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**DEAD HAND CONTROL VS FREE
ALIENATION: AN ANALYSIS OF
UNBORN INTERESTS AND THE
RULE AGAINST PERPETUITY
UNDER SECTIONS 13–17 OF THE
TRANSFER OF PROPERTY ACT, 1882**

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Abstract

This paper delves into the legal and philosophical context of transferring of property to a person not yet born as laid down in sections 13 to 17 of the Transfer of Property Act, 1882. The paper discusses the underlying conflict between dead hand control, whereby an individual is allowed to plan for the destiny of his property over generations, and free alienation, which is concerned with transferring property without limitations.

This study examines the development of the rule against perpetuity from common law to the stricter form of codified legislation in India where the interests created by the property are allowed only up to the life of persons alive at the time and until the minority of the beneficiary. In section 13, there is the possibility for a property owner to transfer his property to someone not yet born provided that the transfer covers the whole remainder of interest in the property. Section 14 works as the main limitation to the transfer by providing timely vesting of interests;

whereas, Sections 15 & 16 discuss issues related to class transfer and invalidation of earlier interest, respectively. Section 17, on the other hand, limits the earning of income from property.

Keywords: Dead Hand Control, Free Alienation, Rule Against Perpetuity, Transfer of Property Act, 1882, Unborn Persons, Property Law in India, Vesting of Interest, Sections 13–17 TPA

1. Introduction: The Jurisprudence of Property and Time

The issue of property rights is not merely a concern for the here and now, but rather it entails time powers.¹ If a person becomes the owner of property, the law allows him/her to alienate it². But what is the nature of this alienation right? Does it involve the ability to decide who will own the property in a hundred, two hundred, or even five hundred years' time?

If the answer was yes, then there would be the possibility of the creation of something known as "perpetuity" which simply means that the property is linked to a particular family for eternity, and it will never change hands or become a target of mortgages³. In economics, it creates serious problems since it takes the property out of the market, out of the possibility of being mortgaged and put to productive use⁴.

On the other hand, "Free Alienation" means that there should be an easy process of transferring the property from one to another.⁵ In "Transfer of Property Act," 1882, there exists a pursuit of the "Golden Mean".⁶ The law recognizes the natural tendency of man to take care of his offspring and even grandsons. However, a line is drawn, which can be found from Section 13 to 17.⁷

¹ 2 William Blackstone, *Commentaries on the Laws of England* 2 (1766).

² Id

³ John Chipman Gray, *The Rule Against Perpetuities* § 201 (4th ed. 1942).

⁴ John Chipman Gray, *The Rule Against Perpetuities* § 201 (4th ed. 1942).

⁵ 2 Herbert T. Tiffany, *The Law of Real Property* § 437 (3d ed. 1939).

⁶ The Transfer of Property Act, No. 4 of 1882, pmb. (India).

⁷ Id. §§ 13–17.



1.1 The Philosophical Struggle: Static vs. Dynamic Wealth

Wealth, according to economists such as Adam Smith and David Ricardo, was not considered merely as the collection of property; rather, it was seen as the productive deployment of capital⁸. In other words, when capital is constantly circulating through activities of exchange, investments, and reinvestments, it creates jobs, innovates, and facilitates overall economic growth⁹. On the other hand, capital which stays idle or artificially restrained lacks productivity and economic efficiency¹⁰.

From this perspective, the principle of “dead hand control” where property owners seek control on how to utilize or dispose of their property even after their death amounts to static wealth¹¹. Property burdened with overly strict provisions for the future becomes “static” and thus incapable of responding to the dynamics of the market and society. The consequences include the distortion of the land market through lack of flexibility in the disposal of property.¹²

As against this, free alienation is an embodiment of dynamic wealth.¹³ Where property is freely transferable, it is bound to move in the hands of the person who will derive maximum utility out of it¹⁴. Such mobility increases economic efficiency, leads to optimal utilization of resources, and promotes economic dynamism. This is in complete harmony with the principles of classical economics, which emphasize the need for minimizing interference in the mobility of property to optimize societal benefit¹⁵.

In this context, the Transfer of Property Act, 1882 (TPA) is not merely a body of law regulating property, but it is also a mechanism through which the economy is regulated¹⁶. The rules relating to the limitation period, rule against perpetuity, and unreasonable restraint on alienation have been formulated to ensure that there is no ossification of property.¹⁷ Through such limitations on generational control over property, the TPA makes sure that the property continues to be economically active¹⁸.

In summary, therefore, the TPA represents a compromise between personal freedom and collective economic considerations¹⁹. Though it recognizes the right of a property owner to sell his property, at the same time it inhibits any attempt to establish permanent control, which may affect the circulation of economic activities.²⁰ It thus ensures that the property law serves the function of sustaining economic circulation and avoiding the accumulation of dead capital in society.

2. Historical Context: From English Common Law to Indian Codification

In order to comprehend Sections 13 and 14 of the TPA, one needs to trace its origin from the English Common Law, particularly the “Duke of Norfolk’s Case” (1682), where the fundamental “Rule against Perpetuities” was established to avoid the establishment of “unbarrable entails.”²¹

2.1 The Duke of Norfolk’s Legacy

The Earl of Arundel in the seventeenth century tried to establish a series of shifting interests in his sons’ favor in accordance with some conditions²². Lord

⁸ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* bk. II (1776); David Ricardo, *On the Principles of Political Economy and Taxation* (1817).

⁹ Id

¹⁰ Id

¹¹ Gray, *supra* note 3, § 201.

¹² Id

¹³ Tiffany, *supra* note 5, § 437.

¹⁴ Id

¹⁵ Smith, *supra* note 8; Ricardo, *supra* note 8.

¹⁶ The Transfer of Property Act, No. 4 of 1882 (India).

¹⁷ Id. §§ 10–17.

¹⁸ Id

¹⁹ Mulla, *The Transfer of Property Act* 102 (11th ed. 2013).

²⁰ Id

²¹ *Duke of Norfolk’s Case*, (1682) 3 Ch. Cas. 1 (Eng.); see also John Chipman Gray, *The Rule Against Perpetuities* § 173 (4th ed. 1942).

²² Id



Nottingham, who headed the court at that time, understood that if shifting uses continued endlessly, then the nobles would be able to enclose all the land of England forever²³. It was decided that some interest should vest in the course of "lives in being plus twenty-one years."²⁴

2.2 The Indian Modification: A More Restrictive Stance

As regards application of the above principles under the Indian Succession Act of 1882, the British administration made efforts to tailor the above principles according to the Indian social conditions²⁵. Whereas the English law provided a period of 21 years known as 'period in gross', which did not depend upon the age of the party in whose favor the transfer is to be made, the Indian law is more restrictive²⁶. As per section 14 of the Transfer of Property Act, the additional period is confined to the minority of the party, who shall take the interest²⁷. The idea behind this was that property can only remain tied for a duration sufficient enough to raise a new generation until it reaches its majority age of 18 years²⁸.

3. Section 13: The Legal Status of the "Non-Existent"

Section 13 is among the most complex sections in the Act²⁹. The section is based on the assumption that it would be impossible for a transfer to be made to any non-living party³⁰. However, it acknowledges the legality of making a transfer to a beneficiary who may be born after the transferor's death³¹.

The Theory of the Prior Interest

Vacuum in title is intolerable in law³². Suppose A conveys land to his grandchild B, who is still not born. Who becomes the owner of the property until then? Under section 13, there should be a "prior interest."³³ This interest will normally be in the form of a life estate to a living being³⁴.

The property is called "in abeyance" or "in trust" with the life estate owner³⁵. As soon as the unborn individual comes into existence, he acquires an interest in the property but may not have any physical possession until the life estate expires³⁶.

The "Whole Remaining Interest" Rule: Rejecting Life Estates for the Unborn

The other rule for protection provided by Section 13 is the requirement that the interest created in favor of the unborn should be the "whole remaining interest."³⁷ No partial interest can be created in favor of the unborn like creating a "life estate."³⁸

The Rejection of "Double Possibilities"

In the old English law, there was a concept known as "The Rule in *Whitby v. Mitchell*," according to which "double possibilities" were not allowed, such as limiting the property to the unborn child of an unborn individual³⁹. This rule was not adopted in the Indian context as such but Section 13 served the purpose even better than the rule because it ensured that no double possibilities could occur at all⁴⁰.

²³ Id

²⁴ Id

²⁵ The Indian Succession Act, No. 10 of 1865 (India); see also The Transfer of Property Act, No. 4 of 1882 (India).

²⁶ Gray, *supra* note 21, §§ 201–03.

²⁷ The Transfer of Property Act, No. 4 of 1882, § 14 (India).

²⁸ Id.; see also Mulla, *The Transfer of Property Act* 113 (11th ed. 2013).

²⁹ The Transfer of Property Act, No. 4 of 1882, § 13 (India).

³⁰ Id

³¹ Id

³² 2 William Blackstone, *Commentaries on the Laws of England* 107 (1766).

³³ The Transfer of Property Act, No. 4 of 1882, § 13 (India).

³⁴ Id

³⁵ Mulla, *The Transfer of Property Act* 96 (11th ed. 2013).

³⁶ Id

³⁷ The Transfer of Property Act, No. 4 of 1882, § 13 (India).

³⁸ Id

³⁹ *Whitby v. Mitchell*, (1890) 44 Ch. D. 85 (Eng.).

⁴⁰ The Transfer of Property Act, No. 4 of 1882, § 13 (India); Mulla, *supra* note 35, at 98.



Case Study: *Girjesh Dutt v. Data Din* (1934)

Indeed, the logic employed by the court is founded on the very technicalities of section 13 of the Transfer of Property Act, 1882, that deals with cases where the transfers are made in favor of a person who is yet to be born⁴¹. The above section creates an exception to the general rule that one cannot transfer a property to a non-existent entity⁴². However, these exceptions are governed by certain requirements⁴³.

First, the law provides that whenever the transfer of property is done in favor of a person who has not yet been born, there should have been a prior interest in favor of some living person⁴⁴. In the current case, this was fulfilled, as A gave a life interest to B, who was alive at the time of the transaction⁴⁵.

However, the second and most important aspect of Section 13 is that the interest given to the unborn must be all the remainder that the transferor had left after making the gift⁴⁶. In simple terms, it means that the interest given to the unborn should be absolute⁴⁷. It was never the intention of law to permit the creation of partial and successive life estates for those who are not born yet because such actions would have restrained the free flow of property from one generation to another⁴⁸.

For instance, in the scenario above, although the gift made to the male issue of B, which happened to be an unborn, was valid since it granted the recipient an absolute interest, the same cannot be said about the restriction imposed upon B's daughters. The reason behind this is that the girls, who also happened to be

unborn, received only a life estate with a remainder over to A's nephew.

Thus, this intention contravened Section 13⁴⁹. This section does not allow the vesting of a mere life estate to an unborn individual followed by other estates, as the purpose of the restriction would be circumvented through such provisions, enabling the transferor to have power over the land through several generations to come⁵⁰.

Hence, the Court ruled that the grant made to B's daughters was void from the outset⁵¹. This was not on account of the daughters being unborn, but due to the interest conferred on them not being absolute in nature⁵². This case therefore demonstrates a crucial point that Section 13 of the Transfer of Property Act enables an unborn individual to accept property, but only if the interest taken is absolute in nature⁵³.

4. Section 14: The Rule Against Perpetuity Explained

Section 14 serves as the "Limitation Statute" relating to property control⁵⁴. This section provides that no interest shall be created taking effect during the lifetime of living persons and the minority of a child not yet born⁵⁵.

4.1 The Three-Pillar Calculation

Perpetuity Period in India is determined on the basis of⁵⁶:

1. Life/Lives in Being: This refers to "the measuring lives." Life/lives in being have to be living on the date of transfer. They do not necessarily have to be beneficiaries; rather

⁴¹ *Girjesh Dutt v. Data Din*, (1934) 36 All. 653 (India).

⁴² The Transfer of Property Act, No. 4 of 1882, § 5 (India).

⁴³ Id. § 13.

⁴⁴ Id.

⁴⁵ *Girjesh Dutt*, (1934) 36 All. 653.

⁴⁶ The Transfer of Property Act, No. 4 of 1882, § 13 (India).

⁴⁷ Id.

⁴⁸ Mulla, supra note 35, at 99.

⁴⁹ The Transfer of Property Act, No. 4 of 1882, § 13 (India).

⁵⁰ Mulla, supra note 35, at 100.

⁵¹ *Girjesh Dutt*, (1934) 36 All. 653.

⁵² Id.

⁵³ Id.

⁵⁴ The Transfer of Property Act, No. 4 of 1882, § 14 (India).

⁵⁵ Id.

⁵⁶ Id.; see also Mulla, *The Transfer of Property Act* 113 (11th ed. 2013).



they could be anyone as long as they are ascertainable⁵⁷.

2. Gestation Period: In case the beneficiary is within the womb (minor in ventre sua mere), an additional period of nine months approximately is added⁵⁸.
3. Majority Period: The property should vest before the age of 18⁵⁹.

4.2 The Concept of "Vesting": Vested vs. Contingent

Vesting lies at the heart of Section 14⁶⁰. An interest "vests" where there is nothing to prevent it from coming into existence by reason of some contingency⁶¹.

- Vested Interest (Section 19): Any interest created for the benefit of a person without mentioning the time when such interest is to vest, or mentioning that it vests immediately or upon the happening of an event certain to happen⁶².
- Contingent Interest (Section 21): An interest which vests only when a certain event uncertain to happen occurs⁶³.

It needs to be pointed out that the rule of perpetuity operates in respect of contingent interests only⁶⁴. In case an interest has already vested, the rule would not be applicable⁶⁵. It provides that a contingent interest should vest within a perpetuity period; otherwise, the whole transaction would be void from the very beginning (ab initio)⁶⁶.

4.3 The "Absolute Certainty" Test

Whereas the "Wait and See" rule applies in America, in India, "Absolute Certainty" is followed⁶⁷. It does not matter whether the child will be an adult by the time he attains the age of 18 years during the period covered by the document⁶⁸. What matters is the mathematical certainty on the date of the execution of the document⁶⁹.

5. Section 15: The Modern Approach to Class Gifts

In property law, a "class" refers to a group of individuals distinguished by a particular feature (e.g., "all of my grandchildren")⁷⁰.

5.1 The Shift from the English Rule

According to the old English approach (Leake v. Robinson), where a bequest to a class member exceeded the remoteness requirement (violation of the rule against perpetuities), the entire bequest to the whole class would be rendered invalid⁷¹. This approach stemmed from the notion that the transferor intended the class to receive the property as a whole; hence, if the entire class could not receive it, then no single individual could receive the property⁷².

5.2 The Indian "Severability" Principle

The revised Section 15 states that if a class gift becomes ineffective as against some class members because of Sections 13 or 14, then it becomes void only as regards those class members⁷³. For instance, "a gift to all the children of my son who attain the age

⁵⁷ John Chipman Gray, *The Rule Against Perpetuities* § 201 (4th ed. 1942).

⁵⁸ Id. § 215.

⁵⁹ The Transfer of Property Act, No. 4 of 1882, § 14 (India).

⁶⁰ Id.

⁶¹ Id.; see also Mulla, supra note 56, at 115.

⁶² The Transfer of Property Act, No. 4 of 1882, § 19 (India).

⁶³ The Transfer of Property Act, No. 4 of 1882, § 21 (India).

⁶⁴ Gray, supra note 57, § 201.

⁶⁵ Id.

⁶⁶ The Transfer of Property Act, No. 4 of 1882, § 14 (India).

⁶⁷ Gray, supra note 57, § 629; see also Restatement (Second) of Property § 1.4 (Am. L. Inst. 1983).

⁶⁸ The Transfer of Property Act, No. 4 of 1882, § 14 (India).

⁶⁹ Mulla, supra note 56, at 118.

⁷⁰ 2 Herbert T. Tiffany, *The Law of Real Property* § 439 (3d ed. 1939).

⁷¹ *Leake v. Robinson*, (1817) 2 Mer. 363, 35 Eng. Rep. 979 (Ch.).

⁷² John Chipman Gray, *The Rule Against Perpetuities* § 373 (4th ed. 1942).

⁷³ The Transfer of Property Act, No. 4 of 1882, § 15 (India).



of 25 years." This means if some of the son's children were born prior to the transfer, whereas others were born thereafter, then it can become ineffective against the latter group but effective against the former⁷⁴.

6. Section 16: The Principle of Consequential Failure

Section 16 is called the "Domino Rule," which means that if an interest is made to commence after an interest which is itself void according to 13 or 14, then the second interest too will become void⁷⁵.

6.1 The "Dependent Interest" Doctrine

The theory is that when the previous interest is not legal, it is impossible for the statute to "leapfrog" over the invalidity and locate another interest down the line that is valid⁷⁶. The effect of such a statute will be to prevent the owner of the property from "sandwiching" a void and a valid interest⁷⁷.

Case Example: Anirudha Mitra v. Administrator General of Bengal (1949)

In the case of *Anirudha Mitra v. Administrator General of Bengal*, the question before the court related to the interpretation of a transaction involving successive interests, where a life interest had been conferred on an unborn person and later a gift over made to another individual⁷⁸. This led the court to interpret the relationship between sections 13 and 16 of the Transfer of Property Act 1882⁷⁹.

The first question before the court concerned the validity of the transfer in favor of the unborn person⁸⁰. Section 13 provides that a transfer shall only be valid

where an interest in the property is transferred to an unborn person in its entirety⁸¹. However, in this case, the interest transferred was a limited estate, namely the right to a life interest⁸². This rendered the transfer void as it did not meet the conditions of section 13⁸³.

Once the interest that preceded was ruled as void, the court then proceeded to the next part, Section 16⁸⁴. Section 16 stipulates that when there is failure in the transfer of interest to an unborn person, the other interests that depended on such transfer would also become invalid⁸⁵. Based on this principle, the court ruled that the second gift-over was invalidated since it depended on the first one⁸⁶.

As such, not only was the transfer to the unborn person voided, but the other gift was also deemed as void, regardless of the presence of the recipient of the interest during the transfer process⁸⁷. This particular case clearly shows that where the limitation contravenes Section 13, Section 16 automatically makes the whole thing void⁸⁸.

7. Section 17: Directions for Accumulation

Although sections 13-16 provide information about the ownership of the land and the time thereof, section 17 provides information regarding the produce of the land⁸⁹.

⁷⁴ Id.; see also Mulla, *The Transfer of Property Act* 121 (11th ed. 2013).

⁷⁵ The Transfer of Property Act, No. 4 of 1882, § 16 (India).

⁷⁶ Id.; see also Mulla, *The Transfer of Property Act* 125 (11th ed. 2013).

⁷⁷ Id.

⁷⁸ *Anirudha Mitra v. Adm'r Gen. of Bengal*, A.I.R. 1949 Cal. 305 (India).

⁷⁹ The Transfer of Property Act, No. 4 of 1882, §§ 13, 16 (India).

⁸⁰ *Anirudha Mitra*, A.I.R. 1949 Cal. 305.

⁸¹ The Transfer of Property Act, No. 4 of 1882, § 13 (India).

⁸² *Anirudha Mitra*, A.I.R. 1949 Cal. 305.

⁸³ Id.

⁸⁴ Id.

⁸⁵ The Transfer of Property Act, No. 4 of 1882, § 16 (India).

⁸⁶ *Anirudha Mitra*, A.I.R. 1949 Cal. 305.

⁸⁷ Id.

⁸⁸ Id.; see also Mulla, *supra* note 76, at 126.

⁸⁹ The Transfer of Property Act, No. 4 of 1882, §§ 13–17 (India).



7.1 The Economic Rationale

Accumulation involves the retention of the income and not its use⁹⁰. Excessive accumulation is liquid perpetuity. It ensures that capital cannot be used in the economy⁹¹.

7.2 The Statutory Limit: 18 Years

The limit provided by section 17 is⁹²:

- The lifetime of the transferor⁹³.
- Or a period of 18 years from the date of the transfer⁹⁴.

Beyond this period, the instruction for accumulation shall become void, and the income shall be distributed to those who would have had a claim to the same in absence of the instruction⁹⁵.

7.3 Detailed Exceptions and the "Prudent Owner" Test

It is understood by law that the process of accumulation is sometimes required for effective management⁹⁶. Accordingly, Section 17 does not cover⁹⁷:

1. Dues of Debt Repayment: Settling outstanding debts⁹⁸.
2. Allocation for Offspring: Arrangements made for the "advancement" of offspring⁹⁹.
3. Property Protection: Preserving and maintaining property¹⁰⁰.

8. Interaction with Personal Laws

One of the most complicated issues within the realm of property law in India is where it merges with religious personal laws¹⁰¹.

8.1 Hindu Law: The Tagores Case

Prior to the introduction of the Transfer of Property Act, the Rule Against Perpetuities in Hindu Law was known by way of the Tagore v. Tagore case¹⁰². According to the judgment of the Court, a Hindu was barred from making an estate that had no precedent in Hindu Law¹⁰³. A gift made to an unborn person would normally be considered void¹⁰⁴.

8.2 Muslim Law: The Waqf Exception

Muslim Law has no application of the Rule against Perpetuity in respect of Waqfs¹⁰⁵. The Waqf-alal-aulad, which was once considered a perpetual Waqf, has been reconciled by the Mussalman Wakf Validating Act, 1913¹⁰⁶. This was done in accordance with public policy and made it clear that the religious purpose may be perpetual, but the personal object should ultimately become charitable¹⁰⁷.

9. Comparative Analysis: India, UK, and USA

Feature	Indian TPA (1882)	English Law (Modern Law)	USA (Modern Trend)
Perpetuity Period	Life + Minority (18 years)	125 years (fixed)	"Wait and See" (90 years)

⁹⁰ Mulla, *The Transfer of Property Act* 130 (11th ed. 2013).

⁹¹ Id

⁹² The Transfer of Property Act, No. 4 of 1882, § 17 (India).

⁹³ Id

⁹⁴ Id

⁹⁵ Id

⁹⁶ Mulla, supra note 90, at 131.

⁹⁷ The Transfer of Property Act, No. 4 of 1882, § 17 (India).

⁹⁸ Id

⁹⁹ The Transfer of Property Act, No. 4 of 1882, § 17 (India).

¹⁰⁰ Id

¹⁰¹ Mulla, *The Transfer of Property Act* 140 (11th ed. 2013).

¹⁰² *Tagore v. Tagore*, (1872) 1 Beng. L.R. 377 (P.C.) (India).

¹⁰³ Id

¹⁰⁴ Id

¹⁰⁵ Asaf A.A. Fyzee, *Outlines of Muhammadan Law* 366 (5th ed. 2008).

¹⁰⁶ The Mussalman Wakf Validating Act, No. 6 of 1913 (India).

¹⁰⁷ Id.; see also Fyzee, supra note 105, at 368.



Unborn Interests	Must be Absolute (S. 13)	Can be Life Estates	Varies by State
Accumulation	18 Years	No Specific Limit	Varies; often perpetuity rule

USA:- Wait & See approach in the USA constitutes a contemporary reform in that there will be no automatic cancellation of the gift¹⁰⁸. The court will allow some time before determining whether the interest vests during the specified period¹⁰⁹. The failure by India to adopt the "wait & see" approach represents a deliberate preference for Certainty of Title in that, in India, one must determine at first sight whether the title is good when purchasing a piece of property¹¹⁰.

10. Contemporary Challenges and Reform

With the arrival of the contemporary age of virtual and intellectual property rights as well as real estate investment trusts (REITs), the question arises of how applicable is the act of 1882¹¹¹.

10.1 The "Minority" Problem

For instance, while in the year 1882, 18 years was considered a sensible age of maturity, in this 21st century, when many people go on to further their studies to the mid-twenties, some scholars in legal terms have proposed that there must be an expansion of perpetuity to become "Life + 25 years" to afford

better control of inheritance to the parents of their children¹¹².

10.2 Corporate and Commercial Interests

Can section 14 affect companies? Normally, the provisions in section 14 apply in vesting of property¹¹³. For example, in the case of R. Kempraj v. Burton Son & Co., the Supreme Court of India decided that where there is provision for renewal of lease, such provision does not vest an interest in property as in the case of a transfer of the same¹¹⁴.

11. Judicial Interpretation: The "Spirit of the Law"

Courts of India are always "Pro-Alienation."¹¹⁵ This can be seen in Sopher v. Administrator-General of Bengal, 1944, wherein the Privy Council was faced with a difficult will where the draftsmen attempted to create an array of interests of unborns.¹¹⁶ The court reemphasized that "the whole of the remaining interest" should go to the unborn individual¹¹⁷. Even if the transferor attempts to be "too clever" by excluding something from the interest of the unborn, then the entire devise would fail¹¹⁸.

The judicial process is seen as the "final reaper" of the Dead Hand phenomenon¹¹⁹. In cases wherein the legal drafter produces a restrictive document, the court applies sections 13 to 17 like a scalpel to trim off the

¹⁰⁸ John Chipman Gray, *The Rule Against Perpetuities* § 629 (4th ed. 1942); see also Restatement (Second) of Property: Donative Transfers § 1.4 (Am. L. Inst. 1983).

¹⁰⁹ Id

¹¹⁰ The Transfer of Property Act, No. 4 of 1882, § 14 (India); Mulla, *The Transfer of Property Act* 118 (11th ed. 2013).

¹¹¹ The Transfer of Property Act, No. 4 of 1882 (India); see also Mulla, *The Transfer of Property Act* 150 (11th ed. 2013).

¹¹² John Chipman Gray, *The Rule Against Perpetuities* § 201 (4th ed. 1942); see also Mulla, supra note 111, at 152.

¹¹³ The Transfer of Property Act, No. 4 of 1882, § 14 (India).

¹¹⁴ *R. Kempraj v. Burton Son & Co.*, A.I.R. 1970 S.C. 1872 (India).

¹¹⁵ Mulla, *The Transfer of Property Act* 160 (11th ed. 2013).

¹¹⁶ *Sopher v. Adm'r Gen. of Bengal*, A.I.R. 1944 P.C. 67 (India).

¹¹⁷ Id

¹¹⁸ *Sopher v. Adm'r Gen. of Bengal*, A.I.R. 1944 P.C. 67 (India).

¹¹⁹ John Chipman Gray, *The Rule Against Perpetuities* § 201 (4th ed. 1942).



invalid portions of the instrument and return the asset into active commerce¹²⁰.

12. Critical Summary: Dead Hand vs. The Market

The conflict outlined in this paper is one of power. The "Dead Hand" wants to perpetuate its power through property¹²¹. The "Market" wants to free that power and give it back to the living¹²².

Sections 13-17 set out the terms of this conflict¹²³. These provisions guarantee that:

1. Vesting is Fixed: There is no need to wait a lifetime and then another 18 years before one knows who owns the land¹²⁴.
2. Inheritance is Absolute: One cannot be considered merely a custodian of one's children's inheritance; one becomes an actual owner of the land¹²⁵.
3. Income is Liquid: Property rights are not frozen for generations¹²⁶.

13. Conclusion: The Eternal Balance

The conflict between "Dead Hand Control" and "Free Alienation" is one which has been a permanent feature of life since the beginning of mankind itself.¹²⁷ We desire immortality in some way to be remembered, to ensure that our progeny has what it needs, and to make decisions despite our absence from the scene¹²⁸. However, the law has to look towards the demands of the living¹²⁹.

The provisions of Sections 13 to 17 of the Transfer of Property Act, 1882, constitute a victory of social engineering¹³⁰. By enabling transfer to unborn persons

under Section 13, while restricting the period of their vesting under Section 14, and ensuring that there is income available to the living (under Section 17), the law acts to prevent the emergence of a landed aristocracy which would hinder the development of the economy¹³¹.

Ultimately, property cannot simply belong to its owners; it belongs to the State too.¹³² The Rule Against Perpetuity ensures that this belongs not to the coffins of history, but lives on as a valuable asset in perpetuity¹³³.

¹²⁰ The Transfer of Property Act, No. 4 of 1882, §§ 13–17 (India).

¹²¹ Gray, supra note 119, § 201.

¹²² Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* bk. II (1776).

¹²³ The Transfer of Property Act, No. 4 of 1882, §§ 13–17 (India).

¹²⁴ Id. § 14.

¹²⁵ Id. § 13.

¹²⁶ Id. § 17.

¹²⁷ John Chipman Gray, *The Rule Against Perpetuities* § 201 (4th ed. 1942).

¹²⁸ Id.

¹²⁹ Id.

¹³⁰ The Transfer of Property Act, No. 4 of 1882, §§ 13–17 (India).

¹³¹ Id. §§ 13, 14, 17; see also Mulla, *The Transfer of Property Act* 165 (11th ed. 2013).

¹³² 2 William Blackstone, *Commentaries on the Laws of England* 2 (1766).

¹³³ Gray, supra note 127, § 201.