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## ***ABOUT US***

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

With this thought, we hereby present to you

# **AN ANALYSIS OF LEGISLATIVE PROVISIONS** **RELATING TO THE REGISTRABLE DOCUMENTS**

AUTHORED BY- TAPAN KHOSLA

## **I. General**

The registration and preservation of registered documents serve a vital public interest, particularly in transactions involving the transfer of interest in immovable property, by providing a transparent mode of devolution of interest. The entrustment of the act of registration with trained public officers enhances the authenticity of transactions through a process of identification of executants, attestation of documents, licensing of document writers, preserving records, and enabling public access to duly registered documents. However, certain areas of registration are prone to litigation, including the registrability of documents, the extent of admissibility of unregistered documents, and refusal of registration. Consequently, provisions such as Sections 17, 49, and 70-75 have been extensively interpreted through case law<sup>1</sup>.

To ensure the security and protection of property, the Indian Legislature has enacted the Registration Act, 1908, which specifically deals with immovable property. The Act is structured into fifteen parts, with Part I providing definitions, and Part II focusing on the Registration Establishment, covering the administration, management<sup>2</sup>, and organization of the registration department. The state government appoints the Inspector General, registrars of districts, and sub-districts for the purpose of registration. Part XI outlines the duties and powers of registering officers and the method of registration of documents presented for registration, while Part XII deals with the powers of registering officers to refuse registration and the remedies available. Part III contains provisions related to registrable documents, and Parts IV to IX deal with the procedure for presenting documents and registration. Part X describes the effects of registration and non-registration of documents, and Part XII deals with refusal to register, with Chapter XXIV of the rules providing further guidance on refusal to register.

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<sup>1</sup> Kannan (ed.), *Mulla's The Registration Act*, Preface to the Twelfth Edition (Lexis Nexis 2012).

<sup>2</sup> *YanalaMallechwari v. AnouthulaSayamma*, AIR 2007 AP 57 (FB).

A critical analysis of the Registration Act, 1908, reveals that Part III, read with Parts IV to IX, is the most crucial portion of the Act, warranting in-depth examination. Therefore, this chapter is divided into two parts: Part I, which examines registrable documents under the Registration Act, 1908, and Part II, which explores registrable documents under other legislations.

## II. Concept of Documents and Instruments

The legislative provisions governing the registration of documents related to immovable property in India revolve around the concepts of "documents" and "instruments." The Registration Act, 1908, commences with the term "document" in Section 17, followed by the term "instruments" in subsequent sub-clauses. Consequently, it is essential to delve into the meanings of these terms to ensure a comprehensive understanding of the law.

The terms "document" and "instrument" are used interchangeably in the Act, although an instrument cannot be construed to include a court order or any court proceeding<sup>3</sup>. A document, as defined, denotes any matter expressed or described upon any substance by means of letters, figures, or marks, intended to be used or which may be used as evidence of that matter. This definition encompasses records, writings, precepts, instructions, or directions.

The legislature's use of inclusive definitions aims to enlarge the meaning of words or phrases to incorporate their ordinary, popular, and natural sense, as well as the sense attributed to them by the statute<sup>4</sup>. The interpreter of the statute must consider well-known historical facts and put themselves in the position of the Members of Parliament who enacted the law, thereby understanding the collective will of the Parliament<sup>5</sup>.

The term "instrument" is not defined in the Registration Act, 1908. However, Section 3 of the Transfer of Property Act, 1882, refers to an "instrument" as a non-testamentary instrument, without providing a definition. In a legal sense, an instrument<sup>6</sup> is a writing that gives formal expression to some act, such as a deed, contract, or writ. It encompasses a formal legal writing, including records, deeds, or written agreements, which are used to create, secure, modify, or terminate a right or provide evidence.

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<sup>3</sup> *YanalaMallechwari v. AnouthulaSayamma*, AIR 2007 AP 57 (FB)

<sup>4</sup> *Kalawati v. Sri Krishna*, AIR 1944 Oudh 49.

<sup>5</sup> *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.*, AIR 1987 SC 1023.

<sup>6</sup> The Indian Penal Code, 1860, s. 29.



The definition of "instrument" in Byres' Law Dictionary (1923 Edition) further clarifies that an instrument is a writing, generally of a formal nature, which may include letters, cheques, or other orders for payment, but excludes accounts, letters in ordinary correspondence, and memoranda, where the primary motive is not the creation of evidence to bind a party or establish an obligation or title.

The Registration Act, 1908, does not define "instrument," but Section 2(14) provides an inclusive definition, encompassing every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished, or recorded. Section 17(2) of the Act engrafts exceptions to the instruments covered only by Clauses (b) and (c) of Sub-section (1) of Section 17.

It is essential to note that an unsigned entry in an account book does not constitute a document or instrument, whereas an entry of a formal deed of gift in an account book is a document and is invalid if not registered. A document is not executed until it is signed, and unless executed, it is not liable to stamp duty and, consequently, is not registrable.

### **III. Meaning of Important Terms**

The Indian Registration Act, 1908, employs specific terminology to denote the significance of documents or instruments that become eligible for registration under Section 17. Three crucial terms - "purport," "create," and "declare" - are essential in understanding the legislative provisions governing registrable documents.

The term "purport"<sup>7</sup> is not defined in the Registration Act or any other statute dealing with property transfer. However, according to Black's Law Dictionary, "purport" refers to the meaning, import, or substantial meaning of an instrument, distinguished from "tenor," which denotes an exact copy. In the context of Section 17, "purport" conveys the immediate intention of the instrument, rather than its ultimate consequences or collateral effects.

The term "create" is a legal concept that means to bring into being, invest with a new title, or produce. Therefore, any non-testamentary instrument that originates, confers, or affects a right, title, or interest in immovable property falls within the purview of "create." The phrase "which purport or operate to create" implies that the document itself has the immediate intention of creating a right, title, or

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<sup>7</sup> *Bhoop Singh v. Ram Singh Major*, 1955 (6) SC 534

interest, rather than merely stating a fact or having a collateral effect.

The term "declare" means to make known or announce. In the legal context, it implies a definite change of legal relation to the property by an expression of will embodied in the document<sup>8</sup>. This expression of will is distinct from a mere statement of fact. A document containing an admission or acknowledgement of a past event does not "declare" a right within the meaning of Section 17 and is therefore exempt from registration.

In *Sakhrum v. Madan*, the court held that "declare" is used in conjunction with "create," "limit," or "extinguish" a right, title, or interest, implying a definite change of legal relation to the property<sup>9</sup>. This interpretation was affirmed by the Privy Council in *Bageshwari Charan v. Jagarnath Kauri*, where it was observed that "declare" is ejusdem generis with words like "create," "assign," or "limit," and does not comprise an acknowledgement.

The distinction between a mere recital of a fact and a document that creates a title is crucial in determining whether a document requires registration. A document that merely states a fact, such as a letter containing an admission of partition, does not require registration. Conversely, a document that declares a right, title, or interest, such as a deed of partition, does require registration. The expressions "create," "assign," "limit," or "extinguish"<sup>10</sup> imply a definite change of legal relation to a property, and the expression "declare" must be interpreted similarly, importing a declaration of will rather than a mere statement of fact.

#### **IV. Categories of Documents**

Under the Indian Registration Act, 1908<sup>11</sup>, documents are categorized into three distinct groups. The first category encompasses documents that are mandatorily registrable under the Act, while the second category pertains to the procedural framework for registering documents as per the Act's provisions. The third category deals with the administrative machinery established under the Act, outlining the duties of various classes of officers. This classification excludes provisions related to penalties.

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<sup>8</sup> *Ahmad v. Qadir*, AIR 1968 Gujarat 165.

<sup>9</sup> *S. Prative Pal v. Jonbi Charan Chatterji*, AIR 1963 Calcutta 470.

<sup>10</sup> Law Commission of India, 6<sup>th</sup> Report on Registration Act, 1908 (July 1957).

<sup>11</sup> *Ibid*

The documents registrable under the Act can be further subdivided into three categories. The first category comprises documents related to transactions that, according to substantive law, can only be effected through registered instruments. It is essential to note that the Registration Act, 1908, does not stipulate that a transaction is invalid if not registered. Instead, it mandates that written instruments evidencing certain transactions must be registered, while others may be registered at the parties' discretion, in accordance with the Act's provisions. The obligation to effect transactions solely through registered instruments is imposed by substantive law. For instance, the Transfer of Property Act, 1882, requires that sales, mortgages, exchanges, gifts, and leases can only be effected through registered instruments, subject to exceptions for certain transactions involving immovable property valued at less than Rs. 100. Similarly, the Trusts Act, 1882, necessitates that trusts related to immovable property be created through registered written instruments. While substantive law lays down the obligation, it does not provide the machinery for registration, which is instead provided by the Registration Act, 1908.

The second category includes documents related to transactions that can be effected without writing, such as partitions, releases, and settlements, under substantive law. However, if these transactions are evidenced by a writing and pertain to immovable property, the registration law intervenes, and clauses (b) and (c) of Section 17(1) require registration of such documents, subject to exceptions specified in subsection (2) of that section. Additionally, if an authority to adopt is conferred in writing, other than a will, it must be registered. These documents fall within the second category.

The third category consists of documents that parties may choose to register at their discretion<sup>12</sup>, as permitted by Section 18. Wills, for instance, need not be registered, but parties may opt to register them under the Act's provisions. These documents come under the third category. The essence of the Registration Act lies in Sections 17 and 18, which deliberate on the documents for which registration is compulsory and those for which registration is optional, respectively.

## **V. An Analysis of Legislative Provisions of Registrable Documents**

The legislative provisions governing registrable documents in India have undergone significant transformations. The Registration Act, 1908, applies to all documents tendered in evidence on or after

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<sup>12</sup>*Ibid.*

January 1, 1909, provided they were executed on or after the date when the preceding Registration Acts came into force. Conversely, the document must be one that was compulsorily registrable under the Act in force at the time of its execution. Additionally, certain legislative provisions mandate the registration of specific documents under the Registration Act, 1908.

Section 17 of the Act categorizes documents that require compulsory registration. This section presents a comprehensive list of documents or instruments that necessitate interpretation to understand the underlying intent behind their registrability.

One such category of compulsorily registrable documents is gifts, as per Section 17(1)(a). The instrument of gift is registrable regardless of the value of the property. The Transfer of Property Act, 1882, contains three pivotal sections – 122, 123, and 129 – that are crucial to the operation of a transaction as a gift. Section 122 defines a gift as the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person (the donor) to another (the donee), and accepted by or on behalf of the donee. Section 123 stipulates that for the purpose of making a gift of immovable property, the transfer must be affected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. Furthermore, Section 129 clarifies that nothing in this chapter relates to gifts of movable property made in contemplation of death or shall be deemed to affect any rule of Mohammedan law.

In the context of Muslim law, a gift is valid if it meets three essential criteria: a declaration of gift by the donor, an acceptance of the gift (express or implied) by or on behalf of the donee, and delivery of possession of the subject of the gift by the donor to the donee to the extent the interest conveyed is susceptible. It is crucial to note that a Muslim gift may be valid even without a registered deed and may be invalid even with a registered deed, as registration is irrelevant to its legal force.

Prior to the Transfer of Property Act, 1882, no writing was necessary to affect a gift of immovable property. However, if a writing was executed to effect a gift, that writing required registration under the Registration Act, 1908. An instrument of gift of immovable property necessitates registration under the Registration Act, 1908, regardless of the value of the property. Moreover, an agreement in writing between members of a joint Hindu family to allot a share of the joint family property to an outsider, if considered a gift, requires registration. Section 17 of the Act mandates that the instrument of gift of immovable property shall be a registered one, irrespective of the value of the property. Any Streedhan given by a Hindu father to the daughter at the time of marriage would certainly be a gift as

defined in Section 122 of the Transfer of Property Act, 1882, which necessarily requires a written document and registration as required under Section 17 of the Act.

## **VI. Conclusion**

In conclusion, the legislative provisions governing registrable documents in India, particularly the Registration Act, 1908, have a rich historical background that warrants a nuanced understanding. The transition from a learner to a lawmaker necessitates a comprehensive overview of the Registration Act, 1908, and its main requirements, as well as a comparative analysis of Registration Systems in Europe and the United States.

The Law of Registration of documents relating to Immovable Property in India was a product of the abrupt and forceful implementation of English Law of Registration of Documents, introduced during the onset of British Rule in India. The Britishers introduced a Land Registration System in India primarily to address the issue of unrecognized rights of cultivators, which led to unrest, monopoly, and corruption. The historical context of land ownership in India is significant, as land was considered a prized possession essential for a decent life. In ancient times, the King was considered the sole owner of the land, and tax was paid to the King for continued possession of land, which was the primary source of revenue.

The eighteenth century was marked by significant events, including the decline of the Mughal Empire and the rise of European powers in India. This period of turmoil and pandemonium was detrimental to the growth of morality and social order. To restore order and combat corruption, the Britishers established a machinery to deal with the problems of land ownership, including the production of forged sanads in the proceedings that followed the promulgation of laws relating to registration of documents of immovable property.

The Registration Act, 1908, was enacted to address these issues, and its provisions have undergone significant transformations over time. The Act applies to all documents tendered in evidence on or after January 1, 1909, provided they were executed on or after the date when the preceding Registration Acts came into force. The Act mandates the registration of specific documents, including gifts, wills, and leases, among others.

In the context of gifts, the instrument of gift is registrable regardless of the value of the property, and

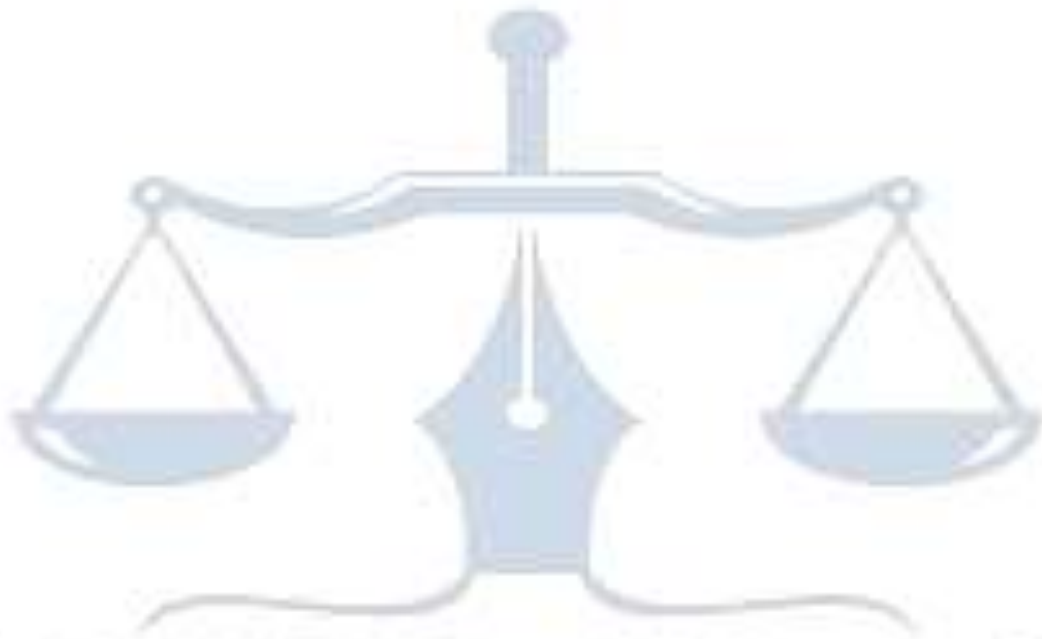
the Transfer of Property Act, 1882, contains three pivotal sections – 122, 123, and 129 – that are crucial to the operation of a transaction as a gift. The legal position is well settled, and a Muslim gift may be valid even without a registered deed and may be invalid even with a registered deed, as registration is irrelevant to its legal force.

In conclusion, the legislative provisions governing registrable documents in India are complex and multifaceted, with a rich historical background that informs their development and implementation. A comprehensive understanding of these provisions is essential for effective governance, social order, and economic growth. The Registration Act, 1908, and its provisions have played a significant role in shaping the legal landscape of India, and their continued relevance and applicability are a testament to their importance in modern India.

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