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Reviewing the redundancy of Doctrine of Consideration in the Indian Contract Act, 1872 with special reference to 13th Report of Law Commission

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ABSTRACT

Doctrine of Consideration has been a central principle in the Indian as well as the English Law. As per Section 10 of the Indian Contract Act, 1872, consideration forms an essential element to constitute a valid and legally enforceable contract. Any contract devoid of consideration is said to be void since the legal intention of the parties to enter into the contract cannot be determined sans consideration. Nonetheless, consideration must always move at the desire of the promisor. This was established in the landmark Indian case of Durga Prasad v. Baldeo and Ors. (1881). However, in contemporary times the Doctrine of Consideration is becoming redundant. Thus, this study aims to highlight the importance of the Doctrine, its redundancy and the reformations suggested by the 13th Report of the Law Commission. Several case laws have been cited for gauging the concept of Doctrine of Consideration and its redundancy better.

I. INTRODUCTION

The law of contract determines the conditions under which promises shall be legally binding by setting forth a number of limiting principles subject to which the parties may create rights and duties for themselves which the law will uphold.² The Indian Contract Act, 1872 was established to prescribe laws that regulate the contractual interactions between parties. It relies on the English Common Law and the principles laid down by the same. According to Sec 2 (d) of the Act, consideration is defined as *the action of doing or abstaining to do, or a promise to do or abstain from doing a certain task as desired by the promisor*. The party/person making a proposal to contract with another party is referred to as the ‘promisor’ under the Act. Similarly, the party/person who receives the proposal and accepts the said proposal is referred to as the ‘promisee’. The landmark judgment of Currie v. Misa³ establishes the concept of consideration

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² Rangin Pallav Tripathy, *The Demise of Consideration*. Nirma ULJ, 3, p.1 (2013)

³ Currie v Misa LR 10 Ex 153; LR 1 App Cas 554

and lays down its essentials to a valid contract. The court defined consideration as: “*some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other.*” The principle of consideration in English Common Law arose from the Latin maxim *quid pro quo*, which literally translates to “something for something” or an exchange of favours.

For a consideration to be valid, it must have sufficient **legal** value but need not have an **economic or monetary** value. In several historical case laws, the courts have been more concerned about the enforcement of exchange of favours, rather than the fairness in such exchanges. According to Section 10 of the Indian Contract Act, one of the essentials to constitute a valid contract is “lawful consideration”. This is defined under Section 23 and 24 of the said Act. A lawful consideration, as defined in the aforementioned sections, is one which:

1. Is not forbidden by the law of the land nor does it defeat the provisions of any law
2. Is not fraudulently obtained
3. Is not immoral according to Court of law nor does it violate any public policy
4. Does not involve or imply any injury to either parties in the contract.

Therefore, according to Section 10 of the Act, consideration is one of the essential elements to constitute:

- i) an agreement into a contract, and
- ii) the said contract legally valid

In order to legally bind any party in a contract, it is necessary for the consideration in question to be a) lawful, and b) sufficient in the eyes of law. Any contract, without such a consideration is said to be void. Another essential element of a lawful consideration is that it moves at the desire of the promisor, which means that the consideration offered is solely upon the explicit will or desire of the promisor.

However, with the present reformations made to the Indian contract Law and several suggestions from the Law Revision Committee⁴ question the relevance of consideration for legally binding two parties in a contract, in the current scenario. Several committees working towards reforming law have deemed consideration to be redundant in the present times. This research study intends to understand the reformations and evolution of consideration in the Indian contract law over the years, and determine whether consideration is a ‘redundant’

⁴ Mindy Chen-Wishart, *Reforming Consideration: No Greener Pastures*. Contract in Commercial Law, pp.77-103. (2016)

element for legally binding any party in a contract.

Research Methodology

Research objectives:

1. To examine the primary function of the Doctrine of Consideration
2. To understand the misinterpretation of the principle: '*consideration moves at the desire of the promisor*'
3. To determine whether the definition of consideration in the Indian Contract Act, 1872 and the Doctrine of consideration has become redundant in the current scenario of contract laws.

Research questions:

1. Does the definition of consideration, as defined in the Indian Contract Act, 1872, leave any scope of ambiguity and thus lead to misinterpretations?
2. What are the key functions of the Doctrine of Consideration in the Indian Contract Act, 1872?
3. Is the Doctrine of consideration redundant with respect to the present-day contract laws in India?

Limitations:

This is a doctrinal form of research, wherein the researcher has made references to several secondary sources, like reliable websites, research journals, textbooks, etc. for the purpose of collecting information pertaining to the topic. Since the research is completely secondary in nature, the inaccuracies and discrepancies from the sources might also be reflected in this study. Moreover, the secondary sources that have been referred to for this study are impart subjective information on the topic, thus there is scope for biases in this study.

Literature review:

1. **Rangin Pallav Tripathy (2013), "*The Demise of Consideration*", published by Nirma University Law Journal: Volume-3, Issue-1.**

The Demise of Consideration is a study based on the redundancy and rigidity of the concept of consideration, in the Indian Contract Laws. The author discusses the few primary functions of the Doctrine of Consideration, and the rationale behind incorporating such a Doctrine in the Indian Contract Act. The author highlights how the Doctrine exceeds its primary function of eliminating impulsive agreements, and has a very wide scope which limits the enforcement of

several contractual agreements, even if deemed fit by the courts. The author intends to illustrate how the Doctrine could be reformed to meet the present-day needs in law. The author also strikes a difference between the function of this Doctrine in England and in India.

2. Ashwary Sharma (2018), “Considering Consideration in the Indian Law”, published by SSRN.

In this study, the author highlights the criticisms of several jurists and law scholars against the Doctrine of Consideration. The study also argues that the definition of consideration creates ambiguity and thus widens its scope in the Indian Contract Laws. The author cites several case laws pertaining to consideration and that it moves at the desire of the promisor. Various arguments and theories of jurists have been analysed to gauge the redundancy of Doctrine of Consideration in the Indian Contract laws. The author enunciates the revocation of the Doctrine, and discusses the reformations that could be brought about. The author also examines the role of the rigidity of the Doctrine in restricting the enforcement of several contracts.

3. Vrindesh Patel, Bhoomika Kalley & Jenish Rupareliya (2016) “13TH LAW COMMISSION REPORT” published by International Journal of Legal Developments and Allied Issues Volume 2 Issue 2 ISSN: 2454-1273

This study presents the several reformations pertaining to the Doctrine of Consideration, as suggested by the 13th Law Commission Report. The study also examines the need for such reformations and highlights the scope of reducing ambiguity by implementing the reformations suggested by the Law Commission. The study also presents several case laws which depict the growing irrelevance of the Doctrine of Consideration in the Indian Contract laws.

II. ANALYSIS

i) The primary function of the Doctrine of Consideration:

The Doctrine of Consideration was regarded as a key achievement in the sixteenth and seventeenth century, since it defined the scope of the newly defined promissory liability. Promissory liability is a contractual principle, devised to avoid the discernible economic harm due to the constant making and breaking of promises by parties. Essentially, as a general opinion of various jurists, Doctrine of Consideration served as the only proof of legal intention to contract. This suggests that the presence of consideration in a contract implied the legal intention of one party to enter into a contract with the other, and thus such contract is said to be enforceable and legally binding.

The framers of this Doctrine intended to eliminate the scope of impulsive agreements made,

without the intention to fulfil the same in the future, and such agreements being agitated into litigation. This doctrine has the primary function of identifying the desire of the parties to be legally bound by a contract and to make it legally enforceable. Since, it also brings out the idea of reciprocity, it makes the will or the desire of the party to enter into a legally binding contract, more evident. Cheshire stated in their book on Law of Contracts, “*A consideration meant a motivating reason. The essence of the doctrine was the idea that the actionability of a parol promise should depend upon an examination of the reason why the promise was made. The reason for the promise became the reason why it should be enforced or not enforced.*”⁵

It is also important to note the significance of the phrase “*consideration must move at the desire of the promisor*”, since this indicates the meeting of minds in a contract. If consideration is defined according to the subjective evaluation of each party in the contract, oral contracts will never be enforceable because there would be no way that the parties could demonstrate to the courts or to each other, what constituted as consideration in their promise. There would be no means of understanding what led to the common consensus between the parties if each of them had their own subjective notion of the cause of making the promise.⁶ To simplify the said principle, an illustration can be put forth: If A asks B to take care of her (A’s) cat while A is away, and B does so (completes the performance as requested by A) with the hope of receiving a sum of money as consideration for the performance of the act, when A returns. However, A claims that she had no intention of providing a consideration to B, and she merely requested for a gratuitous act. In this case, there was no meeting of minds, since the consideration did not move at the desire of the promisor.

ii) The redundancy of the Doctrine of Consideration:

Nonetheless, several other jurists like Lord Mansfield in the case of Pillans v. Van Mierop⁷ have expressed their opinion on the Doctrine of consideration being redundant. The doctrine has been severely criticized by such jurists, and was regarded as an unnecessary part in the fulcrum of contract law.⁸ Lord Mansfield insisted that if there are other ways to ascertain the legal intention of a party to enter into a legally binding contract, the doctrine of consideration should not be an essential in the formation of such contract. Moreover, Lord Dunedin in the landmark case of Dunlop⁹ highlighted the absurdity of the Doctrine of Consideration, for its inability to serve

⁵ M.P. Furmston, Cheshire, Fifoot and Furmston’s Law of Contract (1st Indian ed.), p. 8 (Oxford University Press, New York 2007)

⁶ Sharma, *Infra* note 10 at p.28-29

⁷ Pillans v. Van Mierop (1765) 3 Burr 1664.

⁸ Tripathi, *Supra* note 1 at p.18

⁹ Dunlop Pneumatic Tyre Co. Ltd. v. Selfidge and Co. Ltd. 1915 A.C. 847.

fairness.¹⁰

Similarly, Lord Wright presented an inconsistency argument pertaining to the Doctrine of Consideration. He argued that law imposes an external test of consideration for determining the legal intention to enter into a binding contract, which in itself is redundant. He explains that an external test cannot always rightly prove the presence or absence of a legal intention to be bound by contractual relations. He questions the relevance of the Doctrine of Consideration based on two types of cases, i) where the courts have enforced a legal contract with the absence of consideration and ii) where the courts have refused to enforce a legal contract with the presence of consideration.¹¹ Lord Wright provides a legal backing to each of these two types, by stating the examples of *Foakes v Beer* and *Balfour v Balfour* respectively.

In the case of *Foakes v Beer*, the two parties agreed that Foakes would pay £500 immediately and £150 every 6 months until he had paid off the debt and in return Beer wouldn't take any action. Within 6 years of the agreement, Foakes had cleared off the debt. Beer still took legal action against Foakes for not immediately paying off the debt. When Foakes claimed that both the parties agreed to the terms mentioned above, Beer denied the validity of such an agreement because of the absence of consideration. The court held that, a sum lesser in value than the sum owed cannot be sufficient consideration and thus the agreement was void, no contract could be enforced and Beer was entitled to the payment of dues with interest. Contrastingly, in the case of *Balfour v Balfour*, a man promised an allowance of 30 pounds to his wife in return for her agreement of supporting herself entirely out of that allowance. It was held in this case that even though there was consideration, this arrangement is not a contract as there was no contractual intention.

Another contention put forward by Lord Wright, is the fact that the doctrine of consideration being a condition to enforce a contract sometimes defeats the legitimate intention of parties to enter into a contract. He proposes that a logical test to determine the contractual intentions of parties must be devised. Such test must be based on factors such as the presence of serious and deliberate contractual intention and the absence of fraud, illegality, mistake, immorality or any other thing barred by the law to enter into a contract.¹² Moreover, Fried's criticism is one of the most renowned criticisms pertaining to the Doctrine of Consideration. Fried argues that the Doctrine of Consideration is not fair and just in terms of bargain. This is because it emphasizes on the requirement of a bargain or an exchange but does not specify the need for sufficiency.

¹⁰ Tripathi, *Supra* note 1 at p. 5

¹¹ Aishwary Sharma, *Considering Consideration in the Indian Law*. SSRN, 3674969, p.16 (2018)

¹² Sharma, *Id* at p.18

Finally, Fried asserts that the Doctrine of Consideration is contradictory in nature because many contracts, without the presence of consideration, have been made enforceable in the past.

Several jurists have also pointed out the ambiguity in the definition of the word ‘consideration’ wherein it is stated “*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*”. The phrase ‘any other person’ creates a scope of ambiguity in terms of the rights of the parties in the said contractual agreement. The aforementioned phrase creates an ambiguity in identifying which parties have a vested interest in the contract, and thus can bring forward legal proceedings, in case of a dispute in the future.

iii) Reforms as suggested by the 13th Report of Law Commission

In the past, the Law Commission Report has served to reform several redundant laws in the Indian Contract Act, 1872. These reforms aid in ensuring that the laws are simplified and are in accordance with the present-day social norms. In this case, the wide scope and rigidity of Doctrine of Consideration had become a liability to jurists and law experts, and they insisted on limiting or narrowing down the scope of the Doctrine. Several jurists like Sir Pollock, Lord Wright, Lord Dunedin, Dean Pound and others have severely criticized the existence of Doctrine of Consideration in the Indian Contract Act, 1872, more so as a prerequisite for the creation of a valid and legally binding contract between parties. The Commission has identified the redundancy of the Doctrine, mainly due to its rigidity and wide scope. It becomes almost impossible to enforce contracts in cases like *Kedarnath Bhattacharji v Gorie Mohamed*¹³ and *Venkataswamy v. Rangaswamy*¹⁴, wherein it was held that an agreement is not legally enforceable without the presence of consideration, unless it fulfils its exceptions. According to Dean Pound in the Introduction to Philosophy in Law, an individual’s bond must be as good as their word, and thus there is no need for consideration to establish contractual relations between two parties.¹⁵

The thirteenth report of law commission suggested a few amendments to be made to the existing definition and scope of Doctrine of Consideration. No matter how severely the Doctrine is criticized by jurists, it cannot be completely repealed since it has become a crucial element in the formation of a valid and legal contract, over the years. However, certain amendments, as

¹³ *Kedarnath Bhattacharji v Gorie Mohamed* ILR (1886) 14 Cal 64

¹⁴ *Venkataswamy v. Rangaswamy* (1903) 13 Mad LJ 423

¹⁵ Vrindesh Patel, Bhoomika Kalley & Jenish Rupareliya, *13TH LAW COMMISSION REPORT*, 2, International Journal of Legal Developments and Allied Issues. ISSN 2454-1273, P.178 (2016)

suggested by the thirteenth report of law commission can be implemented. According to the Commission these promises must be enforceable without consideration:

- i) promises in writing,
- ii) promises that induce foreseeable reliance,
- iii) promising to do what one is already bound to do,
- iv) promises to accept part payments in discharge of the whole debt,
- v) promises for past consideration, and
- vi) promise to keep offers open for a definite period (“firm offers”).¹⁶

Moreover, the Law Commission also suggests that:

- 1) The condition of consideration being a vital element in a contract must be eliminated in cases where a party can attest that the other party is reliable. In such cases, a contract should be made enforceable even in the absence of consideration.
- 2) The Commission states that this should be applicable to both express and implied contracts. Thus, the phrase “express or implied” must be added to the section after “promise” in the definition of consideration
- 3) The Commission discusses the concept of future consideration which can be beneficial for time-bound contracts that are held to be void only because the consideration is absent.

III. JUDICIAL REVIEW

1) Durga Prasad v. Baldeo and Ors.¹⁷

In this case the plaintiff, at the desire of the district collector, created built a bazaar (local market) with extra shops in the bazaar, at his own expense. These shops were later occupied by the defendants, who in the name of consideration, used to pay commission on articles they sold through their agency, to the plaintiff. After a few months, when the defendants failed to pay commission to the plaintiff, the latter brought a legal suit against the former. The Hon’ble court held that the act of receiving commission from the defendants, is merely extortion of money on the part of the plaintiff. Thus, under Sec 2 (d) of the Indian Contract Act, 1872, the Hon’ble court held that the consideration in this case is void, because it was not at the desire of the

¹⁶ Chen-Wishart, *Supra* note 3 at p. 2

¹⁷ Durga Prasad v. Baldeo and Ors. ILR (1881) 3 ALL 221

promisor. Since the act of creating the new bazaar and extra shops was not the result of the promise between the plaintiff and the defendants, but it was at the desire of the collector, the plaintiff cannot claim consideration from the defendants for the same. It was held that “*The only ground for the making of the promise is the expense incurred by the plaintiff in establishing the Ganj (market) but it is clear that anything done in that way was not 'at the desire' of the defendants so as to constitute consideration.*” Moreover, Sec 25 (iii) clearly states that any contract without consideration is void. Therefore, this is a landmark case which highlights the principle of “*consideration moves at the desire of the promisor*” and reiterates that any contract without the presence of consideration, is void.

2) Adaitya Das v Prem Chand Mondal¹⁸.

In this case the defendant promised to bring a Thakur to the plaintiff's house to lead the dinner organised by the plaintiff's for his guests. The defendant failed to bring the Thakur and consequently the dinner was cancelled and the food cooked for the dinner was wasted, as no guest participated of it due to the absence of the Thakur. The plaintiff claimed damages from the defendant for the same, since the defendant was responsible for the injury and damages incurred by the plaintiff. The court held that the dinner was not organized at the desire of the promisor (the defendant). The defendant merely offered to bring a Thakur to the already organized dinner. Thus, the plaintiff's action for damages was dismissed as he had done nothing on the desire of the promisor.

3) Chinnaya v Ramayya¹⁹

In this case a lady (the defendant's mother) gifted her daughter (defendant) a property comprising of certain land through a gift deed. The deed was recorded with the appropriate authorities. One of the stipulations of the deed required the daughter to pay Rs.653 to the lady's sister (the plaintiff) each year. Later, the old lady died, and the defendant refused to pay the money she had promised to the sister. As a result, the plaintiff filed a lawsuit against the defendant in order to reclaim the money. The issues raised in the case were: 1) whether the plaintiff can initiate action against the defendant for breaching the contract between the defendant and her mother? 2) Whether the defendant is entitled to consideration (the amount) for a contract she is not part of? The Hon'ble Madras High court held that although the plaintiff was stranger to the consideration but since she was a party to the contract she could enforce the

¹⁸ Adaitya Das v Prem Chand Mondal, AIR 1929 Cal 369

¹⁹ Chinnaya V. Ramayya (1882) ILR (1876-82) 4 Mad 137

promise to the promisor. Consideration must move from the promisee or any other person– with reference to section 2(D) of Indian Contract Act, 1872.

IV. RECOMMENDATIONS:

1. It is not always possible to ascertain the legal intention of a party to enter into a contract just because the promise or agreement was in writing, without the presence of consideration. Thus, the recommendation of the law report must be reconsidered and several tests like absence of illegality, fraud, etc. should be considered while ascertaining the legal intention of a party

2. Consideration, no matter how redundant in today's time, is still a crucial element which decides whether or not a contractual agreement is legally binding. If not the sole test, but consideration must be one of the tests to determine whether a contract must be legally binding or not.

3. The recommendations of various jurists and law scholars must be noted and accumulated to devise new reformations, in order to make the Doctrine of Consideration more relevant in the present-time.

V. CONCLUSION

It is evident that consideration plays a crucial role in ascertaining whether or not a contract is legally binding. The role of consideration is not limited to ascertaining the legality of a contract, but also to eliminate the scope of impulsive agreements. Several case laws, as highlighted in this study, present the necessity of consideration and the principle “*consideration moves at the desire of the promisor*” in order to ensure that the parties arrive at a common consensus before entering into a contract. This reduces the scope of ambiguity. Ironically, several jurists argue that the definition of consideration is ambiguous in itself. It is claimed that the phrase “or any other party” in the definition of consideration widens its scope for strangers to bring forward legal proceedings. Thus, the thirteenth law commission report presents several reformations that can be made to the Doctrine of Consideration. This will reduce ambiguity, ensure that no stranger can sue a party in the contract and also make the Doctrine of Consideration more relevant in the present-day.

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5. Venkataswamy v. Rangaswamy (1903) 13 Mad LJ 423
6. Durga Prasad v. Baldeo and Ors. ILR (1881) 3 ALL 221
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