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Review Document

Indian Contract Act, 1872 (Sec.1 to Sec.123)

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Indian Contract Act, 1872 (Sec.1-Sec.123)

Significance

The Indian Contract Act is one of the oldest mercantile laws of our country. It came into effect on the 1st of September 1872 and is applicable to the whole of India. Containing a total of 266 sections it is the principal law regulating contracts in India.

Objective

It is the foundation upon which the superstructure of modern business is built. It affects everybody, more so, trade, commerce and industry.

Important provisions

Section 2(h) of the Indian Contract Act, 1872, defines the term contract as ‘An agreement which is enforceable by law is a contract’. So we can say that a contract is an agreement between two or more parties to do or abstain from doing something.

Contract = Agreement + Enforceability

Communication, Acceptance and Revocation of Proposals

Section 4: It says that the communication of the offer is complete when it comes to the knowledge of the person it has been made to. So when the offeree (in case of a specific offer) or any member of the public (in case of a general offer) becomes aware of the offer, the communication of the offer is said to be complete.

Section 5: It says the offer may be revoked anytime before the communication of the acceptance is complete against the proposer/offeror. Once the acceptance is communicated to the proposer, revocation of the offer is now not possible.

It also states that acceptance can be revoked until the communication of the acceptance is completed against the acceptor. No revocation of acceptance can happen after such date.

Voidable Contracts and Void Agreements

Section 13: Two or more persons are said to consent when they agree upon the same thing in the same sense.

Section 15: Coercion is the committing or threatening to commit any act, forbidden by the Indian Penal Code or the unlawful detaining or threatening to detain, any property, to the prejudice of any person with the intention of causing any person to enter into an agreement.

Section 16: When one party to a contract is able to dominate the will of the other and uses the position to obtain an unfair advantage, the contract is said to be induced by undue influence.

Section 17: Fraud exists when a false representation has been made knowingly with an intention to deceive the other party or to induce him to enter a contract.

Section 18: A misrepresentation is a form of a statement made preceding to the contract being completed.

Section 19 and 19A: Consent is free when it is not caused by mistake, misrepresentation, undue influence, fraud or coercion. When consent is caused by any of above said elements, the contract is voidable at the option of the party whose consent was so caused.

Section 20: This provision states that if the parties to a contract are under a mistake as to a matter of fact essential to the agreement. Therefore, any agreement with a bilateral mistake is void.

Sections 23 & 24: If either the consideration or the object of a contract is illegal, then the agreement is void as it defeats the provisions of the law. This applies to contracts which the court may deem as immoral or opposed to public policy, such as fraudulent agreements, which may cause financial loss to a person.

However, if the legal part of the contract is severable from the illegal part, then the former can be enforced in the court of law.

Section 25: This section provides that a contract without any consideration would be rendered void unless it is a gift made on account of natural love and affection; it is a time-barred debt, or it is compensation to someone who has voluntarily done something for the promisor.

Section 26: Any agreement which is made in restraint of marriage, either partially or absolutely, of a person is void as it the policy of the law to protect a person's freedom to choose their marital partner.

Section 27: Agreements made in restraint of trade are also rendered void as the law protects a person's right to carry on their choice of trade or profession, given that it is not illegal in nature.

The exception to this section is laid out in the proviso to Section 27 pertaining to the sale of goodwill, which restrains a buyer from carrying on similar trade with other sellers.

Section 28: An agreement by which a person is restrained to enforce his/her legal rights is void on the grounds of public policy as it is in contravention to the jurisdiction of judicial bodies.

Contingent contract

Section 31: Contingent Contracts are the contracts, which are conditional on some future event happening or not happening and are enforceable when the future event or loss occurs.

Enforcement of Contingent Contracts

Section 32: A contingent contract might be based on the happening of an uncertain future event. In such cases, the promisor is liable to do or not do something if the event happens. However, the contract cannot be enforced by law unless the event takes place. If the happening of the event becomes impossible, then the contingent contract is void.

Section 33: A contingent contract might be based on the non-happening of an uncertain future event. In such cases, the promisor is liable to do or not do something if the event does not happen. However, the contract cannot be enforced by law unless happening of the event becomes impossible. If the event takes place, then the contingent contract is void.

Section 34: If a contract is a contingent upon how a person will act at a future time, then the event is considered impossible when the person does anything which makes it impossible for the event to happen.

Section 35: There can be a contingent contract wherein a party promises to do or not do something if a future uncertain event happens within a fixed time. Such a contract is void if the event does not happen and the time lapses. It is also void if before the time fixed, the happening of the event becomes impossible.

Contingent contracts might be based on the non-happening of an uncertain future event within a fixed time. In such cases, the promisor is liable to do or not do something if the event does not happen within the said time. The contract can be enforced by law if the fixed time has expired and the event has not happened before the expiry of the time. Also, if it becomes certain that the event will not happen before the time has expired, and then it can be enforced by law.

Section 36: If a contingent contract is based on the happening or non-happening of an impossible event, then such a contract is void. This is regardless of the fact if the parties to the contract are aware of the impossibility or not.

Performance of Contracts

The promisor or his representative must perform unless the nature of contract shows that it may be performed by a third person, but the promisee may accept performance by a third party.

By whom contracts must be performed

In case of joint promisors, all must perform, and after the death of any of them, the survivors and the representatives of the deceased must perform. But their liability is joint and several. If the promisee requires any one of them perform the whole promise, he can claim contribution from others.

Section 45: Joint promisees have only a joint right to claim performance.

Time and Place of Performance of Contract

Section 46: Imagine a contract where the promisor has to perform his promise without any application by the promisee and there is no time specified for the performance of the same. In such a scenario, the promisor should perform the contract at a reasonable time.

While the term 'reasonable' can have different interpretations, the section specifies that it the circumstances of every case will determine the definition of reasonable for the parties involved.

Section 47: If there is a contract where the promisee is not required to make an application but the promisor needs to perform the contract only on a Sunday, then the promisor should perform the promise during regular business hours, unless the time is specified in the contract too.

Section 48: Let's say that there is a contract where the promisee necessarily needs to make an application for the performance of a contract, and then the promisee needs to ensure that the application is made at a proper place and time. In this case, the phrase 'proper place and time' can have different meanings in different cases.

Section 49: Imagine a contract where the promisee is not required to make an application for the performance of contract. Also, the place of performance is unspecified. In such a scenario, it is the responsibility of the promisor to apply to the promisee asking him to appoint a reasonable place for the performance of the promise.

Section 50: There can also be a contract where the promisor agrees to perform the promise in a manner and at a place and time prescribed or sanctioned by the promisee.

Performance of reciprocal promises

Section 53: When a contract is based upon a reciprocal promise and one of the parties prevents the other from fulfilling his/her obligations under the contract, then it becomes voidable at the option of the party who was prevented from performing on his/her promise.

Section 55: There are certain contracts in which time is of the essence, and thus they need to be performed during that period itself. However, when there is a failure to perform the contract on time, then the contract becomes voidable at the option of the aggrieved party.

Appropriation of payments

If the performance consists of payment of money and there are several debts to be paid, the payment shall be appropriated.

Contracts which need not be performed

Section 62: Parties may agree to cancel the contract or to alter it or to substitute a new contract for it.

Section 64: When a person, at whose option the contract is voidable, rescinds it then the other party need not perform any obligations relating to the contract. At the same time, the person who has voided the contract must restore any benefits he/she may have received.

Certain Relations Resembling Those Created By Contract

It deals with five circumstances under which a quasi contract comes to exist. There is no real contract between the parties and the law imposes the contractual liability due to the peculiar circumstances.

Section 68: Imagine a person incapable of entering into a contract like a lunatic or a minor. If person supplies necessities suited to the condition in life of such a person, then he can get reimbursement from the property of the incapable person.

Section 69: If a person pays the money on someone else's behalf which the other person is bound by law to pay, then he is entitled to reimbursement by the other person.

Section 70: Imagine a person lawfully doing something or delivering something to someone without the intention of doing so gratuitously and the other person enjoying the benefits of the act done or goods delivered. In such a case, the other person is liable to pay compensation to the former for the act, or goods received. This compensation can be in money or the other person can, if possible, restore the thing done or delivered.

However, the plaintiff must prove that:

- The act that is done or thing delivered was lawful
- He did not do so gratuitously
- The other person enjoyed the benefits

Section 71: If a person finds goods that belong to someone else and takes them into his custody, then he has to adhere to the following responsibilities:

- Take care of the goods as a person of regular prudence
- No right to appropriate the goods
- Restore the goods to the owner (if found)

Section 72: If a person receives money or goods by mistake or under coercion, then he is liable to repay or return it.

The Consequences of Breach of Contract

Section 73 lays down provisions regarding the compensation for loss or damage caused by the breach of contract. It talks about the right of the party who suffers from the breach of a contract. Such a party can claim compensation from the party who did not perform his obligations under the contract. The loss caused to the party must arise naturally i.e. in the usual course of things or must be known to the parties, while contracting, to occur in case of a breach. This section further states that the compensation would not be provided for remote or indirect loss suffered by such breach of contract.

The second part of this section talks about compensation for failure to discharge obligation resembling those created by contract. New obligations might occur and resemble the existing obligations under the contract. These new obligations must be discharged. If not, then the party injured from the failure to discharge such obligations is entitled to receive compensation. It is claimed from the party who failed to fulfill their obligations under the contract.

Section 74 deals with a situation where the parties have already specified the penalty for breach of contract. In this case, the party alleging breach is entitled to receive the same amount of compensation as stated in the contract. If the contract specifies any other penalty, then such a penalty must be imposed. The aggrieved party will receive compensation whether actual damage or loss has been proved to occur or not, irrespective of the fact that the actual damage or loss is proved or not.

Section 75 states that a party who has rightfully rescinded a contract is entitled to receive compensation.

Loopholes

- Any contract that restrains one from exercising lawful profession, trade or business of any kind, is termed void as per Indian contract law. Also, it does not provide for apportionment of losses in contracts which are void. That is not the case in laws of many other countries.
- Under The Indian Contract Act, a contract without consideration is void subject to certain exceptions provided in Section 25 of the Act. However, in English law there are contracts without consideration in some cases.

Conclusion

Contracts play a very important role in the day-to-day life of every person. Most of the time people enter into contracts without even realizing it. For the formation of a contract, there are many essentials that have to be followed. After the formation of a contract, the next stage is reached, namely, the fulfillment of the object the parties had in mind. Once the object is fulfilled the liability of either party comes to an end.

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About the Author



I'm Divya Soni from Indore Institute of Law and I had the opportunity to undergo a one-month internship at LeaglEagle Law Forum. I must say this was an enriching experience for me. Mainly this was an online internship and bare act review program. Each intern was provided with six bare acts to review which we have to submit at the 20th day. It was difficult and interesting for me to review each bare act as I haven't read few bare acts before. In general, I can say that this internship was an invaluable experience for me, and the knowledge and skills I gained during this period will certainly help me in the future.