

# THE TRANSFER OF PROPERTY

ACT, 1882(Act No. IV of 1882)

**Object** -: An Act to amend the law relating to the Transfer of Property by act of parties.

**Total Section** = 137

**Total chapter** = 8

**Date of Enactment** =17 Feb 1882

**Date of Enforcement** = 1 July 1882

## INTRODUCTION

The opening line of the Act shows that the Transfer of Property Act, 1882 (6th report, IVth Law Commission), was not any fresh adventure in the field. The law prior thereto, stood scattered in various Provincial and Central Acts and the purpose of 1882 Act was to consolidate them, the Schedule appended to the Act refers to four statutes (All now repealed), Eight Acts of the Governor General in Council (Partly repealed; Extent of.repeal specified) and three Regulations (Extent of repeal specified). The Act IV of 1882 (that is TP. Act) repeals these to the extent mentioned in the Schedule. Another thing expressed here refers to a very important limit of the Act. It is limited to transfer in effect only to act of parties. The Act does not apply to cases of transfers by operation of law. Third, remarkable thing about the Act is; that it nowhere defines 'what is property'. It merely defines the word 'transfer of Property' in section 5. The English law for internal purposes makes distinction in between Realty and Personalty. This distinction has found no place in Transfer of Property Act, 1882. Instead, the international distinction between movable and immovable property has been

adopted. For international transactions, the distinction between movable and immovable is recognized even in England. Fourth the word 'immovable property' has been negatively defined. This, therefore, requires to be supplemented from many other relevant Acts which are *pari materia*. The Indian Contract Act, Registration and Stamps Act and General Clauses Act may be referred to as important enactments in these matters. Fifth Transfer of Property Act has a very unusual scheme. Chapter II, Part A (from Sections 5—37) applies whether property is immovable or movable. Part B (Sections 38—53-A) applies only to transfer of immovable. Chapters III, IV and V again deal with immovables only. Chapters VI, VII apply to both movables and immovables. Chapter VIII applies to Actionable Claims like debt and benefits. These are neither movable property nor immovable property.

### **Scope and object of the 1882 Act**

The scope of this Act is limited to transfer of property by act of parties as distinguished from a transfer by operation of law, e.g., in case of insolvency, forfeiture or sale on execution of a decree. For instance, if A agrees to sell his land to B, the transaction will be governed by the T.P. Act, 1882. But, if B, purchases the land of A, at the auction-sale held by the Court in execution of a decree against A, the transfer of the land to B takes effect by operation of law, and none of the provisions of the Act requiring the transfer to be effected in a particular way, e.g., by a registered document, shall apply to it. The Act relates to transfer of property *inter vivos* and has no application to disposal of property by Will, nor does it deal with cases of devolution or succession.' Crown grants are exempted from the operation of the Act by Section 2 of the Crown Grants Act (15 of 1895) and the Act does not apply to transfers made by or on behalf of the Government.

"The chief object of the Transfer of Property Act are two-fold; first, to bring the rules which regulate the transmission of property between living persons into harmony with the rules affecting its DEVOLUTION UPON DEATH and thus to the complement the work that commenced with the framing of the law of intestate

and testamentary succession; and secondly to complete the Code of Law ' of Contract, so far as relates to immovable property. In aiming at these objects, the Legislature has striven to avoid technicalities and refinements, to discard all rules whereby the parties to a transaction were made liable to unexpected consequences, and all provisions in deeds which were found in practice to lead to embarrassment and litigation. Like the' Contract Act, it is not, and does not purport to be, an exhaustive measure."

Provisions of Sections 117 and 129 lay down three exceptions; of agricultural leases and gifts marz-ul-maut (death bed transaction) and rule of Mohammedan law. In addition, chapter on lease has now been adversely affected by various Rent control legislations throughout the country. Amendment of 1900 excluded Government Grants. Sections 74, 75 and 80 have been omitted. Section 85-90, 99 and 135-A have been repealed. The Benami Transactions (Prohibition) Act, 1988, Registration and other related laws (Amendment) Act, 2001 and Transfer of Property (Amendment) Act, 2003 have introduced changes in original 1882 Act and as amended in 1929.