

13TH LAW COMMISSION REPORT

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ABSTRACT

The importance of a contract is not a fact unknown. Its need was clearly felt because of which a transition was made from the so called “state of nature” to a formalized, systematized world of contracts. Such was this world that every offer when accepted, its performance was backed by the law. The law, as a result became the guardian of agreements made between mankind. The non-performance or breach of these contracts was backed by very many forms of reprimand, again, prescribed by the law.

The 13th Law Commission of India revised the Indian Contract Act, 1872 and gave its valuable suggestions for its reformation. Each section of the Indian Contract Act has been discussed at length and recommendations have been made in cases where revision is necessary. This has been done where the existing law:

1. Has run out of date with the present time.
2. Is too rigid and needs to be more flexible.
3. Is ambiguous and unclear.

The 13th Law Commission Report has been drafted in the most systematic form. Developments in the Law have been the initiation plebiscite of the Law Commission’s Report. Here, contrasts and similarities have been drawn from the English and Roman concepts of the contractual arena. It is only after this, that the scope of revision has been pointed at. Various concepts have been highlighted, for example, Doctrine of consideration, the need for codification, Doctrine of Privity and quasi contract. The report begins as a time capsule, taking the reader back to the time when contracts were derived from property law and were very rigid. The change then to a formal law of contracts has been pointed at. The Indian Contract Act has been brought forth and its flip sides, ambiguities and lacunas have been indicated.

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The 13th Law Commission's Report on the Indian Contract Act, 1872 has provided the researcher with a lot of insight on the existing law of contracts in India and what necessary changes have to be made in order to endure its effectiveness. However there are certain aspects regarding the same that have been excluded from the scope of revision which will be pointed out by the researcher(s) on the course of the research article.

FOREWORD TO CONSIDERATION

Consideration is said to be one of the most integral parts of contracts in the modern world. Various regions have taken different approaches towards consideration in their contract system. For Instance, In Roman Laws the enforcement of promises was limited³⁵⁴. Romans believed in keeping promises therefore their definition of consideration was based on saying *Pacta Sunt Servanda* that simply means, "Agreements must be kept"³⁵⁵. Therefore it's a moral theory that emphasized on fulfilling the promises once made and subsequently ensuring sanctity of a contract. However this view was not practical in nature and was later changed. If we look into the English Contract Law their definition of consideration was based upon Latin maxim *Quid Pro Quo* that simply means that if something is being done then a reward is expected for the act as long as it's not a charity. On the other side the Americans had come up with a *Realist* definition of consideration. According to these theories the essentials of consideration were:

1. To constitute consideration a performance or a return promise must be bargained for.
2. A performance or return promise is bargained for if it is sought by the promisor in exchange of his promise.
3. This performance or return promise may consist of an act or a forbearance or creation, modification, destruction of a legal relationship.
4. The performance or return promise may be given to the promisor or some other person or may be given by the promisee or any other person.

Hence there were various theories evolved for considerations in contract.

The Indian Contract Act, 1872 has borrowed the concept of consideration from the English Contract Act that is based upon *Quid Pro Quo*. Under the Indian Contract Act the contract is defined under Section 2 (h). Section 2(h) says, "An agreement enforceable by law is a

³⁵⁴ Malcolm P. Sharp, *Pacta Sunt Servanda*, 41 Columbia L R. 783, 783-798 (1941)

³⁵⁵ Henry Campbell Black, *Black's Law Dictionary* (8th ed.2004)

contract”.³⁵⁶ The conditions regarding the enforceability are mentioned in Section 10. There are four conditions being laid down in Section 10 out of which one is consideration.

Therefore, an agreement becomes a contract only when it has some consideration and other three conditions specified in Section 10 are fulfilled. This makes consideration an essential part of a contract.

The term consideration as we saw has various interpretations. In this paper the term will be restricted to English and Indian interpretation. One of the commonly used definition for consideration was given by Lush J in *Currie v Misa*³⁵⁷: “A valuable consideration in the sense of the law, may consist either in some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered or undertaken by the other.” Indian Contract Act defines consideration as follows under Section 2 (d):

“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.”³⁵⁸

This definition in simple words means that the act or refraining from doing some act that is consideration of promise should be done at desire of promisor and it should be done by promisee or any other person and such promise should be executed. Calcutta High Court had given very simple definition of consideration: “consideration is the price of a promise, a return or *quid pro quo*, something of value received by the promisee as inducement of the promise.”³⁵⁹

As Section 10 of Indian Contract Act emphasizes the importance of consideration in making agreement a contract, Section 25 of the Indian Contract Act clears rules out that all agreement without consideration will be void and also provides for certain exceptions to this rule. Hence, Section 25 evolves the doctrine of consideration in this act. It may be noted that even in England also such doctrine exists.

In the case of *Lee v Muggeridge*, Heath J remarks “promises without consideration are not enforced, because they are gratuitous”.³⁶⁰

³⁵⁶ Indian Contract Act, 1872, sec. 2 (h)

³⁵⁷ *Currie v Misa*, (1875) 10 Ex 153, 162

³⁵⁸ Indian Contract Act, 1872, sec. 2 (d)

³⁵⁹ *Fazalaldin Mandal v Panchanan Das*, AIR 1957 Cal 92.

³⁶⁰ *Lee v Muggeridge*, 1813 128 ER599

CASE LAWS

In India, the limitation and rigidity of the Doctrine of consideration has been the reason of the folly of abundant cases. Some of the relevant cases regarding the same have been illustrated below. Through these case laws the researchers aim to concretize the fact that consideration needs to be narrowed down of its scope.

Ram Dass and Ors. Vs Kishan Dev and Anr. ³⁶¹

The facts of the case are such that there was a disputed land which was owned by Chintu S/o Ragha, on his death there was only one natural heir Smt. Durga (defendant) who inherited the property of Chintu, the plaintiff who was the grandson of Kariloo, real brother of Ragha and thus brother of defendant claimed that the land belonged to him on the basis of a will alleged by him to have been executed in his favour by Chintu. Thus a dispute raised and looking at the matter between family members the elders of the native village came forward and persuaded them to get into an agreement under which one third of the land will go to the plaintiff and rest to the defendant and thus the terms were reduced in writing and registered. But subsequently the defendant refused the share to the plaintiff, for which the plaintiff filed a suit praying for the possession of the land which was entitled to him.

The defendant argued that though there was a relationship between the parties but in fact no will had been executed, and as for the agreement between them she contended that she was forced into the agreement by the sarpanch and the panch on the ground that the plaintiff will treat her as a sister and her children as nephews.

During the trial the defendant passed away and her legal representatives files the Letters Patent Appeal, in which the only contention was that as there was no consideration in the said agreement therefore it is void.

³⁶¹ AIR 1986 HP 9

The court in its judgements made the observation that different considerations had indeed prevailed at the time of the agreement i.e. a share in the land for the plaintiff and love and care for the defendant as the villagers sought necessary as the parties were in close relation and thus appeal was made to the emotions so as to save the relations. The trial court followed the same logic and decided that promoting peace and good will between the family members is consideration enough for family settlements and thus the agreement stands between the parties.

The high court also made the same observation that the settlement was indeed to resolve the dispute for which the agreement was written and registered, and natural love and affection between the parties is consideration enough and needs nothing more thus the plaintiff was entitled to one third share in the land and the appeal was dismissed.

Doraswamy Iyer Vs Arunachala Ayyar and Ors.³⁶²

This was a Civil Revision Petition filed by the plaintiff against the judgement of the lower court. The facts of the case were such that the defendant who was a trustee of a temple had entered into a contract for necessary repairs of the temple which was initially funded by the village common funds, as the work proceeded more funds were required and subscriptions lists were issued to raise money for the same. The petitioner had put himself down in the list for the sum of Rs 125 for the recovery of which the suit had been filed. The defendant claimed that he had changed his legal position and incurred liabilities based on the promise of the plaintiff. The question before the court was that was this changing of legal amount to consideration. The definition of consideration requires that “at the desire of the promisor”, therefore there must have been some bargain in request for which the consideration had been given to amount to consideration as per the definition.

The lower court had observed that it was a perfectly good contract but in the view of the high court mere promise was not sufficient and there needs to be some bargain for some promise to the promisor in return for the consideration, thus mere entry in the subscription list and no promise in return does not amount to consideration.

³⁶² AIR 1936 Mad 135

Therefore the court in its judgement said that there had been no request for return promise or no bargain thereof for temple repairs therefore it was only a bare promise not backed by consideration. Therefore there is no contract and payment of Rs. 125 cannot be enforced.

Combe v Combe³⁶³

The facts of the case were such that Mr and Mrs Combe were a married couple but eventually their marriage fell apart. At the time of their divorce the husband promised to pay annual maintenance although the wife was better off and used to earn more. For seven years the wife didn't enforce the promise and never asked for the maintenance, although seven years later she moved to the court to enforce the promise. The wife argues that she had acted on the promise to her own detriment and pleaded to court to apply promissory estoppel even though there was no consideration in the contract.

In the judgement Justice Denning made the observations that according to law a contract is formed when at the desire of the promisor the promisee does or abstains from doing some act then the promisor can't be allowed to go back upon his word and he has to perform the contract since he himself had created the qualifications for the contract.

However in this case it was observed that there was no consideration in return for the promise and promissory estoppel cannot be used as a sword but a shield i.e. it can be a part of cause of action but not the cause of action itself. For the doctrine of consideration it was said that it is too firmly fixed in the contract and it cannot be overthrown and it still remains a cardinal part of formation of contract.

The court in its judgement said that the wife abstained from applying for maintenance at her own will and there was no evidence that the husband had made any request or something as such to the wife to abstain from asking for maintenance and also one cannot waive the right to apply for maintenance therefore there is no consideration for the husband's promise therefore there is no contract which can be enforced for performance.

³⁶³ All ER [1951] 2 KB 215

LAW COMMISSION'S RECOMMENDATIONS AND COMMENTS

The 13th Law Commission Report has mentioned a lot many changes in the Indian Contract Act. It has through its recommendations tried to modify, simplify and bring the act in accordance with the present times. This anachronism was mentioned more so in the case of the Doctrine of Consideration. The makers of the Law Commission Report have cited many examples by eminent jurists and thinkers of law to suggest that the wide scope of the Doctrine of Consideration has become a liability and in fact needs to be limited and narrowed down. This rigidity of the Doctrine curbs the execution of many cases that ought to be executed. To prove this point a chain of events was written down by the Law Commission's members wherein they sequentially showed how the Doctrine of Consideration evolved and now, since it isn't on harmonious terms with the current time; needs to be struck down or be limited.

In the report, examples of the dissatisfaction caused due to the Doctrine of Consideration have been mentioned through the words of Lord Wright, Sir Pollock, Lord Dunedin (*Dunlop Pneumatic Tyre Co. v. Selfridge and Co.*)³⁶⁴, Dean Pound and the likes. Not just in the case of England but even in the United States of America, there has been criticism of the Doctrine of Consideration. However, there the major concern is defining a clear meaning of the Doctrine of Consideration. How far it is applicable and what is its reach are points of contestation. According to Dean Pound in the Introduction to the Philosophy of Law³⁶⁵, a man's word has to be as good as his bond, and thus there isn't a need for consideration as it questions a man's word of mouth; his promise.

In India, the Doctrine of Consideration is backed by many eminent jurists and hence it was taken to be impossible to scrape this section completely. But the commission recommended limitation of its scope. This was done so that the rigid adherence to the doctrine can be avoided. Section. 25, which deals with consideration is proposed to be amended and revamped so as to make it more flexible. More than most of the times it so happens that a valid intentional contract is entered into but it is declared unenforceable because of the want of consideration.

The commission recommends that if a party believes that the other party can be relied upon then that contract would be held valid even if there is no consideration. This should hold true not just

³⁶⁴ *Dunlop Pneumatic Tyre Co. v. Selfridge and Co. Ltd.*, (1915) AC 847

³⁶⁵ Roscoe Pound, *An Introduction to the Philosophy of Law* 307 (1922)

for express contracts but even for implied contracts which are assumed from conduct, mannerisms, omissions, et al. Thus, the commission suggested that the words “express or implied” be added to the section after “promise.” Even in cases where an offer is held to be existent for a definite period of time is held void for the want of consideration, the Law Commission implored that the offer should be allowed to be open even without consideration at that point of time. An element of future consideration is thus discussed over here that the commission supports.

The changes recommended by the Law Commission in this regard are a breath of fresh air. In other parts of the report. This, and the other changes proposed indicate a want of modernization by the Indian Contracts Act and a surge for the same has been done by the western countries. In the matter related to consideration, there is a dire need for change and it has been adequately addressed by the Law Commission. In order to enter into a lawful agreement, it is crucial that the agreement must have a lawful consideration. If any agreement has an unlawful consideration, it is by itself declared void since it doesn't satisfy the requirement of a contract. Then why can one not enter into an agreement intentionally and with a cause and only without consideration. It seems superfluous.

The worst brunt of it is faced in cases of charity wherein an individual promises to help in a charitable cause by giving financial aid but then refuses to do so. Now such an agreement (if not in writing or fulfilling the other conditions of a valid contract) cannot be upheld in a court of law and would be declared void just for the sole reason that it lacks consideration as was done in the case of *Kedarnath v. Gauri Mohamed*³⁶⁶. Even in the cases where an agreement is entered into by love and affection is not valid without consideration as long as it doesn't fulfil the exceptions of the same. The same was reiterated in the case of *Venkataswamy v. Rangaswamy*³⁶⁷. Due to all these anomalies of the Doctrine of Consideration, it becomes impossible to execute any such agreements. It is slowly and gradually becoming a bad law and thus it is imperative that its scope be limited. A man's word of mouth i.e. an implied contract, his intention, his cause for entering into an agreement sans consideration must be taken into account for its validity.

The cases valid or void nature should be reached at by judging the facts and circumstances and not that fact that it comprised or lacked consideration.

³⁶⁶ *Kedarnath v. Gauri Mohamed* ILR (1886) 14 Cal 64

³⁶⁷ *Venkataswamy v. Rangaswamy* (1903) 13 Mad LJ 423

Hence, the researchers agree that the recommendations of the law commission are in fact relevant and necessary. They are also modest since only limitation is asked to be imposed on the doctrine and not a complete end. For the Indian Contract Act to make an advance or to be in counterminis terms with the current times, it is necessary that the proposed changes be made and implemented as early as possible. Only then can India come on the same footing again with its commonwealth partner; England. Whenever a law existing from a long time becomes obsolete or the masses want a change for the same, it is only barbaric to keep it existing and mar the needs of the people. It is rather expected of the lawmakers to embrace a change of time and welcome new laws that co-exist with the 21st century and help in the advancement of the quality of the Indian Legal arena worldwide.

CONCLUSION

Through this analysis of the Report of the 13th Law Commission with special attention to the Doctrine of Consideration, the researchers have provided the reader with a basic structure of the Indian Contract Act in the context of consideration. In doing so, there has been showcased a brief understanding of the subject and what the entire analysis relates to. It sets the base of the entire research so that it can be legible and understandable to a layperson as well. From then on a critique has evolved regarding the topic. Consideration in contracts has been criticized on various grounds; from making enforcement of contracts meant to be enforced difficult, to being a liability as it is not in terms with the times of now. This has been analyzed by the help of case laws, them being:

1. Ram Dass and Ors. Vs Kishan Dev and Anr.
2. Doraswamy Iyer Vs Arunachala Ayyar and Ors.
3. Combe Vs Combe

These cases display how relevant agreements made intentionally for noble causes like charity or love and affection, have been declared void just because they lack consideration or are not entered into in a written format. These judgments have been criticized by the researchers and in order to prevent such judgments in future there needs to be a law that limits the Doctrine of Consideration. This is what has been suggested by the Law Commission. They have recommended a serious narrowing down of the wide scope and the ultimate rigidity of the Doctrine. Since the Doctrine has been given a lot of importance in the Indian Law by many eminent jurists, it was not considered

sensible to completely sever the doctrine from the Contract Act. Thus, it was asked by the members in the report to consider implied contracts as valid and also to consider valid, contracts that have been entered into without written, registered contracts.

Hence, the hypothesis of the researchers is proved to be true. This has been done so by using the law commission's report as a backup. Eminent members of the Law Commission have humbly implored the lawmakers to consider this change so that the Indian Contract Act can make an advancement toward modern laws and have better and more flexible agreements be entered into.



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