



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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THE DOCTRINE OF CLOG ON THE EQUITY OF REDEMPTION UNDER INDIAN PROPERTY LAW: A CRITICAL ANALYSIS

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Abstract

The doctrine of clog on the equity of redemption occupies a central place in the jurisprudence of mortgage law. Rooted in the equitable maxim “once a mortgage, always a mortgage”, the doctrine seeks to protect the mortgagor’s inherent right to reclaim the mortgaged property upon discharge of the debt. Under Indian law the right finds statutory expression in Section 60 of the Transfer of Property Act, 1882. This paper undertakes a critical examination of the doctrine, tracing its historical evolution from English equity courts through Privy Council decisions to its present statutory and judicial form in India. It analyses the principal categories of contractual stipulations that have been held to constitute clogs, evaluates the Supreme Court’s and High Courts’ approach to long-term postponement of redemption, and examines the interaction of the doctrine with the Limitation Act, 1963 and the securitisation regime under the SARFAESI Act, 2002. The paper argues that while the doctrine continues to serve an important protective function for vulnerable borrowers, its mechanical application without regard to commercial realities and the changed socio-economic context risks undermining contractual certainty. It concludes with suggestions for a more nuanced, context-sensitive application of the doctrine that balances the equitable protection of mortgagors with the legitimate expectations of mortgagees in contemporary credit markets.

Keywords: Clog on redemption; Equity of redemption; Section 60 Transfer of Property Act; Once a mortgage always a mortgage; Limitation; SARFAESI; Usufructuary mortgage; Freedom of contract.

Introduction

The relationship of mortgage is one of the oldest and most enduring forms of security for debt. At its heart lies a fundamental tension: the mortgagee seeks the greatest possible security and control over the property, while the mortgagor seeks to retain the possibility of recovering the property once the debt is repaid. Equity, from its earliest intervention in English land law, resolved this tension in favour of the mortgagor by recognising an “equity of redemption” – a right that could not be fettered or clogged by contractual stipulation. The maxim that crystallised this approach – “once a mortgage, always a mortgage” – was classically stated by Lord Lindley in *Santley v Wilde*.¹ This maxim has travelled across jurisdictions and continues to shape the law of India more than a century after the enactment of the Transfer of Property Act, 1882.

In India the right of redemption is no longer a pure creature of equity; it is a statutory right conferred by Section 60 of the Transfer of Property Act, 1882.² The section provides that at any time after the principal money has become due, the mortgagor has a right, on payment or tender of the mortgage-money at a proper time and place, to require the mortgagee to deliver the mortgage-deed and, where the mortgagee is in possession, to deliver possession of the mortgaged property. The proviso to the section recognises only two modes of extinguishment of this right: by act of the parties or by decree of a court. The absence of any saving clause of the kind “in the absence of a contract to the contrary” is significant. It indicates that the right cannot be contracted away at the time of the mortgage itself. This legislative choice reflects a deliberate policy decision to protect the mortgagor against the superior bargaining power of the mortgagee.

Despite the statutory formulation, the doctrine of clog continues to generate substantial litigation. Courts are repeatedly called upon to decide whether a particular stipulation – a long term of years, a condition converting the mortgage into a sale on default, a restraint on alienation, or a collateral advantage reserved to the mortgagee – crosses the line from legitimate contractual arrangement into an impermissible clog. The answers given by the courts have not always been consistent. Some decisions emphasise the protective purpose of the doctrine and strike down long terms with relative ease. Others stress the importance of contractual freedom and uphold long postponements

¹Santley v Wilde [1899] 2 Ch 474 (CA) 475 (Lindley MR).

²Transfer of Property Act 1882, s 60.

where the bargain appears fair on its face. The interaction of the doctrine with modern statutes such as the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) has introduced further complexity, as the legislature has itself curtailed the right of redemption in the interest of efficient recovery of non-performing assets.

This paper seeks to provide a comprehensive and critical analysis of the doctrine. It begins by examining the conceptual foundations of the mortgage and the right of redemption under the Transfer of Property Act. It then traces the historical development of the doctrine from English equity through colonial reception to its statutory form in India. The principal categories of clog are analysed with detailed reference to leading authorities of the Privy Council, the Supreme Court and the High Courts. Particular attention is paid to the controversial question of long-term postponement of redemption and to the interaction of the doctrine with the law of limitation. The paper also considers the impact of the SARFAESI regime on the traditional equity of redemption and the resulting tension between equitable protection and legislative policy. Finally, it offers a critical evaluation of the current state of the law and suggests reforms that would better reconcile the protective purpose of the doctrine with the needs of a modern credit economy. Throughout, the analysis remains grounded in the primary sources of Indian property law while drawing comparative insights from English equity where they illuminate the Indian position.

Mortgage and the Right of Redemption: Conceptual Foundations

Section 58 of the Transfer of Property Act defines a mortgage as the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.³ The transferor is called the mortgagor and the transferee the mortgagee. The definition makes clear that what is transferred is not the property itself but an interest in the property. The residual interest – the equity of redemption – remains with the mortgagor. This residual interest is the subject matter of the doctrine of clog.

The right of redemption is therefore an incident of a subsisting mortgage. It is not a right conferred by the mortgage deed; it arises by operation of law from the very nature of the transaction. As

³Transfer of Property Act 1882, s 58.

Mulla observes, the right to redeem is inherent in the relation of mortgagor and mortgagee and cannot be taken away by any stipulation in the mortgage instrument itself.⁴ The statutory embodiment of this principle in Section 60 reinforces the position that the right is available so long as the mortgage subsists and has not been extinguished in one of the two modes recognised by the proviso. The right is thus both statutory and proprietary in character.

The practical content of the right is straightforward. Upon payment or tender of the mortgage-money the mortgagor is entitled to (a) delivery of the mortgage-deed and all documents relating to the mortgaged property, (b) where the mortgagee is in possession, delivery of possession, and (c) at the option of the mortgagor, a reconveyance of the property or an assignment of the mortgage debt to a third person nominated by the mortgagor. In addition, the mortgagor is entitled to the benefit of any accession to the property and of any improvements made by the mortgagee, subject to the mortgagee's right to compensation in appropriate cases under Sections 63 and 63A of the Act.⁵

The right may be exercised by the mortgagor or by any person interested in the equity of redemption, including a subsequent mortgagee, a purchaser of the equity of redemption, or a person having a charge on the property. Section 91 of the Act enumerates the persons who may sue for redemption.⁶ The right is not personal to the original mortgagor; it is an interest in property that is capable of transfer and devolution. This proprietary character of the equity of redemption is of considerable practical importance: it can be sold, mortgaged, or bequeathed, and the person who acquires it steps into the shoes of the original mortgagor for the purpose of redemption. Any attempt to restrain the alienability of this interest is itself treated as a clog.

It is also necessary to distinguish the contractual right of redemption from the equitable (now statutory) right. The contractual right is the right to redeem on the due date fixed by the mortgage deed. If the mortgagor fails to exercise that right on the due date, the contractual right is lost, but the equitable (statutory) right continues. The doctrine of clog is concerned primarily with attempts to fetter or extinguish this continuing statutory right. The distinction is important because a

⁴Mulla, *The Transfer of Property Act* (13th edn, LexisNexis 2018) 551.

⁵*Transfer of Property Act* 1882, ss 63 and 63A.

⁶*Transfer of Property Act* 1882, s 91.

stipulation that merely fixes the contractual due date is ordinarily valid, whereas a stipulation that seeks to prevent the exercise of the statutory right after that date is vulnerable to being struck down as a clog.

Historical Development of the Doctrine

i. English Equity Origins

The modern doctrine of clog is a product of the Court of Chancery's intervention in the harshness of the common-law mortgage. At common law a mortgage was a conveyance of the legal estate subject to a condition subsequent: if the mortgagor repaid the debt on the stipulated day (the "law day"), the conveyance became void; if he failed, the estate became absolute in the mortgagee. Equity regarded this forfeiture as unconscionable where the mortgagor was ready and willing to pay, even after the contractual date. It therefore compelled the mortgagee to reconvey the property upon payment of principal, interest and costs. The right thus recognised came to be called the equity of redemption. The intervention of equity was motivated by a desire to prevent the unconscionable enrichment of the mortgagee at the expense of the mortgagor, particularly in an era when land was the principal form of wealth and the loss of land could mean economic and social ruin.

Once the equity of redemption was established, mortgagees sought to circumvent it by inserting stipulations that either prevented the equity from arising at all or rendered its exercise illusory. Equity responded by striking down such stipulations as "clogs" or "fetters" on the equity of redemption. The principle was articulated with classic clarity by Lord Lindley in *Santley v Wilde*:

"A mortgage is a conveyance of land ldots as a security for the payment of a debt or the discharge of some other obligation for which it is given. This is the idea of a mortgage: and the security is redeemable on the payment or discharge of such debt or obligation. Any provision inserted to prevent redemption on payment or performance of the debt or obligation for which the security was given is what is meant by a clog or fetter on the equity of redemption and is therefore void. ldots Once a mortgage, always a mortgage."

The maxim has two aspects. First, a transaction that is in substance a mortgage cannot be converted into an absolute conveyance by any stipulation contained in the mortgage instrument. Second, even

after the contractual date for redemption has passed, the equitable right to redeem cannot be clogged by collateral advantages that are oppressive or that make redemption practically impossible. English law later relaxed the strictness of the second aspect, particularly in relation to collateral advantages that were not unconscionable and did not prevent redemption, as seen in *Kreglinger v New Patagonia Meat and Cold Storage Co Ltd*.⁷ The historical development in England is important for Indian law because the Indian courts, and later the Supreme Court, have repeatedly treated the English equitable principles as rules of justice, equity and good conscience applicable in India, subject of course to the express provisions of the Transfer of Property Act.

ii. Reception in India and Statutory Codification

The doctrine was received in India as a rule of justice, equity and good conscience long before the Transfer of Property Act. The Privy Council applied it in several decisions arising from the mofussil, and the Indian courts followed suit. When the Transfer of Property Act was enacted in 1882, the draftsmen deliberately omitted any provision permitting a contract to the contrary in relation to the right of redemption. The omission was deliberate: the legislature intended the statutory right to be absolute and not subject to contractual negation at the inception of the mortgage. This legislative choice has been consistently respected by the courts.

The Privy Council in *Mohammad Sher Khan v Seth Swami Dayal* reaffirmed that a condition postponing the right of redemption beyond the contractual term in the event of default was a clog and therefore void.⁸ The Supreme Court of India has consistently treated the doctrine as part of the law of the land, describing it as a rule of justice, equity and good conscience that must be moulded to the realities of each transaction. In *Pomal Kanji Govindji v Vrajlal Karsandas Purohit* the Court observed that the doctrine must be adapted to the reality of the situation and the individuality of the transaction, taking note of the time, the condition of the parties, the price spiral, the term of the bargain and other obligations against the background of the financial condition of the parties.⁹

The Statutory Framework: Section 60 of the Transfer of Property Act

⁷*Kreglinger v New Patagonia Meat and Cold Storage Co Ltd* [1914] AC 25 (HL).

⁸*Mohammad Sher Khan v Seth Swami Dayal* AIR 1922 PC 17.

⁹*Pomal Kanji Govindji v Vrajlal Karsandas Purohit* (1989) 1 SCC 458.

Section 60 is the cornerstone of the Indian law of redemption. It provides that at any time after the principal money has become due, the mortgagor has a right, on payment or tender at a proper time and place of the mortgage-money, to require the mortgagee to deliver the mortgage-deed and all documents relating to the mortgaged property, and where the mortgagee is in possession, to deliver possession thereof. The proviso states that the right conferred by this section has not been extinguished by act of the parties or by decree of a court. The section is deliberately framed without the familiar formula “in the absence of a contract to the contrary”, thereby signalling that the right is non-derogable at the inception of the mortgage.

Two points deserve emphasis. First, the right arises “at any time after the principal money has become due”. The mortgagor cannot compel redemption before the contractual due date unless the mortgagee has done something that accelerates the right (for example, by taking possession in breach of the terms of the mortgage or by otherwise acting inconsistently with the continuance of the mortgage). Second, the only recognised modes of extinguishment are act of the parties (for example, a subsequent deed of release or a sale of the equity of redemption by the mortgagor) and a decree of a competent court (for example, a decree of foreclosure or a decree confirming a sale in execution of a mortgage decree). A contractual stipulation contained in the original mortgage instrument cannot extinguish the right. The Supreme Court has repeatedly held that Section 60 confers a statutory right that cannot be fettered by any agreement made at the time of the mortgage. In *Shivdev Singh v Sucha Singh* the Court observed that the right of redemption is a statutory right and any condition that has the effect of extinguishing or clogging that right is void.¹⁰

It is also necessary to note the distinction between an agreement made at the time of the mortgage and a subsequent agreement. A subsequent agreement by which the mortgagor releases the equity of redemption or sells it to the mortgagee is valid, provided it is independent of the original mortgage transaction and is supported by consideration. The courts scrutinise such subsequent transactions carefully to ensure that they are not merely colourable devices to achieve what could not be achieved in the original mortgage deed. The distinction between original and subsequent agreements remains one of the most important practical applications of the doctrine.

¹⁰Shivdev Singh v Sucha Singh (2000) 4 SCC 326.

Instances of Clog on the Right of Redemption

Indian courts have identified several recurring categories of stipulations that constitute clogs. The classification is not exhaustive; each case must be examined on its own facts. Nevertheless, the following categories cover the great majority of decided cases and provide a useful analytical framework for understanding the operation of the doctrine.

a. Condition of Sale in Default

A stipulation that upon default in payment by a specified date the mortgage shall automatically become an absolute sale is a classic clog. The reason is obvious: such a condition seeks to convert a security transaction into a conveyance and thereby extinguish the equity of redemption. In *Gulab Chand v Saraswati Devi* the Supreme Court held that a clause in a mortgage by conditional sale providing that the mortgagee would become the owner of the property if any notice of breach of lease covenants was received within four years was a clog and therefore unenforceable.¹¹ The Court emphasised that the character of the transaction as a mortgage could not be altered by any such stipulation. It is important to distinguish a true mortgage by conditional sale (which is recognised as a distinct form of mortgage under Section 58(c) of the Act) from a simple mortgage containing a condition of sale on default. In the former case the transaction is intended from the outset to operate as a sale if the condition is not fulfilled; in the latter the condition is an attempt to transform a pure security into a sale. The courts look to the substance of the transaction rather than its form.

b. Postponement of Redemption for a Long Term

This is the most litigated and the most nuanced category. A mere agreement that the mortgage shall not be redeemable for a fixed period is not, without more, a clog. The parties are free to fix a term during which the principal shall not be called in. The difficulty arises when the term is so long that, in the circumstances of the case, it effectively prevents the mortgagor from ever recovering the property, or when the long term is coupled with other oppressive conditions. In *Seth Ganga Dhar v Shankar Lal* the Supreme Court upheld an 85-year term, holding that the length of

¹¹Gulab Chand v Saraswati Devi AIR 1997 SC 242.

the term by itself did not constitute a clog.¹² The Court observed that the parties might have had legitimate reasons for agreeing to a long period and that the court should not lightly interfere with contractual freedom.

Subsequent decisions, however, have adopted a more contextual approach. In *Pomal Kanji Govindji* the Court emphasised that the doctrine must be moulded to the realities of the situation. Factors such as the economic condition of the mortgagor, the rate of interest, the obligations imposed on the mortgagor in respect of repairs and improvements, and the inflationary rise in property values must all be taken into account.¹³ A term that might have been reasonable in an earlier era may become oppressive in a period of rapid inflation. High Courts have increasingly treated very long terms (99 years, 95 years, 90 years) as raising a presumption of clog, especially when the mortgagor is a person of limited means and the mortgagee has been in long possession. The modern trend is therefore to treat extreme length of term as a strong indicator, though not conclusive proof, of a clog, and to examine the surrounding circumstances with care.

c. Condition Postponing Redemption in the Event of Default

A stipulation that if the mortgagor fails to pay on the due date the right of redemption shall be postponed for a further substantial period is almost invariably struck down. In *Mohammad Sher Khan v Seth Swami Dayal* the mortgage was for five years with a condition that on default the mortgagee could take possession for twelve years during which the mortgagor could not redeem. The Privy Council held the condition to be a clog.¹⁴ The rationale is that such a condition does not merely fix the original term; it imposes an additional penalty for default that hinders an already accrued right of redemption. Similar reasoning has been applied to clauses that require the mortgage to be renewed for a further long period upon default. The courts have consistently refused to allow the mortgagee to convert a temporary default into a permanent or long-term deprivation of the equity of redemption.

¹²Seth Ganga Dhar v Shankar Lal AIR 1958 SC 773.

d. Restraint on Alienation and Collateral Advantages

A condition that the mortgagor shall not transfer the equity of redemption, or that any transfer shall be void, is a clog. The equity of redemption is an interest in property and is freely alienable. Any attempt to restrain that alienability is inconsistent with the nature of the interest and is therefore void. In *Kuddi Lal v Aisha Jehan Begam* a condition that the mortgagor could redeem only by making personal payment and not by transferring the property was held to be a clog.¹⁵ The same principle applies to a condition requiring the personal attendance of the mortgagor for redemption or prohibiting redemption through an agent or assignee.

Not every collateral advantage reserved to the mortgagee is a clog. A reasonable rate of interest, a right to the usufruct in a usufructuary mortgage, or a stipulation for payment of costs of improvements are all legitimate incidents of the security. The difficulty arises when the collateral advantage is so extensive or so enduring that it continues after redemption or makes redemption economically unviable. English law, after a period of strictness, has moved towards a more liberal approach that permits collateral advantages provided they are not unconscionable and do not prevent redemption. Indian courts have generally followed a similar path, examining each stipulation in its factual matrix rather than applying a rigid rule. A stipulation that the mortgagee shall remain in possession as a permanent tenant even after redemption has, however, been consistently held to be a clog.

Judicial Approach: Leading Precedents Critically Examined

The Indian judiciary has developed a substantial body of case law on the doctrine. A few decisions deserve closer examination because they illustrate both the protective purpose of the doctrine and the difficulties of its application. In *Meharban Khan v Makhna* the mortgagee was entitled to possession for nineteen years. The deed further provided that on repayment the mortgagor would recover only a limited interest and that on default the property would stand permanently transferred. The Privy Council held both stipulations to be clogs.¹⁶ The decision is important for its insistence that upon full payment the property must be restored free of all liens created by the

¹⁵Kuddi Lal v Aisha Jehan Begam AIR 1927 Oudh 113.

¹⁶Meharban Khan v Makhna AIR 1930 PC 142.

mortgage instrument. It also illustrates the court's willingness to look beyond the formal language of the deed to the practical effect of the stipulations.

In *Hari v Vishnu* two successive mortgages were clubbed into a single instrument and the mortgagor was prohibited from redeeming until both sums were paid. The Bombay High Court held that the stipulation was not a clog because the transactions had been consolidated by mutual consent.¹⁷ The decision illustrates that a subsequent agreement that merely consolidates existing liabilities may be valid even if it postpones redemption of one mortgage until the other is discharged. The distinction between an original clog and a subsequent consolidation remains important in practice.

The decision in *Pomal Kanji Govindji* is particularly significant for its methodological approach. The Court refused to apply a mechanical test based solely on the length of the term. Instead it insisted on a holistic examination of the entire bargain: the financial condition of the parties, the rate of interest, the obligations regarding construction and repairs, and the economic environment. The Court observed that freedom of contract is permissible provided it does not lead to taking advantage of the oppressed or depressed.¹⁸ This contextual approach has been followed in subsequent decisions and represents the modern orthodoxy. It is submitted that this approach correctly balances the protective purpose of the doctrine with the need for contractual certainty.

In *Shivdev Singh v Sucha Singh* the Supreme Court reaffirmed that a 99-year term, examined in the light of the surrounding circumstances, could constitute a clog. The Court emphasised that the doctrine is a rule of justice, equity and good conscience that must be adapted to the individuality of each transaction.¹⁹ The decision is also notable for its rejection of the argument that long terms are customary in certain regions and therefore immune from scrutiny. More recent High Court decisions continue to refine the doctrine. Courts have held that a term of 29 years or more, when coupled with other onerous conditions, may amount to a clog, and that the right to redeem cannot be postponed indefinitely by successive renewals. The trend is towards a fact-sensitive inquiry that

¹⁷*Hari v Vishnu* ILR 28 Bom 349.

takes account of changed economic conditions, particularly the rapid appreciation of urban land values.

Is the Right of Redemption Barred by Limitation?

Article 61(a) of the Limitation Act, 1963 prescribes a period of thirty years for a suit to redeem or recover possession of immovable property mortgaged.²⁰ The period begins to run when the right to redeem or to recover possession accrues. Section 27 of the same Act provides that at the determination of the period limited for instituting a suit for possession of any property, the right to such property shall be extinguished.²¹ The interaction of these provisions with the doctrine of clog has generated difficulty. If a mortgage contains a term that is subsequently held to be a clog, does the right to redeem accrue only when the court declares the clog void, or does limitation run from the original contractual due date?

The better view, supported by recent High Court authority, is that when a term is read down as a clog, the right to redeem accrues on the date the clog is lifted by the court, and limitation begins to run only from that date. This approach prevents the mortgagee from benefiting from his own attempt to clog the equity. In the case of usufructuary mortgages where no time is fixed for redemption, the Supreme Court has held that limitation does not begin to run from the date of the mortgage but from the date when the mortgagor pays or tenders the mortgage money. Until such payment the right of the mortgagee to seek a declaration of title remains unaffected. This principle preserves the equity of redemption for as long as the mortgagor has not discharged the debt. There remains, however, a degree of uncertainty about the precise moment at which the right to redeem accrues when a clog is involved. Legislative clarification of the commencement of the limitation period in such cases would be desirable.

The Doctrine in the Age of SARFAESI

The enactment of the SARFAESI Act, 2002 has significantly altered the landscape of enforcement of security interests. Section 13 of the Act confers wide powers on secured creditors to take possession and sell the secured asset without the intervention of the court. The 2016 amendment

²⁰Limitation Act 1963, art 61(a).

²¹Limitation Act 1963, s 27.

to Section 13(8) of the SARFAESI Act has restricted the borrower's right to redeem after the publication of the auction notice.²² In recent decisions the Supreme Court has clarified that, post-amendment, the right of redemption ceases with the publication of the notice of sale. This statutory curtailment does not constitute a "clog" in the traditional sense; it is a legislative modification of the right itself. Nevertheless, the courts have insisted on strict compliance with the procedural requirements of the Act and the Rules, and have been willing to set aside sales that are conducted in violation of those requirements, thereby effectively restoring the borrower's ability to redeem.

The SARFAESI regime therefore illustrates a broader tension. On the one hand, the traditional doctrine of clog continues to protect individual mortgagors against oppressive contractual terms. On the other hand, the legislature has deliberately curtailed the right of redemption in the interest of efficient recovery of non-performing assets. The challenge for the courts is to ensure that the statutory curtailment does not become a vehicle for abuse while at the same time respecting the legislative policy of speedy enforcement. The interaction of the two regimes remains an area in which further authoritative guidance from the Supreme Court would be welcome. A coherent theory of the doctrine must explain why private parties cannot do what the legislature can do. One possible reconciliation is that the doctrine is concerned with the protection of the weaker party in a private bargain, whereas the SARFAESI curtailment is a public-policy measure aimed at systemic financial stability. Even on this view, however, the courts must remain vigilant to ensure that the statutory power is not used in a manner that is itself oppressive or contrary to the principles of natural justice.

Critical Analysis: Equity, Contract and Policy

The doctrine of clog is frequently justified on the ground that the mortgagor is the weaker party and that equity must intervene to prevent the mortgagee from exploiting that weakness. There is undoubted historical truth in this justification, as noted by early commentators such as Wyman.²³ In an agrarian society where land was the primary form of wealth and credit was scarce, the risk of forfeiture was real and the protective role of equity essential. The same justification continues

²²Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, s 13(8) (as amended in 2016).

²³Bruce Wyman, 'The Clog on the Equity of Redemption' (1908) 21 Harvard Law Review 459.

to have force in contemporary India, particularly in transactions involving small agriculturists, urban poor, and first-time home buyers who deal with institutional lenders possessing vastly superior bargaining power and legal resources.

At the same time, the doctrine can produce commercial uncertainty. Sophisticated borrowers who negotiate complex financing arrangements may find that terms carefully drafted to allocate risk are later struck down as clogs. Long-term project finance, leasehold mortgages, and structured finance transactions often require periods of non-redemption that would, under a rigid application of the doctrine, be vulnerable to challenge. The contextual approach developed in *Pomal Kanji* and subsequent cases mitigates this risk to some extent by requiring courts to examine the entire bargain rather than applying a mechanical test. Nevertheless, the residual uncertainty remains a cost of the doctrine. A further difficulty is the relationship between the doctrine and the principle of freedom of contract. Section 60 does not contain a saving for contracts to the contrary. The courts have therefore treated the statutory right as non-derogable at the inception of the mortgage. This is a strong intervention in the contractual process. While it may be justified in the case of standard-form consumer mortgages, its application to negotiated commercial transactions between parties of equal bargaining power is more difficult to defend on policy grounds.

Finally, the doctrine sits uneasily with the modern statutory regimes that deliberately curtail the equity of redemption in the interest of financial stability. If the legislature can extinguish or severely restrict the right of redemption under SARFAESI, the claim that the right is so fundamental that it cannot be the subject of private bargain becomes harder to sustain. A coherent theory of the doctrine must explain why private parties cannot do what the legislature can do. One possible reconciliation is that the doctrine is concerned with the protection of the weaker party in a private bargain, whereas the SARFAESI curtailment is a public-policy measure aimed at systemic financial stability. Even on this view, however, the courts must remain vigilant to ensure that the statutory power is not used in a manner that is itself oppressive or contrary to the principles of natural justice. A more differentiated approach that distinguishes consumer from commercial mortgages would better reflect the diverse contexts in which the doctrine is invoked.

10. Conclusion and Suggestions

The doctrine of clog on the right of redemption remains a vital part of Indian property law. It continues to perform an important protective function, particularly for vulnerable mortgagors who lack the resources to negotiate on equal terms. The statutory foundation provided by Section 60 of the Transfer of Property Act, coupled with a rich body of case law, ensures that the equity of redemption cannot be lightly extinguished. At the same time, the doctrine is not free from difficulty. Its application to long-term commercial transactions can generate uncertainty. Its interaction with the SARFAESI regime reveals a tension between traditional equitable protection and modern legislative policy favouring rapid recovery of secured debt. The contextual approach developed by the Supreme Court in decisions such as *Pomal Kanji Govindji* and *Shivdev Singh* is a welcome development, but greater clarity is still required.

The following suggestions are offered for the further development of the law. First, courts should continue to apply a contextual, multi-factor test when examining long-term postponements of redemption. The length of the term should be only one factor among many; the economic condition of the parties, the presence or absence of oppressive collateral stipulations, and the commercial purpose of the transaction should all be weighed. A mechanical approach based solely on the number of years is neither necessary nor desirable. Second, a clearer distinction should be drawn between consumer mortgages and commercial mortgages. In the former category the protective function of the doctrine should remain robust; in the latter a greater degree of contractual freedom may be appropriate, subject always to the prohibition of unconscionable terms. Third, the relationship between Section 60 of the Transfer of Property Act and the SARFAESI Act should be clarified by legislative amendment or authoritative judicial pronouncement, so that the extent to which the equity of redemption survives the initiation of measures under the Act is placed beyond doubt. Fourth, the limitation period for redemption suits should be reconsidered in the light of modern conditions. A thirty-year period may be excessively long in an era of rapid changes in land values and ownership patterns; a shorter period, coupled with clear rules on the accrual of the cause of action when a clog is lifted, would promote certainty without unduly prejudicing mortgagors. Fifth, greater attention should be paid to the form and content of standard-form mortgage documents used by institutional lenders. Regulatory guidance requiring clear disclosure of any term that postpones or conditions the right of redemption would assist borrowers in understanding their rights and would reduce the incidence of litigation.

In the final analysis the doctrine of clog remains a necessary safeguard against the exploitation of the weaker party in mortgage transactions. Its continued vitality depends on the ability of the courts to apply it with sensitivity to the facts of each case and to the evolving commercial and social context in which mortgages are created and enforced. The maxim “once a mortgage, always a mortgage” still speaks with force; the task of the contemporary lawyer and judge is to ensure that it speaks with wisdom as well.

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