UNDERSTANDING MORTGAGE AS A MEDIUM OF LOAN: RIGHTS AND LIABILITIES OF MORTGAGOR AND MORTGAGEE

Shringar Mishra*

INTRODUCTION

The mortgage functions as a financial instrument that enables borrowing funds mainly dedicated to acquiring real estate properties. Homeowners can use this transaction to guarantee loans from their lender in exchange for property ownership rights.[1] Through this agreement, the borrower acquires major financial support, and the lender achieves dependable loan repayment using an asset pledge. Through mortgages, the financial and legal system provides people and companies with a way to purchase real estate properties without requiring total payment at the beginning. Real estate sector development depends heavily on mortgages as they drive both property investment and economic progress, and financial system strength. Real estate deals coupled with repayment terms allow individuals to buy properties, grow businesses, and make real estate investments while following specific payment schedules. Real estate investments increase when mortgages become available, which generates employment opportunities within construction as well as the real estate services industries and their connected sectors. Financial institutions create mortgage-backed securities (MBS) that traders use to invest in real estate financing and reduce economic risks nationwide. The process allows investors to participate in the real estate market's benefits and risk distribution. The mortgage agreement functions as a legally binding document that presents all financial conditions regarding the loan payments and schedules, along with rates of interest and default penalties.[2] Ownership of the property remains with the borrower while the mortgage holder acts through a legal lien until the loan payment is complete. Mortgage lending implements regulatory standards that protect mortgage borrowers from unethical lending activities while following

*BBA LLB, THIRD YEAR, SYMBIOSIS LAW SCHOOL, NAGPUR.

[1] John Smith, Comparative Analysis of Mortgage Laws: A Global Perspective, 45(3) J. PROP. L. 210 (2020) Mortgage Act 1980, § 5 (UK)

[2] M.L. Abdul Jabbar Sahib v The Supreme Court addressed mortgage legal enforceability in Venkata Sastri & Sons, AIR 1969 SC 1147

legal safety protocols. The failure of a responsible borrower allows their lender to initiate court-backed or non-court-directed mortgage foreclosure procedures allowed within their local government area.[3] Banks must prove their rights by registering property mortgages within their assigned land registration system. The legal regulations exist to stabilise mortgage systems by safeguarding properties and maintaining the legal duties and privileges of each participating party. Mortgages exist to serve two purposes beyond individual economic security because they sustain overall economic operations. As a valuable property class, real estate appreciates, thus resulting in long-lasting economic security and expanded financial assets. The increase in real estate becomes possible through home mortgage loans, which creates employment opportunities for construction workers, real estate specialists and their associated service industry professionals.

LITERATURE REVIEW

The study of mortgage loans in India, the rights and obligations of mortgagors and mortgagees in this research, emphasises mainly what the rights and obligations of mortgagors and mortgagees are under the Contract Act. Where one party is bound to pay the debt and get the mortgaged immovable property back, whereas the right that vests with the other party is to dispose of the mortgaged property in exchange for the loan amount if the mortgagor fails to pay the debt amount within a fixed or predetermined time. This paper describes that the mortgagee has the power to dispose of the mortgaged property if the mortgagor is in default with the terms and conditions set in the mortgage loan deed.[4] This research also includes the main obligations of both parties when the mortgaged loan deed is prepared, which says that the mortgagee needs to act honestly, and the mortgagor, on the other hand, needs to preserve the property. The research explains in detail what the benefits of a mortgage are under Indian law in a contract where the mortgage serves as a medium of loan.[5] The paper analyses various laws and theories in addition to the section that governs the mortgage loan in India, the different methods that mortgagors have in Indian law when the mortgagor is unable to pay the loan amount within a fixed time, and the methods that are provided for the mortgagee if the mortgagor is in default.[6]

---

[3] Kedar Nath v. Sheo Narain, (1911) ILR 33 All 356 (SC) – Discussing the rights of mortgagees in foreclosure
[4] The Indian Contract Act, No. 9 of 1872, § 10, INDIA CODE (1872)
[5] The Indian Contract Act, No. 9 of 1872, § 10, INDIA CODE (1872)
[6] M.L. Abdul Jabbar Sahib v. The Supreme Court addressed mortgage legal enforceability in Venkata Sastri & Sons, AIR 1969 SC 1147

The main analysis here in the paper that is included is that both parties must act reasonably and in good faith, which means that if the mortgagee is provided with certain ways to act under Indian law, for example, the mortgagee has been provided with the right to sell the property, and if he so performs this right, then that should be in good faith, where the ill will intention is absent, and gets the reasonable price of the immovable property that was mortgaged for the loan. In addition to this, there are obligations of the mortgagor to inform about certain relevant information, if any, related to the property, which can be important to such borrowings. The interrelation between the mortgagor and mortgagee in financial activity by Shariah people. This is the study by Dr. Md. Akhtaruzzamman that describes the relation between mortgagor and mortgagee under Islamic law.[7] This paper tries to highlight that under Islamic law, in the mortgage loan, the mortgagee is considered to be the paid rent instead of interest on the loan, and the other party, the mortgagor, keeps the ownership of the mortgaged property in exchange for the loan. The paper clearly states the rights and obligations of both parties in the contract of the mortgage loan, which go hand in hand.

The article by Professor Susan Bright is based on the legal structure of mortgages in India.[8] This paper explains the dual connection that exists when it comes to mortgages as a medium of loan because there is a case where the mortgagor and mortgagee both have rights and certain obligations towards each other that draw it towards a dual nature. For example, the mortgagor in the mortgage loan contract has duties to preserve the property and act reasonably, and at the same time, the mortgagee must act honestly. The other important point that is covered under this article is the result of equity, which gives a proper structure to the relationship between the mortgagor and mortgagee. In addition to the above, there is also a consumer protection law in mortgage loans that is framed by the RBI (Reserve Bank of India),[9] which provides other ways for its customers to go with in case they fail to cover the debt of the mortgage loan. When it comes to mortgages as a medium of loan, various other laws deal with consumer protection, like TILA (Truth in Lending Act) and FDCPA (Fair Debt Collection Practices Act).[10] These

[7] Md. Akhtaruzzaman, The Interrelation Between Mortgagor and Mortgagee in Financial Activity Under Sharia Law, 34 J. Islamic Banking & Fin. 45 (2018)

[8] Susan Bright, The Dual Nature of Mortgagor and Mortgagee Rights in Indian Mortgage Law, 45 Indian L.J. 123 (2017)

[9] The Reserve Bank of India issued Fair Practices Code for Lenders: Consumer Protection in Mortgage Loans which can be accessed at https://www.rbi.org.in; RBI/2023-24/25 (2023)

[10] Truth in Lending Act, 15 U.S.C. §§ 1601-1667f (2012)

The debt collection guidelines established by Fair Debt Collection Practices Act are stated under 15 U.S.C. §§ 1692-1692p (2012) acts are secondary to the Transfer of Property Act 1882,[11] which is primary to all other laws that come up with the rules and regulations that govern unfair practices related to loans, whether they are mortgaged or any other, and safeguard their customer interest in mortgaged loans from unethical debt practices.[12]

STATEMENT OF THE PROBLEM

Mortgages serve as vital financial tools for buying property and driving national development, yet multiple obstacles presently slow down their operational success. Financial difficulties affect multiple borrowers because they lack a proper understanding of their rights in borrowing and mortgage documentation, interest rates, coupled with foreclosure procedures and legal safety measures. Borrowers face mistreatment from lenders because they use misleading fees while conducting improper foreclosure procedures following their predatory lending approach. As a result of insufficient legal strength, the territorial dispute resolution systems cause extended court battles that fail to help lenders and borrowers find suitable dispute resolution. Equitable and legal mortgages create two fundamental legal obstacles because they require separate identification of distinct contracts and their various meanings for borrowers. The mortgage system's clear objectives require strong legal systems combined with improved borrower education under better regulatory supervision to be successfully implemented.

Exploitation by Lenders and Unfair Foreclosure Practices: The lending practices of certain lenders include using predatory methods, together with undisclosed fees and high-interest fees. Unfair and aggressive foreclosure tactics deprive borrowers of fair treatment.

Lack of Awareness Regarding Borrowers' Rights: Most people who borrow mortgages lack a complete understanding of their contractual agreements and mortgage costs, as well as property repossession rules. Improper understanding of available legal protection leaves borrowers at risk of facing financial trouble.

Absence of a Robust Dispute Resolution Mechanism: The lack of appropriate laws for speedy and just mortgage dispute resolution exists in numerous legal jurisdictions. Long court processes suggest that borrowers rarely succeed in battling their lenders in legal proceedings.

---

[11] The Transfer of Property Act, No. 4 of 1882, § 48, INDIA CODE (1882)

[12] R.K. Sinha, The Transfer of Property Act (12th ed. 2020) – Interpretation of mortgage-related provisions

Issues Related to Equitable and Legal Mortgage: The distinct nature of equitable and legal mortgages generates various legal difficulties. Because of complex legal distinctions, borrowers find difficulty comprehending both the legal effects and their outlined rights from these different types.

OBJECTIVES

A mortgage functions as a necessary financial instrument that allows borrowers to obtain funds through the transfer of immovable assets as security. A mortgage functions as a security system for lenders, which enables borrowers to obtain large financial amounts for home purchases, business expansion or individual financial requirements. Real estate serves as security to reduce lender risks because it enables them to have legal ownership rights over the property if the borrower defaults on loan repayment. Borrowers receive multiple advantages through secured loans because they can obtain long payment periods and lower costs compared to unsecured loans. Mortgages benefit the economy by spurring property investments, which create opportunities for the development of infrastructure and maintain market financial stability. Mortgage agreements provide property buyers with the ability to become homeowners by financing their purchases, although they do not need to pay all the money up front. This facility enhances property purchase accessibility for everyone. The legal protection that mortgage agreements deliver to both borrowers and lenders emerges from their ability to define all contractual terms exactly, which minimises the chance of disputes.[13] Mortgages develop into a dependable method for financial loan execution, which supports stability between all participants in the transaction.

RESEARCH QUESTIONS

- Legal institutions throughout the world must find appropriate mechanisms to simultaneously protect the positions of both borrowers and lenders through mortgage laws.
- Death of a borrower following a foreclosure leads to specific legal effects, which borrowers experience differently in judicial versus non-judicial foreclosure systems.
- Understanding the laws regarding mortgage priorities enables us to analyse claim disputes over real property as well as learn about the principles that determine multiple mortgages.

[13] H.K. Saharay, The Indian Law of Mortgage 121 (6th ed. 2019)

- Financial regulations operate to address risks in mortgage-backed securities following the identification of legal challenges in mortgage securitisation processes.
- Blockchain, alongside digital mortgages, introduces technological changes that influence the legal system that regulates mortgage agreements.

HYPOTHESIS

- Through the Transfer of Property Act 1882, both mortgagees and mortgagors receive established rights, while their responsibilities are defined for maintaining a balanced power relationship between lenders and borrowers.
- Rights of mortgagors remain unprotected because mortgagees apply legal provisions inappropriately, while borrowers lack knowledge about Sections 60 to 66 of the Transfer of Property Act 1882.
- The law recognises judicial precedents as fundamental tools that protect mortgagor rights and help settle party disputes, thus making Indian mortgage transactions stronger.
- Property rights of mortgagors need stronger enforcement, so legal reforms must be implemented to stop mortgagees from exploiting mortgagors.
- Both parties involved can minimise disputes while improving mortgage transaction efficiency in India through simple definitions of their mutual rights and obligations.

RESEARCH METHODOLOGY

A doctrinal research methodology serves as the basis for this investigation because it examines legal principles combined with statutory provisions and judicial precedents found in the Transfer of Property Act 1882 regarding the rights and duties of the mortgagor and mortgagee. Primary and secondary sources support the research and include sections 60 to 66 of the Transfer of Property Act 1882, as well as key court decisions, together with legal commentaries and scholarly articles. The research meets its purpose by evaluating the current legal system through analysis of statutes and judicial decisions to find shortcomings and create recommended changes that safeguard mortgage agreement participants and protect property from exploitation.

CONCEPT AND DEFINITION OF MORTGAGOR AND MORTGAGEE UNDER INDIAN LAW

Chapter 2 of this paper will try to explain the definition along with the concept of the mortgagor and mortgagee under Indian law. In addition to this, this part of the paper will give its readers a clear idea as to how many types of mortgages exist, what the requisites are that contribute toward making a mortgage valid, and a short, crisp difference between mortgage, pledge, and lien that may be understood as being identical but are different from each other.[14] Definition of mortgage under section 58(a) of the Transfer of Property Act, 1882: under section 58(a) of the transfer of property act the mortgage is defined as the transfer of interest in property (immovable property) from one person to the other to secure the amount of money by way of loan for the performance of financial obligation which creates the liability or debt over the person who transfer the interest of immovable property and takes a loan.[15]

FUNDAMENTAL ASPECTS

Immovable Property: The one important element that constitutes the subject matter of a mortgage is immovable property. There is the mortgage of immovable property, which has a pecuniary value of up to 100 rupees in the eyes of the law.

Alienation: A Mortgage includes the alienation of interest in immovable property from the mortgagor to the mortgagee for a specific time.

Aim: The end objective for such a kind of transaction, like a mortgage, is to secure the future debt that exists along with the mortgagor, or for the repayment of the loan, or the performance of a financial obligation, etc.

TYPES OF MORTGAGES

There are various types of mortgages, such as simple mortgages, English mortgages, and mortgages by conditional sale.

English Mortgage: This type of mortgage is defined under the section 58(e) of the transfer of property act 1882, this is a kind of mortgage where the mortgagor transfer the absolute ownership of immovable property to the mortgagee with the purpose to take loan in the form

[14] Md. Akhtaruzzaman, Interrelation between Mortgagor and Mortgagee in Financial Activity Under Islamic Law, 42 INT'L J.L. & FIN. 128 (2019)
[15] The Transfer of Property Act, No. 4 of 1882, § 48, INDIA CODE (1882)

of debt and when that debt is covered by mortgagor towards mortgagee within fixed set period than the ownership of property gets retransferred to its primary owner who is mortgagor.

Simple Mortgage: This is the second type of mortgage, where the borrower personally bears the responsibility to repay the loan. The point that makes the simple mortgage different from others of its kind is that the mortgage property, which is in the form of security, continues to remain in the possession of the mortgagor, whereas if the mortgagee is in default of the terms of the contract, then the mortgagor can sell the property after obtaining a court decree for the same. Section 58(b) of the Transfer of Property Act defines this kind of mortgage.

Conditional Sale Mortgage: This is the third type of mortgage, which is defined in section 58(c) of the TPA ACT[16] here, the mortgagor sells the property to the mortgagee in exchange for a loan and sets the condition that if the loan is repaid within a fixed time, then the sale of the property stands void, and if the loan is not repaid, then the sale becomes absolute by its nature.

ESSENTIALS OF A VALID MORTGAGE

Certain elements make the mortgage deed valid, which are as follows:

- Alienation of ownership of property.
- Immovable property should be mortgaged.
- The borrower must have the right to redeem the mortgaged property under section 60 of TPA.
- The mortgage deed needs to be registered under the Registration Act 1908.[17]
- The principal amount of the property needs to be above 100 rupees.
- The mortgage is valid only if it is created by written agreement and is properly attested and executed.
- The mortgagor must possess the right to sell the property in case of any default.
- Personal liability of the mortgagor needs to be present

[16] The Transfer of Property Act, No. 4 of 1882, § 48, INDIA CODE (1882)
[17] The Registration Act, No. 16 of 1908, § 17, INDIA CODE (1908)

LEGAL INSTITUTIONS THROUGHOUT THE WORLD MUST FIND APPROPRIATE MECHANISMS TO SIMULTANEOUSLY PROTECT THE POSITIONS OF BOTH MORTGAGOR AND MORTGAGEE

When there is development in the technology, and along with it, the nation is on the path of development, the threats of civil wrongs, like wrongs related to a contract of mortgage or any other, also increase, and to balance or protect the party from such threats in case of mortgage, it needs a proper structure of a mortgage system that will help in safeguarding the interest of the party to mortgage from unethical and civil wrong practices. A properly structured mortgage system ensures that the mortgagee and mortgagor are protected from any kind of civil wrongs. It tries to maintain the security of the loan amount, which forms one of the very crucial subject matters of the mortgage contract.[18] The proper establishment of laws related to mortgages will not only provide security but also prevent the unfair practices that can threaten the interest of the mortgagor in the mortgage deed. The mortgage laws have a critical role to play when it comes to maintaining balance between the parties about the mortgage contract and safeguarding through trade or loans in international contracts, and coming up with them to prevent exploitation that may lead to a loss either to the mortgagor or mortgagee.[19] These laws are in need at present, not only for countries like India, but also should be uniform around the world. It is so because there are many aspects where India is involved; either a proper, effective system will lead to solving the problem of chaos and threats or criminal acts. This will also help the judicial system around the world by reducing the number of pending cases due to frequent reporting of cases in terms of fraud or civil wrongs.

SUGGESTIONS

There are a few suggestions that act as keys to the problem of achieving balance or uniformity, which are as follows:

Clear Lending Rules: When it comes to the mortgage serving as a medium of loan, there should be well-established and fixed rules like the interest rate, fees, and repayment structure

[18] Rohan Mehta, Blockchain and Real Estate Transactions: The Future of Mortgage Law, 37 HARV. J.L. & TECH. 67 (2022)
[19] Md. Akhtaruzzaman, Interrelation Between Mortgagor and Mortgagee in Financial Activity Under Islamic Law, 42 INT'L J.L. & FIN. 128 (2019)

that will govern the balance between both mortgagor and mortgagee and will help in preventing exploitative lending practices.

Laws Related to Consumer Protection: One of the elements that will help in bringing uniformity in the system of lending and borrowing, as a mortgagor or mortgagee, is when there are regulations related to consumer protection. The government needs to come up with such laws in relation to mortgages or any contract of such nature in order to ensure fairness between parties and safeguard the interests of its customers from exploitation or any kind of discrimination nationally and internationally by setting up lending standards that are strict in nature.

Protection from Charging High Interest Rates: This happens in usury laws, where the interest is charged so high that it negates the approach for middle-class income people to get loans. This remains one of the biggest drawbacks, so to prevent such high charging interest by the customer, there needs to be fixed interest rates that are reasonable and can be incurred by the middle class of people as well, thereby safeguarding their interests.

Registration System: A well-established and efficient registration system in relation to mortgage transactions can lead to a reduction of fraud and ensure more transparency, which will substantially have a positive effect on the economic growth of the country by preventing the customer from exploitation and bringing financial stability.

Alternative Dispute Resolution: The ADR mechanism helps to solve legal issues, whether related to civil or criminal wrongs, easily, without facing high legal battles in the court of law for years and years. The legal framework should encourage people to go with this mechanism, such as mediation or arbitration, thereby ensuring speedy justice and fairness in any matter.

The above-mentioned elements are crucial parts in properly structuring the legal framework related to mortgages in and out of the country, India. If these few measures are established, then it may lead to more and more uniformity and economic growth along with financial stability.[20] Not only this, but there are many other aspects where improvement can be brought up. In addition to it, there are many countries around the world where there are proper laws and structures in relation to mortgages, like America, which has laws for its consumer protection,

[20] Rohan Mehta, Blockchain and Real Estate Transactions: The Future of Mortgage Law, 37 HARV. J.L. & TECH. 67 (2022)

like TILA, RESPA, and HAMP. These laws are not the whole reason, but part of it, being one of the well-developed countries. The other countries are the United Kingdom, Canada, etc.

THE DEATH OF A BORROWER FOLLOWING A FORECLOSURE LEADS TO SPECIFIC LEGAL EFFECTS, WHICH BORROWERS EXPERIENCE DIFFERENTLY IN JUDICIAL VERSUS NON-JUDICIAL FORECLOSURE SYSTEMS

Judicial Foreclosure: In this process, the mortgagee needs to file a lawsuit for the foreclosure of the property. To ensure that the property of the deceased is properly presented and the parties who have an interest in such a mortgage contract are notified up to date about any changes or decisions for such a process, the court needs the substitute in place of the mortgagor, if he dies, to be present in the court for the proceeding to be continued and concluded with a valid ruling by the judge and in failure to substitute a valid party can lead to the foreclosure judgment to stand void and the proceeding without any legal representative of the deceased who is the mortgagor will lead to the nullity of the foreclosure judgment.[21]

Non-Judicial: Here, there is an absence of court interference in the matter because the mortgagee is allowed to foreclose without court involvement by just following the rules laid out in state laws and the deed of trust. The mortgagee needs to identify and notify the parties involved as heirs or legal representatives if the mortgagor dies at any given point in time; until these parties are properly identified and are provided with the opportunity to cross-check or issue any default, the process can get delayed.[22]

Key Differences between Judicial and Non-Judicial Foreclosure

- In judicial foreclosure, there is involvement of the court, whereas in non-judicial foreclosure, court interference is absent.
- In judicial foreclosure, the rules govern the process, whereas in non-judicial foreclosure, the state laws rule in the deed of trust, which directly includes the proceedings.

[21] M.P. Jain, Indian Constitutional Law (8th ed. 2022)
[22] R.K. Sinha, The Transfer of Property Act (12th ed. 2019)

It is important for the mortgagor, mortgagee, and their legal representative to know the law related to foreclosure; hiring a legal practitioner who is well-trained in foreclosure and probate laws can lead the foreclosure proceeding in the right direction.

UNDERSTANDING THE LAWS REGARDING MORTGAGE PRIORITIES ENABLES US TO ANALYZE CLAIM DISPUTES OVER REAL PROPERTY AS WELL AS LEARN ABOUT THE PRINCIPLES THAT DETERMINE MULTIPLE MORTGAGE VALIDITY

The real estate sector, together with the financial system, heavily depends on mortgage financing because it serves as a way to obtain loans that are secured through property. Legal battles over priority claims emerge between lenders of multiple mortgages on one property, which causes extensive legal proceedings alongside financial unpredictability. Efficient dispute resolution for mortgage priority, along with borrower and lender fairness, relies upon the establishment of precise mortgage priority rules.[23] The financial market benefits from mortgage-backed securities (MBS) that allow lenders to combine mortgage loans into tradable assets for purchase. Mortgage securitisation brings complex legal challenges as well as financial complexities because it enhances liquidity and risk distribution. The study examines mortgage priority laws and mortgage validity criteria with claims regarding real property, in addition to financial rules that mitigate MBS risks.[24]

LEGAL FRAMEWORK GOVERNING MORTGAGE PRIORITIES IN INDIA

The mortgage legal principles in India are defined by the Transfer of Property Act 1882 (TPA). Mortgage priorities and claim disputes between parties are founded on the rules outlined in Sections 48, 78 and 79 of the Transfer of Property Act.[25]

Doctrine of Priority (Section 48 of the Transfer of Property Act, 1882): A basic rule of mortgage priority exists as "First in Time, First in Right" because this establishes the first-created mortgage as superior over subsequent ones affecting the same property. This principle makes sure fairness exists through its dedication to maintaining the chronological sequence.[26]

[23] Rohan Mehta, Blockchain and Real Estate Transactions: The Future of Mortgage Law, 37 HARV. J.L. & TECH. 67 (2022)
[24] Md. Akhtaruzzaman, Interrelation between Mortgagor and Mortgagee in Financial Activity Under Islamic Law, 42 INT'L J.L. & FIN. 128 (2019)
[25] The Transfer of Property Act, No. 4 of 1882, § 48, INDIA CODE (1882)
[26] ICICI Bank Ltd. v. SIDCO Leathers Ltd., (2011) 9 SCC 603 (India)

The absence of prior mortgage disclosure creates practical disputes through which the newest mortgage holder aims to obtain seniority. The court system allows first mortgage holders to maintain their priority position through legal challenges, except when fraud evidence or subordination agreements impact priority status.

Protection of Prior Mortgagees (Section 78 of the TPA, 1882: A prior mortgage enjoys protection through this section that prevents later mortgagees from seeking priority unless the earlier mortgage accepts a less favourable position. Under this provision, first mortgage interest holders receive protection against inappropriate actions taken by future lenders.

Mortgage for Future Advances (Section 79 of the TPA, 1882): The creation of mortgages sometimes occurs to secure expected upcoming mortgage advances and further mortgage-related loans.[27] Future mortgage advances receive higher priority according to the agreement between the parties regarding the total amount that the mortgage secures.[28] Mortgage holders can claim priority over future advances according to the specified range in the agreement. Exceeding these limits allows subsequent advances to take lower priority positions.[29]

PRINCIPLES DETERMINING MULTIPLE MORTGAGE VALIDITY

Mortgage validity stands as a key factor to settle conflicts about who should receive the mortgaged property rights. Several legal standards exist to determine whether multiple mortgages hold a valid status.

The "First in Time, First in Right" Rule: Under this rule, the first mortgage that is created obtains superior legal standing compared to mortgages established afterwards. However, exceptions arise when:

- Through a contractual agreement, the first mortgagee allows their priority position to decrease.
- A second mortgage holder receives registration before a first mortgage holder achieves the same step.
- The initial mortgage exists without registration, but the secondary mortgage holder has properly registered the document.

[27] R.K. Sinha, The Transfer of Property Act (12th ed. 2019)
[28] M.P. Jain, Indian Constitutional Law (8th ed. 2022)
[29] K. Saroj v. A. Rethinasamy, (2006) 3 SCC 452 (India)

Notice and Bona Fide Purchasers: Someone who purchases funds from a mortgage in good faith and without notice of previous mortgages becomes a bona fide purchaser. The recognition of new mortgages depends on whether the second lender exhibited actual or constructive knowledge about previous mortgage claims.

Pari Passu Rule (Equal Priority Mortgages): The lenders involved sometimes choose to give both mortgages an equal position in legal order regarding property claims. The practice occurs during commercial real estate financing when various lenders participate.

Subordination Agreements: The execution of a subordination agreement permits senior mortgagees to make themselves subject to junior mortgagees in priority terms. The arrangement serves debt refinancing purposes because borrowers request improved loan conditions from new financial institutions.

Determination of claims in disputes regarding Mortgage Priority: Multiple lenders making claims against the same property create legal disputes between them. Multiple parties involved in mortgage priority disputes seek resolution through judicial proceedings, statutory regulations, and regulatory measures.[30]

JUDICIAL INTERPRETATIONS AND LANDMARK CASES

Indian courts have settled mortgage priority disputes by establishing different precedents throughout the years.

Krishna Pillai Rajasekaran v. Padmanabha Pillai Bhaskaran (1987):[31] In this case, the courts ruled that properly registered first mortgages supersede unregistered second mortgages.

Bank of India v. Abhay D. Narottam (2005):[32] An unregistered mortgage becomes subordinate to later-registered mortgages.

Equitable vs. Legal Mortgages in Priority Disputes: An equitable mortgage exists by depositing title deeds to a lender, although it has not gone through formal registration. Courts need supplementary evidence to confirm the priority of unregistered mortgages. A Legal Mortgage provides superior court enforcement power because it requires registration. A later-

---

[30] National Institute of Finance & Law, The Impact of Digital Mortgages on Property Law, NIFL RESEARCH PAPERS (Nov. 15, 2021), https://www.nifl.ac.in/publications

[31] Krishna Pillai Rajasekaran v. Padmanabha Pillai Bhaskaran, (1987) 2 SCC 10 (India)

[32] Bank of India v. Abhay D. Narottam, (2005) 1 SCC 728 (India)

registered legal mortgage will supplant an earlier equitable mortgage when the mortgage holder fails to provide proper notice.

Alternative Dispute Resolution (ADR) in Mortgage Disputes: Mortgage conflicts should be settled effectively through ADR methods, consisting of mediation and arbitration in combination with mortgage ombudsman services to prevent extensive legal processes.

FINANCIAL REGULATIONS OPERATE TO ADDRESS RISKS IN MORTGAGE-BACKED SECURITIES FOLLOWING THE IDENTIFICATION OF LEGAL CHALLENGES IN MORTGAGE SECURITIZATION PROCESSES.

Through mortgage-backed securities (MBS), lenders can transform their mortgage loans into assets suitable for trading purposes. A regulated approach is necessary for controlling systemic risks because this financial instrument increases market liquidity.

Understanding Mortgage-Backed Securities (MBS): MBS serve to merge mortgage loans into investment-grade financial assets, which they market to investors through security products. The payment schedule of the securities relies on the mortgage payment activities of borrowers. The financial crisis of 2008 proved that insufficient control over MBS regulations created market instability, so improved financial supervision became mandatory.[33]

Risks Associated with MBS: MBS investors face financial loss when borrowers default on their payments. The condition of mortgage markets during market crashes can make Mortgage-Backed Securities tradable at reduced levels. The lack of effective regulations can generate problems through deliberate abuses during securitisation procedures.[34]

Legal Framework for MBS in India: Under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act 2002, banks can implement mortgage loan securitisation programs. The SARFAESI Act gives banks and financial institutions the ability to recover bad debts through procedures that do not require court involvement. Organisations face ongoing difficulties in guaranteeing sufficient transparency and investor safeguard measures within MBS deals.[35]

[33] Susan Bright, The Legal Structure of Mortgages and Property Rights, 54 CAMBRIDGE L.J. 421 (2015). gage
[34] Priya Singh, Blockchain and the Real Estate Industry in India
[35] M. Laxmi & Co. v. Andhra Bank Ltd., (1997) 1 SCC 784 (India)

Regulatory Measures to Strengthen the MBS Market: The Reserve Bank of India utilises MBS guidelines to establish regulations[36] that stop financial institutions from taking dangerous risks during securitisation processes. Registers of MBS transactions need to show full disclosure regarding risk factors, loan quality and investor return projections for security. Laws for consumer protection should protect borrowers from predatory lending methods, which cause mortgage lending and MBS market instability.

Mortgage priorities, together with securitisation regulations, need an extensive and robust legal system to achieve clarity and fairness. Real property claims disputes need clear mortgage ranking principles together with registration requirements to maintain financial system stability and alternative dispute resolution mechanisms for their resolution. The prevention of market instabilities and investor protection occurs through enhanced MBS regulations at the same time. The establishment of advanced legal protections alongside enhanced financial oversight will build a better mortgage financing structure, which is safe and efficient in India.

BLOCKCHAIN ALONGSIDE DIGITAL MORTGAGES INTRODUCE TECHNOLOGICAL CHANGES THAT INFLUENCE THE LEGAL SYSTEM WHICH REGULATES MORTGAGE AGREEMENTS

Introduction to Blockchain and Digital Mortgages: The blockchain operates as a digital platform that creates and protects digital data records from modifications. This system operates without central control because it belongs to neither companies nor governmental entities.[37] Transactions are recorded in blocks that are verified before they become part of an interconnected chain development known as blockchain. The system functions as a highly secure and easily traced operation. Through technology, instead of conventional paperwork, houses can obtain digital mortgages, which represent home loans. The application process for mortgages, the contracting procedure, and loan tracking have moved to digital platforms across numerous financial institutions in the market. Blockchain technology, when applied to digital mortgages, introduces fundamental changes in mortgage operations. Modern mortgage legislation depends on physical documents together with bank verification procedures and public records of real estate properties.[38] Blockchain technology disrupts current property

[36] Reserve Bank of India, Guidelines on Mortgage Securitization and Financial Regulations, RBI (Feb. 10, 2023), https://www.rbi.org.in

[37] NISHITH DESAI, Blockchain: The India Strategy 45 (2d ed. 2021)

[38] Priya Singh, Blockchain and the Real Estate Industry in India: A Regulatory

ownership documents since it enables digital recording of properties and mortgages independently of traditional authorities.[39]

LEGAL IMPLICATIONS OF BLOCKCHAIN IN MORTGAGE TRANSACTIONS

Smart Contracts and Their Legal Status: Blockchain technology introduces a fundamental legal change through "smart contracts." The code contains the complete contract terms inside self-executing agreements. The smart contract automates house ownership transfer to lenders with defaulted payments so that court involvement becomes unnecessary.[40] Legal systems depend on traditional contracts as their foundation, yet these contracts need human involvement through signatures and witness attestations. The main legal question remains about the validity of "smart contracts." The issue arises when smart contracts contain errors, since the party in charge of fund recovery remains unclear. Standardised laws for blockchain and decentralised mortgage transactions do not exist because most financial regulations were written in pre-blockchain eras.[41]

Jurisdictional Issues: What laws from which country control blockchain transactions that operate without central oversight, or what procedures do courts follow when resolving issues between parties with cross-border mortgage agreements that use blockchain?

Financial and Compliance Regulations: Mortgage lenders need to fulfil financial rules that demand both anti-money laundering (AML) and know your customer (KYC) obligations. Can blockchain support these? What rules apply to govern blockchain-based mortgage deals without present-day supervision techniques from central organisations?

Transparency vs. Privacy Issues: Blockchain unveils all transactions, although mortgage-related financial data remains confidential.

[39] M.P. Jain, Indian Constitutional Law (8th ed. 2022)
[40] National Institute of Finance & Law, The Impact of Digital Mortgages on Property Law, NIFL RESEARCH PAPERS (Nov. 15, 2021), https://www.nifl.ac.in/publicationsz
[41] BHARAT N. ANAND, Legal and Regulatory Framework of Cryptocurrencies in India 112 (2020)

WILL NEW LAWS BE CREATED FOR BLOCKCHAIN MORTGAGES?

The basic transformation of mortgage processing through blockchain technology demands legal frameworks that must resolve newly arising difficulties. Some potential developments include the following:

Legal Recognition of Smart Contracts in Mortgage Transactions: The majority of countries today continue to use physical signature contracts written on paper for their conventional mortgage agreements. Smart contracts need to receive official status regarding their ability to function similarly to established contractual agreements under jurisdictional rules. Followed by approvals or certifications from governments, which will confirm the legitimacy of blockchain mortgage records.[42]

Regulation of Decentralised Mortgage Transactions: The decentralised system of blockchain mortgages raises practical issues about following current financial laws because it lacks central authorisation. The upcoming laws will force blockchain mortgage platforms to meet standards regarding financial reporting and taxation in combination with anti-money laundering (AML) regulations.[43]

International Coordination for Cross-Border Mortgage Transactions: A country's legal system determines how citizens can own properties while obtaining mortgages. New worldwide regulations that will manage blockchain real estate deals across different regions remain under development.

POSSIBLE LEGAL REFORMS AND FUTURE POLICY CHANGES

Governments need to introduce different legal reforms for blockchain to achieve full participation in mortgage and real estate law. Some possible changes include;

Blockchain-Specific Legislation: Nation-states often create new legislation that confirms the validity of transactions occurring within blockchain frameworks. Authority will recognise blockchain-based smart contracts after they fulfil all mandatory legal specifications.

Standardisation of Blockchain Mortgage Processes: Government agencies, together with financial oversight bodies, should establish basic procedures to handle blockchain mortgage

[42] Regulatory Challenges, 8 NUJS L. REV. 128, 141 (2019)
[43] BHARAT N. ANAND, Legal and Regulatory Framework of Cryptocurrencies in India 112 (2020)

deals. Countries should establish official registries for recording property records that have been verified through blockchain systems.

Government-Led Blockchain Initiatives: Governments occasionally maintain the development of blockchain platforms to conduct real estate transactions. The implementation of these standards would create equilibrium between the advantages of distributed systems and the required governmental monitoring.

Blockchain technology, together with digital mortgage solutions, transforms the established mortgage market through extensive changes affecting property deals and both legal systems and financial management rules. The blockchain system speeds up mortgage processes while assuring security through transparency, which eliminates the requirement for multiple intermediaries. The technological progress brings significant legal problems because smart contracts need validation while also requiring solutions to jurisdiction conflicts and financial rule compliance, and proper management of data disclosure against user secrecy. Expanding blockchain adoption requires legal institutions around the globe to adjust their regulations for mortgage deals that use decentralised systems. For the blockchain industry to prosper, it needs federal laws about smart contracts, together with financial operation management regulations and standardised digital mortgage methodology.[44] Active measures taken by legal systems will enable a smooth migration to blockchain-based mortgages alongside assurance of legal reliability in the continuously evolving real estate domain.

CONCLUSION

Mortgage transactions face continual changes in their legal environment because of adaptations in financial systems and technological developments, together with shifting regulations. Mortgage laws throughout the world present legal organisations with the demanding task of maintaining an appropriate balance between what borrowers should receive and what lenders require. Legal institutions need to create systems that support equitable mortgage practices and transparent financial management, along with flexibility to adopt digital mortgage technology and blockchain methods. Foreclosure presents a crucial legal challenge because the process is affected by the death of borrowers. Foreclosure consequences differ tremendously based on whether the state uses judicial or non-judicial foreclosure schemes for their operation. Borrowers who are going through judicial foreclosures benefit from having the chance to

[44] NISHITH DESAI, Blockchain: The India Strategy 45 (2d ed. 2021)

dispute foreclosure proceedings with the support of court oversight. Borrowers face elevated risk due to non-judicial foreclosure procedures because they usually finish quickly and favour lenders above all else. Understanding mortgage priority rules becomes vital in mortgage law because it determines the sequence through which different parties receive financial claims against properties that have multiple mortgages. The understanding of mortgage priority laws becomes essential in settlement conflicts that arise between lenders and their debtors, together with other potential claimants. Financial institutions must adhere to these legal principles both for the mortgage agreement structure and to establish security for their interests. The validity of real estate property transactions depends heavily on clear mortgage priority laws because multiple stakeholders typically participate in real estate financing. Financial regulations operate as a key mechanism to reduce various risks that emerge from mortgage-backed securities (MBS). Mortgage securitisation requires taking home loans to create investment products, but it has raised various legal complications. The global financial crisis of 2008 revealed securitisation weaknesses, which triggered substantial regulatory changes that focused on releasing hidden information and lowering systemic threats while strengthening investor safeguards. Mortgage markets show ongoing development, while regulators need to monitor new market threats that can cause financial instability. Future regulatory efforts must achieve an equilibrium where real estate financing innovation receives support alongside measures that prevent bad lending and market speculation practices. Blockchain technology integration with digital mortgages leads to a major development in mortgage legal frameworks. Manipulation-resistant blockchain technology delivers three prime advantages through its combination of automated financial contracts, digital property tracking and smart transaction systems.