

**The Transfer of Property Act
(ACT NO. IV OF 1882)**

(As amended by Act XX of 1929, Act V of 1930, Act XXXV of
1934 and the Government of India (Adaptation of laws)
Order, 1950)

An Act to amend the law relating to the
transfer of property by act of parties

Preamble :

Whereas it is expedient to define and amend certain parts of the law relating to the transfer of property by act of the parties, it is hereby enacted as follows :-

Short History of the Act :

The transfer of property Act was enacted in pursuance of the policy of the Government to codify the Civil law of India into a self contained civil code.¹ The Royal Commission appointed for the purpose prepared the Draft of the Transfer of Property Act. The draft was submitted to the Secretary of State for the approval. A Select Committee was appointed to examine the draft but it failed to give the draft a concrete shape. Then it was referred to the Second Law Commission and after many discussions and modifications it prepared the present Act and it did try, as far as possible, to make it self-contained. This is evident from S.4 which provides that the chapters and sections of this Act, which relates to contracts shall be taken as part of the Indian Contract Act, 1872; and sections 54. paragraphs 2 and 3, 59, 107, and 123 shall be read as supplemental to the Indian Registration Act, 1908. The Bill so prepared and approved by the Legislature received the assent of the Governor General on the 17th February 1882. It came into force on 1st July, 1882.²

Before the enactment of the Act in 1882, there was practically no law dealing with real property in India and the Courts, in the absence of statutory provisions adopted English law of real property as principles of justice, equity and good conscience. But English laws were not always applicable to the Indian social conditions and their application resulted in a confused state of affair. In order to remedy this situation a commission in the name of Royal Commission, which later on came to be known as the First Law Commission, was appointed.

Since its enactment in 1882, this Act has been amended, repealed in part and extended under many enactments. By the Act II of 1900 the definition of "actionable claims" has been amended. It excludes from its purview claims secured by mortgage of immovable property or hypothecation or pledge of movable property not in possession. This amendment was intended to limit the words "actionable claims" to only secured debts. The most important amendment was introduced in the year 1929. The Amendment Act, XX of 1929, amended more than 50 sections and many new sections were added.

Preamble :

Preamble is generally regarded as a key to the Statute.¹ For some times its position was not very clear. In **Mills v. Wilkins**² Lord Holt observed. "The preamble of a statute is no part thereof but contains generally the motives or inducement thereof". Now however it is an established fact that where the enacting part is explicit and unambiguous the preamble can not be resorted to control, qualify or restrict it, but where the enacting part is ambiguous the preamble can be referred to explain and elucidate³ the same. Lord Halsbury puts it in more subtle way: "Two propositions are quite clear--one, that a preamble may afford useful light as to what a statute intends to reach and another, that if an enactment is itself clear and unambiguous no preamble can qualify or cut down the enactment."⁴ Thus it may be said that where the operative part of an enactment is clear and unambiguous, the preamble is not the operative part of the statute, and can not control and extend it. But where the language of the operative part of a statute is not clear the preamble may be very usefully referred to in order to explain and elucidate it.⁵

Clause (d) Transfer by Operation of Law :

The operation of the Act is limited to transfers by act of parties. This indicates clearly that transfers by operation of law are beyond the purview of this Act. A transfer by operation of law is not validated or invalidated by anything contained in the Act.⁴ Testamentary and intestate succession, forfeiture, court sales and insolvency are regarded as transfers by operation of law.