
AN IN-DEPTH ANALYSIS AND CRITICAL EVALUATION OF SECTION 2(H) OF THE INDIAN CONTRACT ACT OF 1872

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ABSTRACT

The Indian Contract Act of 1872 has a number of clauses and sections that, among other things, are both directly and indirectly intertwined with one another and depending on one another. Section 2(h), which forms the basis of describing how a contract is established, lays forth the basis of conditions that are required to form a contract. The interpretation of the word "*contract*" is based on a system of definitions of the components that lead up to the establishment of a contract. These components include an offer, a promise, acceptance, consideration, a promisor, a promisee, and an agreement respectively. A contract is a term that can be applied to an agreement that is legally binding between two or more than two parties. In addition, the explanation of said section is backed by several sections of the Indian Contract Act, 1872, which was passed in 1872. With the exception of a certain ambiguity that is related to the interpretation of the word "*may*" that is included in Section 12 of the Indian Contract Act, 1872, all of the sections and subsections in the cross-sectional analysis thoroughly work in sync with each other by providing support for statements that are mentioned in the clauses and covering the shortcomings of the sections. This is the case even though there is a certain ambiguity that is related to the interpretation of the word "*may*" that is included in Section 12 of The Indian Contract, 1872.

KEYWORDS: Consideration, Agreement, Contract

Introduction

The word contract stems from the Latin word “*contractus*” which denotes to “work on contract”. The notion of '*pacta sunt servanda*,' which means '*agreements must be kept*,' underpins contract law. A contract may be defined as an agreement which is enforceable by law. A promise is necessary to establish a legally enforceable agreement, and it is offered in exchange for consideration¹ which is considered as an incentive to enter into a promise.

The Indian Contract Act, 1872, which governs Indian contract law, prescribes the law relating to contracts in India. This act had been predicated on English Common Law principles. The term "justice, equality, and good conscience" was construed to mean the English statutory provisions that apply to Indian society and circumstances. In practice, it has been ascertained that implementing English law was not complicated because there were just several differences between English and personal law on many points, and there was no rule of personal law in many cases, and because many Indian businessmen had gained experience from their dealings with English people².

According to “Section 2(h)” of the Indian Contract Act 1872, a contract is defined as legally enforceable agreement³.

The Sectional Analysis of Section 2(h) of The Indian Contract Act, 1872

The interpretation of Contract in the said section is based upon a series of definitions of the elements leading up to the formation of contract, i.e offer, promise, acceptance, consideration, promisor, promisee and agreement. A legally valid agreement between two or more than two parties can be termed as a contract. It is pertinent to notice that a contract cannot be formed without obtaining the consent of the respective parties⁴ entering into the contract. The plaintiff's omission to sign the agreement cannot be used to infer that the arrangement was unilateral and that the plaintiff was not a willing party to the terms and circumstances of the sale agreement. When two minds have divergent views, there is no likelihood of coming to an agreement, which is fundamental to form a contract. Although the contract will have no value or meaning if the

¹ Williston, S. , *Consideration in Bilateral Contracts*, 27(6), HARVARD LAW REVIEW, 503–529, (1914) <https://doi.org/10.2307/1326781>

² Patra, A. C, *Historical Background Of The Indian Contract Act, 1872*,4(3), JOURNAL OF THE INDIAN LAW INSTITUTE, 373–400, (1962) <http://www.jstor.org/stable/43949727>

³ Pollock and Mulla, *The Indian Contract Act, 1872, 15th Edition* , Preamble, (LexisNexus) , (2014)

⁴ J.K. Industries Ltd. v. Mohan Investments and Properties Pvt. Ltd., AIR 1992 Del 305

evidence clearly depicts that there was a ‘*consensus ad idem*’ between the parties and that the preponderance of the contract had been executed according to the terms of the contract. The absence of such a condition renders a contract void, though some flaws render a contract voidable. If, the Statute defines the procedure for entering into a contract, a legal contract can be reached only in the manner specified in the Statute; if the guidelines are not followed, no concluded contract exists.⁵

Cross Sectional Analysis of Section 2(h) With Other Provisions of The Indian Contract Act, 1872

Section 2(e): Section 2(e) of the Indian Contract states that “*Every promise and every set of promises, forming the consideration for each other, is an agreement.*”. Along with promises being considered as an agreement, multiple promises forming a consideration for each other are also considered as agreements. The term “*forming consideration for each other*” refers to the phrase “*collection of promises*” and does not fit the criteria of “*every promise.*” Thus, a promise can be deemed as an agreement without containing the element of consideration. A promise is successfully transformed into an agreement only when the offeree accepts the offer. According to the contemporary language an agreement as a duty to perform on behalf of both parties irrespective of the legal obligation bestowed upon them. The term agreement underlines the necessity to have the consent of the respective parties involved in the deal⁶.

By taking Section 2(h) into consideration, it can be said that promises and those set of promises which form contain lawful consideration however inadequate it may be (but enough in the eyes of law) to form an agreement will deemed as a contract.

Section 2(d) : Section 2(d) of the Indian Contract Act, 1872 defines the essential element pertinent to forming a contract, i.e., consideration. Consideration is defined as, “*When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.*”⁷. Consideration forms an important aspect in forming a contract as a contract including an agreement lacking

⁵ Pollock and Mulla, *The Indian Contract Act, 1872, 15th Edition*, Preliminary, Interpretation Clause-, Section 2(h), (LexisNexus), (2014)

⁶ Pollock and Mulla, *The Indian Contract Act, 1872, 15th Edition*, Preliminary, Interpretation Clause-, Section 2(e), (LexisNexus), (2014)

⁷ Kedarnath Bhattacharji v Gorie Mahomed, ILR 14 CAL 64 [1886]

consideration is termed as void. Whether it is sufficient or not, it must be authentic and cannot be an illusion⁸. Considerations which are seen as unlawful in the eyes of law even though it may be adequate according to the terms of the agreement, ultimately renders the agreement void⁹.

Putting Section 2(h) into consideration, it can be said that inclusion of legally valid consideration is essential in forming an agreement and eventually the combination of these two essential factors leads to the formation of a contract. Thus, we can say the clause mentioned in the above section acts as a catalyst to the steps leading to the formation of a contract as mentioned in section 2(h) of the Indian Contract Act, 1872.

Section 10: This section underlines the agreements which can be termed as contracts based on certain criteria which are:

- (i) Both parties should be competent enough to form a contract.
- (ii) The contract should be formed only after obtaining consent of the parties involved in the agreement.
- (iii) The consent should not be obtained through illegal means; it should be thoroughly free and valid in the eyes of law.
- (iv) The element of consideration should exist prior to forming the contract.
- (v) The nature and object of consideration should be lawful¹⁰.
- (vi) The agreement is not expressly declared as void.

The clause further states that nothing contained shall have any effect on any legislation in force in India that is not specifically repealed, by which any contract must be made in writing or in the presence of witnesses, or any law relating to the registration of papers¹¹.

⁸ Chidambara v. P.S. Renga, AIR 1965 SC 193: (1966) 1 SCR 168

⁹ Pollock and Mulla, *The Indian Contract Act, 1872, 15th Edition*, Preliminary, Interpretation Clause-, Section 2(d), (LexisNexus), (2014)

¹⁰ Tarsem Singh v. Sukhminder Singh, AIR 1998 SC 1400

¹¹ Pollock and Mulla, *The Indian Contract Act, 1872, 15th Edition*, Chapter II, What Agreements are Contracts-, Section 10, (LexisNexus), (2014)

As per Section 2(h) which defines an agreement enforceable by law, a contract can also be deemed as an agreement whose sole purpose is to form a duty which is enforceable by law. Agreement is a broader term than contract in that all contracts are agreements but not all agreements are contracts. Contracts are formed when agreements conform to the rules outlined in Section 10 of the Indian Contract Act of 1872¹².

Section 11: Section 11 of Indian Contract Act, 1872 contains one of the essentials required to constitute a valid contract as mentioned in Section 10. It states that every individual who has attained the age of majority is competent to enter into a contract provided that he is of sound mind and is not disqualified under any terms of the law he is subjected to. Thus 3 categories of individuals are classified as incompetent to enter into a contract which are as follows:

(i) A person who has not attained the age of majority, i.e., a minor¹³.

(ii) A person who is of unsound mind

(iii) A person who has been disqualified under the law to which he is subjected from entering into a contract.

Thus, forming a contract with individuals fulfilling any of these above-mentioned criteria would render the contract void¹⁴.

Now putting Section 2(h) into consideration it should be noted that all agreements do not form contracts. Agreements which satisfy certain conditions laid down in above mention section and uphold legal validity along with lawful consideration will be allowed to form a contract. Thus, the legal enforceability of these agreements required to form a valid contract along with lawful consideration [as mentioned in Section 2(h)] depends upon the soundness of that said person's mind.

¹² A Detailed Analysis of Provisions Related to Competency to Contract Under the Indian Contract Law, <https://lawtimesjournal.in/a-detailed-analysis-of-provisions-related-to-competency-to-contract-under-the-indian-contract-law/>

¹³ Pandey, R. S. , *Minors' Agreement In India And The U. K.- A Comparative Survey*, JOURNAL OF THE INDIAN LAW INSTITUTE, 205–252, (1972) <http://www.jstor.org/stable/43950180>

¹⁴ Pollock and Mulla, *The Indian Contract Act, 1872, 15th Edition* , Chapter II, Who are competent to Contract-, Section 11, (LexisNexus), (2014)

Section 12: Section 12 of Indian Contract Act, 1872 states one of the conditions necessary for an agreement to uphold legal validity in the eyes of law. It states that:

(i) For the purposes of making a contract, a person is said to be of sound mind if, at the time of making it, he is capable of understanding it and making a rational judgement about its effect on his interests.

(ii) A person who generally of unsound mind but sometimes of sound mind may form a contract when he is of sound mind.

(iii) When a person is usually of sound mind, but occasionally of unsound mind may not be able to form a contract when he is of unsound mind.

Although the varied interpretation of the word “may” in above mentioned clause causes some ambiguity while inferring the contract, but the word “may not” is an obligatory word and suggests a mandatory operation.

Taking Section 2(h) into consideration it can be said that the primary purpose of forming a contract is to fulfil the legal obligations as mentioned in the agreement. The free consent should be obtained to form a contract and a free and rational consent can only be obtained if a person is of sound mind. Under the Indian law, agreeing to the terms with an agreement is only possible if the person possess a sound mind and the ability to decide the terms of the contract rationally, and if devoid of it the person is declared incompetent to enter into a contract. Therefore, obtaining consent of a legal agreement coupled with lawful consideration [as stated in section 2(h)] can only be obtained if the person has a sound mind.

Conclusion

Barring a certain ambiguity relating to the interpretation of the word “*may*” included in Section 12 of the Indian Contract Act, 1872, all the sections and subsections in the cross-sectional analysis thoroughly work in sync with each other by supporting statements mentioned in the clauses and covering the shortcomings of the sections. For example Section 2(d) that defines consideration which in turn supports the reason behind requiring a lawful consideration in order to form a contract as defined in section 2(h).

Adding on to that Section 10 of the Indian Contract Act, 1872 which lays down the prerequisites for an agreement to be legally valid. Agreement is one of the most important

elements to form a contract and an agreement devoid of any of these clauses as mentioned in Section 10, would render the agreement void. Hence this portrays the element of inter-dependency of Section 2(h) on Section 10.

Moving on from that Section 11 and Section 12 of the Indian Contract Act, 1873 respectively which contain the competency to enter into an agreement and the soundness of a person's mind while making a contract respectively. Both these sections are indirectly responsible in the formation and non-formation of an agreement thus depending upon the competency and the soundness of the mind of a person. Thus, the formation of a legally enforceable agreement needed to form a contract as mention in section 2(h) of the Indian Contract Act, 1872 indirectly depends upon these two sections.

Thus, we can notice that the successful implementation of Section 2(h) of the Indian Contract Act, 1872 invariably depends upon the correct fulfilment of the conditions prescribed in the aforementioned sections of the Indian Contract Act.