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## DESCRIPTIVE ANALYSIS ON INDIAN CONTRACT ACT

*-MANI MUGILAN SARAVANAN*

### ABSTRACT:

The Indian Contract Act of 1872 came into force on September 1 of 1872. This act is the backbone of the corporate world, and contracts are being used by every citizen in day-to-day life. It's one of the oldest laws prevailing today and was enacted during the colonized period. It's divided into two parts, which are general contracts and specific contracts. Before the amendment, partnership was also included, and after, it was enacted as a separate act by parliament. This article gives a short review of the Indian Contract Act, and it's divided into general and specific contracts. It discusses essential elements of a valid contract and how these essentials are used in the corporate world with relevant case laws. It also explains situations when any one or more of the essentials in the contract is absent and a minor enters into a contract, etc. The Indian Contract Act is wider in nature.

**KEY WORD:** Contract, void, voidable, null and void, minor, unsound, ratification,

### CONTRACT:

A contract is an agreement enforceable by law under the Indian Contract Act of 1872. Before knowing other sections, you must know a few terms and their meanings in the simplest way. These are also essential to a valid contract

### GENERAL CONTRACT:

From section 1 – 75 falls under general contract, which includes definitions of some important terms like contract, agreement, promise, proposal, acceptance, essentials of a valid

contract, etc. Section 2(h) of the Indian Contract Act of 1872 defines an Indian contract as an “agreement enforceable by law,” which literally means that an agreement formed between two or more parties that are not barred by law is a contract [1]. Let’s view them in detail.

### **ESSENTIALS OF A VALID CONTRACT:**

- i. Offer
- ii. Acceptance
- iii. Free consent
- iv. Competent to contract
- v. Lawful object and consideration

### **OFFER:**

In general, when a person proposes to do something or not to do something willingly, without any external influence, to get acceptance from the other party, it is said to be an offer. An offer may be implied or expressed, according to Section 9 of the ICA of 1872<sup>1</sup>.

- **Offer vs. Invitation:**

From Section 2(a), you can infer that willingness is important, which distinguishes an offer from an invitation. In the invitation, there is no such willingness, but he proposes terms to negotiate while he wishes the other party to propose an offer on those terms<sup>2</sup>.

### **ACCEPTANCE:**

When a person gives their assent to the proposal, the offer becomes a promise. The acceptance can also be implied or expressed, which means the offeree can communicate his acceptance by whatever means that has the effect of communicating his assent<sup>3</sup>

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<sup>1</sup>.*The Indian Contract Act*, No. 9 of 1872, § 2(a), India Code (as amended 2023), <https://www.indiacode.nic.in>.

<sup>2</sup>.*The Indian Contract Act*, No. 9 of 1872, § 2(a), India Code (as amended 2023), <https://www.indiacode.nic.in>.

<sup>3</sup> *Indian Contract Act*, No. 9 of 1872, § 2 (India), available at <https://indiankanoon.org/doc/630686/> (last visited July 12, 2025).

### **COMPETENCE TO CONTRACT:**

Section 10 states the capacity of a person to enter into a contract. The person who:

- i. Attained age of majority (18 years old)
- ii. Sound mind (stable mind)
- iii. Not barred by law, are eligible to enter into a contract [2].

### **FREE CONSENT:**

Free consent is defined under section 14 as consent that is said to be free unless it's not given under [3]:

- i. Coercion – consent given by threat of another person.
- ii. Undue influence—consent given under the influence of another person.
- iii. Fraud—consent given due to believing false facts as truth.
- iv. Mistake—consent given due to mistaken facts.
- v. Misrepresentation—giving consent due to misrepresentation of another person.

### **LAWFUL OBJECT AND CONSIDERATION:**

Let's take an instance: I ask you to kill someone; in return, I will give you a sum of 10 lakh rupees after completion. If I fail to keep my promise, then you cannot sue me in court since there is no lawful object present in the above-mentioned agreement and the maxim “quid pro quo,” which means something in return. So in a contract, if there is no lawful consideration or object, then the contract is not valid.

### **SECTION 23:**

Section 23 states the condition for a consideration to be valid. It's not forbidden by law. Against public policy is immoral and fraudulent Involves injury to a person or property Section 25 of the Indian Contract Act states that an agreement without valid consideration is void.

- Exceptions to section 25 are

1. Love and affection
2. Compensation of past services
3. Written and valid agreement

#### **SECTION 27:**

Section 27 states that an agreement that restrains the exercise of a profession, business, or trade is void. *Vijaya Bank v. Prashant B Narnaware* (May 14, 2025) Petitioner filed for appeal of the case in the supreme court against the verdict passed by the high court of Delhi. The appellant Vijaya Bank issued an open notice for the appointment of 349 officers of different grades in 2006. The notice had a clause that states that the employees should work for at least 3 years, and if they resign within 3 years, they have to pay 2 lakhs as a penalty. The bank argued that this is because after liberation we are competing with other banks, and losses are incurred due to vacant posts. The court held that the respondent has to pay the penalty.

#### **SECTION 31:**

Section 31 defines a contingent contract, a type of contract that is to do or not to do something if some event collateral to such contracts occurs or does not occur. A wager is a form of contingent contract that depends on the luck of a person for the event to occur in the future. But a wager agreement is considered to be void in India.

#### **MINOR'S AGREEMENT:**

An agreement entered is void ab initio, which means that the agreement is void from the beginning. Hence, the person cannot make a minor liable and recover money if he or his attorney knows that other person is a minor. But if not, they can recover the money that they had given to the minor. In case the minor does not or is unable to pay the full amount, lender can only recover up to what he can afford.

- *Mohori Bibee v. Dharmodas Ghose:*

The plaintiff filed a suit against the defendant (minor) for recovery of money. The defendant mortgaged his house for some thousand rupees by misrepresenting himself as a major while entering into the contract. But the attorney of the lender (plaintiff) knows that he

is a minor. The court held that the minor agreement is considered to be void in India. When the minor enters into a contract, it becomes void from the beginning and cannot be ratified after he becomes a major.

### **QUASI CONTRACT AND THEIR IMPORTANCE:**

Sections 68–72 of the Act are about quasi-contracts, which prevent unjust enrichment<sup>4</sup>. For instance, a person who supplies necessities to a minor or incapable person for their basic survival is entitled to reimbursement from their property (Section 68). The minor cannot be made liable since the agreement entered into between him and the other party is “void ab initio,” which means the agreement is void from the beginning. The party who entered into a contract with a minor cannot sue him for breach of contract because of the above maxim.

### **SPECIAL CONTRACT:**

It includes Indemnity, Bailment, Guarantee, and Agency.

### **INDEMNITY:**

A contract of indemnity is a type of contract by which one party is to save the other from loss incurred due to the promisor himself or any other third person. An essential of an indemnity contract is that there must be a loss, and the loss must be incurred due to the action of the promisor or any other third person.

Whether indemnity and insurance the same? Almost all insurance other than life insurance and personal accident insurance is the same since the value is not fixed and finite. The right of the indemnity holder is stated in section 125 of the Indian Contract Act of 1872: as an individual acting within the scope of the author, D can recover all damages of any suit for which he is compelled to pay all costs and all sums that he is compelled to pay in any suit or compromise on any suit.

### **GUARANTEE:**

A contract of guarantee is defined under 126 of the Contract Act of 1872 as a contract to perform the promise or the charge liability of a third person in case of his default. The person

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<sup>4</sup> *The Indian Contract Act*, No. 9 of 1872, §§ 68–72, India Code (as amended 2023), <https://www.indiacode.nic.in>.

who gives such a guarantee is called the surety, the person in respect of whose default the guarantee is given is called the principal debtor, and the person to whom it is given is the creditor. Essentials of a valid contract of guarantee in clothes: there must be municipal debt or a need for recovery of the principal debt, and the concentration of the consideration is divided into 3 as past consideration. Future consideration and present consideration. If a principal debtor gets any benefit, then that suffices to sustain the guarantee.

#### **TYPES OF GUARANTEE:**

There are different types of guarantees, such as continuous guarantees. Specific guarantees and so on continue guarantees, and specific guarantees are the most common guarantees that everyone faces in life in any situation. Continuous guarantee is defined under section 129 as any one person guaranteeing a series of transactions; it is called a continuous guarantee. A specific guarantee is defined as a guarantee given for a single transaction and ends when the transaction is done. There is also a guarantee called a revocable guarantee. A guarantee can be revoked by notice or death of surety, and in sections 130 and 131, those guarantees are called "revocable guarantees."

#### **BAILMENT:**

Bailment, as defined under section 148 of the Indian Contract Act, is the delivery of goods by one person to another for some specific purpose, and after the accomplishment of that purpose, the goods shall be returned or disposed of according to the person who gave them. Essentials of valid bailment include delivery of possession, delivery should be upon contract, delivery should be upon some purpose, and the good shall be returned or disposed of according to the direction of the bailor after accomplishment of that purpose.

The duties of a bailor include the duty to disclose faults in goods. The bailor is responsible for any damage that occurred due to a fault in the goods belt, whether he is aware of such a fault in the goods or not. Illustration: if A lends a carriage to B, and while using the carriage, due to a fault in the carriage, this results in the death of B, A is responsible.

The duties of the bailee include the duty to take care of the goods bailed and the duty not to make unauthorized use of the bailed goods, the duty not to mix, the duty to return, the duty not to set up just terii, and the duty to return increase. According to section 151, the bailee should take care of the goods as if they were his own; if there is any damage or loss of things, the bailee is liable. According to section 154, Bailee shall not make unauthorized use of the

goods bailed. According to sections 155 to 157, it is a duty of the bailee not to mix the goods bailed with his own goods; If he mixes the good with his own, it is his liability to separate the goods if possible and return the goods to the bailor, or if it is not separable, then he is liable to pay for the loss incurred to the bailor due to the mix of goods in the proportion of the good bailed in the mixed goods. There are several duties of Bailee but above mentioned are some important duties.

### **PLEDGE:**

Pledge, as defined under section 172, is the bailment of goods as security for payment of debt or performance of the promise. The bailor is called the pawnor, and the bailee is called the pawnee. Pledge is a kind of bailment. Essentials of a valid pledge include delivery of possession, and the purpose should be security for payment of debt or performance of promise. The delivery of possession can be in two ways; it may be constructive delivery or actual delivery. Constructive delivery means the action of the bailor that puts the bailee in possession of the goods. For example, if the bailor gives the car key to the bailee, then this action is deemed to be delivery of possession.

### **AGENCY:**

There are several types of agents, such as del credere agents, brokers, factors, auctioneers, etc. The duties of an agent are also discussed in the Indian Contract Act of 1872, which includes the duty to execute a mandate, the duty to follow instructions or customs due to reasonable care and skill, the agent's duty to communicate with the principal, the duty to avoid conflicts of interest, the duty not to make secret profits, etc. An agent cannot delegate his authority to another. According to the maxim *delegatus non potest delegare*, a person cannot delegate his work to another, which has been delegated to him by the principal.

Agent authority may be expressed or implied. An authority is said to be expressed when it is given by words spoken or written, and when it is through conduct and action, it is said to be implied.

### **REMEDIES FOR BREACH OF CONTRACT:**

There are several remedies for a breach of contract under the Indian Contract Act as well as the Specific Relief Act. Either there will be termination of the contract, or the offeror could ask for specific performance of his promise. In case of any loss due to breach of contract by the offeree, he will be made liable unless the performance of the promise is skill-based, which cannot be done thereafter. For instance, if party A gives his gold coin to a goldsmith to

make a jewel, but the goldsmith, due to his accident, falls into a coma and is not able to complete the promise, then party A cannot sue party B.

### **SPECIFIC RELIEF ACT:**

Under the Specific Relief Act, one can ask for relief such as recovery of possession of immovable property, specific performance of contract, rectification and cancellation of instruments & rescission of contracts, preventive relief, and declaratory relief. Injunctions are also asked for under this act, and there are different types of injunctions, such as mandatory injunctions and perpetual injunctions.

### **CONTRACT IN MODERN TIME:**

On June 25 of this year, 2025, the Delhi High Court passed its verdict on the case Varun Tyagi vs. Daffodil Software Pvt. Ltd. In the above case, the court addressed the enforceability of a post-employment non-compete clause, which restrains an employee from employment with their business partners. But the high court of Delhi, under Justice Tejas Karia, quashed the interim injunction, resulting in the voiding of clause 2.16 under section 27 of the Contract act<sup>5</sup>. This is a good example of judicial interpretation. Even after 150 years of enacting the Indian Contract Act, it's still evolving and upgrading with the developing digital era<sup>6</sup>.

### **CONCLUSION:**

The Indian Contract Act is still used not only in the corporate world for making deals but it is also used by advocates to win litigation hence it's important to master the contract act or keep a legal advisor by your side if you wish to sign a contract so that it won't cause trouble later. The Contract Act has been amended at least twice since society developed as time passes and advocates should keep up with it.

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<sup>5</sup> *The Indian Contract Act*, No. 9 of 1872, § 27, India Code (as amended 2023), <https://www.indiacode.nic.in>.

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