

THE REGISTRATION ACT, 1908

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REGISTRATION ACT, 1908

History of legislation-

The system of registration of documents was in vogue in British India from an early date. It was first introduced in Bengal by Bengal Regulation XXXVI of 1793; in Bombay by Regulation IV of 1802 and in Madras by Regulation XVII of 1802. These Regulations applied not only to the Presidency towns but also to the moffusil. The Regulations in the three different Presidencies were more or less in the same form. The system of registration which was introduced in 1793 remained an optional system till 1866. From 1866 certain classes of documents were required to be compulsorily registered. The Act of 1866 was replaced by Act III of 1877 which was amended from time to time till it was replaced by the present Act XVI of 1908. The system of registration which was introduced in 1793 remained an optional system till 1866. From 1866 certain classes of documents were required to be compulsorily registered. The Act of 1866 was replaced by Act III of 1877 which was amended from time to time till it was replaced by the present Act XVI of 1908. The Indian Registration Act, 1908 applied to the British Indian Provinces and, after the coming into force of the Constitution, to the corresponding Part A and Part C States. By Act III of 1951 the Act was made applicable to Part B States also.

Importance of Registration of Legal Documents:

There are certain importance of registration of legal documents as per the Indian Registration Act, 1908 which are as follows:

- a) It provides authenticity and validity to a document.
- b) The use of registered documents aids in protection from fraud and misappropriation.
- c) Registered documents can also be used as legitimate court evidence.
- d) It acts as valid proof in a court of law which aids a person in taking legal action during any kind of dispute.
- e) Registered legal document ensures transparency in deals.
- f) If the legal document is registered, it becomes easier to find out if there's any kind of dispute or on-going litigation with regard to a property.
- g) The Registration Act informs people about legal rights and duties emanating from or impacting a specific property.
- h) When a legal document is registered, it ensures its adequate retention and recording.
- i) In case a registered document is lost, its copy can be accessed from, the place where it has been registered

Purpose of "The Registration Act, 1908"

The Registration Act of 1908 was enacted with the primary objective of creating a standardized system of registration for documents related to the transfer, lease, or mortgage of immovable property. The act intends to maintain the credibility and authenticity of property transactions by making the registration of specific legal documents such as sale deeds, lease deeds, and mortgage deeds mandatory.

Furthermore, the act introduces a legal assumption that registered documents are genuine and valid, with penalties in place for non-compliance. The act is intended to encourage openness and precision in property transactions while deterring deceitful practices.

The Registration Act of 1908 is a law in India that regulates the registration of various documents related to immovable property. Among its major provisions are:

- **Compulsory registration:** The act requires certain documents, such as sale deeds, gift deeds, mortgage deeds, lease deeds, and power of attorney documents, to be registered.



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- Time of registration: All documents must be registered within four months of their execution, and failure to do so may result in a penalty.
- Appointment of registrars: Registrars are appointed by the state government for different districts or sub-districts, and are responsible for registering documents and maintaining records.
- Fees: A fee is charged for document registration, with the amount varying according to the type and value of the property.
- Power of attorneys: The act also mandates the registration of power of attorney documents that authorize a person to act on behalf of another in property transactions.
- Legal presumption: The act establishes a legal presumption that any document registered under it is valid, genuine, and contains true facts.
- Public inspection: Registered documents are available for public inspection, and certified copies can be obtained by paying a prescribed fee.
- Consequences of non-registration: Documents that should be registered but are not cannot be used as evidence in court and cannot establish any right or title to the property.

Overall, the Registration Act of 1908 seeks to ensure transparency and accuracy in property transactions in India.

Definitions:

Section 2(6) - IMMOVABLE PROPERTY

Immovable property includes land, buildings, 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;

- i. LAND: Air space above land; Gases, minerals, diamonds below land; river upon land
- ii. BENEFITS ARISING OUT OF LAND: right to receive rent from land, right to collect fruits, fishery
- iii. THINGS ATTACHED TO EARTH: rooted to earth; embedded; things attached to what is so embedded
- iv. RIGHT TO WAYS: easement.

Land:

In common parlance, the term 'land' constitutes a proportion of the earth which is not covered by water. It can be connoted as an area of ground with regard to its ownership or use. The term is intended to include all the things on the surface of the earth, feasibly the column of space above the earth, and the ground below the surface of the earth. The word is comprehensive enough to engulf even the things below the surface of the earth, say sub- soil, mines, and minerals. It even covers the objects placed by the human agency on or under the earth's surface, provided it shall be done with the intention of permanent annexation. The term also covers the things which are said to be land covered by water, for instance, well, tubewell, rivers, ponds, lakes, and streams, which are dug on the earth's surface. These may be natural or artificial, as the case may be.

BENEFITS ARISING OUT OF LAND:

The phrase "benefits to arise out of land" is considered under the purview of immovable property since it is an interest in land. Even the definition provided in Section 2(6) of the Registration Act, 1908 expressly includes this phrase under the category of immovable property. Some examples of benefits arising out of land include rent received from the house, revenue from agriculture, rent from shops and jagir, right to catch fish from pond or river, and right to collect lac from trees. Also, the right to collect dues from the market or fair situated on a plot of land, interest on the income from immovable



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property, lease of land, etc. even the right to extract any minerals, right to conduct an exhibition of a piece of land, right to possession, establish a hoarding or advertisement of the part of the land, right of the priest to recover dues from the funeral, management of Sarjan land, interest of the mortgagee in the property that has been mortgaged, etc. are all considered immovable property.

"Any other benefits to arise out of land". A benefit that arises out of land is immovable property. In England it is regarded as a profits a prendre. In Halsbury's Laws of England, meaning of the 'profits a prendre has been given as under :

A profits a prendre' is a right to take something of another person's land. It may be more fully defined as a right to enter another's land and to take some profit of the soil, or a portion of the soil itself, for the use of the owner of the right.

THINGS ATTACHED TO THE EARTH:

The above-stated expression is separately defined under Section 3 of the Transfer of Property Act, 1882, to include three categories: things rooted in the earth, things embedded in the earth, and things attached to what is embedded in the earth.

Things rooted in the earth:

By virtue of the definition provided under the General Clauses Act, the things rooted in the earth are considered immovable property. Thus, trees and shrubs are considered immovable property. Similar is the case with plants and herbs. However, it is pertinent to mention that this expression does not include standing timber, growing crops and grass in this category.

Things embedded in the earth:

Etymologically, the term 'embedded' connotes something that is firmly fixed in a surrounding mass. Embedding denotes a thing whose foundation is laid underneath the earth's normal surface and which becomes a part of the earth. Take, for instance, where stone blocks are placed on one another to frame a wall. Though no mortar or cement is used, they will be considered immovable property since it has become a part of the land. However, when the same stone blocks are just stacked on top of each other in a builder's yard in the form of a wall, they will be treated as movable property.

Attached to what is so embedded:

The things falling under this category are the ones through which permanent beneficial enjoyment can be drawn from the immovable property to which they are attached. A thing will only be said to be attached to the earth when in some way or the other, its permanent beneficial enjoyment can be done. Doors, windows, shutters, etc., are a few examples that fall under this category. These are said to fall under this because they are attached to the house. These things have no existence or meaning of their own. What good will a door does if there is no house? However, it is important to understand that these things must be attached with the intention of permanent fixation or attachment. However, fans, A.C., window blinds, sashes, etc. will not be considered immovable property, even though they may be attached to the house.

Section 2 (9) – Movable Property

The term movable property in common parlance constitutes any physically mobile property or something that can be easily moved by any person. Movable property connotes almost everything that is not affixed to land, irrespective of appearance, shape, size, colour, etc. The items that fall under the category of immovable property are subject to various conditions and restrictions as stated under various Indian statutes.



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The term movable property has been defined diversely in various Indian statutes.

The General Clauses Act, 1897, in section 3(36) defines the term to include property of every description, except immovable property.

The Registration Act, 1897, in Section 2(9) provides an inclusive definition of movable property. According to this, it is to include standing timber, growing crops and grass, fruits on the trees, and juice in trees, along with the property of every description other than immovable property.

Difference between movable property and immovable property:

As a general rule, a determinate or specified portion of land, or benefits that arise from that land, along with the things attached to the earth, falls under the purview of immovable property, whereas the movable property includes standing timber, grass, crops, stocks, shares or any other property that a person owns, and that is capable of being moved from one place to another.

In the case of *Baynath v. Ramadhan and Anr (1962)*:

it was held that the intention of the owner while planting the tree clarifies whether a tree will be considered as standing timber or not.

In another case of *Kapoor Construction v. Leela Nagara) & Ors. (2005)*:

it was held that three factors, namely, intention, mode of annexation and degree of annexation, determine whether the property is movable or immovable.

It is pertinent to note that while distinguishing between the above two, the first thing that is considered is that movable property can be transferred from its position without causing damage or change in its shape, size, colour or appearance. The same is not the case with immovable property. Any attempt made to move immovable property might affect the property.

A sale deed of a mortgaged property, right of worship, promissory note, a piece of machinery or whole machinery, a right to recover maintenance or any allowance, royalty, gold or any jewellery that a person owns in his name, all these come under the category of movable property. Factory, right of the ferry, fishery, harvesting, right to collect rent, a reversion in property leased, right to collect the fruits of trees that are grown in one's ownership, etc., are some examples of immovable property.

If a thing or even the slightest of its parts is attached to the earth and goes deeper, then it is considered immovable property. However, if something is just lying on the earth on its own weight, then the same is regarded as movable property. While considering the provision of transfer, registration is required in immovable property, but this is not the case in movable property.

Section 2(7) – Lease

Section 105 of the Transfer of Property Act, 1882 defines it as follows :

A lease of immovable property is a 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.

COUNTERPART: The word counterpart literally means duplicate. Counterpart refers to the two pieces of one document. In case the contract is executed in duplicate and two parts together to refer to a contract. As per the definition of lease under transfer of property act, since both the parties have to sign the lease, the need for counterpart does not arise.

In case of a counterpart, the piece of document executed by one party stays with him and duplicate is delivered to the other so that each one possess an example of the deed. However, the definition of lease under registration act includes counterpart, which means that even though lease is not executed by both parties, it will still be considered as a valid lease.

UNDERTAKING TO CULTIVATE: in case a document is signed by the lessee under which she takes the responsibility to cultivate the land of the lessor on payment of a consideration and hands over the document or a copy of it to the lesser, then it is considered as a lease as per the definition of lease under registration act.

AGREEMENT TO LEASE: Section 2(7) says that lease' includes an 'agreement to lease. A document to be treated as a lease must satisfy the test of immediate and present demise in respect of the property covered by it and an agreement to lease is no exception.

An agreement to lease requires registration under Section 17(1d) and if not registered, it cannot be admitted in evidence except under the proviso to section 49 of the Act.

In considering the effect of the document (agreement), the Court must enquire whether it contains unqualified and unconditional words of present demise and includes the essential terms of a lease. Generally, if rent is made payable under agreement from the date of its execution or other specified date, it may be said to create a present demise. Another relevant test is the intention to deliver possession. If possession is given under an agreement and other terms of tenancy have been set out, then the agreement can be taken to be an agreement to lease.

In *Hemant Kumari v. Midnapur Zamindari Co.*, a leading case on this subject, a petition setting out the terms of an agreement in compromise of a suit stated as one of the terms that the plaintiff agreed that if she succeeded in other suit which she had brought to recover certain land other than that to which the compromise suit related, she would grant to the defendant a lease of that upon specified terms. The petition was recited in full in the decree made in the compromise suit under section 375 of the Code of Civil Procedure, 1882. Subsequent suit was brought for specific performance of the said agreement and it was resisted on the ground that the agreement in question was an agreement to lease under section 2(7) and since it was not registered it was inadmissible in evidence. The Privy Council rejected this contention and in coming to the conclusion that the agreement to lease under section 2(7) must be a document which effects an actual demise.

KABULIYAT: it refers to a document which reflected the rights of holder on particular piece of land. In case of kabuliyat, an undertaking to take the possession of the land of the lesser is executed by a Lessee for a specified period. Since it is a unilateral document executed by the Lessee but it creates a present right of enjoyment, then it will be a lease as per Registration Act.

REGISTRATION OF DOCUMENTS- COMPULSORY REGISTRABLE:

The transactions which are related to the property are regarded by law as per the Registration Act. Basically, the enactments which deal with registration of the documents come under the Registration Act. Registration act actually provides more authenticity and accuracy to the documents. It provides awareness regarding legal rights and obligations in concerned with property disputes. It aspires to