A LEGAL ANALYSIS OF THE MISUSE OF POWER OF ATTORNEY IN PROPERTY TRANSFER IN INDIA.

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ABSTRACT

This research paper provides a comprehensive legal analysis of the widespread Misuse of the Power of Attorney (PoA) as a deceptive proxy instrument for property transfers within the Indian real estate market. Historically conceptualized as an administrative tool of convenience rooted in the law of agency, the General Power of Attorney (GPA) frequently executed alongside an Agreement to Sell, an affidavit, or a Will (collectively termed "SA/GPA/Will transactions") has structurally mutated into a widespread mechanism to facilitate illicit property title transfers. This deceptive framework is primarily deployed by transacting parties to evade compulsory registration fess, circumvent heavy stamp duties, bypass capital gains taxation, and invest unaccounted wealth.

By analyzing the interconnected statutory architectures of the Transfer of Property Act, 1882, the Registration Act, 1908, and the Indian Contract Act, 1872, alongside overarching international proprietary protections, this paper evaluates the systemic legal vulnerabilities exploited by fraudulent agents. Special focus is directed toward landmark judicial interventions, tracking the evolution of property jurisprudence from the seminal division bench ruling in Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana (2011) to the contemporary Supreme Court pronouncement in Ramesh Chand (D) v. Suresh Chand (2025). These milestones firmly establish that a PoA transfers no inherent title or interest in immovable property. Finally, the study examines persisting loopholes—such as the manipulation of irrevocable clauses and post-demise execution fraud—and offers structural suggestions, including integrated national digital registries and automated vital statistics verification, to enforce institutional transparency and secure land titles.

Keywords: Power of Attorney (PoA), Property Transfer, Conveyance Deed, Registration, Suraj Lamp Case, Fiduciary Duty, GPA Sales.

1. Introduction.

The legal institution of agency, which forms the bedrock of the Power of Attorney (PoA), traces its roots back to ancient Roman law under the foundational *maxim qui facit per alium facit per se* (he who acts through another acts himself). In the Indian context, this legal framework was formalized during the colonial era through the Indian Contract Act, 1872, and subsequently, the Powers of Attorney Act, 1882. Historically, a Power of Attorney was strictly construed as an instrument of convenience, empowering an agent to perform specific administrative or commercial duties on behalf of a principal without transferring any inherent proprietary interest.

However, over the late 20th and early 21st centuries, this tool of convenience underwent a severe mutation within the Indian real estate market. Parties increasingly resorted to proxy "GPA Sales"—a collaborative architecture involving a General Power of Attorney, an Agreement to Sell, and an Affidavit—to evade steep stamp duties, bypass capital gains tax, invest unaccounted money, and circumvent statutory land restrictions. This structural misuse has severely compromised public land registries, stripped original owners of their valid titles through systemic fraud, and generated extensive, multi-generational title litigation across civil courts**.**

1.1.History of Law

The concept of agency, which forms the bedrock of the Power of Attorney (PoA), trace back to ancient Roman law under the *maxim qui facit per alium facit per se* (he who acts through another acts himself).[1] In common law traditions, this concept evolved to facilitate commercial transactions and property management when the principal was physically unavailable. In the Indian context, the legal institutionalization of agency was formalized during the colonial era through the Indian Contract Act, 1872, and subsequently, the Powers of Attorney Act, 1882.[2] Historically, a Power of Attorney was strictly construed as an instrument of convenience, empowering an agent to perform specific administrative or commercial duties on behalf of the principal without transferring any inherent proprietary interest.[3]

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[1] William L. Clark Jr., Handbook of the Law of Agency (St. Paul: West Publishing Co., 1895), 12-14.
[2] See generally The Indian Contract Act, 1872 (Act No. 9 of 1872), c. X; The Powers of Attorney Act, 1882 (Act No. 7 of 1882)
[3] Bowstead on Agency, ed. F.M.B. Reynolds, 15th ed. (London: Sweet & Maxwell, 1985), 45-48

1.2.Background of Issue

Over the late 20th and early 21st centuries, the Power of Attorney underwent a severe systemic mutation in the Indian real estate market.[4] What was conceived as a tool of convenience became a prominent vehicle for illicit property transfers. This degradation primarily manifested through "GPA Sales"—a collaborative architecture involving a General Power of Attorney (GPA), an Agreement to Sell, and an Affidavit or Will.[5]

Parties increasingly resorted to these proxy transactions to circumvent high stamp duties, evade capital gains tax, invest unaccounted ("black") money, and bypass statutory restrictions on the fragmentation or transfer of specific categories of land (such as agricultural or regulatory land blocks).[6] This structural misuse has compromised public registries, stripped original owners of their titles through fraud, and generated extensive, multi-generational title litigation across Indian civil courts.[7]

2. Legal Framework Governing the Power of Attorney

The statutory framework governing property titles and agency in India is built upon three primary pillars designed to guarantee public notice, financial equity, and contractual certainty.

2.1. The Transfer of Property Act, 1882 (TP Act)

The core of property disposition is regulated by Section 5 of the TP Act, which defines a "transfer of property" as an act by which a living person conveys property, in present or in future, to one or more other living persons.[8]

Section 54 (Sale): This section explicitly mandates that a transfer of tangible immovable property of the value of one hundred rupees and upwards can only be executed via a registered instrument.[9] Crucially, Section 54 categorically outlines that a mere contract for sale of immovable property does not, of itself, create any interest in or charge on such property.[10] Therefore, an agent operating under a PoA cannot bypass this section by declaring a proxy

[4] Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (2012) 1 SCC 656.
[5] Suraj Lamp, (2012) 1 SCC at 662.
[6] Ibid., 663-664.
[7] Ramesh Chand (D) v. Suresh Chand, 2025 INSC 1059.
[8] The Transfer of Property Act, 1882 (Act No. 4 of 1882), s. 5.
[9] The Transfer of Property Act, 1882, s. 54.
[10] Ibid.

document to be a completed sale.

Section 53A (Part Performance): Historically, buyers in GPA transactions attempted to shield their possession under Section 53A.[11] However, subsequent statutory adjustments have drastically neutralized this defense for unregistered agreements.[12]

2.2. The Registration Act, 1908

The Registration Act provides the mechanism for public transparency and state verification of land titles.

Section 17(1): This provision lists instruments for which registration is compulsory, including gifts of immovable property and non-testamentary instruments which purport or operate to create, declare, assign, limit, or extinguish any right, title, or interest in immovable property.[13]

Section 17(1A): Introduced via an amendment in 2001, this section states that documents containing contracts to transfer for consideration any immovable property for the purpose of Section 53A of the TP Act must be registered.[14] Failure to register means the document has no effect for the purposes of part performance.[15]

2.3. The Powers of Attorney Act, 1882 & The Indian Contract Act, 1872

The Powers of Attorney Act, 1882, provides the definition and statutory recognition of the tool, but the substantive rules governing the relationship between the principal and the attorney are anchored in Chapter X of the Indian Contract Act, 1872 (Sections 182 to 238).[16] Under Section 182, an "agent" is merely a representative.[17] Section 211 mandates that an agent must act strictly within the bounds of authority delegated by the principal.[18] Any act where an attorney conveys the principal's property to themselves or misuses the authorization to commit a unauthorized sale violates the strict fiduciary obligations established under Section 215 and

[11] Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (2012) 1 SCC 656, 665.
[12] See Registration and Other Related Laws (Amendment) Act, 2001 (Act No. 48 of 2001).
[13] The Registration Act, 1908 (Act No. 16 of 1908), s. 17(1).
[14] The Registration Act, 1908, s. 17(1A) (as amended by Act 48 of 2001).
[15] Ibid.
[16] The Indian Contract Act, 1872, ss. 182-238.
[17] The Indian Contract Act, 1872, s. 182.
[18] The Indian Contract Act, 1872, s. 211.

Section 216 of the Contract Act.[19]

3. International Instruments of Framework Governing Proprietary Status

While property systems are fundamentally tied to domestic land tenures, international human rights frameworks provide overarching protections against the arbitrary deprivation of property, which can be linked to fraudulent transfers via abused legal instruments.

Table 1: Types of International Instruments, Provisions & Core Legal Obligations

International Instrument	Relevant Provision	Core Legal Obligation
Universal Declaration of Human Rights (UDHR), 1948	Article 17	Asserts that everyone has the right to own property alone as well as in association with others, and no one shall be arbitrarily deprived of their property.[20]
International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966	Article 11	Indirectly safeguards proprietary security through the protection of adequate housing and security of tenure, protecting citizens against fraudulent expropriation.[21]
European Convention on Human Rights (ECHR)	Article 1 of Protocol No.1	Explicitly protects the peaceful enjoyment of possessions, allowing deprivation only in the public interest and subject to conditions provided by law.[22]

These international instruments impose a positive obligation on signatory states to maintain a domestic legal framework that secures property rights.[23] This requires domestic courts to

[19] The Indian Contract Act, 1872, ss. 215, 216.
[20] Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), art. 17 (Dec. 10, 1948).
[21] International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, art. 11.
[22] Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Mar. 20, 1952, E.T.S. No. 9, art. 1.
[23] James W. Ely Jr., The Guardian of Every Other Right: A Constitutional History of Property Rights (Oxford:

strictly penalize deceptive structural configurations—such as the fraudulent execution of Powers of Attorney—that result in individuals being unlawfully or arbitrarily stripped of their immovable assets.[24]

4. Judicial Precedents (Case Laws)

The jurisprudence surrounding the misuse of Power of Attorney in property transactions has been thoroughly articulated by the Supreme Court of India across several landmark rulings.

4.1. Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana (2009 & 2011)[25]

The most significant judicial intervention addressing this structural issue is the division bench decision in Suraj Lamp.[26] The Supreme Court comprehensively analyzed the widespread practice of SA/GPA/Will transfers and unequivocally declared them illegal as substitutes for regular conveyance deeds.[27]

The Court, speaking through Justice R.V. Raveendran, held:

"*A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The property can be lawfully transferred only by a registered deed of conveyance*."[28]

The judgment clarified that a PoA is merely a creation of an agency relationship that empowers the attorney to perform acts on behalf of the principal.[29] It does not convey title, even if it is styled as "irrevocable" or executed in tandem with a sale agreement.[30] The Court ruled that municipal authorities must not mutate property records or alter land records based on such documents, as doing so facilitates tax evasion and real estate fraud.[31]

Oxford University Press, 2008), 89-92.
[24] Ibid., 95.
[25] Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (2009) 7 SCC 363; Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana, (2012) 1 SCC 656.
[26] Suraj Lamp, (2012) 1 SCC 656.
[27] Ibid., 660.
[28] Ibid., 667.
[29] Ibid.
[30] Ibid., 666.
[31] Ibid., 668.

4.2.Ramesh Chand (D) v. Suresh Chand (2025)[32]

Reaffirming the strict framework established in Suraj Lamp, the Supreme Court in Ramesh Chand dealt with a intra-family property dispute where one party claimed absolute ownership based on an agreement to sell, a general power of attorney, an affidavit, and a registered will executed by their father in 1996.[33]

The Supreme Court overturned the lower appellate conclusions, holding that such an assortment of documents does not satisfy Section 54 of the Transfer of Property Act, 1882.[34] The Court ruled that because there was no registered deed of conveyance, no exclusive title passed to the claimant.[35] Consequently, upon the father's demise, the property devolved strictly on all Class I legal heirs according to the rules of intestate succession.[36] This case highlights that even historic transactions (pre-dating Suraj Lamp) cannot escape the strict application of statutory registration requirements when ownership claims are asserted in court.[37]

4.3. Other Crucial Pronouncements

In several contemporary cases, such as recent appeals coming out of the High Court of Karnataka, the Supreme Court has emphasized that a combined reading of an unregistered agreement to sell alongside an irrevocable PoA cannot be used as an absolute defense under Section 53A of the TP Act unless the strict components of the 2001 Registration Amendment are met.[38] The courts continue to hold that an attorney who sells the principal's property to their own close relatives or associates without explicit, clear, and unambiguous authorization in the text of the PoA commits a clear breach of trust, rendering the resultant sale deed void.[39]

5. Controversy, Analysis, and Loopholes

Despite clear judicial pronouncements from the Supreme Court, several operational controversies, structural vulnerabilities, and legal loopholes continue to exist within the real

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[32] Ramesh Chand (D) v. Suresh Chand, 2025 INSC 1059.
[33] Ibid., para 4
[34] Ibid., para 14.
[35] Ibid.
[36] Ibid., para 18
[37] Ramesh Chand, 2025 INSC 1059.
[38] See for instance, Sri Muniyappa v. A. Saraswathi, Civil Appeal Nos. 3266-3267 of 2025 (Supreme Court of India, Feb 27, 2025).
[39] Ibid., para 32.

estate market.

5.1. The "Irrevocable" PoA Misconception

A major point of exploitation relies on Section 202 of the Indian Contract Act, 1872, which states that an agency cannot be terminated if the agent has an underlying interest in the subject matter of the agency.[40] Subversive actors draft GPAs that falsely declare the agent has a financial interest in the property (often by referencing a separate, unregistered sale agreement) to claim the PoA is permanent and irrevocable.[41] While Suraj Lamp invalidated this for title transfers, it remains an operational loophole used to confuse bona fide subsequent buyers and block the original owner from recovering their land.[42]

5.2. The Revenue vs. Registration Dilemma

While several states amended their local Stamp Acts to mandate that a PoA authorizing a non-family member to sell property must attract the same stamp duty as a regular conveyance deed, a loophole remains regarding boilerplate text.[43] Smart litigators draft agreements using vague terms like "management, development, and signing of necessary forms" rather than explicitly using the word "sale.[44] Once the agent obtains control under this broadly worded document, they complete the transfer by executing subsequent sub-deeds, bypassing initial registration screening.[45]

5.3. The Post-Demise Execution Fraud

Under Indian law, a Power of Attorney automatically terminates upon the death, insanity, or bankruptcy of the principal.[46] However, because there is no synchronized digital link between national death registries and land registration sub-offices, unscrupulous agents regularly execute sale deeds using old PoAs after the principal has died.[47] By backdating documents or concealing the principal's death, these agents successfully execute fraud before the legal heirs

[40] The Indian Contract Act, 1872, s. 202.
[41] *Suraj Lamp*, (2012) 1 SCC at 666.
[42] Ibid.
[43] See for instance, mutations to the Indian Stamp Act, 1899, art. 23 (as amended locally across Haryana, Delhi, and Karnataka).
[44] M.A. Rao, Real Estate Laws and Practices in India (Wadhwa Nagpur, 2018), 312-315.
[45] Ibid
[46] The Indian Contract Act, 1872, s. 201.
[47] Rao, Real Estate Laws, 320.

can step in or update the property records.[48]

6. Suggestions to Analysis & Improving Implementations

To effectively curb the fraudulent use of Powers of Attorney and protect property owners, several targeted systemic reforms are required:

6.1. Mandatory Centralized Digital Registry for PoAs

Currently, a PoA can be registered in one state or sub-district while the property it affects is located in another.[49] There is an urgent need to establish an integrated, pan-India digital database for all registered Powers of Attorney.[50]

- Before any Sub-Registrar allows the execution of a sale deed based on a PoA, the system must mandate a real-time digital verification check against the central registry to confirm the instrument's validity, scope, and status.[51]

6.2. Integration with Vital Statistics (Death Registries)

To eliminate the loophole of agents executing transfers after a principal's death, the registration database should be electronically linked with national birth and death registration networks.[52] An automated alert system should flag or suspend any PoA associated with an individual whose death certificate has been issued, preventing post-demise property fraud.[53]

6.3. Strict Textual Construction and Standardized Templates

The law should require standardized, non-negotiable templates for any Power of Attorney dealing with real estate.[54] Vague, multi-purpose boilerplate clauses should be legally barred.[55] If a principal intends to grant a power of sale, that power must be explicitly stated in an isolated, highly visible section of the document, requiring independent notarization and clear biometric

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[48] Ibid.
[49] Suraj Lamp, (2012) 1 SCC at 663.
[50] Government of India, Report of the Committee on Land Reforms and Digitization of Records (Ministry of Rural Development, 2022), 45-48.
[51] Ibid.
[52] Ibid., 52.
[53] Ibid.
[54] Rao, Real Estate Laws, 345.
[55] Ibid.

confirmation from the principal.[56]

6.4. Enhanced Verification Safeguards for Sub-Registrars

Sub-registrars must be legally required to perform higher levels of due diligence, rather than treating their role as a purely administrative task.[57] When a sale deed is presented by a PoA holder, the registrar should be mandated to:

- Require a fresh, time-bound "Life Certificate" or live biometric authentication of the principal if the PoA is more than a year old.[58]
- Send an automated digital notification (via SMS or registered email) directly to the principal before the final registration of the transfer, offering a final opportunity to object.[59]

7. Conclusion

The Power of Attorney was designed as an instrument of convenience to facilitate flexible business and personal transactions across distances.[60] However, its systemic exploitation in the Indian real estate market has turned it into a primary source of property fraud, tax evasion, and title instability.[61] The evolution of property jurisprudence—from early colonial codification to the landmark decisions in Suraj Lamp and Ramesh Chand—reflects a consistent judicial effort to enforce the statutory rule that real property can only be transferred through a validly executed, registered deed of conveyance.[62]

However, judicial enforcement alone cannot completely close these operational loopholes.[63] Eliminating this type of fraud requires comprehensive administrative reforms, including the digitization of land registries, real-time linkage with vital statistics registries, and enhanced statutory verification duties for sub-registrars.[64] Only by combining clear legal rules with modern digital infrastructure can India secure property titles, protect vulnerable landowners, and restore institutional transparency to its real estate market.

[56] Ibid.
[57] Suraj Lamp, (2012) 1 SCC at 667.
[58] Government of India, Report on Digitization of Records, 59.
[59] Ibid., 61.
[60] Bowstead on Agency, 15th ed., 72.
[61] Suraj Lamp, (2012) 1 SCC at 661.
[62] See Suraj Lamp, (2012) 1 SCC 656; Ramesh Chand, 2025 INSC 1059.
[63] Rao, Real Estate Laws, 360.
[64] Government of India, Report on Digitization of Records, 70.

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