

# REGISTRATION ACT, 1908

## INTRODUCTION

Object of the Act:

1. To ensure information about all deals concerning land so that correct land records could be maintained.
2. To proper recording of transactions relating to other immovable property.
3. Registration of other documents for more authenticity.
4. Registering authorities have been provided in all the districts for this purpose.



Note that this registration is entirely different from registration of charge done by Registrar of Companies under Companies Act. If the charge relates to immovable property, registration with Registrar (appointed by State Government) under Registration Act and registration under Companies Act with ROC are **both required**.

**Documents of which registration is compulsory** - Registration of documents relating to immovable property is compulsory. Registration of will is optional. (List out names from your notes)

**Documents not requiring registration** - Some documents though related to immovable property are not required to be registered. These are given in section 17(2). (List out names from your notes)

### Time of presentation for registration –

- a. Within 4 months from date of execution [section 23].
- b. Decree or order of Court can be submitted within four months from the day it becomes final.
- c. If document is executed by several persons at different times, it may be presented for registration within 4 months from date of each execution [section 24].
- d. If a document is executed abroad by some of the parties, it can be presented for registration within four months after its arrival in India [section 26].



RE-REGISTRATION - If a person finds that a document has been filed for registration by a person who is not empowered to do so, he can present the document for re-registration within 4 months from the date he became aware of the fact that registration of document is invalid [section 23A].

### Where document should be registered

1. Document relating to immovable property - in the office of Sub-Registrar of sub-district within which the whole or some portion of property is situated [section 28].
2. Other document can be registered in the office of Sub-Registrar where all persons executing the document desire it to be registered [section 29].
3. A Registrar can accept a document which is registerable with sub-registrar who is subordinate to him [section 30(1)].
4. Document should be presented for registration at the office of Registrar/Sub-Registrar.
5. In special case, the officer may attend residence of any person to accept a document or will [section 31].

### Appearance before Registrar:

- ✓All persons executing the document or their representatives, assigns or agents holding power of attorney must appear before registering officer [section 34(1)].
- ✓They have to admit execution and sign the document in presence of Registrar, as required under section 58(1) (a). Appearance may be simultaneous or at different times [section 34(2)].

✓If some of the persons are unable to appear within 4 months, further time upto additional 4 months can be given on payment of fine upto 10 times the proper registration fee [proviso to section 34(1)].

✓If document relates to transfer of ownership of immovable property, passport size photograph and finger prints of each buyer and seller of such property shall be affixed to document. [Proviso to section 32A].

✓The Registrar is required to ensure that these are endorsed on the document.

### **Registration by Registering Officer (R/O)–**

If the Registering Officer is satisfied that all the provisions are complied with and registration fees are paid, the registering officer will register the document [section 35(1)]. He will make necessary entries in the Register maintained by him.

Certification of registration - After all formalities are complete, the R/O will endorse the document with word 'Registered', and sign the same. The endorsement will be copied in Register. After registration, the document will be returned to the person who presented the document [Sec 61].



### **Effective date of document –**

1. A document takes effect from its date of execution and not from date of registration. However, if the document states that it will be effective from a particular date, it will be effective from that date [section 47].

2. Document registered has priority over oral agreement - Any non-testamentary document registered under the Act takes effect against any oral agreement relating to the property.

The only exceptions are : (a) If possession of property (movable or immovable) is delivered on basis of such oral agreement and such delivery of possession is valid transfer under any law (b) Mortgage by deposit of title deeds takes effect against any mortgage deed subsequently executed and registered which relates to same property [section 48].

### **Effect of non-registration**

1. It can not be acted on 2. Cannot be received as evidence of any transaction Thus, the document becomes redundant and useless for all practical purposes.

It can be accepted as evidence in criminal proceedings

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The greatest results in life are usually attained by simple means and the exercise of ordinary qualities. These may for the most part be summed in these two: common-sense and perseverance.

**-Owen Feltham**

# **SPECIFIC RELIEF ACT, 1963**

## **INTRODUCTION**

1. Specific Reliefs Act is complimentary to provisions of Contract Act and Transfer of Property Act, as the Act applies both to movable property and immovable property.
2. The Act applies in cases where Court can order specific performance of a contract or act. As per section 4, specific relief can be granted only for purpose of enforcing individual civil rights and not for the mere purpose of enforcing a civil law.
3. 'Specific performance' means Court will ask the party to perform his part of agreement, instead of asking him to pay damages to other party.

### **A. RECOVERING POSSESSION OF IMMOVABLE PROPERTY –**

1. A person who is entitled to possession of a specific immovable property may recover it in the manner provided in Code of Civil Procedure. (Section 5)
2. If any person is disposed without his consent, of immovable property otherwise than by course of law, he can recover possession, even if any other title is set up in such suit. Such suit shall be brought within 6 months.
3. No suit can be filed against Government for recovery of possession. [Section 6]. -  
- **That is why it is termed as 'possession is 9 points in law'.**
4. **Even an unlawful possession of immovable property can be taken away only by lawful means and not forcefully.**

### **B. RECOVERING POSSESSION OF SPECIFIC MOVABLE PROPERTY**

- a. A person who is entitled to possession of a specific movable property may recover it in the manner provided in Code of Civil Procedure. (Section 7)
- b. If any person is in possession or control of a specific movable property of which he is not owner, he can be compelled to specifically deliver it to the person entitled to immediate possession, in cases specified in section 6. - - Thus, if a person holding the movable property is owner of goods, he cannot be compelled to deliver it to other.
- c. However, in other cases, he can be compelled to deliver it, even if other person is not owner, as long as he is entitled to its immediate possession.

### **C. SPECIFIC PERFORMANCE OF CONTRACT**

Specific performance of contract can be ordered, at discretion of Court, in following cases –

- (a) Where there exists no standard for ascertaining damage caused by the non-performance of act agreed to be done or
- (b) When the act agreed to be done is such that compensation in money for non-performance will not give sufficient relief. [Section 10].
- (c) Please note that as per explanation (ii) to section 10, breach of contract in respect **of movable property** can be relieved (by paying damages) unless the property is not an ordinary article of commerce or is of specific value or interest to the tariff, or consists of goods which are not easily available in the market. -

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In other words, Court may order to deliver specific article only if it is special or unique article, not available in market. In other cases, Court will order damages but not order specific performance of contract.

- (d) In case of **immovable property**, normally, specific performance will be ordered, as such property is usually unique. - - Section 12(1) states that Court shall not order performance of part of contract, except in cases specified in that section.

#### **D. CONTRACTS WHICH CANNOT BE SPECIFICALLY ENFORCED –**

Following contracts cannot specifically enforced –

- (a) Where compensation is adequate relief
- (b) Contract runs into such minute or numerous details or depends on personal qualifications of parties or is such that Court cannot enforce specific performance of its material terms
- (c) Contract which in its nature is determinable
- (d) Contract, performance of which involves a continuous duty, which Court cannot supervise. [Section 14]. - - In other words, in case of movable articles or contract of intricate nature, specific performance will normally not be ordered by Court. - -
- (e) Specific performance of contract of personal nature cannot be ordered.

#### **E. DISCRETIONARY POWERS OF COURT**

- a. Jurisdiction of Court to decree specific performance is discretionary. Court will not order specific performance merely because it is lawful to do so. [Section 20(1)].
- b. Court will consider various aspects before issuing decree for specific performance.
- c. Court can grant compensation in lieu of even in addition to specific performance. [Section 21].

#### **F. OTHER CASES WHEN COURT CAN ORDER SPECIFIC PERFORMANCE**

- (a) Order rectification of instrument if it does not reflect real intention of parties. This may happen through fraud or mutual mistake. [Section 26]
- (b) Order rescission of contract (section 27)
- (c) Cancellation of instrument by getting declared that it is void (section 31).

ॐ नमो भगवते वासुदेवाय ० नमो भगवते वासुदेवाय

☞ Why are people so afraid? The answer is that they have made themselves helpless and dependent on others. We are so lazy, we do not want to do anything ourselves. We want a Personal God, a Savior or a Prophet to do everything for us.

**Swami Vivekanand**

# INDIAN STAMP ACT, 1899

**Object of the Act:** The basic purpose of Indian Stamp Act, 1899 is to raise revenue to Government.

## Power of Parliament in respect of stamp duty –

1. Parliament can make law in respect of Stamp Duty. It can prescribe rates of stamp duty.
2. The stamp duty rates prescribed by Parliament in respect of bill of exchange, cheques, transfer of shares etc. will prevail all over India.
3. However, other stamp duty rates prescribed by Parliament in Indian Stamp Act, 1899 (e.g. stamp duty on agreements, affidavit, articles of association of a company, partnership deed, lease deed, mortgage, power of attorney, security bond etc.) are valid only for Union territories.

## Powers of State Government (S/G) of Stamp Duty –

1. S/G has powers to fix stamp duties on all documents except bill of exchange, cheques etc.
2. Rates prescribed by S/G will prevail in that State. S/G can make law for other aspects of stamp duty also (i.e. matters other than quantum of duty).
3. However, if there is conflict between State law and Union law, the Union law

## A. Instruments chargeable to stamp duty

1. Instrument includes every document by which any right or liability, is, or purported to be created, transferred, limited, extended, extinguished or recorded [section 2(17) of Indian Stamp Act].
2. Any instrument mentioned in Schedule I to Indian Stamp Act is chargeable to duty as prescribed in the schedule [section 3].
3. The list includes all usual instruments like affidavit, lease, memorandum and articles of company, bill of exchange, bond, mortgage, conveyance, receipt, debenture, share, insurance policy, partnership deed, proxy, shares etc.
4. If an instrument is not listed in the schedule, no stamp duty is payable.

💡 'Instrument' does not include ordinary letters. Similarly, an unsigned draft of an agreement is not an 'instrument'.

## B. Duty payable when several instruments

1. In case of sale, mortgage or settlement, if there are several instruments for one transaction, stamp duty is payable only on one instrument. On all other instruments, stamp duty will be of Re. 1 [section 4(1)].
2. If one instrument relates to several distinct matters, stamp duty payable is aggregate amount of stamp duties payable on separate instruments [section 5].

💡 However, if one instrument covering only one matter can come under more than one descriptions given in Schedule to Stamp Act. Then in such case, highest rate specified among the different heads will prevail [Sec. 6]

## What is meant by 'duly stamped' ?

1. Instrument bears an adhesive or impressed stamp
2. Stamp is of Proper amount
3. Such stamp has been affixed or used in accordance with law in force in India [section 2(11)].
4. In case of adhesive stamps, the stamps have to be effectively cancelled so that they cannot be used again.
5. Similarly, impressed stamps have to be written in such a way that it cannot be used for other instrument and stamp appears on face of instrument.
6. If stamp is not so used, the instrument is treated as 'un-stamped'.
7. Similarly, when stamp duty paid is not adequate, the document is treated as 'not duly stamped'.

## Powers to reduce stamp duty

1. Government can reduce or remit whole or part of duties payable.
2. Such reduction or remission can be in respect of whole or part of territories and also can be for particular class of persons.
3. Government can also compound or consolidate duties in case of issue of shares or debentures by companies [section 9(1)].

4. 'Government' means Central Government in respect of stamp duties on bills of exchange, cheque, receipts etc. and 'State Government' in case of stamp duties on other documents [section 9(2)].

**Mode of payment of stamp duty:**

The payment of stamp duty can be made by 1] Adhesive stamps or 2] Impressed stamps.

**When to Execute**

1. Instrument executed in India must be stamped before or at the time of execution (section 17).
2. Instrument executed out of India can be stamped within three months after it is first received in India [section 18(1)].
3. In case of bill of exchange or promissory note made out of India, it should be stamped by first holder in India before he presents for payment or endorses or negotiates in India [section 19].

**Valuation for stamp duty :** Stamp duty is payable on ad valorem basis i.e. on basis of value of property

**What is Adjudication as to stamp duty payable?**

- ✓ Adjudication means determining the duty payable. Normally, the person paying the duty himself may decide the stamp duty payable and pay accordingly.
- ✓ However, in cases of complex documents, the person paying the duty may not be sure of the stamp duty payable. In such case, he can apply for opinion of Collector. He has to apply with draft document and prescribed fees.
- ✓ Collector will determine the stamp duty payable as per his judgment [section 31(1)].

**Instrument cannot be accepted as evidence if not duly stamped** - An instrument not 'duly stamped' cannot be accepted as evidence by civil court, an arbitrator or any other authority authorised to receive evidence. However, the document can be accepted as evidence in criminal court.

**Case when short payment is by mistake -**

1. If non-payment or short payment of stamp duty is by accident, mistake or urgent necessity,
2. The person can himself produce the document to Collector within one year.
3. In such case, Collector may receive the amount and endorse the document that proper duty has been paid.

**Stamp duty on Receipt**

Stamp Duty on receipt is Re. 1 for receipt above Rs. 5,000.

1. Receipt includes any note, memorandum or writing [whether signed by any person or not]
2. where any money, or any bill of exchange or promissory note is acknowledged to have been received or
3. where any other movable property is acknowledged to have been received in satisfaction of a debt or
4. whereby any debt or demand is acknowledged to have been satisfied or discharged or
5. Which signifies or indicates any such acknowledgment [section 2(23)].

**Stamp duty on transfer of shares in a company or body corporate:**

It is 50 Paise (now 25) for every hundred rupees or part thereof of the value of share. It is based on Market price as on date of instrument.

**Stamp Duty on transfer in Depository Scheme -**

1. At the time of IPO Company shall pay stamp duty on total amount of security issued by it
2. Hence no further collection from Investor
3. If Remat opted, then no stamp duty is payable by an investor as if a 'duplicate certificate' has been issued.
4. If securities are purchased or sold under depository scheme, no stamp duty is payable.

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**I have no special talents. I am only passionately curious - Einstein**

