



THE EMERGING NEED FOR REVISION OF THE CONTRACT LAW

AUTHOR- KASHISH KHANNA, STUDENT AT IILM UNIVERSITY, GURUGRAM, HARYANA

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Abstract

Contract law has been referred to as the law of laws because it has had an inseparable role in various other legislations as well. It aids the coming up of acts like; The Indian Partnership Act and The Sale of Goods Act etc. The laws governing contracts in India (apart from the state of Jammu and Kashmir) (since removed) are governed by the Indian Contract Act of 1872, enacted on 25th of April and came into existence and force since 1st September of the same year, which was founded on the ideas of English Common Law. The main legislation that governs and supervises the enterprises undertaken through such arrangements deals with the framing and approval of contracts or agreements. Contracts and agreements are though not used interchangeably but agreements give rise to contracts. The Act's framework is discussed in this article.¹ It is a detailed manual that controls agreements and contracts in India. The legislation, which was passed to establish a basis for contract law, has undergone numerous revisions throughout time to reflect shifting economic realities.² The act is very crucial in the Indian society. Although it has some loopholes which need national level recognition and attention so that these issues are resolved. People are free to formalize and define their relationships however they see fit thanks to Indian contract law. ³

Keywords: Contracts, Detailed Manual, Controls, Enterprises, Loopholes, Recognition, Legislation.



¹ Indian Contract Act, India Filings, <https://www.indiafilings.com/learn/indian-contract-act/> Last Accessed on 10th June 2023 – 3:00 PM.

² A Comprehensive Guide, Indian Contract Act, <https://unacademy.com/content/ca-foundation/study-material/business-correspondence/the-indian-contract-act-1872-a-comprehensive-guide/> Last Accessed on 10th June 2023 – 3:10 PM.

³ Introduction to Contract Law, Up grad, <https://www.upgrad.com/blog/introduction-to-contract-law/> Last Accessed on 10th June 2023 – 3:30 PM.

I. Introduction

Tracing a brief history shall provide an ethical outline to this research. It may be determined by looking at how contracts have evolved through time, from Roman law to Muslim law to Hindu law and finally to legal punishments under the British Regime, that even though the technicalities and the methods and means of punishment may alter. Even though the laws' applicability may vary, their fundamental principles—that a minor cannot enter into a contract, that both parties' consent must be given in the same way and with the same intent, that certain people—such as those who are inebriated or over the age of 18—must not enter into a contract—remain constant. Therefore, it can be claimed, that the contract law has developed over time and has been interpreted differently in many communities, but the fundamental ideas have not changed and no attempt has been made to alter them.⁴

The relevance of the act shall not remain untouched as it is of utmost cruciality. Given that law of contract adds certainty to business transactions, contract law is crucial for ensuring smooth trade and commerce. It does not necessarily follow that just businesspeople are impacted. The entire society is impacted. We are all impacted by it in some way. From daylight to night, each of us signs a number of contracts. A contract is entered into when a person buys a book, attends a movie, takes his automobile to the mechanic, etc.⁵ Contracts are essentially legally binding agreements that specify that one party will provide products and services in exchange for a specific payment from the other party. The business will run more effectively if the contract has the right term.

It's critical to know that a blockage of an agreement results in a blockage of revenue. On the other hand, a well-written contract ensures a seamless operation and, as a result, makes it

simple to make money. In addition, contracts are comprehensive and simple to administer. This aids in the business operation's ability to accumulate large sums of money that can be used for other, more profitable purposes. Contracts are by their very nature relational and collaborative. By outlining the key provisions for the parties in unambiguous terms, they promote transparency and improve interaction. Contracts that express their conditions of employment in full are preferred to those that do not. For a relationship to be successful and last, there must be open communication on all sides. Contracts serve as a representation of the agreement between two parties. Each party has obligations and privileges with respect to the other. A contract serves as a written record of this arrangement. The details and the level to which both sides are obligated to one another are likely to be stated in a well-written contract. The relationship between the parties is outlined in a contract. The opposite party may file a lawsuit in the event that a party violates the agreement to which it has agreed.⁶

According to the Act talked about above, a valid contract is the one for which a proposal is made (S.2), accepted, it further leads to an agreement and the set of agreements forming consideration make up a contract. It is valid {S.2 (h)} only if it fulfills all essentials in S.10 of the Indian Contract Act, 1872, along with intention which has not been expressly codified in the Act but has been derived as an essential from judicial precedents. The act is of great importance and forms a respectable law but unavoidably, it has some loopholes which have been discussed below.

II. Research Methodology

Doctrinal and comparative research is the methodology that will be used for this study. In this study, the Indian Contract Act of 1872 and judicial precedents served as the main data sources. Published books, journals, scholarly

⁴ Akash, History of Indian Contract Act, 1872, Legal Katta, <https://legalkatta.in/history-of-the-indian-contract-act-1872/> Last Accessed on 10th June 2023 – 3:50 PM.

⁵ Importance of Indian Contract Act, Account Learning, <https://accountlearning.com/indian-contract-act-1872-nature-importance/> Last Accessed on 10th June 2023 – 4:00 PM.

⁶Avantika Bhattacharya, Contracts and Their Importance, Legal Services India, <https://www.legalserviceindia.com/legal/article-6733-contracts-and-their-importance.html> Last Accessed on 11th June 2023 – 4:20 PM.

articles, online journals, research reports, and others were employed as secondary sources of data.

III. Reasons of existence of a space for reform in the Indian law of contract:

A. Doctrine of Privity:

1. According to the common law doctrine of the privity of contract, if you are not a party to a contract, you are not entitled to its advantages and are not responsible for any of its stipulations. The fundamental belief is that a contract may only be litigated or enforced by parties to it.⁷

2. Essentials: The foremost is the formation of a valid contract, followed by competent parties followed by breach of the contract, followed by the fact that a party to the contract has filed the suit.

3. Relevant Case laws: In an effort to resolve the ambiguities in the application of the doctrine of privity, the Indian supreme court held in *M.C. Chacko v. State of Travancore*⁸ that, with some well-known exceptions, a person who is not a party to a contract cannot enforce the terms of the contract. The recognized exemption referenced in the judgement cited is worded broadly to include the contract's beneficiaries. Other courts in the nation have established their opinions on the rights of third-party beneficiaries. In one case, the division bench of the Calcutta High Court held in *Bhujendra Nath vs. Sushamoyee Basu*⁹ that a third party to a contract that benefits him has the right to enforce the agreement.¹⁰

4. Disadvantages: Frequently, the promisee and the third party have a trusting relationship. A duty to uphold the terms of the contract under a trust is not recognised by Privity. When a

promisor receives an agreed-upon compensation but ignores its duty to a third party, it is unfairly benefited; nonetheless, privity does not see any unfairness. Some have contended that the promisee can enforce the contract; nonetheless, the promisee has sole choice over the third party's settlement, which may simply include small fees.¹¹

However, the law does not explicitly address third-party rights; it is vague in nature. The doctrine must be eliminated in order for a third party to be able to bring a lawsuit against a contract that was made for his benefit under certain conditions, as suggested in the 13th Law Commission Report. To do this, either a new definition or statutory provision must be added, or a new law granting third parties specific rights must be passed under certain conditions.¹²

B. Surrogacy Contracts

1. An arrangement whereby a woman conceives and delivers a kid on behalf of a person who is unable to have children.¹³ A surrogacy contract guides the entire surrogacy journey, clearly outlining each party's rights, roles, and responsibilities before, during, and after the pregnancy.

2. Two major loopholes in provision regarding surrogacy contracts:

- If remedy should be claimed under ICA or SPA.
- Commodifying a living being.

The discrepancy occurs because contractual remedies are not always applicable when such surrogacy contracts are broken. It is challenging to provide for any reliefs, whether those reliefs are governed by the Indian Contract Act itself or the Specific Relief Act, due to the inherent

⁷ Privity Of Contract Definition, Lexis Nexis, <https://www.lexisnexis.co.uk/legal/glossary/privity-of-contract> Last Accessed on 13th June 2023- 5:30 PM.

⁸M.C. Chacko V. State of Travancore, 1970 SCR (1) 658.

⁹ Bhujendra Nath vs. Sushamoyee Basu, AIR 1936 Cal 67.

¹⁰ Priyesh Sharma, Treatment of Doctrine Of Privity By Indian Judiciary, Mondaq, <https://www.mondaq.com/india/contracts-and-commercial-law/243778/treatment-of-doctrine-of-privity-by-indian-judiciary> Last Accessed On 13th June 2023-5:00 PM.

¹¹'Discuss Criticisms of the Doctrine of Privity of Contract', Law Teacher, <https://www.lawteacher.net/free-law-essays/contract-law/discuss-criticisms-of-the-doctrine-of-privity-of-contract-contract-law-essay.php> Last Accessed on 13 June 2023 - 5:20 PM.

¹²Re-look on Contract Law, IP Leaders, <https://blog.ipleaders.in/why-indian-contract-act-needs-a-re-look/> Last Accessed on 13th June, 2023- 5:30 PM.

¹³Surrogate Pregnancy, NIH, <https://www.cancer.gov/publications/dictionaries/cancer-terms/def/surrogate-pregnancy>, Last Accessed on 14th June, 2023- 6:10 PM.

nature of the contract involving the transfer of a human child to the inherited parents and the complications that arise on specific performance due to pregnancy problems. Another flaw is the human infant's seeming commercialization and damages claims made because the youngster was born lacking in some capacity.²⁰ If such a circumstance happens or in the event that the surrogate mother lies, it becomes difficult for her to recompense the other couple.¹⁴ Thus, surrogacy provisions in Indian law struggle to find a state of balance.

C. E- Contract Provisions

1. Any valid contract entered into by competent parties for a lawful consideration with a lawful objective, not declared void, with free consent which is entered into in an online mode (non-physical meeting) is an E-Contract.

2. The world has drastically changed post Covid 19 and its effects throughout the globe. It led to an era of online court proceedings, teaching-learning, businesses etc. Bringing into force new E-Contract provisions will lead to unstopped development in the world of contracts.

3. There is an emerging need of such new laws, legalizing e-contracts and suggesting measures of remedy post breach of it.

4. This will have many linked advantages such as, time saving, easy accessibility, no physical and geographical constraints and restrictions. It might have its own disadvantages like increased misuse of the law and increase in cyber-crimes, although these can be resolved by spreading awareness, the same should be done by the government as its duty.

D. Contracts with the Incompetent: The Minors

1. In accordance with S.11 of The Indian Contract Act people of sound mind and age of majority, that is, in India, eighteen (18), can enter into a

legally enforceable contract. A minor is any person who is below the age of majority, that is, eighteen years.

2. The Act omits defining the implications of entering into a contract with a minor, but goes on to expressly outline the repercussions of vitiated "consent" under sections 19, 19A, and 20. The Privy Council's interpretation of the Act in Mohori Bibee¹⁵ judgement is flawed, and the Act does not enable the creation of the type of contracts that are void from the start that it did.¹⁶

3. Thus, there is dearth of clarity on this topic as well.

E. Section 27: Agreements in Restraint of Trade are Void

Although, the section is inspired from the English law, but is very different in context of its implementation and applicability in all acts. It is narrowly defined and needs new precedents to become reasonable and applicable. It needs detailed definitions as well.¹⁷

F. Other criticisms and loopholes:

The major flaw in the definition of section 2(h) is that it is also described in several other sections, making it impossible to read on its own. Consequently, a normal person is unable to understand section 2(h)'s sole definition.

Section 2(d)'s term "consideration" may or may not be enough, so a contract involving the purchase of a car for Rs. 100 may be ambiguous; as a result, it must be explicit.¹⁸

IV. Requirement of changes in the laws of a changing society.

The drafters of the Constitution believed that it needed to reflect societal changes as well as

¹⁴ Harjas Singh Gulati, Loopholes in the Indian Contract Act: A Critical Analysis, International Journal of Creative Research Thoughts, Volume 10, Issue 6 of 2022.

¹⁵ Mohiribibee V. Dharmodas Ghose, ILR (1903) 30 Cal. 539 (PC).

¹⁶ Shivprasad Swaminathan, Minors Contract: A major problem in the Indian Contract Act, 1872, Oxford Academic Journal, Volume 42 and Issue 1 of 2021, Pg. 101-115.

¹⁷ Critical Analysis of The Indian Contract Act, JUS Corpus, <https://www.juscorpus.com/critical-analysis-of-section-27-of-indian-contract-act/> Last Accessed on 14th June 2023 – 6:28 PM.

¹⁸ Noor, Analysis of S.2 (h) of Indian Contract Act, 1872, Legal Services India, <https://legalserviceindia.com/legal/article-8650-analysis-of-section-2-h-of-indian-contract-act-1872.html> Last Accessed on 14th June 2023 6:29 PM.

the aspirations of the populace. They did not regard it as a holy, unchanging law. They therefore established allowances for occasionally incorporating adjustments. Constitutional amendments are what are referred to as these alterations.¹⁹ Change in laws is the need of the hour as the situations in a society change. They are required for an enhanced civil lifestyle. It is only the natural laws which can remain constant in a sustained society. Since, our law is such a dynamic subject, it naturally adapts to its environment. It's time for society to effectively use the laws already in place so that they can be used to bring about social change in the truest sense. Therefore, a society can gain from this topic in a wide variety of ways.²⁰

V. Analysis

The document provides a brief study of the need to reform contract laws to catch up with a complex and ever-growing and developing society. The changes like growth of AI Technology, modern ideas and influence of the West all around the globe have reformed the thinking of people in the world, and citizens in our country have not been left unaffected with these changes and developments around us. Laws act as a means of social control in a society. Thus, they should be amended accordingly to keep up with the needs of the society. Codified laws, especially go through various stages of approval in our country, yet left with certain loopholes in them. These loopholes shall not be ignored so that any victim can be put into near justice situation and shall not be denied such a justice due to dearth of law provisions. A great example of an evolving law in our country is the Law of Tort, it is a dynamic law and it evolves with the society, this has been possible because it is non codified. This paper does not suggest that

¹⁹Importance of Amendments, Toppr, https://www.google.com/search?q=importance+of+amendments&rlz=1C1J JTC_enIN1040IN1040&oq=importance+of+amendments&aqs=chrome.69i57j0i512l9.7327j0j9&sourceid=chrome&ie=UTF-8 Last Visited on 14th June 2023 – 6:30 PM.

²⁰ Oishika Banerjee, Law as an Instrument of Social Change, IP Leaders, <https://blog.ipleaders.in/can-law-used-instrument-creating-social-change/> Last Accessed on 14th June, 2023 – 6:33 PM

codified laws are unhealthy for a society. Codified laws are the best, subject to changes with changing society. The above idea is not just confined to contract law. The paper confines to required changes in contract law.

VI. Reasons for Amending A Law

Their can be various possible reasons for changes in a law. A few of the are change in community values, change in expectation, change in mindsets, change in legal system, enhanced community awareness on a particular issue, changes in technological aspect or changes in the international relations of a country.²¹

Another reason for change in a law could be that by such a change, it could be used in more judgements as compared to its original form which makes it more reasonable to exist. Wider usage will reflect it effectiveness in the society.

Laws could also be changed due to increasing crimes, especially in underdeveloped and developing countries, in relation to misuse of a particular law. In such a situation the government should immediately intervene and look after making the law better, so that they prevent its misuse.

VII. Conclusion

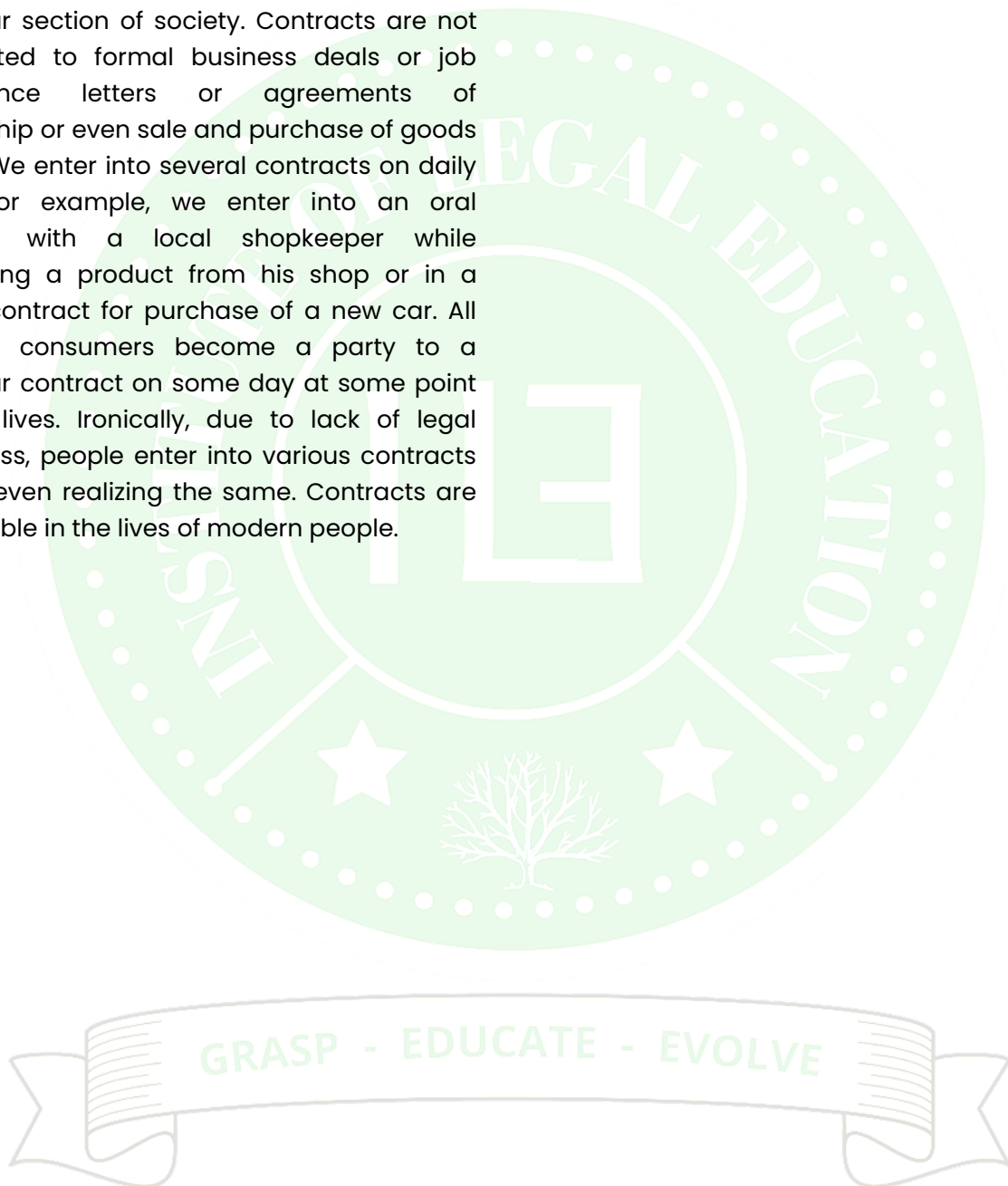
A few suggestions provided by famous jurists can be taken into consideration if the reframing of the act is carried out by the Indian Parliament. It is clear that the Indian Contract Act should be reframed. The Indian Contract Act, in the opinion of the majority of legal professionals, is a well-written piece of legislation, but some revisions will help bring it into line with the standards of the modern marketplace. As a result, parties from abroad looking to conduct business in India can have more faith in this.²² The act aids with the legal operation of the contracts and provides redress

²¹ Reasons for change in the law, Engage, <http://engageeducation.org.au/legal-studies/unit-3/area-of-study-1-parliament-and-the-citizen/reasons-for-change-in-the-law/> Last Accessed on 15th June – 7:00 PM

²² Supra note 12



to those who are harmed by them. As a result, it is among the most important acts in India. One of the most sought-after professions among young aspirants is law due to its complexity.²³With the ever-growing society and newer generations, it is vital for the society to maintain pace with the laws as well and contract law is a law which is not limited to a particular section of society. Contracts are not just limited to formal business deals or job acceptance letters or agreements of partnership or even sale and purchase of goods in bulk. We enter into several contracts on daily basis. For example, we enter into an oral contract with a local shopkeeper while purchasing a product from his shop or in a written contract for purchase of a new car. All kinds of consumers become a party to a particular contract on some day at some point in their lives. Ironically, due to lack of legal awareness, people enter into various contracts without even realizing the same. Contracts are inseparable in the lives of modern people.



²³ Supra note 10