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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've 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 except 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 dehorn 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 y 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 Ss. 1-75 of the Act. Ss. 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 [except the state of Jammu and Kashmir]; **and it shall come in to 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-

- a. General Principles [Ss. 1-75]
- b. 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.