

Legality of Object and Consideration under Indian Contracts Act, 1872

Introduction

“No polluted hand shall touch the pure fountains of justice.”

[Section 23](#) of the Indian Contract Act, 1872 (“Act”), specifies three issues, for example, consideration for the agreement, the object of the agreement and the agreement in essence. Section 23 makes a restriction on the freedom of an individual in connection to going into agreements and subjects the privileges of such individual to the overriding contemplations of public policy and the other provisions articulated under it. Section 23 additionally discovers its bearing from [Section 264](#).

The word “Object” used in Section 23 indicates and signifies “purpose” and doesn’t imply importance in a similar sense as “consideration”. Therefore, despite the fact that the consideration of an agreement might be legal and genuine, that won’t stop the agreement from being unlawful if the purpose (object) of the agreement is illicit. Section 23 limits the courts since the section isn’t guided by the thought or motive, to the object of the exchange or transaction fundamentally and not to the reasons which lead to the equivalent.

Difference between Agreement and Contract

The points given beneath are generous and very substantial so far as the distinction between contract and agreement is concerned:

S.No.	Agreements	Contracts
1.	Guarantees and commitments framing consideration for the parties to a similar assent are known as an agreement.	The agreement, which is lawfully enforceable is known as a contract.
2.	The definition of the agreement is characterized in Section 2 (e) .	The definition contract is characterized in Section 2 (h) of the Indian Contract Act, 1872.
3.	Each agreement isn't a contract.	Each contract is an agreement.
4.	The agreement doesn't legitimately head or bound any party for the exhibition of contract.	In the contract, the individuals are undoubtedly bound to execute their part.
5.	The extent of the agreement is more extensive than a contract since it covers a wide range of agreement just as a contract.	The extent of a contract is moderately smaller than an agreement since it covers just those agreements which have lawful

		enforceability.
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Essentials of Valid Consideration

According to **Section 2(d)** "When, at the desire of the promisor, the promisee or some other individual has done or refused to do, or does or refrains from doing, or vows to do or to keep away from doing, something, such act or restraint or guarantee is known as a consideration for the guarantee."

According to Section 23, the thought or object of an agreement is lawful, unless:-

"It is prohibited by law; or is of such a nature that, whenever allowed it would quash the provisions of any law or is false; or includes or suggests, damage to the individual or property of another; or the Court views it as immoral, or restricted to public policy." In every one of these cases, the consideration or object of an agreement is said to be unlawful. The meaning of consideration given in Section 2(d) of the Indian Contract Act, 1872 is fairly a practical and pragmatic definition.

The reason for this is to stress the straightforward actuality that consideration is some act done or vowed to be done, at the desire of the promisor. It additionally stays away from the practical challenges brought about by the hypothesis of consideration as comprising of some act which is helpful to one party or inconvenient to the other. The Act simplifies the issue by saying that any sort of act or forbearance which is done or attempted to be done at the desire of the promisor is adequate consideration.

At the desire of Promisor

The meaning of consideration in Section 2(d) unmistakably stresses that an act will not be a great consideration for a guarantee except if it is done at the desire of the promisor.

“In [Durga Prasad v. Baldeo](#), the offended party, on the request for the collector of a town, worked and built at his own cost, certain shops in a bazaar. The shops came to be occupied by the defendants who, with regards to the offended party having exhausted cash in the development, vowed to pay him a commission on articles sold through their office in the bazaar. The offended party’s activity to recover the commission was dismissed.”

The main ground for the creation of the guarantee is the cost incurred by the offended party in setting up the Ganj(market) however it is clear than anything done in that manner was not ‘at the desire’ of the defendants in order to establish consideration. The act was the aftereffect of not the promise but rather of the collector’s order.

Acts Done at Request

Then again, an act done at the promisor’s desire is a is of good consideration for his promise regardless of whether it is of no personal use or advantage to him. The decision of the Calcutta High Court in **Kedar Nath v. Gorie Mohamed** has got outstanding recognition in this regards.

It was thought proper to raise a town corridor at Howrah provided that adequate membership could be got together for the reason. To this end, the Commissioners of Howrah district set out to work to get vital funds by public membership. The litigant was a supporter of this reserve for Rs. 100 has marked his name in the membership book for that sum. On the confidence of

the guaranteed membership, the offended party went into an agreement with a contractual worker to manufacture the corridor. However, the defendant neglected to pay the sum fundamental to assemble the corridor. In any case, the defendant neglected to pay the sum and fought that there was no consideration for his promise.

He was, therefore, held liable wherein People were asked to buy, knowing the reason for which the cash was paid; they realized that on the confidence of their membership, a commitment was to be brought about to pay the contractor for the work. The promise was: *'in light of your consenting to go into a contract to raise the corridor, I attempt to supply cash for it.'* The act of the aggrieved party in entering into a contract with the contractual worker was done at the longing or desire of the defendant (the promisor) to comprise consideration inside the significance of Section 2(d). It was to be promised to pay for the presentation of an act and it couldn't have been repudiated once the promise entered execution.

Promisee or some other individual

The subsequent striking feature of the definition in **Section 2(d)** is that the act which is done is to establish a consideration might be finished by the "promisee or some other individual". It implies accordingly, that as long as there is a consideration for a guarantee, it is insignificant who has furnished it. It might move from the promisee or if the promisor has no complaint, from some other individual. This guideline has its beginning in the English customary law, having been adopted by the Court of King's Bench as early as 1677 in [Dutton v. Poole](#):

An individual had a girl to wed and so as to give her a marriage portion he proposed to sell a portion of wood which he had at the time. His child (the respondent) guaranteed that if "the dad would forbear to sell at his request, he would pay the girl £1,000." The dad as asked forbore and sold it however the

defendant didn't pay. The girl and her husband sued the defendant for the sum. Obviously, the defendant gave his guarantee to his dad and it was the dad alone who, by swearing off selling the wood, had furnished consideration for the promise. The offended party was neither conscious of the agreement nor keen on the consideration.

In any case, it is similarly certain that the entire object of the agreement was to give a portion to the offended party or plaintiff. It would have been exceptionally unjust to enable the child to keep the wood but then to deny his sister of her portion. He was appropriately held liable.

Position of Beneficiary who isn't a Party

Major suggestions of English law referred by the Lordship Viscount Haldane are:

1. Consideration must move from the promisee and the promisee only, in whatsoever condition. On the off chance that it be furnished by some other individual, the promisee turns into a stranger to the consideration and in this manner, can't authorize the promise;
2. An agreement can't be authorized by an individual who isn't involved with it despite the fact that it is made for his advantage. He is an alien to the agreement and can claim no rights under it.

These recommendations were shaped because of the [Tweedle v. Atkinson](#) case, which established the foundation of what in this way came to be known as 'privity of contract', which implies that an agreement is an agreement between the parties in particular and no third individual can sue upon it in any event when avowedly he is profited. Whitman J. believed it to be a built-up guideline "that no stranger to the consideration can exploit an agreement, although made for his advantage".

Along these lines, in spite of the fact that the sole object of the contract was to tie down an advantage to the offended party, he was not permitted to sue as the contract was made with his dad and not with him. This rule was certified by the House of Lords in [Dunlop Pneumatic Tire Co. v Selfridge and Co.](#)

Offended parties (Dunlop and Co.) offered certain merchandise to one Dew and Co. furthermore, verified an understanding from them not to sell the merchandise underneath the listed cost and that in the event that they offered the products to another dealer, they would get a similar undertaking to maintain the price list.

Dew and Co. offered the engine tires to the litigants (Selfridge and Co.) who made a deal to avoid offering the tires to any private client at not exactly the listed costs. The offended parties sued the respondents for breach of the agreement. It was held that accepting the plaintiffs' were undisclosed principals, no consideration moved from them to the defendants and that the agreement was unenforceable by them.

Privity of Consideration

In India, the two examples referenced above are not at any condition pertinent. Here, in the perspective of the reasonable language written down in Section 2(d), it isn't fundamental that consideration ought to be furnished by the promise. A promise isn't enforceable if there is some consideration for it and it is very insignificant whether it moves from the promise or some other individual.

The decision of the Madras High Court in [Chinnaya v. Ramayya](#) was: An old woman, by deed of gift, gifted certain property to the litigant, her girl. By the provisions of the deed, which was enrolled, it was stipulated that an annuity of

Rs. 653 ought to be paid each year to the offended party, who was the sister of the old woman.

The defendant, executed an Iqrarnama (understanding) promising to give impact to the stipulation, in favour of the plaintiff. The annuity was, however, not paid and the offended party sued to recover it. Unmistakably, the main consideration for the litigant's guarantee to pay the annuity was the gift of specific lands which was by the old woman to the respondent, the defendant, in this way, attempted to protect herself on the ground that the promise (the offended party) had furnished no consideration for the same.

Briefly, the entire case was: the litigant's promise was given to the offended party, however, consideration was furnished by the offended party's sister.

The court could have effectively enabled the offended party to recover the annuity, as consideration can be given by "some other individual" and is similarly powerful. The court arrived at a similar outcome yet to some degree on a diverse ground.

Innes J. attempted to compare the circumstance with the realities of Dutton v. Poole. All things considered, the respondents' sister would have gotten the marriage partition but for the litigant's promise. In this present case additionally, it gave the idea that the offended party was at that point getting from her sister an annuity of like sum out of the estate and when the estate was given over to the litigant, it was stipulated that the payment to the offended party ought to proceed and she promised in the same manner.

That implies that the inability to keep the promise would have denied the plaintiff of an amount which she was already receiving and it is a legal commonplace that if a promise causes some loss, then it is sufficient consideration for the promise. Thus, the plaintiff had given consideration.

Unlawful agreements

In [Bovard v. American Horse Enterprises](#) (1988), the California Court of Appeal for the Third District refused to execute an agreement for the payment of promissory notes utilized for the acquisition of an organization that manufactured drugs and the similar sort of stuff. Despite the fact that the things sold were not really unlawful, the court refused to honour the agreement for public policy concerns.

In Canada, one most-cited instance of absence of enforceability dependent on lawlessness is [Royal Bank of Canada v. Newell](#), in which a lady even without asking her husband, forged her husband's signature on 40 cheques, totalling over \$58,000. To shield her from prosecution, her husband marked a letter of purpose arranged by the bank in which he consented to accept and assume "all obligation, liability, duty" for the forged cheques. However, the agreement was unenforceable, and was struck somewhere by the courts, as a result of its basic objective, which was to "stop a criminal prosecution".

Due to the agreement's lawlessness, and therefore voided status, the bank had to restore the payments made by the husband.

Object and consideration

The consideration or object of an agreement is lawful until it contains any of the below-mentioned conditions:-

Forbidden by law

At the point when the object of an agreement or the consideration of an agreement is prohibited by law, at that point they are not legal consideration or object any longer. They at that point become unlawful in nature. Thus such an

agreement can not be substantial or valid any longer. Unlawful consideration of an object incorporates acts that are explicitly punishable by the law. This additionally incorporates those that the appropriate authority disallow by means of rules and guidelines. However, if the rules made by such authorities are not in pair with the law than these will not be at all applicable.

Forbidden by law" isn't synonymous with the word 'void' and thus it is not essential that anything that is void is also "illegal by law".

The above decision was made by the Supreme Court in [Gherulal Parakh v. Mahadeodas](#) (AIR 1959 SC 781) and the court held that:

"The word 'immoral' is an exceptionally complete word. Conventionally it takes in each part of life direct from personal conduct to the general standards of living. It might likewise be said that what is hostile to great conscience, is immoral and unethical. Its differing content relies on schedule, place and the phase of human progress of a specific culture. To put it in simple words, no general standard can be set down and any law dependent on such fluid idea.

The provisions of Section 23 of the Contract Act show the authoritative goal to give it limited importance. Its comparison with a similarly illusive idea, public policy, shows that it is used in a limited sense; generally, there would be covering of the two ideas.

The other constraint imposed on the word by the statute, in particular, "courts think about immoral" draws out the possibility that it is likewise a part of the customary law like the teaching of public policy, and, in this manner, ought to be restricted to the standards perceived and settled by Courts. Points of reference restrict the said idea just to sexual immorality and no case has been brought to the notification of the common people where it has been applied to any head other than sexual immorality.

The word "Law" in Section 23(1) implies law, that is, the law sanctioned by the government and it is not allowed to get involved with an agreement to guarantee based on an agreement which is precluded(prohibited) by the law. The inquiry regardless of whether a specific contract is prohibited by an Act or will in general thrashing its provisions is constantly one of development of the Act, the standard for which is that it ought to be interpreted as indicated by the and as the legislature intended to be.

Violation of licenses and provisions

If any provision of violation of licenses is not given the concerned act then it will not be considered as illegal or illegitimate. Let us take an example: 'A' got a permit from the Forest Department to cut the grass of a specific territory. The authorities at the division revealed to him that he can not give such right to someone else. However, the Forest Act has no such rule. But on one fine day 'A' offered his right to 'B' and the agreement was still held as legitimate."

Assignment of copyright

According to [Section 18](#) of the Copyright Act, 1957 the proprietor of the copyright of a work has the option to allot his copyright to some other individual. The impact of the task is that the chosen one gets qualified for every one of the rights identified with the copyright to the appointed work. However, the mere award of right to distribute and publish and sell the copyrighted work adds up to publishing right and not the assignment of copyright.

Where the person chosen one for copyright gets qualified for any privilege involved in the copyright, he will be treated like the proprietor of the copyright in regard to those rights. The assignor will likewise be treated like the proprietor of copyright as for unassigned rights. The legitimate agents of the assignee will be qualified for the advantages of assignment if the trustee passes away before the work is done.

In [Video Master v. Nishi Production](#), the Bombay High Court considered the issue of whether the assignment of video rights would incorporate the privilege of satellite broadcast also. The Court concurred with the conflicts of the respondent that there were various methods of correspondence to the public out there, for example, TV broadcasting (Doordarshan), satellite telecom and video TV.

The proprietor of the film had separate copyright in each one of those modes, and he could relegate it to various people. In this way, satellite broadcast copyright of film was a different right of the proprietor of the film and the video copyright doled out to the offended party would exclude this.

Method of Assignment

According to [Section 19](#) of the Copyright Act, 1957, assignment of copyright is legitimate just in the event that it is recorded as a hard copy and marked by the assignor or by his properly approved operator. On the off chance that the time of assignment isn't referenced it will be considered to be taken as five years from the date of assignment. On the off chance that the regional degree of such assignment isn't stipulated, it will be taken as relevant in entire of India.

Likewise, **Section 19(8)** examines that the assignment of copyright neutralize the terms and conditions on which rights have been assigned to a specific copyright society where the creator of the work is a part, will be void. Further, Section 19(9) and Section 19(10) opine that the assignment of the copyright for making cinematograph film or sound account will not influence the privilege of the creator to guarantee an equivalent portion of the eminences and thought payable as for utilization of his ensured work.

In [Saregama India Ltd v. Suresh Jindal](#), it was held that the proprietor of the copyright in a future work may relegate the copyright to any individual either entirely or in part for the entire of the copyright or any part thereof and once

the assignment of copyright is made, the assignee with the end goal of this Act is treated like the proprietor of the copyright.

Defeat any law

The words "if allowed, it would defeat the provisions of law" referenced in Section 23 should be understood as referring to the execution of an agreement which essentially involves the offence of the provision of any law. The general standard of law as pursued by the courts depends on special case to the maxim: *modus et conventio vincunt legem*. Which means, on the off chance that the express provision(s) of any law is damaged by an agreement, the interests of the parties or of outsiders, would be harmfully influenced by its satisfaction.

The parties to an agreement are allowed to direct their privileges(rights) and liabilities themselves, and the court will just offer impact to the intention of the parties as mentioned in the agreement as per the applicable laws of the country.

In short three principles which emerge are:

1. An agreement or contract is void if its motive is the commission of an illegal act;
2. An agreement or contract is void, in the event that it is explicitly or impliedly prohibited by any law;
3. An agreement or contract is void if its performance is unimaginable without breaking down of any law.

According to Section 23, the contrast between agreements that are void and agreements that are unlawful is extremely meagre or little. As said by Anson, "The law may either prohibit an agreement to be made, or it might just say that on the off chance that it is made, the courts will not implement it. In the

previous case, it is unlawful, in the latter it is just void, yet in as much as illegal agreements are likewise void, however void agreements are not really, the difference is for most purposes not significant and even judges appear to regard the two as interchangeable”.

In [Rajat Kumar Rath v. Administration of India](#), the Orissa High Court has clarified the differentiation in the following words:

“The void agreement is one which has no lawful impact. On the off chance that an agreement is collateral to another or establishes a guide encouraging the completion of the object of the other agreement which however void but is not disallowed by law, it might be upheld as a security understanding. On the off chance that it is a piece of a component intended to the law actually restricted, can’t face a claim on the agreement, it is spoiled with the wrongdoing of the object looked to be accomplished which is hit by the law.

Where an individual is entering into an illegal agreement, guarantees explicitly or by the suggestion that the agreement is blameless, such a promise adds up to collateral agreement upon the other party if in truth blameless of immorality may sue for damages”.

Injury to person or property of another

According to the provisions of Section 23, an agreement which includes making damage to an individual or property of outsider is void and can’t be implemented by the court and in this manner, no case is economical for the break of such an unlawful agreement.

Fraudulent

‘Pari delicto est conditio defendentis’

The Hon'ble Supreme Court of India under majority of decisions has held that there are a few exemptions to the above rule. In this association, the Hon'ble Supreme Court cited with endorsement the accompanying perceptions of Anson: *"there are rarely any cases in which a man was relieved of the outcomes of an unlawful agreement into which he has entered, cases to which the maxim doesn't have any significant bearing."*

They will fall into three classes:

1. Where the unlawful propose has yet been considerably conveyed into effect before it is tried to recover cash paid or merchandise provided or conveyed in furtherance of it;
2. Where the offended party isn't in *pari delicto* with the defendant;
3. Where the offended party doesn't need to depend on the illicitness or illegality to make out his case".

Section 23 says that the thought or object of the understanding is unlawful in the event that it "is fraudulent". But dependent upon such and comparative exemptions, contracts which are not illegal and don't began in fraud, should in all regards be watched: **pacta conventa quae neque contra leges neque dolo mali inita sunt omnimodo observanda sunt** (contracts which are not unlawful and illegal and don't originate in fraud, should in all regards be watched).

Immoral interference in marital relations/ Immorality according to the law

In the event that the object or the consideration are viewed by the court as improper, at that point such object and consideration are immoral. State, for instance, 'A' loaned cash to 'B' to get separated from her husband 'C'. It has concurred that once 'B' acquires the separation, 'A' would wed her. Yet, the

court passed the judgment that 'A' can't recover cash from 'B' since the agreement is void because of unlawful consideration.

Public policy

It is trite law that one who purposely goes into a contract with ill-advised object can't authorize his rights in connection with such contract. Prominently, the Act does not anywhere characterize the words "public policy" or "opposed to the public policy" or "as contrary to public policy". Nonetheless, one may take note of that the expression "public policy" could obviously mean issues concerning the general public or for the public benefit and the enthusiasm of the public on the large.

Public Policy' is "an ambiguous and unsuitable term determined to vulnerability and mistake when applied to the choice of lawful rights; it is equipped for being understood in various senses; it might and does in conventional sense implies political practicality or that which is best for regular greatness of the network, and in that sense, there might be a variety of sentiments; as indicated by training, habits, talents and auras of every individual who is to choose whether an act is against public policy or not".

According to Lord Atkin, "the regulation doesn't stretch out just to harmful impacts, it must be applied to destructive tendencies. Here the ground is less protected and misleading".

The above rule has been drawn by the Hon'ble Supreme Court of India in [Gherulal Parakh v. Mahadevdas Maiya](#), wherein Hon'ble Justice Subba Rao, referring to the perception of Lord Atkin observed: "Public Policy or the strategy of the law is an illustrative idea. It has been portrayed as a 'dishonest guide', 'variable quality', 'unruly horse', and so forth.

The essential obligation of an official courtroom is to implement a promise which the parties have made and to maintain the holiness of agreement which frames the basis of society however in specific cases, the court may relieve them from their obligation of a rule established on what is known as the public policy. For the need of better words.

Lord Atkin portrays that if something is done in opposition to the public policy is an unsafe thing, yet the regulation is stretched out not exclusively to destructive cases, yet in addition to harmful tendencies, it is administered by precedents."

In [Kedar Nath Motani v. Prahlad Rai](#), the Hon'ble Court held that "the right view in law is that what one needs to see is whether the lawlessness goes to such a great extent the base of the issue that the offended party can't bring his activity without depending upon the unlawful transaction into which he had entered. On the off chance that the lawlessness is insignificant or venial, the offended party is not required to trust the jury to decide wisely upon that illegality, at that point, public policy requests that defendant ought not to be permitted to exploit the position.

A severe view, obviously, must be taken of the offended party's direct, and ought not to be permitted to bypass the wrongdoing by reestablishing some dishonest statement or by misquoting the realities. Assuming, however, the issue is clear and the illegality isn't required to be argued or demonstrated as a major aspect of the reason for activity and the offended party retracted before the illegal intention was accomplished, at that point, except if it be of such a gross nature as to shock the conscience of the court, the plea of the defendant ought not prevail."

The Hon'ble Supreme Court of India has managed certain cases under Section 23 holding that a few activities of going into the contract are void. In the case titled "[ONGC Ltd. v. Saw Pipes Ltd.](#)" while deciphering the importance of 'public

policy' for this situation, the Hon'ble Court saw that it has been over and over, expressed by different authorities that the articulation 'public policy' doesn't concede to exact definition and may shift from age to age and every now and then.

Thus, the idea of 'public policy' is viewed as vague, defenceless to narrow or extensive importance relying on the situation wherein it is used. In this way, it was held that the term 'public policy' should be given a more extensive significance.

The Hon'ble Court putting dependence on "[Central Inland Water Transport Corporation Limited and Anr. v. Brojo Nath Ganguly and Anr.](#)" held that what is useful for people in general or out in the public interest or what might be harmful or damaging to the public interest, shifts every once in a while. However, an honour, which is apparently, obviously infringing upon statutory provisions can't be said to be in the public interest. Such an honour is probably going to badly influence the administration of justice. Subsequently, the honour ought to be set aside if it is in opposition to:

1. The principal approach of Indian Law;
2. The interest of India;
3. Equity or justice;
4. On the off chance that it is apparently illegal.

The illegality must go to the root of the issue and if the illegality is of a trivial sort, it can't be held that the honour is against the public policy. An honour can likewise be set aside in the event that it is so unfair and absurd that it shocks the conscience of the court.

So let us take a look at certain agreements that are against public policy:

1. Trading with the Enemy: Entering into an agreement with an individual from a nation with whom India is at war, will be a void agreement. For instance, a broker going into an agreement with a Pakistani national during the Kargil war;
2. Smothering Prosecution: This is an invasion of the normal course of law, and such agreements are void. For instance, A consents to offer land to B in the event that he doesn't participate in the criminal proceedings against him;
3. Maintenance and Champerty: Maintenance agreement is the situation in which the individual vows to keep up a suit wherein he has no genuine interest personally. Champerty is the point at which individual consent to help another party in a suit for a bit of portion of the damages or harm;
4. An Agreement to Traffic in Public Offices;
5. Agreements to make Monopolies;
6. A consent to brokerage marriage for remunerations;
7. Interfering with the Courts: An agreement whose object is to actuate a legal or state authorities to act corruptly and interfere with legitimate procedures.

Conclusion

So this was all about legality of objects and consideration under law of contracts. To maintain a strategic distance from legitimate issues, later on, parties must go to an agreement by setting an incentive to explicit merchandise, administrations, or employment execution. Consideration lawfully ties an agreement, shielding the two parties from potential claims or false impressions.

Likewise, consideration regularly incorporates an area that decides misfortunate obligation. Having an agreement that obviously expresses this data causes the

court to figure out where the disappointment happened, who is to blame, and what punishment is to be granted. The full proof guideline anticipates the presentation of outward proof that could adjust the conditions of an agreement in any capacity. Security contracts enable parties to make augmentations to fundamental agreements.