

# CONTRACT OF AGENCY AND ITS TYPES: A LAW STUDENT'S PERSPECTIVE

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## ABSTRACT

*Agency Contracts are extremely common in cases of business law. These contracts are either in an express or an implied form. Delegated authority leads to creation of an agency under contract law. Delegated authority means that the authority is transferred from one person to another and a person is appointed to carry out specific tasks under contract law. This leads to creation of principal-agent relationship. This confers the rights as well as duties on both principal and agent. There are various examples of principal-agent relationship. Some of them include Insurance agency, advertising agency, travel agency, factors, brokers, del credere agents etc.*

*The laws relating to agency are dealt under Chapter X of the Indian Contract Act, 1872. Almost all businesses require agency contracts. Hence, it's of utmost importance to know the law relating to agency. Any business organization be it large scale or small scale require agency contracts to delegate work opportunities. Therefore, laws relating to the agency and types of agency are an important area of Business Law.*

*The research paper focuses on the various types of agencies and explain briefly the circumstances under which such relationships are created.*

**Keywords:** Agent, Authority, Liability, Principal

## I. INTRODUCTION

### Meaning of Agency

Section 182 of the Indian Contract Act 1872

Definition of Agent and Principal:

*An agent is a person employed to do any act for another or to represent another in dealings with the third parties. The person for whom such act is done, or who is represented, is called the principal.<sup>i</sup>*

The relationship existing between the Principal and Agent is known as Agency wherein the principal has given the authority to carry out dealings and transactions between parties.

In an agency, there exists two contracts i.e.

- a) The first contract created between the principal and the agent from which the agent is delegated the authority to act for and on behalf of the principal, and
- b) The second contract is the one made between the principal and the third party through the work of the agent.

To be an agent a person must be a major (i.e. above 18 years of age) and must be of sound mind. As among Principal and third individual an individual may turn into an Agent, to be dependable to his Principal as indicated by the arrangements contained in the Act.

No consideration is important to make an agency. Several kinds of business specialists have been perceived under Indian Contract law, which incorporates brokers, salespeople, del credere agents, people dependent on cash for getting deals and insurance agents.

## II. CREATION OF AGENCY

Agency Contract under the Indian Contract Law, 1872 are in an expressed or implied form. Any agency contract does not require consideration as an essential ingredient to the contract.

Agency contracts are either expressed or implied. There is no need of consideration as consideration is not an important factor in an agency contract. Agency contracts arise because of various factors and some of them include estoppel, necessity or ratification.

## III. TYPES OF AGENCY

### 1. EXPRESS AGENCY

A contract of agency can either be made in an oral form or even in a written form. Example of a written contract of agency is the Power of Attorney that gives a right to an agent to work and carry out decisions. An agent can be given General Power of Attorney or can be given special powers authorizing him to carry out a single act or transaction.

### 2. IMPLIED AGENCY

This situation arises when there is any behaviour or conduct that leads to appointments of agent indirectly. When an agent appointed based on circumstances or the circumstances are such that it can be inferred that he is an agent.

Allu owns a bakery in Bihar but lives in Mumbai. His bakery is managed by a person named John. John takes care of the daily transactions of the bakery and buys flour from a person named Ram, with Allu's knowledge. In this case, John has *implied authority* from Allu to buy these intermediate goods.

In *Chairman L.I.C v. Rajiv Kumar Bhaskar*, in accordance with the salary saving scheme of L.I.C, the employer was entitled to deduct the premium from the employee's salary. The amount so deducted had to be deposited by the employer with L.I.C.

Subsequent to the employees' death, it was confirmed by his heirs that the employer has defaulted in depositing the amount with LIC, owing to which the policy had lapsed. A clause in the acceptance letter was clearly stated that the employer had agreed to act as the agent of the employee and not of the Insurance Company. It was contended that the employer was acting as the agent of the company, thereby making the L.I.C accountable as a Principal due to the fault of the employer.

**a. AGENCY BY ESTOPPEL (SECTION 237)**

The situation of Estoppel arises when one is precluded from denying the truth of anything which he or she has represented as a fact, however, it is not a fact.

Thus, where Prakash allows third parties to believe that Aniket is acting as his authorized agent, he will be estopped from denying the agency if such third-parties relying on it make a contract even when Aniket had no authority to act as agent.

**The Ram Chandran Case:**

A clerk of a cooperative society was entrusted with the job of a cashier. Later he was disallowed by the society to receive cash or cheques from members of the society. The clerk was held out as the agent of the society whereby he could act on its behalf in matters concerning money. Thus, the clerk was held to have an ostensible (apparent) authority as Sec. 237 was applicable.<sup>ii</sup>

**b. WIFE AS AGENT**

Where husband and wife are residing together, it is presumed that the wife has authority to act as agent of her husband. She can pledge his property or obtain loans on his accounts, deal with

husband's banking transactions, take important business decisions, deal with parties to business. But the husband will not be liable if he proves that:

- (i) tradesman were warned by him not to supply goods on credit to his wife; or
- (ii) wife was warned by him not to use his credit;
- (iii) his wife had adequate supply of articles by provided by him or
- (iv) Adequate allowance was provided by him so that wife could have a decent standard of living

#### c. **AGENCY BY HOLDING OUT**

Also, where any person is declared by another as his agent, the third-party can hold that person responsible for the acts of the ostensible or apparent agent, or the agent by holding out. In partnership agreement, there is Principal agent relationship. Every partner acts as an agent to the outsiders as he is representing his firm in the ordinary course of business.

#### d. **AGENCY OF NECESSITY**

During certain circumstances, a person could be entrusted with another's property. He has to act as custodian or care- taker of the property. He may have to incur additional expenses to preserve such property. This is called an agency of necessity. It also arises when one person acts on behalf of another to save the person from unforeseen or unpredictable loss or damages without expressly being appointed as an agent.

For example, Amartya sent a horse by goods train. When the horse reached the destination, there was nobody to receive it. The railways cannot neglect the horse and it is bound to take proper steps to keep the horse alive. This, railways act as agent of necessity as the situation so demands.

A wife separated from her husband can pledge her husband's credit to sustain herself according to the position or status of the husband in spite of him forbidding her to do so.

**e. AGENCY BY RATIFICATION (SECTION 169-200)**

Where a person is not authorized to act as agent, or act beyond the authority, then the principal is neither responsible for the acts of the agent nor bound by the contract with the agent in respect of such authority. However, the principal can ratify the agent's transaction. In this way, an agency by ratification is created.

This is also termed as ex post facto agency- agency that arises after the event. By this ratification, the principal is bound by the contract and is liable as if the agent had been authorized to act in such a manner.

Illustration:

Kangana bought apples on behalf of Tapsee, without her consent or knowledge. Tapsee later sold those apples to Kareena. This act of Tapsee impliedly ratifies the purchase made by Kangana

**Ratification is disallowed in the following cases:**

1. When the person does not have enough knowledge of the facts of the case or has defective half-baked information about it.
2. When a person acts on behalf of another person in such a manner that he tarnishes the image or harms his reputation or violates any of his rights as if the act was done with his authority.<sup>iii</sup>

## IV. TYPES OF AGENTS

### Special Agent

Special Agent is an agent who is appointed to do a singular specific act. For example, Babu is appointed as a special agent to sell a bike. If Babu exceeds the scope of his authority, the principal is not bound by it and third parties need not assume that Babu has unlimited powers.

### General Agent

General Agent is an agent appointed to perform all acts in general relating to a specific job. For example, A manager of a firm can bind the principal by all his acts which are done within the ordinary scope of business. Whether the manager is actually authorized for any particular act or not is of no use provided that third party acts bona fide.

### Sub-Agent

Sub-Agent is an agent appointed by an agent. An agent at times may delegate the duty that has been delegated to him by the Principal on account of tremendous work pressure or pressure to meet deadlines. Ordinarily, an agent is not supposed to delegate the duty he is supposed to perform himself to another person (*delegatus non potest delegare*), except in particular circumstances where he must, out of necessity, do so.

### **Delegatus non potest delegare:**

An agent cannot and should not delegate the duty that was delegated to him under ordinary circumstances. The idea behind that is when a Principal appoints an agent, he reposes his faith

in the agent and might not have similar faith or trust or confidence in the work of another person.

### **Sub-agent vs Substituted agent:**

There is basic difference between sub-agent and the substituted agent. When a person, in the ordinary course of business in the capacity of an agent, is asked to name someone for a certain task, the person whose name is suggested does not become a sub-agent to the Principal, but he becomes a substituted agent.

Illustration:

Jaya asks her solicitor to appoint an auctioneer to sell her vintage Mercedes Benz. Her solicitor appoints Mehnaz as an auctioneer. In this case, Mehnaz is not a sub-agent but is, in fact, a substituted agent for this sale.

### **Co-Agent**

Agents who are jointly appointed to do an act together are known as co-agents.

### **Factor**

An agent who is appointed for a reward in the form of commission (one who apparently seems like the owner of the things) concerned is known as a factor. He is an agent who is given the possession of goods. A contract is entered into with him by the Principal for the sale of the



goods for the latter. He may sell the goods on credit, may negotiate the price and give discount to the buyer.

### **Broker**

Broker is the one who is employed to make contracts in the name of the Principal for the purchase and sale of goods. He does not have the possession of goods. He act as a connecting link between the parties and brings them on negotiating table and if the circumstances are favorable then he becomes entitled to his commission called brokerage.

### **Auctioneer**

Auctioneer is an agent who acts a seller for the Principal and invites the bid in an auction.

### **Commission Agent**

Commission Agent is appointed to buy and sell goods with the best terms and conditions for his Principal.

### **Del Credere**

Del Credere is an agent who acts as a salesperson as well as broker. He often acts as guarantor for the Principal. He guarantees the credit extended to the buyer. He is one who in the hope of an extra commission guarantees his Principal that the third person shall discharge his financial obligations.

## **Pucca Adatia**

A **pucca adatia** is person who is entitled to keep profit with himself of constituent made by him. It is generally defined in section 182 of Indian Contract Act 1872.

In the case of *Shivnarayan Kabra v. The State of Madras*<sup>iv</sup>, the advertisement was released by appellant presenting himself to be pucca adatia. On reading the advertisement, people wanted to enter into forward contract. He assured them that he undertook business as per pucca adatia system. The respondent made allegation of false representation made by appellant. He was not part of any association and was not authorized to carry out such business. The issue with Madras High Court was regarding whether appellant was liable under Section 420 of IPC or not. The court held that because of false representation he could carry out the business of forward contract, the appellant would be responsible under Section 420 of IPC.

## **CONCLUSION**

The Indian Contract Act of 1872 does not differentiate between different classes of agents. An agent may be appointed by the principal, even an employment by any authority authorized by law to make the employment is considered agency.

Under the Indian Law, the Agent has certain duties. An agent is bound by the terms of the contract. He should conduct the business of his principal according to the directions given by the principal or in absence of any such directions, according to the prevalent customs. Every agent should carry out the mandate of his principal. In order to entitle the agent to receive his reward, he must have discharged all his duties expected of him under the agency and abide by all conditions imposed by the Indian Contract Act, 1872.

## **ENDNOTES**

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<sup>i</sup> Concept of Agency in Indian Contract Act - The Complete Concept And Landmark Judgments by Dhyan Shah dated 5<sup>th</sup> July, 2021; Lawyers Club India

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[Concept Of Agency In Indian Contract Act - The Complete Concept And Landmark Judgments \(lawyersclubindia.com\)](#)

<sup>ii</sup> Law of Estoppel by Rishabh Goenka [www.legalservicesindia.com](http://www.legalservicesindia.com)

<sup>iii</sup> Law of agency published by Mirza Wardah Beg [www.blogileaders.com](http://www.blogileaders.com)

<sup>iv</sup> AIR 1967, 986



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