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## **THE INDIAN CONTRACT ACT, 1872**

### **INTRODUCTION**

The law of contract lays down the legal rules relating to promises: their formation, their performance, and their enforceability. Explaining the object of the law of contract, Sir William Anson observes: "The law of contract is intended to ensure that what a man has led to expect shall come to pass; that what has been promised to him shall be performed."

The word Contract' is derived from the Latin word 'contractus' which means "to work on contract." The law of contract is based on the principle laid down in the Latin phrase ***Pacta sunt servanda***, which means "agreements to be kept" or "pacts must be kept."

**Anson said:** "The law of contract does not lay down a number of rights and duties which the law will enforce; it consists of rather a number of limiting principles subject to which the parties may create rights and duties for themselves which the law will uphold." Thus, the law shall not lay down absolute rights and liabilities of the contracting parties; rather it shall lay down only the essentials of a valid contract. "The parties to a contract, in a sense, make the law for themselves" (Anson).

Parties have the freedom to settle all the terms of their contract, subject only to the overall control of law that there is no imposition (viz. undue influence, force, etc.), that the terms are reasonable and that they are not opposed to public policy. For example, the parties may settle any consideration and the court cannot interfere only because the consideration is inadequate or too small.

"To consummate a contract there must be mutuality as well as a meeting of the minds of parties." "Mutuality' means equality of rights between the parties. Either party should have equal right to enforce the contract. For example, where one of the parties to a contract is a minor, there is no mutuality. Further, in a contract there is a consensus ad idem i.e. 'meeting of minds'.



'Meeting of minds' means that the parties have by the exchange of offer and acceptance know each other's consent. "A contract, like a tort, is not unilateral." In a tort, a wrong is committed by one person against the other (e.g. injuring another by rash and negligent driving).

The law of contract in India is contained in the Indian Contract Act, 1872, which extends to the whole of India including the State of Jammu and Kashmir. This Act is based mainly on English Common law consisting of judicial precedents. The Act is not exhaustive as it does not deal with all the branches of the law of contract. There are separate Acts which deal with contracts relating to negotiable instruments, transfer of property, sale of goods, partnership, insurance, etc. Before 1930, the Act also contained provisions relating to contracts of sale of goods and partnership.

To the extent that the Indian Contract Act deals with a particular subject it is exhaustive upon the same and it is not permissible to import the principles of English law deforms the statutory provisions. The decisions of the English courts possess only a persuasive value ***[Satyabrata Ghose v Mugneeram Bangur & Co. AIR 1954 SC 44].***

Where no statutory provision to the contrary is in existence in the Indian Contract Act, the courts in India have generally been guided by the Common Law of England. Although English Common Law permeates the Indian Contract Act, every new development of the Common Law may not necessarily fit into the scheme and words of our statute then it will be the duty of the courts in India to read the statute naturally and to follow it ***[Bhagwandas vs Girdharilal AIR 1966 SC 543].***

The Act does not affect the provision of any Statute, Act or Regulation not expressly repealed by it, nor any usage or custom of trade, nor any incident of any contract not inconsistent with the provisions of the Act (Sec. 1). A minor amendment in Sec. 28 of the Act was made by the Indian Contract (Amendment) Act, 1996. The general principles of the law of contract applicable to all contracts are laid down under Sections 1-75 of the Act. Sections 124-238 deals with specific or special kind of contracts e.g. indemnity and guarantee, bailment and pledge, and agency.



## **CHAPTER I**

### **PRELIMINARY**

**Preamble.-** whereas it is expedient to define and amend certain parts of the law relating to contract;

**Section 1 - short title, extent and commencement-** This Act may be called the Indian Contract Act, 1872. It extends to the whole of India, and it shall come into force on the first day of the September, 1872.

#### **Is the Indian contract Act, 1872 exhaustive in nature?**

The Indian contract Act, 1872 is not exhaustive and also not complete on matters of contract because some contracts are dealt with by different specific Acts like Transfer of property Act, Partnership Act, Specific Relief Act etc. SOGA.

#### **Scheme of Indian Contract Act, 1872**

This Act has been divided into two parts-

- General Principles [Ss. 1-75]
- Specific Contract [Ss. 124-238]

#### **What is a contract?**

A contract has been defined in **section 2(h)** as “an agreement enforceable by law.”

Thus, a contract consists of following two elements-

1. Agreement.
2. Legal obligation arising out of agreement.

According to **Sir William Anson-** “A contract is an agreement enforceable at law made between two or more persons by one or more to acts or forbearances on the part of other or others.”

#### **Now to understand it we need to know:**

What an agreement is-

Indian Contract Act **Section 2(e)** defines **Agreement** as “every promise and every set of promises forming the consideration for each other is an agreement.”

- In an agreement there is a promise from both sides. For example, A promises to deliver his watch to B and in return B promises to Pay a sum of Rs. 5000 to A there is said to be an agreement between A and B.
- A promise is a result of an offer (proposal) by one person and its acceptance by the other. For example, when A makes a proposal to sell his watch to B Rs. 5,000 and B accepts his proposal, there results a promise between two persons.

**Section 2(b)** of the Act defines **Promise** as under:

“When the person to whom the proposal is made signifies his assent there to, the proposal is said to be accepted. *A proposal, when accepted becomes a promise.* Thus, when there is proposal from one side and the accepted of that proposal from other side, it results in a promise. This promise from the two parties to one another is known as an agreement.”

On analyzing the above definition, the following characteristics of an agreement become evident:

- **Plurality of persons:** There must be two or more persons to make an agreement because one person cannot enter into an agreement with himself.
- **Consensus-ad-idem:** Both the parties to an agreement must agree about the subjectmatter of the agreement in the same sense and at the same time.

**Note-** As started above, an agreement to become a contract must give rise to a legal obligation i.e., a duty enforceable by law. If an agreement is incapable of creating a duty enforceable by law, it is not a contract. Thus, an agreement is wider term than a contract.

**“All contracts are agreement but all agreements are not contract”,** because agreement of moral, religion or social nature e.g. a promise to lunch together at a friend’s house or to take a walk together are not contracts because they are not likely to create a duty enforceable by law for the simple reason that the parties never intended that they should be attended by legal consequences. In other words, *“An agreement which creates social obligation is not a contract.”*



In business agreement the presumption is usually that the parties intend to create legal relations for e.g. an agreement to buy certain specific goods at an agreed price e.g., 20 bags of wheat at Rs. 800 per bag is a contract because it gives rise to duty enforceable by law, and in case of default on the other part of either party an action for breach for breach of contract could be enforced through a court provided other essential elements of a valid contract as laid down in section 10 are present, namely, if the contract was made by free consent of the parties competent of contract, for a lawful consideration and with a lawful object.

### **ACCEPTANCE**

A proposal when accepted, results in an agreement. It is only after the acceptance of the proposal that a contract between the two parties can arise. Sec. 2(b) defines 'acceptance' as follows:

"When the person to whom the proposal is made signifies his assent there to, the proposal is said to be accepted. *A proposal, when accepted becomes a promise.* Thus, acceptance is the assent given to a proposal.

Mere silence is no acceptance. Silence does not per se amount to communication but an acceptance by silence could be sufficient if it was the offeree who suggested that their silence would be sufficient [Re Selectmove Ltd. (1995) 1 WLR 474].

### **CONSIDERATION**

Consideration constitutes the very foundation of the contract. An agreement not supported by consideration is void (sec. 25, Contract Act).

**Section 2 (d), Indian Contract Act defines consideration as under:**

"When, at the desire of the promisor, the *promisee* or *any other person* has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise."

Thus, Consideration means, "The price paid for the promise".

The three ingredients of this definition of consideration are:

- I. That the act or abstinence, which is to be a consideration for the purpose, should be done at the desire of the promisor,
- II. That is should be done by promise or any other person,
- III. That the act or abstinence may have been already executed or is in the process of beingdone or may still be executory i.e. it is promised to be done.