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NEED FOR A LEGISLATIVE **FRAMEWORK FOR VIRTUAL** **GOODS AND PROPERTIES** **BROUGHT IN INDIA THROUGH** **THE METAVERSE**

Authored By- Nihal Govind T

INTRODUCTION

Metaverse is a concept of persistent, online 3D Universe that combines multiple virtual spaces. Metaverse allows the users to meet, gather, and socialize through a virtual 3-dimensional medium¹. Metaverse is a growing area in the information technological industry and already many corporations and establishments have shown significant interest in incorporating a part of their activities in the Metaverse. However, an ambiguity persists in regard to the regulation of such virtual spaces.

Metaverse or virtual space is a growing area under Information technology that is regarded as a virtual asset or space in technological sense. Section 5 of the TP act, section 2(7) of sales of Goods Act, and the provisions in RERA Act, creates an ambiguity in defining and understanding whether virtual property or metaverse would fit into the specific regulatory framework dealing with property in India. Section 5 of the TP act defines the transfer of property as the conveyance of property from one person to another, provided that such transfer is not prohibited by law. However, section 5 of the TP act does not explicitly provide the medium for the conveyance of property and hence, a virtual medium of conveyance of property

¹ What is Metaverse, Binance Academy (Sep.21, 2021), [https://academy.binance.com/en/articles/what-is-the-metaverse?](https://academy.binance.com/en/articles/what-is-the-metaverse?ref=cr)

cannot be held invalid. The paper contends that metaverse of virtual asset under the would come within the scope and ambit of section 5 of the TP act.

The objective of the research is to determine the scope of legislation regulating the protection and transfer of assets in regulating virtual space and property like 'Metaverse'. In order to analyze the research objective and research problem in depth, the author seeks to adopt doctrinal based research. The method of data collection is qualitative, and the data on which the author rely is taken from secondary source and mainly involves the use of texts. The author being a passive observer relied on the 'existing data' in form of statutes, case laws, and other research articles. The author sourced his data from prominent data bases which include the official government websites for statutes, SCC Online and West law for case laws, and Jstor, Heine Online, for research articles. By virtue of content analysis, the paper seeks to analyze and interpret the relevant provision that deals with the appointment of guardian for disabled person with an intention protect their life and property. It further seeks to understand the rule of interpretation that shall be applied in deciding the applicability of those section with respect to the appointment of guardian for comatose patient in regard to their life and property.

SCOPE OF REGULATION OF METAVERSE/VIRTUAL PROPERTY IN INDIA

Virtual Property in a Metaverse is an area of technological emergence and advancement under the radar of legal consideration and enforcement. Hence, there has always been confusion and ambiguity about its legal status and position. A virtual Property is a property right in a virtual product². Both virtual and intellectual property rights protect interests in non-corporeal things. However, virtual property rights apply to rivalrous goods whereas, intellectual property rights apply to non-rivalrous goods³. Although, virtual property rights raise a concern pertaining to ownership. It is unclear on whether a virtual property right is owned by the creator or does it belong to the users? Under this section the author intends to analyze the scope of virtual property rights in regard to the Indian legal framework.

² Steven J. Horowitz, Competing Lockean Claims to Virtual Property, 20 HARV. J.L. & TECH. 443 (2007)

³ Id

Scope of Virtual Property under the Transfer of Property Act, 1882

Section 5 of the Transfer Property Act, 1882 provides the ‘transfer of property’ as an act by which a person conveys a property in present or future to one or more person or to himself⁴. By mere reading of section 5 of the Transfer of Property Act, it is evident that the said section does not prescribe a mandatory medium for the conveyance of a property. Further, section 5 also does not invalidate the transfer of a virtual property. However, it is difficult to presume that the legislative and intention of the further amendments to the act would have foreseen the development of virtual assets so as to incorporate them under the TP Act. Furthermore, there is an ambiguity in understanding the nature of a virtual property with respect to the TP Act. Even though, a virtual property will not come under the excluded items under the meaning of immovable property as provided under section 3 of the TP Act; on further reading and wider understanding it is evident that virtual property cannot be considered as an immovable property, as there is no scope for its registration under the TP Act. TP Act provides for compulsory registration of transfer of property valuing more than 50 rupees of things that are ‘attached to Earth’⁵. Hence, there is no scope for incorporating virtual property as an immovable property for its regulation under the Transfer of Property Act.

The Scope of Virtual Property under the Sales of Goods Act

In the Previous sub-section, the author claimed that a virtual property cannot be considered as an immovable property for the purpose of being regulated by the Transfer of Property Act. In this section, the author intends to look in depth at the scope of considering virtual property in a metaverse as a good for the purpose of being regulated by the Sale of Goods Act, 1930. Section 2(7) of the Sales of Goods Act provides that a ‘good’ means every kind of moveable

⁴ Transfer of Property Act, 1882, sec.5, No.4, Acts of Parliament, 1882 (India)

⁵ Id at sec. 3

property other than actionable claim and money, and includes stocks, shares, growing crops, grass, and things attached to the earth which are agreed to be severed before the sale or under the contract of sale⁶. It is well known that the Sale of Goods Act does not stand as an exception for the regulation of digital assets. Presently, all the shares that are in digital form are considered as a good for the purpose of being regulated by the Sale of Goods Act, 1930. Therefore, it could be presumed that the scope of this act could be extended to the regulation of the virtual property which is also a digital asset. Moreover, in the case *TATA Consultancy Services v. State of Andhra Pradesh*, the honorable Supreme Court held that the transaction sale of a computer software is clearly a sale of good within the definition as provided under the act⁷. The decision of the SC paves the way for recognition of sale of virtual of property within the meaning of good as provided under the Sale of Goods Act, 1930⁸.

Regulation of Virtual Property in Metaverse under the Indian Contracts Act, 1872

Section 10 of the Indian Contract Act 1872, provides that all agreements are contracts if they are made with free consent for a lawful consideration and for the attainment of a lawful object⁹. Virtual Property Transaction in a Metaverse can be brought under the ambit of section 10 with respect to its enforcement since the relevant section does not explicitly prohibit the development of contract pertaining to virtual property transactions. Lawful consideration is one of the essentials in forming a contract. Since the transactions involving virtual property are carried out using money, it seems possible to squeeze them into the existing contract law framework¹⁰. Even if it is claimed that the transactions pertaining to the sale and purchase of virtual property is done using cryptocurrencies, such transaction would be still considered valid under Indian Contracts Act. Supreme Court in the case, *Internet and Mobile Association of India v. Reserve Bank of India*, held that cryptocurrencies such as "Bitcoin clearly qualifies as money or funds under the plain meaning definitions. Bitcoin can be easily purchased in

⁶ The Sale of Goods Act, 1930, sec. 2(7), No.3, Acts of Parliament, 1930 (India)

⁷ *TATA Consultancy Services v. State of Andhra Pradesh*, A.I.R. 2005 S.C. 371

⁸ Peter Brown and Richard Raysman, *Property Rights in Cyber Space Games and Other Novel Legal Issues in Virtual Property*, 2 Ind. J. L. & Tech. 88 (2006)

⁹ Indian Contracts Act, 1872, sec.10, No.9, Acts of Parliament, 1872 (India)

¹⁰ *Supra Note.8*

exchange for ordinary currency, acts as a denominator of value and is used to conduct financial transactions" ¹¹. After the judgment, it can be concluded that cryptocurrency is deemed to be a valid consideration and no liability can be raised against a person for the usage of cryptos as a consideration for the enforceability of a contract.

Limitation in regulating the transactions pertaining to Virtual Properties

In the above sections, it was evident that the sale of virtual property can be regulated by the Sale of Goods, 1930, and Indian Contracts Act, 1872, and the limitation of the same with respect to the transfer of property Act, 1882. However, one of the fundamental questions that arises in regulating the transfer and sale of such properties is in regard to its jurisdiction. The objective of the study undertaken by the author is to study and analyze the scope and regulation of virtual properties in a three-Dimensional Universe that combines multiple virtual spaces. The primary concern that arises in regard to such regulation is with respect to its jurisdiction. Metaverse is a virtual 3-D platform that is centralized and governed by the companies such as Meta. In such cases it is hard to determine whether the virtual spaces that are given for sale can be considered as a property or should such allotment of virtual spaces be considered as a service rendered by the centralized platform. In such instance, should the regulation of a virtual property under Metaverse be regulated by the Consumer Protection Act, 2019 along with the Sale of Good of Act? In other scenario, if we consider the allotment of virtual space as separate property in the same sense as a physical property, a concern arises in regard to the jurisdiction of such virtual property.

In case of a virtual space, the concerns regarding jurisdiction are less complicated as companies like Meta has been registered in India and can be made liable for any fault in their service under Consumer Protection Act, 2019. However, if such spaces are considered as a separate and independent property, then it is very difficult to determine the territorial jurisdiction and it also raises a new jurisprudential issue regarding the recognition of 'virtual territories.

¹¹ Internet Mobile Association of India v. Reserve Bank of India, (2020), 10 SCC 274

The scope of considering virtual property as an intellectual property

In the previous sections the author analyzed the scope of considering virtual asset as an immovable property under the transfer of property act and as a moveable asset under the sales of good act. In this section the author would looking in depth at the scope of considering virtual asset under the realm of intellectual property and the legal implications of the same.

The copyright act defines the author of a computer generated literary, dramatic, or artistic work as the person who causes the work to be created¹². Applying the literal rule of interpretation, the intellectual property right of a virtual asset would be vested upon the person who created such an asset or platform. In such case, it would be the company (in our case 'meta') who would be owning all the copyrights concerning the virtual asset. However, the significant issue arises in regard to the transfer of the virtual asset to the users for a consideration. Meta offers a platform wherein the users can enjoy their asset in a virtual world. Hence, eventually it just offers a medium for the users to enjoy, possess, or transfer their property like a third-party government. Hence, there is an ambiguity in determining the owner of the copyright. Even if it is asserted that the initial copyright is being vested on the creator of the platform and subsequently, they sell it to the users, the concern arises in regard to the registration of such transfer in the Registrar of Copyrights since there is a major issue in determining the jurisdiction of such transfer.

Another important question that arises is regarding trademarks and how could the brands protect their trademark in the virtual world. Trademark infringement is defined as a trademark which is identical or confusingly similar to a registered trademark owned by another person, in relation to products or services which are identical or similar to the products or services which the registration covers¹³. Currently, the existing legislations creates an ambiguity in regard to the protection of these trademark in the virtual world as it is very convenient to make a virtual copy without proper regulation. Many international companies such as adidas have decides to offer their service through the virtual spaces. Thus, it becomes very essential to protect the trademark of such companies in the virtual world.

¹²Selvam and Selvam, Breaking the fourth wall-Virtual Property and Intellectual Property Rights in India, May 6, 2016 <https://selvams.com/blog/breaking-fourth-wall-virtual-property-intellectual-property-rights-india/>

¹³ Ibid.

Conclusion

The paper's main objective was to determine the scope of the existing legislations pertaining to the virtual properties and goods bought in the Metaverse. To establish and analyse the objective, the author initially analyzed the scope of what all constitute as a Property under the various legislations concerned with property and goods in India. Through the initial analysis, the author came to the conclusion that virtual Properties and goods brought in. Virtual world (Metaverse) can be brought under the definition of property under the Transfer of Property Act 1881 through the lens of Psychological and Metaphysical theory of property in jurisprudence. Further, he author examined various related case laws in other countries pertaining to this topic in context ignorer to analyse whether virtual properties and goods can be brought under the purview of respective Indian legislations and it was understood that by interpreting the definition of property in a utilitarian way can enable such an inclusion. It has also been understood that the need and relevance of legislations of virtual properties in meta verse and other virtual worlds has been required to be distinct in its form even when perceived through the lens of Intellectual Property rights. But it is to be understood that doing so comes with certain limitations addressed earlier which can be overcome with much more deeper analysis and studies.

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