

THE LAW OF REGISTRATION

(As under Transfer of Property Act-1882 & Registration Act-1908)

Video Lecture

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INTRODUCTION

Registration Fee vs. Stamp Duty

- ❑ **'Registration fee'** is charged by the Government to keep a document in public records.
- ❑ **'Stamp duty'** is levied by the Government to raise revenue and to recognise a right.
- ❑ The **'Law of Registration'** in India is explained under.....
 - The Transfer of Property Act-1882
 - The Registration Act-1908

INTRODUCTION

- ❑ The following provisions are related to 'registration' as under the **Transfer of Property Act-1882**.

Section	Type of Transfer	Value of the Property	Registration
54	Sale of immovable property	\geq Rs. 100	✓ .
	Sale of revision or intangible property	NA	✓ .
59	Mortgages	\geq Rs. 100	✓ .
107	Leases <ul style="list-style-type: none"> • for year to year or • > one year or • Reserving a yearly rent 	NA	✓ .
118	Exchange of immovable property	\geq Rs. 100	✓ .
123	Gift of immovable property	NA	✓ .

THE REGISTRATION ACT, 1908

- ❑ It extends to the whole of India, except the State of Jammu & Kashmir.
- ❑ The **State Government may exclude** any districts or tracts of country from its operation [Sec-1 (2)].
- ❑ It came into force from **1st January, 1909**.
- ❑ **Objective**
 - To consolidate the enactments relating to the **Registration of documents**.

AN OVERVIEW OF REGISTRATION ACT- 1908

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REGISTRATION ESTABLISHMENT

- ❑ **Inspector General of Registration**
Sec - 3
- ❑ **Inspectors of Registration-office**
Sec-8
- ❑ **Registrars**
Sec- 6
- ❑ **Sub-Registrars**
Sec-6

REGISTRATION OF DOCUMENTS

- ❑ **Registration - Compulsory**
Sec-17(1), 17(1-A), & 17(3)
- ❑ **Registration - Not Necessary**
Sec-17(2)
- ❑ **Registration - Optional**
Sec- 18
- ❑ **Exemption of Registration**
Sec-90
- ❑ **Procedure for Registration**
Sec – 32 to 39
- ❑ **Registration - Time & Place**
Sec- 23 to 31, 47 & 48
- ❑ **Effect of Non-registration**
Sec-49

OTHER IMPORTANT PROVISIONS

- ❑ **Registration & Deposit of Wills**
Sec- 27 & 40 to 46
- ❑ **Reasons for Refusal of Registration**
Sec-71 & Ss. 19 to 22
- ❑ **Appeals & Applications**
Sec- 72 to 77
- ❑ **Fees for Registration, Searches & Copies**
Sec-78 to 80
- ❑ **Penalties**
Sec – 81 to 84

S. 3

Inspector General
of Registration



S. 8

Inspectors
Registration-office



S. 6 & 7

Registrars



S. 6 & 7

Sub Registrars

BOOKS KEPT BY THE REGISTRATION OFFICES (S.51)

Book-1: Register of '**Non-testamentary Documents**' related to immovable property

Book-2: Record of '**Reasons for Refusal**' of registration

Book-3: Register of '**Wills and Authorities to Adopt**'

Book-4: '**Miscellaneous Register**'

***Book-5:** Register of '**Deposits of Wills**'

***Shall be kept in Offices of 'Registrars'**

Section-85

- ✓ **Unclaimed documents** (other than Wills) in any Registration Office for a period **exceeding 2 years** may be **destroyed**.

Section-84

- ✓ **Registration Officers = Public Servants** within the meaning of IPC-1860.
- ✓ Proceedings under this Act = Judicial Proceedings within the meaning of Sec-228 of IPC-1860.

Documents of which Registration is 'Compulsory'

Sec-17(1), 17(1-A), & 17(3)

Registration is **compulsory** for following instruments...

- ❑ **Gift** of immovable property
- ❑ Non-testamentary instruments, of immovable property (value \geq Rs. 100), which **create, declare, assign, limit or extinguish** (in present or future) **any right, title or interest** (vested or contingent)
- ❑ Non-testamentary instruments which **acknowledge the receipt or payment of any consideration..**
- ❑ **Leases** of immovable property***
 - ✓ From year to year, or
 - ✓ For any term exceeding one year, or
 - ✓ Reserving a yearly rent
- ❑ Non-testamentary instruments **transferring or assigning any decree or order of a Court**, in immovable property (value \geq Rs. 100).
- ❑ **Contracts** relating to transfer of immovable property for consideration **under S.53A of TPA** (part performance)

Documents of which Registration is '**Not Necessary**' Sec-17(2)


Registration is **not necessary** for following instruments...

- ❑ Any **composition-deed**
- ❑ **Shares** in a Joint Stock Company
- ❑ **Debentures** issued by a Company
- ❑ Any **endorsement** upon or **transfer** of any debenture
- ❑ Any **decree or order of a Court**
- ❑ Any **grant** of immovable property **by Government**
- ❑ Any instrument of **partition made by a Revenue-officer**
- ❑ Any **order**, granting a loan under....
 - ✓ The Land Improvement Act, 1871, or
 - ✓ The Land Improvement Loans Act, 1833, or
 - ✓ The Agriculturists Loans Act, 1884, or
 - ✓ The Charitable Endowments Act, 1890, or
- ❑ Any **endorsement on mortgage-deed** acknowledging the payment
- ❑ Any **certificate of sale** of any property sold by **public auction by a Civil or Revenue-officer.**

Documents of which Registration is 'Optional'

Sec-18

Registration is **optional** for following instruments...

- ❑ Instruments (other than gifts and wills), of immovable property (value < Rs. 100), which **create, declare, assign, limit or extinguish** (in present or future) **any right, title or interest** (vested or contingent)
- ❑ Instruments which **acknowledge the receipt or payment of any consideration..** 
- ❑ **Leases** of immovable property for any time **not exceeding ONE year**.
- ❑ Instruments **transferring or assigning any decree or order of a Court**, in immovable property (value < Rs. 100).
- ❑ Instruments (other than wills), of **movable property** which **create, declare, assign, limit or extinguish any right, title or interest**
- ❑ **Wills**
- ❑ **All other documents not required by S. 17 to be registered.**

Documents of which Registration is '**Exempted**'

Sec-90

Documents executed by or in favour of Government are **exempted** for registration.....

- ❑ Documents → issued, received or attested by **any Govt. officer** engaged in making a settlement of land revenue.
 - ❑ Maps → issued, received or authenticated by any **Govt. surveyor**
 - ❑ Documents of village records → which are filed periodically in **any revenue office**
 - ❑ Sanads
 - ❑ Inam title-deeds
 - ❑ Other documents
- } → purporting to be or evidence **grants or assignments by Govt.**

'Persons' to present documents for Registration

Sec – 32 & 33

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- ❑ By person (executing / claiming)
- ❑ By his representative or assign
- ❑ By agent of his representative or assign
- ❑ Duly authorized by 'Power-of-Attorney'

(AIR 1954 SC 316 – POA with authentication **specially** for registration)

Persons exempt from appearance at Registration Office (Section-38)

- ✓ Bodily infirmed persons
- ✓ Persons in Jails under Civil or Criminal process
- ✓ Persons exempted by law from personal appearance in court.

SECTION-33: IF THE PRINCIPAL AT THE TIME OF EXECUTING THE 'POA'.....

- ❑ Resides in **India & where R.Act applies** → before & authenticated by Registrar or Sub Registrar
- ❑ Resides in **India & where R.Act does not apply** → before & authenticated by any Magistrate
- ❑ Resides **out-side India** → before & authenticated by.....

- ✓ Notary Public
- ✓ Any Court
- ✓ Judge
- ✓ Magistrate
- ✓ Indian Consul / Vice Consul or
- ✓ Representative of the Central Government.

Compulsory affixing of **Photograph, Etc.**

Sec – 32-A

*SECTION-32-A: COMPULSORY AFFIXING OF PHOTOGRAPH, ETC.

- ❑ Every person presenting any document u/S.32 shall affix his....

**Passport-size Photograph
+
Finger-prints**

- ❑ If the document relates to sale etc. of immovable property.....

**Passport-size Photograph
+
Finger-prints**

Seller(s)
&
Buyer(s)

Enquiry before Registration by Registering Officer

Sec – 34

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SECTION-34: No document shall be registered without enquiry of the person executing the document before the Registering Officer within the time allowed for presentation.

- ❑ The Registering Officer shall thereupon
 - ✓ **Enquire** whether or not such document was executed by those persons
 - ✓ **Satisfy himself** as to the **identity of the persons** appearing
 - ✓ Satisfy himself of the right of appearing persons....**representative / assign / agent/ POA.**
 - ✓ Note: Nothing in this Section applies to copies of decrees or orders.

- ❑ **SECTION-25:** Under **urgent necessity or unavoidable accident** all such persons do not so appear, the document may be registered **within FOUR months** on payment of a **fine not exceeding TEN times** the amount of proper registration fee, in addition to the **FINE**,

Effect of Admission and Denial of Execution

Sec – 35

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Effect of 'Admission'

All persons executing the document

If in the case of any person appearing by...

- Representative,
- Assign or
- Agent

If the person executing the document is dead, his....

- Representative or
- Assign

**The Registering Officer shall
REGISTER the document**

Effect of 'Denial'

If any person by whom the document purports to be executed denies its execution

If any person appears to the RO to be a

- Minor
- Idiot or
- Lunatic

If the person executing the document is dead, his....

- Representative or
- Assign

**The Registering Officer shall
REFUSE TO REGISTER the
document**

Time and Place of Registration

- ❑ **SECTION-23:** A document **other than will** shall be presented **within FOUR** months from date of its execution.
- ❑ **SECTION-23-A:** When a document is registered by a person not authorized to present for registration, the document can be presented again for '**re-registration by authorized person**'.
- ❑ **SECTION-24:** If **documents executed by several persons at different times**, such document may be presented for registration and re-registration within FOUR months from the date of each execution.
- ❑ **SECTION-25:** Owing to **urgent necessity or unavoidable accident**, any document is not presented for registration till after the expiration of the time , the Registrar (in cases where the delay in presentation does not exceed FOUR months), may direct the Sub Registrar for registration on payment of a **fine not exceeding TEN times** the amount of the proper registration-fee.

Time and Place of Registration

- ❑ **SECTION-47:** A registered document shall operate from the time from which it would have commenced to operate, and **not from the time of its registration.**
- ❑ **SECTION-48:** Registered documents relating to property take affect **against oral agreement** but **from date of registration.**
- ❑ **SECTION-28:** All documents related to immovable property shall be presented for registration in the office of a **Sub-Registrar within whose sub-district the whole or some portion of the property is situate.**
- ❑ **SECTION-30:** Registrar may in his direction may receive and register **any document** which might be registered by any Sub-Registrar subordinate to him.
- ❑ **SECTION-26:** Documents **executed out of India** be presented for registration, **within FOUR months** after its arrival, in India.

❑ Execution date
vs.
Registration date

DOE

❑ Oral Agreement
date
vs.
Registration date

DOR

❑ Oral Agreement
+ Delivery of
possession of
property date
vs.
Registration date

DOO
+
DOP

Effect of non-registration of Document required to be registered Sec - 49

❑ Such document is **not admissible in evidence**.

❑ **Exceptions:**

Such document may be received as evidence of.....

✓ A **contract** in a suit for **specific performance**

✓ **Any collateral transactions** not required to be effected by registered instrument.

Registration of Unstamped Document

- An unstamped instrument **cannot be taken as evidence**.
- If a document which is not sufficiently stamped..... presented after paying penalty under Indian Stamp Act (sufficiently stamped).... Becomes good presentation (shall be accepted as 'evidence').

Registration and Deposit of 'Wills'

Sec- 27 & 40 to 44

'Wills' may be presented or deposited for registration **at any time (S.27).**

Persons entitled to Deposit and Withdrawal of Wills

- ❑ **Deposits of Wills with any Registrar (S.42)**
 - ✓ By the **testator personally**, or
 - ✓ By his **authorized agent**
- ❑ In a **sealed cover** superscribed with the name of the testator with the statement of nature of document.
- ❑ **Persons entitled to Withdraw (S.44) the Wills**
 - ✓ By the **testator or donor** or
 - ✓ **After testator's / donor's death....** Any person claiming as executor or otherwise under a will

Procedure for Deposit of Wills (S.43)

- ❑ On receiving such cover, the Registrar on satisfaction.....
- ❑ Keeps such sealed cover in '**Register Book No.5**' with...
 - ✓ **Superscription**
 - ✓ **Year, Month, Day and Hour** of such presentation
 - ✓ **Note in the receipt**, and
 - ✓ **Names of attestors** who testify the identity of testator
 - ✓ **Seal**
 - ✓ The Registrar shall place and retain the sealed cover in **Fire-proof Box**

Proceedings on Death of Depositor of a 'Will'

Sec- 45

On death of a testator.....

- ☐ An application be made to Registrar
 - ✓ If the Registrar **satisfied that the testator is dead**
 - ✓ In the **applicant's presence & expense**, opens the cover
 - ✓ Cause the contents thereof to be into his '**Book No.3**'
- ☐ When such copy has been made, the Registrar shall re-deposit the original will.

Reasons for Refusal of Registration

Sec-71 r/w Ss.19 to 22

1. Documents in language not understood by Registering Officer, and
Such language is not commonly used in the District (**S.19**)
2. Documents containing interlineations, blanks, erasures, or alterations
(Unless the executing persons attest with their signatures) (**S. 20**)
3. No description of property and maps or plans (**S.21 & 22**)
4. Property is not situated within Registering Officer's sub-district (**S.71**)

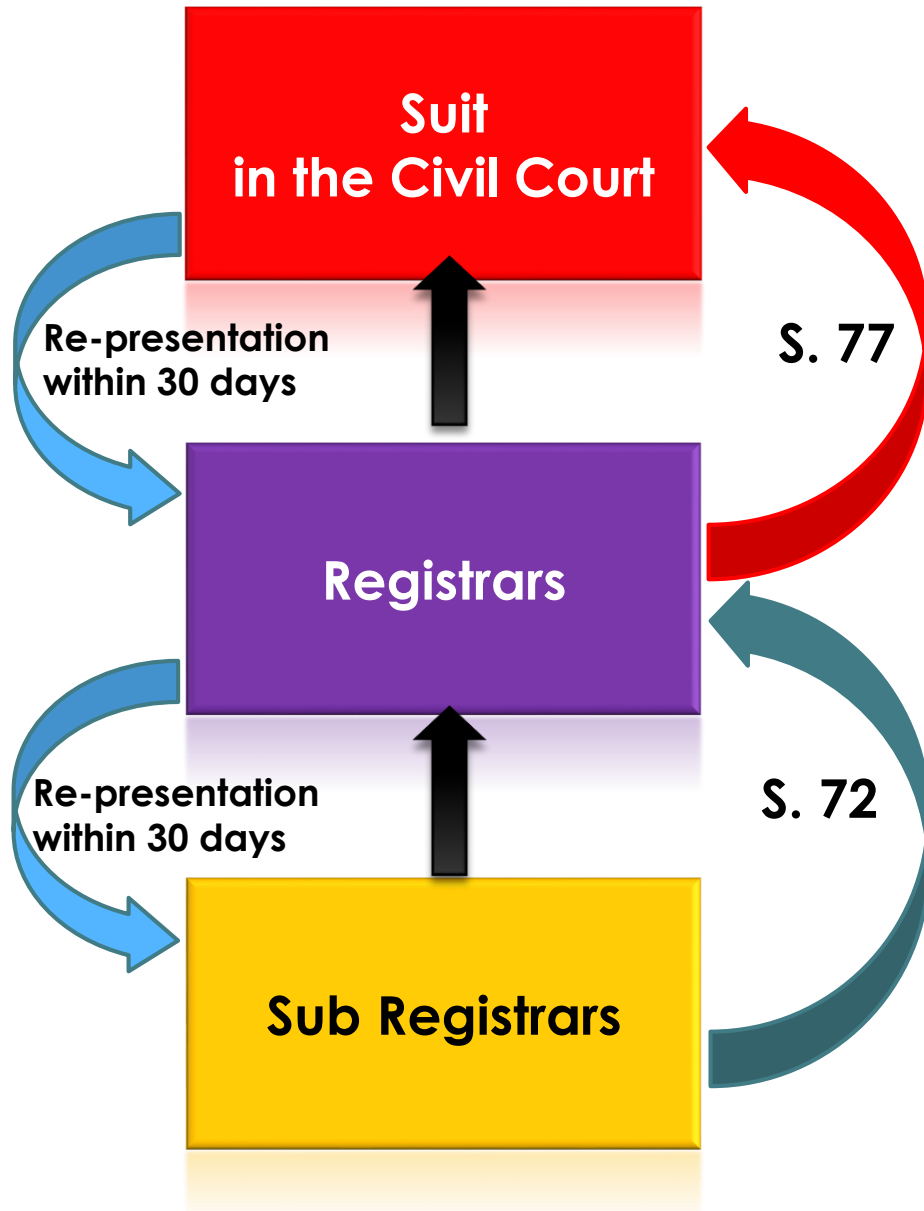
Reasons for refusal to register to be recorded in his '**Book No. 2**', and shall endorse the words "**Registration Refused**" on the document. (**S.71**)

On application, the Registering Officer shall give **a copy of reasons** so recorded **without payment and unnecessary delay**.

Note: Not applicable to Reason No. 4

APPEALS

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No appeal lies from any order by a Registrar under S. 72 or 76

S. 77

Within 30 days

Order of refusal by Registrar (S.76) – Book No.2

S. 72

Appeal within 30 days

If the Sub-Registrar refuses the registration

Note:

If a decree is passed by the Court in favour of the party, then the party should present the document for registration **within 30 days** after passing of such decree

Penalties

Sec- 45

- ❑ For **incorrectly endorsing, copying, translating or registering documents** with intent to injure to any person **(SECTION-81)**
- ❑ For **intentionally making false statements, delivering copies or translations, false personation & abetment** **(SECTION-82)**
- ❑ **Punishment**
 - ✓ Imprisonment – upto SEVEN years, or
 - ✓ With fine, or
 - ✓ With both
- ❑ Registering Officer may commence prosecutions **(S.83).**
- ❑ Triable by officers **not less than those of Magistrate of II Class**

Miscellaneous Provisions

☐ **Certificate of Registration (S.60)**

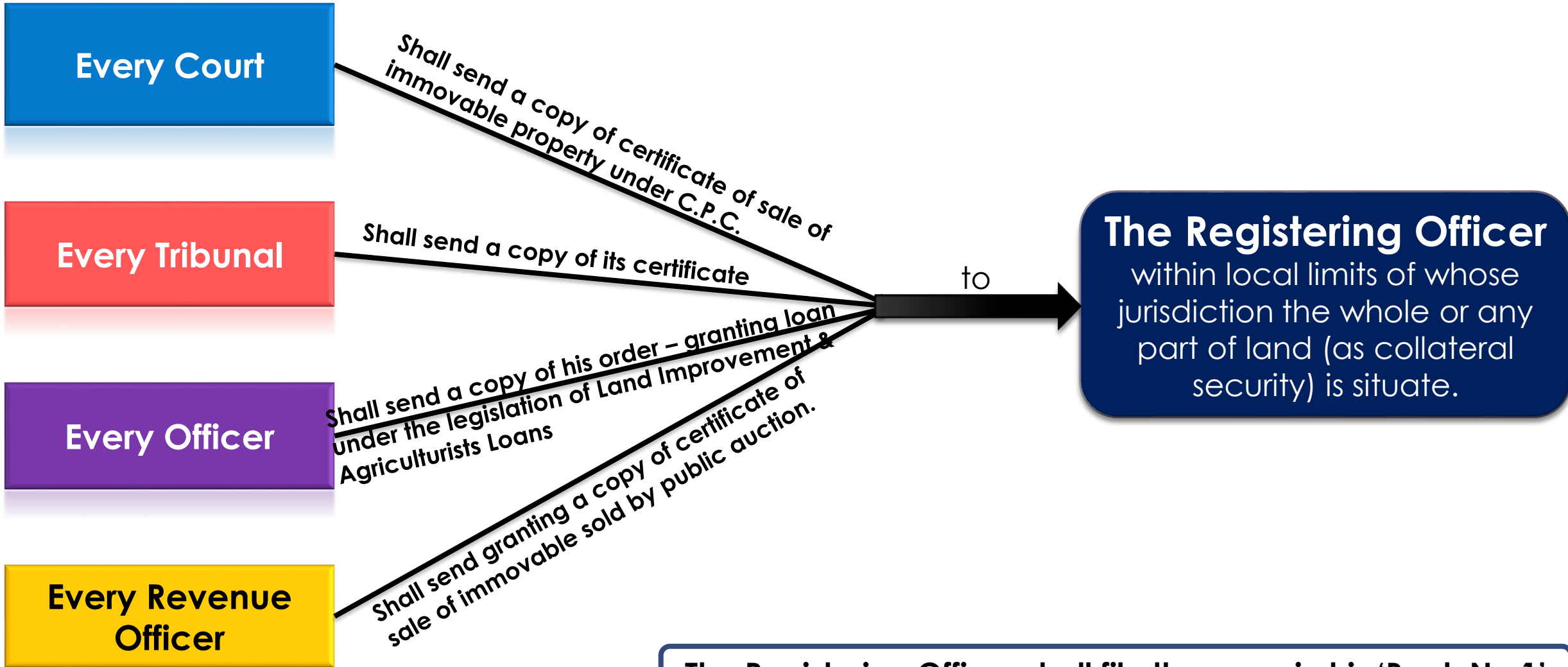
The Registering Officer shall endorse a certificate containing the word “**Registered**” with.....

- ✓ **Registration Number**
- ✓ **Page of Book**
- ✓ **Signature**
- ✓ **Seal and**
- ✓ **Date**

- ☐ Endorsements and certificates to be copied and documents returned to the person who presented the same for registration **(S.61)**.
- ☐ On registration of document relates to immovable property, the **Registrar** shall forward a **memorandum of such document to each Sub-Registrar**.

Copies of certain orders, certificates and instruments to be sent to Registering Officers and filed (S.89).

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The Registering Officer shall file the copy in his 'Book No.1'

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