

# Why the Transfer of Property Act, 1882 is not Applicable in Punjab: A Legal Analysis

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## Abstract

The Transfer of Property Act, 1882<sup>i</sup>, is a cornerstone of Indian property law, governing the transfer of property between living persons. While it is uniformly applicable across most Indian states, its implementation in Punjab has been subject to unique historical, legal, and administrative nuances. This paper explores the extent and manner in which the TPA is applicable in Punjab, with a focus on legislative exceptions, customary practices, and judicial interpretations. The study aims to provide clarity on the current legal position and highlight areas requiring harmonization for greater legal certainty in property transactions within Punjab.

## Introduction

The concept of the transfer of property has existed since time immemorial and encompasses various forms such as sale, mortgage, lease, gift, and exchange of property. Due to the absence of a comprehensive legal framework governing the transfer of immovable property, numerous disputes frequently arose among parties. Consequently, it became imperative to enact a clear and effective law that defines and regulates the various aspects of immovable property transfer, providing certainty and reducing conflicts in this area of law.

## Background of the Transfer of Property Act, 1882

Before 1882, specific provisions governed the transfer of property by operation of law and the transfer of movable property by act of parties. Transfers by operation of law were regulated under personal laws, such as the Hindu and Muslim laws of inheritance and wills, or by court orders under the Code of Civil Procedure (CPC). Meanwhile, the transfer of movable property by act of parties was governed by Chapter VII (Sections 76 to 123) of the Indian Contract Act, 1872. However, there was no definite statutory law regulating the transfer of immovable property by act of parties.<sup>ii</sup>

When the British established their rule in India, they actively participated in shaping the Indian legal system. In the absence of a specific statute governing transfers of immovable property by act of parties, the Anglo-Indian courts decided such cases by applying the principles of equity, justice, and good conscience as understood in English law.<sup>iii</sup>

Certain regional regulations also contained rules relating to the transfer of immovable property, including:

- The Madras Regulation of 1802,
- The Bombay Regulation of 1827,
- The Bengal Regulations of 1798 and 1806,

These regulations laid down some basic rules for the transfer of immovable property but were neither exhaustive nor adequate to cover all types of transfers. Consequently, courts frequently resorted to

applying English law principles of equity, justice, and good conscience in the absence of specific statutory provisions. These principles, being fundamental to natural justice, were employed to ensure fairness in individual cases.<sup>iv</sup>

However, the application of English equity in Indian courts, mostly presided over by British judges, often proved inadequate and inconsistent. The socio-economic conditions in India differed significantly from those in England, making English legal principles less suitable. Moreover, judges had considerable discretion in interpreting and applying these principles, which resulted in conflicting and confusing case law due to lack of uniformity.<sup>v</sup>

Given these challenges, there was a pressing need for a clear, certain, and uniform law regulating the transfer of immovable property by act of parties in India. Accordingly, the TPA, 1882, came into force on 1st July 1882 with the primary purpose of establishing a definitive and standardized legal framework for such transfers.<sup>vi</sup>

### Objective of the Transfer of Property Act, 1882

The objective of the TPA, 1882 is articulated in its Preamble, which states that the TPA was enacted because it was "*expedient to define and amend certain parts of the law relating to the transfer of property by act of parties.*" This highlights that TPA was not intended to be a comprehensive code covering all forms of property transfer, but rather to provide clarity, structure, and reform to the existing legal principles governing voluntary transfers of property. TPA also seeks to reform and modernize the prevailing legal framework to make it more suitable to the socio-economic conditions of India.

At the time of its enactment, many rules concerning the transfer of property by act of parties were uncertain, inconsistent, and based on case law or customary principles. TPA sought to provide definite legal meaning and introduce necessary amendments to streamline and standardize such transactions.

The broader objectives of TPA may be summarized as follows:

- (a) TPA provides a definite, clear, systematic, uniform, and unambiguous legal framework for the transfer of immovable property between living persons, ensuring legal certainty and predictability in property transactions.<sup>vii</sup>
- (b) It aims to facilitate transfer of property in a legal and orderly manner, safeguarding the rights and interests of both the transferor and the transferee throughout the transfer process.<sup>viii</sup>
- (c) TPA serves as a complement to the Indian Contract Act, 1872. Prior to the enactment of the TPA, although contracts were governed by statutory law, transfers of property arising out of contracts lacked statutory regulation and were instead governed by judicial decisions based on principles of equity, justice, and good conscience. This often led to inconsistency and unpredictability in case law.<sup>ix</sup>
- (d) By codifying transfers made through acts of parties, the Act establishes a statutory regime parallel to the laws governing testamentary and intestate transfers, such as transfers by will and inheritance. This helped complete the legislative framework governing property transfers in India.<sup>x</sup>

### Meaning by 'Act of Parties'

Property can generally be transferred in two ways: by act of parties or by operation of law. It is important to first understand the distinction between these two modes of transfer.

A transfer by act of parties refers to a voluntary transfer of property between two living persons, also known as a transfer *inter vivos*. Under the TPA, 1882, such transfers are made intentionally and by mutual consent. The transferee may be a minor, a person of unsound mind, or even a child in the mother's womb,

as long as they are capable of acquiring rights under the law. The term “living person” is not limited to natural persons; it also includes a company, association, or body of individuals, whether incorporated or not, as provided under Section 5 of TPA. Both the transferor and transferee must be alive at the time of the transfer, as TPA exclusively governs inter vivos transactions. For example, in cases of sale or gift, the transaction qualifies as a transfer by act of parties because it requires the presence and legal capacity of both the transferor and transferee at the time of execution.<sup>xi</sup>

### **Meaning by ‘Operation of Law’**

The TPA, 1882 does not apply to transfers effected by operation of law, as such transfers are not made by acts of parties. In these cases, the transferor is not a living person, and the property passes automatically by virtue of legal provisions, without any voluntary action on the part of the parties’ involved. For instance, in the case of inheritance or a bequest under a will, the property devolves upon the legal heirs or legatees by operation of the relevant personal laws. The deceased, naturally, takes no action after death, and the transfer occurs automatically in accordance with the law of succession or the law governing wills. Similarly, transfers arising from court orders such as those in cases of insolvency, forfeiture, or execution of a court decree are also considered transfers by operation of law, since they are carried out not by the property owner but by the court or a legal authority. Thus, such transfers fall outside the ambit of the TPA, as they are not governed by the contractual or voluntary mechanisms envisioned by TPA.<sup>xii</sup>

### **Scope of Transfer of Property Act, 1882**

The TPA, 1882 is not a comprehensive code governing all forms of property transfers in India. Its scope is limited and does not extend to every type of transfer that occurs within the country. The applicability of TPA is confined to specific types of voluntary transfers between living persons, and it excludes other modes such as transfers by operation of law or testamentary succession. The scope of TPA can be summarized as follows:

#### **(1) Not Exhaustive**

The TPA, 1882 is not exhaustive or complete. It does not encompass the entire body of law governing all types of property transfers in India. There are various modes and methods of transferring different kinds of property both movable and immovable many of which fall outside the scope of TPA. Transfer of Property Act, 1882 primarily governs voluntary transfers between living persons, but does not include rules for transfers by operation of law, testamentary dispositions, or those governed by personal laws. Moreover, TPA recognizes that it may not cover every situation, and therefore permits the application of principles of justice, equity, and good conscience in cases where no specific legal provision applies. This reinforces the idea that TPA serves as a general framework, rather than a complete or exclusive code, for property transactions in India.<sup>xiii</sup>

#### **(2) Transfer Must Be Between Living Persons: Exclusion of Transfer by Operation of Law**

One of the foundational limitations of the TPA, 1882 is that it governs only inter vivos transfers that is, transfers of property between living persons.<sup>xiv</sup> This requirement is explicitly stated in Section 5 of TPA, which defines a transfer of property as an act by which a living person conveys property to one or more other living persons, or to himself and one or more other living persons.<sup>xv</sup> As a result, TPA does not apply to transfers by operation of law, such as those arising through inheritance, forfeiture, insolvency, or the execution of a court decree.<sup>xvi</sup> Transfers by operation of law occur automatically due to legal mandates, without any act of volition or agreement between living persons, and therefore fall outside the ambit of

TPA.<sup>xvii</sup> TPA is thus limited in its scope and does not cover all modes of property transmission, focusing instead solely on those transfers that are voluntary and contractual in nature.

### **(3) Predominant Application to Immovable Property Transactions**

The TPA, 1882 primarily governs the transfer of immovable property. While TPA does touch upon movable property, the Sale of Goods Act, 1930 is the principal legislation dealing with the transfer of movable goods. Sections 5 to 37 of Chapter II of TPA apply to the transfer of both movable and immovable property, encompassing general principles such as competency of parties, modes of transfer, and the doctrine of part performance. However, Sections 38 to 53-A of the same chapter contain rules that are exclusively applicable to immovable property, covering aspects such as transfer by ostensible owner, fraudulent transfer, and doctrine of part performance. Furthermore, the definitions of gift and exchange include both movable and immovable property, thereby giving these forms of transfer a broader scope. In contrast, the provisions concerning sale (Section 54), mortgage (Section 58), lease (Section 105), and charges (Section 100) specifically pertain only to immovable property. Thus, while TPA includes general provisions applicable to all property, its core framework and regulatory focus lie in the domain of immovable property.<sup>xviii</sup>

### **(4) Exemption of Muslim Law under the Transfer of Property Act, 1882**

Section 2 of TPA, 1882 explicitly states that the provisions of Chapter II of TPA shall not affect any inconsistent rule of Muslim Personal Law.<sup>xix</sup> Accordingly, where any provision of TPA conflicts with a rule of Muslim law, the latter shall prevail over the conflicting statutory provision.<sup>xx</sup> Specifically, Sections 14 and 129 of TPA are not applicable to Muslims where they conflict with Muslim Personal Law.<sup>xxi</sup> However, the provisions of TPA relating to specific transfers such as sale, lease, mortgage, and other transactions remain applicable to all persons, including Muslims, irrespective of their religion, caste, or creed.<sup>xxii</sup> Thus, while certain provisions of TPA are subject to exemption, the substantive law governing property transfers broadly applies without discrimination.

### **(5) Territorial Limitations**

The scope of the TPA, 1882 is limited in several respects, including its territorial jurisdiction. Territorial jurisdiction refers to the geographical area or regions within which a law is applicable. The territorial jurisdiction of the TPA, 1882 extends to the whole of India except the state of Punjab, which means TPA does not have uniform application across all parts of the country. Moreover, TPA was not enforced throughout India simultaneously; rather, it was made applicable to different parts of the country gradually, at different stages, over a period of time.<sup>xxiii</sup>

### **Exemption and Extension of Specified Sections under the Transfer of Property Act, 1882**

Section 1 of TPA, 1882 empowers the State Governments to extend the application of the entire TPA or any of its specific provisions to particular areas within the state.<sup>xxiv</sup> Additionally, the provision authorizes State Governments to exempt certain parts of their territory from the operation of specific sections namely, Sections 54(2) and (3), 59, 107, and 123 which pertain to the registration of transactions such as sale, mortgage, lease, and gift of immovable property.<sup>xxv</sup>

These exemptions are of limited practical consequence, however, as the Indian Registration Act, 1908, a central legislation applicable across the entire country, mandates the registration of such transactions.<sup>xxvi</sup> The requirements laid down under the Registration Act ensure that the legal effect and evidentiary value of these transactions remain uniform, even in territories where the above-mentioned provisions of the Act are not in force.<sup>xxvii</sup> Consequently, the absence of Sections 54(2), 54(3), 59, 107, and

123 in certain states or regions does not materially alter the legal position with respect to the formalities required for the valid transfer of immovable property.<sup>xxviii</sup>

### **Why the Transfer of Property Act, 1882, not applicable in Punjab**

The TPA, 1882 was originally enacted to come into force on 1st July 1882, and at the time of its enforcement, it extended to the whole of *British India* except the provinces of Burma, Bombay, and Punjab, as these regions had their own systems and laws governing property transactions.<sup>xxix</sup> However, Section 1 of TPA empowered the local governments of these excluded territories to extend the application of TPA or any of its specific provisions through a notification in the Official Gazette.<sup>xxx</sup> Exercising this power, TPA was extended to Bombay effective from 1st January 1893, and to Burma on 20th December 1924.<sup>xxxi</sup> Over time, TPA was gradually applied to other regions of the country through similar notifications.

However, the State of Punjab remains an exception to this day. Despite the legislative mechanism allowing for its extension, the TPA, 1882 has not been formally made applicable to Punjab.<sup>xxxii</sup> As a result, while TPA is enforceable throughout most of India, Punjab continues to follow the principles of equity, justice, and good conscience in matters relating to the transfer of immovable property.<sup>xxxiii</sup> In practice, Punjab's courts often refer to the principles embedded in TPA, especially those reflecting substantive law, but they are not bound by its provisions due to the lack of formal applicability.

### **How Transfers of Immovable Property Take Effect in Punjab: Applicability of the Transfer of Property Act, 1882**

The TPA, 1882 is not formally applicable to the state of Punjab.<sup>xxxiv</sup> Consequently, transfers of immovable property between living persons in Punjab are governed by the principles of equity, justice, and good conscience.<sup>xxxv</sup> In the absence of statutory provisions, courts in Punjab often resort to these principles as a source of substantive law when adjudicating disputes related to property transfer.

Although the courts in Punjab are not bound by the provisions of the TPA, in practice, they frequently refer to and apply its provisions, particularly those that reflect the principles of equity.<sup>xxxvi</sup> This is because many of TPA's substantive provisions such as those relating to sale, mortgage, lease, and gift are codified expressions of long-established equitable principles.<sup>xxxvii</sup> Thus, even in the absence of formal applicability, courts are justified in applying those parts of TPA that are grounded in equity, justice, and good conscience. However, the courts in Punjab have typically refrained from applying those provisions of TPA which are purely procedural or where no underlying principle of equity is discernible.<sup>xxxviii</sup> Therefore, while TPA does not have statutory force in Punjab, its influence is nonetheless evident in judicial reasoning, especially where substantive equity is at stake.

### **Conclusion and suggestions**

In India, the transfer of immovable property in certain regions continues to be governed by customary practices and local beliefs, despite the statutory framework provided by the TPA, 1882. thus this practices of people makes scope of the law narrow. A notable example is the state of Punjab, where the continued reliance on customary law, in the absence of strict enforcement of TPA, diminishes the uniformity of legal standards across the country. This selective application undermines the sanctity of the law and may lead citizens to regard it as less authoritative. For the rule of law to be upheld and legal consistency maintained, it is imperative that TPA be uniformly implemented across all states, including Punjab. Prior to the



enactment of TPA, there was no consolidated legal framework regulating the transfer of immovable property in India. The introduction of this legislation filled a significant legal void and provided much-needed clarity and consistency in property transactions. Therefore, TPA was not only timely but also a legislative necessity to bring uniformity, certainty, and transparency to property law in India.

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### Footnotes:

- <sup>i</sup> Transfer of Property Act, 1882 hereinafter read as TPA, 1882
- <sup>ii</sup> R.K.Sinha, *The Transfer of Property Act 1* (Central Law Agency, Allahabad, 13th edn., 2012).
- <sup>iii</sup> The High Courts of The British India. The three High Courts Bombay, Calcutta, and Madras were established in the three-presidency town by letters patent from Queen Victoria. Before the Indian High Court Act of 1961, all three Presidencies had Supreme Court that were change of administering justice.
- <sup>iv</sup> Supra note 1. At 2.
- <sup>v</sup> R.K.Sinha, *The Transfer of Property Act 2* (Central Law Agency, Allahabad, 13th edn., 2012).
- <sup>vi</sup> available : <https://www.smfgindiaincredit.com> (last visited on 08 July 2024).
- <sup>vii</sup> Available at: <https://www.scribd.com> (last visited on July 10, 2024)
- <sup>viii</sup> available at: <https://lawaimer.com> (last visited on July 11, 2024)
- <sup>ix</sup> R.K.Sinha, *The Transfer of Property Act 3* (Central Law Agency, Allahabad, 13th edn., 2012).
- <sup>x</sup> Ibid
- <sup>xi</sup> available at : <https://lawaimer.com>
- <sup>xii</sup> available at : <https://blog.ipleaders.in>
- <sup>xiii</sup> available at : <https://www.scribd.com> (last visited on July 12, 2024).
- <sup>xiv</sup> The Transfer of Property Act, 1882, Act No. 4 of 1882, s 5.
- <sup>xv</sup> Ibid; see also Mulla, *The Transfer of Property Act* (11th edn, LexisNexis 2013), p. 28.
- <sup>xvi</sup> See *Haji Abdul Majid v. Abdul Gani*, AIR 1938 All 140, where the court clarified that the Act does not apply to devolutions by inheritance.
- <sup>xvii</sup> G.C.V. Subba Rao, *Transfer of Property Act* (8th edn, Sultan Chand & Sons 2020), pp. 33–34.
- <sup>xviii</sup> R.K.Sinha, *The Transfer of Property Act 5* (Central Law Agency, Allahabad, 13th edn., 2012).
- <sup>xix</sup> *The Transfer of Property Act*, 1882, Act No. 4 of 1882, s 2.
- <sup>xx</sup> Ibid; see also Mulla, *The Transfer of Property Act* (11th edn, LexisNexis 2013), p. 34, discussing the supremacy of Muslim Personal Law over inconsistent provisions of the Act.
- <sup>xxi</sup> Ibid, ss 14, 129; see *Smt. Safia Begum v. Haji Abdul Majid*, AIR 1944 PC 157 (highlighting non-applicability of these sections to Muslims).
- <sup>xxii</sup> G.C.V. Subba Rao, *Transfer of Property Act* (8th edn, Sultan Chand & Sons 2020), pp. 56–57.
- <sup>xxiii</sup> Refer to commentaries on section 1.
- <sup>xxiv</sup> *The Transfer of Property Act*, 1882, Act No. 4 of 1882, s 1.
- <sup>xxv</sup> Ibid; The relevant provisions specify that the sale of immovable property exceeding Rs. 100 (Section 54), mortgage by deposit of title deeds (Section 59), leases exceeding one year (Section 107), and gifts of immovable property (Section 123) must be registered.
- <sup>xxvi</sup> *The Indian Registration Act*, 1908, Act No. 16 of 1908, ss 17(1)(b)–(d).
- <sup>xxvii</sup> See Mulla, *The Transfer of Property Act* (11th edn, LexisNexis 2013), commentary on s 1, noting that the Registration Act ensures the enforceability of property transactions irrespective of exemptions under the TPA.
- <sup>xxviii</sup> G.C.V. Subba Rao, *Transfer of Property Act* (8th edn, Sultan Chand & Sons 2020), pp. 12–14.
- <sup>xxix</sup> *The Transfer of Property Act*, 1882, Act No. 4 of 1882, s 1; See also Mulla, *The Transfer of Property Act* (11th edn, LexisNexis 2013), Introduction, noting the initial territorial limitations of the Act.
- <sup>xxx</sup> Ibid; Section 1 allows local governments to extend or exempt the Act or its provisions through local regulations and notifications.
- <sup>xxxi</sup> G.C.V. Subba Rao, *Transfer of Property Act* (8th edn, Sultan Chand & Sons, 2020), pp. 10–11.
- <sup>xxxii</sup> See *Karam Singh v. Parma Nand*, AIR 1952 Punj 174, where the Punjab High Court acknowledged the inapplicability of the Act in Punjab.
- <sup>xxxiii</sup> Ibid; Also see Mulla (n 1), noting the continued judicial reliance on equitable principles in the absence of formal legislative application.
- <sup>xxxiv</sup> *The Transfer of Property Act*, 1882, Act No. 4 of 1882; See also Mulla, *The Transfer of Property Act* (11th edn, LexisNexis 2013), Introduction
- <sup>xxxv</sup> See *Karam Singh v. Parma Nand*, AIR 1952 Punj 174, where the court acknowledged that in the absence of statutory law, decisions are guided by equity, justice, and good conscience.
- <sup>xxxvi</sup> Ibid.; See also G.C.V. Subba Rao, *Transfer of Property Act* (Sultan Chand & Sons, 8th edn, 2020), pp. 6–8.

xxxvii See Mulla (n 1), noting that key provisions in the Act reflect equitable doctrines historically recognized in Indian jurisprudence.

xxxviii See Kundan Lal v. Brij Lal, AIR 1920 Lah 251, where the court declined to apply a procedural provision of the Act for lack of an equitable basis.