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# A Critical Appraisal of Section 2(h) of the Indian Contract Act 1872

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## ABSTRACT

*In legal terms, a contract is a legally binding agreement that establishes, defines and controls the rights and duties of the parties that enter into the contract. In the spirit of English Common Law, the Act was enacted. One of the most common elements of a contract is a commitment to transfer one of these things at some future time. Citizens of India are protected by the Indian Contract Act, which includes their contractual rights. It grants the contractual parties rights, responsibilities, and obligations to assist them effectively complete business, from routine transactions to documenting the enterprises of multi-national corporations. An Act of Parliament was passed on April 25, 1872, and went into effect on September 1, 1872, under the Indian Contract Act, 1872. Contracts are referred to in Section 2(h) as "agreements enforced by law." This definition relies heavily on the concepts of "agreement" and "enforceable by law," both of which are important terms. When something is legally enforceable, it indicates that a person who has been wronged may seek redress in court.*

**Keywords:** Contract, Agreement, Indian Contract Act

## I. INTRODUCTION

The courts in India applied the English common law as appropriate to the Indian conditions, customs, and uses before the Indian Contract Act, 1872 was enacted. It could be laid down that some problems with the use of English common laws have been noted. Consequently, later, cases based on Hindu personnel laws and Muslim personal laws began to be decided by the courts. However, the same thing was not proven suitable for the complexity of the business. The Indian Contract Act was therefore implemented in 1872<sup>2</sup>. This Act is founded on the common English law, which primarily consists of legal precedents.

On 1 September 1872, the Indian Contracts Act came into force. This Act applies to the whole Indian population save the state of Jammu & Kashmir. In the present article, the researcher has focused on the analysis of Section 2(h) of the Indian Contract Act, 1872, which defines the meaning of 'contract.' Moreover, a cross-sectional analysis and understanding of the same have

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<sup>2</sup> Sagnik Saha, *Introduction to contracts*, (2015).

been adopted while discussing the other relevant provisions.

## II. ANALYSIS OF THE SECTION 2(H)

It may be noted down that under Section 2(h) of the Indian Contract Act, 1872, an agreement that is enforceable by law is referred to be a contract as a pure meaning in legal terms<sup>3</sup>.

Now the question that arises is how a contract is formed and how the same could be valid between any two parties? It becomes essential to be aware of certain things that form a 'contract' in order to understand this.

The very first essential element to form a contract begins at the stage of considering an offer. It could be ruled down that an offer is accepted, leading to a deal between any two parties. At this step, the agreement is being written, and a formal document is being completed, which states that the parties are attaching their signature or thumbprint to be bound and surrounded by the requirements laid forth in the terms and conditions of the contract. Further, it is essential that such a deal have to be legal, and, as the Indian Contract Act of 1872 defines it, the contract should be legally enforceable. Therefore, the offer made and accepted is then turned into a contract.

In furtherance to this, it should be formally understood that no contract is reliable and acceptable without a promise made to each other while dealing with each other. Here comes the need for a promise to be made. A promise is necessary for a binding legal agreement in contracts and is offered as an incentive to make a promise. A promise is illusory if the promoter makes no obligation to do anything and fails to pay attention to a legal contract. In legal terms, a 'promise' is defined within Section 2(b)<sup>4</sup> of the Indian Contract Act, 1872, as the proposal is considered to be accepted when a person to whom the proposal is made gives his consent. Such a proposal, when accepted by both parties, becomes a promise<sup>5</sup>.

Moreover, in the case of *J.K. Industries Ltd. v. Mohan Investments and Properties Pvt. Ltd.*<sup>6</sup>, it was held by the Court of law that only after all terms and conditions are completed, it is said that a contract has been concluded. Where the facts of a specific instance demonstrate that the exercise of a written contract was a prerequisite for the contract between the parties entering into force, it cannot be stated that any contract entered into in the absence of a written agreement between the parties is in effect.

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<sup>3</sup> Indian Contract Act, 1872, Acts of Parliament, 1872 (India).

<sup>4</sup> Indian Contract Act, 1872, Section 2(b), Acts of Parliament (India)

<sup>5</sup> Ibid

<sup>6</sup> *J.K. Industries Ltd. v. Mohan Investments and Properties Pvt. Ltd.*, AIR 1992 Delhi 305

The term 'contract' has been defined with different interpretations by different persons. Pollock defines the contract as "A contract is every legally applicable agreement and commitment". Moreover, Salmond's alternative definition of contract surrounds as 'Contract is an agreement between the parties which creates and defines obligations.'<sup>7</sup>

Hence, it may be visualized that from the foregoing examination of the contract definition from different persons, it is evident that the contract depends on the contract's enforceability. Therefore, agreement and its effectiveness are undoubtedly the two key elements of a contract. There could be no contract without the absence of any of the two<sup>8</sup>. One must be present while having a contract between the parties.

### III. CROSS-SECTIONAL ANALYSIS OF SECTION 2(H) WITH OTHER PROVISIONS

- **Section 2(e) of Indian Contract Act, 1872<sup>9</sup>**

Cross-sectional analysis of Section 2(h) of the Indian Contract Act 1872 with other provisions of the Act, the first and foremost provision that comes to mind is Section 2(e). Under this section, 'agreement' has been defined as 'any promise and any promises that take account of each other.'<sup>10</sup> Suppose we argue that an agreed proposal/offer that creates legal relationships or is enforceable by law is a common contract. In that case, it raises a further question about how a person accepts an offer? An answer to the same is when he agreed, or in other words, consensus must be reached ad idem that is the 'meeting of minds' of both the contracting parties. The core of the agreement is the meeting of the parties' minds. The parties should have agreed on the terms and conditions to an agreement in the same meaning and simultaneously. There can be no contrast until there is unanimity ad idem.

Hence, understanding the meaning of the term 'contract', the value and importance of an agreement should be put in place. If an offer is made to create a legal obligation, it becomes an offer to conclude a contract. Thus, when the parties are free to consent, contract capability, lawful consideration, and legal purpose or topic, then a contract becomes a contract.

- **Section 10 of Indian Contract Act, 1872<sup>11</sup>**

It may be laid down that the agreements would fall within the purview of contracts with the condition that the same is signed for legal consideration and legal purpose by voluntary assent

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<sup>7</sup> Indian Contract Act, 1872, Acts of Parliament, 1872 (India).

<sup>8</sup> MAGAONKAR REVATI UMASHANKAR, *Essential Elements for Forming a Valid Contract under the Indian Contract Act 1872*, International Journal of Law Management & Humanities, 3(6), (2020).

<sup>9</sup> Indian Contract Act, 1872, Section 2(e), Acts of Parliament (India)

<sup>10</sup> Ibid.

<sup>11</sup> Indian Contract Act, 1872, Section 10, Acts of Parliament (India)

of the competent parties and are hereby not specifically declared null and invalid.

Any legislation in force in India and not now specifically repealed in the form of which any contract or any law related to the registration of documents shall be required to be signed either in writing or in the presence of witnesses.

Moreover, to become a contract, an agreement should be legally obligated, and it would not be regarded and considered as a contract if it is incapable of doing so. In the case of *Balfour v Balfour*<sup>12</sup>, it was noticed by the Court that Mr. Balfour pledged to pay his wife £30/month when she stayed in England for medical reasons. Ms. Balfour sued him when he failed to pay. Her case was unsuccessful because Mr. and Ms. Balfour had no intention of creating a legally enforceable agreement.<sup>13</sup> Hence, it should be noted down that no contract may be concluded without an adequate explanation of the contracting parties' legal rights and responsibilities.

- **Section 11 of Indian Contract Act, 1872**

In the above discussion, the focus has been put upon the conditions and valid requirements to have a contract in force. The parties to the contract are the main components to have any agreement become a contract. Now the question that arises is whether any person could act as a party to a contract or not?

To understand this, Section 11<sup>14</sup> of the Indian Contract Act, 1872 has laid down the conditions and qualifications for the persons to act as parties to the contract. Sec.11 of the Indian Contract Act, 1872 states the criteria for a person to conclude contracts in India which says that a person shall have reached the age of majority, that is, the age of 18, per the legislation of India.

The Indian Majority Act of 1875 governs the age of majority in India. According to Article 3<sup>15</sup> of the Indian Majority Act of 1875, when eighteen years were finished, an Indian citizen is alleged to have reached majority age.

However, if a person is under the age of 18 and a guardian is appointed to him, at the age of 21, he or she shall achieve the majority.

- **Section 12 of Indian Contract Act, 1872**

A contract to be taken place between both the parties, Section 11 requirements to fulfill the condition of age is necessary, but it goes beyond it. At the moment of a contract taking place,

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<sup>12</sup> *Balfour v Balfour*, [1919] 2 KB 571

<sup>13</sup> *Ibid.*

<sup>14</sup> Indian Contract Act, 1872, Section 11, Acts of Parliament (India)

<sup>15</sup> Indian Majority Act of 1875, Acts of Parliament, 1875 (India)

a person must be of a sound mind. According to Sec. 12<sup>16</sup> of the Indian Contract Act 1872, if a person can evaluate his actions, comprehend them, and recognize the implications of the duties imposed on him while entering into contracts, they may be considered to be in a sound mind.<sup>17</sup>

Under any legislation to which a person is subject, a person should not be disqualified. In a country like India, a minor is an Indian citizen who is not 18 years old. A minor cannot grasp the nature of the responsibilities flowing from a contract. Therefore, a contract with a minor (free from the outset) is invalid and cannot be executed by a court of law.

- **Section 14 of Indian Contract Act, 1872**

It may be noted down that for all contracts, it is necessary for them to be voluntary in nature. According to Sec 14<sup>18</sup>, Indian Contract Act, 1872 consent shall be declared to be free if it is not produced by force, excessive influence, fraud, or mistake. No legal contract is concluded if the permission is not free of charge.

Hence, from the above analysis of cross-sectional interpretation, it is being noticed that for any contract to be made between the parties, certain essential elements are necessary to be put in place before a binding and final contract is laid down. No contract could be made without the above-discussed elements.

#### **IV. OBSERVATIONAL ANALYSIS OF SECTION 2(H) OF INDIAN CONTRACT ACT**

A positive interpretation of Section 2(h) of the Contract Act lies in the foundation of 'damages' in the cases of breach of contract. A contract breach shall occur whenever either of the contracting parties' breaches any of the terms or conditions agreed upon while having a contract. Moreover, infringement of any contract generally arises where a party partly and erroneously executes the contract or when the party executes the contract in a retarded way and not under terms and conditions relating to time limitations for executing the contract.<sup>19</sup> In the wordings of law, damages are the most frequent remedy that the aggrieved party has provided. This permits the aggrieved party to seek compensation for the party's loss causing the violation incurred by the party following the breach of the contract.

Hence, in accordance with section 74<sup>20</sup> of the Indian Contract Act of 1872, the party

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<sup>16</sup> Indian Contract Act, 1872, Section 12, Acts of Parliament (India)

<sup>17</sup> Indian Contract Act, 1872, Acts of Parliament, 1872 (India).

<sup>18</sup> Indian Contract Act, 1872, Section 14, Acts of Parliament (India)

<sup>19</sup> Raghav Sehgal, *A Detailed Analysis of Provisions Related to Compensation for Loss or Damage Caused by Breach of Contract under the Indian Contract Law*, Law Times Journal, (2021).

<sup>20</sup> Indian Contract Act, 1872, Section 74, Acts of Parliament (India)

complaining in violation of the contract shall be allowed to claim appropriate compensation for the party breaking the contract in the case of a penalty, while no real damage is inflicted. The observation of Section 2(h) could be interpreted in this sense.

Moreover, it could be laid down that a contract is a legally binding contract between two parties when consideration exists, and the goal and purpose of the contract is always within the purview of legality. The contract is otherwise invalid from the beginning. The Indian Contract Act of 1872 deals extensively with contracts and describes the validity of contracts and the essence of contracts. This paper has covered several sections of the agreements and how they are used in connection to Section 2(h) of the Indian Contract Act 1872. In furtherance to this, the analysis could be visualized in the sense that how contracts are objectively and subjectively assessed by courts to discover the intent behind the contract development and to prove their legality or legal validity. The meaning and definition of a contract and how the same could be considered as binding in nature in terms of law must be interpreted along with other provisions of the Contract Act.

## **V. CONCLUSION**

It can be concluded that the Indian Contract Act is responsible for establishing and validating the contracts or agreements of several parties. Contract law is a fundamental area of the law that regulates and oversees all aspects of business activity whenever there is a transaction or an agreement. As a result, contract law is an essential component in the process of establishing what a contract is and the conditions that must be met for one to be valid. A recognized proposition (agreement) that is fully accepted by law and either legally stated or lawfully enforced is referred to be a contract. Therefore, a contract is a legal document that imposes certain rights and responsibilities on the parties to the contract, rights and duties that are established, defined, and agreed upon by all parties to the deal.

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