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CONCEPT OF CONTRACTUAL LAW IN INDIA

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ABSTRACT

Contractual responsibilities and regulations that are obligated to regulate and reform global industries are of greatest significance in the modern era. In addition to the legal framework, there are efficient methods for combating arbitrariness and avoiding fraud in any form. It is the sacred responsibility of the legal fraternity to implement a specific method to improve the performance and reach of such contractual agreements, which may vary from minor to major in nature. Several important aspects will be included in our article, and we will use them to shed light on developing trends and problems in contractual relationships. Finally, we will be adding important elements of sophisticated jurisprudence to the ever-growing domain of Contractual Relationships via this article. In order to fight arbitrariness and prevent worldwide fraud, such contractual connections, which may vary from minor to much more incidental in nature, it is essential for the legal community to implement a specific method to improve the performance and reach of such contracts.

KEYWORDS: *Agreement, Contract, Law, Legal Relationship, Obligation.*

1. INTRODUCTION

In the current enthralling and contemporary era of the global economy's hyper-boom, it is necessary to enlist certain Contractual obligations and laws that are bound to govern and overhaul the global industries as a whole in various aspects of the fundamental institutionalization of Contractual relationships. A contract may be described as An agreement enforceable by law1 under the Indian Contracts Act 1872, or in other words, a contract is anything that is an agreement and enforceable by the law of the country. A legal relationship between two or more contracting-parties evidenced by an offer, acceptance of the offer, and a valid consideration, i.e. a legal and valuable consideration, can also be defined precisely and succinctly as a legal relationship between two or more contracting-parties evidenced by an offer, acceptance of the offer, and a valid consideration, i.e. a legal and valuable consideration. A contract, according to Black's Law Dictionary, is an agreement between two or more parties that creates enforceable or otherwise recognized legal obligations[1].

In support of this, one of the most ardent and crucial aspects of the law as a subject is to ensure social justice and civility in society as a whole; to maintain a peaceful and merrier society, all three pillars of justice, namely the legislature, executive, and judiciary, must ensure a strong and effective mechanism for combating Contractual Frauds, falsifications, and other forms of deception.

2. DISCUSSION

To begin, we must consider the origins of Contract Law and its brief development in relation to the antiquity of Contracts as a legal topic. Contracts in India are primarily regulated by the Indian Contract Act of 1872. The English Law was applied to the Presidency cities of Madras, Bombay,

and Calcutta prior to the adoption of the Indian Contract Act, 1872, under the Charter given to the East India Company in 1726 by King George I.

The British government enacted the Act of Settlement in 1781, which states that in issues of inheritance and succession, contracts dealing with parties in the case of Mohammedans and Hindus, their individual laws were taken into account. When one party is a Muslim and the other is a Hindu, the defendant's laws and customs are taken into account. In the Presidency Towns, this rule was followed. Outside of the presidential towns, decisions were made based on justice, fairness, and moral conscience[2].

In its early days, the Indian Contract Act of 1872 dealt with the sale of goods, indemnity, and guarantee, as well as the law of bailment, agency, and partnership. However, as time progressed, other offshoots of this Act were formed into separate Acts, such as the Indian Partnership Act, which was enacted in 1932. The Indian Contract Act has many aspects:

- *Efficacy of existing legal and contractual obligations:* The Indian Contract Act of 1872 is a piece of law that governs contractual relationships between two or more parties in general. Despite being one of India's oldest laws, The Indian Contract Act's importance has increased exponentially in the present economic climate, with a substantial increase in the number of contracts being entered into between different parties and the resulting conflicts. There are a few important points regarding the present state of the Indian Contract Act that are worth noting.
- *Losses and damages incurred:* The Indian Contract Act, Section 73, allows for compensation for loss or damage caused by a breach of contract that occurs naturally in the course of business. However, contract law does not cover any distant or indirect loss or harm incurred as a result of the violation.
- In addition, the Indian Contract Act allows for liquidated damages and other penalties for the party that is harmed by a contract's violation. However, many nations' contract rules limit total compensation to the sum of liquidated damages. According to Indian contract law, any contract that prevents someone from engaging in a legitimate profession, trade, or business of any sort is invalid. It also makes no provision for the allocation of losses in invalid contracts. This is not the case in many other nations' laws[3].

In the general ethos of contract performance, failure to fulfill a duty guaranteed in the contract is unavoidable, and the parties aggrieved are entitled to compensate. In general, monetary compensation is sought in cases of contract breach so that the parties who have been wronged may be returned to the position they would have been in if the contract had been properly performed or to the one they were in before to entering into the contract. However, as a straitjacket formula, determining damages and awarding them in monetary form to the aggrieved is not always feasible. When the harm may be decided in the form of liquidated damages, it is usually specified as a pre-determined provision in the contractual agreement, and both parties agree to such a determined claim for damage that must be paid by one of them in the event of a violation of the contract. These liquidated damages are defined, specified, and subject to a cap limit that the parties must adhere to, which is determined by the contract's worth.

However, just because a party agrees to seek damages in accordance with a preset maximum limit does not preclude it from seeking damages in any other manner for which the contract contains an explicit provision. In addition to Liquidated Damages, the aggrieved party may be well within his or her rights to recover risk purchase costs, i.e. additional costs and expenses incurred for engaging third parties to carry out balance work to avoid contemplation and mitigate further delay, subject to the terms of the contract[4].

As a result, claiming Liquidated Damages and Risk Purchase Costs at the same time is a reality.

However, the mere presence of a Liquidated Losses clause in a contract, which may set a maximum ceiling limit in terms of a percentage of the contract value, would not preclude real damages from being recovered under other categories.

1. *Purchase Risk Factor:*

Risk purchase cost is best understood as provisions that Parties may include in their agreement that inform the performing party that if it fails to execute the contract, the job will be done by someone else and the money invested will be reliably recovered.

However, there is a danger that the new agency will not do its role in reducing the losses, and that it will not execute a function that was entrusted to another party at the start of the contractual relationship. Furthermore, there is unquestionably an issue of privity of contract when a completely new party enters the picture and partially accomplishes what the two other parties to the contract were supposed to do from the outset[5].

There may be ambiguity and difficulties in determining the defaulter in this situation, and if there is a fallacy, the intended result dwindles and the ultimate product is terrible, to say the least. For example, suppose you have a contract to construct a flyover and you need to utilize the Risk Purchase Clause. The pillars of the bridge had already been built by the original party, and the remainder of the work was finished by the newly added party in that scenario. If the bridge collapses, determining the main responsibility for the catastrophic occurrence, i.e., whether the pillars or the rest of the structure are to blame, is a monumental job. Since a result, the concept of vicarious liability finds itself in a hazy situation, as the master-servant connection cannot be accurately determined, and the issue of who has responsibility for damages goes unanswered[6][5].

2. *Substituted Performance is a term that refers to a performance that has been replaced:*

Only in its expression is the replacement performance remedy new. It is a remedy in which the aggrieved party may have the contract fulfilled via other channels and recover the fees and expenditures from the contract breaker after allowing the contract breaker to complete his share. This is now a statutory right as a result of the change. The Indian Contract Act of 1872 acknowledges that an offended party may have the contract work done by someone else and then sue the contract breaker for the fees and expenditures.

The new rules will allow the party the right to these costs, providing him the assurance that his job would be finished by a third party once the contract breaker has had a chance to perform his side of the deal. Because the disputing parties engage in abrasive behavior and adopt extreme views. The offended party may incur excessively high costs or spend excessive amounts on additional effort, and then seek reimbursement from the contract breaker. It is only just and reasonable to have some control over such claims.

3. *Contractual Specific Performance:*

It is clear from the Specific Performance of Contracts Act that the purpose of the specific remedy act is to provide remedies that is integrated into a decree. The main concern is that the order must be carried out as soon as possible. There is no sense in the courts using their power since they are bound by rules to issue only certain decrees that can be carried out, and it should be left to the plaintiff to decide whether he wants compensation or particular remedies[7].

- *Structure prior to modification:*

A violation of a contract to transfer immovable property cannot be properly remedied by monetary compensation and goes beyond that. Furthermore, the defendant's participation is required because if the person who is meant to execute the contract is in the defendant's capacity, the person would

not want to participate in the plaintiff's contract enforcement. Furthermore, if the plaintiff's performance is delayed, the plaintiff expects the performance to be completed quickly, but the decree execution process takes a long time.

- *Specific performance criticism:*

The manner the solution affects the parties' behavior varies as well. People would be encouraged to fulfill their obligations, and they would be discouraged from breaking them. Furthermore, compensation does not completely recompense the plaintiff for his or her losses. In addition, the denigration of particular performance in different types of contracts is discussed further below.

- *E-Contracts:*

The introduction of innovative technology has guaranteed that the country's e-commerce sector is strong. However, if technology is used without a proper legal framework, it would cause disorder in society and be detrimental to business. The Indian Contract Act of 1872, the Information Technology Act of 2000, and the Indian Evidence Act of 1872 are the key statutes that decide whether an e-contract is legal[8].

E contracts are created via email exchanges and online agreements, such as browse wrap, shrink wrap, and click wrap agreements. Under Indian law, all of the aforementioned forms are legal if they meet the requirements for a valid contract. Major problems include contracting capacity, free consent, determining the relevant legislation, and determining the court's jurisdiction. Though the Indian legal system properly handles e-contracts, legislators will have a difficulty in keeping up with the problems that would emerge as technology evolves and adequately addressing them.

- *Contractual clauses that are unfair:*

Because Indian contract law lacks a solid rule governing unfair contract terms, it is essential to develop basic principles governing contract unfairness. This will have far-reaching consequences in a variety of contracts, including loan agreements, builder-developer agreements, debt instruments, landlord-tenant agreements, government contracts, and arbitration agreements, to name a few.

As a result, most developed countries have established methods for dealing with contract unfairness, and acknowledge the potential of both procedural and substantive unfairness. Even if the parties have not raised an allegation of unfairness, the courts should have the authority to do so[9].

Many members of the legal profession also point out that the Law Commission has suggested that separate laws be established to safeguard parties from such unfair conditions. Particular craftsmen catering to the preferences of individual consumers gradually fade away in an industrial society, whether mature or emerging, giving way to mass manufacturing of standardized goods. Standardization leads to standardized client transactions, i.e., standardized contracts with customers. They may be found in any location where large-scale activities are carried out. It is very difficult for large-scale companies that engage into many contracts with people to draft an unique contract for each person. The benefits of such contracts include cost savings and predictability.

- *FRAND (fair, reasonable, and non-discriminatory) contract terms and conditions:*

There is now a debate regarding major standard setting organizations' (SSOs) intellectual property rights (IPRs) policies and how licensing conflicts involving Standard Essential Patents (SEPs) subject to fair, reasonable, and non-discriminatory (FRAND) licensing obligations should be handled. India is developing FRAND jurisprudence at a time when there is a lot of discussion across the world. With the current FRAND-related conflicts in India, the legal and economic

concerns underpinning the worldwide debate on SSO IPR policies and SEPs. What regulations India implements and how the jurisprudence develops are critical to the Indian mobile industry's long-term prospects.

The digital economy of today is built on standards in many ways. We wouldn't have had hundreds of companies banding together to build the mobile wireless revolution and tie decades of technical discoveries into the 2G, 3G, and 4G wireless cellular standards that now power the majority of our smartphones and tablets if we didn't have standards[10].

3. CONCLUSION

The established legal view is that the purpose underlying the parties' contract execution is sacred and must be found when interpreting a contract clause. If the parties to a contract agreed to concurrently apply different provisions of the contract within their ambit for handling different breaches at their own discretion and volition, the availability for liquidated damages stipulating a maximum ceiling limit would be construed solely as a collection of the modes to recover damages for a specific breach.

In the event where the contract itself provides for and enables the injured party to claim damages under different other headings, such as Risk Purchase Costs/ Additional Costs in addition to and except the specified Liquidated Damages, such a provision would not be a prohibition.Damages. As a result, both Liquidated Damages and Other Damages will be claimed at the same time, and the ceiling on Liquidated Damages claims cannot be used to assert damages under other headings.

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