

SYLLABUS

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- ⇒ Various definitions given under Transfer of Property Act,
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UNIT I: INTRODUCTION

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- ⇒ Various definitions given under Transfer of Property Act, 1872
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INTRODUCTION

By its very existence, society mandates interaction, exchange or transfer. A property, movable or immovable, is transferred from one person to another under various situations and circumstances and for different values. The transfer may be a gift, an inheritance or an asset acquired by paying full value. Also, there are different laws/legislations governing the transfer of property, movable and immovable under different circumstances.

When a **movable property** is transferred **inter-vivos** (i.e. between two living persons), Sales of Goods Act, 1930 comes into play. When an **immovable property** is transferred from living person to living person(s), the Transfer of Property Act, 1882 comes into play. In case, the property is transferred from a dead person to a living person(s) i.e. **by operation of law**, the law applied will be the Law of succession. Should a person die without leaving a will (intestate), the law of intestate succession is applicable and in cases where a person dies leaving a will, the law of testamentary succession is applicable.

Transfer of property Act, 1882 is one of the most important branches of the law of property. It was enacted in the year 1882 and contains **137 sections** and is divided into **8 chapters**. The Act came into force with effect from **1st July, 1882**. It mainly deals with the transfer of immovable property and also movable property between two living persons i.e. transfer inter vivos. The Act does not apply to transfer by operation of law (E.g.: Succession, Court Sales, insolvency etc.)

SCHEME OF THE ACT

The Act can be broadly studied into three main groups.

PROVISIONS	SECTIONS
Preliminary aspects relating to transfer of property	Sections 1 to 4 Chapter-I
General principles of transfer of property	Sections 5 to 53-A Chapter-II
Specific transfer (Eg: Sale, Mortgage, Lease, Exchange, Gift and actionable claim)	Sections 54 to 137 Chapters III to VIII

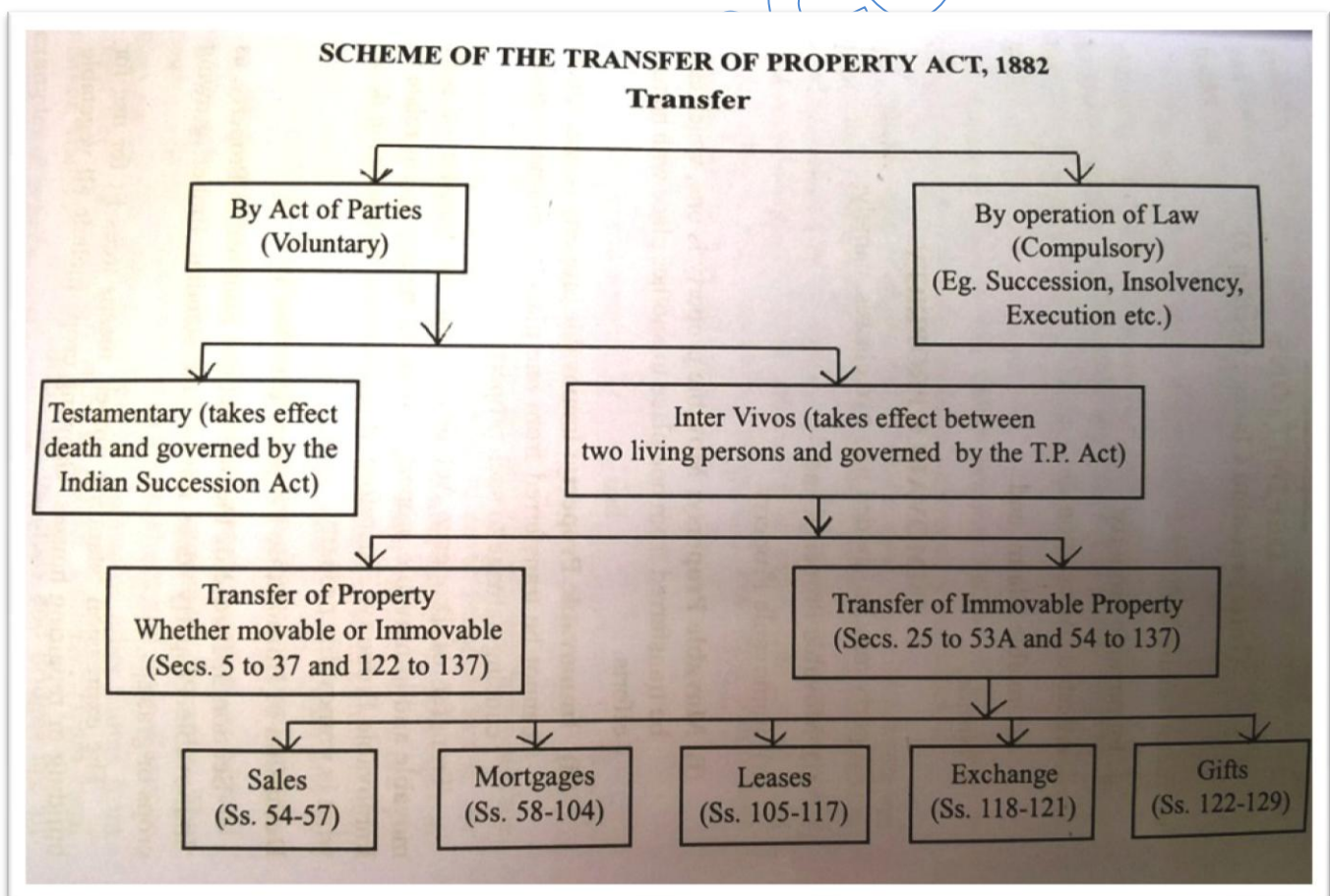
Transfer of Property: Transfer of Property may be explained under the following categories:

1. Transfer of movable and immovable property.
2. Transfer inter vivos i.e. between two living persons and transfer from one dead persons to one or more living persons ; and
3. Voluntary transfer and involuntary transfers.

The Transfer of Property Act mainly deals with the transfer of immovable property. As stated above, some of the Sections also deal with movable property.

- ⇒ Sections 5 to 37 of Chapter-II are applicable where the property is immovable or movable,
- ⇒ Chapters III to V containing Sections 54 to 117 deal with immovable properties only.
- ⇒ Chapters VI to VIII containing Sections 118 to 137 are applicable to both immovable and movable properties.

With regard to the second category mentioned above, the Act deals with first part i.e. transfer inter vivos, while the transfers from dead person to living person/persons are governed by the Indian Succession Act (Law of Inheritance). With regard to the third category, the Act deals with voluntary transfers, while the Insolvency Act and Civil Procedure Code deal with the involuntary transfers.



BACKGROUND

In India, the personal laws governed the transfer of property assisted by orders of Courts under Civil Procedure Code before the Transfer of Property Act, 1882 came into existence. Transfer of movable goods was regulated to an extent by the Indian Contract Act, 1872. For transfer of immovable property, the Anglo-Indian courts often resorted to principles of Justice, Equity and Good Conscience as it prevailed in England at the time. This rarely helped owing to the vast differences in customs and society of the two countries. Of course the rapidly growing commerce and infrastructure in the late nineteenth century lead to more conflicts even in business. Thus, an immediate need was felt for a clear and pragmatic law regarding property and transfers suited to India and its peculiar problems as well as to take care of the potential economic problems. The task of drafting such legislation fell upon the First Law Commission

and was later referred to the Second Law Commission. A Bill, finally presented to the Legislative Council, became a law on the 17th of February 1882 and came into force from 1st July of the same year.

OBJECTIVES

The Transfer of Property Act, 1882 (hereinafter referred to as the 'TP Act, 1882') was intended to define and amend the existing laws and not to introduce any new principle. It applies only to voluntary transfers. The following may be enumerated as the objectives of the Act:

- a) As per the preamble of the Act, the TP Act, 1882 is to amend or regulate the law relating to transfer of property by the acts of the parties.
- b) The Act provides a clear, systematic and uniform law for the transfer of immovable property.
- c) The Act completes the Code of Contract since it is an enacted law for transfers that take place in furtherance of a contract.
- d) With provision for inter-vivos transfers, the TP Act, 1882 provides a law parallel to the existing laws of testamentary and intestate transfers.
- e) The Act is not exhaustive and provides scope to apply the principles of Justice, Equity and Good Conscience if a particular case is not governed by any provision of law.

SCOPE

Since the T P Act, 1882 is not a complete code of transfer of property; we can say its scope is limited. The Act does not apply to all the transfers taking place in India.

- a) **Limitation on Transfer:** The Act applies to transfer by the act of parties and not by application of law. Thus, its operations are limited to transfers by act of parties only except in a few cases saved by Section 2 of the Act.
- b) **Not Exhaustive:** There are various kinds of property and various modes of transfer of property. The Act does not incorporate rules for all modes of transfer in existence. The Act does not even claim to be a complete code as apparent from omission of the term 'consolidate' from its Preamble.
- c) **Transfer of Immovable Property:** The Act mainly deals with transfer of immovable properties only.
- d) **Exemption of Muslim Law:** In case of a conflict between the TP Act, 1882 and rules of Muslim Law, the latter will prevail. Section 2 of the Act does not affect inconsistent rules of Muslim Law. Thus, a settlement made in perpetuity for the benefit of descendants of the settler is a valid wakf (charitable gift) wherein there is an ultimate gift in favour of a charity.
- e) **Exemption of Rights and Incidents:** Certain incidents of a contract or the essential nature of property are exemption from the operation of the Act by Section 2. The Act also saves certain property rights. For example, the right to partition of immovable property is an incident of property but this right is not affected by the provisions of the TP Act, 1882.

TERRITORIAL LIMITATION

A territorial law is a lex loci i.e. law of a particular place and applies to all persons inhabiting the territory irrespective of their personal status. It is different from personal law that generally follows the person. The TP Act, 1882 is a territorial law and its operation extends to the whole of India except for Punjab. It was not enforced throughout the country in one go. It was made applicable to different parts of the country on different occasions. When the Act was first enforced (1st July 1882), it extended to the whole of

'British India' except Bombay and Punjab. The Act was extended to the territories of Bombay from 1st January 1893. In Punjab, the transfer of immovable property by the act of parties is governed by the rules of Justice, Equity and Good Conscience.

Transfer of property is a 'Concurrent Subject' (Entry 6 of List III (Concurrent List) of Seventh Schedule to Constitution). Both Central and State Government can take legislative action in respect of transfer of property except that relating to agricultural land which is a state subject.

TRANSFER OF PROPERTY

According to **Section 5** of the Act, '**Transfer of Property**' means an act by which a living person conveys property, in present or future, to one or more living persons, or to himself or to himself and one or more other living persons. The property may be movable or immovable, present or future and the transfer can be made orally, unless transfer in writing is specifically required under any law. Any person competent to contract and entitled to transferable property, or authorized to dispose of transferable property on his own, can transfer such property whether in part or whole, absolutely or conditionally.

TP Act primarily governs the transfer of immovable properties. Movable properties are governed by Sale of Goods Act, 1930. Hence, there is a need to understand what is movable and what is immovable property and the ways to distinguish them. The word "Property" has not been defined in TP Act when we examine the Act, we realise that the word has been used in the most widest and generic sense. Property denotes every kind of interest or right that has an economic content.

Property broadly classified into-

1. Movable property
2. Immovable property

The Term "Immovable Property" occurs in various Central Acts. However none of those Acts conclusively define this term. The most important act which deals with immovable property is the Transfer of Property Act (T.P.Act). Even in the TP Act this term is defined in exclusive terminology. TP Act does not actually define immovable property. The definition fails to indicate as to what is "included" as immovable property.

- ⇒ According to **Section 3 Para 2 of TP Act**, "**Immovable Property**" **does not include standing timber, growing crops or grass**. Thus, the term is defined in the Act by excluding certain things. The expression 'standing timber' means trees fit for use for building and repairing houses. Growing crops includes all vegetable growths, which have no existence apart from their produce such as pan leaves, sugarcane etc. Similarly, grass can only be used as fodder and is a movable property.
- ⇒ As per **Section 3(26) of the General Clauses Act 1897**, "**immovable property**" **"shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth". This definition of immovable property has reference only to the physical objects and does not furnish an exhaustive test of what is, and what is not, immovable property;**

The term immovable property includes three things namely-

- ✓ Land;
- ✓ Benefits arising out of land; and
- ✓ Things attached to earth.

Here, land does not include only the upper surface of the earth but is extensive enough to cover things below it, for instance minerals, wells, tube-wells, rivers, ponds etc. Further, benefits arising out of land means other ancillary rights well connected to land such as right to receive future rent, revenue from agriculture, right to collect lac, leaves or other things from forest trees etc.

⇒ **Section 2(6) of The Registration Act, 1908** defines "Immovable Property" as under:

- **"Immovable Property includes land, building, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth but not standing timber, growing crops nor grass".**

The definition of the term "Immovable Property" under the Registration Act, 1908 is comprehensive. The above definition implies that building is included in the definition of immovable property.

Thus, in essence land includes-

1. Earth's surface
2. Earth's surface covered by water
3. Column of space above the surface: Objects placed by human agency with the intention of permanent annexation (Eg: buildings, fences, walls)
4. Ground beneath the surface: In its natural state (Eg: Minerals)

Relevant Cases:

- **Ananda Behera v. State of Orissa (AIR 1956 SC 17)** – Right to catch fish from Chilka lake over a number of years, was held to be an equivalent of a benefit to arise out of land
- **Shanta Bai v. State of Bombay (AIR 1959 SC 532)** – Right to enter land, cut and carry away wood over a period of twelve years was held to be immovable property. The right to collect lac from trees is also immovable property.

"attached to the earth" means-

- (a) rooted in the earth, as in the case of trees and shrubs (subject to the exception of standing timber, growing crops and grass);
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached (eg: doors, windows, ceiling fans etc. But ornamental and decorative fittings festivities, electric appliances are not considered in this definition since these are not permanent but only transitory and occasional and secondly they are not in any sense beneficial to the wall or doors. Therefore, these are not immovable property)

TEST How to determine whether any movable property attached to the earth has become immovable property?

There are two well established tests in English law-

1. **Degree/mode of annexation:** This was the rule laid down in **Holland v. Hoggson**. If the movable property is resting on the land merely on its own weight, the presumption is that it is movable property, unless contrary is proved. Eg- A brick resting on the land. If it is fixed to the land even

slightly or it is caused to go deeper in the earth by external agency, then it is deemed to the immovable property, unless contrary is proved. Eg- A machine fixed to the land by using screws (like in industries)

2. **Object/purpose of annexation:** Whether the purpose was to enjoy the chattel (movable property)? Some crushed stones are deposited on a land, so that it can be transported elsewhere in a few days. Here, the intention/object is not to keep the stones permanently. They are to be enjoyed independently of the land on which they are deposited. Or to permanently benefit the immovable property? Some blocks of stones are placed one above the other without using cement, but in a manner that it stays strong and acts as a wall and prevents cattles entering the land. Here, the intention is to make a wall out of the stones. It becomes a part of the property. It benefits the property by protecting to the property.

Some leading cases-

Shanta Bai v. State of Bombay (AIR 1958 SC 532)

State of Orissa v. Titaghur Paper Mills Co. Ltd. (AIR 1985 SC 1291)

Ananda Behera v. State of Orissa

Firm Chhotabai Jethabai Patel & Co. v. State of MP

In a nut-shell, the negative definition of TP Act and the positive definition of the General Clauses Act if taken together gives the correct idea of immovable property.

INTELLECTUAL PROPERTY

What is intellectual property?

Intellectual property, in its literal sense, means the things which emanate from the exercise of the human brain. It is the product emerging out of the intellectual labour of a human being. Property does not just comprise of tangible things like houses, cars, furniture, currency, investments etc and such assets are not the only kind that can be protected by law. There are many other forms of intangible property known as intellectual property that have been recognized under the law and granted protection against infringement. Under intellectual property law, owners are granted certain exclusive rights to a variety of intangible assets, such as musical, literary, and artistic works; discoveries and inventions; and words, phrases, symbols, and designs.

Intellectual property is divided into two categories-

1. **Industrial Property**, that includes patent for inventions, trademarks, industrial designs and geographical indications.
2. **Copyright**, that includes literary works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures and architectural designs. Rights related to copyright included those of performing artists in their performances, produces of phonograms and those of broadcasters in their radio and television programs.

These rights are outlined in **Article 27 of the Universal Declaration of Human Rights**, which sets forth the right to benefit from the protection of moral and material interests resulting from authorship of any scientific, literary or artistic production. The importance of intellectual property was first recognized in

the Paris Convention for the Protection of Industrial Property in 1883 and the Berne Convention for the protection of Literary and Artistic Works in 1886. Both treaties are administered by the World Intellectual Property Organization (WIPO).

PATENTS

A patent is a right granted to the owner of an invention that prevents others from making, using, importing or selling the invention without his permission. A patentable invention can be a product or a process that gives a new technical solution to a problem. It can also be a new method of doing things, the composition of a new product, or a technical improvement on how certain objects work. Once it is granted, its term of a patent is 20 years from the date of filing, subject to the payment of annual renewal fees.

Benefits of registering a patent

Once you register a patent, apart from using the patent to prevent others from exploiting your invention, you can employ it to raise funds for your business, license it to third parties for commercial returns or sell the patented invention.

For an invention to be patentable, it must, in general, satisfy three key criteria:

- 1) **New**- The invention should not be publicly known in any way, anywhere in the world. Owners of inventions should be careful to keep the invention secret until a patent application has been successfully made. If the idea has already been talked about, commercially exploited, advertised or demonstrated, then the novelty of the invention may be compromised. If the invention needs to be disclosed to a third party before a patent application has been made, a non-disclosure agreement should be drawn up. Once a Date of Filing has been obtained for the patent application, the invention can claim a "Patent Pending" status and the applicant can proceed to disclose the invention as indicated in the patent application to interested parties. As part of the application process, the patent application will be published after 18 months and if the statutory requirements are met. Once published, details of the invention will be made available for public inspection.
- 2) **Inventive step**- The invention must be something that represents an improvement over any existing product or process that is already available. The improvement must not be obvious to someone with technical skills or knowledge in the invention's particular field. If an invention is new yet obvious to a person skilled in the art, the invention would not fulfil the inventive step requirement.
- 3) **Industrial application**- The invention must be useful and have some form of practical application. It should be capable of being made or used in some form of industry.

According to Section 3 of the (Indian) Patents Act, 1970, the following are not patentable in India-

1. An invention, that is frivolous or that claims anything obviously contrary to well established natural laws;
2. An invention, the primary or intended use of which would be contrary to law or morality or injurious to public health;
3. The mere discovery of a scientific principle or the formulation of an abstract theory;
4. The mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant;
5. A substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;

6. The mere arrangement or rearrangement or duplication of known devices, each functioning independently of one another in a known way;
7. A method of agriculture or horticulture;
8. Inventions relating to atomic energy.
9. Any process for the medicinal, surgical, curative, prophylactic or other treatment of human beings or animals.
10. Plants and animals in whole or any part thereof other than microorganisms.
11. Mathematical or business method or a computer program per se or algorithms.
12. Literary, dramatic, musical or artistic works, cinematographic works, television productions and any other aesthetic creations.
13. Mere scheme or rule or method of performing mental act or playing game.
14. Presentation of information.
15. Topography of integrated circuits.
16. An invention which in effect, is traditional knowledge or is based on the properties of traditional knowledge.

TRADEMARK

A trade mark is a visual symbol in the form of a word, a device, or a label applied to articles of commerce with a view to indicate to the purchasing public that they are the goods manufactured or otherwise dealt in by a particular person as distinguished from similar goods manufactured or dealt in by other persons. A person who sells his goods under a particular trade mark acquires a sort of limited exclusive right to the use of the mark in relation to those goods. Such a right acquired by use is recognized as a form of property in the trade mark, and protected under common law. A person can also acquire a similar right over a trade mark, not so far used but only proposed to be used, by registering it under the Trade Marks Act 1999. The law of trade marks is based mainly on the concepts of distinctiveness similarity of marks and similarity of goods. A trade mark can be represented graphically in the form of your company's logo or a signature. Through a registered trade mark, you can protect your brand (or "mark") by restricting other people from using its name or logo. Once acquired, a trade mark can last indefinitely as long as you renew it every 10 years. Because a registered trade mark is a form of IP, you can license or assign it to others.

Definition - 2(1)(zb)

1. Trade mark must be a mark which includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or combination thereof [S. 2(1)(m)]
2. The mark must be capable of being represented graphically
3. It must be capable of distinguishing the goods or services of one person from those of others.
4. It may include shape of goods, their packaging and combination of colours.
5. It must be used or proposed to be used in relation to goods or services.
6. The use must be for the purpose of indicating a connection in the course of trade between the goods or services and some persons having the right as proprietor to use the mark.
7. The right to proprietorship of a trade mark may be acquired by registration under the Act or by use in relation to particular goods or services.
8. The right of proprietorship acquired by registration is a statutory right which requires no actual user but only an intention to use the mark. On the other hand the right acquired by actual user in relation to particular goods or services, is a common law right which is attached to the goodwill of the business concerned.

A registered trade mark can be protected against unauthorized use by others by an action for infringement. This is a statutory remedy. An unregistered trade mark can be protected against unauthorized use by others by an action for passing off which is a common law remedy.

The benefits of registering a trade mark

For a mark that is not registered, you may rely on your rights under the common law action of "passing off" to protect your mark against imitation or infringement. However, if you register a trade mark in relation to your goods and/or services, you are effectively gaining a statutory monopoly of your mark. A trade mark can add value to your business because it can be used to protect your market share, you can license it to third parties such as a franchisee, or you can sell it outright for a specified value. You can also use a trade mark to help you to raise equity for the development of your business.

The following are some common examples of marks that cannot be registered as a trade mark:

- ✓ Marks that are descriptive
- ✓ Marks that are common to your trade
- ✓ Marks that could offend or promote immoral behaviour
- ✓ Deceptive marks
- ✓ Marks that are identical to earlier marks
- ✓ Marks that could cause confusion
- ✓ Marks that are identical or similar to Well Known Marks

Function of a Trade Mark:

The function of a trade mark is to give an indication to the purchaser or possible purchaser as to the manufacture or quality of the goods, to give an indication to his eye of the trade source from which the goods come, or the trade hands through which they pass on their way to the market. It gives the purchaser a satisfactory assurance of the make and quality of the article he is buying, the particular quality being not discernible by the eye. It is on the faith of the mark being genuine and representing a quality equal to that which he has previously found a similar mark to indicate that the purchaser makes his purchase. A trade mark may be used to indicate not only that the goods are of a particular maker but are goods of that maker of a particular kind or quality.

Under modern business conditions a trade mark performs four functions:

1. it identifies the product and its origin,
2. it guarantees its unchanged quality,
3. it advertises the product, and
4. it creates an image for the product.

Trade mark symbols- If you successfully register a trade mark, you are permitted to use the ® symbol next to your mark. Another common symbol associated with trade mark is ™ – this denotes that the mark is being used by the company as their trade mark but it does not mean that the mark is registered or protected under the trade mark law.

Other marks

There are a number of other types of marks that you might find are appropriate for your business.

- **Certification mark-** This mark is granted to people who wish to certify the characteristics of a particular goods or service. The certification can relate to the origin, material or mode of manufacture of the goods, or the performance, quality or accuracy of a service. By applying for a

certification mark, goods and services are easily distinguishable from other non-certified goods or services on the market. For example, if your product is organic, you may be in a position to use a certified organic mark on your packaging.

- **Collective marks-** This is a sign that is used to distinguish the goods and services offered by an association or group of traders from those being offered by non-members of the association. Once registered, all members of the group can use the collective mark; it is an effective way to indicate that your business is a member of a wider group of traders.
- **Government agency marks (Rule 13)-** IPOS has a separate database for all logos or devices that are used by government agencies. These may not be registered marks if the agency isn't providing goods or services. However, if you are looking to register a logo that might be similar to one being used by a government agency, you will need to seek permission from that particular organisation before you utilise it.

COPYRIGHT

Copyright protects works like novels, computer programmes, plays, sheet music and paintings. Generally, the author of a copyright work has the right to reproduce, publish, perform, communicate and adapt his work. These exclusive rights form the bundle of rights that we call copyright and enable the owner to control the commercial exploitation of his work.

What is protected by copyright?

Copyright protects the expression of ideas (e.g. words and illustrations). Ideas alone are not protected.

The following may be protected under copyright law:

- ✓ Literary works (e.g., written works, source codes of computer programs)
- ✓ Dramatic works (e.g., scripts for films and dramas)
- ✓ Musical works (e.g., melodies)
- ✓ Artistic works (e.g., paintings, photographs)
- ✓ Published editions of the above works
- ✓ Sound recordings
- ✓ Films
- ✓ Television and radio broadcasts
- ✓ Cable programmes
- ✓ Performances

What is not protected by copyright?

Subject matter not protected by copyright includes:

- ✓ Ideas or concepts
- ✓ Discoveries
- ✓ Procedures
- ✓ Methods
- ✓ Works or other subject matter that have not been made in a tangible form in a recording or writing
- ✓ Subject matter that is not of original authorship

Copyright and registered designs: When an artistic work, such as a drawing or a sculpture, is applied to a product and industrially produced (i.e. more than 50 copies of the products are produced), the copyright protection will no longer cover that artistic work. It may be protected as a registered design under the Registered Designs Act, if the registration criteria are met.

Rights of a copyright owner

<p>Literary, dramatic and musical works</p>	<p><u>Authors enjoy the exclusive rights to:</u></p> <ul style="list-style-type: none"> ✓ reproduce the work; ✓ publish the work; ✓ perform the work in public; ✓ communicate the work to the public; and ✓ make an adaptation of the work.
<p>Artistic works</p>	<p><u>Artists enjoy the exclusive right to:</u></p> <ul style="list-style-type: none"> ✓ reproduce the work; ✓ publish the work; and ✓ Communicate the work to the public.
<p>Published editions of literary, dramatic, musical or artistic works</p>	<p>The publisher has the exclusive right to make a reproduction of the edition.</p>
<p>Sound recordings</p>	<p><u>The producer of a sound recording enjoys the exclusive rights to:</u></p> <ul style="list-style-type: none"> ✓ make a copy of the sound recording; ✓ rent out the sound recording; ✓ publish the sound recording if it is unpublished; and ✓ make available to the public a sound recording by means or as part of a digital audio transmission.* <p>* Where the sound recording is made available to the public through a non-interactive digital audio transmission, the producer of the recording shall be entitled to equitable remuneration. This remuneration can be agreed between the parties or determined by the Copyright Tribunal.</p>
<p>Films</p>	<p><u>The producer of a film enjoys the exclusive rights to:</u></p> <ul style="list-style-type: none"> ✓ make a copy of the film; ✓ cause the film to be seen in public; and ✓ communicate the film to the public.
<p>Television and radio broadcasts</p>	<p><u>The broadcaster enjoys the exclusive rights to:</u></p> <ul style="list-style-type: none"> ✓ make a recording of the broadcast; ✓ rebroadcast; ✓ communicate the broadcast to the public; and ✓ cause the broadcast to be seen or heard by a paying audience.
<p>Performances</p>	<p><u>The performer has the right to authorise the following uses:</u></p> <ul style="list-style-type: none"> ✓ allow the performance to be seen and heard, or seen or heard, live in public; ✓ make a direct or indirect sound recording of his live performance;

- ✓ make available a recording of the performance to the public in such a way that the recording may be accessed by any person from a place and at a time chosen by him;
- ✓ sell, rent, offer for sale, distribute or import such recordings for these purposes;
- ✓ publish a recording of a performance (if not previously published); and
- ✓ communication of the live performance to the public (including broadcasting, internet dissemination and inclusion of the performance in a cable programme).

GEOGRAPHICAL INDICATION (GI)

A geographical indication (GI) is a sign that identifies a product as originating from a particular location which gives that product a special quality or reputation or other characteristic.

GIs that are not protected

It is important to note the following instances where a geographical indication will not be protected:

- ✓ It is immoral or against public order;
- ✓ It is no longer in use or no longer protected in the country of origin;
- ✓ It has become the common name in Singapore for the goods or services which it identifies;
- ✓ [for wines and spirits] it has been used continuously for at least 10 years preceding 15 April 1994 or in good faith preceding that date;
- ✓ It is confusingly similar to a trade mark for which rights had been acquired before the GI is protected in its country of origin; or
- ✓ It is the name of a person or a predecessor in a particular business.

INDUSTRIAL DESIGN

A design refers to the features of a shape, configuration, pattern or ornament applied to an article by any industrial process. If you register a design, you will be protecting the external appearance of the article. Registered Designs are used primarily to protect designs for industrial use.

The benefits of registering a design- By registering a design, you obtain a right to ownership and the right to prevent others from using the design without your permission. You may use it to better protect your market share by barring copying by others, license it to third parties for commercial returns or sell the design for a sum of money.

To qualify for registration, a design must, in general, satisfy two key criteria:

1. **The design must be new**- The registered design must not have been registered or published anywhere in the world before the date of application of the first filing. Thus the owner of a design should be careful not to disclose the design to anyone until a design application is filed.

Generally, a design is not new if it:

- ✓ has been registered;
- ✓ has been published anywhere in the world, in respect of the same or any other article; or
- ✓ differs only in immaterial details, or features, from other designs that are commonly found in trade.

2. **The Design must be industrially applied onto an article**– The registered design has to be applied to an article by an industrial process. This means that more than 50 copies of the article must have been or are intended to be produced for sale or hire.

Designs that cannot be registered

Under the Registered Designs Act and Rules, the following cannot be registered:

- ⇒ Designs those are contrary to public order or morality.
- ⇒ Computer programmes or layout designs of integrated circuits.
- ⇒ Designs applied to certain articles; such as wall plaques, medals and medallions, and printed matter primarily of a literary or artistic character (e.g. calendars, certificates, coupons, greeting cards, leaflets, maps, playing cards, postcards, stamps, and similar articles).
- ⇒ Methods or principles of construction.
- ⇒ Designs those are solely functional.
- ⇒ Designs those are dependent upon the appearance of another article, of which it is intended by the designer to form an integral part of another article, so that either article may perform its function.

ATTESTED

As defined under **Sec. 3** of TP Act, *“in relation to an instrument, attested means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary.”*

The expression “attestation” means “to sign and witness the fact of execution of a document by the executants.” “Attest” means to testify a fact, to bear witness to a fact. Attestation in relation to a document signifies the fact of authentication of the signature of the executants of that document by the attestator by putting down his own signature on the document in testimony of the fact of its execution.

Attestation is an important formality in execution of transfer. All transfers do not require attestation. Attestation is valid and complete, when two or more witnesses sign the instrument. The object of attestation is to ensure that there is no fraud or vitiating circumstances in the execution of a document.

NOTICE

The last paragraph of the Sec 3 states under what circumstances a person is said to have notice of a fact. Notice literally means knowledge as to existence of certain facts. He may himself have actual notice or he may have constructive notice which may be imputed to him when information of the fact has been obtained by his agent in the course of business transacted by the agent for him.

(a) **Express or actual notice**: An express or actual notice of fact is a notice whereby a person acquires actual knowledge of the fact. It must be definite information given in the course of negotiations by a person interested in the property.

(b) **Constructive Notice**: It is a notice which treats a person who ought to have known a fact, as if he actually knows it. It is a presumed or an implied notice. In other words, a person has constructive notice

of all facts of which he would have acquired actual notice had he made those enquiries which he ought reasonably to have made. The legal presumption of constructive notice applies in following cases:

- ⇒ **Wilful abstention from an enquiry or search**- If a person being aware of the fact did not make an enquiry which he ought to have made, then, he is deemed to have notice of that fact.
 - ⇒ **Gross negligence**
 - ⇒ **Registration as notice**- Constructive notices is applicable in cases where documents are required to be registered. One can identify the title of a person in property by observing the documents. Registration of a document under the Registration Act is a constructive notice of its contents as it is a public document accessible to the public at large on certain compliances. Where a document need not be compulsorily registered, its registration does not amount to constructive notice.
 - ⇒ **Actual possession as notice**- Any person acquiring any immovable property shall be deemed to have notice of title if any, of any person who is in actual possession thereof.
 - ⇒ **Notice to agent**- The general rule is that notice to the agent is the notice to the principal on the basis of the vicarious liability. This rule is subject to certain limitations like the notice should have been received by the agent-
 - ✓ During the tenure of the agency;
 - ✓ In his capacity as an agent;
 - ✓ In the course of the agency business; and
 - ✓ In the manner material to the agency business.
- Exception**- Fraudulent concealment of fact by agent does not amount to notice to the principal.
- ⇒ **State of property amounts to notice**- Sometimes the situation and condition of a property speaks louder than the man. This is based on the legal maxim "**res ipsa loquitur**" that is **things speaks for itself**.

UNIT II: LAW RELATING TO TRANSFER OF PROPERTY
UNDER TRANSFER OF PROPERTY ACT, 1882

- ⇒ General principles of transfer of property whether movable or immovable (Sec. 5 to 37)
- ⇒ What may be transferred
- ⇒ Competence, operation, conditions restraining alienation and repugnant to interest
- ⇒ Other Conditions– determinable on insolvency transfer to unborn person, Rule against perpetuity, accumulation, transfer for benefit of public in perpetuity.
- ⇒ Conditional transfers – Condition precedent and subsequent, Vested and Contingent interest
- ⇒ Void condition,
- ⇒ Doctrine of Election (Sec. 35)
- ⇒ Doctrine of apportionment (Sec. 36,37)

The Transfer of Property Act, 1882 mainly deals with transfer of immovable property between two living person, i.e. transfer inter vivos. The property which is dealt by and large under this Act is immovable property. It doesn't mean that movable property is not a subject matter of this Act. The general principles of Transfer of property Act i.e. **Sections 5 to 37** of the Act is equally applicable for both movable and immovable properties.

How transfers of property can become valid?

- ✓ Transfer should be between living persons. However, under Section 13 of this Act, property can be transferred to an unborn person.
- ✓ Both the parties i.e. transferor and transferee should be competent to contract.
- ✓ The property must be conveyed. The property must be in existence and rights may be transferred either in present or in future.
- ✓ The object and consideration must be lawful.
- ✓ If the Act requires any particular mode, then the transfer must be made in that manner. (For example- Writing, attestation, stamping, registration etc.)

In a nutshell, the Act covers the following heads:

1. Transfer of property: Definition (Section 5).
2. What property may be transferred and what property cannot be transferred (Section 6).
3. Competency of persons to transfer a property and incidents of a valid transfer (Section 7 & 8); and
4. Mode of transfer generally: Oral Transfers (Section 9) except the conditions where TP Act requires a particular mode i.e. writing, attestation, registration etc.

TRANSFER OF PROPERTY

The expression Transfer of Property means 'passing of a right in the property from one person to another. In some cases, there may be passing of entire bundle of rights from transferor to transferee, but in some other cases, there may be transfer of only some of such rights i.e. partial interest. In other words, the transfer of property under the T.P. Act may be the transfer of absolute interest in the property (E.g. Sale, Gift etc.) or the transfer of limited interest in the property (E.g. Mortgage, Lease etc.)

Transfer of Property means an act by which one living person conveys property in present or in future to-

- (a) one or more other living persons : or
- (b) to himself; or

(c) to himself and one or more other living persons and to transfer property to perform such act. In this section 'living persons' includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.

The second paragraph has been added by the (Amending) Act of 1929, in order to make it clear that the words 'living person' embraced Companies and Societies, and that the general provisions of this Act as to transfers do not affect the special provisions of the Indian Companies Act.

By observing the above definition, we may analyse it as follows-

- ⇒ Transfer of Property is an act. Every act leads to some consequence. Here transfer also leads to a consequence i.e. conveyance of rights in the property from one person to another.
- ⇒ The consequence of the act may be in present or in future.
- ⇒ Although the transfer of Property may be in present or in future but the property should be in existence at the date of transfer and so there is no transfer of future property.
- ⇒ The conveyance must be from one living to another living. So it is not applicable to conveyance from one dead to another living person (Except Secs. 13 to 16 and 22).

WHETHER THE FOLLOWING ARE TRANSFER OR NOT ACCORDING TO THE TP ACT?

Partition: Partition is not a transfer because there is no new right obtained by one co-sharer on partition. Since, it does not devolve any new right on the co-sharer except separation of a right, which is already vested in him. It is an adjustment in the existing right and does not create any new right and so it is not a transfer according to TP Act.

Charge: Charge on property is not a transfer within the meaning of Section 5 of the TP Act, as there is no transfer of interest made in favour of charge holder except the right to payment out of the property subject to charge.

Relinquishment: A relinquishment by a reversioner of his reversionary interest does not amount to transfer because it denotes the extinction of right and there is nothing left to transfer.

Easement: Creation of an easement is not a transfer.

Surrender of lease: Surrender of a lease is not a transfer. In surrender, lessee's interest falls into the lessor's greater interest and so no new right is transferred in this process.

**WHAT PROPERTY MAY BE TRANSFERRED &
WHAT PROPERTY CANNOT BE TRANSFERRED**

(Section 6)

Section 6 of the Transfer of property Act lays down that property of any kind may be transferred except as provided under Law for the time being in force. The words 'property of any kind' indicates that transferability is the general rule and the right to property includes the right to transfer the property to another person.

Property of any kind excludes from its purview the future property. A transfer of future property can only operate as a contract, which may be specifically performed when the property comes into existence.

Section 6 Clause (a) to (j) of the TP Act lay down the provisions relating to what property may be transferred and what property cannot be transferred. It runs as follows:

“Property of any kind may transferred, except as otherwise provided by this Act or by any other law for the time being in force

- (a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.
- (b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.
- (c) An easement cannot be transferred apart from the dominant heritage.
- (d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.
- (e) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.
- (f) A mere right to sue cannot be transferred.
- (g) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.
- (h) Stipends allowed to military, naval, air force and civil pensioners of the Government and political pensions cannot be transferred.
- (i) No transfer can be made in so far as it is opposed to the nature of the interest affected thereby; or for an unlawful object or consideration within the meaning of Section 23 of the Indian Contract Act, 1872, to a person legally disqualified to be transferee.
- (j) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate is under the management of a Court of Ward, to assign his interest as such tenant, farmer or lessee.”

What property may be transferred?

Right to property includes the right to transfer property or interest, absolute or limited in the property. Property of any kind may be transferred except those enshrined in Clause (a) to (j) of Section 6 of the Transfer of Property Act and any other law for the time being in force may declare such property as not transferable.

What property cannot be transferred?

Section 6 of the Transfer of Property Act provides for the general rules that all kinds of property is alienable/transferable. However, certain exceptions are provided under Clauses (a) to (i).

1. **Spes Successionis [Section 6(a)]**: The expression 'Spes Successionis' means mere chance or hope of succession. The right of a person to inherit to another in future is a mere chance, which may or may not happen and hence, it cannot be transferred. In other words, mere hope to get the property of another cannot be transferred. In India, spes successionis is a nullity (null and void).
2. **Mere right of re-entry**: Sec 6(b) provides that a mere right of re-entry for breach of a condition subsequent cannot be transferred to other except the owner of the property affected thereby. This right of re-entry is usually inserted in leases empowering the lessor to re-enter upon the demised premises if the rent is in arrear for a certain period or if there is a breach of covenants in the lease.
Example: A grants a lease of a plot of land to B with a condition that if B shall build upon it, he

would re-enter. A transfers to C his right of re-centering in case of breach of the covenant not to build. The transfer is invalid for two reasons, one, the right is a personal licence and not transferable, second, the transferee could only use it for the purposes of a suit to enforce the right without acquiring any right in the property. But if A transfers the whole of his interest in the property, i.e., ownership along with the right of re-entry to C, the transfer shall be valid being a legal incident of the property.

3. **Easements:** An easement is a right to use, or restrict the use of land of another in some way. Easement means right over the property of another. Examples of easements are rights of way, rights of light and rights of water. An easement involves the existence of a dominant heritage and a servient heritage. That is, there must be two parcels of land, one (the dominant heritage) to which the benefit of the easement attaches, and another (the servient heritage) which bears the burden of the easement. But technically an easement cannot exist in gross (independently of the ownership of land but only as appurtenant) attached to a dominant heritage. It follows therefore that an easement cannot be transferred without the property which has the benefit of it i.e. the dominant heritage.

Example: A, the owner of a house X, has a right of way over an adjoining plot of land belonging to B. A transfers his right of way to C. The transfer is a transfer of easement and therefore invalid. But if A transfers the house itself, the easement passes on to C on such transfer.

4. **Personally restricted interests:** This clause states, a person cannot transfer an interest restricted in its enjoyment of him. A transfer of such interest would defeat the object of the restriction. As an example, if a house is lent to a man for his personal use, he cannot transfer his right of enjoyment to another. Under this clause, the following kinds of interest have been held not to be transferable-
- (a) A religious office
 - (b) Emoluments attached to priestly office. Where, however, the right to receive offerings made at a temple is independent of an obligation to perform services involving a qualification of a personal nature, the right is transferable.
 - (c) A right of pre-emption
 - (d) Service tenures
5. **Right to future maintenance [Sec.6 (dd)]:** A right to future maintenance is solely for the personal benefit of the person to whom it is granted and, therefore, cannot be transferred. Before the insertion of this Sub-section in 1929, there was a conflict of opinion whether the right to future maintenance when it was fixed by a decree was transferable or not. It was held in Madras that it was, and in Calcutta that it was not. The amendment supersedes the Madras decision. The result is that the assignment of a decree for maintenance is valid if the maintenance has already become due but as to future maintenance it is not valid. Arrears of maintenance, therefore, can be assigned.
6. **Mere right to sue:** A mere right to sue, as for instance, in respect of damages for breach of contract, or for tort, cannot be transferred. The object of the prohibition is to prevent gambling in litigation. Moreover, a right to sue is personal to the party aggrieved. For instance, past mesne profits, damages for a breach of a contract, for suing an agent for accounts and for pre-emption are all mere right to sue and thus cannot be transferred.

Example: A contracts to buy goods from B. On due date A fails to take delivery and B sells the goods in the market at a loss of Rs.10000. B transfers the right to recover the damages to C. The transfer is invalid.

7. **Public office:** According to this section, a public office cannot be transferred. The prohibition is based on the grounds of public policy. A public office is held for qualities personal to the incumbent, and obviously it would be against public interest to permit alienations of public office.

The salary of a public officer is not transferable, although, under Section 60, C.P.C, it is attachable with certain limits. As stated by Page Wood, V. C. in *Corporation of Liverpool v. Wright*:

"Where the law assigns fees to an office, it is for the purpose of upholding the dignity and performing properly the duties of that office, and the policy of the law will not allow the officer to bargain away those fees to the appointer or anyone else."

If the office is not public, it would be transferable even though the discharge of its duties should be indirectly beneficial to the public.

8. **Pensions:** Under this clause, stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred. The term 'pension' means a periodical allowance or stipend granted not in respect of any right of office but on account of past services of particular merits or as compensation to dethroned princes, their families and dependants. Accordingly, a reward is not a pension. Section 60 of the Civil Procedure Code also exempts a pension from attachment in execution of a decree against the pension holder.

9. **Nature of interest:** This sub-section forbids transfer (1) in so far as such transfer would be opposed to the interests affected thereby, (2) for unlawful object or consideration, and (3) to a person legally disqualified to be a transferee.

Section 136 of the Transfer of property Act forbids a Judge, a legal practitioner or an officer connected with any Court of Justice from purchasing an actionable claim.

10. **Untransferable interest:** The last sub-section of Section 6 is identical with the proviso in Sub-section (i) of Section 108 of this Act and was inserted by the Amendment Act, 1885 to obviate any doubt which might arise owing to the fact that section does not primarily apply to leases for agricultural purposes.

In general lease-holds are transferable but this sub-section makes an exception of this rule and declares certain interest immutable. Thus, under this rule, a tenant having an untransferable right of occupancy cannot alienate or assign his interests in the occupancy. Similarly, a farmer of an estate, in respect of which default has been made in paying revenue, cannot assign his interest in the holding. The same remarks apply to a lessee of an estate under the management of a Court of Wards.

PERSONS COMPETENT TO TRANSFER PROPERTY

Section 7 of the TP Act lays down as to who are competent to transfer. This section is silent about the persons in favour of whom transfer can be made. Section 7 says that every person –

- (a) competent to contract under section 11 of the Indian Contract Act and

- (b) entitled to transferable property, or
- (c) authorized to dispose of transferable property which is not his own,
is competent to transfer such property,
 - ✓ either wholly or partly, and
 - ✓ either absolutely or conditionally.

According to Section 11 of the Indian Contract Act, 1872, a person is competent to contract if he is –

- ⇒ of the age of majority,
- ⇒ of sound mind and
- ⇒ is not otherwise disqualified from contracting by any law. A person who is competent to contract is competent to transfer a property.

So minority and insanity are legal disabilities. That apart, a judgment debtor, whose property is sold in execution of a decree, is legally disqualified to transfer the property sold in execution of a decree. Similarly, where a person's properties are under management of Court of Wards, he is legally disqualified to transfer any interest in his property or create a charge over it.

Section 7 meant to say that the Karta of a Hindu Joint family, a guardian, an executor or administrator, a trustee, a person holding power of attorney to transfer and so on are the persons authorized to dispose of transferable property which is not his own. But there is nothing in the TP Act to nullify a transfer in favour of a minor or a lunatic. A minor or a lunatic can be a mortgagee provided there is no covenant for him to perform. A minor or a lunatic may be a purchaser provided the sale does not impose any obligation upon him. Or a minor or a lunatic may be done of a gift provided the gift is not onerous.

Section 6 of the TP Act lays down three types of persons who can not assign their interest. Thus,

- ✓ A tenant having an untransferable right of occupancy cannot assign his interest as such tenant.
- ✓ The farmer of an estate in respect of which default has been made in paying revenue, cannot assign his interest as such farmer.
- ✓ The lessee of an estate under the management of a Court of Wards can not assign his interest as such lessee.

ESSENTIALS OF A VALID TRANSFER OF PROPERTY

Following are the eight essentials of a valid transfer of property:

1. The transfer must be between two or more living persons. So the transferor and transferee can not be exactly identical.
2. The property transferred must be transferable.
3. The transfer must not be according to Section 6-
 - ✓ opposed to the nature of the interest affected thereby, or
 - ✓ for an unlawful object or consideration, or
 - ✓ to a person legally disqualified to be a transferee.
4. The transferor must be according to Section 7-
 - ✓ competent to transfer,
 - ✓ entitled to the transferable property and
 - ✓ authorised to dispose of transferable property which is not his own.

5. Under Section 9, the transfer must be made in the mode prescribed by the Act. All necessary formalities like attestation, registration etc. must be complied with.
6. According to Section 13, if, on a transfer, an interest is created in favour of an unborn person, subject to a prior interest created by the same transfer, it must exhaust the whole of the remaining interest of the transferor.
7. Under Section 14 the transfer must not offend the rule against perpetuity.
8. According to Section 25, when the transfer is conditional, the condition must be not be illegal, impossible, immoral or opposed to the public policy.

CONDITION RESTRAINING ALIENATION AND CONDITION RESTRAINING ENJOYMENT

CONDITION RESTRAINING ALIENATION IS VOID (Sec. 10)

Transfer of property from one person to another includes the right to own, right to enjoy and the right to dispose/alienate without any restraint or restriction/condition. During transfer beneficial ownership is passed from one to the other. Power of alienation is a legal incident of property. Ownership can not be thought of without the right to transfer. So any restriction on such right of alienation is repugnant to and not allowed by the law. If the transferor imposes any condition or clog on the transferee not to transfer further, such condition is called “Rule against alienability” and is void under Sec. 10 of TP Act and the transferee can simply deny or ignore such condition. Simply put, as per Sec. 10, if the condition or limitation absolutely restrains the transferee from alienating his interest in the property, the condition or limitation is void but the transfer remains valid as if there was no condition at all.

Restraint on alienation may be of two types-

- ✓ absolute restraint and
- ✓ partial restraint.

When a property is transferred absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest to the property, the condition is void except in certain circumstances i.e. such absolute restraint is permissible with respect to a lease, where such a condition is for the benefit of the lessor or those claiming under him and secondly a transfer to, or for the benefit of, a woman not being a Hindu, Muhammadan or Buddhist, which provides that she would not have the power, during her marriage, to transfer or charge the same or her beneficial interest therein. But when the restraint is partial, the condition is not void.

RESTRICTION RESTRAINING ENJOYMENT OR REPUGNANT TO THE INTEREST CREATED BY TRANSFER IS VOID (Sec. 11)

The right of free enjoyment of property is an incident of absolute ownership. When by way of transfer an absolute ownership is created in favour of the purchaser, restrictions on free enjoyment of the property are repugnant to the interest created thereby. In the eye of law those restrictions on free enjoyment are therefore void.

The above principle has been embodied in section 11 of the Transfer of property Act. Sec. 11 of the TP Act lays down that where on a transfer of property, an interest is created therein absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed

by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction. Therefore, the transfer should create an absolute interest in the property. If the transfer does not create any absolute interest in the property in favour of the transferee, Sec. 11 does not come to play. If absolute interest is created, the transfer shall remain valid as if there is no such direction.

For example, A assigns a life-interest in a farm to B for her maintenance. The deed contains a direction that B shall not cut down the trees. Here the direction is valid as there is no absolute transfer in favour of B. But if A makes an absolute gift of a house to B, with a direction that B shall reside in it, here the gift being absolute, the direction is void and B may or may not live in the house.

There is an exception to this general rule. The exception is based on the principle emerged in the decision of the leading case ***Tulk v. Moxhay***. According to Sec. 11 of the TP Act, where the transferor gives a direction to the transferee to the effect that for the beneficial enjoyment by the transferor of another property, the transferee is to enjoy the transferred property in a particular manner, such a direction is valid and enforceable.

For example, if A makes an absolute gift of a house to B, and directs that B shall not raise it higher so as to obstruct the passage of light and air to the A's adjoining house, the restraint on enjoyment will be valid .

TRANSFER FOR THE BENEFIT OF UNBORN PERSON (Sec. 13 & 14)

The Transfer of Property Act, 1882 deals mainly with the transfer of immovable properties between two living persons i.e. transfers inter vivos. According to Sec. 5 of the TP Act, the general rule is that property can be transferred in favour of living person. Therefore, a transfer can not be made directly in favour of an unborn person. Here, the term “living person” includes juristic person such as company, registered firm etc. Under the English law as well as Indian law a child in mother's womb is considered to be in existence. But a child who is not in mother's womb is not considered to be in existence. But Sec. 13, 14 and 18 of the TP Act deal with the law with respect to the transfers for the benefit of an unborn person.

Section 13 embodied the ***rule against double possibilities*** what is known in England as the rule in ***Whitby v. Mitchell***. Section 14 of the Transfer of Property Act controls section 13.

Section 13 lays down that where on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Section 13 has further illustrated the matter in the like manner.

Where A transfers property, of which he is the owner, to B in trust for A and his intended wife, successively for their lives, and, after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son, the interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

Such an interest may be created for the benefit of an unborn person if the following conditions are fulfilled-

- 1) No direct transfer.
- 2) Interest of the unborn person must be preceded by a prior interest.
- 3) The unborn person must come into existence before the prior interest comes to an end i.e. before the death of the last life estate holder and he must have the interest at the latest when he attains majority.
- 4) The whole of the remaining interest of the transferor in the property must be comprised in the interest created for the benefit of such unborn person.

Therefore, the effect of section 13 is that there can not be a direct transfer to a person who is not in existence, or unborn person, on the date of the transfer. It is for this reason that the said section uses the expression 'for the benefit of' and not 'transfer to an unborn person.'

RULE AGAINST PERPETUITY (Sec. 14) AND ITS EXCEPTIONS

The dictionary meaning of the word 'perpetuity' is 'continuing forever'. Here under Sec. 14 the term "perpetuity" refers to tying up of property for an indefinite period or for ever. According to Jarman, perpetuity, in the primary sense of the word, is a disposition which makes property inalienable for an indefinite period. If properties are blocked for ever from being alienated, the commerce would be obstructed, capital investment of the country would be withdrawn from trade and every branch of industry would be diminished. Certainly, it would obstruct the national prosperity. There are some persons who wish to retain their properties in their own family from generations to generations perpetually. But, it is the policy of the law to prevent creation of perpetuities.

To protect this situation Sec. 14 of the Transfer of Property Act has embodied the rule against perpetuity. The rule is founded on the general principle that the transfer shall be void which tend to create in perpetuity or place property for ever out of the reach of exercise of the power of alienation. Section 14 lays down that ***"no transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, the interest created is to belong if he attains the age of majority."***

Let us suppose, that A transfers a piece of land to his friend B for life, and afterwards to his friend C for life, then to his friend D for life, and then to the son that may be born to B, for his son's life, then to the son that may be born to C for his life, and then ultimately to the son that may be born to D for ever. In case of such disposition of the land, B can not alienate the property, because he has only a life interest therein. For the same reason, neither C nor D, nor the sons of B and C can alienate the property. When the property finally vests in D's son, only he will be entitled to alienate the property. This would be certainly a restraint on the free alienation of the piece of land for a considerable long period. Section 14 prevents this and lays down that one can tie up property and stop its free alienation only for one generation, because all friends of A, now living must die within that time, as they are all candles lighted together. Again, as for instance, if a transfer is made by A in favour of B for his life, afterwards in favour of C, D and E, successively for their lives, who are all living persons, the transfer is valid because all the persons benefited are in existence at the date of transfer.

According to the English law, the vesting of property can be postponed for any number of lives in being and an additional term of 21 years afterwards, & for as many months in addition as are equal to the ordinary period of gestation, should gestation exist. The additional term of 21 years is irrespective of the fact whether such person is a minor or not. But according to the Indian law, the vesting can be delayed beyond the lifetime of persons in being for the period only of the minority of some person born in their lifetime, & the addition of an absolute period of 21 years has not been adopted by Sec. 14.

The following are the exceptions to the rule against perpetuity-

1. The rule has no application where land is purchased or property is held by a corporation.
2. This rule does not apply when the transfer creates only a personal obligation and does not affect the interest in the property.
3. Gifts to charities such as transfer for the benefit of public, for the advancement of religion, knowledge, health, commerce, safety, or any other object beneficial to the mankind do not fall within this rule.
4. A covenant of redemption in a mortgage is not affected by this rule.
5. A covenant for pre-emption in respect of land unrestricted in point of time is not affected by this rule.
6. Where only a charge is created on any property and such a charge does not amount to transfer of any interest, that charge does not fall within this rule.
7. The contract for perpetual renewal of a lease does not come within the purview of this rule.
8. Provision for the payment of the debts of the transferor.

RULE AGAINST ACCUMULATION OR DIRECTION FOR ACCUMULATION (SEC. 17)

The term “**accumulation**” literally means ‘**increase of principal by re-investment of interest**.’ Sec. 11 says that condition which restrains the enjoyment of property which is absolutely transferred is void. A direction for accumulation of income is a particular mode of restraining the enjoyment of property. But, as contrary to Sec. 10, Sec. 17 provides an exception and permits a direction for accumulation of income to operate in certain cases. The maximum permissible time period upto which income of the property may be accumulated is:

- (a) Life of the transferor or,
- (b) A period of 18 years from the date of the transfer, whichever is a longer period.

So a direction of postponement of beneficial enjoyment or in other word which makes accumulation of income beyond this period of maximum permissible limit is void.

Illustration: A transfers his properties to B for life with a direction that the income of the said properties shall be accumulated during A’s life and shall be given also to C. The direction for the accumulation of income is valid, upto life of B. A transfer a property to B for life and thereafter to B’s such son who first attains the age of 25 years with a direction for accumulation of income till B’s first son attains 25 years. The direction of the accumulation of such income is void, reason it is beyond the permissible limit (life or 18 years). A transfers property to B in 1960 with a direction for the accumulation of its benefits upto 1990. A dies in 1985 thus the transferor lives for 25 years which is more than 18 years. The direction for accumulation is valid upto 1985 (for 25 years) because it is the longer period.

Sec.17 is subject to the following 3 exceptions-

1. **Payment of Debts-** The period of accumulation can be exceeded in case of payment of debts. For example– A makes a gift of his house to B with a direction that from the rents of the house B shall pay Rs 500 per months towards the satisfaction of a debt of Rupees 10,000/- incurred by A. The direction of the accumulation of income is valid even it continues after the life of A or expiry of period of 18 years.
2. **Raising portions-** Portion ordinarily means a part or share which points to the arising of something out of something less for the benefit of some children or class of children.
3. **Preservation and maintenance of the property-** For the maintenance of property/preservation of property, it is allowed.

VESTED AND CONTINGENT INTEREST [Sec. 19-24]

Vested interest is defined by Sec. 19 of the TP Act. When a person has fixed right of present or future possession of property he is said to have Vested Interest in the property. Sec. 19 says that “**where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.**” It is further provided by Sec. 19 that a vested interest is not defeated by the death of the transferee before he obtains possession.

It has been explained by Sec. 19 that an intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

The main characteristics of vested interest are as follows-

1. Vested interest does not depend upon the fulfilment of any condition. It creates an immediate and present right though the enjoyment may be postponed to a future date.
2. Vested interest is not defeated by the death of the transferee before obtaining possession. If the transferee dies, his vested interest passes on his heirs.
3. Vested interest is heritable and transferable also.

As for an instance, if X executes a deed of gift in favour of Z and directs that Z shall not take over possession of the gifted property till the death of X and his wife Y. Here, Z acquires a vested interest in the property but the enjoyment of the property by Z is postponed. And if Z dies before taking over possession of the property, his vested interest will not be defeated but his heirs will inherit to his vested interest.

CONTINGENT INTEREST

Contingent interest is defined by Sec. 21 of the TP Act. Sec. 21 provides that where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

But there is one exception. Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

The following are the main characteristics of a contingent interest-

- 1) When the transferee dies before obtaining possession, the contingent interest fails, and the property reverts to the transferor.
- 2) Contingent interest is depended entirely upon the fulfilment of a condition. Therefore, in the event of non-fulfilment of the condition, the contingent interest fails.
- 3) Contingent interest is transferable. But the question whether it is heritable or not depends on the nature of the contingency.

As for example of contingent interest, if a sum of money is bequeathed to A, in case he shall attain the age of 18 or when he shall attain the age of 18. A's interest in the legacy is contingent until the condition is fulfilled by his attaining that age.

DIFFERENCE BETWEEN THE VESTED AND CONTINGENT INTEREST

VESTED INTEREST	CONTINGENT INTEREST
Vested interest is created without specifying the time when it is to take effect.	Contingent interest is created to take effect on the happening of a specified uncertain event.
In case of vested interest, it is to take effect forthwith or on the happening of an event which must happen.	In case of contingent interest, the specified event may or may not happen. If the specified event does not happen, the contingent interest fails.
Vested interest is not depended upon the fulfilment of any condition. It creates an immediate right in favour of the transferee though the enjoyment of the property by the transferee is postponed.	Contingent interest is entirely depended upon the fulfilment of the condition. So, if the condition, which may or may not happen, is not fulfilled, the interest is lost.
Vested interest is not defeated by death of transferee before he obtains possession. Vested interest is heritable and transferable.	Contingent interest is also transferable but whether the contingent interest is heritable or not is depended on the nature of the contingency.
In case of a vested interest, if the transferee, in whose favour the interest is created, dies before taking possession of the property the interest passes on his heirs.	In case of contingent interest, if the transferee, in whose favour the interest is created dies before obtaining possession, the contingent interest fails and does not pass on his heirs.
In case of vested interest a right with respect to the property is created immediately though the enjoyment is postponed.	But in case of contingent interest there is a mere promise to give such right of enjoyment with respect to the property if the condition is fulfilled.

WHEN CONTINGENT INTEREST BECOMES VESTED??

When a property is transferred subject to a condition precedent, i.e. on the happening of a specified uncertain event, the transfer creates a contingent interest in favour of the transferee with respect to the property transferred. When the specified uncertain event happens the contingent interest of the transferee becomes vested interest. In such event, or on the death of the transferee before he obtains possession, the vested interest of the deceased transferee, with respect to the property transferred, passes on his heirs.

**CONDITIONAL TRANSFERS-
CONDITION PRECEDENT AND CONDITION SUBSEQUENT**

Sections 25 to 34 of TP Act lay down the provisions relating to conditional transfers. As per Sec. 25, where the interest created on a transfer of property is dependent upon a condition the fulfillment of which is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the court regards it as immoral or opposed to public policy, such transfer is declared void.

Conditional transfers may take place in two ways-

1. Condition precedent
2. Condition subsequent

According to Sec. 26, '**condition precedent**' means where the terms of a transfer of property impose a condition which must be fulfilled before a person can take an interest in the property, that condition is called a condition precedent. The transferee's interest in the property is only contingent until the condition is fulfilled. Sec. 25 to 27 deals with condition precedent. Substantial compliance of a condition precedent is deemed sufficient.

Let us suppose that A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. But E dies and B marries with the consent of C and D. B is deemed to have fulfilled the condition. This condition is called a condition precedent.

Condition subsequent is defined by Sec. 28 of the Transfer of Property Act. It is a condition which destroys or divests upon the happening of an event. According to Sec. 28, on a transfer of property, an interest therein may be created to accrue to any person, with the condition superadded that in case a specified uncertain event happens or does not happen, such interest is to pass to another person. Such a condition is called a condition subsequent. A condition subsequent divests an estate from one person and vests it in another person. This may be explained by an example.

Let us suppose that a sum of money is transferred to A, to be paid to him at the age of 18; if he shall die before he attains that age, to B. A takes a vested interest in the transfer subject to be divested and to go to B in case A shall die under 18.

CONDITION PRECEDENT	CONDITION SUBSEQUENT
In condition precedent, the estate is not vested in the grantee until the condition is performed/fulfilled.	A condition subsequent is one by the happening of which an existing estate will be defeated.

Vesting of estate is postponed till the condition is performed.	Vesting is immediately completed and not postponed.
Once the interest is vested it can never be divested on the ground of non-fulfilment of the condition.	Though the interest is vested it is liable to be divested on the ground of non-fulfilment of condition.
Acquisition of an estate is affected in the condition precedent.	Retention of the estate is affected in the condition subsequent.
In case of condition precedent, the transfer is void if the condition is i) impossible in performance, ii) immoral and iii) opposed to the public policy.	In case of condition subsequent, the transfer is valid if the condition is i) impossible of performance, ii) immoral and iii) opposed to the public policy, only the condition will be ignored .
In condition precedent the condition must be valid in the eye of law.	In condition subsequent the condition's invalidity will be ignored.
The condition precedent may be subsequently complied with. The doctrine of Cypruss applies.	The condition subsequent must be strictly complied with. The doctrine of Cypruss does not apply.

DOCTRINE OF ELECTION

The principle of the doctrine of election was explained in the leading case of *Cooper v. Cooper*. Sec. 35 of the TP Act embodied the doctrine of election. *The doctrine of election is based on the principle of equity.*

According to the section 35 where a person-

- a) professes to transfer property which he has no right to transfer, and
- b) as part of the same transaction, confers any benefit on the owner of the property,
- c) such owner must elect either to confirm the transfer or to dissent from it.

If he dissents from it-

- (a) he must relinquish the benefit so conferred; and
- (b) the benefit so relinquished reverts to the transferor or his representative as if it had not been disposed of.

However, when such benefit reverts back to the transferor, it is subject to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred in two cases, namely-

- i) where the transfer is gratuitous, and the transferor has, before election, died or otherwise become incapable of making a fresh transfer; and
- ii) where the transfer is for consideration.

The doctrine of election may be illustrated by the following example. Let us suppose that one farm of Sultanpur is the property of C and worth 800/- . A, professes to transfer that farm of Sultanpur upon which he has no right to transfer. And by an instrument of gift, professes to transfer it to B, giving by

the same instrument 1000/- to C. C, the owner of the farm of Sultanpur, is to elect either to confirm the transfer or to dissent from it. Here, C elects to retain the farm or dissents from the transfer. C, then forfeits the gift of 1000/- . In the same case, A dies before the election. The representatives of A must, out of the 1000/- pay 800/- to B to make good to the disappointed transferee the amount or value of the property attempted to be transferred.

The conditions necessary for application of this doctrine are as follows-

- a) The transferor must not be owner of the property which he transfers.
- b) The transferor must transfer the property of other owner to a third person.
- c) The transferor must at the same time grant some property, in the same instrument, out of his own, to the owner of property.
- d) The two transfers i.e. transfer of the property of owner to the transferee and conferment of benefit on the owner of property must be made in the same transaction. Question of election does not arise if the two transfers are made by virtue of two separate instruments.
- e) The owner must have proprietary interest in the property; a creditor is not put to election as he has only a personal right to be paid by the debtor.
- f) The owner taking no benefit under a transaction directly, but diverting a benefit under it indirectly, is not put to election.
- g) Question of election does not arise when benefit is given to a person in a different capacity.

There is difference between English and Indian law regarding the doctrine of election.

1. English law applies the principle of compensation while the Indian law adopts the rule of forfeiture.
2. English law does not specify any time within which election is to be made .Indian law specified one year time within which owner of the property is to elect whether he confirms the transfer or dissents from it .If the owner does not comply with such requisition , he is to be deemed to have elected to confirm the transfer.

There is one exception to the doctrine of election. Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claims the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction. This exception may be explained by an example. Let us suppose that X transfers to Y the property A, in lieu of Y's property B which is given to Z. X also gives to Y the property C. If Y elects to retain his own property he must relinquish claim over A but not C.

APPORTIONMENT OF BENEFIT OF OBLIGATION ON SEVERANCE (Sec. 36, 37)

Sec. 36: Apportionment of periodical payments on determination of interest of person entitled

In the absence of a contract or local usage to the contrary, in rents annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof

Sec. 37: Apportionment of benefit of obligation on severance

When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract, to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

FEEDING THE GRANT BY ESTOPPEL (SEC. 43)

English law of estoppel is that where a grantor has purported to grant an interest in land which he did not at the time possess but subsequently acquires, the benefit of his subsequent acquisition goes automatically to the earlier grantee or, as it is usually expressed, feeds the estoppel. **Section 43** of the Transfer of Property Act embodied this doctrine of feeding the grant by estoppel.

Section 43 says that where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property, at any time during which the contract of transfer subsists. Section 43 further provides that nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

The following are the conditions for application of the doctrine of feeding the grant by estoppel-

1. There must have a fraudulent or erroneous representation of ownership by the transferor.
2. The transferee must have acted on the fraudulent or erroneous representation of the transferor.
3. The transferor should not have transferable title on the property transferred.
4. The transfer should be for consideration.
5. The transferor must subsequently acquire title upon the property transferred on the basis of fraudulent or erroneous representation of ownership.
6. The contract of transfer must be subsisting when the transferee exercises his right to recourse the doctrine of feeding the grant by estoppel.

If these conditions are fulfilled the transferee can exercise his option only during continuance of the contract and only in respect of the interest which the fraudulent or erroneous transferor acquires in such property. **But there are some circumstances where the doctrine of feeding the grant by estoppel has no application. These circumstances are as follows-**

1. This section is not applicable if the transfer is not for consideration.
2. This section does not apply if the transfer is invalid for being forbidden by law or contrary to public policy.

3. This section is not applicable if the contract comes to an end before acquisition of the property by the transferor.
4. This section has no application to Court sales.
5. The right is not available against the bonafide purchasers for value without notice.

DOCTRINE OF LIS PENDENS (Sec. 52)

The doctrine of Lis pendens emerged out of the maxim “*ut lite pendente nihil innovetur*” which means that ***nothing new should be introduced in a pending litigation***. This doctrine of Lis pendens is embodied in section 52 of the Transfer of Property Act.

The principle of finality of litigation or the doctrine of Lis pendens will be found in the judgment of Lord Justice Turner in the leading case of *Bellamy v. Sabine*, where the Learned Judge said so, “.... It is, as I think, a doctrine common to the Courts of both law and equity, and rests, as I apprehend upon this foundation---that it would plainly be impossible that any action should or could be brought to a successful termination, if alienation pendente lite were to prevail. The plaintiff would be liable in every case to be defeated by the defendant’s alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to be defeated by the same course of proceeding.....”

According to Sec. 52 of TP Act, during the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits of the Central Government, of any suit or proceeding which is not collusive and in which any right to any immovable property is directly and separately in question, the property can not be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

It has been explained further by the Sec. 52 that for the purpose of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

In order to constitute Lis pendens, following conditions must be satisfied-

- ⇒ There should be a pending suit or proceeding.
- ⇒ The suit or proceeding must not be collusive one.
- ⇒ The suit or proceeding must be pending in a Court of competent Jurisdiction.
- ⇒ The suit or proceeding must be one in which a right to immovable property is directly and specifically in question.
- ⇒ The property directly and specifically in question must be transferred during such pendency.
- ⇒ The transfer must affect the right of other party.

The effect of a transfer during pendente lite is that the transfer is not ipso facto void but is only voidable at the option of the party whose interests are affected thereby and the parties to the transfer are bound to abide by the decree eventually passed in the suit.

The doctrine of lis pendens may be explained by an example. Let us suppose that A mortgaged his property to B. B filed a suit on the mortgage and obtained a decree for sale. While this decree was being executed, A leased the property to X for ten years. During sale of the property B purchased the property himself. As the lease to X was affected by the rule of Lis pendens B was entitled to evict X.

There is one exception to the rule of lis pendens. It is quite open to the Court to permit any party to the suit to transfer the property on such terms which it may think fit and proper to impose.

FRAUDULENT TRANSFER OF PROPERTY ESSENTIALS (Sec. 53)

Every transfer of immovable property by way of sale made with an intention to defeat or delay the creditor of the transferor is voidable at the option of the creditor so defeated or delayed. This is what is stated in Section 53 of TP Act. If the transferee purchased the property after proper enquiries and in good faith and belief, the transfer is valid and he will not be liable. However, the creditor can institute a suit against the transferor. If the transfer was made without sufficient consideration or with the intention to defeat or defraud the creditors, the transfer is voidable at the option of the transferee also.

The following are some of the essential elements of Fraudulent Transfer:

- ✓ A transfer must be made by a debtor to a third person for consideration.
- ✓ The intention behind the transfer was to defeat or defraud the creditors.
- ✓ The transfer is voidable at the option of the creditor.
- ✓ The creditor can file suit on behalf of himself and all other creditors.
- ✓ If the property was purchased by the transferee in good faith, he will not be liable.

DOCTRINE OF PART-PERFORMANCE (Sec. 53-A)

The historical background regarding the application of the doctrine of part performance reveals that in the case of *Kurri Veerareddi v. Kurri Bapireddi*, the full Bench of Madras High Court ruled in 1906 that the English doctrine of Part Performance was not applicable in India. Thereafter, in the case of *Md. Musa v. Aghore Kumar Ganguli*, the Privy Council held in 1914, that the English doctrine of Part Performance was applicable in India on the principles of Justice, equity and good conscience. Again, in 1928, in the case of *Arif v. Jadunath*, the Privy Council held, going back to the view of Madras High Court, that the English doctrine of Part Performance was not applicable in India. Thereafter, in 1929, *Sec. 53-A* was introduced, to incorporate the doctrine of Part Performance, by amending the TP Act.

Object of the doctrine of Part Performance is to prevent fraud.

Section 53-A of the TP Act lays down that where any person contracts to transfer-

- (a) for consideration,
- (b) any immovable property,
- (c) by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee-

- (a) has, in part performance of the contract, taken possession of the property or any part thereof,
or

- (b) the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and
- (c) the transferee has performed or willing to perform his part of the contract,

then notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force,

- a) the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property
- b) of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract.

It has also been provided by Sec. 53-A, as an exception to this rule, that nothing in this section shall affect the rights of a transferee for consideration-

- (a) who has no notice of the contract or
- (b) of the part performance thereof.

Basis of the doctrine of part performance are the following three maxims of equity-

- ✓ He who seeks equity must do equity.
- ✓ Equity treats that as done which ought to have been done.
- ✓ Equity looks to the intent rather than to the form.

The doctrine of part performance requires the following conditions to come into play-

- There should be a contract, to transfer any immovable property, for consideration, duly written and signed by the transferor or on his behalf, from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty.
- The transferee must have taken possession of the property or any part thereof or if already in possession should have continued in possession in part performance of the contract and should have done some act in furtherance of the contract.
- The transferee must have performed or is ready and willing to perform his part of the contract.
- The rights of any other subsequent transferee for value without notice will not be affected by this doctrine.

There is difference in between the English and Indian doctrine of part performance-

- A. According to the English law, even oral agreement comes within the purview of this doctrine on the strength of equity but it is not so in India.
- B. According to the English law both the plaintiff and defendant can avail of the doctrine whereas it is not so in India. In India this doctrine is used as a shield and not as a sword.

UNIT III: TRANSFERS OF IMMOVABLE PROPERTIES & MOVABLE PROPERTIES

- ⇒ Sale
- ⇒ Mortgage
- ⇒ Gift
- ⇒ Leases
- ⇒ Exchanges
- ⇒ Actionable claims

SALE OF IMMOVABLE PROPERTY

The relevant sections in the Act are Sections 54 to 57 of The TP Act, 1882. Sale is defined by Sec. 54 of the Transfer of Property Act. According to the Sec. 54, **sale is a transfer of ownership in exchange for a price paid or promised, or partly paid and partly promised to pay.**

The essentials of a valid sale are as follows-

- ⇒ According to section 7, the seller must be a competent person to transfer.
- ⇒ According to section 6, the transferee must be a competent person and must not be a person disqualified to be a transferee.
- ⇒ According to section 6, the subject matter should be transferable immovable property.
- ⇒ The ownership must be transferred.
- ⇒ The transfer of ownership must be in exchange for price.
- ⇒ The price must be paid or promised to pay or partly paid and partly promised to pay.
- ⇒ The deed of conveyance must be registered in case of transfer of a tangible immovable property of the value of Rs. 100/- and upwards.
- ⇒ In case of tangible immovable property of a value less than Rs. 100/- , there must be either a registered deed of conveyance, or delivery of property.

A **contract for sale** is also defined by Sec. 54 of the Act. According to Sec. 54 a contract for sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in, or charge on, such property.

In English law, the purchaser, by virtue of the contract for sale, becomes owner of the property, from the date of the contract, according to equity. But in India, vendor's ownership in the property is not affected by the contract for sale until the deed of conveyance is not registered.

The difference between sale and contract for sale may be shown in the following tabular form.

SALE	CONTRACT FOR SALE
Sale is a transfer of ownership of immovable property.	Contract for sale is only an agreement to sell immovable property in future on such terms settled between the parties.
Sale creates interest in the immovable property in favour of the purchaser.	Contract for sale does not create any- a) interest in, or b) charge on such property. Ownership remains intact in favour of the vendor.
Sale passes an absolute legal title to the	Contract for sale does not pass any legal title to

purchaser.	the purchaser.
Sale creates a right in rem in favour of the purchaser.	Contract for sale creates only a right in personam in favour of the purchaser enforceable against the promisor or a subsequent purchaser without notice.
Sale must be completed by a deed of registered conveyance in case of- a) a tangible immovable property of the value of Rs. 100 or more, b) a reversion or c) other intangible thing.	According to the explanation 17, of the Indian Registration Act, a contract for sale need not be registered at all.

SALE HOW MADE- Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immovable property takes place when the seller places the buyer or such person as he directs, in possession of the property.

RIGHTS AND LIABILITIES OF SELLER AND BUYER BEFORE AND AFTER COMPLETION OF SALE

Sec. 55 of the Transfer of property Act deals with the rights and liabilities of buyer and seller.

The buyer's rights and liabilities is divided into two stages:

- ⇒ Before of completion of Sale and
- ⇒ After completion

BUYER'S RIGHTS

1. Before of completion of sale:

- a) A charge on the property for the purchase of money properly paid by him in anticipation of the delivery. This charge is converse of the seller's charge for unpaid price.
- b) Interest on such purchase money.
- c) The money and costs awarded to him in a suit for specific performance of the contract or to obtain a decree for its recession.

2. After completion of sale: After completion i.e., where ownership has passed to him.

- a) The buyer is entitled to the benefits of any improvement or increase in value of the property.
- b) Rents and profits thereof.

BUYER'S LIABILITIES

1. Before Completion of Sale: The buyer is bound:

- a) To disclose to the seller any fact as to the nature or extent of the seller's interest in the property which the seller is not aware. This duty is like the seller's duty to disclose material defects in the property.
- b) To pay or tender the purchase money to the seller or to such person as he directs.

2. After completion of Sale:

- a) To bear any loss arising from destruction, injury or decrease in value of the property.
- b) To pay public charge and rents which may become payable in respect of the property.

SELLER'S RIGHTS

1. Before Completion of Sale: The seller is entitled to rents and profits till the ownership passes to the buyer. If the buyer takes possession before completion of the sale, the seller has a right to claim interest on the unpaid purchase money from the date of possession.

2. After Completion of Sale: The seller is entitled to a charge upon the property in the hands of-

- (a) The buyer or
- (b) Any transferee without consideration, or
- (c) Any transferee with notice of non-payment, for the amount of the unpaid purchase-money.

SELLER'S LIABILITIES

1. Before completion of sale

- a) To produce to the buyer on his request for examination all documents relating to the property. The buyer must inspect the title deeds in his own interest, as otherwise, he may be fixed with constructive notice of matters which he could have discovered the title.
- b) To the best of information, all relevant questions put to him.
- c) On payment or tender of the price, to execute a proper conveyance of the property.
- d) Between the date of the contract of sale and the delivery of the property, to take proper care of the property.
- e) To pay compensation to the buyer if there is any loss or damages to the property.
- f) To pay all public charges and rent accrued due in respect of the property, up to the date of the sale. Public charges means Government Revenue, Municipal Taxes, etc.

2. After completion of sale:

- a) To give to the buyer or such person as he directs such possession of property as its nature admits. Actual possession is not possible in the case of incorporeal rights such as a right to fishery, etc.
- b) Where the whole of the purchase money has been paid to the seller he is also bound to deliver to the buyer all documents of title. The cost of obtaining the deeds should be borne by the seller.

MORTGAGE

Mortgage is simply a transfer of interest in the immovable property while the ownership still retains with the mortgagor. **Section 58** of the Transfer of Property Act defines mortgage. According to this section a mortgage is the transfer of an interest in specific immovable property for the purpose of securing-

- i) the payment of money advanced or to be advanced by way of loan,
- ii) an existing or future debt, or
- iii) the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee, the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument by which the transfer is effected is called a mortgage-deed.

The essential nature of mortgage is that it is a transfer of an interest in specific immovable property to the lender, called a mortgagee. The mortgage is simply the transfer of an interest in the property mortgaged. It is not the transfer of absolute interest in the property. There is necessarily a transfer of interest in specific immovable property by reason of the execution of the mortgage. That would be there irrespective of whether a debt has arisen or not because it is a necessary element of mortgage, but a mortgage is not always executed for securing debt which has already arisen. A mortgage can be executed for securing payment of money to be advanced. Money which may be paid later may be secured by a current mortgage.

FORMS OF MORTGAGE

Section 58 of Transfer of Property Act has introduced six kinds of mortgages. They are as follows-

- 1) *Simple mortgage.*
- 2) *Mortgage by conditional sale.*
- 3) *Usufructuary mortgage.*
- 4) *English mortgage.*
- 5) *Mortgage by deposit of title-deeds.*
- 6) *Anomalous mortgage.*

Simple Mortgage- The characteristics of a simple mortgage are:

- a) that the mortgagor must have bound himself personally to repay the loan,
- b) that to secure the loan he has transferred to the mortgagee the right to have specific immovable property sold in the event of his having failed to repay, and
- c) that possession of the property is not given to the mortgagee-

The outstanding feature of a simple mortgage is that possession is not delivered to the mortgagee, but remains with the mortgagor. Since the mortgagee is not put into possession of the property, he has no right to satisfy the debt out of the rents and profits, nor can he acquire the absolute ownership of mortgaged property by foreclosure.

It will be seen that the mortgage, has, on default of the mortgagor, a two fold cause of action— one arising out of the breach of the covenant of repay and the other arising out of the mortgage. The mortgagee may, therefore, sue him for the mortgage-money or may proceed against the property or may combine both these remedies in one suit. If he sues on personal undertaking only, he obtains a money decree but if he sues on the mortgage, he obtains an order for the sale of the property.

Mortgage by conditional Sale-

The Mohammedan Law forbids the taking of interest and therefore in order to evade the prohibition of interest, a kind of mortgage, known as *byebil wafa* was devised. The mortgagor purported to make over the property to the mortgagee, by way of an absolute sale, and the mortgagee (the ostensible buyer) agreed to resell the property, at the expiry of a certain stipulated time, on being repaid the money advanced by him.

Essentials of a mortgage by conditional sale-

In a mortgage by conditional sale-

- 1) the mortgagor must ostensibly sell the immovable property,
- 2) there must be a condition that either,
 - (a) on the repayment of the money due under the mortgage on a certain date, the sale shall become void or the buyer shall retransfer the property to the seller, or

- (b) in default of payment on that date the sale shall become absolute.
- 3) The condition must be embodied in the document which effects or purports to effect the sale. This is, therefore, a mortgage in which the ostensible sale is conditional and intended simply as a security for the debt. The word “ostensible” means that it has an appearance of sale but is really not a sale. It is merely executed in form of sale with a condition attached to it. The ostensible sale need not be accompanied with possession. The mortgagee does not acquire any personal right against the mortgagor. It is to be noted that the sale does not become absolute in default of payment on the due date by itself until there is a decree absolutely depriving the right of redemption of the mortgagor.
- 4) For a transaction to be a mortgage by conditional sale proviso to Section 58 envisages that the condition effecting or purporting to effect the sale as a mortgage transaction, must be incorporated in one and the same deed. Where separate documents of sale deed of reconveyance and lease deed were executed in the same transaction and the condition effecting the sale as a mortgage was not embodied in the sale deed itself, the mortgagor was debarred from saying that the transaction was in the nature of mortgage by conditional sale.

Usufructuary Mortgage- The characteristics of a usufructuary mortgage are:

- (a) possession of the property is delivered to the mortgagee;
- (b) the mortgagee is to get rents and profits in lieu of interest or principal or both;
- (c) no personal liability is incurred by the mortgagor; and
- (d) the mortgagee cannot foreclose or sue for sale.

No personal liability i.e. the mortgagor cannot be sued personally for the debt. The mortgagee is only entitled to remain in possession of the mortgaged property till the principal and interest are defrayed according to the terms of the agreement. Since a usufructuary mortgagee is entitled to remain in possession until the debt is paid off, no time limit can be fixed expressly during which the mortgage is to subsist.

English Mortgage- An English Mortgage is a transaction in which the mortgagor binds himself to repay the mortgage money on a certain date, and transfers the mortgage property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the department. Thus, the main features of this mortgage are-

- (a) that the mortgagor should bind himself to repay the mortgage money on a certain day;
- (ii) that the mortgage property should be transferred absolutely to the mortgagee; and
- (iii) That such absolute transfer should be made subject to a proviso that the mortgagee will recovery the property to the mortgagor, upon payment by him of the mortgage money on the appointment day.

Mortgage by deposit of title-deeds- In England, a mortgage of this kind is called an “**equitable mortgage**” as opposed to a “mortgage” because in this type of mortgage, there is simply a deposit of document of title without anything more, without writing or without any other formalities. The object of the Legislature in providing for this kind of mortgage is to give facility to the mercantile community in cases where it may be necessary to raise money all of a sudden before an opportunity call be afforded of

preparing the mortgage-deed. This mortgage, therefore, does not require any writing and being an oral transaction, is not affected by the Law of Registration.

Anomalous mortgage- Several other kinds of mortgages are in use in various parts of India which are in the nature of usufructuary mortgage. These and other types of mortgages have been given the name of 'anomalous' mortgage. Anomalous mortgage has been defined as a mortgage which does not fall under any of the five classes mentioned above.

In the case of a mortgage ***other than a mortgage by deposit of title-deeds***, if the principal money secured is Rs. 100 or upwards, a registered instrument is compulsory. In case of mortgage by deposit of title deeds, since the debtor deposits with the creditor the title deeds of his property with an intent to create a security, the law implies a contract between the parties to create a mortgage, and no registered instrument is required.

RIGHT OF REDEMPTION (Sec. 60)

The most important right possessed by the mortgagor is the right to redeem the mortgage. Under this section, at any time after the principal money has become due, the mortgagor has a right on payment or tender of the mortgage-money to require the mortgagee to reconvey the mortgage property to him. The right conferred by this section has been called the right to redeem and a suit to enforce this right has been called a suit for redemption. In English Law, the mortgagor's right to redemption contained in for Equity of redemption. This remedy is available to the mortgagor only before the mortgagee has filed a suit for enforcement of the mortgage. Subsequent to the filing of the suit, this remedy is not available.

Clog on Redemption- “Clog” refers to a **restraint**. The right of redemption is an inviolable right in the sense that it cannot be denied to the mortgagor even though he may by express contract abandon his right to redeem the property. Equity in its insistence upon the principle that a mortgage is intended merely to afford security to the lender, has held an agreement which prevents redemption as void.

Lord Lindley in Stanley v. Wild, expounded the principle as under:

“The principle is this- a mortgage is a conveyance of land or an assignment of chattels as securities for the payment of a debt or the discharge of some other obligation for which it is given. That is the idea of a mortgage; and the security is redeemable on the payment or discharge of such debt or obligation, any provision to the contrary notwithstanding. Any provision inserted to prevent redemption on payment or performance of the debt or obligation for which the security was given, is what is meant by a clog or fetter on the equity of redemption and is, therefore, void. It follows from this that “once a mortgage always mortgage”. A 'clog' or 'fetter' is something which is consistent with the idea of security.

It should be noted that the doctrine of clog on redemption applies only to dealings which take place between the parties to a mortgage at the time when the contract of mortgage is entered into. It does not apply where they subsequently vary the terms upon which the mortgage may be redeemed.

Under Indian law, redemption involves two things:

⇒ re-transfer of the interest which had been originally transferred to the mortgagee, and

⇒ delivery of the possession

Both these things are done by virtue of the terms of mortgage, and in pursuance of an agreement between the parties. Thus, the re-transfer of the interest is also by virtue of an agreement. Under the Indian Law, the right of redemption is a statutory right which cannot be fettered by any condition which impedes or prevents redemption. Any such condition is void as a clog on redemption. The Legislature has quite advisedly not used any such words as “**in the absence of a contract to the contrary**” in [Section 60](#) with a view to prevent the mortgagor from contracting himself out of his right of redemption at the time of the mortgage. It is, therefore, manifest that the right cannot be clogged.

What is a clog on equity of redemption is a matter of fact in each case. Following instances would make it clear.

- (a) **Condition of sale in default**- The courts will ignore any contract the effect of which is to deprive the mortgagor of his right to redeem the mortgage. Accordingly, if one of the terms of the mortgage is that on the failure of the mortgagor to redeem the mortgage within the specified period, the mortgagor will have no claim over the mortgaged property and the mortgage deed will be deemed to be a deed of sale in favour of the mortgagee, it cannot be given effect to. It plainly takes away altogether the mortgagor's right to redeem the mortgage after the specified period. This is not permissible for “once a mortgage always a mortgage” and therefore always redeemable. (*Gangadhar v. Shankar Lal*)
- (b) **Long term for redemption**- A long term is not necessarily a clog on redemption. In *Gangadhar v. Shankarlal*, it was held by the Supreme Court of India that the terms in the mortgage that it will not be redeemable until the expiry of 85 years were not a clog in the circumstances of the case.
- (c) **Stipulation barring mortgagor's right of redemption after certain period**- If there is a stipulation which bars mortgagor's right of redemption after certain period, the stipulation is treated as a “clog” on the mortgagor's equitable right of redemption.
- (d) **Condition postponing redemption in case of default**- In *Mohammad Sher Khan vs. Seth Swami Dayal*, the mortgage was for a term of five years with a condition that if the money was not paid, the mortgagee might enter into possession for a period of twelve years during which the mortgagor could not redeem. It was held that such a condition was a clog because it hindered an existing right to redeem.
- (e) **Restraint on alienation**- A stipulation that the mortgagor shall not alienate the mortgaged property or shall not take loan on the security of the mortgaged property has been held to be a clog.
- (f) **Redemption restricted to Mortgagor**- An agreement that redemption should be available to the mortgagor, and not to his heirs has been held as a clog.
- (g) **Penalty in case of default**- Stipulation to charge at enhanced rate of interest from the date of mortgage, in case of default in payment, has been held to be a clog.

LEASE

Under the Transfer of Property Act, 1882, the subject of “Leases of Immovable Property” is dealt with in Chapter V.

Section 105 of the TP Act, 1882 defines a lease of immovable properties as transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The transferor is called the lessor; the transferee is called the lessee; the price is called the premium; and the money, share, service or other thing to be so rendered is called the rent. **The lease for more than one year cannot be created unless it is registered.**

The expression “transfer of a right to enjoy” stands in contrast with the words “transfer of ownership” occurring in Section 54 in the definition of sale. In a sale, all the rights of ownership, which the transferor has, passes on to the transferee. In a lease, there is a partial transfer, i.e. a transfer of a right of enjoyment for a certain period or in perpetuity. The interest transferred in case of lease is called the leasehold interest.

In Anthony v. K.C. Ittoop & Sons and Others, (2001), the Supreme Court found that there are three interdictions¹ to claim that an instrument can create a valid lease in law.

The first inhibition is that it should be in accordance with the provisions of Section 107 of the Transfer of Property Act. That Section reads as under- A lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

The second inhibition, as pointed out by the Supreme Court, is Section 17(1)(d) of the Registration Act, which states that where a lease of immovable property from year to year or for any term exceeding one year or reserving an yearly rent, such document should be compulsorily registered.

The third inhibition, as noted by the Supreme Court, is Section 49 of the Registration Act relating to the consequence of non-compliance of Section 17. Section 49(c) contemplates that no document required by Section 17 or by any provision of the Transfer of Property Act to be registered shall be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered. Nevertheless, the Supreme Court, taking into consideration of the proviso to Section 49 of the Registration Act, found that an unregistered lease deed may be taken as evidence of any collateral transaction not required to be effected by registered instrument.

It should be noted that while both a sale and a mortgage to a minor are valid, a lease to a minor is void as the lease imports a covenant by transferee (lessee), to pay rent and perform various conditions which may be imposed in a lease. For a lease of immovable property, there must be a lessor and a lessee. An agreement of lease must also be executed lawfully by the lessor and the lessee containing the terms and conditions of the lease for lawful consideration. The lessor and lessee must also be persons who are competent to contract. Unless the aforesaid requirements are satisfied, an

¹ An authoritative prohibition, especially by court order

agreement of lease of immovable property cannot be lawfully made and executed. In every case, there is an implied contract that the lessee will be put in possession of the property of the lessor.

Essential elements of lease:

- (i) Immovable property;
- (ii) Right to enjoy such immovable property;
- (iii) Two parties- both the transferor and the transferee who are competent to make contract;
- (iv) The ascertainable duration of the lease;
- (v) Consideration that is premium or rent.

- ✓ **Subject-matter:** The subject-matter of a lease must be immovable property.
- ✓ **Parties:** Both parties, i.e., the lessor and the lessee must be competent to contract. A lease cannot be created without any express or implied contract between two parties.
- ✓ **Duration:** The right to enjoy the property must be transferred for a certain time or in perpetuity. It may commence either in the present or on some date in future or on the happening of an event which is bound to happen. Where day is expressed for the commencement of the lease, such day must be excluded in computing the whole period of lease. **Section 110** enacts that if the day of commencement is not stated, the lease begins from the date of execution. If it is expressed to commence from a past day, that is only for the purpose of computation, and the interest of the lessee begins from the date of execution. Both the time when the lease begins and the time when it ends must be fixed. Apart from leases for certain time, a lease may be in perpetuity. Such leases are generally agricultural leases.

KINDS OF LEASES ON THE BASIS OF DURATION

- **Permanent Lease-** In India, the permanent leases or a lease in perpetuity may be created either expressly or inferred from the circumstances of a given case. In the latter case it is said to have been created through a presumed grant. The tenancy of a permanent nature in the sense that it could not be revoked so long as the plaintiff paid rent in cash or kind, may be inferred from various terms and conditions of a lease. The mere fact that a uniform fixed rent had been paid for a long time or the fact that the lessees had been in possession of the land for a long time making construction of land at their own cost would not raise a presumption that the tenancies were of a permanent character. In every case an inference of permanency of tenancy is a question of fact depending upon the facts of each particular case. The onus of proving that a tenancy is permanent is on the tenant setting up such a case.
- **Tenancy-at-will:** A lease which is silent as to duration of term would be void as a lease, but if the lessee has taken possession, a tenancy-at-will is created. It arises by implication of law in cases where a person takes possession of the premises with the consent of the owner. It may also arise by an express agreement to let for an indefinite period for compensation accruing from day to day. The tenant in such a case is not a trespasser and his only liability is to pay compensation for use and occupation. A tenancy-at-will is terminable by either party. A demand by the landlord for possession is sufficient to terminate his tenancy-at-will. Under Section 105 of the Transfer of Property Act, a lease creates right or an interest in enjoyment of the demised property and a tenant or a sub-tenant is entitled to remain in possession of the demised property until the lease is duly terminated and eviction takes place in accordance with law. For ascertaining whether a document creates a licence or lease, the substance of the document must be prepared to the form.

It is not correct to say that exclusive possession of a party is irrelevant but at the same time is not conclusive. The other tests, namely intention of the parties and whether the document creates any interest in the property or not are important consideration.

- **Tenancy by sufferance:** Another type of a tenancy may be noted here. It is called a 'tenancy by sufferance'. It also arises by implication of law when a person who has been in possession under a valid lease continues in possession even after the expiration of the lease without the consent of the lessor. Thus, a tenant holding over after the expiration of the term is a tenant at sufferance. A tenancy at sufferance is terminated at any time by the landlord entering without notice or demand.
- ✓ **Consideration:** The consideration is either premium or rent. Premium is the price paid or promised to be paid in a lump sum whereas rent is a periodical payment. When the interest of the lessor is parted with for a price, the price paid is premium or salami. But the periodical payments made for the continuous enjoyment of the benefits under the lease are in the nature of rent. But the definition of rent given in this section is wide enough to include not only money but also the delivery of a share of the crop, of the rendering of service, etc. **Section 105** recognises also a lease of immovable property in consideration of a share of crops.
- ✓ **Agreement to lease:** A document whereby the terms of a lease, are finally fixed and it intended to give the right of enjoyment to the lessee either at once or at a future date is a lease. On the other hand, a document which only binds the parties, the one person promising to grant the lease and the other promising to accept it, is merely an agreement to lease. If the intended lessee enters into possession, he can, under section 53-A, resist the lessor's suit for ejection: provided the agreement is in writing.

DISTINCTION BETWEEN LEASE AND LICENSE

Lease is a transfer of right to enjoyment of property made for a certain time in consideration of a price paid or promised. Under Section 108, the lessee is entitled to be put in possession of the property. A lease is therefore a transfer of an interest in land. The interest transferred is called the **leasehold interest**. The lessor part with his right to enjoy the property during the term of the lease and it follows from it that the lessee gets that right to the exclusion of the lessor.

Whereas **Section 52 of the India Easement Act defines a license** as **a right to do or continue to do, in or upon the immovable property of the grantor, something which in the absence of such right be unlawful, and such right does not amount to an easement or interest in the property**. Under Section 52 of the Easement Act if the document gives only a right to another to come on the land or premises and use them in some way or the other while it remains in possession and control of the owner thereof, it will be a licence. A lease is the thus, a transfer of a right to enjoy the premises, whereas a license is a privilege to do something on the premises which otherwise would be unlawful. The legal possession in case of license continues to be with the owner of the property but the licensee's permission, his occupation or use would be unlawful. It does not create in his favour any estate or interest in the property. There is therefore a clear distinction between the two concepts.

The Supreme Court of India in **Associated Hotel of India v. R. N. Kapoor**, quoted following observations and laid down the following propositions:-

- (a) To ascertain whether a document creates a license or a lease, the substance of the document must be preferred to the form;
- (b) the real test is the intention of the parties– Whether intended to create a lease, or a license;
- (c) if the document creates an interest in the property, it is a lease, but, if it only permits another to make use of the property of which the legal possession continues with the owner, it is a license, and
- (d) if under the document, a party gets exclusive possession of the property, prime facie he is considered to be a tenant, but circumstances may be established which negative the intention to create a lease. If the agreement is in writing, it is a question of construction of the agreement having regard to its terms and, where its language is ambiguous, having regard to its object, and the circumstances under which it was executed, whether the rights of the occupier are those of a lessee or a licensee.

Distinction summarised-

- A lease is a transfer of an interest in land whereas the license does not create any interest in land in favour of the licensee.
- A lessee can sue a trespasser in his own name but a licensee cannot do so.
- A lease can be assigned, but a license cannot be assigned.
- A lease cannot be revoked until the term, but a license, subject to certain exceptions, can be revoked.

TERMINATION OF LEASE

Section 111 deals with the question of determination of a lease, and in various clauses (a) to (h) methods of determination of a lease of immovable property are provided. A lease of immovable property determines-

- (a) by efflux of the time limited thereby,
- (b) where such time is limited conditionally on the happening of some event-by the happening of such event,
- (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event-by the happening of such event,
- (d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right,
- (e) by express surrender, that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them,
- (f) by implied surrender,
- (g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease,
- (h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

The right of the lessee- Right of the lessee in the leased property subsists even if the leased property has been destroyed by fire, tempest or flood or violence of an army or of a mob or other irresistible force unless the lessee exercises its option that on happening of such events the lease has been rendered void. By necessary corollary, therefore, if the leased property is destroyed wholly by fire, the lease cannot be said to be extinguished, nor can it be said that lessee's right in the leased property has come to an end unless the lessee exercises such option.

EXCHANGE

Chapter VI of TP Act, 1882 which extends from Sec. 118 to Sec. 121 (both inclusive) provides for the transfers by way of exchange.

- **Sec. 118** defines exchange as- ***When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange"***. A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.
- **Sec. 119: Right of party deprived of thing received in exchange**
If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby, or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party or his legal representative or a transferee from him without consideration.
- **Sec. 120: Rights and liabilities of parties**
Save as otherwise provided in this Chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.
- **Sec. 121: Exchange of money**
On an exchange of money, each party thereby warrants the genuineness of the money given by him.

GIFT (Sec. 122-128)

Sec. 122 defines "Gift" as-

"Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made- Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.

A gift of immovable property must be effected by-

- i) a registered instrument signed by or on behalf of the donor,
- ii) and attested by at least two witnesses.

In the event of gift of movable property, it may be effected by-

- i) either by a registered instrument signed and attested as above, or
- ii) by delivery of the property, such delivery may be made in the same way as goods sold or may be delivered.

Following are the essentials of a valid gift-

1. The subject matter of the gift should be capable of transfer, existing and certain.
2. There should be two parties, in one side the donor and in other side the donee.
3. The donor must be capable of gifting the property.
4. The gift should be made without any consideration and voluntarily.
5. There should be a transfer of interest on the part of the donor.
6. The gift should be accepted by or on behalf of the donee during his life time.
7. The acceptance must be made during the lifetime of the donor.
8. The donor and donee must be living persons.
9. In the event of gift of immovable property, there must be a registered instrument properly attested by at least two witnesses and signed by the donor.
10. In the event of gift of movable property, there may be a registered instrument properly attested by at least two witnesses and signed by the donor or by delivery of possession in the same way as goods are sold.

When gift may be suspended or revoked:

Sec. 126 of the TP Act, 1882 provides for conditions where a gift may be revoked. Following are those conditions-

- (a) That the donor and donee must have agreed that the gift shall be suspended or revoked on the happening of a specified event; **such event must be one which does not depend upon the donor's will;**
- (b) the donor and donee must have agreed to the condition at the time of accepting the gift; and
- (c) the condition should not be illegal, or immoral and should not be repugnant to the estate created under the gift. [Section 126 is controlled by Sec. 10. As such, a clause in the gift deed totally prohibiting alienation is void in view of the provisions contained in Sec. 10. A gift, which was not based on fraud, undue influence or misrepresentation nor was an onerous one, cannot be cancelled unilaterally (i.e. one-sidedly). Such a gift deed can be cancelled only by resorting to legal remedy in a competent court of law.]

ONEROUS GIFT

'**Onerous gift**' is a gift made subject to certain charges imposed by the donor on the donee. The principle behind this is that he who accepts the benefit of a transaction must also accept the burden of the same. This section, being an embodiment of a rule of equity, applies equally to Hindus and Mohammedans. For acceptance of an onerous gift, acceptance of the gift itself is sufficient; there need not be any separate and express acceptance of the onerous condition also at the same time. The acceptance of the gift will carry with it the acceptance of the onerous condition also, even though at the time of the gift the donee was not aware of such condition, specially where the onerous condition is of a trifling nature. A donee, not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

UNIVERSAL DONEE

The essential condition to constitute a universal donee is that the gift must consist of the donor's whole property. If any portion of the donor's property, no matter whether it is moveable or immovable, is excluded from the operation of the gift or the endowment, the donee is not a universal donee. This concept is embodied in Sec. 128 of the TP Act, 1882. Where a Muslim person made a gift of the whole of his estate to his son and directed him to pay his debts, the son was a universal donee and he was liable to pay all debts of the donor. There is no rule of Muslim law which conflicts with the provisions of this section.

ACTIONABLE CLAIM

As the expression "**Actionable Claim**" itself denotes, it is a claim on which action lies for certain reliefs in the law courts. It excludes the claims which have been already adjudicated or decreed so that no further action can be based thereon and also the claims, though actionable are secured by mortgage or pledge or hypothecation. This exclusion is reflected in the definition of "Actionable Claim" contained in Section 3 of the Transfer of Property Act, 1882.

Essentially, an actionable claim is a claim to any debt or to any beneficial interest in movable property. **Under the TP Act, an actionable claim excludes the claims to such debts as are secured by mortgage, hypothecation or pledge of immovable or movable and the claims to any beneficial interest in any movable property that is in the actual or constructive possession of the claimants.**

Such debt or beneficial interest may be existing, accruing, conditional or contingent and it is a civil court which only can have jurisdiction to grant suitable relief/s in respect thereof. The definition though complex is logical and well reasoned. The significance of "actionable claim" lies in its assignability.

Debts secured by mortgage etc. are excluded from the definition of "Actionable Claim" because such debts are not the claims to property but the property itself. Similarly, all claims under the contract are excluded except claims to the payment of liquidated sums of money or debt or price.

Examples of actionable claims-

- ✓ The benefit of a contract giving an option to purchase the land;
- ✓ Claim for arrears of rent;
- ✓ Claim for rent to fall due in future;
- ✓ The benefit of executory contract for the purchase of goods;
- ✓ An option to repurchase the properties sold;
- ✓ An endorsement on the back of a contract for the purchase of goods by the purchaser that he had sold all his rights and interest in the contract to a person named;

Examples of claims that are not actionable claims-

- ✓ A claim which is decreed;
- ✓ The right to sue for accounts and to recover money which might be found due on taking accounts from an agent;
- ✓ A claim for main profits;
- ✓ Relinquishment of interest of a retiring member of joint hindu family business in favour of the continuing co-parcener/s;
- ✓ A mere right to sue

Sec. 130: Transfer of actionable claim

The transfer of an actionable claim **whether with or without consideration** shall be effected **only by the execution of an instrument in writing signed by the transferor or his duly authorized agent**, shall be complete and effectual upon the execution of such instruments, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not:

Provided that every dealing with the debtor other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceeding and without making him a party thereto.

Exception: Nothing in this section applies to the transfer of a marine or fire policy of insurance or affects the provisions of section 38 of the Insurance Act, 1938.

Illustrations-

(i) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in section 131, pays B. The payment is valid, and C cannot sue A for the debt.

(ii) A effects a policy on his own life with insurance company and assigns it to a bank for securing the payment of an existing or future debt. If A dies, the bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor, subject to the proviso in sub-section (1) of section 130 and to provisions of section 132.

UNIT IV: M.P. ACCOMODATION CONTROL ACT, 1961

Preamble, Definitions and Provisions Regarding Rent

Control of Evictions of Tenants

Eviction on grounds of bonafide requirement

Deposit of Rents

PREAMBLE, SHORT TITLE, EXTENT & COMMENCEMENT

It received the assent of the President on the 25th December, 1961. Assent was first published in "The Madhya Pradesh Gazette" Extraordinary on the 30th December, 1961. It was enactment number 41 i.e. Act 41 of the year 1961. The Act comprises of 51 Sections contained in VII Chapters and 2 Schedules.

The Preamble of the Act is as follows-

"An act to provide for the regulation and control of letting and rent of accommodations, for expeditious trial of eviction cases on ground of "bonafide" requirement of certain categories of landlords and generally to regulate and control eviction of tenants from accommodations and for other matters connected therewith or incidental thereto."

The Act professes to control letting and rent of accommodation and the eviction of tenants therefrom. The Act also restricts the power of the landlord to let and re-let at will. It also restricts his power to eject the tenant at will. Thus the direct and immediate object of the Act is to ensure occupation of accommodation by them who are in need of it. Also, the Act intends to give protection to the tenants by preventing unscrupulous and veracious landlords from charging exorbitant rent from tenants and evicting tenants, who refused to agree to the enhanced of their rent. However, it was not the intention of the legislature to extinguish all the rights of a landlord. It is a beneficial legislation, beneficial to both the landlord and the tenant.

SEC. 1: Short title, extent and commencement

- 1) This Act may be called the Madhya Pradesh Accommodation Control Act, 1961.
- 2) It extends to the whole of Madhya Pradesh.
- 3) The Act shall, in the first instance, be in force in the areas specified in the First Schedule. It shall come into force in other areas of the State on such dates as the State Government may, by notification, appoint and different dates may be appointed for different areas and for different provisions of the Act and thereupon the First Schedule shall be deemed to have been amended accordingly.

NON-APPLICABILITY OF THE ACT

SEC. 3: ACT NOT TO APPLY TO CERTAIN ACCOMMODATIONS

- (1) Nothing in this Act shall apply to -
- (a) accommodation which is the property of the Government;
 - (b) accommodation which is the property of a local authority used exclusively for non-residential purposes;
- (2) The Government may, by notification, exempt from all or any of the provisions of this Act any accommodation which is owned by any educational, religious or charitable institution or by any nursing or maternity home, the whole of the income derived from which is utilized for that institution or nursing home or maternity home.

SEC. 4: PROVISIONS OF THE CHAPTER NOT TO APPLY TO CERTAIN ACCOMMODATIONS FOR SPECIFIED PERIOD

Nothing in this Chapter shall apply to any accommodation or part thereof, construction of which was completed before or after the commencement of this Act, **for a period of five years** from the date on which completion of such construction was notified to the local authority concerned.

The effect of such exemption is that such a landlord would be entitled to charge rent from a tenant as per agreement and no standard rent of that accommodation can be fixed before the expiry of five years of its construction. Further, the landlord of such accommodation can also receive premium for the grant of any lease in respect of such accommodations.

INTERPRETATION CLAUSE/DEFINITIONS (SEC. 2)

Sec.2 which provides for the interpretation clause opens with the words- "**In this Act, unless the context otherwise requires-**". This simply means that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive in as much as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context.

There are following definitions under Sec. 2 of the Act-

- (a) "**accommodation**" means any building or part of a building, whether residential or non-residential and includes, -
- (i) any land which is not being used for agricultural purposes;
 - (ii) garden, grounds, garages and out-houses, if any, appurtenant to such building or part of the building;
 - (iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;
 - (iv) any furniture supplied by the landlord for use in such building or part of building;

The Act gives its own definition to the term "Accommodation" and the definition is exhaustive. What is meant by accommodation is a building or part of a building irrespective of its use. It may be used for the purpose of residence or otherwise.

(b) "**landlord**" means a person, who, for the time being, is receiving, or is entitled to receive, the rent of any accommodation, whether on his own account or on account of or on behalf of or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the accommodation were let to a tenant and includes every person not being a tenant who from time to time derives title under a landlord.

This definition is exhaustive as well as inclusive.

(c) "**lawful increase**" means an increase in rent permitted under the provisions of this Act;

(d) "**lease**" includes a sub-lease;

(e) "**member of the family**" in case of any person means the spouse, son, unmarried daughter, father, grand father, mother, grand mother, brother, unmarried sister, paternal uncle, paternal uncle's wife or widow, or brother's son or unmarried daughter living jointly with, or any other relation dependent on him;

The expression "member of the family" has been used in clause (e) of Sec. 12(1) and Sec. 23-A of the Act. It becomes quite clear that a member of the family is divided into three categories of relations. In the first category, certain named relations alone are included while in the second it is brother's son or unmarried daughter living jointly with him and in the third category is any other relation who is dependent on him.

Here, what is to be marked is that the condition attached with the second category is not attached to the first and the condition attached to the third category is neither attached to the first nor to the second category. Therefore, in true sense, in order to decide whether a particular person is a member of the family or not, his relationship with the landlord must be checked and found out whether he belongs to the first category or the second category or the third category and if he belongs to the second or the third category, whether he fulfills the condition attached to such categories.

(f) "**Rent Controlling Authority**" means an officer appointed under section 28;

(g) "**repealed Act**" means the Madhya Pradesh Accommodation Control Act, 1955 (XXIII of 1955), repealed under section 51;

(h) "**standard rent**" in relation to any accommodation means standard rent referred to in section 7 or where the standard rent has been increased under section 8, such increased rent;

The Act does not define the term rent. Even clause (h) also does not give any definition of the term 'standard rent'. It just gives a reference to standard rent under Sec. 7 and lawfully increased rent under Sec. 8 respectively. In general, the term "rent" is comprehensive enough to include all payments agreed by tenant to be paid to his landlord for the use and occupation not only of the building and its appurtenances but also of furniture electric installations and other amenities agreed between the landlord and the tenant to be provided by and at the cost of the landlord.

(i) "**tenant**" means a person by whom or on whose account or behalf the rent of any accommodation is, or, but for the contract express or implied, would be payable for any accommodation and includes any person occupying the accommodation as a sub-tenant and also, any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act: but shall not include any person against whom any order or decree for eviction has been made.

PROVISIONS REGARDING RENT

SEC. 5: RENT IN EXCESS OF STANDARD RENT NOT RECOVERABLE

- 1) No tenant shall, notwithstanding any agreement to the contrary, be liable to pay to his landlord for the occupation of any accommodation any amount in excess of the standard rent of the accommodation,
- 2) Any agreement for the payment of rent in excess of the standard rent shall be construed as if it were an agreement for the payment of the standard rent only.

SEC. 6: UNLAWFUL CHARGES NOT TO BE CLAIMED OR RECEIVED

- 1) Subject to the provisions of this Act, no person shall claim or received any rent in excess of the standard rent, notwithstanding any agreement to the contrary.
- 2) No person shall, in consideration of the grant, renewal or continuance of a tenancy or sub-tenancy of any accommodation,-
 - (a) claim or receive the payment of any sum as premium or 'pugree' or claim or receive any consideration whatsoever, in cash or in kind, in addition to the rent;
 - (b) except with the previous permission of the Rent Controlling Authority, claim or receive the payment or any sum exceeding one month's rent of such accommodation as rent in advance.
- 3) It shall not be lawful for the tenant or any other person acting or purporting to act on behalf of the tenant or a sub-tenant to claim or receive any payment in consideration of the relinquishment, transfer or assignment of his tenancy or sub-tenancy, as the case may be, of any accommodation.
- 4) Nothing in this section shall apply to any payment made under an agreement by any person to a landlord for the purpose of financing the construction of the whole or part of any accommodation on the land belonging to, or taking on lease, by the landlord, if one of the conditions of the agreement is that the landlord is to let to that person the whole or part of the accommodation when completed for the use of that person or any member of his family:
Provided that such payment shall not exceed the amount of agreed rent for a period of five years of the whole or part of the accommodation to be let to such person.
- 5) Any payment made under sub-section (4) shall be deemed to be the payment of rent in advance for such period from the commencement of the tenancy to which it is relatable.

SEC. 7: STANDARD RENT- "*Standard rent*" in relation to any accommodation means-

- 1) Where reasonable annual rent or fair rent has been fixed by a competent authority under the repealed Act or prior to the commencement of the repealed Act, as the case may be, by a competent authority under the enactment for the time being in force, such reasonable annual rent or fair rent;
- 2) (i) where the accommodation was let out on or before the 1st day of January, 1948, and the reasonable annual rent or fair rent has not been so fixed, the rent of that accommodation as shown in the Municipal Assessment Register or as was realized on the 1st day of January, 1948, whichever is less; or
(ii) where the accommodation was not let out on or before the 1st day of January, 1948, the rent of that accommodation as shown in the Municipal Assessment Register or as could be realised on the 1st day of January, 1948, whichever is less; increased-

- (a) in the case of residential accommodation and accommodation used for education purpose, by thirty-five per cent of such rent;
- (b) in the case of other accommodation, by seventy per cent of such rent; and
- (c) in case the tenant is not liable to pay the municipal tax and there has been any increase in municipal tax subsequent to 1st day of January, 1948, by an amount equal to such increases:

Provided that the increase specified in paragraphs (a) and (b) shall be permissible only if the accommodation has been kept in good and tenantable repairs:

- 3) in case of accommodation not falling under clause (1) or (2) above-
 - (a) if the accommodation is separately assessed to municipal assessment, the annual rent according to such assessment plus fifteen per cent thereon;
 - (b) if only a part of the accommodation is so assessed, the proportionate amount of the annual rent for the whole accommodation according to such assessment plus fifteen percent thereon;
 - (c) if the accommodation is not so assessed, -
 - (i) the annual rent calculated with reference to the rent agreed upon between the landlord and the tenant when such accommodation is first let out, and if it has not been so let out, to such amount for which it could be let out immediately after its construction was completed; or
 - (ii) the annual rent calculated on the basis of annual payment of an amount equal to 6 3/4 percent per annum of the aggregate amount of the actual cost of construction and the market price of the land comprised in the accommodation on the date of the commencement of the construction;

whichever is less.

SEC. 8: LAWFUL INCREASE OF STANDARD RENT IN CERTAIN CASES AND RECOVERY OF OTHER CHARGES

- 1) Where a landlord has, at any time, before the commencement of this Act with or without the approval of the tenant or after the commencement of this Act with the written approval of the tenant or of the Rent Controlling Authority, incurred expenditure for any improvement, addition or structural alteration in the accommodation not being expenditure on decoration or tenantable repairs necessary or usual for such accommodation, and the cost of that improvement, addition or alteration has not been taken into account, in determining the rent of the accommodation, the landlord may lawfully increase the standard rent per year by an amount not exceeding ten percent of the rent payable, for the time being.
- 2) Where a landlord pays in respect of the accommodation any charge for electricity or water consumed in the accommodation or any other charge levied by a local authority having jurisdiction in the area which is ordinarily payable by the tenant, he may recover from the tenant the amount so paid by him, but the landlord shall not save as provided in Sec. 7, recover from the tenant whether by means of an increase in rent or otherwise, the amount of any tax on building or land imposed in respect of the accommodation occupied by the tenant.
- 3) Provided that nothing in this sub-section shall affect the liability of any tenant under an agreement, whether express or implied, to pay from time to time the amount of any such tax as aforesaid.

SEC. 9: NOTICE OF INCREASE OF RENT

- 1) Where a landlord wishes to increase the rent of any accommodation, he shall give the tenant notice of his intention to make the increase and in so far as such increase is lawful under this Act, it shall be due and recoverable only in respect of the period of the tenancy after the expiry of thirty days from the date on which the notice is given.
- 2) Every notice under sub-section (1) must be ***in writing signed by or on behalf of the landlord and either be sent by registered post acknowledgment due to the tenant or be tendered or delivered personally to him, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the accommodation.***

SEC. 10: RENT CONTROLLING AUTHORITY TO FIX STANDARD RENT, ETC.

- 1) The Rent Controlling Authority shall, on an application made to it in this behalf, either by the landlord or by the tenant, in the prescribed manner, fix in respect of any accommodation-
 - (i) the standard rent in accordance with the provisions of Sec. 7; or
 - (ii) the increase, if any, referred to in Sec. 8.
- 2) In fixing the standard rent of any accommodation or the lawful increase thereof, the Rent Controlling Authority shall fix an amount which appears to it to be reasonable having regard to the provisions of Sec. 7 or Sec. 8 and the circumstances of the case.
- 3) In fixing the standard rent of any accommodation part of which has been lawfully sub-let, the Rent Controlling Authority may also fix the standard rent of the part sub-let.
- 4) Where for any reason it is not possible to determine the standard rent of any accommodation on the principles set forth under Sec. 7, the Rent Controlling Authority may fix such rent as would be reasonable having regard to the situation, locality and condition of the accommodation and the amenities provided therein and where there are similar or nearly similar accommodation in the locality, having regard also to the standard rent payable in respect to such accommodations.
- 5) The standard rent shall be fixed for a tenancy of twelve months:
Provided that where the tenancy is from month to month or for any period less than a month, the standard rent for such tenancy shall bear the same proportion to the annual standard rent as the period of tenancy bears to twelve months.
- 6) In fixing the standard rent of any accommodation under this section, the Rent Controlling Authority shall fix the standard rent thereof in an unfurnished state and may also determine an additional charge to be payable on account of any furniture supplied by the landlord and it shall be lawful for the landlord to recover such additional charge from the tenant.
- 7) In fixing the standard rent of any accommodation under the section, the Rent Controlling Authority shall specify a date from which the standard rent so fixed shall be deemed to have effect:
Provided that in no case the date so specified shall be earlier than thirty days prior to the date of the filing of the application for the fixation of the standard rent.

SEC. 11: FIXATION OF INTERIM RENT

If an application for fixing the standard rent or for determining the lawful increase of such rent is made under section 10, the Rent Controlling Authority shall, pending final decision on the application, make, as expeditiously as possible, a provisional order specifying the amount of the interim rent or lawful increase to be paid by the tenant to the landlord and shall appoint the date from which such interim rent or lawful increase so specified shall be deemed to have effect.

**CONTROL OF EVICTIONS OF TENANTS, EVICTION ON GROUNDS OF BONAFIDE
REQUIREMENT, DEPOSIT OF RENTS**

Chapter III of the Act provides for “**Control of Eviction of Tenants**”. But, the very first provision of this Chapter i.e. **Sec. 11-A** creates an exclusion in favour of certain landlords regarding applicability of this Chapter. It is as follows-

SEC. 11-A: CERTAIN PROVISION NOT TO APPLY TO CERTAIN CATEGORIES OF LANDLORDS

The Provision of this Chapter so far as they relate to matter specially provided in Chapter III-A shall not apply to the landlord defined in section 23-J.

SEC. 12: RESTRICTION ON EVICTION OF TENANTS

1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely:

- (a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner;
- (b) that the tenant has, whether before or after the commencement of this Act, unlawfully sub-let, assigned or otherwise parted with the possession of the whole or any part of the accommodation for consideration or otherwise;
- (c) that the tenant or any person residing with him has created a nuisance or has done any act which is inconsistent with the purpose for which he was admitted to the tenancy of the accommodation, or which is likely to affect adversely and substantially the interest of the landlord therein;

Provided that the use by a tenant of a portion of the accommodation as his office shall not be deemed to be an act inconsistent with the purpose for which he was admitted to the tenancy:

- (d) that the accommodation has not been used without reasonable cause for which it was let, for a continuous period of six months immediately preceding the date of the filing of the suit for the recovery of possession thereof;
- (e) that the accommodation let for residential purposes is required bonafide by the landlord for occupation as a residence for himself or for any member of his family, if he is the owner thereof, or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned;
- (f) that the accommodation let for non-residential purposes is required bonafide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned;

- (g) that the accommodation has become unsafe, or unfit for human habitation and is required bonafide by the landlord for carrying out repairs which cannot be carried out without the accommodation being vacated;
 - (h) that the accommodation is required bonafide by the landlord for the purpose of building or re-building or making thereto any substantial additions or alterations and that such building or re-building or alterations cannot be carried out without the accommodation being vacated;
 - (i) that the tenant has, whether before or after the commencement of this Act, built, acquired vacant possession of, or, been allotted an accommodation suitable for his residence;
 - (j) that the accommodation was let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment;
 - (k) that the tenant has, whether before or after the commencement of this Act, caused or permitted to be caused substantial damage to the accommodation;
 - (l) that the tenant has given written notice to quit and in consequence of that notice, the landlord has contracted to sell the accommodation or has taken any other step as a result of which his interests would seriously suffer if he is not put in possession of that accommodation;
 - (m) that the tenant has, without the written permission of the landlord, made or permitted to be made, any such construction as has materially altered the accommodation to the detriment of the landlord's interest or is likely to diminish its value substantially;
 - (n) in the case of accommodation which is open land, that the landlord requires it for constructing a house on it;
 - (o) that the tenant has without the written permission of the landlord also taken possession of such portion or portions of accommodation which is not included in the accommodation let to him and which the tenant has not vacated inspite of a written notice of the landlord in that behalf;
 - (p) that the tenant has been convicted under any law for the time being in force of an offence of using the building or allowing the building to be used for immoral or illegal purposes.
- 2) No order for the eviction of tenant in any proceeding under sub-section (1) shall be binding on any sub-tenant referred to in Sec. 15 who has given notice of his sub-tenancy to the landlord under the provisions of that section, unless the sub-tenant is made a party to the proceeding and the order for eviction is made binding on him.
- 3) No order for the eviction of a tenant shall be made on the ground specified in clause (a) of sub-section (1), if the tenant makes payment or deposit as required by section 13:
Provided that no tenant shall be entitled to the benefit under this sub-section, if, having obtained such benefit once in respect of any accommodation, he again makes a default in the payment of rent of that accommodation for three consecutive months.
- 4) Where a landlord has acquired any accommodation by transfer, no suit for the eviction of tenant shall be maintainable under sub-section (1) on the ground specified in clause (e) or clause (f) thereof, unless a period of one year has elapsed from the date of the acquisition.
- 5) Where an order for the eviction of a tenant is made on the ground specified in clause (e) of sub-section (1), the landlord shall not be entitled to obtain possession thereof before the expiration of a period of two months from the date of the order.

- 6) Where an order for the eviction of a tenant is made on the ground specified in clause (f) of sub-section (1), the landlord shall not be entitled to obtain possession thereof-
- (a) before the expiration of a period of two months from the date of the order; and
 - (b) If the accommodation is situated in cities of Gwalior (including Lashkar and Morar), Indore, Ujjain, Ratlam, Bhopal, Jabalpur, Raipur, Durg or such other towns or cities specified by the State Government by a notification in that behalf, unless the landlord pays to the tenant such amount by way of compensation as may be equal to-
 - (i) **double the amount of the annual standard rent of the accommodation in the following cases, namely-**
 - a) where the accommodation has, for a period of ten years immediately preceding the date on which the landlord files a suit for possession thereof, been used for business purposes or for any other purpose along with such purpose, by the tenant who is being evicted;
 - b) where during the aforesaid period of ten years, the tenant carrying on any business in the accommodation has left it, and the tenant immediately succeeding has acquired the business of his predecessor either through transfer or inheritance;
 - (ii) the amount of the annual standard rent in other cases.)
- 7) No order for the eviction of a tenant shall be made on the ground specified in clause (h) of sub-section 10, unless the Court is satisfied that the proposed reconstruction will not radically alter the purpose for which the accommodation was let or that radical alteration is in the public interest, and that the plans and estimates of such reconstruction have been properly prepared and that necessary funds for the purpose are available with the landlord.
- 8) No order for the eviction of a tenant shall be made on the ground specified in clause (j) of sub-section (1), if any dispute as to whether the tenant has ceased to be in the service or employment of the landlord is pending before any authority competent to decide such dispute.
- 9) No order for the eviction of a tenant shall be made on the ground specified in clause (k) of sub-section (1), if the tenant, within such time as may be specified in this behalf by the Court, carries out repairs to the damage caused to the satisfaction of the Court or pays to the landlord such amount by way of compensation as the Court may direct.
- 10) No order for the eviction of a tenant shall be made on the ground specified in clause (m) of sub-section (1), if the tenant within such time as may be specified in this behalf by the Court restores the accommodation to its original condition or pays to the landlord such amount by way of compensation as it may direct.
- 11) No order for the eviction of a tenant shall be made on the ground specified in clause (o) of sub-section (1), if the tenant within such time as may be specified in this behalf by the Court vacates the portion or portions of accommodation not let to him and pays to the landlord such amount by way of compensations as it may direct.

SEC. 13: WHEN TENANT CAN GET BENEFIT OF PROTECTION AGAINST EVICTION

- 1) On a suit or any other proceeding being instituted by a landlord on any of the grounds referred to in Sec. 12 or in any appeal or any other proceeding by a tenant against any decree or order for his eviction, the tenant shall, within one month of the service of writ of summons or notice of appeal or of any other proceeding, or within one month of institution of appeal or any other proceeding by

the tenant, as the case may be, or within such further time as the Court may on an application made to it allow in this behalf, deposit in the Court or pay to the landlord, an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made; and shall thereafter continue to deposit or pay, month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate till the decision of the suit, appeal or proceeding, as the case may be.

- 2) If in any suit or proceeding referred to in sub-section (1), there is any dispute as to the amount of rent payable by the tenant, the Court shall, on a plea made either by landlord or tenant in that behalf which shall be taken at the earliest opportunity during such suit or proceeding, fix a reasonable provisional rent, in relation to the accommodation, to be deposited or paid in accordance with the provisions of sub-section (1) and no Court shall, save for reasons to be recorded in writing, entertain any plea on this account at any subsequent stage.
- 3) If, in any proceeding referred to in sub-section (1), there is any dispute as to the person or persons to whom the rent is payable, the Court may direct the tenant to deposit with the Court the amount payable by him under sub-section (1) or sub-section (2), and in such a case, no person shall be entitled to withdraw the amount in deposit until the Court decides the dispute and makes an order for payment of the same.
- 4) If the Court is satisfied that any dispute referred to in sub-section (3) has been raised by the tenant for reasons which are false or frivolous, the court may order the defence against eviction to be struck out and proceed with the hearing of the suit.
- 5) If a tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no decree or order shall be made by the Court for the recovery of possession of the accommodation on the ground of default in the payment of rent by the tenant, but the Court may allow such cost as it may deem fit to the landlord.
- 6) If the tenant fails to deposit or pay any amount as required by this section, the Court may order the defence against eviction to be struck out and shall proceed with the hearing of the suit, appeal or proceeding, as the case may be.

SEC. 14: RESTRICTIONS OF SUB-LETTING

- 1) No tenant shall, without the previous consent in writing of the landlord-
 - a) sub-let the whole or any part of the accommodation held by him as a tenant; or
 - b) transfer or assign his rights in the tenancy or in any part thereof.
- 2) No landlord shall claim or receive the payment of any sum as premium or 'pugree' or claim or receive any consideration whatsoever in cash or in kind for giving his consent to the sub-letting of the whole or any part of the accommodation held by the tenant.

SEC. 15: NOTICE OF CREATION AND TERMINATION OF SUB-TENANCY

- 1) Where, after the commencement of this Act, any accommodation is sub-let either in whole or in part by the tenant with the previous consent in writing of the landlord, the tenant or the sub-tenant to whom the accommodation is sub-let may, in the prescribed manner, give notice to the landlord of the creation of the sub-tenancy within one month of the date of such sub-letting and notify the termination of such sub-tenancy within one month of such termination.

- 2) Where, before the commencement of this Act, any accommodation has been lawfully sub-let either in whole or in part by the tenant, the tenant or the sub-tenant to whom the accommodation has been sub-let may, in the prescribed manner, give notice to the landlord of the creation of the sub-tenancy within six months of the commencement of this Act, and notify the termination of such sub-tenancy within one month of such termination.
- 3) Where, in any case mentioned in sub-section (2), the landlord contests that the accommodation was not lawfully sub-let and an application is made to the Rent Controlling Authority in this behalf, either by the landlord or by the sub-tenant, within two months of the date of the receipt of the notice of sub-letting by the landlord or the issue of the notice by the tenant or the sub-tenant, as the case may be, the Rent Controlling Authority shall decide the dispute.

SEC. 16: SUB-TENANT TO BE TENANT IN CERTAIN CASES

- 1) Where an order for eviction in respect of any accommodation is made under Sec. 12 against a tenant but not against a sub-tenant referred to in Sec. 15 and a notice of the sub-tenancy has been given to the landlord, the sub-tenant shall, with effect from the date of the order, be deemed to become a tenant holding directly under the landlord in respect of the accommodation in his occupation on the same terms and conditions on which the tenant would have held from the landlord, if the tenancy had continued.
- 2) Where, before the commencement of this Act, the interest of a tenant in respect of any accommodation has been determined without determining the interest of any sub-tenant to whom the accommodation either in whole or in part had been lawfully sub-let, the sub-tenant shall, with effect from the date of the commencement of this Act, be deemed to have become a tenant holding directly under the landlord on the same terms and conditions on which the tenant would have held from the landlord, if the tenancy had continued.

CHAPTER III-A (Sec. 23-A to 23-J)
EVICTION OF TENANTS ON GROUNDS OF BONAFIDE REQUIREMENT

Chapter III-A of M.P. Accommodation Control Act, 1961 is meant to apply on certain specified class of landlords which have been exhaustively defined under Sec. 23-J.

SEC. 23-J: DEFINITION OF LANDLORD FOR THE PURPOSES OF CHAPTER III-A

For the purposes of this Chapter 'landlord' means a landlord who is-

- (i) a retired servant of any Government including a retired member of Defence Services; or
- (ii) a retired servant of a company owned or controlled either by the Central or State Government; or
- (iii) a widow or a divorced wife; or
- (iv) physically handicapped person; or
- (v) a servant of any Government including a member of defence services who, according to his service conditions, is not entitled to Government accommodation on his posting to a place where he owns a house or is entitled to such accommodation only on payment of a penal rent on his posting to such a place.

Provisions which are to apply on these landlords as provided under Chapter III-A are as follows:-

SEC. 23-A: SPECIAL PROVISION FOR EVICTION OF TENANT ON GROUND OF BONA FIDE REQUIREMENT

Notwithstanding anything contained in any other law for the time being in force or contract to the contrary, a landlord may submit an application, signed and verified in a manner provided in rules 14 and 15 of Order VI of the First Schedule to the Code of Civil Procedure, 1908 **as if it were a plaint to the Rent Controlling Authority** on one or more of the following grounds for an order directing the tenant to put the landlord in possession of the accommodation, namely:-

- (a) that the accommodation let for residential purposes is required "bona fide" by the landlord for occupation as residence for himself or for any member of his family, or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned.

Explanation-

For the purposes of this clause, "accommodation let for residential purposes" includes -

- (i) any accommodation which having been let for use as a residence is without the express consent of the landlord used wholly or partly for any non-residential purpose;
- (ii) any accommodation which has not been let under an express provision of contract for non-residential purpose;
- (b) that the accommodation let for non-residential purposes is required "bona fide" by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters, if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned.

Provided that, where a person, who is a landlord, has acquired any accommodation or any interest therein by transfer, no application for eviction of tenant of such accommodation shall be maintainable at the instance of such person unless a period of one year has elapsed from the date of such acquisition.

SEC. 23-B: RCA to issue summons in relation to every application under section 23-A

SEC. 23-C: Tenant not entitled to contest except under certain circumstances

SEC. 23-D: Procedure to be followed by RCA or grant at leave to tenant to contest

SEC. 23-E: Revision by High Court

SEC. 23-F: Duration of stay

SEC. 23-G: Recovery of possession for occupation and re-entry

SEC. 23-H: Deposit or rent pending proceedings for eviction or for revision

SEC. 23-I: False and frivolous application etc.

CHAPTER IV: DEPOSIT OF RENTS

Chapter IV of the Act provides for deposit of rents. Provisions are as follows-

SEC. 24: RECEIPT TO BE GIVEN FOR RENT PAID

- 1) Every tenant shall pay rent within the time fixed by contract or in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable.

- 2) Every tenant who makes a payment of rent to his landlord shall be entitled to obtain forthwith from the landlord or his authorized agent, a written receipt for the amount paid to him, signed by the landlord or his authorized agent.
- 3) If the landlord or his authorized agent refuses or neglects to deliver to the tenant a receipt referred to in sub-section (2), the RCA may, on an application made to it in this behalf by the tenant within two months from the date of payment and after hearing the landlord or his authorized agent, by order direct the landlord or his authorized agent, to pay to the tenant by way of damages, such sum not exceeding double the amount of rent paid by the tenant and the costs of the application, and shall also grant a certificate to the tenant in respect of the rent paid.

SEC. 25: DEPOSIT OF RENT BY TENANT

- 1) Where the landlord does not accept any rent tendered by the tenant within the time referred to in section 24 or refuses or neglects to deliver a receipt referred to therein or where there is a *bona fide* doubt as to the person or persons to whom the rent is payable, the tenant may deposit such rent with the Rent Controlling Authority in the prescribed manner and such deposit of rent shall be a full discharge of the tenant from the liability to pay rent to the landlord.
- 2) The deposit shall be accompanied by an application by the tenant containing the following particulars, namely:
 - (a) the accommodation for which the rent is deposited with a description sufficient for identifying the accommodation;
 - (b) the period for which the rent is deposited;
 - (c) the name and address of the landlord or the person or persons claiming to be entitled to such rent;
 - (d) the reasons and circumstances for which the application for depositing the rent is made;
 - (e) such other particulars as may be prescribed.
- 3) On such deposit of the rent being made, the Rent Controlling Authority shall send in the prescribed manner a copy or copies of the application to the landlord or persons claiming to be entitled to the rent with an endorsement of the date of the deposit.
- 4) If an application is made for the withdrawal of any deposit of rent, the Rent Controlling Authority shall, if satisfied that the applicant is the persons entitled to receive the rent deposited, order the amount of the rent to be paid to him in the manner prescribed and such payment of rent shall be a full discharge of the Rent Controlling Authority from all liability to pay rent to the landlord:
- 5) Provided that no order for payment or any deposit of rent shall be made by the Rent Controlling Authority under this sub-section without giving all persons named by the tenant in his application under sub-section (2), as claiming to be entitled to payment of such rent, an opportunity of being heard and such order shall be without prejudice to the rights of such persons to receive such rent being decided by a court of competent jurisdiction.
- 6) If at the time of filing the application under sub-section (4), but not after the expiry of thirty days from receiving the notice of deposit, the landlord or the person or persons claiming to be entitled to the rent complains or complain to the Rent Controlling Authority that the statements in the tenant's application of the reasons and circumstances which led him to deposit the rent are untrue, the Rent Controlling Authority, after giving the tenant an opportunity of being heard, may levy on the tenant a fine which may extend to an amount equal to two months rent, if the Rent Controlling Authority is satisfied that the said statements were materially untrue and may order that a sum out of the fine realised be paid to the landlord as compensation.

- 7) The Rent Controlling Authority may, on the complaint of the tenant and after giving an opportunity to the landlord of being heard, levy on the landlord a fine which may extend to an amount equal to two months rent, if the Rent Controlling Authority is satisfied that the landlord, without any reasonable cause, refused to accept rent though tendered to him within the time referred to in section 24 and may further order that a sum out of the fine realised be paid to the tenant as compensation.

SEC. 26: TIME LIMIT FOR MAKING DEPOSIT AND CONSEQUENCES OF INCORRECT PARTICULARS IN APPLICATION FOR DEPOSIT

- 1) No rent deposited under section 25 shall be considered to have been validly deposited under that section, unless the deposit is made within twenty-one days of the time referred to in section 24 for payment of the rent.
- 2) No such deposit shall be considered to have been validly made, if the tenant willfully makes any false statement in his application for depositing the rent, unless the landlord has withdrawn the amount deposited before the date of filing an application for the recovery of possession of the accommodation from the tenant.
- 3) If the rent is deposited within the time mentioned in sub-section (1) and does not cease to be a valid deposit for the reason mentioned in sub-section (2), the deposit shall constitute payment of rent to the landlord as if the amount deposited had been validly tendered.

SEC. 27: SAVING AS TO ACCEPTANCE OF RENT AND FORFEITURE OF RENT IN DEPOSIT

- 1) The withdrawal of rent deposited under section 25 in the manner provided therein shall not operate as an admission against the person withdrawing it of the correctness of the rate of rent, the period of default, the amount due, or of any other facts stated in the tenant's application for depositing the rent under the said section.
- 2) Any rent in deposit which is not withdrawn by the landlord or by the person or persons entitled to receive such rent shall be forfeited to Government by an order made by the Rent Controlling Authority, if it is not withdrawn before the expiration of five years from the date of posting of the notice of deposit.
- 3) Before passing an order of forfeiture, the Rent Controlling Authority shall give notice to the landlord or the person or persons entitled to receive the rent in deposit by registered post acknowledged due at the last known address of such landlord or person or persons and shall also publish the notice in his officer, and if the amount of rent exceeds hundred rupees, shall also publish it in any local newspaper.

UNIT V: RENT CONTROLLING AUTHORITY

- ⇒ Appointment
- ⇒ Powers and Functions of Rent Controlling Authority
- ⇒ Procedure
- ⇒ Appeals
- ⇒ Special obligations and penalties of Land Lords
- ⇒ Miscellaneous provisions

APPOINTMENT OF RENT CONTROLLING AUTHORITY

SEC. 28: APPOINTMENT OF RENT CONTROLLING AUTHORITY

- 1) The collector shall, with the previous approval of the State Government appoint an officer, not below the rank of Deputy Collector to be the Rent Controlling Authority for the area within his jurisdiction to which this Act applies.
- 2) The Collector may, with the previous approval of the State Government, appoint, from amongst officers, not below the rank of a Deputy Collector, one or more Rent Controlling Authorities, as he deems fit to assist the Rent Controlling Authority appointed under sub-section (1).

POWERS AND FUNCTIONS OF RENT CONTROLLING AUTHORITY

SEC. 29: POWERS OF RENT CONTROLLING AUTHORITY

- 1) The Rent Controlling Authority shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in any proceeding before it in respect of the following matters, namely:
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) issuing commissions for the examination of witnesses;
 - (d) any other matter which may be prescribed; and
- 2) any proceeding before the Rent Controlling Authority shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1960, and the Rent Controlling Authority shall be deemed to be a Civil Court within the meaning of section 480 and section 482 of the Code of Criminal Procedure, 1898.
- 3) For the purposes of holding any inquiry or discharging any duty under this Act, the Rent Controlling Authority may,-
 - (a) after giving not less than twenty-four hours' notice in writing, enter and inspect any accommodation at any time between sunrise and sunset; or
 - (b) by written order, require any person to produce for his inspection, all such accounts, books or other documents relevant to the inquiry at such time and at such place as may be specified in the order.

**PROCEDURE TO BE FOLLOWED BY RENT CONTROLLING
AUTHORITY IN APPLICATIONS AND APPEALS**

SEC. 30: PROCEDURE TO BE FOLLOWED BY RENT CONTROLLING AUTHORITY

- 1) No order which prejudicially affects any person shall be made by the Rent Controlling Authority under this Act without giving him a reasonable opportunity of showing cause against the order proposed to be made and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the Rent Controlling Authority.
- 2) In all proceedings before it, the Rent Controlling Authority shall consider the question of costs and award such costs to or against any party as the Rent Controlling Authority considers reasonable.

SEC. 31: APPEAL TO DISTRICT JUDGE OR ADDITIONAL DISTRICT JUDGE

- 1) An appeal shall lie from every order of the Rent Controlling Authority made under this Act to the District Judge or an Additional District Judge having territorial jurisdiction (hereinafter referred to as the Judge) and the decision of the appellate court shall be final.
- 2) An appeal under sub-section (1) shall be preferred within thirty days from the date of the order made by the Rent Controlling Authority:
Provided that in computing the period of thirty days the period requisite for obtaining a copy of the order shall be excluded:
Provided further that the Judge may, for sufficient reasons, allow an appeal after the expiry of said period.

SEC. 32: SECOND APPEAL

A second appeal shall lie against any order passed in first appeal under section 31 on any of the following grounds and no other, namely:

- (i) that the decision is contrary to law or usage having the force of law; or
- (ii) that the decision has failed to determine some material issue of law; or
- (iii) that there has been a substantial error or defect in the procedure as prescribed by this Act, which may possibly have produced error or defect in the decision of the case upon merits.

SEC. 33: AMENDMENT OF ORDERS - Clerical or arithmetical mistakes to any order passed by a Rent Controlling Authority or the Judge or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Rent Controlling Authority or the or the Judge on an application received in this behalf from any of the parties or otherwise.

SEC. 34: RCA TO EXERCISE POWERS OF MAGISTRATE FOR RECOVERY OF FINE

Any fine imposed by the Rent Controlling Authority under this Act shall be paid by the person fined, within such time as may be allowed by the Rent Controlling Authority and the Rent Controlling Authority may, for good and sufficient reason, extend the time, and in default of such payment, the amount shall be recoverable as a fine under the provisions of the Code of Criminal Procedure, 1898 and the Rent Controlling Authority shall be deemed to be a Magistrate under the said Code for the purposes of such recovery.

SEC. 35: RCA TO EXERCISE POWERS OF CIVIL COURT FOR EXECUTION OF OTHER ORDER

Save as otherwise provided in section 34, an order made by the Rent Controlling Authority or an order passed in appeal under this Chapter or in a revision under Chapter III-A shall be executable by the Rent Controlling Authority as a decree of a Civil Court and for this purpose, the Rent Controlling Authority shall have all the powers of a Civil Court.

SEC. 36: FINALITY OF ORDER

Save as otherwise expressly provided in this Act, every order made by the Rent Controlling Authority shall, subject to decision in appeal, be final and shall not be called in question in any original suit, application or execution proceeding.

SPECIAL OBLIGATIONS AND PENALTIES OF LANDLORDS

SEC. 37: LANDLORD'S DUTY TO KEEP ACCOMMODATION IN GOOD REPAIR

- 1) Every landlord shall be bound to keep the accommodation in good and tenable repairs.
- 2) If the landlord neglects or fails to make, within a reasonable time after notice in writing, any repairs which he is bound to make under sub-section (1), the tenant may make the same himself and deduct the expenses of such repairs from the rent or otherwise recover them from the landlord:

Provided that the amount so deducted or recoverable in any year shall not exceed one-twelfth of the rent payable by the tenant for that year.

- 3) Where any repairs without which the accommodation is not habitable or usable except with undue inconvenience are to be made and the landlord neglects or fails to make them after notice in writing, the tenant may apply to the Rent Controlling Authority for permission to make such repairs himself and, may submit to the Rent Controlling Authority an estimate of the cost of such repairs, and, thereupon, the Rent Controlling Authority may, after giving the landlord an opportunity of being heard and after considering such estimate of the cost and making such inquiries as it may consider necessary, by an order in writing, permit the tenant to make such repairs at such cost as may be specified in the order and it shall thereafter be lawful for the tenant to make such repairs himself and to deduct the cost thereof, which shall in no case exceed the amount so specified, from the rent or otherwise recover it from the landlord.

Provided that the amount so deducted or recoverable in any year shall not exceed one-half of the rent payable by the tenant for that year:

Provided further that if any repairs not covered by the said amount are necessary in the opinion of the Rent Controlling Authority, and the tenant agrees to bear the excess cost himself, the Rent Controlling Authority may permit the tenant to make such repairs.

SEC. 38: CUTTING OFF OR WITHHOLDING ESSENTIAL SUPPLY OR SERVICE

- 1) No landlord either himself or through any persons purporting to act on his behalf shall without just and sufficient cause cut off or withhold any essential supply or service enjoyed by the tenant in respect of the accommodation let to him.
- 2) If a landlord contravenes the provisions of sub-section (1) the tenant may make an application to the Rent Controlling Authority complaining of such contravention.

- 3) If the Rent Controlling Authority on inquiry finds that the essential supply or service enjoyed by the tenant in respect of the accommodation was cut off or withheld by the landlord without just and sufficient cause, it shall make an order directing the landlord to restore such supply or service.
- 4) The Rent Controlling Authority may in its discretion direct that compensation not exceeding fifty rupees -
 - (a) be paid to the landlord by the tenant, if the application under sub-section (2) was made frivolously or vexatiously :
 - (b) be paid to the tenant by the landlord, if the landlord had cut off or withheld the supply or service without just and sufficient cause.

Explanation I. - In this section, "essential supply or service" includes supply of water, electricity, lights in passages and on stair cases, conservancy and sanitary services.

Explanation II. - For the purposes of this section, withholding any essential supply or service shall include acts or omissions attributable to the landlord on account of which the essential supply or service is cut off by the local authority or any other competent authority.

SEC. 39: CONTROL OF LETTING

- 1) The Collector or such other Officer not below the rank of a Deputy Collector as may be authorized by him in this behalf (hereinafter referred to in this Chapter as the authorised officer) may, on his own motion or on application made to him in this behalf, by general or special order, require a landlord to give information in writing within such time as may be specified therein of any accommodation which has fallen vacant or is likely to fall vacant and also require him to let or not to let such accommodation except in accordance with such order as he may give in accordance with the provisions of this Chapter.
- 2) If any accommodation which has fallen vacant or is likely to fall vacant is required for occupation by any person holding an office of profit under the Union or State Government or any person in the service of a local authority, the Madhya Pradesh Electricity Board, the Board of Secondary Education, Madhya Pradesh, or such other body corporate as may be specified by the State Government by a notification in the Gazette, the Collector or the authorized officer, may, subject to the provisions of section 40 within 15 days from the date of receipt of the information given by the landlord in pursuance of an order issued under sub-section (1) by order allot the accommodation to any such person as may be specified by him in the order and direct the landlord to put him in possession of the accommodation and the landlord shall place him in possession immediately if it is vacant or as soon as it becomes vacant:

Provided that if the landlord has in the information given in pursuance of an order issued under sub-section (1) stated that he needs the accommodation for his own occupation, the Collector or the authorized officer, shall if satisfied after due inquiry that the accommodation is so needed, permit the landlord to occupy the same.

Provided further that in allotting the accommodation to any person under this sub-section due regard will be had, as far as possible, to the wishes of the landlord as regards the type of the person to whom the accommodation may be allotted, as may be indicated by him in the information given in pursuance of an order issued under sub-section (1).
- 3) If no order is passed and served upon the landlord within the period specified in sub-section (2), he shall be free to let the vacant accommodation to any person.

- 4) Provided that in a case failing under the first proviso to sub-section (2), the period spent in an enquiry shall be excluded.
- 5) The Collector or the authorized officer may take or cause to be taken such steps and use or cause to be used such minimum force including police force as may, in his opinion is reasonable for securing the compliance with, or for preventing or rectifying contravention of the Act or rules thereunder or for the effective exercise of such power.
- 6) Nothing in this section shall apply to-
 - a) any accommodation used for residential purposes the monthly rent of which does not exceed twenty-five rupees:
 - b) any accommodation used for non-residential purposes the monthly rent of which does not exceed fifty rupees ;
 - c) any accommodation which has fallen vacant in pursuance of an order passed under this Act for the purpose of occupation by the landlord :
 - d) any accommodation belonging to a local authority, company or Firm and *bona-fide* intended solely for the occupation of its officers, servants and agents.

SEC. 40: ALLOTMENT OF ACCOMMODATION

The Collector or the authorized officer shall as far as possible allot accommodation under sub-section (2) of section 39 in accordance with the following principles:

- 1) The accommodation shall be allotted in the following order of priority:
 - (i) Persons holding office of profit under the Union or the State Government;
 - (ii) Persons in the service of a local authority, Madhya Pradesh Electricity Board, Board of Secondary Education, Madhya Pradesh, or such other body corporate as may be specified by the State Government by notification.
- 2) If the accommodation was occupied by a person holding an office of profit for the Union or the State Government, it shall be allotted to his successor :
Provided that for reasons to be recorded in writing, it may be allotted to any other person who is not a successor of the previous occupant.

SEC. 40-A: SPECIAL PROVISION OF ALLOTMENT DURING EMERGENCY

SEC. 41: LIABILITY OF PERSON ALLOTTED ACCOMMODATION TO PAY RENT

SEC. 42: TERMINATION OF TENANCY

The tenancy of any person who has been allotted an accommodation by virtue of his office shall terminate on the date on which he ceases to hold such office on account of transfer, retirement or otherwise and the said person shall vacate such accommodation by a further period not exceeding four months.

SEC. 43: PENALTIES

- 1) If any person receives any rent in excess of the standard rent as specified in clause (1) of Section 7 or as fixed by the Rent Controlling Authority under section 10, he shall be punishable with simple imprisonment for a term which may extend to three months, or with fine which may extend to a sum which exceeds the unlawful charge claimed or received in excess of the standard rent by one thousand rupees, or with both.

- 2) If any person contravenes any of the provisions of sub-section (2) or sub-section (3) of section 6, he shall be punishable with simple imprisonment for a term which may extend to six months, or with fine which may extend to a sum which exceeds the amount or value of unlawful charge claimed or received under the said sub-section (2) or sub-section (3). as the case may be, by five thousand rupees, or with both.
- 3) If any tenant sub-lets, assigns or otherwise parts with the possession of the whole or part of any accommodation in contravention of the provisions of clause (b) of sub-section (1) of section 12, he shall be punishable with fine which may extend to one thousand rupees.
- 3-A) If any landlord re-lets or transfers the whole or any part of any accommodation in contravention of the provisions of sub-section (1) or sub-section (2) of section 17, he shall be punishable with imprisonment for a term which may extend to one thousand rupees, or with both.)
- 4) If any landlord re-lets or transfers the whole or any part of any accommodation in contravention of the provisions of sub-section (3) or sub-section (4) of section 23-G, he shall be punishable with imprisonment for a term which may extend to three months, or with fine, which may extend to one thousand rupees or with both.
- 5) If any landlord contravenes the provisions of sub-section (1) of section 38, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.
- 6) If any person contravenes the provisions of ³(sub-section (1) or sub-section (2) of section 39 or of sub-section (2) of section 40-A) he shall be punishable with simple imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

SEC. 44: COGNIZANCE OF OFFENCES

- 1) No court inferior to that of a magistrate of the First Class shall try any offence punishable under this Act.
- 2) No Court shall take cognizance of an offence punishable under this Act, unless the complaint in respect of the offence has been made within three months from the date of the commission of the offence.
- 3) Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any magistrate of the First Class to pass a sentence of fine exceeding two thousand rupees on a person convicted of an offence punishable under this Act.

**MISCELLANEOUS PROVISIONS UNDER
M.P. ACCOMODATION CONTROL ACT**

SEC. 45: JURISDICTION OF CIVIL COURTS BARRED IN RESPECT OF CERTAIN MATTERS

- 1) Save as otherwise expressly provided in this Act, no civil court shall entertain any suit or proceeding in so far as it relates to the fixation of standard rent in relation to any accommodation to which this Act applies or to any other matter which the Rent Controlling Authority is empowered by or under this Act to decide, and no injunction in respect of any action taken or to

be taken by the Rent Controlling Authority under this Act shall be granted by any civil court or other authority.

- 2) Nothing in sub-section (1) shall be construed as preventing a civil court from entertaining any suit or proceeding for the decision of any question of title to any accommodation to which this Act applies or any question as to the person or persons who are entitled to receive the rent of such accommodation.

SEC. 46: ABETMENT OF CONTRAVENTION PUNISHABLE AS CONTRAVENTION

Any person who attempts to contravene or abets the contravention of any order passed or deemed to have been passed under this Act shall be deemed to have contravened that order.

SEC. 47: Liability of contravention in case of company, firm etc.

If the person, who contravenes any order made or deemed to have been made under this Act is a company partnership, firm or other body corporate, every director, partner, manager, secretary or other officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

SEC. 48: RENT CONTROLLING AUTHORITY TO BE PUBLIC SERVANT WITHIN THE MEANING OF SECTION 21 OF THE INDIAN PENAL CODE, 1860.

SEC. 49: PROTECTION OF ACTION TAKEN IN GOOD FAITH

No suit, prosecution or other legal proceeding shall lie against the Collector, the Rent Controlling Authority or the officer authorised by the Collector under sub-section (1) of section 39 in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

SEC. 50: POWER TO MAKE RULES

- 1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.
- 2) In particular, and without prejudice to the generally of the foregoing power, such rules may provide for all or any of the following matters, namely:
 - a) the form and manner in which, and the period within which, an application may be made to the Rent Controlling Authority :
 - b) the manner in which a Rent Controlling Authority may hold an inquiry under this Act:
 - c) the powers of the civil court which may be vested in a Rent Controlling Authority.
 - d) the manner of service of notices under this Act:
 - e) any other matter which has to be, or may be, prescribed.
- 3) All rules made under this section shall be laid on the table of the Assembly.