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Understanding Specific Transfers under Property Rights: Gift, Actionable Claims, and Lease under Indian Law

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ABSTRACT

This research paper provides a comprehensive examination of specific modes of property transfer under Indian law, focusing on Gifts, Actionable Claims, and Leases as governed by the Transfer of Property Act, 1882. These forms of transfer represent distinct legal mechanisms, each with its own set of principles, statutory provisions, and implications.

This paper undertakes an in-depth doctrinal and analytical study of specific categories of property transfer under Indian jurisprudence. These legal constructs, though varied in their form and function, collectively form a critical foundation of property law and transactional jurisprudence in India. The study elucidates the conceptual underpinnings and statutory formulations governing gratuitous transfers (gifts), tangible enforceable rights (actionable claims), and contractual transfers of enjoyment (leases), while simultaneously examining the substantive and procedural requisites essential for their validity and enforceability.

The section on gifts comprehensively examines both voluntary transfers without consideration, and the nuanced doctrine of onerous gifts, highlighting judicial interpretations that impact donative intent, acceptance, and revocability. The analysis of actionable claims explores the legal recognition of unsecured, non - possessory debts and interest, interpreting their transfer ability and procedural implications through statutory mandates and equitable principles. The segment on leases provides a structural classification of leaseholds, from fixed term to perpetual agreements, critically engaging with the essential elements of lease formation, rights of parties, and the formal requirements of execution.

Through statutory interpretation, judicial precedents, and illustrative examples, this paper explores, the essential requirements, methods of transfer, and legal consequences arising out of these property transactions. The study highlights the significance of these concepts in both personal and commercial text, elucidating, how property Law balances the interest of all parties involved. The conclusion underscores the critical importance of understanding these transfers not just for legal compliance but also for safeguarding rights and ensuring informed decision making in property dealings. This paper aims to serve as a vital source for legal scholars, practitioners and individuals engaged in property transactions under

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Indian law. By critically appraising, the inter-relationship between formality, consent, and consideration in property transfers, the paper seeks to advance doctrinal clarity and practical utility. This study not only contributes to academic discourse, but also holds significant relevance for legal practitioners, jurists, and policy makers engaged in the refinement of application of the Indian property law.

Keywords: 'transfer of property act, 1882', 'donor', 'donee', 'property', 'gift', 'onerous gift', 'consideration', 'acceptance', 'competence' 'universal donee', 'death bed gifts', 'claims', 'legal proceedings' 'transferee', 'transferor', 'revocation', 'termination', 'lease', 'lessee', 'lessor'.

I. INTRODUCTION

The concept of property ownership and various legal methods through which property can be transferred lie at the heart of property law in India. In a country with a rich, historical, and social economic diversity, the legal framework governing property transactions, play a pivotal role in ensuring order, justice, and predictability in both personal and commercial dealings. One of the most foundational pieces of legislation that govern such transactions is the "*Transfer of Property Act, 1882*". This act delineates the ways in which property both movable and immovable can be transferred lawfully from one person to another.

Among the numerous forms of transfer recognised under Indian law, three significant categories that have far reaching implications in every day, legal and economic contexts are '*Gifts*,' '*Actionable Claim*' and '*Lease*.' Each of these transfers, while falling under the broad umbrella of property Law, are governed by their own specific principles, procedures, and legal consequences. Understanding them in depth, not only enrich is our comprehension of Indian property law but also helps in ensuring the transactions are carried out with clarity, legality, and fairness.

A '*Gift*,' as governed by sections 122 to 129 of the transfer of property act, is a voluntary and uncomplicated transfer of ownership from one individual (donor) to another (donee). This type of transfer, those simple in its philosophical underpinnings, demands, strict appearance to legal requirements, such as the absence of consideration, the necessity of acceptance, and the proper mode of execution - particularly in distinguishing between movable and immovable property. Furthermore, complexity, such as the concept of 'onerous gifts,' 'revocation of gifts,' and 'universal donee doctrine,' provide additional layers of legal scrutiny and interpretation.

Similarly, '*Actionable Claims*,' a more abstract form of property, pertain to unsecured debts or claims that are enforceable by a legal proceeding. Section 3 of the transfer of property act offers

a detailed definition of what constitutes an actionable claim, while section 130 to 132 lay down the methodology for its valid transfer, the necessity of notice and the resulting legal obligations on the transferee. Despite being intangible in nature, actionable claims form an integral part of financial and commercial transactions, especially in contexts such as debt recovery, insurance claims and unpaid dues.

Lastly, the concept of '**Lease**,' defined in section 105 and elaborated upon in sections 106 to 117, 17 represents a contractual transfer of rights to enjoy immovable property for a limited time in return for consideration. A lease, whether absolute or derivative, fixed term or periodic, is governed by specific statutory requirements. These provisions safeguard the interests of both the 'lessor' and the 'lessee' while balancing the principles of fairness, contractual obligation, and property ownership.

By analysing these three major modes of property transfer in a structured and systematic manner, this research paper aims to provide a comprehensive understanding of the legal nuances, practical applications, and interpretative frameworks under Indian law. Such understanding is crucial not just for students and professionals of law, but also for lay-persons engaging in property related transactions.

(A) Gift

Gift if understood on simple terms, is the transfer of ownership of a property by the sender to the recipient, without any consideration or compensation in return for the transfer, such that the transfer takes place with the full consent and willingness of the sender (the person who give the gift). Thus, it can be said that gift the 'relinquishment of the rights of oneself, in the property without any for of consideration in return, while creating the rights of the person receiving the gift on such gifted property.'

In the Indian subcontinent, Gift comes under the ambit of Property Law and is governed under "The Transfer of Property Act, 1882". Under this act the provisions related to Gift are from Section 122 to Section 129.

(B) Essentials of a valid gift

- There Should be a Donor and Donee;
- Transfer of Ownership should be done;
- Acceptance of the Gift by the Owner;
- Only Existing Property can be Transferred;

- Transfer only Without Consideration;
- The Transfer should be Voluntary i.e., Free Consent of the Donor;
- The Transferred Gift Should be Accepted by the

II. GIFT UNDER TRANSFER OF PROPERTY ACT, 1882

Gift is defined under section 122 of the act:

i. Section 122: “Gift Defined”: -

Under this section gift is defined as ‘when certain rights that exist in movable or immovable property are transferred, voluntarily and without consideration, by the donor to the donee, then it is known as gift.’

This section further states that no gift will be deemed completed until it has been accepted by the donee (the person in favour of whom the gift is made), such that the acceptance has to be given by the donee itself,

- either in his/her lifetime; or
- if the donee has died before he/she could give their acceptance then such unaccepted gift becomes void.

Modes of Gift under the act:

ii. Section 123: “Transfer how Effected”: -

Under this section the mode of effecting the transfer of property for the purpose of gift is given for both movable and immovable property.

These modes are:

- For movable property:
 - a. 1st mode: through a registered instrument that has to be signed by:
 - Donor; and
 - Attested by at least 2 witnesses;
 - b. 2nd mode: by delivery of the movable property to the donee.
- For immovable property:
 - a. The transfer of effected through a signed and registered instrument (document).
 - b. This registered document must be signed by:

- Donor or his/her legal representative; and
- Attested by at least 2 witnesses;

Revocation of Gifts:

iii. Section 126: “When Gift May be Suspended or Revoked”: -

Under this section the provisions for revocation or suspension of gifts are given.

- According to this section any such gift is void, where the parties (donor and donee) have agreed to revoke the gift (wholly or partly) at the mere ‘will’ of the donor.
- Further the section says that a gift can be revoked with the mutual consent of the donor and the donee, such that the gift could be revoked or suspended if certain conditions or event took place, without being dependent on the ‘will’ of the donor.
- This section also says that a gift can be revoked in the same manner that a contract can be rescinded, i.e if the gift was ‘not made’ with the free consent of the donor or if coercion, undue influence, fraud, or misrepresentation was used in the making of such gift.
- Finally, this section states that no gift can be revoked, except under the conditions mentioned in the section.

Onerous Gifts:

When a property that is burdened or attached with responsibilities or obligations is transferred by the means of gift under the Transfer of Property act, 1882 then the transfer of such property is known as ‘onerous gift’.

This concept is based on the Latin maxim “qui sentit commodum sentire debet onus,” meaning “whoever receives benefits must also bear the burdens attached to such benefits.”

Onerous Gift has been defined under section 127 of the ‘Transfer of Property Act, 1882’.

iv. Section 127: “Onerous Gifts”: -

Under this section onerous gifts are divided into 3, they are:

- When the gift contains more than 1 thing and is transferred to to the same person (1 person), in a single transfer;
- When the gift contains of more than 1 thing and transferred to the same same

person but but in 2 or more independent transfers;

- When an onerous gift is made to a ‘disqualified person’;

These types in detail:

a. Transfer of several things to the same person in a single transfer:

This means that if many things are transferred to the same (1 person) person in one single transfer, such that some of the items of the gift are burdened with obligations and the others are not. When such a situation arises the ‘donee (receiver of the gift)’ can either,

- completely accept all the items (burdened and free) alike; or
- completely reject all the items (burdened or free) alike;

There are some essentials that have to be fulfilled before this type of onerous gift can be made are:

- gift has to be made in a single transfer in 1 single transfer not more;
- gift has to made to the same person only;
- gift has to comprise of several properties/ items;
- out of the several properties that the gift comprises, at least 1 of them should be burdened or have an obligation on it;

Thus, if the donee wants to accept the benefits attached with the gift, then such donee has to also accept the burdens attached to it as well.

Illustration:

Radha gifted 2 properties to Shayam, 1 movable and the immovable, both the properties were transferred via a single transfer.

Out of these the movable property has an obligation on it while the other (immovable) property does not.

Under such situation if Shayam wants to accept the gift, he would have to accept both the properties alike, but if he only wants to accept the non burdened property and reject the burdened one then that is not possible. Either he accepts all or rejects all, there is no option of choice in this type of onerous gift.

b. Transfer of several things to the same person in a 2 or more independent transfers:

This means that if many things are transferred to the same (1 person) person in 2 or more

independent transfers, such that some of the items of the gift are burdened with obligations and the others are not. When such a situation arises the 'donee (receiver of the gift)' has the option to choose 1 property and reject other, meaning that the donee can choose some while rejection others, even if the accepted gift is beneficial while the rejected one is burdened.

Thus, unlike other types of on gift, in this one, there is no compulsion on the donee to accept or reject both properties, he can choose between them.

Illustration:

Radha transferred three of our properties to Shyam, via two separate transfers.

The first transfer had one property that was free from any kind of burden, while the other transfer her two properties that both burden with obligations.

Now, Shyam has the power to choose one out of the two transfers that were made to him, and he will not be obligated to accept the transfer that contains burden properties.

c. Gift under this section (onerous gift) to disqualified persons:

This means that when donee, who was not competent to contract, accepts the onerous property, then such donee is not bound by acceptance of the onerous gift, that he/she accepted.

But if the donee who at the time of accepting the onerous gift was incompetent to contract, becomes competent later in the future, and then retains the onerous gift (property)being fully aware of the obligation on it, then under such circumstance the acceptance becomes binding on the donee.

Case law:

“Punna Lal vs. Fulmoni”: -

In this case it was held by the Calcutta high Court held that the obligation that was carried by the onerous gift was to maintain the dependents of the donor of the gift and such burden was valid and had to be fulfilled by the donee in the scenario he accepts the gift.

Universal Donee:

Any person who can receive all the assets of the donor via. Gift is known as a 'Universal Donee.' This gift comprises of all the movable and immovable property of the donor that is being transferred to the donee as Gift.

v. Section 128: “Universal Donee”: -

According to this section, any person who can get a gift that consists of all of the properties of the donor (movable and immovable) that person is known as a universal donee.

This section also places a duty/responsibility, or liability on the person who becomes a universal donee, that such person will have to take care of all the debts and liabilities that were on the donor in relation to the properties that were transferred as gift.

This section further makes it clear that the universal donee will be held liable only for such property that he has received as gift, i.e. The liabilities should not exceed the market value of the gift but if the liability exceeds the market value, then the donee will not be liable for the excess part of the liability of the property transferred as gift.

Death Bed Gifts:

Death bed gifts, come as an exception to all the provisions of gift under the transfer of property act, 1882. This type of gift is also known as '*Donatio Martis Causa.*'

Death bed gift is a legal principle began in the Roman law; there it was a mechanism by which people would be able to gift their properties to another person while they were on their death beds, such that these gifts that were made on the death bed will take effect, irrespective of what the provisions were given in the will of the person who made a death bed gift.

III. ACTIONABLE CLAIM

If understood in simple terms, when a legal action can be started on any debt or claim in the courts of law to get relief, then such debt or claim are known as 'Actionable Claim. Actionable claims are such debts that have not been secured and under TPA they are capable of being owned and transferred.

Actionable Claims are governed under The Transfer of Property Act, 1882, under various sections.

(A) Actionable Claims Under Transfer of Property Act, 1882:

Actionable Claim is defined under Section 3 of the act.

i. Section 3: "Interpretation Clause": —

Actionable Claim : according to this section, actionable claim means " any claim to any debt, other than such debts that have been secured by way of mortgage of movable property,, hypothecation, pledge of movable property or claim to any beneficial interest in movable property, not in possession i.e the movable property is not in actual or constructive possession of the person claiming (claimant), such that the civil courts recognise this claim as sufficient ground to giving relief, whether such debt or beneficial interest is,

- Existent,

- Accruing,
- Conditional, or
- Contingent

Illustration:

- a. Mohan borrowed 10,00,000 from Sohan and mortgage his house to Sohan in exchange for the loan. This mortgage debt given by Sohan to Mohan is not an actionable claim as it is secured.
- b. Rohan borrowed 10,00,000 from Reema without any security, thus, this loan given by Reema Rohan, without any security is an action of claim.

What may constitute as Actionable Claim:

- a. A debt that is not secured,
- b. Any form of maintenance or allowance payable in future,
- c. Any claim made to return earnest money,
- d. Claim made for fixed deposit in bank,
- e. Arrears of rent,
- f. Etc.

Instances and the Processes Through Which Actionable Claims can be Transferred

ii. Section 130: “Transfer of Actionable Claim”: -

According to this section, whether with or without consideration and actionable claim can only be transferred by the execution of a document (instrument of transfer, such that the document has to be in writing and has to be signed by the transfer of the person who has been duly authorised by the transfer to sign the document on his/her behalf. The transfer of action will claim made in such manner becomes effective and complete once the instrument of the transfer has been executed.

Only after the transfer has become effective, all the rights and remedies that were once vested with the transfer will now vest with the transferee, irrespective of the fact, whether notice of such transfer has been made or not.

This section further suggests that the transferee, after having received all the rights and remedies in the actionable claim can sue and initiate proceedings for such claim under his own name, such that the transferee does not need to take permission of the transferor and does not even

need to make him a party to the proceedings.

iii. Section 131: “Notice to be in writing, signed”: -

According to the section, the notice that is to be sent, shall be in writing and be signed by,

- Transferee or his legal representative; and
- Shall have name and address of the transferee;

iv. Section 132: “Liability of transferee of actionable claim”: -

according to this section, once the actionable claim has been transferred, the transfer becomes liable for all and any liability and equity that the transferor was once a subject of, in respect of the transferred actionable claim.

IV. LEASE

If understood in simple terms, a ‘Lease’ is a legal contract (agreement) between 2 parties where each party is bound by the terms of the agreement. Under this agreement one party transfers the right of enjoyment of the property to the other party for a limited time period, in return for payment / consideration or price. The person who transfers the rights of enjoyment of property to another in return for consideration is known as the ‘Lessor’ and the person who gives the consideration in return for the right to enjoyment of the property for a specific time is known as the ‘Lessee.’

This legal contract or agreement is known as Lease or the Lease Agreement. Lease is governed under The Transfer of Property Act, 1882, in Chapter 5, from Section 105 to Section 117.

(A) Essential Requirements of a Lease

1. The subject matter of the lease must be an immovable property;
2. The rights of enjoyment must be done from lessor to lessee;
3. It is necessary to have a lessor and a lessee;
4. It is necessary for the lessor to be a competent person and to have the title, ownership, and the authority of the property whose rights are being transferred;
5. It is necessary that the lessee is also competent to enter into contract at the date on which the lease is executed;
6. A lease has to be executed by both parties, i.e the lessor and the lessee;
7. There has to be some kind of consideration for the lease either as a premium or premium plus rent;

(B) Kinds And Classification of Lease

Lease is majorly divided into 2 types:

- Absolute Lease:

This type of lease is granted by a person who has complete (absolute) rights over the property that has been leased, i.e the owner of the property. An absolute lease is also known as 'Primary Lease' and can be granted for any number of years or for any time.

- Derivative Lease:

This type of lease is also known as 'Sub-Lease' or 'Under-Lease' and is given by the person who has the primary lease of the property. This lease cannot be made for a period beyond the primary lease.

Lease is classified into three main categories:

- Lease for a Fixed Period of Time:

Like the name suggests for this type of fees, the time period for which the rights are being transferred is fixed or predetermined.

For example: A leased his property to B for a fixed period of 5 years.

- Periodic Lease:

This type of lease is one, in which the duration of the lease is in a continuous form i.e., period to period. This continuous period can be of a year, a month, a week or even quarterly.

This period in a periodic lease is determined by the payment of rent i.e the intervals at which the rent is paid to the lessor by the lessee.

Case Law: "Ashutosh versus Chandi Charan, 1927":

In this case, it was held that even if a lease is for an indefinite period, but the rent that is collected from this lease is paid on a periodic basis i.e yearly, then this lease would be considered as 'year to year' lease.

- Lease in Perpetuity:

This type of lease is usually referred to as 'permanent lease' and is without a specified time period. Lease in perpetuity in India is usually granted for agricultural property and can be created either expressly, or it is presumed that lease in perpetuity has been created.

Case Law: "Syed Ali versus Manik Chandra, 1924":

According to decision given in this case, it was held that if there is some change or increase in

the rent of the lease, then such change or increase in the rent will not destroy the permanent character of the lease, but only till the time the lessee pay the rent.

(C) Lease Under Transfer of Property Act, 1882

Lease is defined under Section 105 of the Act:

i. Section 105: “Lease Defined”: -

according to the section, lease can be defined as, ‘when the rights to enjoy a leased property are transferred for some time (certain time), such that the transfer made is either expressed or implied a made in perpetuity, for consideration of a price or consideration of money or share of crop, service or any thing of value, that has to be rendered periodically or on special occasions by the person to whom these rights are being transferred to the person who is transferring the right of enjoyment, is known as Lease’.

This consideration could either be:

- paid; or
- promised to be paid; or
- partly paid; or
- partly promised to be paid;

In short it can be said that a ‘lease’ can be made for consideration of:

- Price paid or promised;
- Money;
- Share of crops;
- Services;
- Any other thing of value;

This section further defines the following terms:

- Lessor: the person who transfers the rights of enjoyment to another in return for consideration is known as the lessor.
- Lessee: the person to whom the rights of enjoyment are transferred after he/she pays the consideration is known as lessee.
- Premium: it is the price that has to be paid for lease, it can either be paid or is promised to be paid.

- **Rent:** it is the money, share of crops, services or any other thing is of value, that is given to the lessor as consideration.

Modes of Creation of Lease:

ii. Section 107: “Lease How Made”: -

According to this section there are two ways in which a lease can be made/created, and the created lease are for immovable property:

- Leases can only be created through a registered document/instrument, for such immovable properties that are leased for 1 or more than 1 years or reserves rent on a yearly basis then such
- For all other types of immovable properties, the lease can either be made by a registered instrument or through an oral agreement that is accompanied by the delivery of possession of the leased property.

Rights and Liabilities of Lessor and Lessee:

iii. Section 108: “Rights and Liabilities of Lessor And Lessee”: -

This section lays that, if any lease contract or local law is absent, then the following rights and liabilities possessed by the lessor and the lessee against each other.

- **Lessor:**
 - a. **Rights:**
 - It is the right of lessor to receive payment for the leased property;
 - It is the right of lessor to retain ownership of the title of the leased property and only transfer the rights to enjoy the property and the right of possession of the property for a certain amount of time i.e for the duration of lease;
 - b. **Liabilities:**
 - A lessor is bound to/liable to present/disclose all and any (if any) material defect that may be in the least property in respect to the purpose for which the property is being leased, such that the lessor is aware of these defects. This disclosure is to be made to the lessee.
 - The lessor is liable to give lessee possession of the leased

property.

- **Lessee:**

- a. **Rights:**

- It is the right of lessee that he can make the lease void if the property becomes unfit for the purpose for which the lease was made due to any unforeseen situation like fire, flood, violence of arm, or mob, et cetera.
 - It is the right of Lessee that he can get the least property repaired with his own money, and then deducted from the rent, if he had asked the lessor to make the repairs, but the lessor refused or did not get it done.

- b. **Liabilities:**

- Lessee has the duty to not harm the least property in any way, but if it is found that the property was harmed by actions of lessee then he is liable to fine.
 - It is the liability of Lessee to inform the lessor of any interest that the lessor may have the least property but is not aware of and the lessee is aware of.
 - It is the duty/liability of the lessee to pay any amount that is payable to the lessor at the time at which the amount is due.

Modes of Determination/Termination of Lease:

- iv. Section 111: "Determination of Lease": -

According to the section, a lease can be determined/terminated only in the following ways:

- Termination of lease through a 'efflux of time':

This says that once the time period for which the lease was predetermined ends, it will automatically terminate when such predetermined lease term expires.

Further, the lessee gives back the possession of the leased property, when the last date of the lease period is reached, the rights go back to the lessor.

- Termination of lease, once such event occurs on which the least time period was based:

this says that when a lease is created for the occurrence of any event, such that the event actually happens or occurs, then the lease will be terminated.

- Termination of lease once the interest of lessor is terminated in the least property:

This means that once the lessor does not own the leased property, then the lease will be terminated, unless the new owner continues the lease.

- Termination of lease by the express surrender of lessee:

This says that when a lessee himself or herself surrenders (gives up) his/her right in the least property back to the lessor, by an agreement that was made mutually between them, then the lease terminated.

- Termination of lease by forfeiture:
 - If lessee while any of the conditions of the lease, then the lessor can re-enter the property due to such violation of the expressed condition, and in such instance, the lease deemed to have been terminated.
 - If the lessee gives up his position as a lessee by becoming the owner of the lease property or by claiming the title of the property, then in such situation the lease is terminated.

V. CONCLUSION

Property rights, being fundamental to personal freedom and economic development, require a clear, precise, and predictable legal framework for their transfer and regulation. The transfer of property act, 1882, in laying down the statutory guidelines for transferring property in various forms, provides the backbone for ensuring legal clarity and protecting the rights of all stakeholders involved in such transactions.

The in-depth exploration of gifts, actionable claims, and leases reveal the wide-ranging mechanisms through which rights and obligations can shift from one individual to another. A gift may appear to be simple act of generosity, yet under the law, it carries with it a number of legal preconditions, duties, and expectations - particularly when dealing with conditional or onerous gifts. It becomes imperative that both the donor and the donee understand the implications of such a transfer to avoid disputes and ensure its enforceability.

Actionable claims, though intangible, are deeply embedded in the legal and commercial fabric

of the country. The fact that these claims can be transferred like tangible property - and give rise to enforceable rights - demonstrates the adaptability and evolution of property law in accommodating modern financial systems. The stipulations surrounding their transfer, emphasise the importance of documentation, notice, and awareness of liabilities, ensuring that the rights of third parties are not unjustly compromised.

Leases, on the other hand, serve as a cornerstone of property usage in both residential and commercial. The legal requirements that govern the formation, execution, and classification of leases ensure that the relationship between lessors and lessees is both equitable and legally enforceable. Through periodic, fixed term, or perpetual leaseholds, the law enables individuals and businesses to access and utilise property without full ownership, thereby contributing significantly to the functioning of the real estate economy.

In summation, the legal doctrine is governing these three distinct, yet interconnected modes of transfer reflect the complexity and robustness of Indian property law. They provide a necessary framework for balancing rights, responsibilities, and remedies, and ensure that all property - related transactions adhere to principles of Justice and transparency. A thorough grasp of these concepts not only helps in preventing legal pitfalls but also empowers individuals to make informed decisions regarding acquisition, transfer, and utilisation of property. Whether one is a legal practitioner, a law student, or a common citizen, the knowledge of such transfers is essential for navigating the legal landscape of property in India.

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