

WHAT IS CONTRACT?

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Definition:-

Anson¹ has defined the word contract in the following words:-

“A contract consists in an actionable promise or promises. Every such promise involves two parties, a promise and promise, and an expression of a common intention and of expectation as to the act or forbearance promised.”

Under the Indian Contract Act, 1872, Section 2(h) of the act provides:-

“An agreement enforceable by law is a contract”

The word agreement is defined in Section 2(e) which runs as follows:

“Every Promise and every set of promises, forming the consideration for each other, is an agreement.”

“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 promise.”

Thus ‘contract’ is bilateral transaction between two or more than two parties. Every contract has to go through several stages beginning with the stage of negotiation during which the parties discuss and negotiate proposals and counter-proposals as also the consideration resulting finally in the acceptance of the proposals.

Under law it is not necessary that every contract must be in writing. There can be an equally binding contract between the parties on the basis of oral agreement unless there is law which requires the agreement to be in writing.²

An accepted proposal is an agreement and an agreement enforceable by law is a contract. Thus every contract comprises of an agreement but every agreement is not necessarily a contract.

¹ Anson’s Law of Contract 23rd Edition, Edited by A.G. Guest (1970) p.23

² Tarsem Singh V. Sukhiminder singh, AIR 1998 SC 1400, 1403.

An agreement to be enforceable in law must fulfill the conditions laid down in Section 10 of the Contract Act.

Classification of the Indian Contract Act:-

General division of the Indian Contract Act, in the past, Indian Contract Act had a wide scope and included from Section 1 to 75 the General Principles of contract, Section 76-123 includes Sale of Goods Act, Sections 124 -147 deals with Contracts of Indemnity and Guarantee, Section 148-181 is about contracts of Bailment and Pledge, Section 182-238 is of Agency, Section 239-266 is of Partnership Act.

- **Contract**

As per the Indian Contract Act, 1872, a "contract" is an agreement enforceable by law. The agreements are not enforceable by law are not contracts. An "agreement" means 'a promise or a set of promises' forming consideration for each other. And a promise arises when a proposal is accepted. By implication, an agreement is an accepted proposal. In other words, an agreement consists of an 'offer' and its 'acceptance'.

- **Offer**

An "offer" is the starting point in the process of making an agreement. Every agreement begins with one party making an offer to sell something or to provide a service, etc. When one person who desires to create a legal obligation, communicates to another his willingness to do or not to do a thing, with a view to obtaining the consent of that other person towards such an act or abstinence, the person is said to be making a proposal or offer.

- **Acceptance**

An agreement emerges from the acceptance of the offer. "Acceptance" is thus, the second stage of completing a contract. An acceptance is the act of manifestation by the offeree of his assent to the terms of the offer. It signifies the offeree's willingness to be bound by the terms of the proposal communicated to him. To be valid an acceptance must correspond exactly with the terms of the offer, it must be unconditional and absolute and it must be communicated to the offeror.

- **Agreement**

An "agreement" is a contract if 'it is made by the free consent of parties competent to

contract, for a lawful consideration and with a lawful object, and is not expressly declared to be void'. The contract must be definite and its purpose should be to create a legal relationship. The parties to a contract must have the legal capacity to make it. According to the Contract Act, "Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of a sound mind, and is not disqualified from contracting by any law to which he is subject". Thus, minors; persons of unsound mind and Persons disqualified from contracting by any law are incompetent to contract.

- **Consent**

Consent is very important part of the contract. The contracts become Void if misrepresentation, mistake or anything like this the fraud will be committed. In case of a breach of a contract specific performance is granted but it has various exceptions to it, depending on the situation. If the general essentials ingredients of a contract are fulfilled, a valid legal contract is formed and it becomes affective from date it is signed.

- **Consideration**

Mutual and lawful consideration for agreement, it should be enforceable by law. Hence, intention should be to create legal relationship. Agreements of social or domestic nature are not contracts, Parties should be competent to contract, and contract should not have been declared as void under Contract Act or any other law is also important elements of a valid contract. The contract becomes Void if any of these elements are not fulfilled.

Section 10 provides:

"All agreements are contracts if they are made by the free consent of parties competent to contract, for lawful consideration and with a lawful object, and are not here by expressly declared to be void.

Nothing here in contained shall affect any law in force in India and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witness, or any law relating to the registration of documents."

According to section 10, noted above, an agreement to be enforceable must fulfil the following conditions:

1. The parties must be competent to contract,

2. The agreement must be made by the consent of the parties,
3. The agreement must be made for some consideration,
4. The object of the consideration must be lawful,
5. The agreement must not have been expressly declared to be void under the contract act or any other act,
6. In some special cases, as provided by the law, the agreement should be in writing or in the presence of witness or should be registered.

A concluded contract including an arbitration agreement can result be tender and acceptance thereof though a formal document signed by other parties has not been executed.³

In M.M. & M. Refinery, Bangalore v. M.S.S. I. Corporation,⁴ it was contended that under one of the tenders, the successful tenderer was required to execute an agreement within ten days of the announcement of acceptance of the tender and till such agreement was executed there was no contract. Rejecting this contention The Madras High Court held:

“It is a question of construction whether the execution of the further contract is a condition or term of the bargain or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through. In former case, there is no transaction already agreed to will in fact go through.

In former case, there is no enforceable contract because the condition is unfulfilled or because the law does not recognize a contract entered into contract. In the latter case there is a binding contract and the reference to the formal document may be ignored.”

A contract does not become statutory simply because it is for the construction of a public utility and it has been awarded by a statutory body. The fact that one of the parties to the agreement is a statutory or public body will not of itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the contract act.

Every act of a statutory body need not necessarily involve an exercise of statutory power.

³ Union of India v. A.L. Ralia Ram, AIR 1963 SC 1685

⁴ AIR 1974 Mad39 at p. 42 Vor Hatzfeldtwildenbing v. Alexander, (1912) 1 Ch. D. 284: and Shankarlal Narayandas v. New Mufussil Co. Ltd., AIR 1946 PC97.

Statutory bodies, like private parties have power to contract or deal with property such activities may not raise any issue of public law.

Where in a case, it has not been shown how the contract is statutory; the contract between the parties will be deemed to be in the realm of private law. Such a contract cannot be called or considered a statutory contract.⁵

Objective of the law contract:-

The objective of the law of the law contract is to ensure that a man fulfils his promise, what a man has promised shall come to pass.

Thus the objective of the law of contract is that the promises made by men shall be performed by them.

Anson⁶ has defined the law of contract as “that branch of the law which determines the circumstances in which a promise shall be legally binding on the person making it.” Sir Frederick Pollock,⁷ has written:

“The Law of Contract represents the constant endeavour of the public authority, viz., the State to establish a positive sanction for the expectation of good faith which has grown up in the mutual dealings of man.”

Since the earlier times, it has always been the endeavour of mankind to ensure that the promises made by men are fulfilled and in the present times also the law of Contract performs this august function.

Contract by Central and State Governments:-

As pointed out above, no form for entering into contracts is prescribed by Indian contract Act. But when contract is entered into by or with the Central or State Governments, certain formalities are necessary.

Article 299 of the Constitution of India provides:-

- 1. All contracts made in the exercise of the executive power of the union or of a state shall be expressed to be made by the president, or by the Governor of the state, as the case may be, and all such contracts and all assurance of property**

⁵ Kerala State Electricity Board v. Kurien E.Kalathil, AIR 2000 SC 2573, 2576.

⁶ Anson's law of contract, 23rd Edition, Edited by A.G. GUEST (1971), p. 23.

⁷ Pollock on CONTRACTS, P. 1.

made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

2. Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purpose of the constitution, or for the purpose of any enactment relating to the Government of India here to force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.”

It is now well settled that where a contract between the governments and a private individual is not in the form required by Article 299 (1) of the Constitution. It is void and cannot be enforced and, therefore, the Government cannot be sued by a private individual for breach of such a contract.

Article 299 (1) lays down following three conditions, for the making of a contract by the President of the Union or by a governor of a State:

1. It must be expressed to be made by the president or the governor as the case may be.
2. It must be executed.
3. The execution should be by such person and in such manner as the President or the Governor may direct or authorize :

Provisions of Article 299 (1) noted above are mandatory.

Principle of Legitimate Exception:-

The Supreme Court has observed that in recent years the principle of legitimate exception has been applied invoking the implications of administrative law.

In this connection the apex court after considering English and other cases observed that it is generally recognized that the legitimate expectation of the applicant confers upon him, the locus standi for hearing of judicial service.

The Principle of legitimate expectation is confined or limited to proper hearing before such decision in respect of denial or withdrawal of promise.

This principle does not give the applicant a direct right before the administrative officers. Such a legitimate expectation does not require any protection where public interest requires otherwise.

In other words, where the legitimate expectation of a person is not fulfilled by a particular decision, it is necessary for the decision taking authority to show some overriding public interest. The above observations were made by the Supreme Court in *Union of India v. Hindustan Development Corporation*.⁸

In this case, the Supreme Court also observed that it is true that in a welfare state the government have vast powers in respect of special services such as granting of leases, license and contracts. The scope of such governmental works is very wide.

However, it is expected that while granting contracts, quotas, licences etc. the Government will not act like a private person but will act in accordance with some healthy standards and rules. Such acts must not be unreasonable. In case there are some reserved rights in tenders or other contracts they ought not to be arbitrary. They ought to be in accordance with certain policies or valid principles which themselves are not arbitrary and unreasonable.

In respect of the tenders if the government reserves the right to accept even, the lowest bid or proposal, it must be done on a reasonable basis.⁹

Every action of the government has to be for the welfare of the people. The governor cannot exercise powers arbitrarily or unreasonably, its acts can be declared invalid or illegal.

However, it may be noted that is a person's claims is based on legitimate expectation, he has first to prove the basis of such claim and that he has locus standi to be heard. He can succeed only when the decision of the concerned authority is arbitrary, unreasonable and devoid of any public interest.

It is a matter of policy, or change of old policy, the courts cannot interfere. It is a question of fact whether in a facts and circumstances are such to create a legitimate expectation. If this test is satisfied and the court is satisfied that it is a question of legitimate expectation, the next question would raise as to whether justice has failed or not been rendered as a result of not given opportunity before making the decision and whether on that basis the decision would be quashed. If the decision quashed, the relief would depend on certain on certain factors.

In respect of contractual matters and others activities the government and its instrumentalities have to act in accordance with Article 14 of the Constitution and non-arbitrariness is its special feature.

⁸ AIR 1994 SC 988.

⁹ *Union of India v. Hindustan Development Corporation*. AIR 1994 SC 988 AT P. 998: SEE ALSO *Erussion Equipment nd Chemicals Ltd. V. State of West Bengal*, AIR 1975 SC 226.

In public law, there is no discretion without controls. A public authority has to exercise his powers in public interest only.

Conclusion:-

They are various forms of contracts such as contract of indemnity, contract of guarantee, agency etc. The contract act illustrates elements that need to be fulfilled for a valid contract along with exception and after wards it deals with the sections that illustrates the remedies for both parties in case the contract has been breached or has been considered to be void in case of any of the elements not being fulfilled. It is very important for a normal day to day trading and regular dealing to have a valid and effective contract and it need to be made affective under the Contract act.

