

An overview on Actionable Claims and Related Legal Provisions in India

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Abstract

This paper offers a comprehensive examination of the concept of actionable claims under Indian law, primarily governed by the Transfer of Property Act, 1882. It explores the nature and classification of actionable claims as a form of intangible movable property, emphasizing their relevance in claims involving unsecured debts and beneficial interests not in possession of the claimant. The paper delves into the statutory definition under Section 3 and analyzes essential distinctions between secured and unsecured debts. It further discusses judicial interpretations, essential characteristics, and the procedural aspects of transferring such claims under Section 130 and related provisions. Through various case laws, the study illustrates both the scope and the limitations of actionable claims, highlighting instances that fall within or outside the purview of the definition. Additionally, the paper reviews ancillary provisions relating to notice, liability, solvency, and assignment of rights under insurance policies, as well as statutory disqualifications affecting court officers. Concluding with a critical analysis, it argues for statutory reforms to clarify ambiguities regarding the nature of transactions constituting a transfer of actionable claims and to define the associated rights and liabilities more precisely. This research contributes to a nuanced understanding of actionable claims and their operational framework within Indian property law.

ACTIONABLE CLAIM

An actionable claim is called, in English Law, a chose in action or a thing in action as against a chose or money in possession. It denotes incorporeal personal property of all disciplines and an interest in corporeal personal property not in possession of the owner which accordingly can only be claimed or enforced in action. Therefore, while the different types of movable property governed by the Sale of Goods Act can be called as chose in possession, an actionable claim is also a type of movable property called chose in action. It is also a movable property because a debt is a property and anything which is not immovable property is movable property.

Actionable claim in general terms signifies a claim or a debt for which you can take an action. It means there's a claim and you can approach court for enforcement of the same. The debt here is unsecured. Thus, we can say that an Actionable Claim is a claim to any debt, other than secured by mortgage of immovable property or pledge or hypothecation of some movable property, or to any beneficial interest in movable property, not in possession either actual or constructive of the claimant.

Examples of actionable claim;

- Arrears of rent;
- Interest of the partner in a dissolved partnership;
- Annuities under a deed of waqf;

- Money due for goods sold;
- A mohammadam widow's claim for unpaid dower;
- A claim to rent to fall due in future;

Exceptions to Actionable claim;

- Debts secured by mortgage of immovable property;
- Damages for breach of contract;
- Damages in tort;
- A claim to mesne profits;
- Share in company;
- Claim to copyright.

DEFINITION

Actionable claim is defined in the Transfer of Property Act¹ which was included by the Amending Act². It is an intangible movable property, and its transfer is discussed in Chapter VIII of the Act³.

It has been defined under section 3 (paragraph 6) of the act as follows:

*“ ‘actionable claim’ means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent. ”*⁴

Therefore, essentially an actionable claim may be:

- A claim to a debt which is unsecured, excluding that of mortgage, hypothecation or pledge of immovable property
- Beneficial interest in movable property

Here, debt means not only loan, rather than any obligation to pay certain sum of money may be called a “debt”. Debt may be of two types; i. secured and ii. unsecured.

A secured debt is a debt in which the creditor or the person who provides debt takes security; it can be of both movable and immovable property; from the debtor or the person to whom the debt is given for repayment of its money. When debt is secured by immovable property it is mortgage, and when debt is secured by movable property it is secured by pledge or hypothecation.

An unsecured debt is exactly opposite of secured debt. If there is no security of movable or immovable property the debt is unsecured. Under section 3 only unsecured debt is actionable claim.

UNSECURED DEBT

Unsecured debt refers to all monetary obligations of a certain amount, and that is not covered by any security in the form of mortgage, pledge or hypothecation. This is not just limited to the concept of loans forwarded by a creditor to a principal debtor. It extends to all kinds of monetary obligations, such as rent or payment on sale of property etc.

The three requirements for a transaction to qualify as unsecured debt are:

¹ Section 3 of the Transfer of Property Act, 1882

² The Amending Act II of 1990.

³ The Transfer of Property Act, 1882

⁴ Section 3 of the Transfer of Property Act, 1882

1. Monetary obligation
2. No security
3. Certainty of amount of money obligated

In the case of **Sunrise Associates v. Govt. Of NCT Of Delhi**⁵, it was held by the hon'ble court that an actionable claim may be existent in praesenti, accruing, conditional or contingent.

So, the three types of Unsecured Debt may be;

1. Existent Debt: The debt is existent when a debt or sum of money becomes due and has to be payable at present for instance, the claim of arrears of salary.
2. Accruing debt: Accruing means to increase over a period of time, so, where a debt is payable on a future date, the debt is accruing. For example, if Mr. A promises to pay Rs. 3,000/- to Ms. B as maintenance allowance on 15th of every month, the claim of Ms. B against Mr. A is an accruing debt before 15th of that month.
3. Conditional or contingent debt: As the word indicates, conditional means based on some condition which can be fulfilled by parties and contingent means any condition which is beyond the control of parties. For instance: Mr. A promises to Mr. B Rs. 5,000/- if he marries Ms. C within one year. So, in this case, the claim of Mr. B of Rs. 5,000/- is based on the condition of his marriage. Hence it is conditional debt. And if Mr. A promises to give Mr. B Rs. 5,000/- on the birth of the first child of Mr. B only the male child, this is a contingency which makes it contingent debt.

INSTANCES

INSTANCES OF ACTIONABLE CLAIMS

1. A maintenance allowance payable at a future date.⁶
2. A right to the proceeds of a business.⁷
3. A partner's right to sue for an account of a dissolved partnership.⁸
4. Annuities payable under a deed of wakf.⁹
5. The price payable by a purchaser of immovable property before the execution of the conveyance.¹⁰
6. The right to recover money left in the hands of a vendee.¹¹
7. An amount due under a policy of insurance.¹²
8. An amount due under a letter of credit.¹³
9. The right to recover the insurance money on the death of the assured person, or on the expiry of the endowment period.¹⁴
10. A right to recover back the purchase money on the sale being set aside.¹⁵
11. Arrears of rent.¹⁶

⁵ Sunrise Associates v. Govt. Of NCT Of Delhi & Ors., AIR 2006 SC 1908.

⁶ Haridas v. Baroda Kishore, (1900) ILR 27 Cal 38

⁷ Alkash Ali v. Nath Bank, AIR 1951 Assam 56.

⁸ Mulchand v. Shamdas, AIR 1941 Sau 73.

⁹ Bibi Alimunissa v. Abdul Aziz, 165 IC 298.

¹⁰ Ahmaduddin v. Majlis, (1881) ILR 3 All 12.

¹¹ Hanuman Estate Pvt. Ltd. v. Dhanuka Industries Pvt. Ltd., (1975) 79 Cal WN 83.

¹² Varjivandas v. Maganlal, AIR 1937 Bom 382.

¹³ Joseph Pyke & Sons Ltd. v. Kedarnath, AIR 1959 Cal 328.

¹⁴ Chinnapareddi v. Venkararamanappa, AIR 1942 Mad 209.

¹⁵ Ambika Prasad Singh v. Ram Charitar Singh, AIR 1951 Pat 419.

12. Future rents¹⁷.
13. A decretal debt¹⁸.
14. Interest of the purchaser of the lottery in the prize money.¹⁹

INSTANCES OF CLAIMS NOT COVERED AS ACTIONABLE CLAIMS

1. A judgment debt or decree²⁰.
2. A claim to compensation for a canal constructed by the government on a part of the mining site before transfer of the mining lease²¹.
3. A claim to mesne profits as they are unliquidated damages.²²

TRANSFER OF ACTIONABLE CLAIMS

Under the Transfer of Property Act, the mode of transfer of actionable claim is described.

“Transfer of actionable claim.—(1) The transfer of an actionable claim [whether with or without consideration] shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorized agent, shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not:

Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.

Exception.—Nothing in this section applies to the transfer of a marine or fire policy of insurance [or affects the provisions of section 38 of the Insurance Act, 1938 (4 of 1938)].”²³

Section 130²⁴ does not provide clearly that what is meant by ‘transfer of actionable claim’. Infact the section only reveals how the transaction of transfer of actionable claim can be made effective and complete and insists upon the execution of an instrument in writing signed by the transferor. Section 130 states that on execution of an instrument in writing duly signed by the transferor all the rights and remedies of the transferor shall vest in the transferee. The transferee of an actionable claim is entitled to institute a suit or proceeding on his own name and can do so without seeking the consent of transferor to do so and without making him a party. The transfer of an actionable claim can be made with or without consideration.

¹⁶ Daya Debt v. Chapala Devi, AIR 1960 Cal 378.

¹⁷ Poothekka Nachiar v. Annamalai Chetti, AIR 1926 Mad 1173.

¹⁸ Somashekanao v. K.S. Mishra, AIR 1944 Nag 185.

¹⁹ Mohideen Sahib v. Ameena Bi, AIR 2007 Mad 13.

²⁰ Afzal v. Ramkumar Bhudra, (1886) ILR 12 Cal 610.

²¹ State of M.P. v. Balimansha Byramji, (1976) MP LJ 535

²² Jai Narayan v. Kishan Dutta, AIR 1924 Pat 551].

²³ Section 130 of the Transfer of Property Act, 1882.

²⁴ Section 130 of the Transfer of Property Act, 1882.

ILLUSTRATIONS

(i) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in section 131, pays B. The payment is valid, and C cannot sue A for the debt. (ii) A effects a policy on his own life with an Insurance Company and assigns it to a Bank for securing the payment of an existing or, future debt. If A dies, the Bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor, subject to the proviso in sub-section (1) of section 130 and to the provisions of section 132.

In the case of *Bharat Nidhi Ltd. v. Takhatmal*²⁵, it was held that the transfer of a right to a sum of money is a valid transfer of actionable claim.

Further, in the case of *Daya Bai v. Ambalal*²⁶, it was held that assignment of dividends of a share in a company is also a valid transfer under actionable claim.

But, in the case of *Mulji Mehta & Sons v. C. Mohan Krishna*²⁷, it was held that there cannot be an assignment of a promissory note, though there can be an assignment of debt.

Therefore, the essential elements of such a transfer are:

- The instrument of transfer must be in writing
- The transferor or a duly appointed agent must have signed such an instrument.
- Consideration may or may not be extended.
- Such a transfer will be complete and deemed effective only when it has been executed.

ESSENTIALS OF TRANSFER

a. **WRITTEN INSTRUMENT-** The first requirement is that every transfer of an actionable claim should be in writing. The obligation of having a written instrument is an important but significant alteration of law²⁸. An oral transfer is invalid²⁹.

However, in *Bharat Nidhi Ltd v. Takhatmal*³⁰, it was observed by the Supreme Court that a document can amount to equitable assignment independent of Section 130³¹. Therefore, transfer for actionable claims, in certain circumstances may be recognised even if it is in violation of Section 130.

b. **MODE OF ASSIGNMENT-** For the assignment to be effected, no rigid wording is necessary as long as the intention of such assignment is clear from the language used. This intention should be extremely evident by the receipt which represents the transfer of claim. In *Hunsraj v. Nathoo*³², even an endorsement written on the back of a contract for the purchase of goods which stipulated that the purchaser sold his rights and interest in the contract was held to be a valid transfer of actionable claim.

c. **CONSIDERATION-** An Amendment inserted the words “whether with or without consideration.”³³ This was done to bring cases of gifts within its purview.

²⁵ *Bharat Nidhi Ltd. v. Takhatmal*, AIR 1969 SC 313.

²⁶ *Daya Bai v. Ambalal*, AIR 1981 SC 156.

²⁷ *Mulji Mehta & Sons v. C. Mohan Krishna*, AIR 1997 AP 153.

²⁸ *Velayuthan v. Pillaiyar Chetti*, (1911) 9 Mad LT 102.

²⁹ *Raman Chetty v. Nagarathana Naicker*, 15 IC 380

³⁰ *Bharat Nidhi Ltd. v. Takhatmal*, AIR 1969 SC 313.

³¹ Section 130 of the Transfer of Property Act, 1882.

³² *Hunsraj v. Nathoo*, (1907) 9 Bom LR 838

³³ Act 20 of 1929.

The whole question of payment of consideration is exclusive to the assignor and assignee; non-payment of the consideration for an assignment is not ground to take advantage of by a debtor to invalidate transfers³⁴.

- d. **EFFECTIVE WHEN EXECUTED-** The assignment or transfer of claims is effectual only from the date of the assignment. This is a deviation from the English Law where such assignment manifests from the date of notice, except in cases of equitable assignment³⁵.

EXCEPTIONS TO SECTION 130

- Negotiable instruments such as checks, money orders etc, as well as financial market items such as stocks, shares and debentures.
- Marine insurance policies.
- Fire insurance policies.
- All cases falling under Section 38 of the Insurance Act, 1938.

OTHER PROVISIONS

NOTICE

Section 131 of the Act states that every notice of transferable claim must be duly signed by the transferor or his agent.³⁶

The notice must be an express notice in writing and should be given to the transferor³⁷.

If the assignment is by a registered document, notice is not necessary³⁸.

A notice may be conditional, and can be validated by subsequent notices.

LIABILITY OF TRANSFEREE OF ACTIONABLE CLAIM

Section 132 of the act deals with liability of transferee of actionable claim³⁹. After the transfer of an actionable claim, the transferee takes the transfer with all the liabilities and equities of the transferor as they stood at the date of the transfer. The principle of this section applies to court sales.

WARRANTY OF SOLVENCY OF DEBTOR

Section 133 provides that the transferee is not bound to give any warranty as to the solvency of the debtor.⁴⁰

MORTGAGED DEBT

Section 134 provides for mortgage debt. This section provides that when a debt is transferred, if received by the transferor or recovered by the transferee, should be applied in the following manner:

1. First, in payment of the costs of such recovery;
2. Secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and
3. Lastly, the residue, if any, belongs to the transferor or other person entitled to receive the same.⁴¹

³⁴ Narain Food Products Ltd. v. Tikam Chand, AIR1973 All 573.

³⁵ Gorringer v Irwell, (1886) 34 ChD 128 (CA).

³⁶ Section 131 of the Transfer of Property Act, 1882.

³⁷ Bank of the East v. State of Assam, AIR 1958 Assam 22.

³⁸ Prem Chand v. Onkar Dutt, AIR 1972 All 415.

³⁹ Section 132 of the Transfer of Property Act, 1882.

⁴⁰ Section 133 of the Transfer of Property Act, 1882.

ASSIGNMENT OF RIGHTS UNDER POLICY OF INSURANCE AGAINST FIRE

Section 135 provides assignment of rights under policy of insurance. An express exemption is provided under law to assignment of marine and fire policies of insurance from its application.⁴²

INCAPACITY OF OFFICERS CONNECTED WITH COURTS OF JUSTICE

Section 136 provides for the incapacity of officers connected with the court of justice. This section provides statutory disqualification on certain officers, associated or connected with the courts to be a transferee of actionable claims, the predominant reason being the probable misuse of power, position and information.⁴³

SAVING OF NEGOTIABLE INSTRUMENTS

Section 137 lays down the saving of negotiable instruments. This section expressly save the application of the rules to stocks, shares or debentures, or to instruments which are for the time being, by the law or custom, negotiable.⁴⁴

CONCLUSION

Actionable claim is an intangible movable property, and it is transferable. It mainly refers to the types of claims that can be recovered through proceedings in Courts. Actionable claims within the meaning of Section 3 of the Transfer of Property Act, therefore, cover (i) claims to unsecured debts and (ii) claims to beneficial interest in moveable property not in possession actual or constructive whether present or future., conditional or contingent. Such actionable claims could be (a) a right to claim maintenance (b) a right to arrears of rent (c) a right to annuities (d) moneys payable under a contract for price or advance (e) a right to claim benefit of a contract (f) a partner's claim for accounts and his share therein (g) insurance claim, other than marine insurance (h) salary in arrears (i) book debts (j) a fixed deposit receipt, etc. Such claims can be transferred to another person, but certain people are barred from becoming transferee of actionable claims. This bar has been imposed in order to maintain the integrity of Court proceedings.

Thus, it can be concluded that statutory law on transfer of actionable claims need amendment to define clearly that transaction covers transfer of debt from one debtor to another debtor or it covers transfer of a claim or a right from one creditor to another creditor or it amounts to transfer of a claim or right by creditor to a third party which is called as agency contract for collection of debt. The law must also be amended to provide the rights and liabilities of parties to above mentioned transactions. The statutory provisions must also be amended to provide the requisites necessary for the validity of transfer of actionable claim.

⁴¹ Section 134 of the Transfer of Property Act, 1882.

⁴² Section 135 of the Transfer of Property Act, 1882.

⁴³ Section 136 of the Transfer of Property Act, 1882.

⁴⁴ Section 137 of the Transfer of Property Act, 1882.