
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**THE DOCTRINE OF NOTICE IN TRANSFERS OF IMMOVABLE
PROPERTY UNDER THE TP ACT AND ALLIED STATUTES**

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ABSTRACT:

The doctrine of notice, codified in Section 3 of India's Transfer of Property Act, 1882 (TPA), establishes a tripartite framework—actual, constructive, and imputed notice—to regulate priorities in immovable property transfers, protecting bona fide purchasers for value while binding those with knowledge of prior rights. Originating in English equity, this principle extends across allied statutes: TPA governs transfer validity; Specific Relief Act Section 19(b) determines specific performance enforceability; Registration Act Sections 47-50 publicizes dealings via indexed records; and Easements Act Section 41 recognizes visible enjoyment as notice for prescriptive rights. This comparative study elucidates convergences—a unified diligence-based good faith standard excluding negligence (Law Commission Report No. 70)—manifest in uniform inquiry duties triggered by possession, registries, or easements, reinforced by TPA Section 52's *lis pendens* stabilizing litigation. Tensions emerge in functional divergences (TPA's rigid priorities vs. SRA's remedial discretion), evidentiary triggers (documentary vs. possessory), and burdens (SRA's strict transferee onus). Absent universal notice, statute-specific applications risk fragmentation, though digital reforms promise harmonization. Ultimately, notice balances equity and certainty, preventing unjust enrichment in India's evolving property regime.

KEYWORDS: Doctrine of notice, Section 3 of TPA, Section 19(b) Specific Relief Act, registration, easements, bona fide purchaser, good faith.

INTRODUCTION:

The doctrine of notice originally emerged in English equity to regulate priorities in unregistered interests, protecting a bonafide purchaser for value without notice and binding

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purchasers who had actual or constructive knowledge of prior equitable rights. Indian law codified this doctrine primarily in Section 3 of the Transfer of Property Act, 1882, but the same idea now permeates the Specific Relief Act, Registration Act, and Easements Act. A comparative perspective is necessary because each statute uses the concept of “notice” for different ends: TPA uses it to determine priority and validity of transfers; Specific Relief uses it to decide when specific performance can be enforced against a subsequent purchaser; the Registration Act uses it to transform private dealings into public facts; the Easements Act uses visible enjoyment as a form of notice; This article compares these strands, highlighting convergences and tensions in the doctrine of notice under other statutes how it is applied.

TAXONOMY OF NOTICE UNDER SECTION 3 OF THE TRANSFER OF PROPERTY ACT, 1882

The Section 3 of the Transfer of Property Act, 1882 (TPA) defines when a person is said to have notice of a fact in the context of property transactions. The provision states that a person has notice of a fact when they actually know that fact, or when, but for their wilful abstention from an enquiry or search which they ought to have made, or their gross negligence, they would have known it. This statutory formulation gives rise to a tripartite taxonomy of notice: actual notice, constructive notice, and imputed notice. Each category serves an important role in maintaining fairness and certainty in property dealings and in preventing parties from taking advantage of deliberate ignorance. Law Commission Report No. 70³

ACTUAL NOTICE

The Actual notice refers to direct, definite knowledge of a fact obtained through clear and reliable communication. The information must be specific and unambiguous; vague rumours, suspicions, or hearsay do not suffice. Once actual notice is established, it is conclusive and binds the person absolutely.

The classic illustration of actual notice in Indian law is the decision of the Privy Council in *Mohori Bibee v. Dharmodas Ghose*⁴. In this case, a minor executed a mortgage in favour of a moneylender. During negotiations, the minor’s mother expressly informed the mortgagee’s agent that her son was underage. Despite this explicit disclosure, the mortgagee proceeded with the transaction. The Privy Council held that the mortgage was void as the mortgagor was

³ The protection for transferees “in good faith for consideration” runs through TPA provisions on ostensible ownership, unauthorised transfers and fraudulent conveyances, placing the burden on such transferees to prove good faith when they invoke these protections.

⁴(1903) 30 IA 114

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a minor and therefore incompetent to contract under Section 11⁵ of the Indian Contract Act, 1872. Crucially, the Court treated the mother's clear statement about minority rights as actual notice to the mortgagee. The communication was direct and left no room for ambiguity. The mortgagee could not later claim ignorance of the minor's incapacity.

This case demonstrates two key features of actual notice: (i) definiteness of communication, and (ii) its binding and irrefutable nature once proved.

Illustration

'A' purchases land from 'B'. At the time of sale, 'B' hands over a written statement clearly declaring that 'C' has an existing right of way over the land. A thereby acquires actual notice of 'C's easementary right. 'A' cannot subsequently deny the existence of 'C's right by asserting that it was not registered or separately mentioned in the sale deed.

CONSTRUCTIVE NOTICE

Constructive notice arises not from direct knowledge, but from circumstances which are such that a reasonable person, exercising ordinary prudence, ought to have made enquiries or searches that would have revealed the truth. Under Section 3, constructive notice is attributed where there is:

- wilful abstention from an enquiry or search which ought reasonably to have been made, or
- gross negligence.

The Act also incorporates specific presumptions through its Explanations, particularly about (i) title deeds, and (ii) registration of documents.

The important basis of constructive notice is possession. In **Ram Niwas v. Smt. Bano**⁶ the Supreme Court held that where a person is in actual possession of property, any prospective purchaser is under a duty to inquire into the nature and basis of that possession. In that case, the purchaser bought property while tenants were visibly in occupation but made no enquiry as to their rights. The Court treated this failure as constructive notice of the tenants' leasehold interests. Possession, the Court effectively indicated, operates as a visible warning signal that investigation is required.

⁵Section 11 of the Indian Contract Act, 1872 - Every person is competent to contract who is of the age of majority according to the law to which he is subject) and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

⁶(2000) 6 SCC 685

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Another important dimension of constructive notice concerns registration. Explanation II to Section 3 provides that a registered document, duly entered in the prescribed indexes, operates as notice from the date of registration to any subsequent transferee.

However, the presumption is not absolute. In *Kotla Venkataswamy v. Chinta Ramamurthy*,⁷ The Privy Council considered the extent of a purchaser's duty to search the registration records. Where a purchaser had made a bona fide and reasonably careful search, but failed to discover a prior registered deed due to an error not attributable to him, the Court was prepared to recognise that constructive notice should not be imputed. The decision underscores that the test is one of reasonable diligence, not perfection.

Illustration

'X' purchases land from 'Y'. At the time of inspection, 'X' finds 'Z' in open and continuous possession of the land, cultivating it. 'X', however, makes no inquiry from Z about his interest. Later, Z asserts rights under an unregistered lease granted by 'Y'. 'X' will be deemed to have constructive notice of Z's leasehold right, as 'X' wilfully abstained from an enquiry which a reasonable purchaser ought to have made.⁸ Conversely, if 'X' had diligently searched the registration records and made reasonable enquiries from persons in possession, but still could not discover an earlier registered encumbrance due to an indexing mistake by the authorities, a court may decline to impute constructive notice, following the rationale in *Kotla Venkata Swamy*⁹.

IMPUTED NOTICE

The Imputed notice concerns the law of agency. It refers to knowledge acquired by an agent in the course of and within the scope of their authority, which the law attributes to the principal. The underlying rationale is that a principal who acts through an agent must bear the consequences of the agent's knowledge in relation to the transaction, provided the agent is acting in good faith and within the scope of employment.

In *Gokul Das v. Eastern Mortgage & Co.*, (1905)¹⁰, the Privy Council held that, in a situation where a solicitor acting for a mortgagee was aware of prior encumbrances on the mortgaged property. The solicitor did not effectively communicate this information to the mortgagee. The Court nevertheless held that the mortgagee was fixed with notice of those encumbrances.

⁷AIR 1934 PC 185

⁸Dinshah Fardunji Mulla, *The Transfer of Property Act 65* (Solil Paul ed., 14th ed. 2023)

⁹ *ibid supra* 5

¹⁰(1905) 32 IA 150

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The solicitor's knowledge, acquired in the course of acting on the mortgage transaction, was imputed to the client. The case illustrates the principle that a principal cannot avoid the consequences of facts known to their authorised representative in the very transaction in question.

However, the doctrine is not unqualified. Where the agent acts fraudulently and outside the scope of their authority, the principal may not be bound. In **Dehra Dun Mussoorie Electric Tramway Co. v. Jagmandar Das**,¹¹ The Court declined to impute knowledge to the principal where the agent had acted in a manner inconsistent with the principal's interests and beyond the legitimate scope of his authority. The decision indicates that imputation of notice is conditioned upon (i) alignment with the agent's authority, and (ii) absence of collusive or independent fraud.

Illustration

'P' authorises his advocate 'A' to conduct due diligence and purchase a parcel of land. In the course of negotiations, 'A' is informed by the seller that the property is subject to a prior equitable mortgage. This information, obtained while acting within the scope of A's authority, is imputed to P, even if 'A' negligently fails to communicate it. 'P' will be treated as having notice of the prior mortgage.

If, however, 'A' secretly participates in a scheme to defraud 'P' and acquires this information while acting outside his authorised role and in furtherance of his own interest, a court may, on the reasoning in **DehraDun Mussoorie Electric Tramway**¹², decline to impute such knowledge to 'P'.

Possession and Registration as Notice

Under TPA, open and continuous possession by a third party operates as constructive notice. In **Ram Niwas v Smt Bano**,¹³ the Supreme Court held that a purchaser who ignored obvious tenant possession could not claim to be without notice of the tenancy, effectively equating unexplained possession with a warning signal that demanded enquiry

Separately, registration of a compulsorily registrable instrument, duly indexed, is treated by Explanation II to Section 3 as constructive notice of its contents from the date of registration, a position reinforced by the 1929 amendment. Yet, as seen in **Kotla Venkata Swamy**, this

¹¹ AIR 1931 All 135

¹² Ibid supra 9

¹³(2000) 6 SCC 685

presumption is treated as rebuttable when a reasonable search is thwarted by an indexing error, preventing the Registration Act from becoming a strict liability trap for honest purchasers.

SPECIFIC RELIEF ACT, 1963: SECTION 19(b) AND BONA FIDE PURCHASERS

Section 19(b) of the Specific Relief Act provides that specific performance of a contract for the sale of immovable property may be enforced against “any other person claiming under him by a title arising subsequently to the contract” except a transferee for value who has paid his money in good faith and without notice of the original contract. The provision thus uses notice to determine when a subsequent purchaser shall be bound by an earlier contract.

The Supreme Court has repeatedly held that Section 19(b) is an exception in favour of bona fide purchasers, and therefore the **onus to prove “good faith” and “without notice” lies squarely on the subsequent purchaser** claiming that protection. Recent decisions emphasise that good faith requires both honesty and due enquiry; mere assertions of ignorance are insufficient.

Importation of TPA Doctrine into Specific Relief

Courts interpret “notice” in Section 19(b) by importing the TPA taxonomy: actual, constructive and imputed. Thus:

- A purchaser with *actual knowledge* of a prior agreement cannot invoke Section 19(b).
- A purchaser who fails to enquire into visible possession, suspicious price, or prior dealings documented in registries may be held to have *constructive notice*.
- Knowledge of an advocate or agent retained to verify title may be *imputed* to the purchaser if acquired in the course of the transaction.

Recent Supreme Court clarification (2024–2025 line of **Manjit Singh v. Darshana Devi**¹⁴The case involved a plaintiff seeking specific performance of an unregistered agreement to sell. During the pendency of the dispute, the original owner sold the property to subsequent purchasers (the appellants). These purchasers claimed protection under Section 19(b) of the Specific Relief Act, asserting they were *bona fide* purchasers for value and had no knowledge of the prior agreement. The core of the dispute rested on whether the

¹⁴2024 INSC 770

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purchasers had exercised enough diligence to claim they lacked "notice" of the existing encumbrance.

It was held that a purchaser who willfully abstains from inquiring into the title or fails to investigate the party in actual possession of the property is deemed to have constructive notice, thereby disqualifying them from the protection of Section 19(b).

In **Alka Shrirang Chavan v. Hemchandra Rajaram Bhonsale**¹⁵, the plaintiff filed a suit for specific performance in 1986 and registered a notice of lis pendens; during pendency, the defendant sold the property via multiple sale deeds in 1987 to the predecessors-in-interest of the Respondents/Appellants, who later obstructed decree execution claiming bona fide purchaser status without notice of the pending litigation. The Supreme Court rejected this defense, holding the registered lis pendens notice under TPA Section 52¹⁶ constituted constructive notice binding subsequent transferees, prioritizing the plaintiff's claim and affirming lis pendens as statutory notice stabilizing litigation against alienations.

The Court ruled that once a notice of lis pendens is registered under Section 52 of the TPA, any subsequent transfer is "subservient" to the eventual decree, regardless of the purchaser's claim of ignorance.) stresses that a purchaser who omits basic due diligence—such as examining encumbrance certificates, asking about pending suits or prior agreements, or inspecting possession—cannot claim to be a bona fide purchaser under Section 19(b). This aligns the Specific Relief standard with the “gross negligence” and “wilful abstention” criteria under Section 3 of TPA.

Comparative Observation

- **Common ground:** Both TPA and Specific Relief demand honesty plus reasonable enquiry, and both treat constructive notice as sufficient to defeat claims of bona fide purchase
- **Difference in function:** Under TPA, notice primarily affects **priority and validity of the transfer**; under Specific Relief, it determines whether a prior contract can be specifically enforced against a later transferee.

¹⁵2026 INSC 52

¹⁶ that during the pendency of any suit or proceeding in a court having authority within India, no immovable property can be transferred or otherwise dealt with in a way that would affect the rights of any other party to the suit.

- **Burden of proof:** Law Commission and recent case law underline that in Section 19(b) disputes, the **subsequent transferee** carries the burden to show absence of notice and presence of due care, whereas under TPA, the burden position may vary depending on the section invoked.

REGISTRATION ACT, 1908: PUBLIC REGISTRY AS NOTICE

The Registration Act provides information on the registration of private land through compulsory registration, indexing, and open inspection of registries. In property law, its key comparative role is to support the constructive notice regime under Section 3 of the TPA.

When registration is compulsory, the act of registration generally amounts to notice of the instrument and its contents from the date of registration. This presumption is explicitly incorporated by Explanation II to Section 3 of TPA, and it is central to the idea that third parties should be able to rely on public records rather than private assurances.

Comparatively:

- **TPA** uses registration as one source of constructive notice.
- **Registration Act** supplies the procedural machinery and evidentiary presumption that a registered, properly indexed document is discoverable by reasonable search.

Law Commission Report No. 70 points out that good faith in the context of payments and priorities under TPA cannot ignore the quality of registry searches made; honest payment in ignorance of a registered interest is not protected if a simple search would have revealed it. This underscores that registry-based constructive notice depends on the objective availability of information.

EASEMENTS ACT, 1882 - VISIBLE ENJOYMENT AS NOTICE:

Under the Indian Easements Act, apparent and continuous easements can arise or be recognised based on visible and permanent signs of enjoyment, such as drains, pathways or windows. Courts treat these physical indicators as imposing a duty on purchasers to enquire about possible servitudes, thereby functioning as a form of constructive notice analogous to the possession-based doctrine in TPA.

A comparative insight is that while **TPA Section 3** focuses on possession and registration, the **Easements Act** adds “visible enjoyment of quasi-easements” as another contextual fact

that a prudent purchaser must heed. Ignoring such signs risks being characterised as gross negligence, defeating claims to be unaware of burdens on the land.

GOOD FAITH AND DUE INQUIRY - A CROSS-STATUTORY VIEW:

Law Commission Report No. 70's discussion on good faith notes that protection across provisions like Sections 38, 41, 43, 51 and 53 TPA is consistently confined to transferees acting "in good faith for consideration", and that this requires more than mere honesty. Recent Supreme Court jurisprudence under Section 19(b) Specific Relief reiterates this: *good faith demands honesty plus due care and attention, excluding negligence or wilful abstention from inquiry.*

Comparatively:

- **TPA Section 3:** defines notice via gross negligence/wilful abstention.
- **Specific Relief Section 19(b):** imports the same standard and places a burden on the subsequent purchaser.
- **Registration Act:** presumes that a minimum level of enquiry involves a registry search.
- **Easements Act:** expects an enquiry when visible signs of use are present.

Aspect / Statute	TPA (Sec. 3 & related)	Specific Relief Act (Sec. 19(b))	Registration Act, 1908	Easements Act, 1882
Core function of notice	Priority, validity, protection of transferees	Whether specific performance binds the subsequent transferee	Convert private deals into public notice	Recognise burdens via visible enjoyment
Categories of notice	Actual, constructive,	Same, imported from TPA	Constructive via registration	Constructive via visible,

Aspect / Statute	TPA (Sec. 3 & related)	Specific Relief Act (Sec. 19(b))	Registration Act, 1908	Easements Act, 1882
	imputed			continuous use
Source facts for constructive notice	Possession, registration, abstention, negligence	Prior contract, possession, registries, agent's knowledge	Duly registered & indexed instruments	Apparent, continuous easements
Good faith standard	Honesty + due enquiry (via case law & LC 70)	Same; burden on subsequent purchaser	Reasonable registry search requires	Reasonable inspection of the site/use expected
Burden of proving good faith	Generally, up on the transferee claiming protection under special sections	Always on subsequent purchaser invoking 19(b) shield	On the party denying constructive notice	The party denies knowledge of visible servitude

Viewed comparatively, the doctrine of notice under Section 3 of TPA is not an isolated device but the central node of a wider statutory network that includes the Specific Relief Act, Registration Act, Easements Act and RERA. Across these enactments, courts increasingly converge on a common standard: a party claiming the status of bona fide purchaser for value without notice must show both honesty and reasonable diligence, and cannot plead ignorance where circumstances called for inquiry.

At the same time, differences in statutory purpose matter. The TPA is primarily concerned with interests and priorities; Specific Relief with the enforceability of contracts; and the Registration and Easements Acts with the publicity of rights via registries and physical

indicators. Notice doctrine is being adapted within each framework to reconcile equity and certainty in context-sensitive ways.

For doctrine and policy, two points stand out. First, the cross-statutory shift toward an objective, diligence-based concept of good faith narrows the space for “innocent” ignorance, especially for sophisticated transferees. The comparative approach to notice, therefore, remains essential to ensure both fairness to prior rights and stability of titles in India’s evolving property regime.

ACTUAL NOTICE:

Actual notice arises where the transferee has clear, direct knowledge of a fact affecting the transaction. The classic authority is **Mohori Bibee v Dharmodas Ghose**¹⁷, where the Privy Council treated the mother’s express statement that the mortgagor was a minor as actual notice of incapacity to contract.¹ Once such notice was proved, the mortgagee could not claim bona fide status or enforce the mortgage, because his conscience was affected by clear knowledge of a fundamental defect.² This case remains the standard illustration of how definite communication fixes a party with actual notice. Courts similarly treat written declarations, explicit recitals and lawyers’ letters conveying specific rights (such as easements or prior contracts) as actual notice, provided they are communicated before or at the time of the transfer.

CONSTRUCTIVE NOTICE:

Constructive notice is attributed where the transferee ought to have known a fact by exercising ordinary prudence and reasonable enquiry. **Ram Niwas (Dead) through LRs v Smt Bano**¹⁸ is the leading Supreme Court authority on possession as constructive notice.⁴ The purchaser bought property while tenants were visibly in occupation but made no enquiry into their interest; the Court held this failure was “wilful abstention from enquiry” under Section 3 of TPA and treated the purchaser as having constructive notice of the tenants’ leasehold rights.⁵ The case firmly establishes that open, continuous possession is a red flag which no reasonable purchaser may ignore.

On the registration side, **Kotla Venkataswamy v Chinta Ramamurthy**¹⁹ reconciles the Registration Act’s presumption of notice with Section 3 of TPA.⁶ The Privy Council accepted that registration normally gives constructive notice but held that where a bona fide purchaser

¹⁷(1903) ILR 30 Cal 539 (PC)

¹⁸(2000) 6 SCC 685

¹⁹AIR 1934 Mad 579

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makes a reasonably careful search yet fails to discover a prior deed due to an indexing error, constructive notice should not be imputed.⁷ This decision shows that the presumption of constructive notice from registration is strong but rebuttable in cases of administrative failure.

Judicial and academic writing also treat visible easements—drains, pathways, windows in continuous use—as constructive notice of servitudes under the Easements Act, again mirroring the Ram Niwas logic that what is visibly and continuously enjoyed must prompt enquiry

IMPUTED NOTICE:

Imputed notice attributes an agent's knowledge to the principal if acquired within the scope of authority and in the course of the transaction.

In **Gokul Das v Eastern Mortgage & Co.**²⁰, the Privy Council held that knowledge of prior encumbrances possessed by the mortgagee's solicitor bound the mortgagee, even though the solicitor failed to communicate it.⁹ The decision anchors the rule that a principal who chooses to transact through an agent must bear the consequences of the agent's knowledge in that transaction.

Conversely, **Dehra Dun Mussoorie Electric Tramway Co. v Jagmandar Das**²¹ represents the limit of this doctrine.¹⁰ There, the court declined to impute knowledge where the agent acted fraudulently, beyond the scope of authority, and in conflict with the principal's interest.¹¹ The case draws an important line: imputation applies to loyal, authorised agency, not to rogue conduct undertaken for the agent's private gain.

Modern case law involving bank officials, company officers and panel advocates extends these principles, often treating knowledge of designated due diligence officers as knowledge of the institution, but generally requiring proof that the specific agent was in fact tasked with the transaction

CONCLUSION:

In conclusion, the doctrine of notice acts as a key pillar in property law across the TP Act, Easements Act, and Specific Relief Act, though its exact role shifts with each. It primarily protects bona fide transferees from hidden interests; in the Easements Act, it governs awareness of prescriptive rights; and in the Specific Relief Act, it influences equitable

²⁰33 Cal 410 (PC)

²¹ Ibid supra 9

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remedies for possession disputes. These statutes collectively underscore notice's role in balancing fairness between parties, preventing unjust enrichment while upholding transactional certainty. Despite contextual differences, the doctrine remains a cornerstone, ensuring that ignorance is no excuse when reasonable inquiry could reveal encumbrances. This comparative lens reveals its enduring adaptability in India's evolving legal framework. This adaptability highlights its balance of equity and certainty in transactions. Ultimately, the doctrine prevents claims of ignorance where diligence would uncover hidden rights, fostering trust in property dealings. Through this comparison, its flexible yet consistent essence shines in India's legal system.

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2. Dr H.S. Gour's Law of Transfer of Property Act (11th Ed.)
3. Anand and Iyer's Specific Relief Act (15th Ed., 2022)
4. Law Commission of India Report No. 70 (1977)

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1. The Specific Relief Act, 1963
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3. The Easements Act, 1882
4. The Transfer of Property Act, 1882