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## THE INDIAN CONTRACTS ACT: KEY PROVISIONS AND CASE LAWS

~ *Goral Chavda*

### INTRODUCTION

The Indian Contract Act 1872 (“Act”) is a set of laws in the Indian Jurisprudence to govern all commercial transactions, contracts, and agreements. This is one of the oldest codifications and has been amended time and again to keep up with the changing economic trends in the country. Section S(h) of the Act defines a Contract as “an agreement enforceable by law”<sup>1</sup>. This connotes two major parts of a contract, firstly, it has to be an agreement and secondly, it shall entail enforceability in law.

An agreement connotes “every promise and every set of promises, forming the consideration for each other”<sup>2</sup>. It is, therefore, a combination of offer and acceptance. It becomes a contract once it leads to a legal obligation, i.e., it must be within the scope of law. Thus, a contract = offer + acceptance + enforceability by law (defined by law).

### OFFER AND ACCEPTANCE

An offer is the first essential element that initiates the process of a contract and acceptance is the assent given to the proposal. The person proposing is called an offeror or promisor, while the person accepting the offer is the offeree or the promisee<sup>3</sup>. It reflects the legal relation and intention of both the parties. There should be no ambiguity in the terms of the offer and it should be communicated.

❖ *Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas & Co.*

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<sup>1</sup> The Indian Contract Act, 1872, § 2(h)

<sup>2</sup> The Indian Contract Act, 1872, § 2(e)

<sup>3</sup> The Indian Contract Act, 1872, § 2(c)

In this case, the Hon'ble Supreme Court ("SC") laid down when and where an acceptance of the offer is completed. The offer and acceptance were communicated over the telephone, i.e., the conclusion of the agreement by an instantaneous speech. The plaintiff made an offer to the defendants in Khamgaon to procure specific products from Ahmedabad, and they accepted it.

When the defendants failed to perform the contract, the plaintiff filed a suit against them at Ahmedabad<sup>4</sup>. The SC held that the acceptance of a proposal completes against the proposer when the acceptance is put in a course of transmission to him and the case of the acceptor when it comes to the knowledge of the proposer<sup>5</sup>. The court also laid down the principle that the "place of acceptance in such situations will be the place where the communication of the acceptance is received"<sup>6</sup> i.e., in this case, Khamgaon.

### **LAWFUL OBJECT AND CONSIDERATION**

As per Section 23 of the act, object and consideration shall be legal for a contract to be valid. The object entails as the purpose for which the parties enter into a contract, while consideration is the price one pays instead of the offer<sup>7</sup>. Both of them should not be forbidden by law and shall not be fraudulent, immoral, or against public policy. Consideration should be real and not imaginary.

#### *❖ Kedarnath Bhattacharji vs. Gorie Mohamed*

The defendant subscribed an amount for the construction of the town hall on the faith of which the plaintiff entered into contracts of procuring material. When the former denied to pay, the Madras High Court held that the subscription was to be paid on the desire of the promisor and hence constituted good consideration under section 2(d) of the Act<sup>8</sup>. Therefore, the plaintiff was liable to pay the subscribed amount as its consideration for the procurement of materials.

### **FREE CONSENT**

A meeting of the minds and the assent of both parties is required for a contract to be constituted, according to Sections 10, 13, and 14 taken together (Consensus Ad Idem). Additionally, this consent needs to be freely given<sup>9</sup>. Therefore, the contract is voidable if the consent is vitiated

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<sup>4</sup> Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas & Co. 1966 SCR (1) 656

<sup>5</sup> *Id* at 2.

<sup>6</sup> *Id* at 2.

<sup>7</sup> The Indian Contract Act, 1872, § 23

<sup>8</sup> Kedarnath Bhattacharji vs. Gorie Mohamed 1886, ILR 14 Cal 64

<sup>9</sup> The Indian Contract Act, 1872, § 10

by the events of coercion, undue influence, fraud, or misrepresentation; nonetheless, it will be void in the event of a bilateral mistake<sup>10</sup>.

❖ *Chikkam Seshamma v Chikkam Ammiraju*

A person coerced his wife and son to execute a deed in his brother's favor by threatening them to commit suicide. Later, the Madras High Court held that a threat of this kind to commit suicide amounted to coercion under Sec 15 of the Act, and hence the deed was declared void ab initio<sup>11</sup>. Section 15 conditions were met since the threat of suicide might be interpreted as an act prohibited by the Indian Penal Code.

**AGREEMENTS EXPRESSLY DECLARED TO BE VOID**

As per Section 2(g) of the Act, all those agreements which are not enforceable by law are void<sup>12</sup>. Certain agreements are expressly declared to be void by the Contracts Act such as:

- Agreements by way of wager<sup>13</sup>
- Agreements to do impossible acts<sup>14</sup>
- Uncertain and ambiguous agreements<sup>15</sup>
- Agreements without consideration
- Agreements having unlawful consideration or object
- Agreements where the consent is based on a mistake
- Agreements in restraint of marriage<sup>16</sup>, trade<sup>17</sup>, and legal proceedings<sup>18</sup>

❖ *Gherulal Parakh vs. Mahadeodas Maiya & ors.*

The Supreme Court of India dealt with an agreement that was not expressly declared void but was found unenforceable because it was against public policy i.e., a wagering contract. Although Section 30 of the Contract Act declares wagering contracts unlawful and unenforceable, wagering is not illegal per se. Furthermore, as per Section 23 of the Contract

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<sup>10</sup> The Indian Contract Act, 1872, § 14

<sup>11</sup> *Chikkam Seshamma v Chikkam Ammiraju* 1918 ILR 41 Mad 33

<sup>12</sup> The Indian Contract Act, 1872, § 2(g)

<sup>13</sup> The Indian Contract Act, 1872, § 30

<sup>14</sup> The Indian Contract Act, 1872, § 56

<sup>15</sup> The Indian Contract Act, 1872, § 29

<sup>16</sup> The Indian Contract Act, 1872, § 26

<sup>17</sup> The Indian Contract Act, 1872, § 27

<sup>18</sup> The Indian Contract Act, 1872, § 28

Act, a partnership agreement to such a contract is not illegal<sup>19</sup>. Thus, this clause does not forbid a partnership established to conduct betting activities.

## **COMPETENT TO CONTRACT**

A person is competent to contract if he has attained the age of majority, is of sound mind, and is not disqualified from contracting by any law<sup>20</sup>. Section 11 and Section 12 together necessitate the parties being competent to contract.

### *❖ Mohori Bibee vs. Dharmodas Ghose*

The minor (defendant) executed a mortgage deed on a land of which he was the sole owner. Later, when the mortgagee (plaintiff) filed a suit to recover the amount, the privy council held that since one of the parties was a minor, this contract was void ab initio and was not valid in the eyes of the law<sup>21</sup>. Since the contract did not exist, the minor couldn't be forced to pay back the mortgaged amount as he is not bound by any promise or obligation arising under the said contract.

## **CONCLUSION**

A contract requires the presence of all these elements: offer, acceptance, Lawful object, Lawful consideration, Free consent, and competence to contract. The Indian Contract Act encompasses a lot more than the elements. It also lays down regulations for special contracts like Indemnity, Guarantee, Continuing Guarantee, Bailment, Pledge, Agency and Partnership. The provisions of this act become a guiding factor for what commercial transactions ought to be within the Indian jurisprudence and the degree of deflection allowed from the standard form of contracts.

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<sup>19</sup> Gherulal Parakh vs. Mahadeodas Maiya & ors 1959 AIR 7811

<sup>20</sup> The Indian Contract Act, 1872, § 11

<sup>21</sup> Mohori Bibee vs. Dharmodas Ghose (1903) L.R. 30 I.A 114