit given to him or her by the government and he or she cannot share his or her benefit with someone else.³⁹ The salary of a public officer is paid either before or after it becomes due, depending on the terms and conditions of his or her service.⁴⁰ The transfer of the salary of a public officer, whether paid before or after it becomes due, is invalid and unenforceable.

Section 6(g) : Pensions⁴¹

A pension is a periodic payment made to a person who has retired from public service or employment, usually based on his or her length of service, salary history, and specific pension plan rules.⁴² A pension is a form of deferred compensation that is intended to provide financial security and stability to the retired person. A pension is not a property right that can be transferred to another person. Section 6(g) of the Transfer of Property Act, 1882 (India) expressly states that “a mere right to sue cannot be transferred”.

This provision is based on the principle that a pension is a personal benefit given to the person who has earned it by his or her public service or employment and he or she cannot share his or her benefit with someone else.⁴³ The courts have also held that a pension is not transferable and cannot be assigned or sold.

Section 6(h) : Nature of Interest⁴⁴

The nature of interest refers to the type and extent of rights or benefits that a person has in a property or a thing. The nature of interest can vary depending on the mode and terms of transfer.

³⁷ Liverpool v. Irwin [1977] AC 239 (House of Lords).

³⁸ BLACK'S LAW DICTIONARY 1540 (Bryan A. Garner ed., 11th ed. 2019).

³⁹ Dept of Govt, <https://dopt.gov.in/transfer-policy-and-transfer-orders>, (AUGUST. 06, 2023).

⁴⁰ Dept of Govt, <http://dopt.gov.in/>, (AUGUST. 06, 2023).

⁴¹ THE TRANSFER OF PROPERTY ACT, 1882, §6(F), No. of 4 of 1882, Acts of Parliament, 1882.

⁴² See BLACK'S LAW DICTIONARY 1310 (Bryan A. Garner ed., 11th ed. 2019).

⁴³ *Id.*

⁴⁴ THE TRANSFER OF PROPERTY ACT, 1882, §6(F), No. of 4 of 1882, Acts of Parliament, 1882.

A transfer is an act by which a person conveys his or her interest in a property or a thing to another person, either wholly or partially, permanently or temporarily, voluntarily or involuntarily.⁴⁵

There are different types of transfers, such as:

❖ Transfer of ownership: This is the transfer of the full and absolute rights and liabilities of a property or a thing from one person to another. The transfer of ownership results in the complete change of the nature of interest. The transferee becomes the owner and acquires all the rights and duties of the transferor, while the transferor loses all his or her interest in the property or thing. For example, if A sells his house to B, A transfers his ownership to B and B becomes the new owner of the house.

❖ Transfer of rights: This is the transfer of some or all of the rights or benefits that a person has in a property or a thing to another person, without affecting the ownership. The transfer of rights results in the partial change of the nature of interest. The transferee acquires some or all of the rights that the transferor had, while the transferor retains some or all of his or her rights. For example, if A leases his house to B, A transfers his right to use and occupy the house to B for a certain period, but A remains the owner of the house.

❖ Transfer of responsibilities: This is the transfer of some or all of the liabilities or obligations that a person has in relation to a property or a thing to another person, without affecting the ownership. The transfer of responsibilities results in the partial change of the nature of interest. The transferee assumes some or all of the responsibilities that the transferor had, while the transferor is relieved from some or all of his or her responsibilities. For example, if A mortgages his house to B, A transfers his responsibility to repay a loan to B by pledging his house as security, but A remains the owner of the house.

Additional Case Laws

In *Amrit Narayan v. Gaya Singh*,⁴⁶ it is observed that a Hindu reversioner has no right or interest in presenti in the property which the female owner holds for her life. Until it vests in his or her death, should he survive, she has nothing to assign, relinquish, or even transmit to his heirs. His right becomes concrete only on her 1

⁴⁵ Namrata Kandankovi, *Section 6 of Transfer of Property Act, 1882*, Ipleaders (August. 6, 2023), [Transfer of Property Act- Section 6 \(ipleaders.in\)](#).

⁴⁶ (1918) 20 BOMLR 546

In *Nanak Chand v. Kishan Chand*,⁴⁷ it has been observed that A sells B a mere right to sue for immovable property. B is not entitled to sue for possession of that property because A sells a mere right to sue, which does not confer on B any title to the property.

Conclusion

In the Transfer of Property Act, the benefits, gains, maintenance, etc. are not transferable, as these are personal benefits that the person derives, and he cannot transfer his benefits to another person. If he does so, that transfer becomes invalid under the Transfer of Property Act.

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