
WHEN AN AGREEMENT BECOMES A CONTRACT: LEGAL ESSENTIALS UNDER THE INDIAN CONTRACT ACT, 1872

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ABSTRACT

Under the sphere of the Indian Contract Act, 1872, this paper looks at the necessary components of a legally binding agreement i.e., contract. Although not specifically mentioned in the Act, elements such as there must be two or more parties or the intention to establish a legal relationship are thought to be essential to the legitimacy of an agreement. The main elements that were discussed are: Proposal and Acceptance: In order to establish a legally binding agreement, a proposal needs to be explicit, communicated, and made with that goal in mind. The proposer must be informed of the acceptance, which must be unconditional and absolute. To highlight the necessity of prior knowledge of a proposal for legitimate acceptance, the seminal case of *Lalman Shukla v. Gauri Dutt* is cited. Competent Parties: The parties must be at least eighteen years old, mentally sound, and exempt from any legal restrictions. The requirements for each of these conditions are described in detail in the text. Free Consent: Coercion, undue influence, fraud, misrepresentation, or error cannot affect consent. A clear distinction between fraud and misrepresentation is made in the definitions of each of these. Lawful Consideration and Object: The parties must exchange something of value (consideration) and have a legitimate purpose (object) for the agreement. When consideration and object are prohibited by law, fraudulent, immoral, or against public policy, they are both considered unlawful. According to the paper's conclusion, an agreement is void or void ab initio if any of these general requirements are not met, rendering it legally unenforceable. It does point out that these general guidelines may be superseded by special provisions for specific contracts under the Act.

Keywords: Contract, Agreement, Proposal, Acceptance, Competent Parties, Consent, Lawful Consideration, lawful object.

Introduction.

Indian Contract Act, 1872 governs the laws regarding the contracts, in India. The Indian Contract Act, 1872, is crucial piece of legislation that governs the contracts. It lays out the principle and rules for creating, enforcing and interpreting contracts ensuring legal validity and provides remedies for the breach. Essentially, the act defines what constitute a valid agreement and outlines the rights and obligation of parties involved in contractual agreement.

As per Indian contract act an agreement is, ‘every promise or a set of promises that forms the consideration for each other.’¹ In simple words when one party proposes an offer and other party accepts it, an agreement came into existence. The terms ‘Agreement’ and ‘Contract’ most often under the mistaken belief are interchangeably used but they possess different meanings, every contract is an agreement, whereas, every agreement is not a contract. Contract means an agreement which is legally enforceable.²

An agreement to become a contract must give rise to certain legal obligations. These legal obligations shall be discharged in accordance to the said act. Section 10 of the said act outlines the core requirements for an agreement to be a contract (legally enforceable agreement). Thus, to make an agreement legally enforceable the below mention credentials should be fulfilled.

Credentials which are not explicitly mention under Indian Contract Act. 1872.

Although these are some elements which are not explicitly mentioned in the Indian Contract Act, 1872. But, are considered significant for legal enforceability of an agreement. which are,

- a. There shall be two or more parties.³
- b. There shall be intention to create legal relationship.⁴

Essential elements for legally enforceable agreement according to Indian Contract Act, 1872.

Proposal.

¹ Indian Contract Act, No. 9 of 1872, § 2(e)

² Indian Contract Act, No. 9 of 1872, § 2(h), Avtar Singh, *Law of Contract*

³ Consensus ad idem.

⁴ *Balfour v. Balfour* (1919) 2 KB 571

In order to make an agreement legally enforceable, the proposal as the first step, possesses high significance, it shall be communicated in a certain manner prescribed under Indian contract act, 1872.

As defined under section 2(a) of the said act, to have proposal, the proposer shall manifest or make known his intention to do or to abstain from doing anything. For a proposal to be valid it must be communicated in a certain or unambiguous way, made with the intention to create legally binding agreement upon acceptance. The proposal may be expressed or implied, general or special.

- a. Expressed proposal: A proposal communicated by using words, either spoken or written.
- b. Implied proposal: A proposal made through conduct or action rather than explicated words.⁵
- c. General proposal: A proposal made to public at large, anyone can accept by fulfil terms.⁶
- d. Special proposal: A proposal made for a particular person or a group of persons.⁷

Invitation to offer.

An invitation to offer also known as invitation to treat is merely a statement that invites another party to make a proposal. Such as, advertisement, tenders, price lists, etc. It's a primary step in to the negotiation, not a binding offer that creates a contract upon acceptance.⁸

The proposal, if does not fulfil the credentials accordingly to the said act. Subsequently it considered as void ab initio.⁹ It means it cannot be enforced as a contract and does not create any legal obligations towards parties.

⁵ Indian Contract Act, No. 9 of 1872, §§ 2(a), 4, 9.

⁶ *Carlill v. Carbolic Smoke Ball Co* (1893) 1 QB 256

⁷ *Boulton v. Jones*, (1857) 2 H & N 564

⁸ *Pharmaceutical Society of Great Britain v. Boots Cash Chemists* (1953) 1 QB 401

⁹ *Mohori Bibee v. Dharmodas Ghose* (1903) 30 IA 114 (PC)

Acceptance.

According to contract law, a contract only exists when one party's offer is legitimately accepted by another. Therefore, the creation of a legally binding contract depends on the idea of acceptance. According to the Indian Contract Act of 1872, acceptance denotes the offeree's consent to the terms of the offer, making it a legally binding promise.

When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise¹⁰. Thus, acceptance is the expression of willingness by the offeree to be bound by the terms of the offer without any modification.

Acceptance must meet a certain crucial requirement in order to be recognized by the law. Such as, acceptance must be unqualified and absolute, which means it must precisely match the terms of the offer.¹¹ Any variation or conditional acceptance is not a contract; rather, it is a counter-offer.

Acceptance must be communicated because it is not an acceptance at all if the offer is not known. The court ruled in *Lalman Shukla v. Gauri Dutt* that an individual cannot accept an offer unless he was aware of it at the time of acceptance.¹²

According to the Act, Acceptance must be made in the way that the offeror specifies¹³. If no method is specified, it must be made in a customary and reasonable way. The offeror may reject the acceptance if it is not made in the manner specified.

Acceptance must be made within the time frame given in the offer, or within a reasonable amount of time if no time frame is specified. The offer expires if acceptance is not made within a reasonable time frame. The court ruled in *T.V. Kuppusamy v. Asokan* that an offer is void if it is not accepted within a reasonable time.¹⁴

Acceptance can be implied, which is recognized from the parties' actions, which is expressed through written or spoken words. Silence, however, does not equate to acceptance. In *Union*

¹⁰ Indian Contract Act, No. 9 of 1872 § 2(b) (India).

¹¹ Indian Contract Act, No. 9 of 1872, § 7(1) (India).

¹² *Lalman Shukla v. Gauri Dutt*, (1913) 11 All L.J. 489 (India).

¹³ Indian Contract Act, No. 9 of 1872 § 7(2) (India).

¹⁴ *T.V. Kuppusamy v. Asokan*, (2010) 4 S.C.C. 400 (India).

of India v. Bhim Sen Walaiti Ram, the court ruled that silence alone cannot be used to infer acceptance.¹⁵

According to Section 8 of the Act, acceptance can be made by fulfilling the proposal's requirements. It was decided in the seminal case of Carlill v. Carbolic Smoke Ball Co. that fulfilling the terms of the offer qualified as a legitimate acceptance.¹⁶

Competent Parties.

Within the meaning of Indian Contract Act, 1872, under section 11 the parties are considered competent for a contract when they completed the age of majority as to the law which they are subjected to and is of sound mind and not disqualified by the law.

1. **Who completed the age of majority:** This is regulated by Indian majority Act, 1875. Section 3 which declare that every person domiciled in India shall deemed to have attained his majority when he completed the age of 18 years. However, in case of minor, the court may appoint the guardian, to act on behalf of him. In some special cases, the court extent the title of a minor or appoint the guardian for a person, up to the age of 21 years.¹⁷
2. **Who is of sound mind:** In the section 12 of Indian Contract Act, 1872 the definition of soundness of mind is given. As per definition, at the time of making contract the person is capable of understanding and forming a rational judgement as it affects upon his interest. The provision also defines two situation which are_
 - a. A person who is of usually of sound mind and occasionally of unsound mind, may make a contract when he is of sound mind, and
 - b. A person is usually of unsound mind and occasionally of sound mind, may make a contract when he is of sound mind.¹⁸
3. **Not disqualified form contracting by any law which he is subject:** Disqualification from contract means, a person is legally prohibited by the laws which he is subject to enter into

¹⁵ Union of India v. Bhim Sen Walaiti Ram, A.I.R. 1971 S.C. 2295 (India)

¹⁶ Carlill v. Carbolic Smoke Ball Co., [1893] 1 Q.B. 256 (C.A.).

¹⁷ The Guardians and Wards Act, 1890, §§ 4, 7; Pratap Singh v. State of Jharkhand, (2005) 3 SCC 551.

¹⁸ Indian Contract Act, No. 9 of 1872, § 12

an agreement. Such as minor or an unsound mind person is prohibited to enter into any agreement in accordance with the Indian Contract Act, 1872. Or

In case of Insolvency, individual declared bankrupt or subject to the insolvency proceeding may be restricted from entering into certain contract.¹⁹ Particularly from entering into the agreement of sale of property. And also, if the law of which an individual is subjected restrict him to enter into an agreement, can be considered as the disqualified by law.²⁰

Thus, an individual shall testify all of the following credentials to be a competent party for entering into an agreement that could be legally enforceable. If not, otherwise considered as void.

Free Consent

The term 'Consent' is outlined under section 13 of Indian contract act, 1872. Which means, when two or more persons agrees upon the same thing in the same sense is considered as consent. And under section 14 it is outlined that the consent shall be free from certain elements which are_

a. Coercion: As per section 15 of Indian contract act 1872. Coercion is committing or threatening to commit any act forbidden by Indian penal code, 1860 or unlawful detaining or threatening to detain the property of a person, with the intention to take consent of that person to enter into an agreement.²¹

b. Undue influence: Undue influence means, a situation where one person uses their position, power or authority over another to dominate their will and take unfair advantage of it²². There are two essential aspect of undue influence which are-

1. In a subsisting relation, one party is in a position to dominate the will of other.
2. And uses that position to dominate the will of that individual.

¹⁹ Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 96, 101 (India); Indian Contract Act, No. 9 of 1872, § 11

²⁰ *The Indian Contract Act, 1872, § 11; Anil Kumar Neotia v. Union of India*, (1988) 2 SCC 587

²¹ Indian Contract Act, No. 9 of 1872, § 15

²² Indian Contract Act, No. 9 of 1872, § 16; *Subhash Chandra Das Mushib v. Ganga Prasad Das Mushib*, A.I.R. 1967 S.C. 878 (India)

If, these two events happen together then only it is considered as undue influence.

- c. **Fraud:** Fraud means, any act committed by a party with the intention to deceive another party or to induce them to enter into an agreement. Fraud includes
1. False statement.
 2. Active concealment of fact by having knowledge.
 3. Promise without intention to perform it.
 4. Any such act or omission as a law specially declared to be fraudulent²³.
- d. **Misrepresentation:** Misrepresentation means, a false statement made by one party to other, which induced other party to enter into the contract. But the statement is made under the innocence or mistaken belief that it is to be true. Although it is false but the statement made without the intention to deceive which is the only difference between misrepresentation and fraud.²⁴
- e. **Mistake:** The mistake within the meaning of Indian contract act, 1872. Refers to misconception, error and misunderstanding regarding the terms of the contract. These mistakes are broadly of two types.²⁵
1. **Bilateral mistake of fact:** A bilateral mistake of fact occurs when both parties to a contract are mistaken about the same essential fact rendering the agreement void under section 20 of Indian Contract Act, 1872. A bilateral mistake signifies a fundamental flaw in the foundation of the agreement. Thus, it prevents both the parties from legal binding.²⁶
 2. **Mistake of law:** A mistake of any law in force in India, either made unilaterally or bilaterally, does not subjected the contract to be voidable. The base of this principle

²³ Indian Contract Act, No. 9 of 1872, § 17

²⁴ *The Indian Contract Act, 1872*, § 18. Pollock & Mulla, *Indian Contract and Specific Relief Acts*, 15th ed. (LexisNexis, 2017)

²⁵ *The Indian Contract Act, No. 09 of 1872*, §§ 20–22.

²⁶ *The Indian Contract Act, No. 09 of 1872*, § 20.

is that everyone is presumed to know the laws of their land. But the mistake as to foreign law has the same effect as to the mistake of law.²⁷

3. **Unilateral mistake of fact:** within the meaning of section 22. A mistake in understanding the matter of fact, held by the one party is considered as unilateral mistake of fact. As the mistake held by one party in the contract, therefore, it doesn't give rise to the contract as voidable.

If the consent is induced with any of such act, while entering into an agreement then the consent is not deemed to be free. Consequently, the agreement is voidable at the option of aggrieved party.

Lawful consideration

Consideration within the meaning of Indian contract act, 1872 is something of value that is exchanged between the parties to a contract. It can be an act, abstinence or a promise to do or to abstain from doing something, given at the desire of promisor²⁸. It can be past, present or future and it does not need to be of equal value to what is being offered in return.

The term lawful consideration is described as, consideration that is not forbidden by law, does not defeat the provision of any law, is not fraudulent and does not involve any injury or immorality. Otherwise,

- a. Lawful consideration cannot be an act that is prohibited by law or
- b. The nature of the consideration shall not in a way that if permitted, would nullify any law.
- c. Shall not be a part of a scheme to deceive or fraudulent act.
- d. Shall not be an act i.e., immoral or against the public policy or include harm to a person or property.²⁹

²⁷ Indian Contract Act, No. 9 of 1872, § 21. State of Maharashtra v. Mayer Hans George, A.I.R. 1965 S.C. 722 (India).

²⁸ Indian Contract Act, No. 9 of 1872, § 2(d) (India)

²⁹ Indian Contract Act, No. 9 of 1872, § 23 (India)

But under section 25 of the said act, provides exception upon the general rule, agreements made without consideration (something of value exchanged) are generally void, but it provides three key exceptions where such agreements become valid contracts:

1. written, registered agreements based on **natural love and affection** between close relatives; or ³⁰
2. promises to compensate for past voluntary acts; or ³¹
3. written promises to pay a **time-barred debt** (debt past the limitation period). ³²

If any agreement defeat's above-mentioned terms in regards of consideration thereafter the agreement is deemed as void.

Lawful object.

Within the meaning of Indian Contract Act, 1872, the 'Object' of an agreement refers to its purpose or what the parties intended to achieve through. A lawful object is one that is permitted by the law³³. In nutshell, lawful object signifies that, the object of an agreement doesn't violate any legal principle. Section 23 of said act outlines what makes an object lawful in an agreement. As per section 23, an object of an agreement is considered lawful when_

- a. The object of an agreement shall not be forbidden by any law in force in India.
- b. The nature of object shall not be in manner that if permitted would defeat any provision of the law of land.
- c. The object shall not involve any element of deception or misconception.
- d. The object shall not be intended to cause to haram or damage to any person or property.

³⁰ Indian Contract Act, No. 9 of 1872, § 25(1) (India), Venkatasamy v. Rangasamy, A.I.R. 1938 Mad. 366

³¹ Indian Contract Act, No. 9 of 1872, § 25(2) (India), Sindha Shri Ganpatsingji v. Abraham, (1896) L.R. 23 I.A. 6 (P.C.)

³² Indian Contract Act, No. 9 of 1872, § 25(3) (India); Maniram Seth v. Seth Rupchand, (1906) I.L.R. 33 Cal. 1047

³³ Indian Contract Act, No. 9 of 1872, § 23 (India).

- e. The object shall not immoral or against public policy or harm to any public interest.

If the object of an agreement violates any of these conditions mentioned above subsequently the agreement is unenforceable by law and considered as void.

Certainty

One of the fundamental prerequisites for the creation of a legally binding agreement is certainty. It implies that the agreement's terms must be understandable, precise, and unambiguous. Because courts are unable to construct or infer the parties' intentions, a contract with a vague, ambiguous, or uncertain meaning cannot be upheld by the law.

In terms of the fundamental provisions of the contract, the principle guarantees that both parties are ad idem, or in agreement. Agreements whose meaning is not certain or capable of being made certain are void, expressly establishes the doctrine of certainty.³⁴

A contract needs to be clear about the following in order to be enforceable:

- a. Parties to the contract
- b. Subject matter
- c. Consideration
- d. Price (where relevant)
- e. Performance obligations

According to Section 29 of the Indian Contract Act of 1872, an agreement is void and unenforceable if any essential element is ambiguous. However, not all agreements that seem ambiguous at first sight are void under Section 29. The agreement is still enforceable if the meaning can be established.

Illustration (Valid): A agrees to sell B “one of his houses in Delhi.” If A owns only one house in Delhi, the agreement is capable of being made certain and is valid.³⁵

Illustration (Void): A agrees to sell B “a house at a reasonable price.” Since “reasonable price”

³⁴ Indian Contract Act, No. 9 of 1872, § 29 (India).

³⁵ Illustration (a), Section 29, Indian Contract Act, 1872

is not defined or determinable, the agreement is void for uncertainty.³⁶

Only agreements that meet the requirements of a valid contract are enforceable under Section 10. Enforceability and lawful consent both imply certainty of terms. This test is not met by an ambiguous agreement, which is void as a result.

Possibility of performance

The parties' obligations must be able to be fulfilled for a contract to be enforceable. A contract is void and ineffective if it calls for the performance of an act that is physically or legally impossible. A person cannot be forced by the law to do something that is not possible (*lex non cogit ad impossibilia*). Thus, possibility of performance is an essential requirement for enforceability of a contract.

The doctrine of possibility of performance is primarily governed by **Section 56 of the Indian Contract Act, 1872**, which embodies the principle of **impossibility and frustration**.

Section 56 provides that:

1. An agreement to do an act **impossible in itself is void**, and
2. A contract which becomes impossible or unlawful **after it is made** becomes void when the act becomes impossible or unlawful.³⁷
3. If a contract becomes impossible to perform **after it is formed**, due to circumstances beyond the control of the parties, the contract becomes void. Such conditions could be_
 - a. Destruction of subject matter³⁸
 - b. Change in law making performance illegal³⁹
 - c. Non-occurrence of a fundamental event

This is known as the **doctrine of frustration**.

³⁶ Illustration (b), Section 29, Indian Contract Act, 1872

³⁷ *Satyabrata Ghose v. Mugneeram Bangur & Co.*, A.I.R. 1954 S.C. 44 (India).

³⁸ *Hind Constr. Contractors v. State of Maharashtra*, (1979) 2 S.C.C. 70 (India).

³⁹ *Boothalinga Agencies v. V.T.C. Poriaswami Nadar*, A.I.R. 1969 S.C. 110 (India).

Conclusion

Under the Indian Contract Act of 1872, an agreement can only be considered legally enforceable if it satisfies all the essential legal requirements, which include a valid proposal and acceptance, competency of the parties, free consent, lawful consideration and object, certainty, and possibility of performance. The agreement is void, voidable, or void ab initio if any of these components are missing, making it unenforceable. The Act acknowledges special provisions for particular contracts, which may take precedence over general rules, even though these general principles govern contractual validity. As a result, the Act guarantees both flexibility and legal certainty in the regulation of contractual relationships.