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PART PERFORMANCE ON PAPER: THE REGISTRATION AND OTHER RELATED LAWS (AMENDMENT) ACT 2001, SECTION 53A OF THE TRANSFER OF PROPERTY ACT, AND THE UNFINISHED CASE FOR A REGISTERED-TITLE INDIA

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I. ABSTRACT :

The Registration and Other Related Laws (Amendment) Act 2001 is usually described as the statute that modernised Indian property registration. That description is at once too generous and too narrow. The Act did not introduce online registration, did not recast the notice rules for leases, and did not make mortgages newly registrable; each of those claims, though often repeated, belongs to other instruments or to later state action. What the Act did was smaller in text and larger in consequence. By inserting section 17(1A) into the Registration Act 1908, deleting the words in section 53A of the Transfer of Property Act 1882 that had allowed an unregistered contract to found a plea of part performance, and removing the matching exception from the proviso to section 49, Parliament made registration the price a purchaser in possession must pay for the statutory shield of part performance. Alongside that central change, the Act abolished the power of a Registrar to register documents relating to property situated anywhere in India, required the photographs and fingerprints of executants to be affixed to documents presented for registration, and authorised registration books to be kept in electronic form. This article reconstructs the law of part performance before 2001, catalogues precisely what the Act changed, and traces its judicial afterlife through *Suraj Lamp*, *Ameer Minhaj*, *R. Hemalatha*, *Ghanshyam*, *K. Gopi* and *Mahnoor Fatima Imran*. It argues that the Act succeeded in narrowing the legal cover available to the informal transfer economy, but left untouched the deeper feature of Indian law that makes registration a public record of deeds rather than a guarantee of title. Reading the reform against England's abolition of part performance in 1989, the Torrens tradition of title by registration, and the draft Registration Bill 2025, the article proposes a sequenced reform agenda that completes, rather than merely repeats, the project Parliament began in 2001.

II. KEYWORDS: Part performance; compulsory registration; section 53A Transfer of Property Act; Registration Act 1908; conclusive land titling.

III. INTRODUCTION

In October 2011 the Supreme Court of India confronted a practice that had become, in Delhi and across much of urban north India, the ordinary way of buying a flat. The buyer paid the full price and took possession. In return the seller handed over a bundle of three documents: an agreement to sell, an irrevocable general power of attorney, and a will bequeathing the property to the buyer. None of these documents conveyed ownership, and none was registered as a conveyance. In *Suraj Lamp & Industries (P) Ltd v State of Haryana* the Court held that such "SA/GPA/Will" arrangements are not transfers at all, that they do not convey title or any interest in immovable property, and that immovable property can be lawfully conveyed only by a registered deed of conveyance.⁴ The Court was frank about why the practice existed: these arrangements allowed parties to avoid stamp duty and registration charges, to conceal the true consideration, and to move undisclosed money through the property market.⁵

Suraj Lamp is often presented as the moment Indian law turned decisively against informal transfers. The judgment is important, but it was not the first move. Ten years earlier Parliament had already taken a more structural step. The Registration and Other Related Laws (Amendment) Act 2001 (the "2001 Act"), in force from 24 September 2001, attacked the same economy at a different point.⁶ *Suraj Lamp* asked whether the bundle of documents transferred

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⁴*Suraj Lamp & Industries (P) Ltd v State of Haryana* (2012) 1 SCC 656 (judgment delivered 11 October 2011).

⁵*ibid.*

⁶Registration and Other Related Laws (Amendment) Act 2001 (Act 48 of 2001); the amendments to the Registration Act 1908 and the Transfer of Property

ownership. The 2001 Act asked a prior question: whether a purchaser who holds only a contract and possession should be protected against the seller at all, and on what terms. Its answer was that such protection would henceforth be available only if the contract was registered.

The distinction matters because the protection in question, the statutory doctrine of part performance in section 53A of the Transfer of Property Act 1882 ("TPA"), had for seventy years been the legal backbone of the informal market. A buyer holding an unregistered agreement and possession could not sue to establish title, but could resist the seller's attempt to evict him. That defensive shield was what made it tolerable to leave a transaction unregistered for years, or forever. By making registration a condition of the shield, the 2001 Act raised the cost of informality at its most sensitive point.

A good deal of writing on the 2001 Act, including material prepared for teaching purposes, attributes to it reforms it did not make: electronic registration, a standardised notice period for terminating leases, and compulsory registration of mortgages. Those developments are real, but they come from elsewhere. Online registration is a creation of state rules and administrative systems built on a narrow enabling provision; the notice rules in section 106 TPA were recast by a separate amendment enacted in 2002; and mortgages securing one hundred rupees or more have required a registered instrument since the TPA was first enacted. A precise account of the 2001 Act is therefore not pedantry. The claim that the Act "modernised" registration obscures what it actually did, and in doing so obscures what it left undone.

There is a further reason to return to the 2001 Act now. A quarter of a century after its commencement, the two questions it left open have both arrived on the national agenda at once. The draft Registration Bill 2025 proposes to make agreements to sell and powers of attorney compulsorily registrable throughout the country, which would generalise the technique the 2001 Act applied to part performance alone. And in November 2025 the Supreme Court, while striking down a State rule that tried to make the registering officer a gatekeeper of title, described the Indian system as one of presumptive titling and asked the Law Commission to examine how it might be moved towards conclusive title.⁷ The first development completes the logic of 2001. The second questions whether that logic is enough. An accurate account of what Parliament did in 2001, and of what it deliberately or inadvertently left alone, is the necessary starting point for assessing both.

This article proceeds as follows. Part IV reconstructs the pre-2001 law of part performance and explains why the unregistered contract was central to it. Part V sets out, provision by provision, what the 2001 Act changed. Part VI analyses the doctrinal consequences of section 17(1A) and its interaction with the proviso to section 49 of the Registration Act. Part VII examines the procedural reforms to the registration machinery. Part VIII traces the judicial afterlife of the Act, from *Suraj Lamp* to the Supreme Court's 2025 decisions on the limits of registration. Parts IX and X turn comparative, to England's abolition of part performance and to the Torrens model of title by registration. Part XI addresses the federal and constitutional overlay. Part XII reads the draft Registration Bill 2025 against the analysis and proposes a reform agenda, and Part XIII concludes.

A. Research Objectives

This paper has four objectives. The first is to identify, with textual precision, the changes the 2001 Act made to the Registration Act 1908, the TPA and the Indian Stamp Act 1899, and to separate those changes from reforms commonly but wrongly attributed to it. The second is to analyse how the insertion of section 17(1A) and the amendment of section 53A altered the legal position of a purchaser in possession under an unregistered contract. The third is to evaluate how the Supreme Court has read the 2001 Act, both directly and through later decisions on informal transfers and the limits of registration. The fourth is to assess, with the aid of comparative material, whether the 2001 reform achieved its purpose, and to propose reforms that would complete it.

B. Research Questions

The paper addresses the following research questions: first, what precisely did the 2001 Act change in the Registration Act 1908, the TPA and the Indian Stamp Act 1899, and which reforms commonly attributed to it did it not make; secondly, how has the insertion of section 17(1A) and the amendment of section 53A altered the rights of a purchaser in possession under an unregistered contract, particularly in light of the surviving proviso to section 49; thirdly, whether the Supreme Court's later jurisprudence, from *Suraj Lamp* to *Mahnoor Fatima Imran*, has consolidated or unsettled the 2001 reform; and fourthly, what the experience of England and of Torrens jurisdictions suggests about the reforms India should adopt, including through the draft Registration Bill 2025.

C. Research Methodology

The paper adopts a doctrinal and comparative methodology. It begins with the text of the 2001 Act itself, read against the unamended provisions of the

Act 1882 took effect on 24 September 2001.

⁷*Samiullah v State of Bihar* 2025 INSC 1292 (judgment delivered 7 November 2025).

Registration Act 1908 and the TPA, so that every claim about what the Act changed can be traced to a specific section. It then analyses the leading Supreme Court decisions applying the amended provisions, with attention to the reasoning of each rather than its headnote. Secondary sources, including commentary on the draft Registration Bill 2025, are used to identify the reform debate and are not treated as authority for statements of law.

The comparative part examines two bodies of law: English law on formalities for land contracts after the Law of Property (Miscellaneous Provisions) Act 1989, and the Torrens tradition of title by registration as developed in Australia and adopted in modified form in England's Land Registration Act 2002. These are used not as models for wholesale transplant, but as analytical aids that show how mature systems have handled the same tension between protecting informal possessors and insisting on formal records. The paper is limited to the law in force at the time of writing; it does not undertake empirical study of registration practice, and its observations on administrative performance are drawn from published material.

IV. BEFORE 2001: PART PERFORMANCE AS AN EQUITABLE SHIELD

The doctrine of part performance is English in origin. The Statute of Frauds 1677 made contracts for the sale of land unenforceable unless evidenced in writing, and the Court of Chancery, unwilling to let the statute become an instrument of fraud, developed the rule that a party who had acted on an oral contract in a way unequivocally referable to it could obtain specific performance notwithstanding the lack of writing. The House of Lords restated the doctrine in *Maddison v Alderson*, emphasising that the acts of part performance must be such as to point to the existence of a contract concerning the land in question.⁸ In English equity, then, part performance was a sword: it allowed the purchaser to sue for the contract to be completed.

The English doctrine rested on a wider foundation that Indian law has never shared. In English equity a specifically enforceable contract for the sale of land makes the purchaser owner in the eyes of equity from the moment of contract, the vendor holding the legal estate on a species of trust for him.⁹ Part performance was therefore a rule about proof of a contract which, once proved, carried proprietary consequences. Indian law starts from the opposite premise. Section 54 of the TPA states that a contract for the sale of immovable property does not, of itself, create any interest in or charge on such property, and the Supreme Court has held that Indian law does not recognise the equitable estate of the English purchaser.¹⁰ The English doctrine also grew less certain with time. In *Steadman v Steadman* the House of Lords accepted that acts of part performance need only point, on the balance of probabilities, to some contract between the parties, and that the payment of money might in some circumstances suffice.¹¹ That loosening contributed directly to the doctrine's abolition, discussed in Part IX.

Indian law resisted importing that doctrine. The TPA as enacted in 1882 required a sale of immovable property worth one hundred rupees or more to be made by a registered instrument, and the Registration Act 1908 denied effect to documents that required registration but had not been registered. The Privy Council held in *Ariff v Jadunath Majumdar Bahadur* that the English equity of part performance could not be used in India to override these express statutory requirements; a purchaser in possession under an unregistered document could not claim, on equitable grounds, the title the statute said could pass only by registration.¹² The result was hard on purchasers who had paid and taken possession, and it prompted legislative intervention.

Ariff settled a question on which Indian courts had been divided. An earlier decision of the Privy Council, *Mohammad Musa v Aghore Kumar Ganguli*, had given effect to an unregistered compromise on which the parties had acted for many years, and several High Courts had read it as authority for applying the English equity in India despite the registration statutes.¹³ *Ariff* confined that decision and restored the primacy of the statute. The sequence is worth remembering, because it shows that the tension between the registration requirement and the claims of a purchaser who has paid and entered is as old as the legislation itself, and that the courts' first instinct was to relieve the purchaser.

That intervention came through the Transfer of Property (Amendment) Act 1929, which inserted section 53A into the TPA.¹⁴ The provision was deliberately narrower than its English ancestor. It protected a transferee who had, under a written contract signed by or on behalf of the transferor, taken possession of the property in part performance and was ready and willing to perform his side of the bargain. In such a case, the transferor and persons claiming under him were debarred from enforcing against the transferee any right in respect of the property, other than a right expressly provided by the contract, even though the transfer had not been completed in the manner prescribed by law. Crucially, the section as enacted in 1929 applied "notwithstanding that ... the contract, though required to be registered, has not been registered". The 1929 amendments added a matching exception to

⁸*Maddison v Alderson* (1883) 8 App Cas 467 (HL).

⁹*Lysaght v Edwards* (1876) 2 Ch D 499 (Ch).

¹⁰Transfer of Property Act 1882, s 54; *Narandas Karsondas v S.A. Kamtam* (1977) 3 SCC 247.

¹¹*Steadman v Steadman* [1976] AC 536 (HL).

¹²*Ariff v Jadunath Majumdar Bahadur* AIR 1931 PC 79.

¹³*Mohammad Musa v Aghore Kumar Ganguli* (1914) LR 42 IA 1 (PC).

¹⁴Transfer of Property (Amendment) Act 1929 (Act 20 of 1929), inserting TPA, s 53A.

the proviso to section 49 of the Registration Act, so that an unregistered document could be received "as evidence of part performance of a contract for the purposes of section 53A".

Two features of the 1929 design shaped the next seventy years. The first is that section 53A was a shield and not a sword. The Privy Council held in *Probodh Kumar Das v Dantmara Tea Co Ltd* that the section confers no active title on the transferee and does not found a cause of action; it only bars the transferor from asserting rights against a transferee in possession.¹⁵ The Supreme Court later set out the conditions for the defence in *Nathulal v Phoolchand*: a written contract for transfer for consideration, signed by the transferor, from which the terms can be ascertained with reasonable certainty; possession taken or continued in part performance; some act done in furtherance of the contract; and the transferee's willingness to perform.¹⁶ The second feature is that, because the shield did not depend on registration, the unregistered written agreement became a durable substitute for a conveyance. The Supreme Court confirmed in *Shrimant Shamrao Suryavanshi v Pralhad Bhairoba Suryavanshi* that a defendant may rely on section 53A to protect his possession even where a suit for specific performance of the underlying agreement would be barred by limitation.¹⁷

The shield had other limits, each of which survives the 2001 amendment. It is subject to a statutory proviso protecting a transferee for consideration who has no notice of the contract or of its part performance, so that an unregistered agreement could always be defeated by a sale to a purchaser who did not know of it. It is available only against the transferor and persons claiming under him, and the Supreme Court held in *Rambhau Namdeo Gajre v Narayan Bapuji Dhotra* that a person who claims through the proposed transferee, and who has no contract with the owner, cannot invoke it against the owner.¹⁸ The transferee must have performed or be willing to perform his part of the contract, and cannot combine the plea with an inconsistent claim to adverse possession.¹⁹ And the acts relied on must be unequivocally referable to the contract alleged, a requirement the Court examined at length in *Sardar Govindrao Mahadik v Devi Sahai*.²⁰ Section 53A was therefore never a general charter for the unregistered purchaser. It was a narrow defence that happened to fit the facts of the typical informal sale.

The combined effect is easy to state. A purchaser with a signed agreement and possession could never become owner without a registered sale deed, but he could remain in possession indefinitely against the seller, and in practice against the seller's heirs and those claiming under him, without ever registering anything. Add an irrevocable power of attorney authorising him to deal with the property, and a will in his favour as insurance against the seller's death, and the purchaser held almost everything ownership offers except the paper title. The informal transfer economy that *Suraj Lamp* later described was, in large part, built on the architecture of the 1929 amendment. Stamp duty on a conveyance was avoided, registration fees were saved, the real price was hidden, and the public register ceased to tell the truth about who held the land.

By the late 1990s this had become a fiscal as well as a legal concern. The Statement of Objects and Reasons accompanying the 2001 Act records that a conference of Chief Ministers and Finance Ministers of the States and Union Territories, convened by the Union Finance Minister in September 1998, had concluded, among other things, that section 30(2) of the Registration Act should be repealed and that registration of general powers of attorney in the nature of contracts to sell immovable property should be made compulsory.²¹ The origin of the reform therefore lies as much in the States' concern about lost stamp revenue as in any abstract commitment to clean titles. That origin explains both the shape of the Act and some of its gaps.

V. WHAT THE 2001 ACT ACTUALLY CHANGED

The 2001 Act is short. Its long title describes it as an Act further to amend the Registration Act 1908, the TPA and the Indian Stamp Act 1899, and its twelve sections are divided into chapters addressing each statute, followed by a saving clause.²² Because so much is attributed to the Act, it is worth setting out what each operative provision does before assessing their combined effect.

Section 2 inserted section 16A into the Registration Act, permitting the registration books required by section 16 to be kept "in computer floppies or diskettes or in any other electronic form", subject to safeguards prescribed by the Inspector-General with the sanction of the State Government, and providing that certified copies or extracts from such electronic books would be treated as copies under section 57.²³ Section 9 made the consequential

¹⁵*Probodh Kumar Das v Dantmara Tea Co Ltd* AIR 1940 PC 1.

¹⁶*Nathulal v Phoolchand* (1969) 3 SCC 120.

¹⁷*Shrimant Shamrao Suryavanshi v Pralhad Bhairoba Suryavanshi* (2002) 3 SCC 676.

¹⁸Transfer of Property Act 1882, s 53A, proviso; *Rambhau Namdeo Gajre v Narayan Bapuji Dhotra* (2004) 8 SCC 614.

¹⁹*Mohan Lal v Mirza Abdul Gaffar* (1996) 1 SCC 639.

²⁰*Sardar Govindrao Mahadik v Devi Sahai* (1982) 1 SCC 237.

²¹Registration and Other Related Laws (Amendment) Act 2001, Statement of Objects and Reasons, as reproduced in the annotated text of the Registration Act 1908.

²²Registration and Other Related Laws (Amendment) Act 2001, long title and ss 1-12.

²³Registration Act 1908, s 16A, inserted by the 2001 Act (n 6), s 2.

amendment to the rule-making power in section 69. These provisions are the true source of the claim that the 2001 Act "introduced electronic registration". They did something more modest: they authorised electronic record-keeping. The presentation of documents, the admission of execution and the registration itself remained physical acts before the registering officer. Online submission, electronic appointment systems and remote verification, where they exist, are products of later state amendments, rules and administrative platforms.

Section 3 is the heart of the Act. It inserted section 17(1A) into the Registration Act, which provides that documents containing contracts to transfer for consideration any immovable property for the purpose of section 53A TPA "shall be registered" if executed on or after the commencement of the 2001 Act, and that if such documents are not registered, "they shall have no effect for the purposes of the said section 53A".²⁴ Section 3 also amended clause (v) of section 17(2), which had excluded from compulsory registration documents that merely create a right to obtain another document which will itself create an interest in land. After the amendment, that exclusion no longer applies to documents falling within sub-section (1A).²⁵

Section 10 made the corresponding amendment to the TPA by omitting from section 53A the words "the contract, though required to be registered, has not been registered, or".²⁶ Section 6 amended the proviso to section 49 of the Registration Act by omitting the words that had permitted an unregistered document to be received "as evidence of part performance of a contract for the purposes of section 53A".²⁷ The three amendments work as a single mechanism: sub-section (1A) creates the registration requirement and prescribes the consequence of non-registration; the amended section 53A removes the textual licence for unregistered contracts; and the amended section 49 closes the evidential route through which an unregistered contract had previously been proved for part-performance purposes.

Section 4 omitted sub-section (2) of section 30 of the Registration Act. That provision had allowed the Registrar of a district in which a Presidency-town was situated, and the Registrar of the Delhi district, to receive and register documents relating to immovable property situated anywhere in India. The facility had become a device for registering documents in a jurisdiction with a lower stamp-duty burden, or one far from the property and from anyone likely to object, and its repeal responded directly to the 1998 conference's recommendation.²⁸ Section 5 inserted section 32A, requiring every person presenting a document for registration to affix his passport-size photograph and fingerprints to the document, and, where the document relates to the transfer of ownership of immovable property, requiring the photographs and fingerprints of each buyer and seller named in it to be affixed as well.²⁹ Section 7 made the consequential amendment to section 52, requiring the photographs and fingerprints so affixed to be endorsed on the document. Section 8 omitted section 67 of the Registration Act.

Section 11 amended Schedule I to the Indian Stamp Act 1899 by inserting Article 23A, "Conveyance in the nature of part performance", which charges contracts for the transfer of immovable property in the nature of part performance under section 53A TPA "in any Union territory" with ninety per cent of the duty payable on a conveyance, and made a corresponding amendment to Article 23 so that duty paid under Article 23A is excluded when computing the duty on the eventual conveyance.³⁰ The territorial limitation is significant and often overlooked. Because the rates of stamp duty on instruments other than those specified in the Union List fall within the legislative competence of the States, the central amendment could fix a rate only for the Union territories. The fiscal logic of the reform, which was to charge near-conveyance duty on a transaction that confers near-ownership protection, depended in the States on parallel state legislation.

Some States had in fact moved first, and by the fiscal route. Madhya Pradesh amended the Stamp Act schedule applicable in the State in 1990 so that an agreement to sell immovable property is deemed to be a conveyance, and is chargeable with duty accordingly, where possession is transferred to the purchaser before, at or after its execution.³¹ The Supreme Court gave that provision real force. In *Avinash Kumar Chauhan v Vijay Krishna Mishra* it held that an agreement to sell accompanied by delivery of possession which had not been stamped as a conveyance could not be admitted in evidence for any purpose, including a collateral purpose, until the duty and penalty were paid.³² In *Omprakash v Laxminarayan* it added that the question is decided by the recitals in the document: if the agreement records that possession has been delivered, it is to be stamped as a conveyance even if the fact of delivery is

²⁴Registration Act 1908, s 17(1A), inserted by the 2001 Act (n 6), s 3(a).

²⁵*ibid* s 3(b).

²⁶Transfer of Property Act 1882, s 53A, as amended by the 2001 Act (n 6), s 10.

²⁷Registration Act 1908, s 49, proviso, as amended by the 2001 Act (n 6), s 6.

²⁸Statement of Objects and Reasons (n 21).

²⁹Registration Act 1908, s 32A, inserted by the 2001 Act (n 6), s 5.

³⁰Indian Stamp Act 1899, Sch I, arts 23 and 23A, as amended and inserted by the 2001 Act (n 6), s 11.

³¹Indian Stamp Act 1899, Sch 1-A, art 23, Explanation (as applicable in Madhya Pradesh), inserted by the Indian Stamp (Madhya Pradesh Second Amendment) Act 1990.

³²*Avinash Kumar Chauhan v Vijay Krishna Mishra* (2009) 2 SCC 532.

disputed in the suit.³³ In such States the purchaser in possession under an agreement already faced a stamp barrier before 2001. The 2001 Act added a registration barrier on top of it, and the two operate differently, as Part VI explains.

Finally, section 12 contains a saving clause. It preserves any right of a transferor that stood debarred under section 53A immediately before commencement, and permits an unregistered document relating to such a right to be received as evidence of part performance as if the amendment to section 49 had not come into force.³⁴ Read with the words "executed on or after the commencement" in section 17(1A), the saving clause confirms that the reform is prospective. Agreements executed before 24 September 2001 continue to support a section 53A defence even if unregistered, a point the Supreme Court accepted in *Ameer Minhaj*.³⁵

What the Act did not do is equally instructive. It did not amend section 106 TPA; the rules on notice to terminate leases were recast by a separate enactment, the Transfer of Property (Amendment) Act 2002. It did not touch sections 58 and 59 TPA on mortgages, so that mortgages by deposit of title deeds continued to require no registered instrument under central law, a gap that several States later closed through their own amendments. It did not make registration of general powers of attorney compulsory, despite the 1998 recommendation to that effect, leaving that element of the informal bundle to state legislation and, eventually, to *Suraj Lamp*. And it did nothing to alter the basic character of Indian registration as a system that records documents rather than guaranteeing title. That last omission is the one on which this article's evaluation ultimately turns.

VI. SECTION 17(1A) AND THE NEW SHAPE OF PART PERFORMANCE

The immediate effect of section 17(1A) is clear from its text: an agreement executed after 24 September 2001 that is relied on for part-performance purposes must be registered, and if it is not, it has "no effect for the purposes of" section 53A. The Supreme Court described the provision in *Ameer Minhaj* as amply clear on a plain reading: a party who wishes to rely on a document containing a contract to transfer immovable property for consideration in order to protect possession under section 53A must have that document registered.³⁶ The purchaser in possession under an unregistered post-2001 agreement is therefore in a position closer to that of the purchaser in *Ariff* than to that of his pre-2001 counterpart. He cannot plead section 53A, and he cannot use the unregistered agreement to prove part performance.

The provision's consequence is, however, carefully confined. Section 17(1A) does not say that an unregistered agreement to sell is void, inadmissible for all purposes, or incapable of supporting any claim. It says only that the agreement has no effect for the purposes of section 53A. The Registration Act's general rule on the effect of non-registration, section 49, has always been subject to a proviso that allows an unregistered document affecting immovable property to be received as evidence of a contract in a suit for specific performance, or as evidence of a collateral transaction not itself required to be effected by a registered instrument. The 2001 Act deleted only the part-performance limb of that proviso; the specific-performance and collateral-purpose limbs survived.³⁷

The Supreme Court had applied the surviving limbs before the question of section 17(1A) reached it directly. In *S. Kaladevi v V.R. Somasundaram*, it held that an unregistered sale deed may be received in evidence in a suit for specific performance as evidence of the contract of sale, and that the proviso operates as an exception to the main part of section 49.³⁸ *Ameer Minhaj* then brought the two provisions together. The agreement to sell in that case was executed in July 2003, after section 17(1A) came into force, and had not been registered. The High Court had held it inadmissible altogether. The Supreme Court reversed, holding that the document could be received as evidence of a contract in a suit for specific performance, though it could have no effect for the purposes of section 53A; questions of its genuineness, validity and stamping would be decided at trial.³⁹

The same structure survived even stricter state legislation. Tamil Nadu amended section 17 in 2012 to require compulsory registration of agreements relating to the sale of immovable property of the value of one hundred rupees and upwards, whether or not possession was delivered. In *R. Hemalatha v Kashthuri* the seller argued that, after this amendment, an unregistered agreement to sell could not be received in evidence at all. The Supreme Court disagreed. Because the State had not correspondingly amended the proviso to section 49, an unregistered agreement remained admissible as evidence of

³³*Omprakash v Laxminarayan* (2014) 1 SCC 618.

³⁴2001 Act (n 6), s 12.

³⁵*Ameer Minhaj v Dierdre Elizabeth (Wright) Issar* (2018) 7 SCC 639, paras 10-11.

³⁶*Ameer Minhaj* (n 35) para 10.

³⁷Registration Act 1908, s 49, proviso (n 27).

³⁸*S. Kaladevi v V.R. Somasundaram* (2010) 5 SCC 401.

³⁹*Ameer Minhaj* (n 35) paras 10-11.

the contract in a suit for specific performance, the only exception being documents falling within section 17(1A).⁴⁰

The resulting position may be summarised in three propositions. First, an unregistered post-2001 agreement cannot be used defensively under section 53A to resist the seller's claim to possession. Secondly, the same agreement can still be used offensively, as evidence of the contract, in a suit for specific performance. Thirdly, because it cannot be used under section 53A, the purchaser's protection depends on his bringing that suit, and on his bringing it within the three-year period prescribed by Article 54 of the Schedule to the Limitation Act 1963.⁴¹ The rule in *Shrimant Shamrao*, that the shield outlives the sword, no longer helps the holder of an unregistered post-2001 agreement, because the shield is gone.

Two refinements should be added. The first concerns time. Article 54 runs from the date fixed for performance or, where no date is fixed, from the date on which the plaintiff has notice that performance is refused. In the typical informal sale the full price has been paid, no date for completion is fixed, and the seller does nothing for years. Time will then begin to run only when the seller, or more often his heirs, repudiate the arrangement. The purchaser's exposure is therefore not that his remedy expires silently three years after the agreement, but that it expires three years after a refusal which he may not have treated as final. The Registration Act's own timetable is much shorter. A document must be presented for registration within four months of its execution, extendable by a further four months on payment of a fine, after which the opportunity to register that document is lost.⁴²

The second refinement concerns third parties. Registration under section 17(1A) does more than preserve the shield against the seller. Under Explanation I to section 3 of the TPA, a person acquiring immovable property is deemed to have notice of any transaction relating to it which is required by law to be, and has been, effected by a registered instrument. A subsequent buyer from the same seller will therefore find it very difficult to claim to be a transferee without notice of a registered agreement, whether for the purposes of the proviso to section 53A or of section 19(b) of the Specific Relief Act 1963.⁴³ Before 2001 the unregistered purchaser was protected against the seller but exposed to the later purchaser without notice. After 2001 the purchaser who registers is protected against both, and the purchaser who does not is protected against neither. The Act thus changed the incentive to register more sharply than a reading confined to section 53A would suggest.

There is an irony in this outcome. The 1929 legislature designed section 53A as a shield precisely because it was unwilling to give purchasers under unregistered documents an active claim to title. The 2001 legislature removed the shield for unregistered agreements but left the sword of specific performance intact. The purchaser who does not register is thus pushed from defence into litigation. For a purchaser whose seller remains cooperative, nothing changes. For one whose seller turns hostile, the practical question becomes whether a specific-performance suit was filed in time. The Specific Relief (Amendment) Act 2018, which made specific performance the general rule rather than a discretionary remedy, has made that sword sharper than it was in 2001, but it has not altered the point at which the purchaser must draw it.⁴⁴

The contrast with the stamp cases is instructive. A deficiency of stamp duty is curable. Under section 35 of the Indian Stamp Act an insufficiently stamped instrument becomes admissible once the duty and the prescribed penalty are paid, so that the rule in *Avinash Kumar Chauhan* delays the purchaser and costs him money but does not finally defeat him.⁴⁵ A failure to register within the statutory period is not curable in the same way, and for the purposes of section 53A its consequence is absolute. The legislature thus chose, in 2001, the more severe of the two sanctions available to it, but applied it to only one use of the document.

The limits of the surviving proviso are illustrated by *Balram Singh v Kelo Devi*. The plaintiff, in possession under an unregistered agreement to sell written on a ten-rupee stamp paper, sued for a permanent injunction alone and did not seek specific performance. The Supreme Court held that she could not obtain by an injunction suit the protection of possession that the unregistered agreement could not otherwise give her, and described the form of the suit as clever drafting.⁴⁶ The decision confirms that the collateral-purpose limb of the proviso to section 49 cannot be used to reconstruct the part-performance defence under another name. A collateral purpose must be independent of, and severable from, the transaction that required registration, and the terms on which a purchaser holds possession under the contract are not collateral to it.⁴⁷ One sentence in the judgment goes further and states that no decree of specific performance could have been passed on the unregistered agreement. Read literally, that statement is difficult to reconcile with *Kaladevi*, *Ameer Minhaj* and *R. Hemalatha*, and it is better understood as a comment on the particular suit before the Court than as a departure from the proviso.

⁴⁰*R. Hemalatha v Kashthuri* 2023 SCC OnLine SC 381.

⁴¹Limitation Act 1963, Sch, art 54.

⁴²Limitation Act 1963, Sch, art 54; Registration Act 1908, ss 23 and 25.

⁴³Transfer of Property Act 1882, s 3, Explanation I and s 53A, proviso; Specific Relief Act 1963, s 19(b).

⁴⁴Specific Relief (Amendment) Act 2018 (Act 18 of 2018), substituting Specific Relief Act 1963, s 10.

⁴⁵Indian Stamp Act 1899, s 35, proviso (a); *Avinash Kumar Chauhan* (n 32).

⁴⁶*Balram Singh v Kelo Devi* (SC, 23 September 2022) Civil Appeal No 6733 of 2022.

⁴⁷*K.B. Saha & Sons (P) Ltd v Development Consultant Ltd* (2008) 8 SCC 564.

The reform has also produced one visible inconsistency in the case law. In *Ghanshyam v Yogendra Rathi* the Supreme Court held that an agreement to sell, a power of attorney and a will do not confer title, but that a purchaser who had paid the full consideration and been put in possession under an agreement to sell acquired a possessory right protected by section 53A, which the transferor could not disturb.⁴⁸ The agreement in that case was dated April 2002, after the commencement of section 17(1A). The reported reasoning does not engage with sub-section (1A), and it is not clear from the judgment whether the agreement was registered. If it was not, *Ghanshyam* sits uneasily with *Ameer Minhaj*, and High Courts have since been invited to rely on it to extend section 53A protection to post-2001 unregistered agreements. The better view is that *Ghanshyam* should be read as confined to its facts, which involved a purchaser seeking eviction of a former owner who had become a licensee, and not as a silent qualification of a statutory rule the Court did not consider. A decision that resolves this point expressly would remove a source of avoidable litigation.

A second limitation of section 17(1A) concerns its field of operation. Section 53A already required a written contract signed by the transferor; oral agreements were never within it. The 2001 Act therefore did nothing about the purely oral transfer, which remains unprotected, and did nothing to strengthen the position of a purchaser who relies on a written contract but has not taken possession, who was never within section 53A to begin with. Its reach is limited to the precise class of transaction that had become the vehicle for informal transfers: the written agreement accompanied by possession. That precision is a strength, because it targeted the real problem. It is also a limitation, because transactions easily migrated to the other documents in the bundle, especially the power of attorney, which central law continued to leave largely unregistered.

A third difficulty lies in the drafting of sub-section (1A) itself. The provision requires registration of documents containing contracts to transfer immovable property for consideration "for the purpose of section 53A". No contract is entered into for the purpose of a statutory defence. Parties contract in order to buy and sell, and whether section 53A will ever be invoked depends on later events. The phrase cannot therefore describe a class of documents identifiable at the time of execution, and the registering officer has no means of knowing whether a particular agreement falls within it. The better reading is that sub-section (1A) does not impose a duty to register in the ordinary sense at all. It states a condition: the purchaser who wants the benefit of section 53A must have registered. That reading explains why the only stated consequence of non-registration is the loss of that benefit, and why the Supreme Court in *R. Hemalatha* treated documents within sub-section (1A) as a distinct category when applying the proviso to section 49. It also explains the reform's uneven reception in practice. A requirement that operates only as a condition of a defence is invisible to the parties until litigation begins, by which time the period for registration has usually expired.

VII. THE REGISTRATION MACHINERY: JURISDICTION, IDENTITY AND ELECTRONIC RECORDS

The procedural amendments in the 2001 Act have attracted less attention than section 17(1A), but they addressed real weaknesses. The omission of section 30(2) ended a form of registration shopping. Before 2001, a document relating to land in one State could be registered by a Registrar in Delhi or in a Presidency-town, far from the land, from local records and from anyone with local knowledge. The practice was attractive for two reasons: stamp duty and registration fees might be lower, and a registration far from the property was less likely to come to the notice of persons with competing claims. By tying registration to the location of the property, the amendment restored the connection between the register and the land it describes, and it protected the States' ability to collect stamp duty on transactions concerning land within their territory.

Section 32A addressed impersonation, one of the oldest forms of registration fraud. Before 2001, the registering officer's duty to satisfy himself of the identity of persons appearing before him rested on the personal knowledge of the officer or on witnesses who vouched for the executant. The requirement that photographs and fingerprints of the presenting parties, and of every buyer and seller in a transfer of ownership, be affixed to the document created a permanent physical record of who actually appeared. The measure does not prevent a determined fraud, but it changes the evidential position when a registration is later challenged, because the person who appeared can be identified and compared with the person whose name appears as executant.

Section 16A, as explained in Part V, authorised electronic record-keeping. Its practical importance lay less in what it did in 2001 than in what it made possible afterwards. Once registration books could lawfully be kept in electronic form, the States could build systems for digitised indexes, searchable encumbrance records and, eventually, online submission and verification of documents. The national effort to integrate these systems, through the Digital India Land Records Modernization Programme and the National Generic Document Registration System, builds on that foundation, although the pace and depth of digitisation have varied greatly between States.

None of these reforms altered the character of the registering officer's function. That point was made emphatically by the Supreme Court in *K. Gopi v Sub-Registrar*. Tamil Nadu had framed Rule 55A of its Registration Rules requiring a presentant to produce the previous original deed by which the executant acquired the property, together with an encumbrance certificate, failing which registration was to be refused. The Court struck down the rule

⁴⁸*Ghanshyam v Yogendra Rathi* (2023) 7 SCC 361.

as beyond the rule-making power in section 69 and inconsistent with the Act. It held that the registering officer is not concerned with the title held by the executant and has no adjudicatory power to decide whether the executant has any title; if the procedural requirements are met and the stamp duty and fees paid, he cannot refuse to register a document on the ground that the vendor has not proved his title.⁴⁹

K. Gopi belongs to a consistent line of authority. In *State of Rajasthan v Basant Nahata* the Supreme Court struck down a State amendment inserting section 22A into the Registration Act, which had empowered the State Government to declare the registration of any class of documents to be opposed to public policy, as an excessive delegation of legislative power.⁵⁰ In *Satya Pal Anand v State of Madhya Pradesh* a three-judge bench held that the registering officer's function is administrative and is exhausted once a document is registered, so that neither the Sub-Registrar nor the Inspector General can cancel a registration on the ground that the document was fraudulent or that the executant lacked title; the remedy lies in the civil court.⁵¹ The registering officer, on this line of cases, can neither refuse a document at the threshold on grounds of title nor undo a registration afterwards. Where States have wanted their officers to do either, they have had to legislate expressly, as Tamil Nadu has done by inserting a power of cancellation into the Act as it applies in that State.⁵²

The identity provisions have also acquired a constitutional dimension that could not have been foreseen in 2001. Section 32A relies on photographs and fingerprints affixed to the paper document. The natural successor to that technique is biometric authentication against a central database, and several States have introduced it. After the Supreme Court's decision in *K.S. Puttaswamy v Union of India*, which upheld the Aadhaar scheme while confining its mandatory use, any such requirement has to be framed with alternatives for those who cannot or will not authenticate in that way.⁵³ The draft Registration Bill 2025, discussed in Part XII, reflects this by making Aadhaar-based verification optional.

K. Gopi is correct as a matter of statutory interpretation, and it protects parties against arbitrary refusal by registering officers. But it also exposes the structural limit of the 2001 reform. The Act made registration a condition of protection under section 53A, and *Suraj Lamp* made it the only route to conveyance. Neither made registration a guarantee of anything beyond the fact that a document was executed and presented. A register that must accept documents from executants without title will, by design, record void transactions alongside valid ones. That is the context in which the Supreme Court's decision in *Mahnoor Fatima Imran*, discussed in Part VIII, must be read.

VIII. THE JUDICIAL AFTERLIFE: FROM SURAJ LAMP TO MAHNOOR FATIMA IMRAN

Suraj Lamp completed, from the side of conveyancing, the reform that the 2001 Act began from the side of part performance. The 2001 Act told the purchaser that an unregistered agreement would not protect his possession. *Suraj Lamp* told him that no combination of agreement, power of attorney and will, whether registered or not, would make him owner. The Court held that an agreement to sell is not a conveyance and does not transfer any interest in the property, save for the limited protection available under section 53A; that a power of attorney is an instrument of agency which does not itself transfer any interest; and that a will speaks only from the death of the testator and may be revoked at any time before it.⁵⁴ It directed that SA/GPA/Will transactions not be recognised as completed transfers for the purposes of mutation or municipal records, while leaving untouched genuine transactions under which the power of attorney is used to execute a registered sale deed.

The relationship between *Suraj Lamp* and the 2001 Act is worth making explicit. The Court's recognition that an agreement to sell creates no interest in land beyond the limited protection of section 53A presupposes the operation of section 17(1A). After 2001, that limited right exists only where the agreement has been registered. The informal bundle described in *Suraj Lamp*, which typically contained an unregistered agreement, therefore offered its holder neither ownership nor, for post-2001 agreements, the statutory shield. What it offered was a contractual claim, enforceable only by a timely suit for specific performance, and a set of documents whose practical value depended entirely on the continued cooperation of the seller and his heirs.

Ghanshyam, discussed in Part VI, appeared to soften that position by recognising a protected possessory right in a purchaser under an agreement to sell. But the Court was careful to repeat the central holding of *Suraj Lamp*: the documents did not confer title. The case is best understood as a reminder that possession lawfully obtained has value even in the absence of title, rather than as a revival of the informal bundle.

Suraj Lamp was also more careful than its reputation as a blanket condemnation suggests. The Court expressly preserved genuine uses of the power of

⁴⁹*K. Gopi v Sub-Registrar* 2025 SCC OnLine SC 740, para 15.

⁵⁰*State of Rajasthan v Basant Nahata* (2005) 12 SCC 77.

⁵¹*Satya Pal Anand v State of Madhya Pradesh* (2016) 10 SCC 767.

⁵²Registration Act 1908, s 77A (as applicable in Tamil Nadu).

⁵³*K.S. Puttaswamy v Union of India* (2019) 1 SCC 1.

⁵⁴*Suraj Lamp* (n 4).

attorney, such as a power granted to a family member to manage or sell property, or to a developer under a development agreement. It stated that holders of SA/GPA/Will documents could still use them to obtain specific performance or to defend possession under section 53A, and that mutations already made by development authorities and municipal bodies on the strength of such documents need not be disturbed.⁵⁵ What the Court refused to do was to treat the documents as a mode of transfer.

Two later decisions show how firmly that refusal has held. In *Shakeel Ahmed v Syed Akhlaq Hussain* the plaintiff had obtained a decree for possession on the basis of an agreement to sell, a power of attorney, an affidavit and a will, and argued that *Suraj Lamp* applied only prospectively. The Supreme Court rejected the argument. It held that no title can pass under unregistered documents of that kind irrespective of *Suraj Lamp*, which only restated the effect of the statutes, and added that even a registered agreement to sell and a registered power of attorney would not have made the plaintiff owner. At most a registered agreement would have entitled him to sue for specific performance.⁵⁶ In *Ramesh Chand v Suresh Chand*, decided in September 2025, the Court dismissed a suit for possession and declaration founded on the same family of documents, and dealt separately with section 53A. Possession, it held, is an indispensable ingredient of the defence, and a plaintiff who sues to recover possession demonstrates by that fact that he cannot claim it.⁵⁷ The second point is of practical importance. Section 53A protects the purchaser who is in possession and is sued. It does nothing for the purchaser who has been dispossessed, whose only remedies lie in a suit for specific performance or in the general law protecting prior possession.

The most significant recent development is *Mahnoor Fatima Imran v Visweswara Infrastructure (P) Ltd*. The dispute concerned fifty-three acres of land in Raidurg, Telangana. The respondents claimed title through registered sale deeds executed by a cooperative housing society, which had itself derived its claim from an unregistered agreement of sale executed in 1982 and later "revalidated". The Supreme Court held that an unregistered agreement of sale could not have conferred title on the society, and that the subsequent registration of sale deeds by the society could not cure that foundational defect.⁵⁸ It also rejected the argument that *Suraj Lamp* requires registered instruments to be treated as valid until set aside by a civil court. Registration of a document gives notice to the world that it has been executed, the Court observed, but that does not confer unimpeachable validity on every registered document.⁵⁹

Read together, *K. Gopi* and *Mahnoor Fatima Imran* describe the Indian registration system with unusual clarity. The registering officer must register a document that satisfies procedural requirements, without enquiring into title. The registered document then gives notice of its execution, and carries a presumption of due execution, but it does not validate a transaction that was defective at its root. Registration is thus necessary for a valid conveyance, and after 2001 necessary for section 53A protection, but it is never sufficient to establish title. The purchaser who follows every requirement of the 2001 Act and *Suraj Lamp* still acquires only what his vendor had to give. Indian law has, since 2001, strengthened the insistence on registration while leaving unchanged what registration means.

The private law response to this gap is limited. The purchaser's principal protection lies in the seller's statutory covenant for title. Under section 55(2) of the TPA the seller is deemed to contract with the buyer that the interest he professes to transfer subsists and that he has power to transfer it, and the benefit of that covenant runs with the land. A purchaser who loses the property because of a defect in the chain may therefore recover damages from his vendor, if the vendor can be found and is worth suing. The market has supplied the rest: searches of the register over thirty years or more, encumbrance certificates, legal opinions on title and, more recently, title insurance, which Parliament has required promoters of real estate projects to obtain where it is notified.⁶⁰ Each of these devices transfers to private parties, at their own expense, a function that a system of registered title performs once and at public risk. Their growth since 2001 is itself evidence of what the register does not provide.

This is not a criticism of either decision. Both apply the law faithfully. The criticism, if there is one, is of a legislative design that has repeatedly raised the formal requirements imposed on parties without ever changing the legal effect of complying with them. The purchaser in 2001 was told to register his agreement to keep his shield. The purchaser after *Suraj Lamp* was told to register a conveyance to become owner. The purchaser after *Mahnoor Fatima Imran* is told that even a registered conveyance does not make him owner if anything in the chain behind it was defective. At each stage, the burden of certainty has been shifted onto the private party, while the State, which maintains the register and collects duty on every transaction recorded in it, has assumed no corresponding responsibility for what the register says.

The Supreme Court has now said as much itself. In *Samiullah v State of Bihar*, decided in November 2025, the Court struck down amendments to the Bihar Registration Rules which had required a seller to produce proof of mutation of the land in his name before a sale deed could be registered. The

⁵⁵*Suraj Lamp* (n 4).

⁵⁶*Shakeel Ahmed v Syed Akhlaq Hussain* 2023 INSC 1016 (judgment delivered 1 November 2023).

⁵⁷*Ramesh Chand v Suresh Chand* 2025 INSC 1059 (judgment delivered 1 September 2025).

⁵⁸*Mahnoor Fatima Imran v Visweswara Infrastructure (P) Ltd* 2025 INSC 646 (judgment delivered 7 May 2025).

⁵⁹*ibid*.

⁶⁰Transfer of Property Act 1882, s 55(2); Real Estate (Regulation and Development) Act 2016, s 16.

reasoning followed *K. Gopi*: the Registration Act provides for the registration of documents and not of title, and a rule-making power cannot be used to convert the registering officer into an adjudicator of ownership. The Court went on to observe that registration under the present law has only presumptive evidentiary value and is never conclusive proof of ownership, that this system of presumptive title is a principal source of the volume of land litigation in India, and that the purchase of property has been made difficult for ordinary citizens as a result. It requested the Law Commission to examine the matter, in consultation with the Union, the States and experts in information technology, and to report on the restructuring of the system, including the possible use of blockchain technology.⁶¹ For the first time, the structural limitation that the 2001 Act left untouched has been identified by the Court as a problem requiring legislative attention.

IX. COMPARATIVE ANCHOR I: ENGLAND AND THE ABOLITION OF PART PERFORMANCE

England, which gave India the doctrine of part performance, abandoned it in 1989, and the reasons are directly relevant to the Indian reform. The Law Commission's 1987 report on formalities for contracts for the sale of land recommended replacing the old rule, under which an oral contract was unenforceable unless evidenced in writing, with a requirement that the contract itself be made in writing, signed by both parties and incorporating all the agreed terms.⁶² Parliament accepted the recommendation in section 2 of the Law of Property (Miscellaneous Provisions) Act 1989. A contract that does not comply with section 2 is not merely unenforceable but void, and because there is no contract, there is nothing for acts of part performance to perform.⁶³

The English reform thus went further than India's in one respect and less far in another. It went further because it eliminated part performance altogether rather than conditioning it on registration. It went less far because the formality it required was writing and signature, not registration; the contract remains a private document. The comparison clarifies what the 2001 Act chose. India retained part performance but converted it from an informal equity into a protection available only to registered contracts. In substance, the Indian purchaser who wishes to be protected before conveyance must now place his contract on the public register, which is a stronger requirement than English law imposes at the contract stage.

The Law Commission's reasons for abolition are worth recalling. It considered that the doctrine of part performance had become uncertain in its operation, particularly after *Steadman v Steadman*, and that a rule requiring the whole contract to be in writing would make the existence and terms of land contracts easier to establish.⁶⁴ The object was certainty about the bargain. It was not the protection of revenue, and it was not the accuracy of a public register, because English law deals with those matters elsewhere. This points to a second and more important difference. In England the purchaser under a valid contract is protected against third parties through the land register itself. An estate contract may be protected by the entry of a notice, and the interest of a person in actual occupation of registered land overrides a later registered disposition in the circumstances set out in the Land Registration Act 2002.⁶⁵ The purchaser in possession, who in India looks to section 53A, in England looks to the register and to the fact of occupation. India's 2001 reform can be seen as an attempt to obtain the first of those protections, an entry on a public record, without having the kind of register that makes the entry reliable.

Not every common law jurisdiction followed England. The High Court of Australia was invited in *Pipikos v Trayans* to relax the requirement that acts of part performance be unequivocally referable to a contract of the kind alleged, and declined. It reaffirmed the test in *Maddison v Alderson* and treated the doctrine as a settled part of Australian law.⁶⁶ Three models are thus available: the doctrine retained in its classical form, the doctrine abolished in favour of a strict requirement of writing, and the doctrine retained but made conditional on registration. India alone has adopted the third.

English law also shows what happens to the hard cases that a strict formality rule creates. The courts soon faced claimants who had acted on informal agreements and were left without a contract. The answer they developed lay in constructive trusts, which section 2(5) of the 1989 Act expressly preserved, and in proprietary estoppel. The House of Lords confined the use of proprietary estoppel in commercial dealings in *Yeoman's Row Management Ltd v Cobbe*, holding that parties who knowingly leave a bargain unconcluded cannot use estoppel to enforce it.⁶⁷ But in *Thorner v Major* it allowed the doctrine to operate in a domestic context, where a farmer had worked for decades on the strength of an assurance that he would inherit the farm.⁶⁸

The lesson for India is that formality rules generate a residual class of claimants who deserve protection and who fall outside the rule's terms. England

⁶¹*Samiullah* (n 7); see also 'SC Quashes Bihar Rule Mandating Mutation Proof for Property Registration; Highlights Deficiencies in Land Registration System' (*SCC Times*, 11 November 2025) <<https://www.sconline.com/blog/post/2025/11/11/sc-quashes-bihar-rule-on-mutation-proof-for-property-registration/>> accessed 6 October 2026.

⁶²Law Commission, *Transfer of Land: Formalities for Contracts for Sale etc of Land* (Law Com No 164, 1987).

⁶³Law of Property (Miscellaneous Provisions) Act 1989, s 2.

⁶⁴Law Commission (n 62).

⁶⁵Land Registration Act 2002, ss 29, 32 and 34 and Sch 3 para 2.

⁶⁶*Pipikos v Trayans* [2018] HCA 39, (2018) 265 CLR 522.

⁶⁷*Yeoman's Row Management Ltd v Cobbe* [2008] UKHL 55, [2008] 1 WLR 1752.

⁶⁸*Thorner v Major* [2009] UKHL 18, [2009] 1 WLR 776.

routes those claimants through equitable doctrines administered with close attention to the parties' relationship and expectations. Indian law, which has no general doctrine of proprietary estoppel of comparable breadth, routes them through section 53A for pre-2001 agreements, through the surviving proviso to section 49 and suits for specific performance for post-2001 agreements, and, in cases like *Ghanshyam*, through a possessory right of uncertain foundation. A reform programme that tightens registration further, as the draft Registration Bill 2025 proposes, must decide how it will treat this residual class, rather than leave the answer to case-by-case improvisation.

English experience also suggests that the residual class does not go away. Within a decade of the 1989 Act the Court of Appeal held in *Yaxley v Gotts* that an oral agreement to grant an interest in land, void under section 2, could nevertheless be given effect through a constructive trust where the claimant had acted to his detriment on the faith of it.⁶⁹ The decision has been criticised as allowing equity to outflank the statute, and *Cobbe* was in part a reaction to it. But its persistence indicates that courts will not readily leave a party who has paid and performed without any remedy, whatever the formality rule says. The Indian parallel is *Ghanshyam*. If the legislature does not define the position of the purchaser who has paid in full and entered but has not registered, the courts will continue to define it for themselves, and not always consistently.

X. COMPARATIVE ANCHOR II: TORRENS, TITLE BY REGISTRATION AND INDIA'S TITLING EXPERIMENTS

The deeper comparison lies not with English contract formalities but with the Torrens system of title registration, first enacted in South Australia in 1858 and now the basis of land registration throughout Australia and in many other jurisdictions. Its central principle is indefeasibility: the person registered as proprietor holds a title that is, subject to limited statutory exceptions, good against the world, whatever defects existed in the chain of transactions that preceded registration. The Privy Council confirmed in *Frazer v Walker* that registration confers an indefeasible title even where the registered instrument was void, for example because it was forged, provided the registered proprietor was not himself party to the fraud.⁷⁰ The High Court of Australia described the Torrens system in *Breskvar v Wall* as a system not of registration of title but of title by registration.⁷¹

That phrase marks the precise difference between Torrens and the Indian model after *K. Gopi and Mahnoor Fatima Imran*. Indian registration is registration of documents: the register records which instruments have been executed and presented, and the legal effect of each instrument depends on the validity of the transaction it embodies. Under Torrens, the register itself is the source of title. The risk of error, which in India falls on the purchaser, is borne under Torrens by the State, typically through an assurance fund from which a person deprived of land by the operation of the system may be compensated.

Three features of the Torrens system deserve closer attention, because each answers a difficulty that Indian law has met. The first is the timing of indefeasibility. The Privy Council's earlier decision in *Gibbs v Messer* had been read as conferring indefeasible title only on a person who took from the registered proprietor in good faith after a void instrument had been registered, a position described as deferred indefeasibility.⁷² *Frazer v Walker* preferred immediate indefeasibility, under which the person who registers in good faith is protected at once. The choice determines who bears the risk of forgery: the innocent purchaser, or the owner whose name was forged, with recourse to the assurance fund. The second feature is the fraud exception. Indefeasibility yields to fraud, but the fraud must be actual dishonesty brought home to the registered proprietor or his agent, and mere notice of an earlier unregistered interest is not enough.⁷³ The third is the caveat. A purchaser under a contract of sale, who has an equitable interest but is not yet registered, may lodge a caveat forbidding the registration of any dealing inconsistent with his interest until he has had an opportunity to assert it.⁷⁴ The caveat performs, within a title register, the function that section 17(1A) performs imperfectly within a deeds register. It places the purchaser's contract on the public record and prevents the vendor from dealing with the land behind his back.

England moved substantially in the same direction through the Land Registration Acts, culminating in the Land Registration Act 2002, which provides that the registered proprietor of a legal estate is deemed to hold it, subject to the statutory scheme for rectification and indemnity, and which laid the statutory foundation for electronic conveyancing.⁷⁵ The 2002 Act illustrates something important for India: the shift to title registration and the shift to electronic process are separate reforms, and each is more valuable when paired with the other. An electronic register of documents is faster than a paper

⁶⁹*Yaxley v Gotts* [2000] Ch 162 (CA).

⁷⁰*Frazer v Walker* [1967] 1 AC 569 (PC).

⁷¹*Breskvar v Wall* (1971) 126 CLR 376.

⁷²*Gibbs v Messer* [1891] AC 248 (PC).

⁷³*Assets Co Ltd v Mere Roihi* [1905] AC 176 (PC).

⁷⁴See, for example, Real Property Act 1900 (NSW), s 74F.

⁷⁵Land Registration Act 2002, ss 58 and 91-93, Sch 8.

register of documents, but it gives the purchaser no greater security of title.

The English scheme also shows what a State guarantee means in practice. Where the register is rectified against a registered proprietor, or a person suffers loss by reason of a mistake in the register, the Act gives a right to an indemnity from the registrar. In *Swift 1st Ltd v Chief Land Registrar* the Court of Appeal held that a lender whose registered charge was removed from the register because the borrower's signature had been forged was entitled to an indemnity, even though a forged disposition would have been a nullity at common law.⁷⁶ The case is the mirror image of *Mahnoor Fatima Imran*. In India the purchaser under a registered deed that proves to rest on a defective root bears the whole loss. In England the loss is carried by a fund financed from registration fees.

India has begun to experiment with conclusive titling, though largely outside the framework of the Registration Act. Rajasthan enacted the Rajasthan Urban Land (Certification of Titles) Act 2016, providing a mechanism for the certification of title to urban land, intended to give certified owners a far higher degree of security than a registered deed alone. At the national level, the policy debate on conclusive land titling has been driven through model legislation and the Digital India Land Records Modernization Programme, whose aim of integrating textual records, maps and registration data is a precondition for any move towards title by registration. These experiments are important because they show that the constitutional and administrative capacity for title registration exists. They also show the scale of the task. A register can be made conclusive only when the records behind it are reliable, and in much of India the land records on which registration depends remain incomplete, outdated or inconsistent with the position on the ground.

The most ambitious of these experiments also provides the clearest warning. NITI Aayog circulated a draft model Act and rules on conclusive land titling to the States in 2020, providing for the establishment of title registers, the notification of draft titles, a period for objections, and specialised tribunals for land disputes with an appeal to the High Court.⁷⁷ Andhra Pradesh legislated on that model. The Andhra Pradesh Land Titling Act 2022 provided for a Land Authority, title registration officers and a system of guaranteed titles, with disputes about entries in the register to be decided by officers and tribunals constituted under the Act.⁷⁸ It was brought into force in October 2023 and repealed in July 2024, before it had operated to any significant extent. The statement accompanying the repealing Act recorded a widespread demand for repeal and referred to apprehensions that the Act jeopardised the existing registration system and impeded landowners in seeking justice.⁷⁹ Whatever view is taken of the politics, the episode carries two lessons for the design of any future reform. Conclusive titling cannot be introduced by transferring the determination of title from civil courts to executive officers without losing the confidence of the people whose titles are to be determined. And a register cannot be declared conclusive before the survey and record work on which it rests has been done and has been seen to be done.

There is also a constitutional constraint. A title register that is conclusive must, by definition, be capable of extinguishing the claim of a true owner who was left off it. That is a deprivation of property by the operation of law, and it engages Article 300A. The Supreme Court's recent statement of the procedural content of that Article, which includes notice, an opportunity to be heard, a reasoned decision and fair compensation, indicates the minimum that a titling statute must provide before a register entry can be made final.⁸⁰ The Torrens assurance fund is, in Indian terms, the compensation that makes the extinguishment lawful.

XI. THE FEDERAL AND CONSTITUTIONAL OVERLAY

Two features of the constitutional framework explain much of the unevenness in the implementation of the 2001 reform. The first is that registration of deeds and documents, and transfer of property other than agricultural land, fall within Entry 6 of the Concurrent List, while the rates of stamp duty on most property instruments fall within the State List. Parliament can legislate on registration and transfer for the whole country, but the States can and do amend the central enactments for their territory, and they alone set the stamp duty that determines whether parties find it worthwhile to register. This is why Article 23A of the Stamp Act schedule was confined to the Union territories, why Tamil Nadu could require registration of all agreements to sell in 2012 and why some States have separately required registration of powers of attorney or of documents recording equitable mortgages.⁸¹ The result is that the 2001 Act set a national floor, and the actual regime governing an agreement to sell depends significantly on where the land is.

The constitutional distribution is more precise than is often appreciated. The power to fix rates of stamp duty on a short list of commercial instruments, such as bills of exchange, promissory notes, policies of insurance and transfers of shares, belongs to Parliament under Entry 91 of the Union List. The

⁷⁶*Swift 1st Ltd v Chief Land Registrar* [2015] EWCA Civ 330, [2015] Ch 602; Land Registration Act 2002, Sch 8.

⁷⁷NITI Aayog, draft Model Act and Rules on Conclusive Land Titling (2020).

⁷⁸Andhra Pradesh Land Titling Act 2022 (Act 27 of 2023).

⁷⁹Andhra Pradesh Land Titling Repeal Act 2024 (Act 11 of 2024), Statement of Objects and Reasons.

⁸⁰*Kolkata Municipal Corporation v Bimal Kumar Shah* 2024 INSC 435.

⁸¹Constitution of India, Seventh Schedule, List III, entry 6; see also Indian Stamp Act 1899, Sch I, art 23A (n 30) and *R. Hemalatha* (n 40).

power to fix rates on all other documents belongs to the States under Entry 63 of the State List. The Concurrent List, in Entry 44, covers stamp duties other than judicial stamps but expressly excludes rates of duty.⁸² Parliament may therefore decide that an instrument is chargeable and prescribe the machinery of the Stamp Act, but it cannot decide how much a purchaser of land in Madhya Pradesh or Tamil Nadu must pay on an agreement to sell. A State amendment to the Registration Act or the TPA, for its part, prevails in that State over the central provision if it has been reserved for and has received the assent of the President under Article 254(2). The combined result is that a reform such as that of 2001, which depends on aligning a registration requirement with a level of duty that parties will actually pay, cannot be delivered by Parliament alone.

The second feature is the constitutional status of property. Since the Constitution (Forty-fourth Amendment) Act 1978 the right to property has been protected by Article 300A, which provides that no person shall be deprived of his property save by authority of law. The Supreme Court has repeatedly described this as a constitutional and human right, most notably in *Vidya Devi v State of Himachal Pradesh*.⁸³ Article 300A protects against deprivation by the State, and it does not constitutionalise any particular registration regime. But it gives weight to a point that pure doctrinal analysis can overlook. The purchasers most affected by the 2001 reform are frequently those with the least capacity to comply with it: residents of unauthorised colonies, rural purchasers in areas without reliable land records, and buyers for whom the stamp duty payable on registration is a significant fraction of the price. Formality rules that are well designed for a market of informed parties with access to lawyers can operate harshly against those outside that market.

This does not mean the 2001 reform was wrong. The informal economy it targeted imposed real costs, including on the vulnerable, through fraud, double sales and disputes over inheritance. It does mean that the success of a registration requirement depends on its accessibility. A requirement that is affordable, geographically accessible and procedurally simple will be obeyed. One that is expensive, distant and uncertain will be evaded, and the evasion will simply migrate to whichever document the law leaves unregulated.

The Court has since given the Article more specific content. In *Kolkata Municipal Corporation v Bimal Kumar Shah* it identified a set of procedural entitlements that must be respected before a person is deprived of property, among them the right to notice, the right to be heard, the right to a reasoned decision and the right to fair compensation.⁸⁴ These entitlements are addressed to acquisition by the State, but they are relevant to registration reform in the way explained in Part X: any scheme under which an entry in a public register conclusively determines ownership will have to satisfy them.

XII. THE DRAFT REGISTRATION BILL 2025 AND TOWARD A REFORM AGENDA

On 27 May 2025 the Department of Land Resources in the Ministry of Rural Development published a draft Registration Bill 2025 for public consultation, proposing to replace the Registration Act 1908.⁸⁵ According to the Department's explanatory note and published commentary, the draft provides for presentation and registration of documents in person or by electronic means, electronic registration certificates and digital records, optional Aadhaar-based verification with alternative means of identification, clearer grounds on which registration may be refused, and an expanded list of compulsorily registrable documents including agreements to sell, powers of attorney authorising transfer of immovable property, sale certificates issued by competent authorities, and documents setting out the terms of mortgages created by deposit of title deeds.⁸⁶ At the time of writing, the draft has been the subject of consultation; its final form and the timing of any enactment remain to be seen.

Measured against the analysis in this article, the draft Bill would complete much of the unfinished business of 2001. Compulsory registration of agreements to sell would extend the logic of section 17(1A) from agreements relied on for part performance to agreements generally. Compulsory registration of powers of attorney authorising transfer would close the gap the 2001 Act left open despite the 1998 recommendation, and which *Suraj Lamp* could address only indirectly. Registration of documents recording equitable mortgages would bring national law into line with the States that have already required it. Electronic presentation would give legislative foundation to what section 16A only enabled. Clear statutory grounds for refusal would codify the principle in *K. Gopi*.

On two points the draft departs from choices made in 2001. The 2001 Act repealed section 30(2) in order to tie registration to the place where the property is situated. Several States have since moved in the opposite direction within their own territory by permitting a document to be registered at any Sub-Registrar's office in the State, relying on digitised records to supply the local knowledge that physical proximity once provided, and electronic presentation

⁸²Constitution of India, Seventh Schedule, List I, entry 91; List II, entry 63; List III, entry 44.

⁸³*Vidya Devi v State of Himachal Pradesh* (2020) 2 SCC 569.

⁸⁴*Kolkata Municipal Corporation* (n 80).

⁸⁵Department of Land Resources, Ministry of Rural Development, Government of India, *Draft Registration Bill 2025* (published for public consultation, 27 May 2025).

⁸⁶*ibid*; 'Digital Leap into Future: India's New Draft Registration Bill, 2025' (*Lexology*, 4 June 2025); 'Soon, You Can Register Property Online: Draft Registration Bill Decoded' (*Business Standard*, 29 May 2025).

of the kind the draft Bill proposes would make the location of the office less significant still.⁸⁷ The change is defensible, because the mischief of section 30(2) lay in registration across State boundaries and stamp jurisdictions, and not in distance as such. But it makes the reliability of the electronic record a condition of the system's integrity in a way that was not true in 2001. Similarly, section 32A assumed that the parties would appear in person and leave a physical trace of their identity. Electronic presentation removes that assumption, and the safeguards against impersonation must then be found in the authentication process itself.

The draft does not, on the available material, alter the fundamental character of Indian registration as a registration of documents rather than of title. That is not a criticism of a registration statute, which may be the wrong vehicle for so large a change. But it means that the questions this article has traced from 2001 to *Mahnoor Fatima Imran* will survive the new Act unless they are addressed deliberately. Five reforms, several of which can be pursued within the framework of the draft Bill, would do so.

First, the consequence of non-registration should be stated uniformly and precisely. The present law combines a broad registration requirement in section 17 with a proviso to section 49 that preserves the evidential use of unregistered agreements in suits for specific performance, a position confirmed in *Ameer Minhaj* and *R. Hemalatha*. If agreements to sell become compulsorily registrable across the country, Parliament should decide expressly whether that proviso is to survive. There are good reasons to preserve it, because it protects purchasers who have paid money under a genuine contract. But the choice should be made in the text, not left to be inferred from the absence of a consequential amendment, as happened in Tamil Nadu.

Secondly, the residual class of purchasers who cannot comply should be addressed directly. Any expansion of compulsory registration should be accompanied by a transitional scheme for agreements executed before commencement, a proportionate stamp-duty regime for agreements to sell of the kind Article 23A attempted for the Union territories, and a statutory statement of the possessory rights, if any, that survive non-registration. This would replace the uncertain foundation of cases like *Ghanshyam* with a clear rule and bring Indian law closer to the considered position England reached through section 2(5) of the 1989 Act and the law of proprietary estoppel.

Thirdly, the registering officer's role should be clarified in a way that respects *K. Gopi* while improving the information available to purchasers. The officer should not adjudicate title. But the system can require that every registered document relating to land carry a link to the existing record of rights and encumbrances, and that any mismatch between the executant and the recorded owner be flagged on the face of the registered document. This would preserve the principle that registration is not a title enquiry while ensuring that the register warns rather than misleads.

Fourthly, digitisation should be treated as the foundation for title reform rather than as its substitute. Electronic registration will speed transactions and reduce certain forms of fraud, such as impersonation and forum shopping, which the 2001 Act addressed through physical means. It will not, by itself, make the register more reliable as evidence of title. The Digital India Land Records Modernization Programme and state initiatives on conclusive titling, including Rajasthan's 2016 legislation, should be integrated with registration reform, so that the move to electronic process is accompanied by a staged move towards State-backed title in areas where records are sufficiently reliable, with an assurance fund of the Torrens type.

Fifthly, the relationship between registration and stamp duty should be reconsidered. The origin of the 2001 Act in the States' concern about lost revenue is understandable, but a registration system whose primary function is fiscal will always be evaded where duty is high. Rationalisation of duty on agreements to sell, powers of attorney and ancillary documents, including the nominal-fee approach for ancillary documents reported in the draft Bill, would reduce the incentive for informality that the 2001 Act fought against at the level of legal consequences.

These proposals should be read with the Supreme Court's request to the Law Commission in *Samiullah*. The Court's emphasis there was on technology, and in particular on the possibility of a tamper-proof ledger of transactions. Technology can make a record difficult to alter. It cannot make the first entry true. A forged or void deed entered on an immutable ledger is immutably recorded, and remains forged or void. The questions that matter are legal ones: what an entry in the register is to mean, who is to bear the loss when it is wrong, and by what procedure competing claims are to be extinguished. The experience of Andhra Pradesh shows the cost of answering them too quickly, and the experience since 2001 shows the cost of not answering them at all. A workable sequence would begin with the reforms the draft Bill already contemplates, proceed to the linking of registration with records of rights, and introduce State-backed title by area and by stages, with adjudication of disputed entries left to judicial bodies and with compensation for those who lose by the register's operation.⁸⁸

⁸⁷Digital Leap into Future: India's New Draft Registration Bill, 2025' (n 86).

⁸⁸On the consultation process, see Press Information Bureau, 'Department of Land Resources Invites Suggestions on Draft "The Registration Bill 2025" from Public within a Period of 30 Days' (27 May 2025) <<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2131546>> accessed 6 October 2026.

XIII. CONCLUSION

The Registration and Other Related Laws (Amendment) Act 2001 was a narrower statute than its reputation suggests and a more consequential one than its brevity implies. It did not introduce electronic registration, recast lease termination or make mortgages registrable. It inserted section 17(1A), trimmed section 53A and the proviso to section 49, repealed section 30(2), required photographs and fingerprints under section 32A, authorised electronic registration books through section 16A, and created a part-performance duty for the Union territories through Article 23A of the Stamp Act schedule. The central change was the conversion of part performance from an informal equity into a protection reserved for registered contracts.

That change did what it was designed to do. The unregistered agreement, which had for seventy years supported indefinite possession against the seller, lost its defensive force for every agreement executed after 24 September 2001. The Supreme Court has applied the change faithfully in *Ameer Minhaj*, and has built on it in *Suraj Lamp*, while preserving, in *Kaladevi* and *R. Hemalatha*, the purchaser's ability to prove an unregistered contract in a suit for specific performance. The informal transfer economy has not disappeared, but it now operates with far less legal cover than it did in 2001.

The reform also had effects that its text does not announce. By making the agreement registrable, it gave the purchaser who registers the benefit of constructive notice against later buyers, and so converted a defence against the seller into something approaching a priority on the public record. By leaving the proviso to section 49 largely intact, it moved the unregistered purchaser from the position of a defendant with a statutory shield to that of a plaintiff with a limitation period. Neither consequence appears in the Statement of Objects and Reasons. Both have shaped the litigation of the last two decades, and both will have to be addressed expressly if agreements to sell become compulsorily registrable nationwide.

What the Act did not do, and what no subsequent reform has yet done, is change what registration means. *K. Gopi* confirms that the registering officer cannot enquire into title, and *Mahnoor Fatima Imran* confirms that registration does not cure a defective title. Indian law has spent a quarter of a century increasing the demands it makes on parties to register, while leaving the purchaser who complies with every requirement exposed to defects he could not have discovered from the register. The draft Registration Bill 2025 would complete the formal project of 2001 by extending compulsory registration and moving the process online. Completing its substantive project would require something more: a move, however gradual and however carefully staged, from a register that records what parties have done to a register on which purchasers are entitled to rely.

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