BLOGS

Easements and Covenants under Property Law

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Introduction

Property law in India, governed primarily by the **Transfer of Property Act, 1882 (TPA)** and the **Indian Easements Act, 1882**, establishes a complex framework of rights and obligations over land. Among the most fundamental concepts are **easements** and **covenants**. Both regulate how land can be used or restricted, but their legal nature, origin, and enforceability differ significantly. Easements are codified as proprietary rights attached to land, while covenants are largely contractual or equitable obligations embedded within transfers of property. Together, they play a crucial role in shaping the rights of landowners, occupiers, and successors, and remain central to disputes concerning land use, access, and restrictions.

Easementary Rights in Indian Law

The **Indian Easements Act, 1882** provides a statutory definition of easements in Section 4. It defines an easement as a right which the owner or occupier of certain land (called the **dominant heritage**) possesses, for the beneficial enjoyment of that land, over the land of another (called the **servient heritage**). Easements are therefore proprietary rights, not personal obligations. They attach to land and pass automatically with ownership or possession of the dominant heritage, irrespective of who the owners are.

The classic example is a **right of way**, where one landowner is allowed to pass through another's land to access their own. Similarly, rights to light, to water, or to lateral support are recognized easements. The emphasis is always on beneficial enjoyment of the dominant land, not the personal convenience of the owner.

Essential Features

The statute, supported by Indian case law, identifies four core characteristics of an easement:

1. Existence of Two Heritages: An easement requires both a dominant and a servient heritage. A person cannot have an easement over their own land. This requirement reflects the proprietary nature of easements.
2. Connection with Beneficial Enjoyment: The easement must enhance the normal enjoyment of the dominant land. The right must be connected with the property itself rather than with the personal convenience of the owner. For instance, a right to fetch water from a well on a neighbor's land can be an easement if it aids the enjoyment of agricultural land.
3. Distinct Ownership: The dominant and servient heritages must be owned or occupied by different persons.
4. Capable of Recognition in Law: The claimed right must be definite, lawful, and not amount to complete possession of the servient land. A vague right such as a right to a "good view" will not qualify.

Modes of Acquisition of Easements

The Indian Easements Act recognises several ways by which easements may be acquired:

- Express Grant: Where the servient owner expressly confers the right by deed, agreement, or transfer. For example, a registered deed granting a right of way.
- Implied Grant or Easement of Necessity: Section 13 of the Act provides that when one transfers or divides property in such a way that one portion cannot be enjoyed without access over another, an easement of necessity arises. For example, where a landlocked parcel is created by sale, the purchaser acquires a right of way over the remaining land. Indian courts have consistently held that this necessity must be absolute, not merely for convenience.
- Implied by Common Intention: Easements may also be implied if both parties intended the land to be used in a specific way that requires such a right. For instance, if land is sold for a flour mill, there may be an implied right to draw water necessary for the mill's operation.
- Prescription: Section 15 allows easements to be acquired by long use. If a person has enjoyed a right over another's land "peaceably, openly, as of right, and without interruption" for 20 years (30 in case of government land), the right matures into a legal easement. Courts emphasize the conditions of such use: it must not be clandestine, must not be by force, and must not be with permission. The Supreme Court in Govindammal v. R. Perumal Chettiar (2006) reaffirmed these principles.

- Custom: Section 18 permits recognition of customary easements in certain communities or localities. For example, a customary right for villagers to take water from a village pond.

Termination of Easements

Easements, though robust rights, can be extinguished under Sections 37 to 47 of the Easements Act. Termination may occur through:

- Release by the dominant owner through an express deed.
- Unity of Ownership and Possession, where the dominant and servient heritages vest in the same person.
- Permanent Destruction of either heritage or alteration making the easement useless.
- Non-user: Continuous non-use for 20 years raises a presumption of abandonment.
- Revocation by Necessity: If an easement of necessity ceases to be necessary, it comes to an end.

Covenants in Indian Property Law

Nature and Definition

Unlike easements, **covenants are not expressly codified** in India. They operate largely through the principles of the **Transfer of Property Act, 1882**, especially Sections 10, 11, and 40, and through equity and case law. A covenant is essentially a promise contained in a deed regulating land use. It may oblige the owner to do something (positive covenant) or to refrain from doing something (restrictive covenant).

For example, a landowner may covenant not to build beyond two storeys to preserve uniformity in a residential colony, or may covenant to maintain fencing.

Positive and Restrictive Covenants

- Positive Covenants require action, such as building or maintaining something. In India, the burden of positive covenants does not run with the land. They bind only the original covenantor and not successors. This principle was reiterated by the Supreme Court in Durga Prasad v. Deep Chand.

- Restrictive Covenants, by contrast, require abstention, such as not using land for commercial purposes. Indian courts, following the English rule in Tulk v. Moxhay (1848), have recognized that restrictive covenants can bind subsequent purchasers, provided they have notice of the covenant. This flows from the doctrine of notice in Section 40 of the TPA.

Running of Benefit and Burden

The central issue in covenant law is whether the benefit and burden of a covenant "run with the land."

- Benefit: The benefit of a covenant can pass to successors if it is intended to benefit the land itself and not merely the original covenantee. Courts require the covenant to "touch and concern" the land.
- Burden:
  - At common law, the burden of covenants generally does not run. India follows this principle for positive covenants.
  - In equity, however, restrictive covenants may run with the servient land if the purchaser has notice. This is why restrictive covenants are frequently enforced in Indian housing colonies and development schemes.

The burden of positive covenants cannot be enforced against successors, but developers often use **chains of indemnity covenants** or invoke the **mutual benefit and burden principle** to achieve practical enforceability.

Distinction between Easements and Covenants

Although both deal with rights and obligations over land, the distinction is clear under Indian law. An easement is a **statutory proprietary right** attached to land and transferable by law, whereas a covenant is a **contractual or equitable obligation** that may or may not bind successors depending on its nature.

Easements are codified and enforceable as rights in rem, while covenants, especially positive ones, remain limited in enforceability under the TPA framework.

Conclusion

Easements and covenants together form a vital part of Indian property law. Easements, codified under the Indian Easements Act, 1882, create proprietary rights that are well-defined, enforceable, and transferable with the land.

They ensure that landlocked parcels, rights of way, and access to essential resources are legally protected. Covenants, on the other hand, though not comprehensively codified, play an important role in regulating modern land use.

Restrictive covenants, enforceable through the doctrine of notice under Section 40 of the Transfer of Property Act, have been crucial in maintaining the uniformity and planned development of residential and commercial colonies across India. Positive covenants, however, remain largely personal obligations, their burden not transferable to successors except through contractual mechanisms.