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ABSTRACT

The doctrine of consideration is one of the pillars of contract law, being the basis on which the enforceability of agreements is decided. Even though the Indian Contract Act, 1872, typically requires consideration for a binding contract, it also sees certain exceptions under which agreements without consideration are enforceable and valid. This paper examines the doctrine of consideration, its legislative basis, judicial understandings, comparative insights, and the reasons behind exceptions according to Indian law. By a thorough evaluation, this study seeks to explain the extent and meaning of agreements without consideration, including their importance in Indian law.

KEYWORDS

Void agreement, Consideration, Contract, Contractual relationship, Agreement.

INTRODUCTION

The contract law regulates the formation and enforcement of agreements among parties. Consideration is one of the fundamental requirements of a valid contract, which is a value exchanged by parties. The maxim "No consideration, no contract" summarizes the rule that a promise lacking consideration is not enforceable under law. Nevertheless, the Indian Contract Act, 1872, acknowledges certain exceptions where an agreement without consideration is enforceable. This paper analyzes the legal framework of agreements without consideration, the reasons behind exceptions, and the judicial perspective towards such

agreements.

Contract law is the foundation of business and individual relations, establishing a legal principle that dictates how parties form, execute, and enforce contracts. Central to this principle is the principle of consideration-the value exchanged between parties that makes a promise enforceable as a contract. The saying "*No consideration, no contract*" conveniently summarizes this tenet, reinforcing that, in the general case, an unsupported promise is not bound by law. The Function of Consideration in Contract Law Consideration is not merely a ritual; it is what constitutes a contract. It is the quid pro quo, so that both parties have an interest in the contract and the agreement is not just a gratuitous promise. Consideration, as per Section 2(d) of the Indian Contract Act, 1872, is anything of value-whether act, abstinence, or promise-offered by one party at the request of the other. This reciprocal exchange is the basis for enforceable obligations and what separates contracts from mere social or moral agreements. The Rule: "No Consideration, No Contract" Section 10 of the Indian Contract Act, 1872, provides that a contract is valid only if it has been made with the free consent of competent parties, for legal consideration and purpose, and not explicitly stated to be void. Where an agreement is not supported by consideration, it is usually void and unenforceable. This principle performs many functions: It prevents promises, which are foolish or careless, from constituting legally enforceable agreements. It guarantees that contracts are the outcome of thoughtful and mutual agreements. It makes business transactions clear and certain and minimizes the possibility of contesting over unwritten commitments.

Exceptions to the Rule: When Agreements Without Consideration Are Valid

While the general rule under Indian Contract Law is that a valid contract requires consideration, Section 25 of the Indian Contract Act, 1872, recognizes specific exceptions where agreements without consideration are still legally enforceable. These exceptions are grounded in the need to uphold fairness, social values, and moral obligations. They include:

1. Natural Love and Affection

An agreement made out of natural love and affection is valid if:

- It is in writing,
- It is registered under the law, and

- It is made between parties in a close relationship (e.g., parent and child).

Example: A father transferring property to his son out of affection is enforceable when proper formalities are followed.

2. Compensation for Past Voluntary Services

When a person voluntarily does something for another without any request, and the latter later promises to compensate:

- Such a promise is enforceable even without prior consideration.

Example: If someone saves another's property from damage, and is later promised a reward, that promise is valid.

3. Promise to Pay a Time-Barred Debt

A written and signed promise to repay a debt that is no longer legally recoverable due to the limitation period:

- Is valid even without fresh consideration, respecting the debtor's moral duty to repay.

4. Creation of Agency

Under **Section 185**, no consideration is required to create an agency relationship:

- An agent may be appointed without offering anything in return.

5. Gifts and Charitable Contributions

- Gifts, as explained under the Act, once accepted by the donee, are valid even without consideration.
- Certain charitable donations and bailment contracts are also enforceable without consideration under specific circumstances.

These exceptions highlight the Indian Contract Act's pragmatic approach, ensuring that legal technicalities do not undermine social values, moral obligations, or principles of equity. By recognizing these exceptions, the law strikes a careful balance

between the rigidity of legal formalism and the broader demands of justice and fairness within society.

Consideration, as defined under Section 2(d) of the Indian Contract Act, 1872, states:

"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."

This definition reflects a broad scope—covering acts or abstentions that are past, present, or future in nature. Uniquely, Indian law permits consideration to move from any person, not just the promisee, diverging from the traditional English law principle and thus allowing greater flexibility in contractual arrangements.

Consideration plays several key roles:

- It illustrates that the parties intended to establish legal relations.
- It makes only value-backed promises enforceable and keeps courts free from claims based on social or casual promises.
- It captures the element of mutuality of obligation, which is an essential characteristic of contracts.

An agreement, without consideration, is usually a moral obligation rather than a legal one.

- Statutory Framework: Agreements Without Consideration
- Section 25: The General Rule
- Section 25 of the Indian Contract Act, 1872, states the general principle:

"An agreement made without consideration is void, unless this rule makes consideration a sine qua non of contract validity. Yet, it carves out exceptions to the rule, understanding that some agreements, although lacking consideration, must be enforceable in the interest of justice, equity, and good conscience.

JUSTIFICATION FOR THE RULE

The justification for considering consideration necessary is to guarantee that only serious and intentional promises be binding in law. It disallows parties to be bound by gratuitous promises given without appropriate consideration. Law aims to make a distinction between casual, social, or moral promises and

promises intended to bind legally.

Exceptions to the Rule: Valid Agreements Without Consideration

Section 25 prescribes three general exceptions to the general rule that contracts without consideration are void. The exceptions are based on equity, morality, and public policy.

1. Contract Made Out of Natural Love and Affection

Statutory Provision Section 25(1) states: "It is written down and registered under the law currently in force for the registration of documents, and is made on account of natural love and affection between parties being in a near relationship to one another

Essential Conditions

For this exception to be applicable, the following conditions must be fulfilled:

The agreement should be in writing. It should be registered under the applicable law. It has to be done on the basis of natural affection and love. The parties should be in a close relationship to one another (e.g., husband and wife, parent and child, brother and sister).

Judicial Interpretation

In *Rajlukhy Dabee v. Bhootnath Mookerjee*¹, the Calcutta High Court held that mere near relationship is not enough; there should be satisfactory proof of natural love and affection. The court declined to enforce a registered agreement between wife and husband where there was no proof of love and affection.

Illustration - A father, out of love and affection being his natural feelings towards his son, promises in writing and registers a deed to transfer a sum of money to his son. The contract is valid and enforceable even if there is no consideration.

Critical Analysis

This exception shows respect for the status of family and close relationships. The requirement of writing and registration is only to avoid false claims and to ensure that the promise is intended and not made in jest.

2. Promise to Pay for Past Voluntary Services

¹ (1900) ILR 27 Cal 435

Section 25(2) provides: It is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do

Essential Conditions

1. The act must have been voluntarily done.
2. The act must have been voluntarily done for the promisor.
3. The promisor must have been legally compellable to perform the act.
4. The assurance to pay should be made after the act is performed.

Judicial Interpretation

In *Sindha Shri Ganpatsinghji v. Abraham*², it was held by the Bombay High Court that a promise to pay for services already rendered voluntarily is enforceable if the service was given for the promisor and the promisor was bound by law to perform the act.

Illustration - A discovers B's misplaced wallet and returns it. B vows to remit payment of Rs. 500 to A for his work. Such a promise is enforceable, although A's action was voluntary and in the absence of any request by B.

Critical Analysis

This exception is founded on the doctrine of equity and moral duty. It acknowledges that an individual who gains from another's voluntary action ought to be in a position to pay the benefactor, even in the absence of an agreement.

3. Promise to Pay a Time-Barred Debt

Section 25(3) states: It is an undertaking given in writing and signed by the person to be charged therewith, or by his agent generally or specially empowered in that behalf, to pay the whole or part of a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

Essential Conditions

1. The debt is time-barred (i.e., the limitation period for enforcing the debt has elapsed).
2. The promise to pay should be in writing.
3. The promise should be signed by the debtor or his agent.

² (1896) ILR 20 Bom 755.

Judicial Interpretation

In *Karam Chand v. Basant Kaur*³, the court ruled that a signed and written promise to repay a time-barred debt is enforceable, although the original debt is not legally recoverable anymore.

Illustration - C is indebted to D to the amount of Rs. 10,000, but the debt has become time-barred. C subsequently enters into a written undertaking to pay Rs. 5,000 against the debt. This undertaking is enforceable even though no fresh consideration is involved.

Critical Analysis

This exception allows debtors to voluntarily revive outstanding old liabilities provided they do so in writing. It prevents the misuse of limitation laws to avoid bona fide debts and upholds the sanctity of written promises.

Other Statutory Exceptions

Apart from Section 25, the Indian Contract Act recognizes other situations under which consideration is not necessary.

Agency (Section 185) - Section 185 provides that no consideration is needed to create an agency. Thus, appointment of an agent is valid even if the agent does not receive any consideration.

Example: A appoints B as his agent to sell his house, without pay. The agency is valid.

Bailment (Section 148)

Section 148 allows a contract of bailment without consideration. Bailment is the delivery of goods for a specific purpose, subject to the condition that they are to be returned or disposed of as per directions.

Example: A delivers his vehicle to B for safe custody, without giving anything. This is a valid bailment.

JUDICIAL INTERPRETATION AND CASE LAW

The Indian judiciary has played an invaluable role in construing provisions related to agreement for consideration or without consideration.

³ [1911] 31 PR 1911.

1. Rajlukhy Dabee v. Bhootnath Mookerjee⁴

- *Facts*: A husband transferred a registered deed promising to pay his wife something every month. The wife initiated action for arrears.
- *Decision*: The court established that mere relation is not adequate; natural love and affection need to be found.

2. Sindha Shri Ganpatsinghji v. Abraham⁵

- *Facts*: Voluntary services were rendered by the plaintiff to the defendant, and then he undertook to pay him.
- *Held*: The promise was enforceable as it fell under the exception for past voluntary services.

3. Karam Chand v. Basant Kaur⁶

- *Facts*: A time-barred debt was undertaken in writing by the defendant to pay.
- *Held*: The promise was enforceable pursuant to Section 25(3).

4. Chinnaya v. Ramayya⁷

- *Facts*: A mother promised a daughter land on the undertaking to pay an annuity to the mother's brother. The daughter failed to pay, alleging absence of consideration.
- *Held*: The court held that consideration can travel from a third party, and the contract was enforceable.

COMPARATIVE PERSPECTIVE: INDIAN LAW VS. ENGLISH LAW

As per English law, consideration must move from the promisee, and past consideration is not effective. The rule is stricter, and exceptions are limited.

Important Differences

- Indian law considers past voluntary services as effective consideration; English law refuses to accept it.
- Indian law allows consideration to move from any person; English law only allows it to move from the promisee.

⁴ (1900) ILR 27 Cal 435.

⁵ (1896) ILR 20 Bom 755.

⁶ [1911] 31 PR 1911.

⁷ (1882) ILR 4 Mad 137.

- English law generally does not enforce promises to pay time-barred debts except with fresh consideration.

Rationale for Indian Approach

The Indian Contract Act follows a liberal and equitable approach, founded on the social and moral climate of Indian society. Exceptions are to be applied so that justice may be preserved and there may not be unjust enrichment.

Critical Analysis

The exceptions to the rule against considerationless agreements are rooted in equity, conscience, and public policy. They allow legal protection for promises that lack consideration but are equitable, just, and in the interest of justice and good conscience.

1. Natural Love and Affection

- Protects family relationships and preserves harmony.
- The writing and registration requirement ensures authenticity.

2. Past Voluntary Services

- Prevents unfair enrichment and incentivizes beneficent acts.
- Encourages acts of kindness and public service.

3. Time-Barred Debts

- Preserves the sanctity of written promises.
- Prevents misuse of limitation statutes in evading legitimate debts.

Potential for Abuse

- While the exceptions are justified, they create potential for abuse:
- Abuse in Creating False Claims
- The natural love and affection exception can be abused in forming fictitious claims of family arrangements.

Ambiguity

- Proving the existence of natural love and affection or voluntariness of the services is subjective.

JUDICIAL SAFEGUARDS

The courts have also established strict requirements for the use of the exceptions, i.e., writing, registration, and clear evidence of the respective relationship or service. This makes abuse less likely.

Practical Implications

- **For Legal Practitioners** - Legal practitioners must ensure that contracts subject to the exceptions are properly recorded and meet the provisions of the statute. They should advise clients on the disadvantages and benefits of entering into agreements without consideration.
- **For Courts** - Judges must balance the imposition of valid promises with the risk of false or unsubstantiated claims. They must interpret the exceptions narrowly and demand clear evidence of the statutory conditions.
- **For Parties** - Parties should remember that not all promises are legally enforceable. Gratuitous promises, except where they fall within an exception under the statute, cannot be enforced by the courts.

Law Commission Recommendations and Reforms

The Law Commission of India has considered the law of consideration from time to time. While the general scheme has not altered, the Commission has placed special emphasis on assuring clearness and consistency while invoking the exceptions. It has also recommended rigid compliance with the writing and registration requirements to prevent abuse.

International Perspectives United States

In America, the consideration law is also similar to English law, though doctrines such as promissory estoppel have been adopted by courts that impose certain promises without consideration on grounds of reliance.

Civil Law Systems

Some civil law jurisdictions do not apply consideration to make valid contracts. Mutual agreement and intention to create legal relations are the foci.

Implications for India

India's solution is an intermediate solution, retaining the need for consideration but allowing exceptions in the interest of justice and equity.

Exceptions to Consideration

- Exception Requirements Legal Effect
- Natural love & affection Writing, registration, near relationship Valid without consideration
- Past voluntary services Voluntary act, promisor legally bound to do act Valid without consideration
- Time-barred debt Written, signed acknowledgment Valid without consideration
- Agency Appointment as agent Valid without consideration
- Bailment Delivery of goods for a purpose Valid without consideration

CONCLUSION

Indian Contract Act, 1872 preserves the principle of consideration as a sine qua non to enforcement of contracts. It recognizes the fact that rigidity of applying this provision could lead to injustice in some cases. Sectional exceptions to it under Section 25 as also under some other sections portray its practical and sensible approach towards enforcement of promises real and existing from love and affection, and on account of voluntary past services rendered, as also for enforcement of debts having fallen under limitation.

Indian policy balances the demand for legal certainty with requirements of equity and morality. The strict prerequisites for calling upon exceptions-including writing, registration, and clear evidence-serve as a buffer against misuse. Judicial interpretation has also clarified the extent and application of such exceptions, ensuring enforcement against those serious and intentioned promises alone.

In short, even though consideration remains the general principle of the rule of validity of contracts in India, the nicely fostered exceptions under the Indian Contract Act, 1872, avoid making the law unfair, unjust, and insensitive towards the nature of human relationships and social obligations.

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