**DISCHARGE OF CONTRACT UNDER INDIAN CONTRACT ACT**

**INTRODUCTION**

As defined by section 2(h) of the Indian Contract Act, a contract is “an agreement enforceable by law”[[1]](#footnote-1). In simpler words, a contract is any agreement which is recognised and protected by the law.

While making a contract and drafting its terms and conditions, each party is assigned with certain rights and obligations. Upon the completion of these respective obligations, the contract is declared null and void. It hence loses its legality, bringing an end to the contractual relationship between the parties. This ending of a contract after ‘discharging’ or performing duties is known as discharge of contracts.

There is a very thin line between discharge and termination of a contract. The main difference between the two is of performance or non-performance. A contract stands discharged if the parties perform their responsibilities as mentioned in the contract. On the other hand, the contract ceases to exist of is terminated if the parties do not perform their respective duties.

*FOR ILLUSTRATING THE DIFFERENCE BETWEEN DISCHARGE AND TERMINATION OF CONTRACT-*

A is a host of a birthday party and employs some singers to perform at the party. The singers come and perform their art. A pays them the quoted the amount. This refers to the discharge of contract. However, if the singers do not come and perform their obligation, A will not pay them the money, hence calling off or terminating the said contract.

**DISCHARGE OF CONTRACT UNDER INDIAN CONTRACT ACT**

As per the Indian Contract Act, Section 73-75, there are 6 modes in which a contract can be discharged:

1. By performance
2. By agreement or consent
3. By impossibility
4. By lapse of time
5. By operation of law
6. By breach of contract
7. **DISCHARGE BY PERFORMANCE**

A contract is said to be discharged when the contractual parties perform their stated obligations within the stipulated time and the prescribed manner.

For example- S makes an offer to sell her car for $1500 to P and P accepts the exact offer and pays the mentioned amount. S delivers the car to P. Since both parties completed their respective duties, the contract is discharged via performance.

If in this case, a party completes their duty and the other doesn’t, they can sue the other party for breach of contract.

Discharge of contract by performance can be through: -

1. **Actual performance**- most contracts which are discharged through performance are carried out through actual performance. Under this, the parties discharge the exact duty which was prescribed to them by the terms of the contract within the mentioned period of time.
2. **Tender or attempted performance**- tender refers to an offer to perform the contractual duties. Sometimes, the party promises to perform the requested obligation and even attempts to perform it but it is not accepted by promise. After the performance of their duty, if the promise doesn’t accept the performance, the promiser is no longer responsible, further, they don’t lose their rights under the contract. This is the reason why a tender is like actual performance, only a variation.

**CASE LAW TO ILLUSTRATE TENDER CONTRACT-**

**Startup v. Macdonald (1843)[[2]](#footnote-2)**

**FACTS**- a contract between the parties stated that the plaintiff had the duty to deliver 10 tons of oil to the other party within the last 14 days of March. The plaintiff delivered the same at 8:30 pm on 31st March. The defendant refused to accept it at such an hour.

**HELD**- the claimant had delivered the goods within the contractual period of time and hence was eligible to claim damages with regard to non-acceptance.

However, the attempted performance must have the following essentials: -

1. It should be unconditional
2. Must be made at proper place and time
3. Is for the entire obligation as specified in the contractual agreement
4. The tenderer must be willing and able to perform
5. The tender must refer to a proper person
6. Reasonable opportunity must be given to the buyer to inspect the products
7. Tender must be made to only one promisee if there are more than one[[3]](#footnote-3)
8. **DISCHARGE BY MUTUAL AGREEMENT/ SUBSTITUITION**

* In this, there is a mutual agreement between the contractual parties of substituting with a new contract or altering the existing contract. After this, the parties of the contract need not perform their duties of the old agreement.
* Illustration- B offers to sell his house to A for 50 lakhs. A agrees to buy it and a contract is formed. Later, A approaches B and claims that she doesn’t have 50 lakhs so they both mutually agree to decrease the agreed amount to 40 lakhs.
* Such an alteration to the original contract, mutually agreed upon is known as discharge of contract by mutual agreement.

Discharge by mutual agreement or substitution are classified into-

* 1. **NOVATION**
* The word novation means an original contract is getting substituted by a new one between the same parties or different ones.
* This is defined by section 62 of the Indian Contract Act.
* The original party will however be liable if the party it has delegated its duty to fails to perform its duty.
* Illustration- suppose A enters into a contract with B who is a carpenter to make a shelf for her. Due to some reason, B has to go out of station and can’t make the shelf. He delegates this duty to C to make the shelf, hence, entering into a novation contract.
  1. **RESCISSION**
* This means cancelling or ruling out some or all terms of the contract mutually by both the parties.
* Illustration- P enters into a contract with Q for lending some money to him that he asked for. Before any transaction takes place, Q approaches P claiming he does not require the money. They, mutually, cancel all terms of the contract and hence have no legal obligation towards the contractual duties.
  1. **ALTERATION**
* Under this, the concerned parties mutually agree to change one or several terms of the contract with an aim to achieve larger benefits from the new contract.
* Illustration- A and B enter into a contract wherein B is to pay $400 to buy his house in a month. B is unable to pay the amount in the stipulated time and offers to pay it in another month with 10% interest. Since A is in no hurry for the payment and is also getting more payment through the new proposal, he agrees. This is an altered contract.
  1. **WAIVER**
* This happens when one party abandons or forfeits their duties and the other party is released from the contract.
* Illustration- if A orders some goods from B for payment but rejects the goods on delivery. B is hence released from the contract.

* 1. **REMISSION**

Remission means acceptance of lesser terms for a contract after mutual consideration and agreement. This also can be with regard to remitting the decided time within the duties were to be delivered.

Illustration- A and B enter into a contract wherein B is to deliver 30 kg of apples to A for a payment of $200. Due to unavailability of funds, B offers to pay $190 for the same. A accepts this remission.

1. **DISCHARGE BY LAPSE OF TIME**

* There will be a discharge of contract if the contractual duties are not complete within the stipulated time and the promise cannot enforce any liability on the promise.
* The Limitation Act, 1963 specifies the periods of limitations for different sorts of contracts. For example, the prescribed period of limitation is 3 years.
* Illustration- After buying a car from B, A agrees to pay an amount of 5 lakhs in 4 years. After she fails to make any payment, B approaches A but gets no response. After 3 years, he approaches the court. But the court doesn’t award any damages because the period of lapse had ended.

1. **DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE**

* In some cases, the circumstances make it impossible to fulfil the contract. It is not either of the party’s fault is caused by unforeseen happenings.
* Illustration- R promises to pay back a debt to S from his savings. But in a couple weeks, his father falls ill and he is forced to spend all his savings on the hospital expenditure. Hence, the contract is discharged by impossibility of performance.

1. **DISCHARGE BY OPERATION OF LAW**

* This refers to a situation where in the contract cannot be performed because of the provisions of law against-

1. Death
2. Insolvency
3. By unauthorised material alteration
4. Merger
5. Rights and liabilities imposed on one person

* This type of discharge is based on two legal maxims: -

1. *Lexicon cogit ad impossibilia*, which means, the law does not recognise the impossible
2. *Impossibilium nulla obligato est*, i.e., what is impossible doesn’t create an obligation

* Illustration- A enters into a contract with B for the sale of his house however, A meets with an accident and expires and hence, the contract between them.

1. **DISCHARGE BY BREACH OF CONTRACT**

* This type of discharge happens when one party fails to deliver its duties or obligations. This does not mean that the contract is terminated since it is the decision of the agreed party to terminate it or not
* Illustration – S agrees to sell her car to B in 2 months but sells it to T the next day.
* It is of two types: -
  1. **ANTICIPATORY BREACH**
* This happens through the anticipation of the parties. It would have happened the parties would have prepared for such a breach beforehand
* Under this, the promisor is relieved from fulfilling his/her obligations and the promisee does not have the capacity to file for damages.
  1. **ACTUAL BREACH**
* This happens when one of the contractual parties commits a breach and refuses to abide by the terms
* In this case, the promisee has the right to file a case for claiming any damages caused to him/her

**CONCLUSION**

When the parties to a certain contract perform their respective duties and obligations, the contract is said to be carried out or performed. This is the natural and normal way of discharging a valid contract. When the contract is performed with the free consent of the parties, within the stipulated time and the exact way of performance, both the parties are relieved from any further liabilities owing to the contract. If one party performs their obligation and the other doesn’t, then the aggrieved party have the right to file for liabilities against the other party. This is the remedy offered by the Indian Contract Act against various cases of breach of contracts.

1. Indian Contract Act, 1872, Acts of Parliament, 1872 [↑](#footnote-ref-1)
2. (1843) 6 Mann & G 593 [↑](#footnote-ref-2)
3. Indian Contract Act 1872, Sec 38 [↑](#footnote-ref-3)