



ANALOGOUS SCRUTINY OF REAL ESTATE LAWS IN INDIA AND BRITAIN

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ABSTRACT

Real estate law is the field of law that governs purchasing, using and selling of land precisely. This law is related to how people acquire property and how they make use of the property they own. Real estate law is also known as real property law. Different countries have different laws relating to real estate. In the following write up we are going to have a comparative analysis between the real estate laws between India and United Kingdom/Britain.

Introduction

It is called “Real” estate because it is related to real property. Real property is land in contrast with personal property or assets like jewellery, objects, vehicles, etc. Fixtures that lies above the land and are attached to it, such as buildings and other structures are a part of real estate.

Before the mid-nineteenth century, the standards governing the transfer of real and individual property on an intestacy were very unique. In spite of the fact that this division doesn't have a similar importance any longer, the difference is still significant due to the fundamental differences between the two categories. An example is the real fact that land is immovable, and in this manner the guidelines or the laws that governs it must differ by mode of its utilisation. A further

purpose behind the differentiation is that rules of the legislation is often drafted employing the traditional terminology.

The division of land and assets has been condemned as being not acceptable as a reason for arranging the standards of property law since it focuses consideration not on the proprietary interests themselves yet on the objects of those interests.

Real property can be classified into:

1. corporeal hereditaments – tangible real property (land or other structures)
2. incorporeal hereditaments – intangible real property (an easement way, etc)

There are various aspects of this law like purchase financing, zoning, title, deeds, taxes and estate planning, etc.

Real estate law is closely tied to various other areas of law For example, the sale of real estate is governed by the contract law, and mandates that such contract be in writing.

There are various specific types of torts and crimes that apply to real estate. For example, trespass refers to entering the land of another without authority to do so, and it can be a crime or the subject of a civil lawsuit. Real estate is also subject to special provisions in family law, such as the rights of a spouse in the marital home.¹

Real estate in India is administered and impacted by a unique combination of State-specific and Federal laws, whereas real estate in Wales and England are majorly governed by two main pieces of legislation, The law of property Act, 1925 and The land Registration Act, 2002.

¹ Real estate law, Justia (<https://www.justia.com/real-estate/>)



There are several land related laws in India, the same is with many other countries. Every law has a different and separate function in protecting rights to land. Talking about India.

- 1) **Transfer of Property Act, 1882-** A Central Act that provides general and basic principles of movable as well as immovable property, for example lease, mortgage, sale, exchange, part performance and lis pendens. The states are required to adopt the provisions of this Act.
- 2) **Registration Act, 1908 and Indian Stamps Act, 1899-** These Acts govern laws relating to requirement for registration of various deeds, instruments as well as documents relating to transfer of interest in immovable property and payment of stamp duty.
- 3) **Indian Easement Act, 1882-** The laws relating to easementary rights to immovable property are governed under this Act.
- 4) **The Indian Contract Act, 1872-** The laws related to contracts in India are governed under this Act such as capacity to enter into contract, execution, implementation, breach and remedies available, etc.
- 5) **Land Revenue Codes-** There are many states in India who have formulated their own land revenue codes by which laws relating to agricultural land-holding, types of tenancy, land revenue etc are governed.
- 6) **The Real Estate (Regulation and Development) Act, 2016 (RERA)-** RERA governs development, marketing and sale of real estate developments and projects in order to protect interests of purchasers in the real estate sector.

Some of the features of RERA are as follows:

- a) Under this Act, each state needs to establish a Real Estate Regulatory Authority. The authority can be approached by the purchaser in the event of any complaints against a developer.
- b) According to this Act, it is compulsory to enlist each under development property where land is over 500 sq. meter or incorporates eight apartments.²
- c) Neglecting to enrol and register project under authority ambit may prompt punishment up to 10% of the project cost.
- d) As a purchaser, you have to pay just for carpet area and not for an overly built region.
- e) The manufacturer needs to put 70% of the cash got from the purchaser into an alternate record. This cash will be withdrawn when the project is completed. This will stop misbehavior of manufacturer of utilizing cash raised for one anticipate for another undertaking.
- f) The builder should give five-year guarantee to any auxiliary deformities in the structure.
- g) The developer needs to distribute all right data about the project, for example, venture plan, design, endorsement of the administration, land title and anticipated date of fulfillment. This data ought to be accessible with RERA.
- 7) **Foreign Exchange Management Act, 1999-** FEMA governs the sale and purchase of immovable property in India by various foreign entities.

Real estate laws in England

²Real Estate Laws In India ([https://www.lawsenate.com/publications/articles/real-](https://www.lawsenate.com/publications/articles/real-estate-laws-india.pdf)

[estate-laws-india.pdf](https://www.lawsenate.com/publications/articles/real-estate-laws-india.pdf)) Accessed on 26/07/2020 at 3:50 pm



There are two main pieces of legislation that underpin Real estate in England and Wales:

The Law of Property Act, 1925 and the Land Registration Act, 2002.

The former one introduced some major reforms in the Real estate sector and also consolidated and modernised pre-existing real estate laws.

The ownership of land, many of the rights and obligations which are related to it must be registered at the Land registry, which is a government agency. The regime of land registration is given under the Land Registration Act, 2002 and related regulations.

However, it is to be noted that these two Acts are not at all all-inclusive. There are other legislation that governs various aspects of the real estate law for example, the execution formalities for contracts and deeds.

Relevancy of International laws to real estate

Indian perspective:

Several concepts or principles recognised under International law have been historically adopted in some or the other form in the various legislations which govern real estate in India for example, rights of agriculturalists to fair compensation in case of acquisition of lands by the Government of India. However, International laws do not have a direct applicability in India.³

UK perspective:

The real estate sector is governed by the laws of domestic jurisdictions. Due to which, legal formalities and requirements relating to real estate are left untouched by International Laws. However, transactions relating to real

estate are not ring-fenced and various areas of real estate have an International element. For example, Environmental policies and laws in the UK often derive a web full of International agreements.

Ownership

Indian perspective:

There was a time when right to property was recognised as a fundamental right under the Constitution of India but now, it is a constitutional right and not a fundamental right. Article 300-A of the Constitution mandates that no person shall be deprived of his property save by authority of law, embodying the doctrine “ eminent domain” which provides for the acquisition of private property by the government in the interest of public.

Also, States are given the power to legislate as well as impose legal restrictions on the ownership of lands by various classes of people such as- land owners with leasehold rights, cultivation rights, transferable or non-transferable rights, mortgagees, land owners belonging to SC/ST categories, etc. We may also find that in certain states, ownership of real estate has been limited such that non-agriculturalists are not allowed to buy agricultural lands in that state.

Further, under the current foreign exchange norms, no person living outside India can acquire any immovable property within India, except if permitted.

UK Perspective:

Any person who is above the age of 18, whatever his nationality may be is eligible to buy and sell freehold property without any restriction.⁴

³ *Supra.1*

⁴ A Brief Legal Guide to Investing

in Real Estate in the UK (<https://www.mayerbrown.com/>-



Types of Rights over land

Indian Perspective:

Wide variety of rights over land are recognised in India and they vary diversely in their nature. They are-

- a) Freehold Rights: These refer to absolute right, title and interest of land against the world.
- b) Leasehold Rights: These rights refer to absolute rights and interest to hold and use a property by a tenant or lessee, as per the terms of the lease deed for a fixed tenure. These are rights *in rem*.
- c) Licence Rights: These refer to right of a licensee to occupy or use a property on a non-exclusive basis. Here, no easement of interest is created in the property in favour of the licensee. These are rights *in personam*.
- d) Easement Rights: These refer to the right which the owner or the occupier of the land possesses for the purpose of enjoyment of land. One such example can be right of passage.
- e) Development Rights: These are unusual rights which allow builders to make changes to their property within the limits imposed by the local authorities or the government.
- f) Subsurface Rights: These are the rights to the earth below the land and any such substance which can be found under the surface.

UK PERSPECTIVE:

There are different categories of rights over immovable property which are recognised in England and Wales, some of which are as follows:

- a) Ownership Rights: Under this there are three types of ownership interest: Freehold, Leasehold and Commonhold.⁵
- b) Legal Rights: They must be created by deed such as legal charges.
- c) Equitable Rights: Many of these are created by contract such as agreement of sale.
- d) Other Rights: These may contain rights that arise without any documentation. For example perspective rights.

System of Land Registration

Indian Perspective:

Indian law does not stress upon registration of the title or the land. Instead, it focusses on the registration of the documents under which the title is transferred in accordance with the Registration Act, 1908.

UK Perspective:

In England and Wales, every unregistered land must be registered on occasion such as grant of lease, grant of mortgage, and the grant of lease for more than seven years.

CONCLUSION

As striking as the outcomes of this analysis may be, the fact is that the organisation of assets across international borders is also equally risky. Appropriate means of protection are an exact, individual clarification, a tax ruling and, where appropriate, a tax contract. Legal, descriptive, analytical and comparative procedures have been deployed in order to govern the likely impact of technological change on the dissemination of legal risk with particular reference to India and UK. The

/media/files/perspectives-events/publications/2015/02/a-brief-legal-guide-to-investing-in-real-estate-in/files/brieflegalguidetoinvestinginrealestateinuk/attachment/brieflegalguidetoinvestinginrealestateinuk.pdf) accessed on 29/07/2020 at 12:45 pm

⁵ Ashurst, Real estate rights and registration in the United Kingdom (<https://www.lexology.com/library/detail.aspx?g=ef7e38a9-973c-47c0-bcf8-9bdf69b230d0>) Accessed on 01/07/2020, 4:05 pm



impact is the extent to which a change in transactional process may inadvertently affect risk. Risk being the significance of change and the likelihood of that consequence having a adverse effect.

