
A Study of Provisions pertaining to Consideration under ICA 1872

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Introduction

A promise is not legally enforceable in and of itself. As a result, the first concern in contract law is what sorts of agreements should be enforced. Traditionally, the answer to the question has been grouped under the title "consideration." That phrase, when properly understood, simply refers to a collection of basic rules that define the conditions under which promises are enforceable, and it might be substituted with the more descriptive term "enforceability." However, during the last century or so, a more constrained approach emerged, in which consideration theory was made to swing around a bargaining axis and expressed through a set of extremely specific rules. This document explains what promises or acts will be evaluated by the court as capable of forming consideration, as well as the clauses of the Indian Contract Act, 1872 that apply.

Definition

Consideration can be elucidated as:

“A valuable consideration in the sense of the law, may consist either in some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered, or undertaken by the other.”¹

This definition necessitates the provision of something of value, which might be a interest to the promisor or a disadvantage to the promisee. The Supreme Court contrasted this definition to **Section 2 (d)** of the Act and found them to be almost identical. It was ruled that the term "value" was implicit in our legislation and may be either positive or negative.

The term 'consideration' must be differentiated from the act of paying a previously agreed-upon sum. The act of paying a price (or failing to pay a price) is the fulfilment of a previously agreed-upon obligation. Consideration can exist or not exist, and it must be factored into the contracting process. Payment of the price is the fulfilment of the promise, not its consideration, if a promise to pay the price is the consideration for the promise. Not paying price agreed is non-performance or breach, and not lack of consideration.²

¹ Misa v. Currie, (1875) LR 10 Ex 153 at 162

² Prahlad v. Laddevi, 2007 AIR Raj 166

Legal Requirement

- The Indian Contract Act, 1872, states that the consideration must be given at the desire of the promisor; it is not a valid consideration if it is provided at the invitation of a third party or is not in the promisor's mutual benefit.
- With exception of British law, which requires the consideration to move upon the promisor's request, Indian law does not care who gave it as long as there is consideration. The consideration may likewise be shifted upon the request of a third person, and only if he is the contract's beneficiary, as in **Chinnaya v. Rammyya**³.
- It could be a deed, a commitment, or even a refusal. It will be a good consideration if indeed the promisee does or does not do something for the promisor at his desire.
- It might happen in the past, now, or in the future:

When the word "past consideration" is used in this context, it refers to when the thought is given before a commitment is made. A person may provide volunteer services without being asked or promised to do so. The promise to pay for the services made by the person acquiring the services is actionable in India under Section 25(2) of the Indian Contract Act, 1872, which asserts:

“An agreement made without consideration is void, unless it's a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something that the promisor was legally compelled to do; or unless.”⁴

It is a future or executor when the consideration for a promise, transfers after the contract is created. It is also correct if it is conditional.

For instance, Peter offers to design architectural designs for John's new home. If the ideas are accepted by John's wife, he offers to give Peter Rs 50,000.

Detriment and Benefit

Consideration for a promise may consist in either some benefit conferred on the promisor, or detriment suffered by the promisee, or both.⁵ The favor bestowed may include any right, interest, profit, or privilege granted to the promisor at his desire. A disadvantage to the promisee is any restraint, setback, loss, or responsibility incurred or performed by the promisee (or, in Indian law, any other person) at the desire of the promisor. In several circumstances, both can be included in the same contract.

An advantage to the supplier and a detriment to the purchaser back up a purchaser's promise to acquire products. However, either of the two is sufficient. Detriment suffered by the

³ 1876-82 4 Mad 137

⁴ Indian Contract Act, 1872, Sec. 25(2)

⁵ Sivagami Achi v. PS Subramania Chettiar, AIR 1936 Mad 978

promisee is always good consideration for it is 'the price for which the promise is bought'⁶; detriment to the promisee is of essence of the doctrine, and 'benefit to the promisor is, when it exists, merely an accident.'⁷

The owner agreed to pay the amount in US dollars in five payments in a shipbuilding contract. The dollar depreciated after the first instalment was paid, and the builder requested a price rise in response, threatening to terminate the contract otherwise. As security for payment, the builders provided a letter of credit. The owner agreed to pay the requested increase without objection, and the builders agreed to raise the letter of credit's amount. It was held that the agreement to carry out the contractual duty to build was no consideration, but the increase in the letter of credit was, it being additional obligation or liability to increased detriment.

A detriment to the promisee is good consideration even though there is no benefit to the promisor. The detriment may consist of any damage or any suspension or forbearance of the plaintiff's right or any possibility of a loss occasioned to him by the promise of the other.⁸ A person's change of position is good consideration for a commitment made on the basis of which he has changed his position. Giving up the right to manage their own estate, for agreeing to common management, was sufficient consideration.⁹ A bank seeking to enforce a guarantee has suffered a detriment, though it has conferred no benefit (factual) upon the surety,¹⁰ but in fact conferred benefit on a third person, the principal debtor. Promises have been also enforced where there has been no detriment to the promisee, but has secured some benefit including 'practical' benefit to the promisor.

The words 'benefit' and 'detriment' have been used by courts in two different ways:

- (i) an act of some worth; and
- (ii) such acts that are not already legally due from the promisee.

The former emphasises the factual advantage or suffering, whereas the latter ignores the factual benefit and considers the legal benefit or harm. In the latter meaning, a promisee has supplied. But if he has executed or vowed to do something he was not legally bound to do will he be given consideration, regardless of whether the promisor benefits in some way.

The consideration could be beneficial to the promisor or a third party, or it could be of no obvious advantage to anyone but a third party. Even if the promisor does not benefit, detriment to the promisee is sufficient, as in the case when X insures Y's bank overdraft and the promisee bank suffers detriment by lending money to Y. Anything done, or any promise

⁶ Pollock, Principles of Contract, 13th edn., 1950, p. 133

⁷ Sir William Holdsworth, History of English Law, Vol. 8, 2nd edn., 1937, p. 11,.

⁸ Perumal Mudaliar v. Sendanatha Mudaliar, AIR 1918 Mad 311

⁹ Kirtyanand Sinha v. Ramanand Sinha, AIR 1936 Pat 456, 164 IC 220

¹⁰ Section 127 of the Act: Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

made, for the benefit of the principal debtor may be sufficient consideration to the surety for giving the guarantee.¹¹

The idea of consideration is not exchange of duties, and an act or abstention performed in exchange for a unilateral commitment is valid consideration to uphold the promise.

Endurance to Sue

The most prevalent kind of forbearance is an unwillingness to sue in a timely manner. The conditions might either expressly or implicitly imply this promise to forgo. Based on the circumstances, it might be difficult to determine if it was an agreement to forbearance (which is not a desirable factor unless backed by the promisor's request) or genuine forbearance. As a result, in *Bittan Bibi v. Kuntu Lal*¹², it was determined that a promise of forbearance shall be carried out according to the promisor's desires.

Forbearance to sue on an invalid claim isn't taken into account. Furthermore, refraining from filing a lawsuit may be a legitimate choice only if the person refraining has a legal right to do so. It is also unnecessary to state how long the abstention will last. A request for forbearance without a time restriction is regarded as a fair amount of time forbearance.

Exceptions

When an agreement formed without consideration is not invalid, **Section 25 of the Contract Act** stipulates a few exceptions. Even though consideration is inferred under **Section 118**, negotiable instruments are invalid if it is proven that no consideration has passed between the parties.

1 – Natural Love and Affection

Without consideration, a written and recorded agreement between close relatives based on natural love and affection is binding. Parties linked through blood or marriage are referred to as "close relatives." In *Rajlukhy Dabee v. Bhootnath Mookerjee*¹³, the court concluded that a close relationship between the parties did not always entail natural love and attachment. In this instance, the defendant agreed to give his wife a monthly fixed fee for her separate housing and upkeep.

The court found no evidence of the spouses' love and attachment. For lack of deliberation, the agreement was declared null and invalid.

2 – Past Voluntary Service

A promise to reimburse someone who has formerly voluntarily or lawfully been obliged to do something for the promisor is binding. Such service, on the other hand, should have been

¹¹ The Indian Contract Act, 1872, Sec. 127

¹² AIR 1952 All 996

¹³ (1900) 4 Cal WN 488

given voluntarily, without the promisor's awareness, and purely for the promisor's sake. This suggests that the act was performed for a living person. A commitment made after reaching majority to pay for goods given to the promisor while in minority was ruled to be within the exception in *Karan Chand v. Basant Kaur*¹⁴.

It should be highlighted that, under the exception, the promise must be made to pay a person who has assisted the promisor in some way, rather than to a person who has not assisted the promisor in any way. For example, X and Y friends; During X's sickness, Y looks after her. Y refuses to pay X for the therapy, but X tells Y's son, Z, that he would pay him Rs. 1000. Because Z, to whom the promise was made, did nothing to help X, X's pledge is void.

3 – Time-barred Debt

A commitment to pay a past-due debt is legally binding. **Section 25(3)** specifies that the commitment must be expressed. As a result, a debtor's letter to his creditor instructing him to "come and take" the money owed to him was found to include no express commitment. It was decided that a tenant's letter to the landlord fulfils the criteria of **Section 25** when the tenant mentioned the arrears of time-barred rent and added. The Bombay High Court, on the other hand, has found that a statement in a business's balance sheet signed by a partner indicating that the firm was indebted to the plaintiff for the specified sum formed an implicit commitment to pay.

Judicial Review

The phrases at the request of the promisor give birth to the notion of Promissory Estoppel under **section 2(d)** of the Indian Contract Act, 1872. It developed from a situation in which, under section 2(d) of the Indian Contract Act, 1872, the promisor or any other person changed his legal position by believing in such promise, in which case the promisor was obligated to his pledge. The legal system at the time validated this idea in the case of *Kedarnath Bhattacharji v Gorie Mohammad*¹⁵.

In the case of *Dutton v Poole*¹⁶, it was held that a random person to consideration can sue under English law; however, in the case of *Tweddle v Atkinson*¹⁷, the former court decision was overruled, and it was held that a random person to consideration cannot sue under English law because there is no intervention of any other person, whether it is in contract or consideration. Any other person's consideration, according to English law, renders the agreement invalid.

¹⁴ (1911) PR 31

¹⁵ (1887) ILR 14 Cal 64

¹⁶ (1678) 2 Lev 210

¹⁷ [1861] EWHC J57 (QB)

"A valuable consideration in the sense of the law may consist either in any right, interest, forbearance, detriment, loss, or obligation, granted, endured, or undertaken by the other," **Currie v. Misa**¹⁸ said.

Durga Prasad established some enterprises in a market on the order of the town collector in the case of **Durga Prasad v. Baldeo**¹⁹. The retailers that inhabited these places agreed to pay Durga Prasad a fee on their sales. Durga Prasad sued the merchants because he did not receive the commission. According to the court, the pledge was not backed up by any consideration because the stores were built on the collector's orders rather than the merchants' requests. As a result, there will be no chance of recovery.

Conclusion

The Indian Contract Act, 1872, defines consideration in a way that departs from the conventional common law idea of consideration as anything that can be quantified in terms of money or money's worth (objective conception) and is broad enough to encompass subjectively expressed commitments. The Indian Contract Act was never intended to include regard for subjectively apparent commitments. Furthermore, the consideration requirement aids in the development of a different type of connection between the parties to an agreement, which supports the agreement's continuation.

¹⁸ (1875) LR 10 Ex 153

¹⁹ (1881) ILR3ALL221