



**SECURING THE RIGHT OF USING
OTHER'S LAND: EMPHASISING
INDIAN EASEMENT ACT, 1882 AND
COMPARISON WITH ENGLISH
COMMON LAW**

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ABSTRACT

With the progression of the period of human advancement, social orders are developing into solid wildernesses, sharing the limits. Henceforth, the Right of Easement can be decoded from ancientness and is extremely old when the concept of property was recognized. Such a right springs up out of morality when the person uses the property of another for his enjoyment, on which he neither has, ownership nor possession. With the progress of the society, Legislation has given obligingness to these rights by enacting Legislations and has also been recognized by Judicial Pronouncements. This paper revolves around the Evolution of Doctrine of Easement, the Valid Conditions for an Easement, Types of Easement, Process of Acquisition and Transfer, Process of Extinction, Suspension and Revival of Easements, Concept of Licenses, The Comparison of 'Easement' in the English Common Law, and Doctrine of Easement with special reference to Rights of Riparian.

INTRODUCTION

¹ An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain another land not his own. The land for the beneficial enjoyment of which the right exists is called

An easement as a privilege of utilization over the property of another. An easement is a privilege in the proprietor of one package of land, given such possession, to utilize the place that is known for another for a unique reason not conflicting with an overall property directly in the proprietor. It is an intrigue that one individual has in the place where there is another. An enthusiasm for land possessed by someone else, comprising morally justified to utilize or control the land, or a zone above or underneath it, for a particular constrained reason, (for example, to cross it for access to an open street). The land profiting by an easement is known as the predominant estate; the land troubled by an easement is known as the servient estate. An easement is the honour of non-possessory property intrigues that gives the easement holder consent to utilize someone else's territory. In layman terms, it refers to the right which a man sometimes has over a piece of land because of his ownership of another. The easement has been defined under § 4 of the Indian Easements Act (herein referred to as the 'Act').¹ Some right which an individual has over the land which isn't his own, if the land is his own, on the off chance that he has an enthusiasm for it, at that point his privilege isn't an easement. You can't have an easement over your territory."² The proprietor of the trees procured no directly over the place that is known for the neighbour just in light of the fact that the parts of his trees reached out over the neighbouring soil for any ceaseless time span.³

Illustrations:

the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner. (<https://indiankanoon.org/doc/82950642/>)

² Metropolitan v. Fowler 1 Q.B. 165 (1892) (U.K.)

³ Manikkam v. Kamala AIR 1987 Ker 72 (India)



- a) A, as the owner of a certain house, has a right of way either over his neighbour B's land for purposes connected with the beneficial enjoyment of the house. This is an easement.⁴
- b) A, as the owner of a certain house, has the right to go on his neighbour B's land, and to take water for the purposes of his household out of a spring therein. This is an easement.⁵
- c) A dedicates to the public the right to occupy the surface of certain land for the purposes of passing and re-passing. This right is not an easement.

ORIGIN AND DEVELOPMENT

The idea of an easement traces to old ages and is extremely old when the idea of property was perceived. The term easement has begun from the word 'aisementum' signifying "comfort, accommodation, benefit", and it formed into a "legitimate right or benefit of utilizing something not one's own" from the mid 15c.⁶ The most established reference can be found in the 'Halhed Gentoo Code' which is a legitimate

code of Hindu Laws during the eighteenth century in India aggregated for Warren Hastings by pandits. From certain parts of the Code, it very well may be found that the privilege of the easement was cherished by the privilege of protection, light, air, and release of water through channels.⁷ Another Hindu Law text 'Vivada Chinthamani' additionally makes some reference to the idea of the easements.⁸ Hamilton's version of Hedaya has additionally perceived easement rights which incorporate the option to water for the water system and the option to release water on the patio of another.⁹ In the words of famous jurist Salmond, "Easement is that legal servient which can be exercised on some other piece of land for the benefit of a piece of land"¹⁰. According to Peacock, "Easement is such a privilege without profit which an owner of dominant heritage receives from the owner of the land due to which owner of that property cannot exercise his complete rights or does nothing for the advantage of the earlier occupiers".¹¹

⁴ Universal Law Publishers, *INDIAN EASEMENTS ACT, 1882* 8 (Diglot Ed , 2020); <http://legislative.gov.in/sites/default/files/A1882-05.pdf> (August 21st, 2020, 14:42)

⁵ *Ibid*; <https://indiankanoon.org/doc/82950642/> (August 21st, 2020, 20:32)

⁶ Karthik Shiva, *LAW OF EASEMENTS: A BRIEF OVERVIEW OF THE INDIAN EASEMENTS ACT, 1882*, 2, Academia (refereed as 'Shiva') at p. 2

⁷ Nathaniel Brassey Halhed, *A CODE OF GENTOO LAWS OR ORDINATIONS OF THE PUNDITS* 154-155 (1777)

⁸ Vacaspatimisra, *VIVADA CHINTAMANI: A SUCCINCT COMMENTARY ON THE HINDOO LAW PREVALENT IN MITHILA* 155, No one shall be at liberty to open a window in a place, after he has resided there for a long time; Windows and water-courses cannot be made by a person, on the side of another's house; A passage uninterruptedly used, by men as well as animals, cannot be blocked; If a number of trees grow on the common boundary of two villages, and their flowers and fruits fall in both, they shall be enjoyed by the inhabitants of both of them; If the branches of a tree, growing on the land of one person, fall on that of another, the latter shall take them.

⁹ 4 Charles Hamilton, *THE HEDAYA, OR GUIDE: A COMMENTARY ON THE MUSSULMAN LAWS* 132 (1791)

¹⁰ Shubhisahu, *DETAILS OF EASEMENT*, Medium (August 12, 2020, 13:16), <https://medium.com/@shubhisahu1996/detail-of-easement>. (referred as 'Medium')

¹¹ *Ibid*



The thought of easements during its initial days in England was an admixture of Roman, Saxon, Danish, and Briton Law. In this period, the solution for the unsettling influence of an easement lay by an activity for harm in law or a suit for directives in value. After the abrogation of Equity courts by the Judicature Act, 1873 the two cures were accessible in court.¹²

REQUISITES FOR VALID EASEMENTS

The essential requisites for a valid easement in its strict sense are:

- a) There must be a dominant tenement and a servient tenement- A dominant tenement is a land to help in which an easement exists. A servient tenement is a land which is dependent upon the weight of an easement existing for another bundle of land.
- b) Both the heritages must be separate- For the exercise of an easement, it is necessary for both the heritage to be different. The easement doesn't arise on the same property. Hence, owners of both the property must also be different to create an easement. ▲
- c) It is an incorporeal right- An easement is an immaterial right delighted in by the proprietor of a lawful estate (dominant owner) over land in the responsibility for an individual (servient owner) that ties replacements in the title. Such rights depend on physical property.¹³
- d) It is Right in rem- Easements are generally considered available against the entire world, hence they are right in rem.
- e) It must be for beneficial use of the property- By and large, the easement must be for the

gainful utilization of the property. The principle object of the easement is that the proprietor of the predominant legacy may utilize and appreciate it in a superior way. Words "better use and satisfaction" is an extremely wide term and it incorporates express and inferred advantages and solaces.¹⁴

The four notable qualities of easements in Indian and English law are, there must be a dominant owner and a servient owner, the easement must oblige the dominant owner, the predominant and servient heritage must be claimed by various people, and the easement must be fit for shaping the topic of an award.¹⁵ In India, there are two additional prerequisites fundamental for an easement, for example, the easement ought to be for 'advantageous pleasure in' the dominant heritage and that the easement ought to qualify the dominant proprietor for do or keep on accomplishing something, or to forestall or keep on forestalling something in or in regard of the servient heritage. The Indian law identifying with easements incorporate Profit-a-Prendre gave it is upheld by a dominant and servient legacy (Profit-a-Prendre appurtenant). This is to be stood out from the English law wherein Profit-a-Prendre and easements are isolated. In any case, the Indian position is to such an extent that it doesn't perceive Profit-a-Prendre in a net.¹⁶

TYPES OF EASEMENT

There are six different types of the easement as per the Act. § 5 of the Act¹⁷ lays down,

¹² Shiva, *Supra*, Note 6, at p. 3

¹³ Easements- Nature and Characteristics, Lexis Nexis (August 12th, 2020, 20:17), <https://www.lexisnexis.co.uk/legal/guidance/easements-nature-characteristics>

¹⁴ Medium, *Supra*, Note 10

¹⁵ *In Re Ellenborough Park* EWCA Civ 4, 3 All ER 667 (U.K.), The Law Commission Consultation Paper No 186, EASEMENTS, COVENANTS AND PROFITS A PRENDRE CONSULTATION

¹⁶ Shiva, *Supra*, Note 6, at p. 6

¹⁷ INDIAN EASEMENTS ACT, 1882, §5, No. 5, Acts of Parliament, 1882 (India)



Easements are either continuous or discontinuous, apparent or non-apparent, positive or negative.

- 1) A continuous easement is one whose delight is, or possibly, constant without the demonstration of man. A privilege added to B's home to get light by the windows without block by his neighbour A. This is a constant easement.
- 2) A discontinuous easement is one that needs the demonstration of man for its delight. A way to go attached to P's home over Q's property.¹⁸
- 3) An apparent easement is one the presence of which is given by some lasting indication which, upon cautious review by a capable individual, would be obvious to him. Rights added to T's territory to lead water there over R's property by a reservoir conduit and to draw off water thus by a channel. The channel would be found upon cautious assessment by an individual familiar with such issues.
- 4) A non-apparent easement is one that has no such signs. A right annexed to A's house to prevent B from building on his land. This is a non-apparent easement.¹⁹
- 5) Positive or Affirmative easements are those which authorise the commission of an act by the dominant owner such as rights of way, right to draw water from a spring, rights of the aqueduct.²⁰
- 6) Negative easements are those which restrict the rights of the servient owner over his

property such as prevents A from building on land to obstruct ancient lights.²¹

DURATION AND NATURE OF EASEMENTS

According to § 6²² of the Act, an easement may be lasting, or for a term of a long time or another restricted period, or subject to periodical intrusion, or exercisable as it were at a certain put, or at certain times, or between certain hours, or for a specific reason, or on condition that it should commence or ended up void or voidable on the happening of an indicated occasion or the execution or non-performance of an indicated act.

§ 7 of the Act provides for easements restrictive of certain rights. Easements are limitations of one or other of the following after rights:

- a) Exclusive right to enjoy- The selective right of each proprietor of immovable property (subject to any law time being in force) to appreciate and discard the equivalent and all items thereof and accessions thereto.
- b) Rights to advantages arising from the situation- The privilege of each proprietor of immovable property (subject to any law for the time being in force) to appreciate without unsettling influence by another the normal favourable circumstances emerging from its circumstance.
- I. The select privileges of each proprietor of land in a town to expand on such land, subject to any city law for the present in power.

¹⁸ *Ibid*, at p. 10

¹⁹ *Ibid*

²⁰ Affirmative and Negative Easements, FindLaw (August 12th, 2020, 22:04), <https://realestate.findlaw.com/land-use-laws/affirmative-and-negative-easements.html>

²¹ *Ibid*

²² An easement may be permanent, or for a term of years or another limited period, or subject to periodical interruption, or exercisable only at a certain place, or at certain times, or between certain hours, or for a particular purpose, or on condition that it shall commence or become void or voidable on the happening of a specified event or the performance or non-performance of a specified act.



- II. The right of each proprietor of a house that his physical solace will not be meddled with tangibly and preposterously by commotion or vibration brought about by some other individual.
- III. The right of each proprietor of upper land that water normally emerging in, or falling on, such land, and not going in characterized channels, will be permitted by the proprietor of the nearby lower land to run normally thereto.

It is a well-recognized principle that unless easementary rights to light and air are obstructed, the adjacent other has a right to put up his wall at the boundary of his property and the owner of the adjacent property can have no grievance against the same.²³

As per The Indian Easements Act, 1882, 'Profit a Prendre' is a piece of the meaning of easements. An occurrence to clarify the idea is, a right to take earth from the place where there is the other individual for making pottery is a benefit a prendre. This is an advantage made out of the spot that is known for the other person. Benefits existing to help the proprietor's property (the dominant tenement) are commonly exercisable just to the degree to which the dominant heritage can profit.²⁴

CREATION OF EASEMENTS

§ 8 to § 19 of the Easement Act set out the different modes for the making of Easements, for example, by grant²⁵, custom or convention²⁶, prescription²⁷, and necessity²⁸. Easements are typically made by in a deed or some other composed document, for example, a will or agreement. Creation an easement demands for the same formalities as the transferring or creating of other interests in the land do, which typically are: a signature, a written instrument, and proper delivery of the document.²⁹ In restricted cases, a court will make an easement by suggesting its reality dependent on the conditions. Two basic easements made by suggestion are easements of need and easements inferred from quasi easements. Easements of need are commonly suggested to offer access to a landlocked bit of property. Easements suggested from quasi easements depend on a landowner's earlier utilization of part of their property to help another bit of his territory. Different techniques for building up easements incorporate prescriptive use (the routine, unfriendly utilization of another's territory), estoppel, custom, open trust, and condemnation.³⁰

A prescriptive use easement may apply when the property is utilized by normal and unfavourable utilization of the property for a specific measure of time. Estoppel can likewise cause an easement when somebody

²³ Pandurang Nayak vs. Jayashree AIR 1990 Karn 236 (India); Universal Law Publishers, *Indian Easements Act, 1882* 12 (Diglot Ed, 2020)

²⁴Oxford Reference, Overview Profit a Prendre, (August 13th, 2020, 11:44), <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100348484>

²⁵ INDIAN EASEMENTS ACT, 1882, § 8- § 11

²⁶ INDIAN EASEMENTS ACT, 1882, § 18

²⁷ INDIAN EASEMENTS ACT, 1882, § 15

²⁸ INDIAN EASEMENTS ACT, 1882, § 13

²⁹ Vibha V, An Analysis on the Doctrine of Easement, Vol 6 Issue 5 INTERNATIONAL JOURNAL OF LEGAL DEVELOPMENTS AND ALLIED ISSUES, Sept 2020, at p. 4.

³⁰Easement Basics, Find Law, (August 14th, 2020, 11:45), [https://realestate.findlaw.com/land-use-laws/easement-basics.html#:~:text=An%20easement%20is%20a%20%22nonpossessory,with%20the%20easement%20holder's%20use.](https://realestate.findlaw.com/land-use-laws/easement-basics.html#:~:text=An%20easement%20is%20a%20%22nonpossessory,with%20the%20easement%20holder's%20use.;); *Ibid*



has depended on the words or activities of another person to their detriment. Surrendering an easement right does not refer to the transfer of property. An easement can be made, altered, and even released. Easement rights can't be made or modified orally. It must be in a composed format. However, easements by prescription and custom not necessarily are in writing. In the case of **Moody v. Steggles**³¹, the award of a right to set up a signboard to the abutting property promoting the open house which established the dominant tenement was held to involve an easement.

WAYS OF ACQUISITION OF EASEMENTS

An easement might be obtained by the proprietor of the immovable property for the advantageous satisfaction where the privilege is made or, for his benefit, by any individual possessing the equivalent.³² The inhabitant can secure an easement over the bordering land having a place with his proprietor for the advantageous satisfaction in other, unflinching property not his own but rather having a place with another person which likewise he happens to possess until further notice as an occupant.³³

Acquisition by Express Grant: The most direct technique for making an easement is by express grant. This happens when the proprietor of the servient tenement gives the

easement to the proprietor of the dominant tenement.³⁴ Express easements are created through a written agreement between the landowners grant in for receiving an easement. An Express easement is made by either a deed or by will. So, it must be written. The doctrine of last grant is the premise of easementary right and if a gathering has been utilizing a specific land for a specific reason from days of yore, it can be said that party has earned easementary right based on last grant.³⁵

Acquisition by Implied Circumstances: Easement can also be acquired in implied circumstances either by way of necessity, quasi-easements, by prescription, or by way of custom or tradition.

- 1) **Easement by Necessity:** § 13³⁶ of the Easement Act deals with easement of necessity. Where one property is served from another property either under lock and key or possession, or in both by the move, estate, or segment or by the activity of law and these two are so moderately arranged that once can't be delighted in without the activity of a specific benefit in or upon or in regard of the other, such benefit is known as the easement of necessity.³⁷ An easement of necessity is coextensive with the need, as it existed when the easement was forced. These easements emerge on the severance of tenements. Easement of need would not, at this point be

³¹ Moody v. Steggles, 12 Ch D261 (EWCA: 1879) (U.K.)

³² INDIAN EASEMENTS ACT, 1882, § 12; See Also; Nihal Chand v. Mst. Bhagwan Dei, A.I.R. 1934 All. 527

³³ Qazi Nasir Uddin Haider vs Raghbir Prasad and Anr. AIR 1939 All 339; Afaque Ahmad, *THE INDIAN EASEMENTS ACT 1882*, Academia (August 14th, 2020, 12:34),

https://www.academia.edu/33883770/THE_INDIAN_EASEMENTS_ACT_1882. (referred as 'Afaque')

³⁴THE CREATION OF EASEMENTS, Law Shelf (August 14th, 2020, 12:40), <https://lawshelf.com/coursewarecontentview/the-creation-of-easements/>

³⁵ *Supra*, Note 10, at p. 16; Nathu Lal vs. Ram Swaroop AIR 1987 Raj 169 (India)

³⁶ INDIAN EASEMENTS ACT, 1882, § 13

³⁷ Afaque, *Supra*, Note 33



accessible when an elective way is accessible to the claimant of that privilege³⁸. In the case of **Muhammad Ramzan vs. Naseer Beg**³⁹, it was held that the plaintiff must not just demonstrate the presence of privilege of the easement at the hour of the move of property to him yet additionally such right is essential for getting a charge out of the moved property. For example, P sells his land to Q for agricultural purposes. Here, Q cannot access his land without passing through R's land (his neighbour).

2) **Quasi-Easements:** The statements (b), (d), and (f) of Section 13 arrangements with what are called quasi easements. These are not easementary rights however are just methods of pleasure in the property which look to some extent like easementary rights in a few attributes. A quasi easement exists when the proprietor of a bundle of land utilizes some portion of that land to support some other piece of their territory. An easement of need, the reason is total need while in the easement of quasi-necessity it is a lone qualified need. A quasi easement won't appear on the off chance that it is explicitly prohibited by the details of the grant or are conflicting with the expectation of the parties. In the case of a person transferring his property to another person then-

- ❖ If an easement is continuous, apparent and necessary to enjoy, then in such a case the transferee shall be entitled to it,
- ❖ If such an easement is continuous, apparent, and necessary to enjoy the said property, the transferor has a right to such easement over the property transferred by him.

❖ In case of partition of the property of the joint family, if an easement is continuous, apparent, and necessary to enjoy the share of one coparcener over the other coparcener, then he is entitled to such a right of easement.⁴⁰

3) **Easement by Prescription:** Prescription methods getting a privilege by the consistent statement of the right, which has been being used for an extensive stretch. §15 of Act expresses that to secure a prescriptive right of easement concerning access and utilization of light or air to and for any structure or backing from someone else's property it probably been calmly delighted in as an easement without interference for a long time. An option to way or some other easement is more likely than not been calmly and transparently delighted in as an easement starting at directly without interference for twenty years. The certain essential conditions for an easement by prescription are that the property is openly, and peacefully enjoyed, as an easement, as a right,⁴¹ without interruption, and for twenty years⁴². The doctrine of lost grant: The presumption involved under this doctrine is that there was a grant of the right in the past but such a grant was lost. In this manner, such a privilege is attempted to have had a legitimate birthplace and the Court assumed that such demonstrations were done and those conditions existed which were important to make a substantial title. The doctrine is utilized in situations where the delight can't be generally sensibly represented. In any case, if such easement depends on an understanding between the parties, which states explicitly or impliedly

³⁸ Rameshchandra Bhikhabhai Patel vs. Maneklal Maganlal Patel and Another AIR 1986 Kant 456

³⁹ Muhammad Ramzan vs. Naseer Beg 1980 CLC 1555 (India)

⁴⁰ *Supra*, Note 33 at p 6

⁴¹ Suresh Chand vs. Hindu Mal AIR 1994 HP 56 (India)

⁴² Krishnan vs. Nanukuttan ILR 1986 (1) Ker 526; Periya Gounder vs. Chinna Gounder AIR 2003 Mad 174. (India)



that the satisfaction isn't as an easement, the guideline of § 15 of the Act won't have any significant bearing.⁴³ In the case of **Manikkan V. Kamala**⁴⁴, the Court held that if parts of a tree overhang the neighbouring area, no privilege can collect over the land over which they hand. The proprietor of such a tree procures no privilege at all over the place that is known for the neighbour, simply because the parts of the tree stretched out over the neighbouring soil for a consistent time span. No right can arise by prescription to continue a nuisance. In **Het Singh and others v. Aman Singh**⁴⁵, it was held that under § 17(a) an option to underground water not going in a characterized channel can't be gained by solution under § 15.

§ 17 of the Easements Act provides that the following types of easements cannot be acquired by prescription.

- ❖ An easement that forces a risk on the property or would prompt the pulverization of the property.
- ❖ A right to the free entry of light or air to an open space of ground.
- ❖ An option to surface water not streaming in a stream and not forever gathered in a pool, tank, or something else.
- ❖ An option to underground water not going in a characterized channel.

- 4) **Easement by Lost Grant presumed from Immemorial user:** Given that, when any land upon, over or from which any easement has been delighted in or inferred has been held under or by any enthusiasm forever or any term of years surpassing three years from the allowing thereof, the hour of the pleasure

in such easement during the duration of such intrigue or term will be rejected in the calculation of the said last-referenced time of twenty years, on the off chance that the case is, inside three years next after the assurance of such intrigue or term, opposed by the individual entitled, on such assurance, to the said land. A sues for an announcement that he is qualified for an option to proceed over B's land, A demonstrates that he has delighted in the appropriate for a quarter-century; however, B shows that during ten of these years C had a daily existence enthusiasm for the land; that on C's passing B got qualified for the land; that inside two years after C's demise he challenged A 's guarantee to one side. The suit must be excused, as A, concerning the arrangements of this segment, has just demonstrated satisfaction for a long time.⁴⁶

- 5) **Easement by Customs:** An easement may be acquired in virtue of a local custom. Such easements are called customary easements.⁴⁷ A custom is a particular rule which exists either actually or presumptively from time immemorial and has obtained the force of law in a particular locality.⁴⁸ A customary right can exist just about the occupants of a locale and it can't be guaranteed concerning the general population on the loose. Customary easements as they are brought in § 18 of the Act, ought not to be recognized from the customary rights alluded to in § 2(b) of the Act. The latter are rights arising out of custom but unapparent to a dominant tenement. No fixed time of delight is important to build up these rights, yet the custom must be sensible and certain.⁴⁹ By the

⁴³ *Supra*, Note 6 at p. 9

⁴⁴ *Manikkan V. Kamala AIR 1987 Ker 72 (India)*

⁴⁵ *Het Singh and others v. Aman Singh AIR 1982 All 968 (India)*

⁴⁶ INDIAN EASEMENTS ACT, 1882, § 16

⁴⁷ INDIAN EASEMENTS ACT, 1882, § 18

⁴⁸ HALSBURY'S LAWS OF ENGLAND, Third Edition, Vol. II under Article 294

⁴⁹ *Parbhawati Devi vs. Mahendra Singh AIR 1981 Pat 133 (India)*



custom of a specific town, each cultivator of the townland is entitled, as such to eat his cows on the basic field. A had become the occupant of a plot of uncultivated land in the town that splits up and develops that plot. He along these lines procures an easement to eat his steers following the custom.

- 6) **Easements by transfer of Dominant Heritage:** Where the dominant heritage is moved or degenerates, by a demonstration of parties or by the activity of law, the exchange or devolution will, except if an opposite expectation shows up, be esteemed to pass the easement to the individual in whose favor the exchange or devolution happens. A has certain land to which an option to way is attached. A lets the land to B for twenty years. The right of way vests in B and his legal representatives so long as the lease continues,⁵⁰ people living in a particular town or city having a right to bury the dead in a particular area or riparian right to use water.

EXTINCTION, SUSPENSION, AND REVIVAL OF EASEMENTS

Extinction of Easements: An easement can be extinguished if the easement holder releases the easement. This delivery should be possible on the holder's understanding or as a major aspect of manage the proprietor of the servient tenement.⁵¹ Usually, mere non-use of property does not end an easement. One or more of the following factors might also have to be present.

- 1) **Extinction by Dissolution of a right of servient owner:** When, due to a cause which preceded the imposition of an easement, the person by whom it was imposed discontinues to have rights on the servient heritage, the easement considered to be extinguished.⁵² The only exception is that nothing in § 37 applies to an easement lawfully imposed by a mortgagor per § 10⁵³. P transfers Sultanpur to Q on condition that he does not marry R. Q imposes an easement o Sultanpur. Then Q marries R. Q's interest in Sultanpur ends, and with it, the easement is extinguished.
- 2) **Extinction by Release:** An easement is quenched when the dominant proprietor discharges it, explicitly or impliedly, to the servient proprietor. Such delivery can be made uniquely in the conditions and to the degree in and to which the dominant proprietor can distance the prevailing legacy. An easement might be delivered as to part just of the servient legacy. A simple non-client of an easement isn't a suggested discharge inside the importance of this segment. For example, A, B, and C are co-proprietors of a house to which an easement is added. A, without the assent of B and C, discharge the easement. This delivery is solid just as against An and his legitimate agent. A, having an easement of light to a window, develops that window with blocks and mortar to show an expectation to forsake the easement for all time. The easement is implicitly relinquished.⁵⁴ The eradication under § 38 happens when the dominant

⁵⁰ Indian Easements Act, 1882, § 19

⁵¹ Termination of Easements, Law Shelf, (August 14th, 2020, 19:56), <https://lawshelf.com/coursewarecontentview/termination-of-easements/>

⁵² INDIAN EASEMENTS ACT, 1882, § 37

⁵³ INDIAN EASEMENTS ACT, 1882, § 10. 10. Lessor and mortgagor.-Subject to the provisions of section 8, a lessor may impose, on the property leased,

any easement that does not derogate from the rights of the lessee as such, and a mortgagor may impose, on the property mortgaged, any easement that does not render the security insufficient. But a lessor or mortgagor cannot, without the consent of the lessee or mortgagee, impose any other easement on such property, unless it be to take effect on the termination of the lease of the redemption of the mortgage.

⁵⁴ *Supra*, Note 10 at p. 38



- proprietor discharges it to the servient proprietor either explicitly or impliedly.⁵⁵
- 3) **Extinction by Revocation:** An easement is smothered when the servient proprietor, in the activity of a force saved for this sake, repudiates the easement.⁵⁶
- 4) **Expiration of the time allowed for the easement or happening of dissolving condition:** An easement is doused where it has been forced for a restricted period or procured on condition that it will get void on the exhibition or non-execution of a predetermined demonstration, and the period terminates or the condition is satisfied.⁵⁷
- 5) **Extinction on termination of necessity and useless easement:** An easement of necessity is extinguished when the necessity comes to an end.⁵⁸ The right to use passage granted in sale deed will not extinguish in terms of § 41 of the Act.⁵⁹ For instance, X awards Y a field difficult to reach except for by ignoring As abutting land. Y a short time later buys a piece of that land over which he can go to his field. The option to way over X's property which Y had gained is doused. An easement, is quenched when it gets unequipped for being whenever and under any conditions useful to the prevailing proprietor.
- 6) **Extinction by Permanent change in Dominant Heritage:** Where, by any perpetual change in the dominant legacy, the weight on the servient legacy is physically expanded and can't be decreased by the servient proprietor without meddling with the legitimate happiness regarding the easement, the easement is quenched.⁶⁰
- 7) **Extinction on permanent alteration of servient heritage by superior force:** An easement is doused where the servient heritage is by prevalent power so forever changed that the dominant proprietor can no longer appreciate such easement. Given that, where a method of need is wrecked by unrivaled power, the prevailing proprietor has an option to another route over the servient legacy; and the arrangements of § 14 apply to such way.⁶¹
- 8) **Extinction by the destruction of subject matter:** An easement is stifled when either the predominant or the servient legacy is demolished. For instance, A has an option to way over a street running along the foot of an ocean bluff. The street is washed away by changeless infringement of the ocean. The easement is stifled.⁶² There is nothing in this Act to support the contention that where a right to light and air to a building has been acquired, partial destruction of it extinguishes that right.⁶³
- 9) **Extinction by Unity of Ownership:** An easement is stifled when a similar individual gets qualified for the supreme responsibility for the entire of the predominant and servient legacies.⁶⁴ For example, A, as the proprietor of a house, has an option to way over the B's field. A home loan his home and B contracts his field to C. At that point C abandons the two home loans and turns out to be accordingly total proprietor of both house and field. The option to way is doused. Likewise, A has an option to proceed over Bs

⁵⁵ Vasudeva Prabhu vs. Madhava Prabhu AIR 1993 Ker 68 (India)

⁵⁶ INDIAN EASEMENTS ACT, 1882, § 39

⁵⁷ INDIAN EASEMENTS ACT, 1882, § 40

⁵⁸ INDIAN EASEMENTS ACT, 1882, § 41

⁵⁹ Dr. S. Kumar & Ors vs. S. Ramalingam, CIVIL APPEAL NOS. 8628-8629 OF 2009 decided on 16 July, 2019

⁶⁰ INDIAN EASEMENTS ACT, 1882, § 43

⁶¹ INDIAN EASEMENTS ACT, 1882, § 44

⁶² INDIAN EASEMENTS ACT, 1882, § 45

⁶³ F.S. Pathuck vs. F.E. Davar 7 Bom LR 352 (India)

⁶⁴ INDIAN EASEMENTS ACT, 1882, § 46



street. B devotes the way to people in general. A's the option to proceed isn't smothered.

- 10) **Abonnement by discontinue use of easement:** A continuous easement or a discontinuous easement is smothered when it stops to be appreciated as such for a solid time of around twenty years. For a continuous easement, from the very day of its satisfaction, was hindered by the servient proprietor or delivered unrealistic by the prevailing owner; and, on account of an irregular easement, from the day on which it was last delighted in by the individual as a predominant proprietor.⁶⁵ An easement isn't doused under this area if, Where the suspension is the incompatibility of an agreement between the dominant and servient proprietors; Where the dominant tenement is held in co-possession, and one of the co-proprietors appreciates the easement inside the said period, or; Where the easement is fundamental. For instance, A has, as attached to his home, privileges of the path from the more responsible option there over the legacies X and Z and the interceding, legacy Y. Before the twenty years lapse, An activities his option to proceed over X. His privileges of the route over Y and Z are not doused.

Suspension of Easements: An easement is suspended when the dominant proprietor gets qualified for ownership of the servient legacy for a restricted intrigue in that, or when the servient proprietor gets qualified for ownership of the dominant legacy for a constrained intrigue in that.⁶⁶ For example, A has an option to the way of B's property gets for rent in his territory, the easementary right to proceed is suspended during this period.⁶⁷

The revival of Easements: § 51 of the Indian Easement Act gives a standard that is unmistakable from English Law on the point. In English Law suspended easement restores yet easement howsoever smothered can never resuscitate. In India, an extinguished easement can be divided into two categories⁶⁸ § 51 of Indian Easement Act reads as " An easement stifled under § 45 resuscitates (a) when the decimated heritage is before 20 years have terminated re-established by alluvion, (b) when the wrecked heritage is a servient building and before 20 years have lapsed such structure is reconstructed upon a similar site and, (c) when the pulverized legacy is a prevailing structure and before 20 years have terminated such structure is remade upon a similar site and in such way as not to uncover a more prominent weight on servient heritage.

An easement quenched under § 46 resuscitates when the grantor estate by which the solidarity of proprietorship was delivered is put aside by the announcement of an able Court. A fundamental easement stifled under a similar area resuscitates when the solidarity of proprietorship stops some other reason.

A suspended easement resuscitates if the reason for the suspension is evacuated before the privilege is smothered under § 47.⁶⁹

LICENSES

Where one individual grant to another, or to a clear number of different people, an option to do, or keep on doing, in or upon the unfaltering property of the grant or, something which would, without such right, be unlawful, and such right doesn't sum to an easement or an enthusiasm for the property,

⁶⁵ *Supra*, Note 33 at p. 8

⁶⁶ INDIAN EASEMENTS ACT, 1882, § 49

⁶⁷ *Supra*, Note 6 at p. 11; Gopalbhai Jikabhai Suvagiya vs Vinubhai Nathabhai Hirani C/SA/208/2015 (India)

⁶⁸ Afaque, *Supra*, Note 33 at p. 27

⁶⁹ INDIAN EASEMENTS ACT, 1882, § 51



the right is called a license.⁷⁰ A license is an individual right allowed to an individual or found out several people. A license isn't adaptable aside from in conditions referenced in Section 56. The transferee of the land over which the license is accessible isn't limited by the License. A license is will undoubtedly be positive. A License can be disavowed at the desire of the grantor aside from in two cases referenced in Section 60.⁷¹ On the off chance that a license is removed, his lone cure is to recoup pay and not to continue the occupation.⁷²

COMPARISON WITH ENGLISH COMMON LAW

In India, easementary rights can be asserted regarding the physical property, for example, land and not regarding incorporeal rights. In any case, under the English Law, an easement can be guaranteed regarding an incorporeal right too. An easement right under the English Law is a privilege without profit.⁷³ It grants satisfaction in specific rights regarding the dominant heritage without permitting the proprietor of the then-dominant tenement to partake in the benefits which emerge out of the dirt of the servient legacy. Subsequently, easement rejects what is considered profit a prendre. Under Indian Law, an easement additionally incorporates profit a prendre. It incorporates a right to appreciate the benefits emerging out of the dirt of another proprietor. This is made clear by the Explanation to section 4 which lays down that the expression

“to do something” includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage of any part of the soil of the servient heritage, or anything growing or subsisting thereon.⁷⁴

Under the Indian Law, two tenements need not be nearby each other because utilized in the area are that the servient legacy must be "certain another land" not having a place with the dominant proprietor. Be that as it may, under the English Law, the heritages must be neighbouring ones.⁷⁵

RIGHTS OF RIPARIAN

Indian Easement Act 1882 is a Complete Code in itself in the regions to which this Act applies. Act characterize and control the easement rights in all perspectives with the goal that everybody appreciates normal easementary rights and there ought to be the least dubious in such manner. Even though the Act is finished in itself yet it isn't thorough. In India, water law or the accompanying regulations fall inside the domain of the Indian Easements Act of 1882. In the Indian Constitution, water is in the state list as Entry 17 subject to the provisions of Entry 56 of List I.⁷⁶ Under the Easements Act, the privileges of a riparian for example an individual who claims the land connecting a waterway or a water stream is perceived by this right. § 7 of the Act delivers that each riparian proprietor has the privilege to proceeded with a stream of waters of a characteristic stream with no annihilation or

⁷⁰ INDIAN EASEMENTS ACT, 1882, § 52

⁷¹ Afaque, *Supra*, Note 33 at p. 28

⁷² Corporation of Calicut vs. K. Sreenivasan AIR 2002 SC 2051 (India)

⁷³ The Indian Easements Act, 1882, at p. 6 (August 14th, 2020, 22:26), <http://law.uok.edu.in/Files/5ce6c765-c013-446c-b6ac-b9de496f8751/Custom/Easement.pdf>

⁷⁴ INDIAN EASEMENTS ACT, 1882, § 4

⁷⁵ The Indian Easements Act, 1882, at p. 6 (August 14th, 2020, 22:26), <http://law.uok.edu.in/Files/5ce6c765-c013-446c-b6ac-b9de496f8751/Custom/Easement.pdf>

⁷⁶ Annie Mampilly, Surana and Surana International Attorneys, RIPARIAN RIGHTS IN INDIA at p. 3



outlandish contamination. A riparian proprietor is offered with the option to utilize water stream which streams past his property similarly with other riparian proprietors. It is appropriate to take note of that The Easement's Act of 1882 perceives the customary privileges of riparian's that are gained under two fundamental guidelines. They are:

- ❖ Long usage or prescription
- ❖ Local custom

However, these rights are also not absolute. It doesn't give a free and supreme right that is charming with no outer impedance. To be more exact it could be noticed that these rights are dependent upon the Government's entitlement to manage the assortment, the dispersion, and the maintenance of the waters of waterways and streams streaming in regular channels.

In **Vippalapati v. Raja Of Vizianagram**⁷⁷, the case was an antecedent of the Ganga Water Pollution case⁷⁸. The support of riparian rights is clear for this situation wherein it was a dam that was deterring the riparian. The Court held that riparian rights are incorporated of a right to get to free-streaming water with no hindrance regardless of whether the impediment is by a dam.

In the decision of **Tata Iron And Steel Company Ltd. v. Province Of Bihar**⁷⁹ is another milestone case one can scarcely extra to overlook while talking about riparian rights inside the Indian range. The decision was pronounced by the Bombay High Court. In straightforward terms, the realities are with the end goal that the Tata Iron And Steel Company Ltd. was delivered rights over the utilization of water from the Swarnarekha

stream for their mechanical purposes. Because of a shortage issue that struck the express, the Government got certain limitations that trimmed down the privileges of the said organization. At this, the Company protested and asserted riparian rights. In any case, this case was expelled by the Court on the ground that an outright right can't be asserted. Everybody appreciates equivalent benefits over the assets and the Government is engaged under the law to make limitations in light of a legitimate concern for the bigger open.

Therefore, I can conclude that § 2 of Indian Easements Act, which empowers the government with the power to regulate the flow of water in natural or artificial stream acts as an exception to the general rule of easementary rights, or specifically, riparian rights under easementary rights and therefore cannot be challenged for invalidity or unconstitutionality.

CONCLUSION

The Indian Easements Act, 1882 provides for the right of easement in India. Easement neither transfers the ownership nor possession of the property. However, it is just for mere beneficial enjoyment without which one's property cannot be enjoyed. The easement has been classified into various categories such as necessity, quasi easement, prescriptive, customary. Under § 7 different modes of acquisition of easement are given either by way of express grant or implied grant. In the case of the right to way, any illegal interference with the right of way constitutes a nuisance and violation of right. In the case of the right to access of light, it does not constitute the right to have a

⁷⁷ AIR 1937 Mad 310 (India)

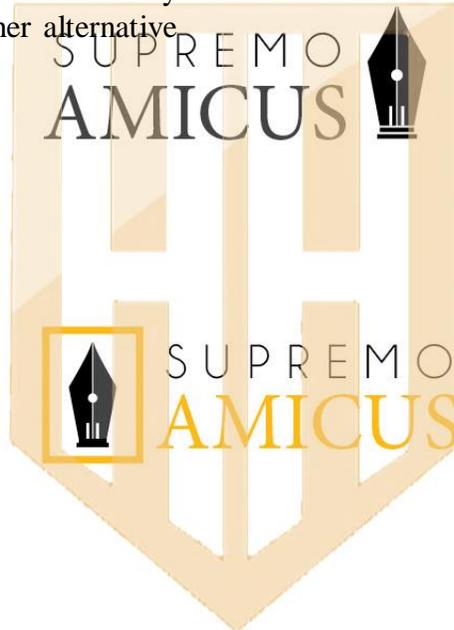
⁷⁸ M.C. Mehta vs. Union of India AIR 1988 SC 1115 (India)

⁷⁹ 2004 (3) BLJR 1948 (India)



continuance of the same amount of light throughout. The article tried to explain the various modes through which easement can be terminated, suspended, or revived. The easement is a benefit that the proprietor of a heritage appreciates regarding that heritage in or over the heritage of someone else.

In the landmark case of **Hero Vinoth v. Seshamma**⁸⁰, the court held that an easement would last only as long as the absolute necessity existed and such a legal extinction could not apply to an acquisition by grant- if a right of way was provided to a particular sharer, it could not be terminated merely because such sharer had another alternative way.



⁸⁰ (2006) 5 SCC 545 (India)