

The law relating to contracts in India is governed by The Indian Contract Act , 1872. However the Contract Act does not purport to codify the entire law relating to contracts...

Void And Voidable Agreement

The law relating to contracts in India is governed by The Indian Contract Act , 1872. However the Contract Act does not purport to codify the entire law relating to contracts, the Act also specifically preserves any usage or custom of trade or any incident of any contract not inconsistent with the provisions of the Act. The law of contract confines itself to the enforcement of voluntarily created civil obligation. The law of contract is not able to take care of the whole range of agreements, Many agreements remain outside the purview because they do not fulfill the requirement of a contract.

A Contract is an agreement; an agreement is a promise and a promise is an accepted proposal. Thus, every agreement is the result of a proposal from one side and its acceptance by the other.

An agreement is regarded as a contract when it is enforceable by law . Section 10 of the Act deals with the conditions of enforceability , According to this section , an agreement is a contract if it is made for some consideration , between parties who are competent to contract , with free consent and for a lawful object .

2. Types of Contract on the basis of its Validity :-

(i) Valid contract: An agreement which has all the essential elements of a contract is called a valid contract. A valid contract can be enforced by law.

(ii). Void contract[Section 2(j)]: An agreement not enforceable by law is said to be void . A void contract is a contract which ceases to be enforceable by law. A contract when originally entered into may be valid and binding on the parties. It may subsequently become void.

(iii). Voidable contract[Section 2(i)]: “An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of other or others, is a voidable contract”. However, the contract continues to be good and enforceable unless it is repudiated by the aggrieved party.

(iv). Illegal contract: A contract is illegal if it is forbidden by law; or is of such nature that, if permitted, would defeat the provisions of any law or is fraudulent; or involves or implies injury to a person or property of another, or court regards it as immoral or opposed to public policy. These agreements are punishable by law. These are void-ab-initio.

“All illegal agreements are void agreements but all void agreements are not illegal.”

(v). Unenforceable contract: Where a contract is good in substance but because of some technical defect cannot be enforced by law is called unenforceable contract. These contracts are neither void nor voidable.

3. Void Agreement :-Void Contract means that a contract does not exist at all. The law can not enforce any legal obligation to either party especially the disappointed party because they are not entitled to any protective laws as far as contracts are concerned. An agreement to carry out an illegal act is an example of a void contract or void agreement. For example, a contract

between drug dealers and buyers is a void contract simply because the terms of the contract are illegal. In such a case, neither party can go to court to enforce the contract.

As per Section 2(g) of The Indian Contract Act , 1872 “An agreement not enforceable by law is said to be void”, and as per Section 2(j) of The Act “A Contract which ceases to be enforceable by law becomes void when it ceases to be enforceable”. Thus Void Contracts can be of following two types :-

(i) Void ab initio :- void-ab-initio i.e. unenforceable from the very beginning

(ii) Void due to the impossibility of its performance :- A contract can also be void due to the impossibility of its performance. E g: If a contract is formed between two parties A & B but during the performance of the contract the object of the contract becomes impossible to achieve (due to action by someone or something other than the contracting parties), then the contract cannot be enforced in the court of law and is thus void.

(iii) Void agreements as per the provisions of Indian Contract Act , 1872 :-

§ Any agreement with a bilateral mistake is void.(Section 20) :- Where both the parties to an agreement are under a mistake as to matter of fact essential to agreement , the agreement is void , for ex. A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain , though neither party was aware of the fact . The agreement is void .

But a contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact . (Section 22)

§ Agreements which have unlawful consideration and objects are void.(Section 23 & 24)

:- The consideration or object of an agreement is unlawful if it is forbidden by law or of such a nature that if permitted , it would defeat the provisions of any law or is fraudulent or involves injury to the person or property of another or court regards it as immoral or opposed to public policy .

If any part of a single consideration for one or more objects , or any one or any part of any one of several consideration for a single object , is unlawful , the agreement is void. But where the legal part of an agreement is severable from the illegal , the former would be enforced.

§ Agreements made without consideration is void.(Section 25) :- An agreement without the consideration is void unless :-

(i) It is made on account of natural love and affection and it is expressed in writing and registered under the law for the time being in force.

(ii) It is a promise to compensate, a person who has already voluntarily done something for the promisor.

(iii) It is a promise to pay a time barred debt.

§ Agreement in restraint of marriage of any major person is void (Section 26) :- Every agreement in restraint of the marriage of any person , other than a minor is void. It is the policy of the law to discourage agreements which restrains freedom of marriage . The restraint may be general or partial , that is to say , the party may be restrained from marrying at all , or from marrying for a fixed time or from marrying a particular person or class of persons , the

agreement is void .

§ Agreement in restraint of trade is void. (Section 27):- Every agreement by which anyone is restrained from exercising a lawful profession, or trade or business of any kind , is to that extent void. There are two kinds of exception to the rule , those created by Statutes:-

Ø **Sale of Goodwill :-** The only exception mentioned in the proviso to section 27 is that relating to sale of goodwill . It states that “ One who sells the goodwill of the business may agree with the buyer to refrain from carrying on a similar business , within specified local limits , so long as the buyer , or any person deriving the title to the goodwill from him , carries on a like business therein : Provided that such limits appear to the court reasonable , regard being had to the nature of the business.

Ø **Partnership Act :-** There are four provisions in the Partnership Act which validate agreements in restraint of trade. Section 11 enables partners during the continuance of the firm to restrict their mutual liberty by agreeing that none of them shall carry on any business other than that of the firm. Section 36 enables them to restrain an outgoing partner from carrying on a similar business within a specified period or within a specific local limits. A similar agreement may be made by partners upon or in anticipation of dissolution.

Exception to the rule as per Judicial Interpretation :-

Ø **Exclusive Dealing Agreements :-** Business practice in vogue is that a producer or manufacturer likes to market his goods through a sole agent or distributor and the latter agrees in turn not to deal with the goods of any other manufacturer. In the case of *Percept D. Mark (India) Pvt. Ltd. v Zaheer Khan*[1] , it was observed by the Court that Negative Covenant in a contract that the covenantee would not sell a similar product of a competitor does not necessarily in restraint of trade , it could also be in furtherance of the trade.

Ø **Restraints Upon Employee :-** An agreement of service often contain negative covenants preventing the employee from working elsewhere during the period covered by the agreement . Trade Secrets , name of customers etc. are also the property of master and servant is not supposed to disclose it to anyone else . An agreement of this class does not falls within Section 27.

§ Agreement in restraint of legal proceedings is void. (Section 28) :- An agreement purporting to oust the jurisdiction of the courts is illegal and void on grounds of public policy. Section 28 of the Act renders void two kinds of agreement , namely:

Ø An agreement by which a party is restricted absolutely from enforcing his legal rights arising under a contract by the usual legal proceedings in the ordinary tribunals.

Ø An agreement which limits the time within which the contract rights may be enforced.

However this is also not an absolute rule and it has two exceptions to it which is as follows :-

Ø This section shall not render illegal a contract , by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration , and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Ø Nor shall this section render illegal any contract in writing, by which two or more persons agree to arbitration any question between them which has already arisen , or affect any provision of any law in force for the time being as to references to arbitration.

But right to Appeal does not come within the purview of this section. A party to a suit may agree not to appeal against the decision.[2]

§ An agreement the terms of which are uncertain is void. (Section 29) :- Agreements , the meaning of which is not certain , or capable of being made certain , are void. It is a necessary requirement that an agreement in order to be binding must be sufficiently definite to enable the court to give it a practical meaning. An agreement to agree in the future is void, for there is no certainty whether the parties will be able to agree.[3]

Where only a part or a clause of the contract is uncertain , but the rest is capable of bearing a reasonably certain meaning , the contract will be regarded as binding.[4] Similarly , if the agreement is totally silent as to price , it will be valid , for , in that case , Section 9 of the Sale of Goods Act,1930 will apply and reasonable price shall be payable.

§ An agreement by way of wager (betting/gambling) is void. (Section 30) :- Agreements by way of wager are void ; and no suit shall be brought for recovering anything alleged to be won on any wager or entrusted to any person to abide by the result of any game or other uncertain event on which any wager is made . The section does not define “Wager”. But wager can be said as a promise to give money or money’s worth upon the determination or ascertainment of an uncertain event .

This rule has two exception to it , which is as follows :-

Ø Horse Race:- This section does not render void a subscription or contribution, or an agreement to subscribe or contribute , towards any plate , prize or sum of money of the value or amount of 500 Rs. Or upwards to the winner or winners of any horse races .

Ø Crossword Competitions & Lottery :- If skill plays a substantial part in the result and prizes are awarded according to the merits of the solution , the competition is not a lottery. Otherwise it is . Thus , literary competitions which involve the application of skill and in which an effort is made to select the best and most skilful competitor, are not wagers.

§ An agreement contingent upon the happening of an impossible event is void. (Section 36) :- A contingent contract is a contract to do or not to do something , if some event , collateral to such contract , does or does not happen . Contingent agreements to do or not to do anything , if an impossible event happens , are void , whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made . For ex. A agrees to pay B 1000 Rs if two straight lines should enclose a space. The agreement is void.

Agreement to do impossible acts is void. (Section 56) :- An agreement to do an act impossible in itself is void . A contract to do an act which , after the contract is made , becomes impossible , or , by reason of some event which the promisor could not prevent , unlawful , becomes void when the act becomes impossible or unlawful .

4. Voidable Contract :- An agreement which is enforceable by law at the option of the one or more of the parties thereto , but not at the option of others or others , is a voidable contract[5]. Voidable Contract are valid unless one of the parties has set it aside . Voidable Contract generally happens when one side of the party is tricked into entering a contract by other party .

(i) Voidable Agreements as per provisions of Indian Contract Act,1872 :-

Ø Voidability of agreements without free consent :- when consent to an agreement is caused by

coercion , fraud or misrepresentation the agreement is voidable at the option of the party whose consent was so caused.[6]

However , A party to a contract , whose consent was obtained by fraud or misrepresentation , may , if he thinks fit , insist that the contract shall be performed.

Ø Power to set aside contract induced by Undue Influence :- When consent to an agreement is caused by undue influence , the agreement is a contract voidable at the option of the party whose consent was so caused[7] . A contract is said to be induced by undue influence where the relation subsisting between the contracting parties are such that one of the parties is in a position to dominate the will of the other.

In such a case the burden of proving that such a contract was not induced by undue influence shall lie upon the person who is in a position to dominate the will of other .

Ø Liability of a Party preventing event on which contract is to take effect :- When a contract contains reciprocal promises and one party to contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented.[8] Obvious principle is that a person cannot take advantage of his own wrong. For ex. A and B contract that B shall execute certain work for A for a certain sum of money . B is ready and willing to execute the work accordingly , but A prevents him from doing so , The contract is voidable at the option of B.

Ø Effect of failure to perform at fixed time , in a contract in which time is essential :- When time is essence of contract and party fails to perform in time, it is voidable at the option of other party[9]. A person who himself delayed the contract cannot avoid the contract on account of (his own) delay.

(II) Consequences of rescission of Voidable Contract :- When a person at whose option a contract is voidable rescinds it , the other party thereto need not perform any promise therein contained in which he is promisor . The party rescinding a voidable contract shall , if he has received any benefit there under from another party to such contract , restore such benefit , so far as may be , to the person from whom it was received.[10]

(III) Mode of Communicating or revoking rescission of voidable contract :- The rescission of a voidable contract may be communicated or revoked in the same manner , and subject to the same rules , as apply to the communication or revocation of a proposal.

5. Void and illegal Agreement :- The Contract Act draws distinction between an agreement which is only void and the one which is unlawful or illegal . An illegal agreement is one which is forbidden by law ; but a void agreement may not be forbidden , the law may merely say that if it is made , the courts will not enforce it . Thus every illegal contract is void but a void contract is not necessarily illegal.

The main difference between a void and illegal contract is that , a void contract is not punishable and its collateral transactions are not affected but on the contrary illegal contract is punishable and its collateral transactions are also void.

6. Difference between Void and Voidable Agreement :-

A void contract is considered to be a legal contract that is invalid, even from the start of signing the contract. On the other hand, a voidable contract is also a legal contract which is declared invalid by one of the two parties, for certain legal reasons.

While a void contract becomes invalid at the time of its creation, a voidable contract only becomes invalid if it is cancelled by one of the two parties who are engaged in the contract.

In the case of a void contract, no performance is possible, whereas it is possible in a voidable contract. While a void contract is not valid at face value, a voidable contract is valid, but can be declared invalid at any time.

While a void contract is nonexistent and cannot be upheld by any law, a voidable contract is an existing contract, and is binding to at least one party involved in the contract.

7. Conclusion :- To secure the performance and enforceability of a contract , the contract should be a valid contract . As the void contracts can't be enforced.