

## Transfer contingent happening of specified uncertain event: Recent trends in India

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### Abstract

This paper primarily focuses on the concept of The Transfer of Property Act, under the main head of the Property Law. It deals with the concept of the Section 23 of the Transfer of Property Act i.e. the Transfer Contingent on Happening of Specified Uncertain Event. It commences with the introduction to the Transfer of Property Act and how the transfer of property act is applicable in the real times. It also speaks about the Scope and Objective of the Act and then how that deals with the topic of the project. As we move further towards the project, we also discuss about Section 21 of the Transfer of Property Act, and that is the Contingent Interest and then we read it along with the provisions of the Indian Succession Act. As we look further, we also talk about the relation of section 21 i.e. the Contingent Interest with Section 23 i.e. the transfer contingent on happening of specified uncertain event i.e. the topic of our paper and then we see how they are interrelated and that when it is together used with particularly section 124 of the Indian Succession Act, what impact does it have on the society, using different case laws and illustrations. Last but not the least our paper ends with certain set of recommendations and conclusions that help the readers to derive at a more clear understanding of the same.

**Keyword:** property act, Indian succession act

### Introduction

As we begin with the introduction, there is something that we need to know and that is this research paper deals with the Transfer of Property Act and has been taken therewith the provisions of the act and its objective is to analyse the provisions and give the readers a better opportunity to open their minds and divulge themselves into the plethora of knowledge and analysis while reading this paper.

*"The first duty of a government is to maintain law and order so that the life, property and religious beliefs are fully protected by the State"*  
- Muhammad Ali Jinnah

Muhammad Ali Jinnah, needs no introduction as he is a famous politician and a leader in the history of British India as well as Pakistan. So, he said that the government ought to maintain law and order in the society so that the life, property and religious beliefs of the people or the subjects of the state are fully protected by the State. So, why do you think he mentioned the three essential duties of the government when it comes to the protection of property, person and religious beliefs, the first very obvious reason being the Indian Partition. The partition that took place back in 1947, has its essence even in the modern day concept of cold war between countries especially when it comes to India Pakistan, the situations are always doubtful and suspicious as to when the cold war may turn into a hot war. The partition of 1947, divided not only the territorial boundaries but also the people and their religious beliefs. The partition disabled the people of various religious sects to carry their immovable property and movable property as well from one boundary to another because they had to leave the places they had been living in since centuries and they had to rush for their lives because the very neighbours they lived with were ready to assassinate them and cut them into pieces because of

the communal violence that took place. Their property was left behind, burnt and destructed. People were left with nothing in their hands and they remained as refugees in the new territorial boundary of India or Pakistan. People of both the countries suffered from immense atrocities and harsh sufferings and it came as a sudden shock to them because many of the rich people turned suddenly poor into the other territorial boundary and there were many who became rich suddenly due to the division of the boundaries as they illegally extracted the property of those people who left the particular area of the territorial boundary. This is the very important reason why he mentions that the government needs to focus on the law and order of the property, religion and the people so that nobody is able to misuse it or extract inappropriately the property of the other person.

Property in the layman sense means that a fixed territorial boundary which has its own quantity or limits and are defined differently by different persons. Property Owner in the layman sense means a territorial boundary which is suffixed in the name of a person or suffixed in the name of the person who is in possession of the same and the one who is beneficiary to the benefits arising out of land is said to be the owner of that property.

Whereas when it comes to the legal sense of the term, it is defined as follows by the Black's Law Dictionary:-

*"The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this Code, the thing of which there may be ownership is called "property"*<sup>[1]</sup>.

The legal definition of the term property means that the ownership of a certain thing is the right of one or more persons to possess which means that there can be one or more person possessing the same thing and they can be called as the owners of the same property. The thing whose ownership is to be

considered is the property of that person, therefore the materialistic possession of the thing is not property but mere possession but the thing which is being considered as the subject matter of the materialistic possession is the property.

The beneficiary to the land or the property is the person who is in the absolute possession of the same and is entitled to the rights of that property or to the enjoyment of use of land or property that he is possessing. The person is said to be the beneficiary of the same when he is making full use of the land and extracting full essence of the land and not wasting it. Also, when he is inheriting the rights of the land apart from the possession. For instance it can be said that the beneficiary is the one who is the owner of the land. For example A, is the owner of the land and he is opening a shop at his personal property, when he opens the shop within the premises of the land, that he owns, the benefit or the profit that he gets out of that shop is entitled to be his because it is arising out of the property that he owns therefore no dispute as to why he is the beneficiary. Apart from that he is not only the beneficiary but also the care taker of that property, for example in the above instance where A has a shop inside his premises, in that case the construction of the shop and the maintenance of the shop will also be his liability and therefore, the ownership of the property does not only bring the rights and the benefit arising out of the land but also the liabilities and duties arising out of it which has to be fulfilled by the same who is enjoying the rights and benefits of the same.

Real estate is an important arena of public life owing to multifarious reasons ranging from high commercial returns and imperative necessity of securing a dwelling house or raising cash on the strength of immovable assets. Similarly, extensive transactions that are totally or partly gratuitous in nature including not merely donations, but akin to relinquishment are also fairly common <sup>[2]</sup>. Adherence and observance of appropriate legal provisions and principles become inherently necessary to the validity of any such transfer. The Transfer of Property Act, enables us to deal with the situations of the property, that we could not have even imagined and also allows the judiciary to interpret it in a numerous way so that it does not get deprived of what is called the interpretation of the statute and miss out on the judgement criterion point.

### **Scope and object of the Transfer of Property Act**

The need to understand the scope and objective of the act arises when there is ambiguity and vagueness in the provisions or the words stated, because we cannot really ascertain the meaning of a term without understanding the reason of it being used. Therefore, it is vital for the basic understanding of the act, now the question that arises is, from where can we interpret the scope and objective of the act? The scope and object of the Transfer of Property Act, can be understood by reading the Preamble of the Act and also, we can know when the difficulty as to the interpretation arises, how does the Judiciary handles, but before that let us first know about what the basic objective is. Prior to the Transfer of Property Act, there was no law relating to the real estate in India. So when it came to the real estate properties, and disputes arising through them we know that there were local customs that were being followed in different parts of the country according to which the local judicial bodies used to discuss about the matter and adjudicate upon it. A few points were covered by the Regulations and Acts which were repealed either wholly, or in part by section 2

of the act. But for the rest of the law, the courts in the absence of any of the statutory provisions, adopted the English law and the principles of the Justice, Equity and Good Conscience. This was not that satisfactory though, because nowhere was it defined what the Justice, Equity and Good conscience meant. Since, the principles of the English law were not always applicable to the Indian society, and the social conditions were different, the law became confused and conflicting in its approach which should not have been the case as far as dispensation of the Justice is concerned. To remedy this state of affairs, Commission was appointed in England to prepare a Code of Substantive Law for India and see the hypocrisy, Indian laws were to be framed and codified in the England. Law commissions were formed and then the matter was looked into.

The preamble is the most important part of the act, since it always helps in the interpretation of the Statutes and also helps in the better understanding of the statute. So, when in doubt one must always refer to the preamble of the Statute. When it comes to understanding the sense of the legislature or the sense in which the legislature drafted the provisions, the preamble of the statute must be referred to and also it is from the preamble of the statute that we can decipher the nature of the provisions of the statute and it becomes a little easy for us to understand and interpret them in the way our judiciary is able to do so. The scope and object of the statute can never be overlooked and this is something which is imbibed in every provision of the Act, be it related to the movable property or immovable property. A person cannot get himself off from the object of the act while studying it or referring it for some or the other purpose.

The preamble of the Transfer of Property Act, says that "whereas it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; it is hereby enacted as follows:-

The true place of preamble in a statute was at one time the subject of conflicting decisions. The modern rule is that where the enacting part is explicit and unambiguous, the preamble cannot be resorted to, to control, qualify or restrict it; but where the enacting part is ambiguous, the preamble can be referred to, to explain and to elucidate it. The rule has been applied to the Indian statutes by the Privy Council <sup>[3]</sup>, and also by the Supreme Court of India <sup>[4]</sup>. The substantive provision of the enactment is to be approached in the light of the policy and purpose deducible from the terms of the long title and the Preamble says the Supreme Court of India <sup>[5]</sup>."

The aforementioned cited paragraph clearly states that it is the Preamble of the Transfer of Property Act which will be referred to in case of ambiguity or in other words where the judiciary is not able to decipher the meaning of the provision given the facts of the case, it is the preamble which will be referred to for making a judgement but in a case, where there arises no ambiguity, the provisions are clear and apt, then there requires no question to refer to the Preamble because the provision itself is clear enough when applied to the set of facts, that the Preamble may not even be referred to for the clarification of the same. There are many Supreme Court judgements which state the same rule that when there arises no ambiguity, the preamble is not to be referred to but where there arises ambiguity the preamble of the statute is the first thing to refer to in order to understand the clear motive of the given provision. The Transfer of Property Act, was intended to define and amend the existing law, and not to introduce any new

principle <sup>[6]</sup>. This means that the laws that were already prevailing through customs and traditions were to be imbibed in this act so as to give it a particular frame and not leave it open ended and not only to continue the legacy of customs and traditions but also not to introduce any new principle. All the existing customs and traditions were taken into consideration provided they were in compliance to the modern rule of natural justice. This Act embodies the principles of natural justice, such as Equity, Justice and Good Conscience <sup>[7]</sup>. This means that though the act provides for so many provisos under the same but all are in compliance with the principles of natural justice i.e. justice, equity and good conscience and those customs and traditions which were not in compliance with the same were struck down at the very beginning stage of framing of the statute.

The chief object of the Transfer of Property Act, were to bring the rules which regulate the transmission of property between living persons into harmony with the rules effecting its devolution on death and thus, to furnish and complement the work commenced in the framing of the law of testamentary and intestate succession; and secondly to complete the code of contract law so far it relates to the immovable property <sup>[8]</sup>. This in simpler terms means that though this act was drafted very well it is not to be read alone because its objective are supplementary to the other provisions of the testamentary and intestate succession and also to complete the law of contract. Which means that this act cannot be read alone, as it is not as exhaustive as other acts or we can call it as in exhaustive because this act does not deal with the transfer of property alone, it also deals with the contracts involved in the transfer of such property and also in the succession part of the property, which means that it is interested in knowing whether the property is not selfearned property and has been gifted or transferred by someone kith and kin. The act is not exhaustive and it does not provide for a complete code <sup>[9]</sup>. This is apparent from the omission of the word 'consolidate', which occurs, for instance, in the preamble to the Indian Evidence Act 1872 <sup>[10]</sup>. When it comes to the competency as to who has the competent power to enact laws relating to the Transfer of Property act, both the Parliament and the State legislature have the power to make laws with respect to the "Transfer of Property other than the agricultural land", which matter is included in the entry 6 of the concurrent list in the seventh schedule to the Constitution of India. The subject of the Agricultural land is mentioned under the entry 18 of the State list. Therefore, Transfer of an agricultural land, whether belonging to the scheduled tribes or other persons, would come under the entry 18 of list II, which carries with it not only the power to make a law placing restrictions on transfers and alienations of such land including a prohibition thereof, but also the power to make a law to re-open such transfers and alienations <sup>[11]</sup>. Also, the Transfer of property act covers only the transfer of property by act of parties and not by operation of law. The Supreme Court in the case of Bharat Petroleum Corporation Ltd. v. P. Kesavan <sup>[12]</sup>, has held: "As would appear from the preamble of the Transfer of Property Act, the same applies only to the transfers by act of parties. A transfer by operation of law is not validated or invalidated by anything contained in the act. A transfer which takes place by the operation of law, therefore, need not meet the requirement of the Transfer of Property Act of the Indian Registration Act."When a transfer is done by the operation of law, it is invalidated or is not valid because the scope of the

Transfer of Property Act does not covers the transfers by operation of law. Now, what does these transfers by operation of law includes, they include forfeiture, sales and all the commercial transactions which involve specialise law in them as a source of reinforcement of the contract. These words exclude the transfers by operation of law i.e. sale in execution <sup>[13]</sup>, forfeiture, insolvency or intestate succession. It also limits the scope of the Act to transfers inter vivos, and excludes testamentary succession <sup>[14]</sup>. The principles embodies in some of the provisions have been applied to the transfers by operation of law in some cases.

### **Historical Background of the Transfer of Property Act**

Prior to the Transfer of Property Act 1882, as discussed above there was practically no law relating to the real estate in India. A few points were covered by the Regulations and the Acts which were replaced either wholly, or partly by s.2. But for the rest of the law, the courts, in the absence of any statutory provisions, adopted the English law as the rule of justice, equity and good conscience as we have already seen in the preamble itself. This was however not satisfactory, for the rules of English law were not always applicable to social conditions in India, and the case law became confused and conflicting. The social conditions of India were totally different from that of the social conditions in England and that is the reason why the laws of both the states could not match up to the expectations because it is like saying that we have the same law for everyone in the world. In such a situation the conflict arises because of many other factors as well, and the society will be dismantled because of the variations of interpretation of the same law. To remedy this state of affairs, the Commission was appointed in England to prepare a code of substantive law for India.

The First Law Commission of India drafted the Indian Succession Act, the Indian contract Act, the Negotiable Instruments Act, the Indian Evidence Act, and the Transfer of Property Act. The reason why we are talking so much about other acts rather the Transfer of Property Act, is that they came into existence before this act, and that they use this act as supplementary to them. It is always that the provisions of the Transfer of Property Act, will be used as supplemental to the provisions of any other act because the Transfer of Property Act is not exhaustive in itself <sup>[15]</sup>.

The Transfer of Property Act, though drafted in 1870, was the last of these drafts to be prepared and to become the law. The draft was sent to India by the Duke of Argyll, who was then as a secretary of State for India and after some amendments, it was first introduced as a bill in the Legislative Assembly or the Legislative Council in the year 1877. The Bill was then referred to the Select Committee, by whom it was revised and circulated for public criticism. In defence to this criticism, all matters not directly referring to transfer inter vivos were omitted; some clauses referring to the trusts, powers and settlements were added and dropped and other clauses were added with a view to save the provisions of the local law and usage. This means that the local law of the land that the people had been following since the ages have been considered and a totally new law was not brought into force, which was the possibility since the Bill was drafted in England and for India, so it was difficult to understand the local law without actually being there in India. So, there were chances that the England law was more into force than the actual Indian local law that

had been derived from the customs, traditions, practices, and from other ancient sources of law.

The Bill thus redrafted was referred to the Second Law Commission. The Second Law Commission in their report of 1879 said that the function of the Bill was to strip the English law of all that was local and historical and to mould the residue into a shape in which it would be suitable for an Indian population and could easily be administered by non-Professional Judges <sup>[16]</sup>. Some of the provisions of the Bill were borrowed from the enactments which it repealed and superseded but the Bill was based mainly on the English Law of real property. The law of Conveyancing and the Property Act, 1881 had been enacted in England before the Bill was passed into law and some of the provisions of the Act, notably sections 57, 61 and 69 are borrowed from that statute.

The Act afterwards was amended on 12 separate occasions by the amendment acts. These amendments did served their purpose, but there were still loopholes left in the provisions that left them open to the contradictions. Despite these amendments, there were conflicting decisions on nearly every section of the Act, and a further exposition of law became necessary. Accordingly in 1927, a special committee was appointed to examine the provisions of the Bill prepared by the legislative department of the government of the India for the purpose of making a general amendment of the Act. The Bill which was the result of their labour was, after a slight amendment in Select Committee, enacted in the Transfer of Property (Amendment) Act 20 of 1929.

### **Contingent Interest and the Transfer Contingent Happening Of Specified Uncertain Events**

*"Contingent Interest - Where on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible <sup>[17]</sup>"*

*There are exceptions to the same which are as follows:-*

*"Exception - Where, under a transfer of property a person becomes entitled to an interest, wherein upon attaining a particular age and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as many be necessary to be applied for his benefit, such interest is not contingent <sup>[18]</sup>"*

This means that when the transfer of property is supposed to happen only on the happening of specified uncertain event, then the person to whom the transfer is to be made is said to have the contingent interest in that property, meaning which the interest arises only on the happening of the specified uncertain event which means the event on the happening of which the property is to be transferred, is specified and is uncertain. Therefore, when for instance a person A is said to transfer his property to B only on his demise, then the happening of A's death is uncertain but is specified so the interest of B therein becomes the Contingent Interest. The exception to this is that when the person becomes entitled to the interest of attaining that property at a particular age, but even before that age the transferor is giving him the benefits arising out of his land, the interest may not be considered as a

contingent interest. For instance in the above mentioned example we saw that A was to transfer his property to B only on his death, but if A does transfer his property before his death, then the interest of B in the property is not contingent anymore. If the transfer is subject to a condition precedent, there is no transfer at all until the condition is fulfilled. Till then the interest is contingent on the condition being fulfilled. When the condition is fulfilled, the transfer takes effect and the interest becomes vested <sup>[19]</sup>. The specified uncertain event may be one which depends upon the will of the intended transferee, eg. execution of a deed, or payment of a sum of a money. The performance of such condition is subject to s.26. Now this provision of Section 21 of the Transfer of Property Act, is not used alone which means that it is used with other sections of the other statutes.

*"Transfer Contingent on happening of specified uncertain events - Where on a transfer of property, an interest therein is, to accrue to a specified person, if a specified uncertain event shall happen and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before all at the same time as the intermediate or precedent interest, seizes to exist <sup>[20]</sup>.*

In the above proviso Subsequent Contingent interest means the case put in this section is that of a prior interest followed by a subsequent contingent interest. The contingent interest cannot vest until the event on which it is contingent happens. For example, on the death of a person the property is to be transferred and the death does not happen, and suddenly the person who has another share of interest in the property dies and then due to that the first one also dies, then this is subsequent contingent interest. If that happens sometime after the prior interest has determined there is a gap or interval during which the estate would be in suspense and would be a res nuleus. The section therefore, enacts that the contingent interest will fail or cannot vest unless the event happens before or at the same time, as the prior interest seizes. This means that the interest will only arise after the happening of specified uncertain event otherwise it will not be called a contingent interest. Thus, if there is a gift for life to A and then to B, in case B gets called to the Bar, the gift to B fails unless he is called to the bar in the lifetime of A, or at the same time as A dies. The provisions also comply with other provisions of other statutes such as the Indian Succession Act, the section corresponds to section 124 of the aforementioned act, according to which if no period is specified a contingent bequest fails unless the event on which it is contingent happens before the period of distribution.

### **Comparison with the Concept of Spes Successionis & Vested Interest**

Now, that we have seen the concept of Contingent Interest, and the concept of Section 23 i.e. transfer of contingent interest on happening of specified uncertain events, let us compare the concepts with the Spes Successionis and Vested Interest.

Spes Successionis is mentioned in section 6 of the Transfer of Property Act. It says *"What may be transferred - Property of any kind may be transferred except as otherwise provided by this Act or by any other law for the time being in force"*

*(a) the chance of an heir apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman or any other mere possibility of a like nature cannot be transferred."*

The possibilities referred to in this clause are bare possibilities and not possibilities coupled with an interest such as contingent remainders and future interest <sup>[21]</sup>. The present interest of a widow in the property inherited by her from her husband can be transferred along with the incidental right of succeeding to the entire estate of her husband on the death of her co widow <sup>[22]</sup>. With reference to contingent interest the judicial committee said "It is something quite different from a mere possibility of alike nature of an heir apparent succeeding to the estate or the chance of a relation obtaining a legacy and also something quite different from a mere right to sue. It is a well ascertained form of property-- It certainly has been transferred in this country for generations -- in respect of which it is quite possible to raise money and to dispose of it in any way the beneficiary chooses."

This can be explained via illustrations or in other words for instance:-

(i) A Hindu owning separate property dies leaving a widow B and a brother C. C has only a bare chance of succession in case he survives B and this *Spes Successionis* he cannot transfer, but if during his lifetime makes a settlement of his separate property to his wife for her life and then to his son if he should have one and in a default of a son to B. B has an interest contingent to A having no son and that interest is transferable. When the rights of an adopted son are curtailed by an agreement during the widow of the adoptive father the right to enjoy the property during her lifetime. The interest of the son has not *spes successionis* but is a vested interest, enjoyment and possession only being postponed.

Now, that we have discussed what the concept of *Spes Successionis* is let us take a look into what the concept of Vested interest is as compared to the contingent interest as studied above. Vested Interest as mentioned in Section 19 of the Transfer of Property Act, says that "Where on the transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms of specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer. A vested interest is not defeated by the death of the transferee before he obtains possession. This means that there is an intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof, is postponed or whereby a prior interest in the same property is given or reserved to some other person or whereby income arising from the property is directed to be accumulated until the time of enjoyment arise or from a provision that if a particular event shall happen the interest shall pass to another person.

### Conclusion

Last, but not the least, when we conclude this paper we give a synopsis of what we have done till now and how it has helped in widening the area of knowledge and research. As we began, we talked about the transfer of property, its concept and introduction that how it gained so much importance in our daily lives that human beings are driving themselves ruthlessly high to achieve unbelievable and unachievable realistically high standards of lifestyle and materialistic pleasures. We have also seen how the transfer of property act has derived itself from the cultures and traditions that were prevalent in the ancient India. We also notice that the preamble of the statute

plays a very important role in the interpretation of the same and gives us an wholesome idea of the methods of interpreting the statute. It also discusses that the act does not involve the transfers by operation of law and it only includes transfers by act of parties and that is when the concept of contingent interest takes place. As we have noticed above that this Research paper talks about the concept of the Contingent Interest and what it is and what is the concept of transfer of contingent on happening of certain unspecified events. Contingent Interest is basically an interest which is given to us by some third party on the happening of a specified uncertain event which in many cases is death and until and unless the event occurs, the person to whom the transfer of property has to be made is not entitled to recover that property or is not entitled to any benefit arising from that piece of property before the happening of such specified uncertain events. We have also compared these concepts with the *Spes Successionis* and Vested interest and shown how they are different from each other. The main point to remember about everything is that the transfer of property under the Contingent interest happens only when the condition is fulfilled, had it been the case that the condition is not fulfilled then the transfer is not valid. The conditions are required to be fulfilled and they have to necessarily comply with the rules of the preamble that talk about justice, equity and good conscience, the three major principles of the natural law on which this whole act is based upon. At the end we have also discussed certain case laws in brief as to make the understanding of the concept a little easier and much more specific in its approach.

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