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SECTION 3 OF TRANSFER OF PROPERTY ACT, 1882 & DOCTRINE OF FIXTURES

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ABSTRACT

The Transfer of Property Act, 1882 (hereinafter referred to as TOPA or TP Act or the Act) is one of the most important legislations of the nineteenth century and still holds an important place among the books of statutes. The Act's main objective is to deal with the transfer the immovable property although such is not exhaustive. The term 'property' has a very wide ambit and includes things which carry some value and over which one can claim rights of ownership. To give a comprehensive meaning to the term 'Property', the Bombay High Court in its judgement in ***Raichand v. Dattatrya***[2] *explained that it can be said to include all legal rights of a person except one's personal rights and this constitutes the person's personal status or conditions.*

This paper aims at a detailed study of the Interpretation Clause, i.e., Section 3 of the TP Act, inter alia its clauses and allied laws, with specific reference to immovable property and "attached to earth". The paper would also provide insights into the doctrines that can be inferred from Section 3 of TOPA and will especially focus on the Doctrine of Fixtures in the context of English law as well as Indian law. Necessary case laws have been provided to study judicial trends in India with respect to fixtures and to support facts and findings.

Keywords:- Transfer of Property Act, interpretation clause, immovable property, attached to earth, fixtures

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INTRODUCTION

Section 3 of the TP Act is the "Interpretation Clause" of the Act. It gives the statutory definitions of 7 terms which have been frequently repeated throughout the TOPA. These 7 terms are namely- (1) immovable property, (2) instrument, (3) attested, (4) registered, (5) attached to the earth, (6) actionable claim and (7) notice.[3] It is a comprehensive statute laying down the ambit and explanations of each of these terms for reference while reading the Act. As said earlier, TOPA deals mainly with immovable property although it is rather surprising that it does not elaborately define "immovable property" in its interpretation clause or elsewhere. The concept of immovable property, the allied laws and other aspects of Section 3 of the TOPA will be explained in details in the paper.

By reading the TP Act, one would come across the various doctrines enshrined in it, most of which have their roots in the English Law. The Doctrine of Fixtures is enshrined in the TOPA and is based on the principle derived from the maxim- *"quicquid plantatur solo, solo cedit"*[4]*;* meaning whatever is attached to the earth/soil, becomes a part of it. Section 3, Paragraph 6 of TOPA provides the definition of "attached to earth" thus confirming the doctrine of fixtures in the context of Indian law. These come under the definition of immovable property and further determined by a prescribed two-fold test[5]. At times, this doctrine is applied to even movable properties attached to immovable objects fixed to the earth, however, standing timber, growing crops and grass, although attached to the earth, do not.[6] This exclusion will be elaborately dealt with in this paper.

UNDERSTANDING THE INTERPRETATION CLAUSE- SECTION 3 OF TOPA

Section 3 of the TP Act serves the purpose of an interpretation clause in the Act. An interpretation clause is one that defines the important words and phrases that have been used repetitively in a written document.[7]

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[3] The Transfer of Property Act, 1882, § 3.
[4] Chris Davis, *Property Law Guidebook- Second Edition*, Oxford University Press (2015), http://lib.oup.com.au/he/Law/davies2e/davies2e_probq01.pdf.
[5] Holland v. Hodgson, (1872) LR 7 CP 328.
[6] Supra note 3.
[7] Oxford Reference, available at https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100008307 (last visited April 26, 2020).

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The above mentioned clause is comprehensive in providing for the meaning of some of the important terms included in the Act.

This paper would focus on the terminologies of immovable property and the phrase "attached to the earth" provided in Section 3 of TOPA, explanations and judicial interpretations thereof.

(i) Immovable property

Section 3 does not provide for a proper and all-round definition for immovable property but merely provides a negative definition. Paragraph 2 of Section 3 of the TP Act merely provide what all are ***not*** to be considered as immovable property- "*Immovable property* ***does not include*** *standing timber, growing crops or grass."*

(a) Standing timber-

The term refers to trees whose timber is valuable for commercial purposes, i.e., those trees which are intended to be cut in a a suitable period of time so that their wood can be used for construction and other purposes, for example, teak, bamboo, shisham, and so on. All standing trees are not immovable property. Whether a tree is immovable property or not is dependent on the purpose or circumstance of the tree and if the benefits of the tree can be enjoyed only whilst it is attached to the earth. For instance, a fruit-bearing tree, such as an apple tree, can only bear fruits till it is attached to the earth, i.e, intended for long-term benefits, and thus is immovable property.

In ***Jagdish v. Mangal Pandey***[8], the court held that the following parameters must be determined to check if a tree comes within the ambit of standing tree-

(a) Nature of the tree
(b) Intent of the owner, i.e., whether it is meant to be cut in a short while or whether it is intended for long term benefits

On the other hand, a tree of valuable timber is useful only after it is cut. The Allahabad High Court described the above purpose for the legislature's intent to exempt standing timber from the ambit of immovable property- *"The reason why they have been excepted from the definition is that, though they are standing for the time being, they are meant not to remain standing, that*

[8] Jagdish v. Mangal Pandey, AIR 1986 All 182.

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they can be brought to use only after they have been cut and that they are meant to be cut sooner or later. It is on account of their nature or character that they have been taken out of the definition of immoveable property."[9]

Thus if the intention is to cut the tree at some point to gain benefits from its parts for commercial purposes, it is to be considered as movable property.[10]

(b) Growing crops-

For growing crops, such as wheat, corn, sugarcane, and so on, the above explanation in (a) stands valid since they are mainly produced for human consumption. They are sown and grown with the purpose of consumption and are useful only after they are harvested. Thus they do not have any independent existence or purpose other than the harvest and are therefore movable properties.

(c) Grass-

Grass is also not considered as immovable property for its only useful purpose as fodder, therefore it is movable property. However, if a person has any sort of contract which gives him/her right over the grass, then it becomes immovable property.

A better definition of immovable property can be found in Section 3(26) of the General Clauses Act, 1897, which provides- *"Immovable property include land, benefits to arise out of land and things attached to the earth."*[11] Section 2, clause 6 of the Registration Act, too, gives an insight into the statutory definition of immovable property as a property which is inclusive benefits "arising out of land", such hereditary rights, right of way, and so on.[12]

More comprehensive definitions of immovable property can be found in the General Clauses Act, 1897 and in the Registration Act, 1908.

(a) **Section 3, clause 26 of the General Clauses Act** provides that the following things come under the purview of immovable property[13] -

- Land

[9] Baijnath v. Ramadhar and Anr., AIR 1963 All 214.
[10] Shantabai v. State of Bombay, AIR 1958 SC 532.
[11] The General Clauses Act, 1897, § 3(26).
[12] The Registration Act, 1908, § 2(6).
[13] Naveen Kumar Shelar, *Transfer of Property Act 1882*, https://www.academia.edu/6331085/The_transfer_of_property_act_1882.

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- Benefits arising out of the land
- Things attached to the earth
- Things permanently fastened to things attached to the earth

(b) **Section 2 clause 6 of the Registration Act** which provides that 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."*[14]

Thus we find that there is a consensus between the TOPA and the Registration Act as far as the exclusion of standing timber, crops and grass from the definition of immovable property is considered; however, the General Clauses Act prescribes no such exclusion.

Sukry Kurdepa v. Goondakull[15] is one of the leading cases on this subject, wherein Justice Holloway had opined that if a thing cannot be removed from one place without causing damage to it, then it is to be considered as immovable property.

Thus, after combing through the above definitions, the following are consistently considered as immovable property-

- Land- Land includes the surface of the earth, and all things which are in their natural state present above or below the earth's surface, such as minerals, lakes, etc.
- Things that are attached to the land or to an object permanently fastened to the land
- Benefits that can be derived from the land or objects attached thereto.

(ii) Attached to the earth

Paragraph 6 of this interpretation clause supplies the expression - "attached to earth", which is further elaborated to include the following-

"(a) rooted in the earth, as in the case of trees and shrubs;

(b) imbedded in the earth, as in the case of walls or buildings; or

[14] Anand Behara v. State of Orissa, AIR 1956 SC 17.
[15] Sukry Kurdepa v. Goondakull, (1872) 6 Mad 71.

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(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached"[16]

From the above definition, the definitions above provide for what all to be considered as immovable property and the definition provides for examples as well.

Moreover, attention must be given to sub-clause (c), which specifies "*for the permanent beneficial enjoyment of that to which it is attached*", which, when read along with the discussion above, can be inferred to be in consensus with the exclusion of standing timer, grass and crops from the ambit of immovable property.

In ***Anand Behra v. State of Orissa***[17], the petitioner has acquired license from the proprietor the Raja of Parikud, to fish in certain areas of Chillika lake and sell those. When the property was taken over by the state government, they refused to recognise the license. The Supreme Court held that the lake is an immovable property and applied the principle of *"profit a prendre"* (French meaning- right of taking) to justify the petitioner's right to enter the estate and catch fish thereof. The application of the above principle in India is regarded as a benefit arising out of the land and is thus immovable property. The following excerpt from the judgement must be referred to:- "*As fish do not come under that category……the definition in the General Clauses Act applies and as a 'profit a pendre' is regarded as a benefit arising out of land it follows that it is immoveable property within the meaning of The Transfer of Property Act."*

In Indian law, movable properties assume the stature of immovable property when they are affixed into the land, or are fastened to something that is permanently attached to the earth. When they are embedded with an intent to keep it so for a long period of time and in a manner that removing them would cause damage to property, they are called fixtures. In India, the doctrine of fixture as applied in the English law, had little to no relevance post the legislation of TOPA.[18] In ***Ismai Kani Rowthen v. Nazarali Sahib***[19], Justice Bhashyam Ayyanggar had refused to adopt the doctrine of fixtures. However, the doctrine and the two-fold test are applied by the Indian judiciary, however not explicitly by the term. However, paragraph 6 of Section 3 of TOPA with reference to "attached to the earth", Section 2(6) of the Registration Act and Section

[16] Supra note 13.
[17] Supra note 14.
[18] Juan Chand Chugh v. Jugal Kishore Agarwal & Ors., AIR 1960 Cal 331.
[19] Ismai Kani Rowthen v. Nazarali Sahib, ILR 27 Mad 211.

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3(26) of the General Clauses Act and their provisions which refer to things attached to the earth, firmly fastened to things attached to the earth and benefits derived from the land, are equivalent to the doctrine of fixture. In ***Official Liquidator v. Sri Krishna Deo & Ors***[20]., the Allahabad High Court pronounced a judgement which was in consensus with the doctrine of fixture and the two-fold test to determine fixtures. It referred to extent with which the machinery was attached in the oil factory and the purpose of the machine and held that while readily detachable, an equipment attached to their bases with screws and nuts is not movable because it has been set up with the specific purpose of operating an oil factory and not with the purpose of being dismantled after a short use.

The law relating to the doctrine of fixture has been elaborated in the next topic of this paper.

THE DOCTRINE OF FIXTURES

The principle of this doctrine is governed by the Latin-French phrase: *"quic quid plantatur solo, solo cedit"*, which means what is attached to the soil, becomes a part of it.[21] Although the origin of the phrase is uncertain, it is believed to have its roots in the Roman doctrine of *accessio*.[22] The doctrine of accession finds its application in the Common Law in the ambit of personal property, whereby, the owner of a property/object would also come into possession of another item if the two are joined inseparably.[23] It can be derived that the purpose of giving effect to the doctrine in such cases is to prevent economic waste that would result if such inseparable items were to be separated. The doctrine of fixtures operates on a similar policy, although it purports to achieve more than just implementing such a policy.[24]

The doctrine of fixtures is believed to be derived from another source, the Latin phrase *"cujus est solum ejus est usque ad coelum"*, which refers to the ownership concept that the owner of a land or the landowner has possession from the centre of the earth (that land) to the heavens above it.[25] Given that such a concept developed in the medieval periods, the extent of the truth in

[20] Official Liquidator v. Sri Krishna Deo & Ors, AIR 1959 All 247.
[21] Ronald W. Polston, *The Fixtures Doctrine: Was It Ever Really the Law*, 16 WHITTIER L. REV. 455, 457 (1995) file:///C:/Users/oishi/Downloads/16WhittierLRev455.pdf.
[22] Ibid.
[23] Ibid.
[24] Venakata Subbarao, *Property Law*, Indian Legal System (2005), http://14.139.60.114:8080/jspui/bitstream/123456789/738/21/Property%20Law.pdf.
[25] Ibid.

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this phrase can be said to be a physical approach to the beliefs of the medieval people with respect to ownership of lands, coupled with the mystique of religious ceremonies associated to sale/purchase of lands.[26] Therefore, it would not be surprising that anything that was placed on the land, or annexed to it with some degree of permanence, would thereafter be considered part and parcel of the land and would belong to the owner of such land.

Now that we have perused through the concepts from which shaped the doctrine of fixtures as it is today, it is important to understand how a fixture differs from chattel.

A fixture is a movable object/ chattel that has been brought onto a land or property and thereafter has been annexed to it that it is treated as part of the land. Such object is attached to the land in such a manner that the title of ownership of the fixture passes automatically with the title of the land.[27] Chattel, however, is also a movable object that is brought onto the land but not treated as part of the land. Subsequently, the title to the chattel does not pass along with the transfer of title.[28]

It can be concluded from the discussion that some movable objects, fixtures, become associated with the property they are attached to and are then considered part and parcel of such property. Question arises as to how it is to be determined that when a fixture must be considered as part of the land it is brought onto. In ***Holland v. Hodgson***[29], a two-fold test was prescribed to determine whether an object was a fixture or not.

The two fold test formulated herein is based on the following parameters:-

(a) Degree of annexation of the object- Indicates the physical connection of the concerned object to the land or to something else that was surely a fixture on the land. If removing the item would cause damage to the property unto which it is annexed, then such an item is deemed to be fixture. On another note, if the item is not attached to the property per se, but is of such heavy weight that it is held in place by gravity alone, such property might

[26] Supra note 15.
[27] Michael L. Lower, *A Brief Explanation of the Law of Fixtures,* SSRN 1, (2011) file:///C:/Users/oishi/Downloads/SSRN-id1807786.pdf.
[28] Ibid.
[29] Holland v. Hodgson, (1872) 7 CP 328.

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be considered a fixture provided that it is evident that the purpose of annexation must have been the same.[30]

(b) Purpose/ intent behind such annexation- This test looks into the purpose with which the object was brought onto the land. If the intent was to add on to enjoyment of the land, the object might be deemed as fixture; if the object was brought to be enjoyed in its own right, it is chattel.[31]

Therefore, it can be concluded that the 2 parameters are used to adjudge on the status of an object as fixture based on 'objective intention'.[32] Almost every time a property changes hands, the question has been recurring as to whether the lesser interests in the land, i.e., the objects annexed to it, are fixtures or not. The tests to determine the same were therefore much needed and were formulated in the 19th century in the owing to the industrial revolution and it also helped in answering the commercial arrangements which gave this ancient question a rather special status.[33]

The two parameters of the test, as aforementioned, each are individually implemented and are equally important to determine fixture, and complement each other. For instance, the law in this area has been surveyed vide the decision of the House of Lords in ***Elitestone Ltd v. Morris***[34]. In this case the question arose, as to whether a building was fixture. The facts of the case were such that the building was only situated on pillars, and was therefore only held in place by gravity. The House of Lords said in its judgement said the question must be decided based on not only the degree of annexation, but more importantly on the intention with which the building was put on pillars. Based on these two parameters, the House of Lords decided that the intention of putting building there was not as a temporary structure but the intent was to make it a permanent structure. Thus the building was held in place on the pillars by means of gravity and the intent behind it, deemed it a fixture.[35]

[30] Elitestone Ltd v. Morris, (1997) 1 W.LR. 687.
[31] Supra note 25.
[32] Supra note 27.
[33] Supra note 31.
[34] Supra note 30.
[35] Ibid.

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The present trend has been to give more stress on the purpose of annexation.[36] However, the degree of annexation is equally important because lack of the same would be decisive in itself, and the purpose of annexation is unclear at times.[37] Even in present times, there is enough uncertainty as to whether an object is a part of the land (fixture) or chattel, which suggests that there is still certain uncertainty regarding the present law on the matter. The doctrine of fixture and the tests to determine the same have been criticized on the grounds that they lack certainty and coherence. Although the law here is dominated primarily by the test laid down in Holland v. Hodgson, it is still pretty imprecise given that these questions ought to be decided on case to case basis. In practice, lawyers and their clients have to deal with this question almost every time while a property is sold, mortgaged, leased or developed and so on.

JUDICIAL TRENDS OF INTERPRETATION IN INDIA

The discussion herein will involve going through some of the interpretations as to the principles and that have been set by the court in due course of the long history of India. The timeline of Indian judiciary can be broadly classified into the pre-independence era and the post-independence era, and the interpretations are related to fixtures, standing timber, growing crops, and so on.

(i) Pre-Independence Era:-

In ***Re:Hormasji v. Unknown***[38], the court dealt with the questions as to whether grass is immovable property and whether the agreement in this case was a lease of a deed for sale. Justice Nanabhai opined that the instrument in question was not a lease since the owner never really parted with the property and the people in whose favour the deeds were executed did not cultivate or pay rent for the grass or the land. Thus it was indirectly affirmed that *"grass was considered to be a movable property."*

The case of ***Kalka Prasad v. Chandan Singh***[39] in the Allahabad High Court was presided by Justice Mahmood wherein he dealt with the question as to whether a hypothecation was meant for the land or for the crops growing on it. Having decided in favour of the latter, i.e., the crops,

[36] M. Haley, *The Law of fixtures: An unprincipled metamorphosis?*, Conveyancer and Property Lawyer 137, 140 (1998).
[37] Ibid.
[38] Re:Hormasji v. Unknown, I.L.R. (1889) 13 Bom 87.
[39] Kalka Prasad v. Chandan Singh, I.L.R. (1888) 10 (All) 20.

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it was held that the hypothecation was for movable property. Reference must be made to the following excerpt to make the position clear:-

"….what was intended to be hypothecated was not the field itself, but only the crops of that field…This being so, the hypothecation was of moveable property and not of immoveable property."[40]

The Provincial and Presidential Courts of Bengal Acts of 1850 and 1865 clearly put huts within the ambit of chattel, however, in the case of ***Nathu Miah v. Nand Rani***[41], huts were held to be fixtures.

Furthermore, in ***Thakur Chander Pramanick***[42] case, the shortcomings of the property law were expressed in such cases:-

"we have not been able to find in the law or custom of this country any traces of the existence of an absolute rule of law that whatever is affixed or built on the soil becomes a part of it, and is subjected to the same rights of property as the soil itself."

(ii) Post-Independence Era

An important case which held attachments or objects imbedded into immovable property to be fixture is ***J. Kuppanna Chetty, Ambati v. Collector of Anantapur***[43], wherein a boiler engine that was fixed/ embedded into the factory building was held to be meant for beneficial enjoyment of the building and was thus held to be immovable property, i.e., fixtures.

The case of ***State of Orissa v. Titaghur Paper Mills Co. Ltd***.[44] dealt with contracts of timber and of bamboo. Reference was made to Section 3of the TP Act, thereafter it was held that bamboo and timber fall under the category of movable property and if they are severed on account of sale or due to a contract of sale, then they are not only movable property but also goods.

The case of ***Ananda Behera v. State of Orissa***[45] is also a leading judgement on this subject, wherein the Apex Court applied the definition of the General Clauses Act to the fishes in a lake

[40] Ibid.
[41] Nathu Miah v. Nand Rani, (1872) 8 Beng. LR 508.
[42] Thakur Chander Pramanick , AIR 1938 All 115.
[43] J. Kuppanna Chetty, Ambati v. Collector of Anantapur, AIR 1965AP 457.
[44] State of Orissa v. Titaghur Paper Mills Co. Ltd, AIR 1985 SC 1293.
[45] Supra note 14.

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and held them to be benefits arising out of the land (the lake in the instant case) and thus held to be immovable property within the meaning of the TP Act.

The judgement in ***Velayudhan Padmanabhan v. K. Thyagarajan***[46] held that yields of fruit trees (mango and jack fruit in the instant case) were not to be considered as growing crops.

SUGGESTIONS AND CONCLUSION

In context of the Indian law, the courts have been very efficient in adjudging each case on its merits and passing viable judgments abiding by the letter of law and merit of the situation. However, as we conclude from the findings of the paper, the terminology in property law has remained vague and ambiguous, wherein every situation needs to be adjudged on the basis of individual facts and circumstances, which not only creates a problem for the common masses who get involved in the matter and the lawyers but also increases the bulk of cases in courts. Unlike countries like Canada, England and Australia, the Indian judiciary has not classified specific doctrines which might be applied in cases to classify movable property from immovable property.[47] Thus, although the legal system follows sound reasoning while pronouncing judgments, a sustainable method of approaching such classification must be adopted.

In light of the aforementioned, the paper puts forth the following suggestions:-

(i) The TP Act is the primary legislation dealing with property matters. In light of the same, the Act must provide an all-round definition of immovable property, such that it in consensus and/or covers the different definitions provided in plethora of acts and statutes.

(ii) The definition of movable property must be included in the TOPA to minimize uncertainty and have a clear understanding of the application. Doing the same would bring coherence in the statute and reduce the inconvenience of referring to several statutes and definitions in order to find answers to the factual matrix in case-to-case basis.

[46] Velayudhan Padmanabhan v. K. Thyagarajan, (2011) 3 KLJ 146.
[47] Manvedra Singh Jadon, *Comparing the Incomparable: A Critical Analysis of the Classification of Property in Movable or Immovable with Respect to the Indian context and resolving the Conundrum*, 71 (NULJ 2017), https://www.scconline.com/Members/SearchResult.aspx.

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(iii) "Benefits arising out of land" the land is a vague term in the legislation. The term benefit has not been defined anywhere in the statute and neither has an exhaustive list of such said benefits have been provided in such a long course of having to deal with so many questions of facts and law on this matter. This vague terminology must be done away with.

(iv) The legislation should, for better distinction between chattel and fixture, include the English doctrine of 'Mode and Object of Annexation', i.e, the Doctrine of fixture.

It can be inferred most agreeable approach to these flaws are comprehensive legislations that are straightforward and factually accurate. Thus, it is a vital requirement that the government progressively legislates in order to overcome legal inconsistencies. This will not only guarantee an efficient form of government, but it would also provide the much required relief to the justice system, which is still overburdened.

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