FRAUDULENT TRANSFERS IN INDIAN PROPERTY LAW: RETHINKING SECTION 53 OF THE TRANSFER OF PROPERTY ACT, 1882 IN THE INSOLVENCY ERA

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ABSTRACT

Section 53 of the Transfer of Property Act, 1882 has long been the primary statutory remedy available to individual creditors seeking to set aside fraudulent transfers of immovable property by insolvent debtors. Rooted in the English Statute of Elizabeth, 1571, the provision protects creditors from deliberate pre-judgment alienations designed to defeat their claims. However, the enactment of the Insolvency and Bankruptcy Code, 2016 has substantially altered this landscape. The Code introduced a comprehensive set of avoidance provisions, including Sections 43, 45, 49, and 66, that allow a resolution professional to challenge preferential, undervalued, and fraudulent transactions on behalf of all creditors collectively. This paper examines the resulting doctrinal tension between these two regimes. It identifies four principal fault lines: (i) the forum conflict between civil courts and the National Company Law Tribunal; (ii) the divergence between intent-based and effect-based standards for avoidance; (iii) the asymmetry in temporal scope, particularly the absence of a look-back period under Section 53 as compared to the defined windows under the IBC; and (iv) the differential scope of property covered by each regime. Analysing the judgments in *Anuj Jain v. Axis Bank Ltd., Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta,* and the Jaypee Infratech proceedings, this paper argues that Section 53 TPA has not been rendered redundant but has been structurally subordinated to the IBC within the domain of insolvency. It survives as an independent remedy for individual creditors dealing with non-corporate debtors and in contexts where no insolvency proceeding is pending. The paper concludes by identifying critical legislative gaps, including the problem of parallel proceedings, unresolved res judicata questions, and the absence of a unified standard for fraudulent intent, and calls for statutory harmonisation between the TPA and the IBC.

I. INTRODUCTION

There is something quietly revealing about the way Indian property law has aged. When the Transfer of Property Act was enacted in 1882, India was a colonial economy governed by agrarian anxieties: landlords, moneylenders, and debtors occupied the centre of legal life. Into this world, Section 53 arrived as a creditor's shield, a provision designed to prevent debtors from spiriting away their assets to defeat legitimate claims. It borrowed liberally from the English Statute of Elizabeth, 1571,[1] which had, for centuries, been the backbone of creditor protection against fraudulent alienations. The essential intuition behind Section 53[2] is not merely a legal rule. It is a moral statement about the relationship between debtors, creditors, and the obligation of honesty in commerce.

For over a century, Section 53 worked quietly within the civil courts of India. It was invoked by trade creditors, by landlords, by decree-holders seeking execution, and by those who found themselves holding judgments against debtors who had cleverly transferred their property before the ink on the decree had dried. Courts evolved a fairly settled body of doctrine: they identified what constituted fraudulent intent, they determined which transfers could be avoided, and they protected creditors who could show that a transfer was designed to delay or defeat them.

Then came the Insolvency and Bankruptcy Code, 2016.[3] The IBC did not merely add to the law; in many respects, it reordered it. It created a dedicated insolvency framework administered not by civil courts but by the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT). It introduced its own provisions on fraudulent and preferential transactions, Sections 43 through 51, which gave resolution professionals and liquidators the power to avoid transactions entered into during defined look-back periods. Suddenly, two regimes claimed jurisdiction over the same species of wrongdoing: the deliberate diversion of assets to defeat creditors.

The question this paper asks is deceptively simple but doctrinally profound: what happens

[1] 'Statute of Elizabeth, 1571, 13 Eliz. c. 5 (Eng.). The Act was formally titled An Act Against Fraudulent Deeds, Gifts, Alienations, etc. It was repealed in England by the Law of Property Act 1925 but had already been transplanted into Indian law through colonial codification.
[2] "Transfer of Property Act, 1882, No. 4, Acts of Parliament, 1882 (India) [hereinafter TPA]. Section 53 is housed in Chapter II, which deals with transfers of property by act of parties.
[3] 'Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India) [hereinafier IBC].

when the same transaction is caught by both Section 53 of the TPA and the avoidance provisions of the IBC? Does one prevail over the other? Has Section 53 become an anachronism, a provision rendered surplus by the arrival of a modern insolvency code† Or does it continue to serve a parallel function, reaching transactions and creditors that the IBC, with its collective and process-driven character, simply cannot accommodate?

It is submitted that Section 53 has not been legislated out of existence, and the IBC's overriding clause under Section 238 does not automatically extinguish it. But the practical and doctrinal landscape has shifted significantly. The result is a state of *structural subordination:* Section 53 survives outside the insolvency process but yields, both formally and practically, to the IBC wherever an insolvency proceeding is afoot. Understanding this relationship has direct consequences for creditors deciding which forum to approach, for practitioners advising clients on avoidance strategies, and for courts navigating competing jurisdictional claims.

This paper proceeds in seven parts. Part II examines the scope and purpose of Section 53 TPA and the body of case law that has grown around it. Part III analyses the parallel framework under the IBC, focusing on Sections 43, 45, 49, and 66. Part IV identifies the doctrinal conflicts between the two regimes. Part V examines how courts have responded to these conflicts. Part VI addresses the central question of whether Section 53 is redundant, and Part VII proposes a path toward harmonisation.

II. THE ARCHITECTURE OF FRAUDULENT TRANSFER UNDER SECTION 53 OF THE TRANSFER OF PROPERTY ACT, 1882

A. The Provision and Its Origins

Section 53(1) of the Transfer of Property Act provides, in substance, that every transfer of immovable property made with the intent to defraud, delay, or defeat creditors shall be voidable at the option of any creditor so defrauded, delayed, or defeated.[4] The provision is explicitly remedial in character: it does not void the transfer automatically but renders it liable to be set aside at the election of the aggrieved creditor. This distinction between a void and

[4] TPA sec. 53(1). The full text provides: ”Every transfer of immovable property made with intent to defraud, delay or defeat the creditors of the transferor shall be voidable at the option of any creditor so defrauded, delayed or defeated.” The proviso protects bona fide purchasers for value without notice.

voidable transfer has been the source of considerable litigation over the decades.

The intellectual ancestry of Section 53 traces directly to the English Statute of Elizabeth, 1571.[5] That statute was enacted in response to the widespread practice of English debtors conveying land to friends or relatives to keep it out of the reach of creditors. India inherited this statutory tradition through colonial legislation, and Section 53 reflects its essential structure: a focus on intent, a requirement of creditor prejudice, and a voidable rather than void remedy.

B. Elements of a Claim Under Section 53

A successful challenge to a transfer under Section 53 requires the satisfaction of three constituent elements, each of which has generated a body of interpretive case law.

(i) Intent to defraud, delay, or defeat: The transfer must have been made with the specific intent of placing the property beyond the reach of creditors. Courts have consistently held that this intent need not be express; it may be inferred from the circumstances. In *Abdul Shukoor v. Arji Papa Rao,*[6] the Privy Council held that fraudulent intent could be gathered from the surrounding facts, including the timing of the transfer, the relationship between transferor and transferee, and the absence of adequate consideration.

(ü) Creditor prejudice: The transfer must actually prejudice the creditor. It is insufficient to show intent alone if the debtor retains other assets sufficient to meet the claim. In *Krishnan v. Krishnan,*[7] the court emphasised that the burden lies on the creditor to demonstrate not merely fraudulent intent but actual or potential harm resulting from the impugned transfer.

(iii) Voidable, not void: The transfer is valid as between the parties until challenged. This means the transferee obtains title, albeit a defeasible one, and only a creditor who moves to set aside the transaction can undo it. A bona fide purchaser for value without notice of the fraud is protected under the proviso to Section 53(1).[8] This protection of innocent third-party

[5] For the doctrinal connection between Section 53 and the Statute of Elizabeth, see T.P. Mukherjee, The Transfer of Property Act 247-253 (7th ed. 1998).

[6] Abdul Shukoor v. Arji Papa Rao, (1923) 50 IA 83 (PC). The Privy Council held that frauduleux intent under Section 53 could be inferred from circumstances includîng the relationship between the parties, the timing of the transfer relaüve to the creditor's claim, and the adequacy of consideration.

[7] ’Krishnan v. Krishnan, AIR 1987 Ker 71. The court held that proof of actual or potential prejudice to the creditor is a necessary element of a Section 53 claim and cannot be assumed from intent alone.

[8] TPA sec. 53(1), proviso (“Provided that this section shall not impair the rights of a transferee in good faith and

purchasers is one of the key distinctions between Section 53 and the IBC's avoidance provisions, which are not conditioned on the subjective knowledge of the transferee in the same way.

C. The Scope of Section 53: What It Covers and What It Does Not

Section 53 is confined in its application to immovable property.[9] This limitation means that transfers of movables, shares, intellectual property, or other classes of assets fall outside its purview. This is a significant restriction in a modem commercial context where the most valuable assets of an insolvent debtor may be receivables, securities, or contractual rights rather than land or buildings. The IBC, by contrast, casts its avoidance net over transactions involving any property of the corporate debtor, a scope incomparably wider than Section 53's domain.

Section 53 also imposes no temporal look-back period. Any transfer, however old, may in principle be challenged if the requisite intent and prejudice can be established. The provision is also primarily operative as an individual remedy: it is available to a specific creditor whose claim has been defrauded, not to creditors collectively. This individual character, as this paper will argue, is the defining structural distinction between Section 53 and the IBC's avoidance framework.

III. FRAUDULENT AND AVOIDABLE TRANSACTIONS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

A. The Shift to Collective Insolvency

The Insolvency and Bankruptcy Code, 2016 represents the most significant overhaul of insolvency law in independent India.[10] Prior to the IBC, insolvency proceedings were fragmented across multiple statutes, each with its own procedural architecture and each generating decades of litigation, delay, and inefficiency. The IBC replaced this fractured landscape with a single, time-bound, tribunal-administered process. The philosophy

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for consideration'). See also Mulla, The Transfer of Property Act 388-392 (l2th ed. 2020).

[9] Mulla, The Transfer of Properfy Act 388 (l2th ed. 2020). The restriction to immovable property is confirmed by the TPA's preamble, which confines the Act's operation to transfers of immovable property by act of parties.

[10] Report of the Bankruptcy Law Reform Committee, Vol. I: Rationale and Design (Nov. 2015). The Committee noted that prior to the IBC, insolvency proceedings were fragmented across at least sin statutes, causing systemic delay and creditor harm.

underlying the Code is fundamentally different from that of the TPA: where the TPA imagines a bilateral dispute between a creditor and a debtor, the IBC imagines a collective proceeding in which all creditors participate and the interests of the enterprise and the economy are served by a swift and orderly resolution.

B. The Avoidance Framework: Sections 43 through 51 and Section 66

The avoidance provisions of the IBC are contained primarily in Sections 43 to 51, with Section 66 dealing with fraudulent trading. Each provision addresses a distinct species of transaction but shares the common purpose of reversing pre-insolvency asset diversion.[11]

Section 43: Preferential Transactions. This provision empowers the resolution professional to apply to the NCLT to avoid transactions that gave one creditor a preference over others during the look-back period, being two years for related parties and one year for unrelated parties prior to the insolvency commencement date." The Supreme Court's ruling in *Anuj Jain v. Axis Bank* J/d.[12] elaborated the contours of this provision, holding that a transaction is preferential if it enables one creditor to receive more than they would in a liquidation distribution. The court emphasised that the intent of the debtor is irrelevant to a Section 43 challenge. This is a cardinal distinction from Section 53 TPA, which is anchored in intent.

Section 45: Undervalued Transactions. A transaction is undervalued if it involves a gift or a transfer at a value significantly below market value within the look-back period of two years.[13] Where the resolution professional can show that the transaction was undervalued and was entered into to defraud creditors, the NCLT may declare it void. The combination of undervaluation and fraudulent intent brings this provision into closest proximity with Section 53 TPA.

Section 49: Transactions Defrauding Creditors. This is the provision most directly analogous to Section 53 TPA. Section 49 applies to transactions entered into at undervalue and designed to put assets beyond the reach of any person entitled to make a claim.'[14] Unlike

[11] "IBC sec. 43(4). The provision defines the look-back period as two years prior to the insolvency commencement date for transactions with related parties and one year for all other transactions.
[12] Anuj Jain, Interim Resolution Professional for Jaypee Infratech Lld. v. Axis Bank Ltd., (2020) 8 SCC 401 [hereinafter Anuj Jain]. This is the leading Supreme Court decision on the scope and operation of preferential transactions under Section 43 IBC.
[13] "IBC sec. 45(2). An undervalued transaction is one where the corporate debtor is a party to a transaction at a value which is significantly less than the value of the consideration provided by the company."
[14] "IBC sec. 49. The provision is modelled on Section 423 of the Insolvency Act, 1986 (UK), which similarly

Sections 43 and 45, Section 49 is not confined to the look-back period; it applies to transactions made at any time. Its temporal breadth aligns more closely with Section 53 TPA, deepening the jurisdictional overlap.

Section 66: Fraudulent Trading. Section 66 deals with the broader wrong of carrying on business with intent to defraud creditors. It imposes personal liability on officers and directors who were knowingly parties to fraudulent trading. While distinct from Section 53 in its focus on ongoing conduct rather than discrete transfers, Section 66 reflects the IBC's comprehensive approach to debtor misconduct.[15]

C. The Jaypee Infratech Case and the Practical Operation of IBC Avoidance

The Jaypee Infratech insolvency proceedings offer a striking illustration of how avoidance provisions operate in practice.'[16] In those proceedings, the NCLT and NCLAT grappled with an enormous portfolio of pre-insolvency transactions, including transfers to group companies, inter-corporate loans, and encumbrances created in favour of related parties. The scale and complexity of the avoidance exercise, involving thousands of home buyers as creditors and a sprawling group of companies as the debtor, made it immediately apparent that the individual civil court remedy under Section 53 TPA would have been wholly inadequate. No individual creditor could have mounted a plausible Section 53 challenge against such a complex web of transactions. Only the collective insolvency process, administered by a specialist tribunal with investigative powers and a dedicated resolution professional, could hope to unravel what had been done.

IV. DOCTRINAL CONFLICTS BETWEEN SECTION 53 TPA AND THE IBC AVOIDANCE FRAMEWORK

"IBC sec. 49. The provision is modelled on Section 423 of the Insolvency Act, 1986 (UK), which similarly extends to transactions at undervalue designed to put assets beyond the reach of creditors, with no fixed look-back period.

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[15] "IBC sec. 66. The provision imposes personal liability on persons who carried on the business of the corporate debtor "with intent to defraud creditors of the corporate debtor or for any fraudulent purpose." It is analogous to Section 213 of the Companies Act, 2013.

[16] "In re Jaypee Infratech Ltd. (Insolvency), 2019 SCC Online NCLAT 1060; see also Anuj Jai , (2020) 8 SCC 401 (discussing the avoidance proceedings arising from the Jaypee Infratech insolvency).

A. The Jurisdiction Problem: Two Forums, One Transaction

The most immediately practical conflict between Section 53 TPA and the IBC is the forum problem. A creditor aggrieved by a fraudulent transfer has, in theory, two avenues: she may file a civil suit under Section 53 TPA in the appropriate civil court, or she may, if the debtor is undergoing insolvency proceedings, invoke the IBC's avoidance machinery before the NCLT. These are not simply different rooms in the same house. They are entirely different buildings, with different rules of procedure, different standards of proof, different powers of investigation, and different orders they can make.

Consider a scenario in which a creditor has filed a civil suit under Section 53 TPA and obtained an interim injunction against the alienation of property, only to find that the same debtor is then placed in insolvency and a resolution professional commences avoidance proceedings under the IBC in respect of the same transaction. Which proceeding takes priority? May the civil court continue to exercise jurisdiction? The answers are not self-evident, and the courts have not resolved them with finality.

B. Section 238 IBC: The Overriding Clause

Section 238 of the IBC provides that the provisions of the Code shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force.[17] This clause appears to resolve the conflict decisively in favour of the IBC. However, a closer reading reveals that the override operates only where there is an inconsistency, and the question of whether Section 53 TPA and the IBC's avoidance provisions are truly inconsistent or merely parallel is more complex than the clause's blunt language suggests.

The Supreme Court has held that an overriding clause does not automatically displace all other laws that operate in the same field; it displaces them only where they are directly inconsistent.[18] Where two provisions can co-exist without conflict, that is, where a creditor can give effect to both without any contradictory obligation, there is no inconsistency and the overriding clause does not operate. On this analysis, Section 238 may not automatically render

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[17] "IBC sec. 238. The provision reads: “The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

[18] "Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, (202i) 7 SCC 209. The Supreme Court held that Section 238 displaces inconsistent provisions of other statutes but does not operate where the two provisions can sensibly co-exist.

Section 53 inoperative. The provisions address similar mischief but do so through different mechanisms, for different beneficiaries, and with different consequences.

C. The Intent Versus Effect Divide

One of the most significant doctrinal differences between the two regimes is the role of intent. Section 53 TPA is fundamentally an intent-based provision: a transfer is fraudulent only if it was made with intent to defraud, delay, or defeat creditors. The fraudulent intent is the gist of the cause of action.

The IBC's provisions are largely effect-based. Section 43 on preferential transactions, as clarified in *Anuj Jain v. Axis Bank Ltd.,*[19] focuses entirely on the effect of the transaction and expressly provides that the intent of the debtor is irrelevant. Only Section 49 and Section 66, which deal with fraudulent transactions and fraudulent trading respectively, retain an element of intent. This structural difference means that certain transactions, those where no fraudulent intent can be established but where the effect was preferential, can only be challenged under the IBC, while transactions motivated by demonstrable fraud against individual creditors outside insolvency remain within Section 53's reach.

D. Temporal Divergence: Look-Back Periods and the Problem of Ancient Transfers

The IBC's avoidance framework is, with the important exception of Section 49, temporally constrained. Sections 43 and 45 operate within look-back periods of one and two years respectively.[20] These periods reflect a deliberate policy choice: the legislature has drawn a line beyond which the interests of transactional security outweigh the interests of creditors in recovering assets. Section 53 TPA draws no such line. In theory, a creditor can challenge a transfer made many years before the debt arose, provided she can establish fraudulent intent and prejudice.

This temporal divergence creates a curious asymmetry. An insolvency professional operating under the IBC may be unable to avoid a transfer made three years before the insolvency commencement date under Sections 43 or 45, but the same transfer could, in principle, still

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[19] Anuj Main, (2020) 8 SCC 401, paras. 63-68. The court stated expressly that "intent of the corporate debtor is not a relevant factor" in determining whether a transaction is preferential under Section 43.

[20] IBC sec. 43(4); sec. 46(1). Both the one-year and two-year look-back periods are computed from the insolvency commencement date, defined in IBC sec. 5(12) as the date on which the Adjudicating Authority admits an application for initiation of insolvency resolution process.

be challenged under Section 53 TPA by an individual creditor in civil court, provided that the civil court retains jurisdiction and Section 238 does not apply. Whether this is a gap in the IBC's coverage or an intentional act of legislative restraint is a question that Parliament has not answered.

E. The Property Scope Divergence

Section 53 TPA is confined to immovable property, whereas the IBC's avoidance provisions extend to all property of the corporate debtor.[21] In a contemporary insolvency involving a technology company or a financial institution, the most significant pre-insolvency transfers may involve intangibles, receivables, or contractual rights, all beyond Section 53's reach. For such transactions, the IBC is the only available remedy and its avoidance framework operates without any competition from the TPA.

V. JUDICIAL APPROACH TO THE COEXISTENCE OF SECTION 53 TPA AND IBC AVOIDANCE PROVISIONS

A. The Trend Toward IBC Primacy in Insolvency Proceedings

The courts and tribunals that have addressed the relationship between Section 53 TPA and the IBC avoidance provisions have generally moved toward treating the IBC as the primary instrument within insolvency proceedings. The NCLT and NCLAT have, in numerous cases, proceeded on the basis that once insolvency is commenced, the IBC's avoidance machinery is the appropriate vehicle for challenging pre-insolvency transactions and that the authority of the NCLT over those transactions is exclusive for the duration of the insolvency process.

In *Anuj Jain v. Axis Bank Ltd.*,[22] the Supreme Court offered what is perhaps the most authoritative judicial statement on the relationship between the insolvency estate and pre-insolvency transactions. The court emphasised that the IBC creates a complete code for insolvency matters and that the resolution professional's power to avoid transactions is an integral part of that code. The Supreme Court's constitutional validation of the IBC in *Swiss*

[21] IBC sec. 3(27). The definition of "property" under the Code expressly includes "money, goods, actionable claims, land and every description of property situate in India or outside India and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property."
[22] (2020) 8 SCC 401, paras. 72-79.

Ribbons Pvt. Ltd. v. Union of India[23] further entrenched the Code's status as a comprehensive and self-contained regime.

B. Section 53 TPA's Continuing Relevance Outside Insolvency

Beyond the insolvency context, there is clear and continuing authority for the independent operation of Section 53 TPA. In a large number of cases involving fraudulent transfers by individual debtors, persons who are not companies in insolvency, Section 53 remains the only available remedy. The IBC's corporate insolvency resolution process applies only to corporate debtors, and the personal insolvency provisions of the IBC are not yet fully operative.

For creditors of individual debtors, traders, partners, and proprietors, Section 53 TPA continues to be the primary statutory protection against fraudulent asset diversion. In this sphere, the two regimes do not conflict at all; they occupy entirely separate domains. As confirmed in *Innoventive Industries Ltd. v. ICICI Bank,*[24] the IBC's new paradigm operates within the specific domain of corporate insolvency, leaving the broader field of individual debtor-creditor relations to pre-existing law.

C. The Missing Judicial Framework: No Settled Test for Inconsistency

What is conspicuously absent from the case law is a clear, principled judicial framework for determining when Section 53 TPA is displaced by the IBC and when it continues to operate alongside it. Courts have tended to deal with questions of avoidance transactionally, resolving the specific dispute before them without laying down a general rule. The result is a body of case law that is coherent in its outcomes but lacking in analytical architecture.

A critical reading of the existing decisions suggests that courts have relied on three informal principles: (i) that Section 238 IBC displaces inconsistent provisions of the TPA in insolvency proceedings; (ii) that the IBC's provisions are lex specialis with respect to insolvency-related avoidance;[25] and (iii) that Section 53 TPA continues to operate in contexts where no

[23] Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407, pams. 71-75. The Supreme Court confirmed that the IBC creates a new paradigm displacing prior insolvency law and that its provisions must be interpreted in light of this overarching purpose.

[24] Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17, paras. 28-34 (upholding the constitutional validity of the IBC and confirming its character as a complete and comprehensive code for insolvency matters).

[25] See generally Umakanth Warmth & Wee Loon Yeo, Comparative Corporate Insolvency Law.- Asia-Pacific Perspectives ch. 7 (2019) (analysing avoidance frameworks across insolvency codes and noting the tension between individual creditor remedies and collective insolvency avoidance).

insolvency proceeding is pending. None of these principles has been stated with the clarity that a settled legal question demands.

VI. IS SECTION 53 TPA REDUNDANT? A CRITICAL ANALYSIS

A. The Case for Redundancy

The argument that Section 53 has become redundant rests on three pillars. First, in the most commercially significant cases, large corporate insolvencies involving substantial pre-insolvency asset diversions, the IBC's avoidance framework is more powerful, more comprehensive, and better institutionally equipped to provide relief. The resolution professional has investigative powers, access to company records, and the authority to challenge a wide range of transactions across all asset classes.

Second, Section 238's overriding clause, read with the **IBC's** status as a comprehensive code, effectively displaces Section 53 in insolvency proceedings. As commentators have noted, a parallel proceeding under Section 53 would create conflicting orders and undermine the integrity of the insolvency process.[26] Third, the confmement of Section 53 to immovable property means that even in non-insolvency contexts, a substantial portion of fraudulent asset diversions fall entirely outside its scope. A provision so limited in reach can claim only a reduced relevance.

B. The Case Against Redundancy

Despite these arguments, the conclusion of full redundancy is, it is submitted, too hasty and insufficiently attentive to the structural differences between the two regimes. Section 53 TPA serves a population of creditors, those dealing with individual debtors, sole proprietors, and partnership firms, and companies outside formal insolvency, who have no access to the IBC's avoidance framework. For these creditors, Section 53 is not merely relevant; it is irreplaceable.

Moreover, even within the corporate insolvency context, there are situations in which the IBC's avoidance provisions may fail to capture a fraudulent transfer. If the transfer occurred outside the look-back period, Sections 43 and 45 are unavailable. Section 49, though

[26] Anand Mîsra, Fraudulent Transfers and the Insolvency Code: An Uneasy Coexistence, 42 Delhi L. Rev. 113, 127-131 (2020).

temporally unrestricted, requires proof of an intent to defraud, making it practically more demanding. A creditor with a straightforward case of fraudulent intent and immovable property outside the look-back period might find Section 53 TPA to be her most direct remedy, provided that no insolvency is yet pending and the civil court's jurisdiction is unimpeded.

C. The Correct Analytical Frame: Structural Subordination

The most intellectually honest characterisation of Section 53's current status is not redundancy but structural subordination. It remains a valid and operative provision of Indian law. It has not been repealed or expressly overridden in its entirety. But its domain has been substantially narrowed by the IBC: it operates freely only outside insolvency proceedings; within insolvency, it yields to the IBC and to the NCLT's jurisdiction.

A useful analogy may be found in the relationship between the Specific Relief Act and the broader contractual remedies under the Contract Act. The Specific Relief Act did not render the Contract Act's damages provisions redundant; the two co-exist, with the former occupying a specific domain and the latter operating as the general background rule.[27] Section 53 TPA now occupies a similarly residual position. It is not the front-line remedy in insolvency, but it continues to fill a gap that the IBC leaves open.

[27] This analogy draws on the principle of lex specialis derogat legi generali: the more specific law governing insolvency matters (the IBC) governs over the more general property law (the TPA) in the domain of insolvency. See Innoventive Industries, (2018) 1 SCC 407, para. 72.