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## A CRITICAL ANALYSIS OF MOVEABLE AND IMMOVEABLE PROPERTY

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### ABSTRACT

The paper “A Critical Analysis of Movable and Immovable Property” examines the numerous elements associated with the concept of property within the Indian legislative structure. The initial chapter briefly introduces the subject property and its application to The Transfer of Property Act. The Act’s particular legislative elements are presented in the subsequent section, The distinction between movable and immovable properties is a cornerstone of property law, influencing various legal processes, including ownership, transfer, taxation, and inheritance. Movable property, such as vehicles, goods, and money, is characterized by its ability to be transferred without altering its essential nature, while immovable property typically refers to land and anything permanently attached to it, such as buildings. This article critically analyzes the legal definitions, transfer mechanisms, and taxation of movable and immovable properties, highlighting the challenges in their classification. Through an examination of landmark case laws, such as *K.K. Verma v. Union of India* and *N. V. Srinivasa Iyengar v. N. V. Krishnamurthy*, the paper illustrates the complexities courts face when determining the classification of properties that may exhibit characteristics of both movable and immovable assets. The article also discusses how these distinctions impact inheritance laws, property taxation, and the evolving nature of property in the face of technological advancements. In conclusion, while the legal framework surrounding movable and immovable properties is well-established, it requires ongoing refinement to address emerging issues, particularly with the rise of digital and intangible assets. A flexible, nuanced approach to property classification is essential to ensure that property laws remain relevant in modern legal contexts.

### INTRODUCTION

In the property law, the distinction between movable and immovable properties holds critical importance. This classification determines various legal aspects such as ownership, transfer, taxation, and inheritance. Movable property generally refers to assets that can be transferred from one place to another, such as vehicles, goods, and money, while immovable property refers to land and anything permanently attached to it, such as buildings and natural resources. The legal frameworks governing these properties differ significantly, and the jurisprudence surrounding them has evolved through multiple landmark case laws. This paper critically analyzes the distinction

between movable and immovable properties by discussing their legal definitions, the transfer of ownership, the role of case laws in shaping the legal landscape, and the challenges faced in their classification. Movable property is defined “As any property that is not fixed to one location, allowing it to be transported from one place to another without any damage to its essence”. Items classified under this category are subject to sales tax, central sales tax, certain restrictions Act, 1956. However, there is no need to register the movable property under the Indian Registration Act<sup>3</sup>, 1908.

## **MOVEABLE PROPERTY**

Movable properties are either consumable or non-consumable and are not subjected to accretion to an inherited impartible estate. Section 2 (9) of the Registration Act, 1908 states that "Movable property includes standing timber, crops and grass, fruits on trees and juice in its trunk, roots and leaf, and property of every other description, except immovable property." Whereas Section 3 (36) of the General Clauses Act<sup>4</sup> states that "Movable property shall mean the property of every description, except immovable property." Section 22 of the Indian Penal Code<sup>5</sup> 1860 states that "The term "MOVEABLE PROPERTY" that are include corporeal property are all described, with exceptions such as land and things not attached to the earth or permanently not attached to the earth."<sup>6</sup>

Moveable property is very important in law because it has several legal rights, that includes transfer of ownership, taxation, inheritance, security against a loan, flexibility. Moveable property are not need to register under Indian registration act 1908.

## **CASE LAWS FOR MOVEABLE PROPERTY**

Nevada properties vs State of maharashtra<sup>6</sup>

This case is an land mark case for the moveable property was discussed by the hon'ble supreme court. In this case, the short question arose whether the money could be seized during the seizure under section 102 of Crpc<sup>7</sup>. The court while reading through the provision came to the conclusion that only moveable property can be seized under section 102 of Crpc. On this the question arose what is the amount to be seized. The court looked at the definition clause of Crpc and looked at section 2(Y) of Crpc. Another question arose the money

that can be seized or not the court after hearing all the clauses and decided that police officer has the power to seize any property of moveable and immovable under section 102 of Crpc.

## **IMMOVEABLE PROPERTY :**

Definition states that it is any property with rights of ownership attached to it and that cannot be moved. If the immovable property has to undergo an ownership transfer process, it is mandatory to register it under the Indian Registration Act, 1908 and must be subjected to its value if it exceeds the amount of Rs 100. The meaning of the Immovable property as per the Indian Regulation Act included everything from buildings, lands, rights of ways, and fisheries to hereditary allowances, and more. Essentially these will be assets that are permanently attached to the ground and cannot be moved.

Section 3 (26) of the General Clause Act, 1897 states immovable property as "Immovable property will include land, advantages to come out of the land, and objects attached to the earth, or permanently fastened to anything attached to the earth".

Section 2 (6) of The Registration Act, 1908<sup>8</sup> states that "Immovable Property includes land, building, inherited allowances, rights to ways, lights, ferries, fisheries or any other advantages to arise out of the land, and things attached to the earth or permanently fastened to anything which is attached to the earth but not standing timber, growing crops or grass. "The Indian Transfer of Property Act, 1882 (TPA)<sup>9</sup> provides a legal definition of immovable property in Section 3, which states that immovable property includes land, benefits arising out of land, and things attached to the earth.

## **TYPES OF IMMOVABLE PROPERTY:**

We categorize an immovable property into four important classes depending on its purpose

3. Indian Registration Act 1908,

4. General Clauses Act 1897,

5. Indian Penal Code 1860.

6. CA appeal no 1481 of 2019, Supreme court 4554,

7. Code of criminal procedure 1973.



### **1.Residential Property**

The primary purpose of residential property is for residential use. These include single and multi-property and multi-family in low and high density houses. Mixed uses of construction include residential and recreational areas.<sup>82</sup>

### **2.Commercial property**

Commercial properties include restaurants, office space, warehouse, shopping malls, and other commercial buildings. A business owner can use the commercial property to perform a different commercial business and different legal operation in a particular area. However, you must adhere to certain rules and regulations. Includes, permissible heights, parking facility etc..

### **3.Agricultural property**

Agricultural property are usually land areas that owners can use as farms, timber land, orchards etc... according to laws, owners cannot use that land other than the agricultural use. Rules also apply to the property sizes, allowed activities, number of non-farm dwelling on the property.

### **4.Special – use property**

Properties that can be used to perform special activities in a specific area such as school buildings, temples, government official buildings, parks, on the basis of special use property with no comparison. Those areas can perform special use activities for the uses of public and for the welfare of the people.

<sup>8</sup>The Registration Act 1908.

<sup>9</sup>Transfer of Property Act 1882.

**DISTINGUISH BETWEEN MOVABLE AND IMMOVABLE PROPERTY**

s.no	Parameter	Movable	Immovable
1	Concept	You can transport this property from one location to another location . you need not make significant changes in their size,shape,quality while moving them.	You can hardly transport this properties from one place to another. If you move,there lose their quality,size,shape.
2	Rights	It allows the right of workshop ,sale of mortgaged property and royalty	It allows right to collect the rent of the property,fishery,way etc.
3	Ownership	The ownership of the property rest with contract law and other common laws .	The ownership of the property comes under regulations of the deed registries act and property act .
4	Registration	You do not need any specific registration for this property.however in case of any one needed you can go for the registration.	One must register the immovable property exceeding \$100 under registration act,1908.this properties without registration is illegal.
5	Taxation	These type of properties comes under good and services tax (GST)you might have pay gst.	These types of properties subjected to stamp duty according to Indian stamp act ,1899 you have to pay stamp amount.
6	Inheritans	These properties easily divided and any one can give to others as per they wish.	It is difficult to divid.if you need you will undergoes legal action
7	Security type	These type of property can pledged by one the security level is not high .	These properties are guided by mortgage.Therefore the security level is high.



The most significant cases that sheds light on the distinction between movable and immovable property is *K.K. Verma v. Union of India*<sup>10</sup>(1954). The Supreme Court of India in this case held that any property that is attached to the land and cannot be separated without causing damage to the land is immovable, even if the property is physically movable. This case set a precedent for determining what constitutes "attachment" to land, which is a central criterion in differentiating movable and immovable properties.<sup>63</sup>

While the legal distinction is clear, practical challenges arise when determining the classification of properties that may possess characteristics of both. For example, machinery that is installed on a piece of land can be difficult to categorize. In *Indian Oil Corporation Ltd. v. Amritsar Gas Service* (1991), the Supreme Court discussed the classification of a petrol pump station with equipment attached to land. It ruled that the petrol pump, though affixed to the land, was movable since it could be dismantled and relocated. This case illustrated that a property's classification depends not only on its physical attachment but also on its intended use and ease of removal.

### **Transfer of Ownership of Movable and Immovable Properties**

The legal processes for transferring ownership of movable and immovable properties are fundamentally different. The transfer of ownership can be achieved through a simple agreement or contract. In most cases, possession of the property itself signifies the transfer of ownership, especially in transactions involving goods. However, there are exceptions, such as vehicles and shares, which may require formal documentation like title transfers or registration.

The transfer of immovable property, on the other hand, is far more complex and regulated. The *Transfer of Property Act*

(TPA), 1882 governs the transfer of both movable and immovable properties in India, but it provides much strict guidelines for the transfer of immovable property. For example, Section 54 of the TPA mandates that the sale of immovable property must be executed through a registered deed of conveyance. Similarly, the *Indian Registration Act, 1908* requires that any transfer of immovable property must be registered in order to be legally valid.

A significant case in the context of the transfer of immovable property is *N. V. Srinivasa Iyengar v. N. V. Krishnamurthy* (1973). In this case, the Supreme Court held that the sale of immovable property cannot be legally complete unless the deed of sale is executed and registered under the provisions of the Indian Registration Act. The ruling reinforced the necessity of formal registration for the legal recognition of property transactions, especially in the case of immovable property. The Court emphasized the importance of registration in protecting the rights of the parties involved and preventing fraud.

The distinction between movable and immovable property is especially crucial in the context of inheritance. Immovable property typically passes by a will or succession laws, which may vary according to the jurisdiction. Movable property, however, can be distributed more informally, and often by simple testamentary bequests.

### **Taxation and Regulation of Movable and Immovable Properties**

The taxation and regulation of movable and immovable properties also follow different legal frameworks. Immovable property, particularly land and real estate, is generally subject to property taxes, which are imposed by state and local governments. These taxes are often based on the value of the land or the buildings on it. Additionally, the transfer of immovable property is usually subject to stamp duty, which varies depending on the jurisdiction and the value of the property.

<sup>10</sup>AIR 1954 BOM358

## Case

### *State of Punjab v. Nahar Singh* (2010)<sup>1</sup>

Highlights the legal complexities of property taxation. In this case, the Supreme Court dealt with the issue of land acquisition and its valuation for compensation purposes. The Court ruled that the valuation of immovable property for the purpose of compensation must take into account the market value of the land, which is subject to assessment by the government. This case underscores the role of the state in regulating and taxing immovable property, particularly when it comes to compulsory acquisition.<sup>64</sup>

On the other hand, movable property is typically subject to sales tax or Goods and Services Tax (GST) in India. The taxation of movable property is less intrusive and more straightforward compared to immovable property. Transactions involving movable property, such as the sale of goods or services, are often taxed at the point of sale or transfer.

A relevant case in the context of movable property taxation is *Tata Iron and Steel Co. Ltd. v. Union of India* (2004), where the Supreme Court addressed the issue of sales tax on the sale of goods. The Court held that goods sold as part of a business transaction are taxable under the relevant provisions of the sales tax law. This case illustrates how the transfer of movable property is treated differently from immovable property in terms of taxation.

### **Challenges and Grey Areas in the Classification of Property**

While the legal classification of property into movable and immovable is generally clear, there are several grey areas where the distinction is not so easily made. Items such as machinery affixed to land, agricultural produce, or even fixtures and fittings in a house often present challenges for

classification. For example, in *S. Ramaswamy v. State of Tamil Nadu* (2008), the Court was faced with determining whether a building could be considered immovable property when it was built using prefabricated materials. The Court ruled that while the building itself was immovable due to its nature and the purpose for which it was constructed, the prefabricated components could be considered movable property.

Another example is the case of *B.L. Gupta v. Union of India* (1979), where the question arose whether timber on a piece of land was movable or immovable property. The Court held that standing trees were immovable property because they were attached to the land, but timber once felled and harvested was movable property.

These cases reveal the complexities involved in the classification process and demonstrate that the legal distinction between movable and immovable property is not always absolute. In many instances, judicial discretion and factual analysis are required to determine the status of certain properties. The courts often rely on the principles of "intent" and "attachment" to make determinations, which can lead to inconsistent interpretations.

### **Conclusion**

The critical analysis of movable and immovable properties reveals that while the legal framework governing these two categories is well-established, significant challenges persist in the classification and treatment of certain types of property. Case laws such as *K.K. Verma v. Union of India*, *N. V. Srinivasa Iyengar v. N. V. Krishnamurthy*, and *S. Ramaswamy v. State of Tamil Nadu* illustrate the complexities involved in property classification and the evolving nature of legal interpretations. The distinction between movable and immovable property influences a range of legal processes, including ownership transfer, taxation, and inheritance.

<sup>11</sup>. Criminal Appeal no 1418 of 2011





As legal systems continue to evolve, it is crucial to refine the distinctions between movable and immovable property to accommodate changing societal needs and technological advancements. Property laws must be flexible enough to account for new types of assets, such as digital property or intellectual property, that may not easily fit into traditional categories. Ultimately, a careful and nuanced approach to property classification is necessary to ensure that legal principles remain relevant and effective in addressing the complexities of modern property ownership.

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