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PRACTICE NOTE — PROPERTY LAW

The Indian Easements Act, 1882 — Key Points

Nature and acquisition of easements, prescription, extinction, licences, and remedies for disturbance

STRUCTURE

6 Chapters, 64 Sections

SCOPE

Governs easements generally; local usages/customs and existing easement rights are saved (S.1, proviso)

NOT APPLICABLE

Certain Scheduled/notified areas and States with their own easement/customary law — verify territorial application before advising

DISTINCT FROM

Natural rights (inherent, not easements) and licences (Chapter VI — personal permission, no interest in property)

DEFINITION & NATURE OF EASEMENT

SECTION 4 — "EASEMENT"

- A right which the owner/occupier of certain land (**dominant heritage**) possesses, for the beneficial enjoyment of that land, to do or continue to do something in or upon, or to prevent/continue to prevent something being done in or upon, land not his own (**servient heritage**).

DOMINANT & SERVIENT HERITAGE

- The land for whose benefit the easement exists is the **dominant heritage**; its owner/occupier is the dominant owner. The land on which the liability is imposed is the **servient heritage**; its owner is the servient owner. An easement is a right **in alieno solo** (in another's land) — it does not amount to ownership.

CLASSIFICATION OF EASEMENTS

CONTINUOUS VS DISCONTINUOUS

- Continuous**: enjoyment is or may be continual without any act of man (e.g. a right to light/air through a window). **Discontinuous**: enjoyment requires a positive act of man each time (e.g. a right of way).

APPARENT VS NON-APPARENT

- Apparent**: existence indicated by a permanent sign visible on careful inspection (e.g. a drain, a doorway). **Non-apparent**: no such visible sign (e.g. a right to lateral support without any external mark).

MODES OF ACQUISITION

EXPRESS GRANT & SECTION 13 — NECESSITY

- Easements may be created by an express grant/agreement (registered where required under the Registration Act, if not incidental to a lease/transfer of immovable property), or arise as an **easement of necessity** on a transfer/partition where the property cannot be used at all without the right (e.g. a landlocked parcel's right of way) — the servient owner is entitled to set out a reasonably convenient way.

SECTION 15 — ACQUISITION BY PRESCRIPTION

- Peaceable and open enjoyment, as an easement, **as of right**, without interruption, for **20 years** (30 years where the servient heritage belongs to Government) matures the right into an absolute easement. The 20/30-year period is reckoned back from the date of the suit in which the claim is contested. Enjoyment must be as of right — permissive or contentious use does not ripen into a prescriptive easement.

RIGHTS NOT ACQUIRABLE BY PRESCRIPTION — SECTION 17 (ILLUSTRATIVE)

EXCLUDED RIGHT	WHY
A right that would tend to the total destruction of the servient property, or its material alteration	Prescription cannot be used to acquire something inherently incompatible with the servient owner's continued beneficial ownership.
Free/unimpeded passage of light or air to an open space of ground	Only light/air passing to a defined opening/window in a building qualifies — not to open, unbuilt land.
A right to surface water not flowing in a defined channel, or to underground water not flowing through a defined channel	Only rights over water in an identifiable, defined course can mature by prescription.

EXTINCTION, SUSPENSION & REVIVAL — SECTIONS 37–51

MODE	KEY POINT
S.37 — Servient owner's title fails	Easement extinguished if, from a cause preceding its creation, the grantor ceases to have any right in the servient heritage.
S.41 — Termination of necessity	An easement of necessity is extinguished when the necessity comes to an end (e.g. an alternative access is created).
S.42 — Useless easement	Extinguished when it becomes incapable of ever being enjoyed for its purpose.
S.46 — Unity of ownership	Extinguished when the same person becomes the owner of both the dominant and servient heritage absolutely.
S.47 — Non-enjoyment for 20 years	A continuous or discontinuous easement is extinguished by total non-enjoyment for an unbroken period of 20 years.
S.49 — Suspension	Easement is suspended (not extinguished) where the dominant owner acquires a limited interest in the servient heritage; it may revive if the cause of suspension is removed before extinction under S.47 occurs.

LICENCES — CHAPTER VI (DISTINGUISHED FROM EASEMENTS)

SECTION 52 — "LICENCE" DEFINED

- A right granted by one person to another (or a definite number of others) to do, or continue to do, something on the grantor's immovable property that would otherwise be unlawful — **not amounting to an easement or any interest** in the property. A licence is purely personal permission, not a proprietary right, and generally does not bind successors-in-title.

SECTION 60 — REVOCATION OF LICENCE

- A licence is ordinarily revocable at the grantor's pleasure, **except** where: (a) it is coupled with a transfer of property and that transfer is in force; or (b) the licensee, acting on the licence, has executed a work of a permanent character and incurred expenses in doing so — such a licence becomes **irrevocable** (subject to the licensee's own default).

DISTURBANCE OF EASEMENTS & REMEDIES

SECTION 33 — SUIT FOR COMPENSATION

- The dominant owner/occupier may sue for compensation on disturbance of the easement, provided the disturbance has caused **substantial damage** — e.g. affecting evidence of the easement, materially diminishing the dominant heritage's value, or (for light/air) materially interfering with physical comfort or the claimant's accustomed business.

SECTION 35 — INJUNCTION

- An injunction may be granted to restrain an **actual** disturbance (where compensation would otherwise be recoverable) or a **threatened/intended** disturbance that would necessarily impair the easement if carried out — courts may decline a mandatory injunction where the plaintiff is guilty of laches/delay.

PRACTICE NOTES

Prescriptive Claims — Plead "As of Right" Precisely

To succeed on a S.15 prescriptive easement claim, specifically plead and evidence peaceable, open, uninterrupted enjoyment **as of right** for the full statutory period ending at the date of the suit — permissive use by a friendly neighbour, however long-standing, will not suffice and is a common ground of defence.

Distinguish Licence From Easement Early in Property Disputes

Where a client's right rests on informal permission (e.g. to park, to use a passage), assess at the outset whether it is a revocable licence or has matured into an easement/irrevocable licence (S.60 exceptions) — this materially affects both the cause of action and the available relief.

Check for Unity of Ownership Before Asserting an Old Easement

Before relying on a long-standing easement in a title/boundary dispute, verify there was no intervening period of common ownership of both properties (S.46) — this extinguishes the easement, and it does not automatically revive on subsequent severance except in the limited circumstances under S.51.

For internal practice reference only — this note highlights select, frequently used provisions of the Indian Easements Act, 1882 (6 Chapters, 64 Sections) and does not cover the full Act. Cross-check exact section text, applicable State amendments, and local custom before relying in advice or proceedings. Prepared 2 August 2026.

Primary sources: The Indian Easements Act, 1882 (indiacode.nic.in); commentary and case-law summaries via iPleaders, Vidhi Judicial Academy, LawPage, LawBhoomi, and Kanoongpt bare-act annotations.