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“OFFENCES AGAINST PROPERTY” – A DETAILED ANALYSIS

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ABSTRACT

Any crimes that affect or violates a person's right to ownership, enjoyment, control or possession over a property constitutes an offence against a property whether movable or immovable. The offences against a property are theft, snatching, robbery, extortion, dacoity, criminal misappropriation, criminal breach of trust, mischief, cheating, damages etc. These offences are often punishable as per the nature of the offence committed, under the codes prescribed by our Indian law.

Keywords: Property, Offences, Dishonesty, Mischief, Prevention, Protection.

1. INTRODUCTION

In general terms, Property is a thing or things any person or person's has legal title over it. A property can either be movable or immovable, physical or virtual. In legal term, a property wholly belongs to a person who can absolutely enjoy or dispose it in the manner he deems to fit. When a person wrongfully covets another person's property an offence is committed. Offences against property is one of the most common and frequently committed by a large number of people across the world. In India offences against property are governed under Bharatiya Nyaya Sanhita, 2023, The Prevention of Damage to Public Property Act, 1984 and Land Grabbing (Prohibition) Acts of the respective states.

2. IMMOVABLE PROPERTY

2.1. DEFINITION:

Section 3 of the Transfer of Property Act, 1882 defines that immovable property includes land, benefits to rise out of land and things attached to earth. It does not include standing timber, growing crops or grass. In the case of **Babulal vs Bhawani, (1912) 9 ALJ776¹** it was held that the definition under S.4 of the General clauses Act, 1897 is also applicable to define immovable property.

The rights or interest arise from an immovable property recognized by courts are as follows²:

- a) Right of way or easement
- b) Rights under lease or tenancy
- c) Rights to extract gold, silver, coal or other minerals from mines
- d) Right to fishery³
- e) Mortgage debts
- f) Equity of redemption
- g) Office of the hereditary priest of temple and also its emoluments⁴
- h) Right of a Maha Brahmin to receive dues at a funeral

2.2. OFFENCES AGAINST IMMOVABLE PROPERTY:

Offences against immovable property includes fraudulent transfer, trespass, criminal damage or vandalism, arson, encroachment, dispossession of property.

A. TRANSFER OF PROPERTY ACT, 1882:

Fraudulent transfer:

The elements of a fraudulent transfer as per S.53(1) of the Transfer of Property Act, 1882 are:

1. Transfer of an immovable property
2. Intention to defeat or delay the creditors of the transfer made
3. Void at the option of the creditor so defeated or delayed

The rule that a fraudulent transfer can be avoided by creditors is not applicable to the two

¹ Dr. R.K. Sinha- The Transfer of Property Act, Page 20 of 2019 edition, Central Law Agency Publications

² Dr. R.K. Sinha- The Transfer of Property Act, Page 25 of 2019 edition, Central Law Agency Publications

³ Bihar fishermen Co-operative Society vs Sipahi Singh, AIR 1997 SC 2149

⁴ Raghoo vs Kasshy, (1883) 10 Cal. 73

exception that are recognized under this section. The exceptions are:

1. The rights of the transferee in **good faith**, for **consideration**
2. Any law relating to **insolvency** for the time being in force.

In the case of **Abdul Shukoor vs Arji Papa Rao, AIR 1963 SC 1150**⁵ it was held that knowledge and mala fide intention of the transferee are the determining factors.

B. THE PREVENTION OF DAMAGE TO PUBLIC PROPERTY ACT, 1984:

Section 3 of this act states that whoever causes damage to any of the public property by mischief shall be punished with imprisonment that may extend up to 5 years and with fine. As per clause 2 any public property that are damaged by mischief, they are punished not less than 6 months of rigorous imprisonment but not more than 5 years with fine. The mischief acts as per S.3(2)⁶ are:

- a) any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy;
- b) any oil installations;
- c) any sewage works;
- d) any mine or factory;
- e) any means of public transportation or of tele-communications, or any building, installation or other property used in connection

C. LAND GRABBING (PROHIBITION) ACTS:

Land grabbing is an unethical acquisition by an individual, private forces or even government through deceit or force from the rightful owner. As far land grabbing by government, acquisition even after proper objection or lack of payment of compensation by the said authorities also constitute as the offence. Each state can enact its own prohibition act. Some of the acts that prevents land grabbing are as follows:

- a) The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013⁷ – LARR Act imposes the acquisition must

⁵ Dr. R.K. Sinha- The Transfer of Property Act, Page 216 of 2019 edition, Central Law Agency Publications
⁶ https://www.indiacode.nic.in/show-data?abv=CEN&statehandle=123456789/1362&actid=AC_CEN_5_23_00018_198403_1517807325229§ionId=37147§ionno=3&orderno=3&orgactid=AC_CEN_5_23_00018_198403_1517807325229

⁷ Act 1 of 2015, Published in Tamil Nadu Government gazette

be made only for **public purpose, fair compensation** must be given, provisions of **rehabilitation** and **resettlement** were included.

- b) States such as Andra Pradesh, Karnataka, Gujarat, Assam, West Bengal etc., has their own land grabbing (prohibition acts).

ANTI LAND GRABBING CELL:

In 2011, a government order was passed to establish The Anti-Land Grabbing Special Cell (AGLSC) of Tamil Nadu in 28 districts of the state. This cell was set up to address the complaints regarding land grabbing cases which were overlooked by the police authorities. A petition against the AGLSC was put in front of Madras High Court on 2015, the court held that the order has ambiguity and does not properly define the terms “land grabbers” and “land grabbing” and hence set aside the government order. In 2023, the Supreme Court upheld the Madras High Court’s decision.

D. THE INDIAN FOREST ACT,1927:

The Indian Forest act’s⁸ main objective is to protect the land areas as reserved or protected areas safeguarding for the indigenous people dwelling in forests as well as protecting the wild life from encroachment.

E. BHARATIYA NYAYA SANHITA,2023:

Under chapter XVII of The Bharatiya Nyaya Sanhita, 2023 the offences against Property are constituted from Sections 303 to 334. Offence against immovable property are as follows:

i. CRIMINAL TRESPASS AND HOUSE TRESPASS – S.329

The essential ingredients of criminal trespass are:

1. Entry into or upon property in the possession of another;
2. Such entry is lawful, then unlawfully remaining upon such property;
3. On such entry into the property unlawful remaining must be with an intention to commit an offence or to intimidate, insult or annoy the person in possession of that property.

To commit house trespass, a person must unlawfully enter or remain in any building, tent or vessel⁹ used as a dwelling place or any other building used as a place of worship or as a custody of property.

⁸ <http://nbaindia.org/uploaded/Biodiversityindia/Legal/3.%20Indian%20forest%20act.pdf>

⁹ Dhanonjoy vs Provat Chandra Biswas, AIR 1934 Cal 480, (1935) Cr LJ 949(Cal)

Punishment:

A person who commits criminal trespass shall be punished with imprisonment extended up to 3 months or with fine extending up to five thousand rupees or both. For house trespass, the person to commit the offence shall be imprisoned up to 1 year term or with fine extending up to five thousand rupees or with both.

ii. CHEATING – S.318

Any person with an intention of deceiving¹⁰ any other person fraudulently or dishonestly to deliver a property to any person or consent to the person to retain a property, intentionally inducing the person who is deceived to do or omit anything that he would not do if not received. Such deception might likely cause any damages to the person, body, mind, reputation or his property is said to be cheating under this section. Dishonest concealment is also considered as cheating under S.318.

Punishment:

1. When a person cheats, he will be imprisoned for to three years, or with fine, or with both. When a person cheats with the knowledge that he is likely to cause wrongful loss to a person he may be imprisoned for five years, or with fine, or with both.
2. A person cheats by dishonestly inducing a person to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, is to be punished with imprisonment of seven years, and will also be liable to pay fine.

Examples:

- a) A person dishonestly induces another that he is a civil servant and receives goods. Here the 1st person has committed cheating
- b) A person has pledged fake stones similar to diamond and receives money. This person has committed cheating.

¹⁰ Narayan Das vs State of Orissa, November 19,1951

iii. MISCHIEF – S.324

Any person with an intention acts to cause or knowing likely to cause an act that results in wrongful loss or damage to the public as well as private person is mischief. The person committing mischief also causes destruction, changes of any property destroy and diminishes the value or utility of that property is said to have caused mischief.

Punishment:

1. When a person commits mischief by causing loss or damage to any property is punished with one year imprisonment or fine, or with both. If the damages have caused loss of more than twenty thousand rupees but less than one lakh rupees is punished with an imprisonment for two years or fine or with both.
2. If the amount exceeds one lakh rupees or more is punished with imprisonment for five years or fine, or with both.
3. If the mischief causes any death, hurt, wrongful restraint, or fear of death, is punished with imprisonment five years, and is also liable to pay fine.

Examples:

1. A person letting his cattle on other person's land for grazing with the knowledge that the crops will be damaged is mischief.
2. Burning another person's valuable asset knowing it will cause a loss is mischief.

iv. FORGERY – S.336

A person with intent¹¹ to cause damage or injury to the public or any person by making false¹² document or a part of document, or any electronic record or a part of the record, or to support any claim or the title of a property or to cause a person to part with the property or to enter into a contract with an implied or expressed intention to commit fraud is said to have committed forgery.

Punishment¹³:

1. A person committing forgery is punished with two years of imprisonment, or with fine,

¹¹ Ram Narayan Popli v CBI (2003) 3 SCC 641, AIR 2003 SC 2478.

¹² Re Riasat Ali (1881) ILR 7 Cal 352; AK Khosla v TS Venkatesan (1992) Cr LJ 1448(Cal).

¹³ Bharatiya Nyaya Sanhita, 2023

or with both. A person committing forgery on documents or electronic record for the purpose of cheating, is punished with imprisonment up to seven years, and is also liable to pay fine.

3. MOVABLE PROPERTY:

DEFINITION:

In common terms, a movable property can be physically moved without changing its value or nature. S.2(21) of Bharatiya Nyaya Sanhita,2023 states that anything except land and things that are attached to earth or permanently fastened to anything which is attached to the earth are movable property. Any illegal acts towards a movable property such as depriving the right of the rightful owner with an intention of causing wrongful gain or loss to one person is an offence.

3.1 OFFENCES AGAINST MOVABLE PROPERTY BHARATIYA NYAYA SANHITA,2023:

i. THEFT – S.303

A person intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft. A person committing theft is punished with imprisonment for the term which may extend up to 3 years with fine or with both.

Examples¹⁴:

1. A person takes away a plant from his neighbour's house with a dishonest intention and sells that plant. Theft has been committed.
2. A person with a good faith, believing property belongs to another person takes away that property from the rightful owner's possession. That person has not committed theft as there is no dishonest intention is present¹⁵.

ii. SNATCHING – S.304

As per this section, theft is snatching when the offender suddenly or forcibly seizes or secures or takes away any movable property from any person or from the person's possession. For snatching, the punishment of imprisonment may extend up to 3 years and shall also be fined.

¹⁴ Bharatiya Nyaya Sanhita,2023

¹⁵ Charanjit Singh Chadha v Sudhir Mehra, AIR 2001 SC 3721, (2001) Cr LJ 4255(SC)

iii. EXTORTION – S.308

Any person who intentionally puts any person in fear of injury or any other so that the person in fear hands over their rightful property which may also be a valuable security or security which may later be valuable that are signed or sealed is said to commit extortion. Taking away a child and extorting money out of is considered to be an aggravated form of extortion¹⁶.

Punishment:

1. When a person commits extortion, he is punished with imprisonment for a term of seven years or fine or with both. And in order to the committing of extortion by putting a person in fear or any attempts to cause fear or injury, is punished with imprisonment of two years, fine, or with both.
2. By putting any person in fear of death or of grievous hurt that person is imprisoned for ten years and is liable to pay fine.

Examples¹⁷:

1. A person threatens another that he will publish defamatory article unless he pays a sum of money. This person has committed extortion.
2. A person threatening to cause grievous hurt gets signature of the person in fear and affixes his seal in a blank document. This person has committed extortion.

iv. ROBBERY – S.309

Robbery always consists of theft and extortion. Theft becomes robbery when, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint¹⁸. Extortion becomes robbery when the offender during the time of committing the offence is in the presence of a person or persons putting them into fear of getting hurt or fear of death¹⁹.

¹⁶ Ram Chandra v State of Uttar Pradesh, 25 July, 1997

¹⁷ Bharatiya Nyaya Sanhita, 2023

¹⁸ Budho Saleh v Emperor AIR 1945 Sind 38; Venu @ Venugopal v State of Karnataka (2008) 3 SCC 94, AIR 2008 SC 1199, (2008) Cr LJ 1634(SC)

¹⁹ Bishwanath Jha v State of Bihar (2001) 10 JT 333,

Example:

1. A person demands money and jewellery by showing a pistol. This person has committed robbery.

v. DACOITY – S.310

Dacoity is an armed group robbery that consists of five or more members whom steal the property from any individuals or groups using threat or violence. Any person committing, aiding or attempting such acts are said to have committed dacoity²⁰.

Punishment²¹:

- a) Those who commit dacoity are punished up to ten years, and are also liable to fine.
- b) Preparation to commit dacoity is punishable with to ten years of imprisonment and also is liable to pay fine. When gathering to commit dacoity is punished up to seven years of imprisonment.
- c) Any person belonging to a gang associated for the purpose of dacoity, are punished with imprisonment for life, or with rigorous imprisonment for ten years, and is liable to fine.

vi. DISHONEST MISAPPROPRIATION OF PROPERTY – S.314

Criminal Misappropriation or Dishonest Misappropriation of property specifically deals with movable properties that are deprived from the rightful owner with a dishonest intention. The elements of Dishonest Misappropriation are²²:

1. The property must be movable
2. The property must belong to another person
3. Finding of the property
4. Using it as the finders own or misappropriating the property
5. There must be a dishonest intention

In the case of **U. Dhar vs State of Jharkhand**²³, the Supreme court held that dishonesty and misappropriation are important elements to constitute under this section. Any person who has

²⁰ Ram Shanker Singh v State of Uttar Pradesh AIR 1956 SC 441

²¹ Bharatiya Nyaya Sanhita, 2023

²² Hari Singh Gour, Penal Law of India vol 4, 11th edition, Law Publishers, Allahabad, 1998.

²³ U. Dhar & Anr vs The State of Jharkhand & Anr, 20 January, 2003

committed dishonest²⁴ misappropriation is to face imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.

S.315 of BNS protects the property of the deceased person. The important elements to apply this section are²⁵:

1. The property must be movable.
2. The property must belong to another person.
3. Such property must be with the deceased person at the time of his death.
4. Such property must be misappropriated before to any possession of those legally entitled.
5. The intention must be dishonesty.

The offence becomes aggravated when the offender is an employee or servant who misappropriates employer's property and is punished up to 7 years of imprisonment.

Examples²⁶:

1. A person takes out a book to read from his friend's shelf thinking the friend has impliedly given consent. The friend discovers the missing book and asks to return. The person who took the book has no intention to return the book even though he now has the knowledge that the friend has not consented and misappropriates.
2. John dies in possession of money and jewellery. His servant David misappropriates the money and jewellery before the possession of any persons legally entitled to such possession, David has committed aggravated dishonest misappropriation.

vii. CRIMINAL BREACH OF TRUST – S.316

Any person in any manner entrusted²⁷ with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits

²⁴ R. Jeeva @ Rajesh vs The State of Tamil Nadu, 20 November, 2013

²⁵ State of Madhya Pradesh v Pramode Mategaonkar (1965) 2 Cr LJ 562(MP).

²⁶ Bharatiya Nyaya Sanhita, 2023

²⁷ Somnath Puri v State of Rajasthan (1972) 1 SCC 630, AIR 1974 SC 794

criminal breach of trust²⁸.

Punishment:

1. Criminal breach of trust is punished up to five years of imprisonment, fine, or with both. When a clerk or servant who is entrusted with property, or the property's dominion commits criminal breach of trust is imprisoned up to seven years with fine.
2. In the case of banker, merchant, broker, attorney or agent they are punished with life imprisonment, or up to ten years, and are liable to pay fine

Examples:

1. Gill an executor of the will misappropriates the will and rewrites for his own benefit after his employer's death. He has committed criminal breach of trust.
2. Subham entrusts his furniture to Lal. Lal sells his furniture. Lal had committed criminal breach of trust.
3. A revenue officer who is entrusted with public's money in treasury misappropriates the money. He has committed criminal breach of trust.

viii. PROPERTY MARK – S.345:

A property mark²⁹ is used to denote that the property belongs to a particular person. Any person who marks any movable property or goods or package or other movable property having already been marked, in such a way that it is reasonably calculated to cause it to be believed that the property or goods that are marked, belonging to another person to whom that property do not belong, is said to use a false property mark³⁰. It is to be noted that property mark and trademarks are completely different³¹.

Punishment:

Any person who uses any false property mark is imprisoned for a year or fine or with both, unless he proves that he has acted without any intent of fraud³².

²⁸ State of Punjab v Pritam Chand (2009) Cr LJ 1742(SC), (2009) 16 SCC 769; Harmanpreet Singh Ahluwalia v State of Punjab (2009) Cr LJ 3462(SC), (2009) 7 SCC 712

²⁹ Suppell v Ponnusami Tevan (1899) ILR 22 Mad 488 at p 490.

³⁰ Bharatiya Nyaya Sanhita, 2023

³¹ Sumant Prasad Jain v Sheoanam Prasad, AIR 1972 SC 2488, (1973) 1 SCC 56, (1972) Cr LJ 1707(SC).

³² Shantilal Uttram Mehta v Dhanji Kanji Shah, AIR 1961 Bombay 203.

Conclusion:

Offence against properties is often overlooked as a non-serious offence but these sorts of offence are committed at large. Proper regulations have to be strictly followed. Problems such as corrupted officials and lack of trust in judiciary also stands as a major role in the increase of offences against the property. The spirit of law must provide fair and reasonable justice, compensation towards the victims affected and severely punish the guilty.

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