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A STUDY ON HISTORICAL DEVELOPMENT OF EASMENTARY RIGHT

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ABSTRACT:

Easementary rights have undergone significant transformations throughout history, shaping the modern concept of easements. This study traces the development of easementary rights from ancient Roman law to contemporary times. In Roman law, servitudes enabled landowners to grant rights over their land for specific purposes. The concept evolved in medieval England, where easements were recognized as interests in land, transferable separately from ownership. The 19th century reform significant reforms, with the easements Act of 1881 codifying the law in England. IN the United States, the Restatement of Property [1936] and subsequent case law clarified easementary rights. The historical analysis reveals the adaptability of easementary rights to changing society needs, from ancient aqueducts to modern-day conservation easements. Understanding the evolution of easementary rights provides valuble insight for addressing contemporary issues in property.

Key words: Easementary rights, historical development, Roman law, English law, Property law, Land ownership.

(1)INTRODUCTION:

An Easement is a right which the owner or occupier of certain land possesses, such as, for the beneficial enjoyment of that land, to do and continue to do something or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own. The law of easements deals with the rights which one person has over the immovable property of another, without being owner of the property or of any interest in that property. It is a peculiar kind of right because, from the point of view of the person whose property is so burdened, it imposed a restriction on enjoyment. It is this psychological conflict between the owner of the burdened property and the claimant asserting that burden, which lends all the excitement to the subject. Sooner or later, this conflict reaches the court and produces its own drama in the court room. Like many other conflicts between citizens, when it reaches the court, gives rise to so many minutes question of detail. The law must deal with all these finer points of life, but statute law, by its very nature has to be satisfied with a bare outline.

(2)EVALUATION OF EASMENTARY RIGHTS:

The Law of Easements is a necessary adjunct to the law of property. There is hardly any land conceivable which does not depend for it depend for its enjoyment, in one way or another, on the indulgence of the owners of the neighboring lands.

In addition of the ordinary rights of property, which are determined by the boundaries of a man's own soil, the law recognizes the existence, as accessorial to these general rights, of certain other rights which may be exercised for over the property of a neighbor and which impose a burden upon

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him. These rights in the property of another [jura in re aliena] are known as easements.

Rights of easements are as old as the day when the human race, first emerging from barbarism, adopted the custom of living together in towns, or living as each other's neighbors respecting each other's rights. The right of easement is the necessary consequence of the right of ownership of land. As soon as men arrived at the determination that individuals were to be allowed exclusive ownership of property, they also came to realize on equitable principles that the good of the public lay in enjoying one's own property, so as not to disturb the enjoyment by the neighbors of his own property. The very gregarious nature of mankind which compels a neighbor to love and respect his neighbors and which binds society together is the foundation of the rights. Along with the advantages of neighborhood which a man enjoys, he has, also, to put up with disadvantages which his neighbor might impose on him in order to enjoy the reciprocal advantage of his neighborhood.

(3) EASEMENTARY RIGHTS BEFORE INDEPENDENCE:

(3) (A) ROMAN LAW:

Turning to the Roman or Civil Law, upon which the legal system of many countries is based, it is found that easements were recognized under the name of "servitutes" or "servitudes". Under that system of Law, the whole bundle of rights which went to constitute ownership was called "Dominium" and servitudes were regarded as fragments of such dominium served from the original stock, and granted to some person other than the original proprietor in restriction of the latter's absolute ownership. Therefore, rights of servitudes were called by Roman lawyers as "jura in re aliena". They were given the name of servitudes, because the property, over which they were exercised, became subject to a sort of slavery, as it were, for the benefit of the dominant owner or the person entitled to exercise these separate rights over it. The term "servitude", however, included the rights corresponding with the duty, whilst the term "easements" is generally used to express the right alone. The servitudes which corresponded with easements were called "praedial servitudes" or servitudes relating to immovables, a title to which could be established in Roman Law by uninterrupted enjoyment for a long period of time.

The servitudes of the Civil Law comprehended_

a) accessorial rights which confer merely a convenience to be exercised over the neighboring land, without any participation in the profit of it, called by the Law of England, "easements";
b) accessorial rights, which are accompanied by a participation in the profits of the neighboring soil, called by the law of England, "profits of prendre': as rights of pasture, or of digging soil, or of shooting or fishing.

In treating of praedial servitudes, no distinction was made between rights of this nature whether accompanied or unaccompanied by a participation in the profits of the land.

(3)(B)ANCIENT COMMON LAW:

The origin and early growth of the English Law relating to easements is somewhat obscure. But rights of easements were recognized by the ancient Common Law of England from the earliest times. There seems little doubt that some of the Roman Law of servitudes has found its way into the English Law of Easements. The word "easements" itself appears to be a French or Norman origin, and was beginning to make itself felt. The earliest definition in English Law of the term "easement" is to be found in an ancient work called terms de la ley, where an easements is described to be "to be "a privilege that one neighbor hath of another by writing or prescription, without profit, as a way or sink through his land, or such like".

(3)(C) HINDU AND MUSLIM LAW:

It seems clear that easements were known and recognized in India, both in the

Hindu and Muhammadan Law. In Halhed's Gentoo Law, 162, which is a translation of a complication of the ordinance of the pandits, made under the direction of Warren Hastings, between 1773 and 1775, it is laid down that "if a man hath a window in his own premises, another person having built a house very near to this, and living there with his family hath no power to shut up that man's window ; and if this second person would make a window to his own house, on the time of constructing such window forbids and impedes him, he shall not have power to make a window. If a drain of a man's house hath, for a long series of years, passed through the building belonging to another, that person shall not give impediment thereto". Many other species of servitudes are referred to in the same book[1]. In another work, the Vivadha Chintamani, various easements are mentioned at pp.124 and 125[2].

As regards Muhammadan Law, the Hedaya[3] shows that a right in the nature of an easement is acquired by one who digs a well in waste ground, that no one shall dig within a certain distance of it so as to disturb the supply of water.

(3)(D)EARLY BRITISH INDIAN STATUTES:

After the advent of British rule in India, as the Law relating to easements forms part of the Law of Property, the application of the provisions of the Hindu and Muhammadan Law as such involved want of reciprocity and collusion of interest, British Political wisdom suggested the withholding of the application of these provisions from the British Indian Courts. But although, the judges were free to apply the principles laid down therein if they were in keeping with their standard of justice, equity and good conscience, that is, the standard laid down by the English law. They were also acted upon if they had received the status of recognized customs of the land. But, in effect, prior to the passing of special acts relating to easements, cases in India were decided in accordance with the English principles, as presenting rules of justice, equity and good conscience. In spite of a fact that the conditions in India differed materially from those in England, the administration of the English Common Law rules respecting easements was fairly successful in presidency towns, but not in the mofussil where neither the people themselves not the court understood the principles upon which such dispute should be determined. The necessity of a statute to regulate the Law relating to easements was felt and the first measure was a provision in the Limitation Act, IX of 1859.But this Act XIV of 1859 contained no express reference to easements. The High Courts of Bengal and Madras, at a time when there was no precise rule in the mofussil as to the period of uninterrupted enjoyment required to establish an easement, showed an inclination by analogy to section 1, Clause [12] of the Act, to adopt twelve years as such period[4]. But the Bombay Court declined to accept such analogy on the ground that the long- established law of Bombay required a period of twenty years for the establishment of an easement[5]. The first Indian Act which expressly recognized easements was the Limitation Act, IX of 1871. It did not contain an interpretation of "Easement", but by section 27 it provided for the acquisition of an easement, whether affirmative or negative, by its enjoyment as an easement, as of right and without interruption, for a period of twenty years. And Section 28 excluded, in the computation of the said period of twenty years in favour of a reversioner who should resist the claim to the easement within three years next after coming into possession, the time of any such enjoyment during the continuance of a life estate, or lesser interest exceeding three years, in the servient tenement while, in the Second Schedule to the Act and Article **31, 32, 40 and 118** provided for the limitation of suits for disturbance of easements, and Article **146** for

[1] Ibid. at 38.
[2] Bagram v. khettranath, (1869) 3 Beng. L.R. (O.C.J) 18,37.
[3] Hamilton's Edition, P. 132.
[4] Joy Prakash Singh v. Ameer Ally, (1868) 9 WR.91; Ponnuswami v. Collector of Madura, (1869) 5 M.H.C.R. 6 at p.21.
[5] Narotam v. Gampatrav, (1871) 8 Bom. H.C (O.C.J) 69.

the declaration of rights to easements. The first definition of "Easement" appeared in Section 3 of Act, XV of 1877 in practically the same terms as section 2[5] of the Limitation Act, IX of 1908, and included profit a prendre. Section **26 and 27** of Act XV of 1877 contained the same provisions regarding easements as those which were embodied in the corresponding Section **27** and **28** of the Act of 1871, expect that Section 28 of the latter Act expressly excluded easements of light and air from its operation, while Section 27 of the Act of 1877 applied to all easements. Article 36, 37, and 38 of the Second Schedule to the Act 1877 corresponded with Article 40, 31, and 32, respectively, of the Act 1871, but differed in the respect that Article 37 and 38 made three years instead of two years, the period of limitation. Subject to the provisions of section 26, with reference to easements acquired by long enjoyment, Article **120** governed suits for injunction to restrain or remove the disturbance of easements[6]. This Article corresponded with the article **118** of the Act of 1871. The object of the Act of 1877 there was no Article corresponding to Article **146** of the Act 1871. The object of the enjoyment Act of 1871 was to facilitate the establishment of the rights of easements by allowing an enjoyment of twenty years, if exercised under the condition prescribed by the Act, and to give, without more, a title to easements; but the act was remediel, and was neither prohibitory nor exhaustive. Under it a person could acquire a title though he had no other right at all, but it did not exclude or interfere with other title and modes of acquiring easements[7].

(4) PROPERTY RIGHTS OF OWNER:

In, nature, one tenement is sometimes found subjected to a natural servitude for the benefit of the more favoured one. The difference between more favoured and less favoured lands had its effect on the law of property from the earliest ages. Accordingly, the unlimited use of property was restricted, and a salutary principle evolved out that every owner of adjoining land must enjoy it subject to the burden placed on it by the natural dispensation of things. Thus, from the disposition of nature, the needs of society, and from the arrangements entered into between owners of adjacent lands originated "the servitudes" of the Roman Law. Even in India, both under Hindu and Muhammadan Law, various species of servitudes were known .

(5) LEGAL PERSPECTIVE OF EASEMENTARY RIGHTS:

(5)(A)SPECIFIC RELIEF AND PROPERTY:

The third enactment in order of time was the Specific Relief Act, 1 of 1877. Section 52 to 57 of this Act dealt with the subject of Preventive Relief by temporary, perpetual and mandatory injunction to prevent and remedy the disturbance of easements. Act 1 of 1877 has been repealed by the Specific Relief Act 47 of 1963. The corresponding provisions in the new Act are Section 36, 37, 38, 39, 41 and 42; there is now an express provision in Section 40 for damages in lieu of, or in addition to, injunction though even under the old Act, such damage were awarded, whether or not the damages were specifically claimed, following the English Law.

The next Act is the Transfer of Property Act, IV of 1882. Section 6, Clause [c] whereof provides that an easement cannot be transferred apart from the dominant heritage, and Section 8 enacts that unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee the easement annexed thereto.

(5)(B)EASEMENTS ACT:

The fifth enactment in order of times is the Indian Easement Act, V of 1882. As there was opposition to its provisions, it was decided not to enforce it throughout the whole of British India. It came into force on 1st July ,1882, and was applied, in the first instance, only to Madras, the Central Provinces and Coorg. It was extended by Act VIII of 1891 to Bombay and the North-

[6] Kanakasabai v. Muttu, I.L.R. 13 M.445.
[7] Rajrup koer v. Abul Hossein, I.L.R. 6 C.394: 7 I.A.240(P.C).

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Western provinces and oudh, and by the Delhi Law Act, VII of 1915, to Delhi.

(5)(C) LAND ACQUISITION ACT,1894:

The next Act is the Land Acquisition Act,1 of 1894.Section 3, Clause [b] of this Act provided that, for the purpose of this Act, a person shall be deemed to be interested in land if he is interested in an easement affecting the land.

(5)(D)THE CODE OF PROCEDURE:

The Criminal Procedure Code, Act 2 of 1974, Section 147 prescribed the procedure to be followed by magistrate in cases of disputes concerning easement. And Rules 1 to 5 of Order XXXIX of the Civil Procedure Code, Act V of 1908 regulate the subject of temporary injunctions.

(5)(E) LIMITATION ACTS 1908 AND 1963:

The Limitation Act, IX of 1908, replaced the Act of 1877, Section 2, Clauses [5] contained a definition of "easement" which adopted the previous inclusion of profits a prendre in easements. It extended to the whole of India, but by the saving enacted in Section 29, clauses (3) the above definition of easements and section 26 and 27 dealing with the acquisition of easements did not apply in the territories to which The Indian Easements Act 1882, extends. The Act of 1908 differed from that of 877 in that –

(1) Section 26(2) definitely provided a rule for the acquisition of easements against the Government, following the last clause of Section 15 of the Indian Easements Act, 1882; and

(2) Illustration (b) to Section 26 of the earlier Limitation Act, had been omitted as going beyond the terms of the section which did not require actual user. easement, which has not been alerted is contained in clause (f) of section 2. By section of the 1(2) it extends to the whole of India except the State of Jammu and Kashmir. And by Section 29(4) it is provided that section 25 and 26 and the definition of easements in Section 2 shall not apply to cases arising in the territories to which the Indian Easement Act,1882(5 of 1882) may for the time being be extended. In Section 25 corresponding to the old section 26, the period for the acquisition of an easement by prescription against the Government is **thirty years not sixty years,** as the period prescribed in Section 26 of the repealed Act.

(5)(F)AMENDMENT TO THE CODE:

It is appropriate to note that the amendment made in Section 80 of the Code of Civil Procedure by Act 104 of 1976[8] by adding sub-section (2) to Section 80 as under

"(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court without serving any notice as required by Sub- section (1) ; but the court shall not grant relief in the suit, whether interim or otherwise , except after giving to the Government or Public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit :

Provided that the Court shall, if it is satisfied, after hearing the parities that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it, after complying with the requirements of sub section (1)."

(6)JUDICIAL PRESPECTIVE:

(6)(A) ADHABAI vs. G. BHEEMAN @ BHEEMA[9]

The central legal point established in the judgment is the requirement for uninterrupted enjoyment of the right of way for more than 20 years to claim easementary rights under the Indian Easement Act.

[8] Code of Civil Procedure (Amendement) Act, 1976 passed on 9th September, 1976 - coming into force on 1-2-1977.
[9] 2020 0 Supreme(Mad) 2068 2020 0 AIR(Mad) 237 ; 2020 4 CivCC 727

(6)(B) ITHAL CHIMAN POWAR vs MANTURABAI AND ORS[10]

The central legal point established is that long-standing usage with the knowledge and consent of the parties can establish a right of easement under the Indian Easements Act.

(6)(C) A.MANIVANNAN VS THARIQ[11]

Easement rights may be implied from property transfer circumstances, allowing access to claimed areas not explicitly stated in deeds.

(6)(D) VICTOR CLEETUS vs LAL KUMAR [12]

The appellate court can order a remand of the case to the trial court in exceptional circumstances where there has been no real trial of the proceedings or where allowing the order to stand would result in abuse of the process of the court.

(6)(E) KARUNAKARAN vs JANAKI AMMA [13]

The execution court's role is to execute the decree and not question its legality or correctness, except in cases where the decree is found to be a nullity due to lack of inherent jurisdiction of the court. Events occurring after the decree generally cannot be considered by the execution court unless there is legal sanction for doing so.

(7)CONCLUSION:

In conclusion, **easement rights** are fundamental to property law, representing a balance between individual ownership and shared access. Originating from ancient systems like Roman servitudes, easements have evolved to support a wide range of uses, including rights if way, utility access, water resources, and environmental conservation. These rights ensure that necessary access can be provided across property boundaries without transferring ownership, promoting coexistence and minimizing conflicts.

Modern application and cases law continues to refine easement rights, adapting them to contemporary needs like digital infrastructure and environmental preservation. By allowing specific uses of land without infringing on ownership rights, easements help facilitate community planning, protect resources, and uphold the rights of adjacent property holders, highlighting their ongoing relevance and adaptability within property law.

(8) REFERENCE:

(1)B.B.KATHIYAR ,Law of Easements and Licence, twelfth edition.

(2)Dr.H.P GUPTA , The Indian Easements Act

(3)KARTHIC MITHRA, Law of Easements and Licences.

(4)https://supremetoday.ai/search/case-law-examples-for-easement-rights

(5)https://supremetoday.ai/doc/judgement/02100138926

[10] https://web.supremetoday.ai/judgement/04400003946
[11] 2024 Supreme(Online)(MAD) 1644
[12]1987 0 Supreme(Ker) 235
[13] 1987 0 KLJ 900 ; 1987 2 KLT 1010