

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 4

2022

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Discharge of Contract by Agreement

SALONI CHOUDHARY¹

ABSTRACT

When a contract is dismissed, all responsibilities resulting from it are terminated. A contract is terminated when it is discharged. As a result, there are as many distinct types of discharge as there are methods to terminate a contractual commitment. When a contract is made with mutual agreement, it can also be discharged or cancelled through mutual agreement, according to the contract's terms."The many methods for terminating a contract, as well as the consequences of each, are discussed in this study. It looks at how a contract may be completed by the parties consenting to it, what the grounds are for terminating a contract, what the methods are for terminating a contract, and how a contract can be terminated by agreement.

Keywords- *agreement, discharge, consent, contractual obligation*

I. INTRODUCTION

According to the Indian Contract Act of 1872, "discharge of contract" is "the termination of contractual relations between the parties." The term "contract discharge" refers to the termination of a contractual relationship between two parties. A contract is said to be discharged when it ceases to be in effect, i.e. when the rights and responsibilities it creates expire. If the agreement to extinguish or terminate the contract is backed up by money or signed under seal, it becomes a legally binding contract. The three basic types of discharges are as follows:

1. **Bilateral Discharge:** When both parties agree to relieve each other from any remaining responsibilities under the original contract, the contract is mutually discharged. Despite the parties' failure to completely or substantially fulfill all of their duties, the contract is discharged.
2. **Accord and Satisfaction:** When one party agrees to release another party who is in breach of the original agreement from its responsibilities in exchange for satisfaction for the execution of another duty, this is known as accord and satisfaction.
3. **Unilateral Discharge:** When one party has completed its end of the bargain and decides to free the other party from the remaining obligations of the contract, this is

¹ Author is a Student at NMIMS School of Law, India

known as unilateral discharge. Only if the agreement is backed up with money or signed under seal is it legally enforceable.

II. GROUNDS FOR DISCHARGE OF CONTRACT

A contract can be discharged by any of the following ways:-

1. Discharge by Performance: A contract can be discharged by actual or attempted performance. When each of the contracting parties has completed what he pledged to do under the contract, it is said that actual performance has occurred. When a promisor promises to perform under a contract but the promisee refuses to accept it, it is considered a discharge by attempted performance.

2. Discharge by Operation of Law:- A contract is dismissed by operation of law if any of the following occurs:-

(i) In the event of personal services, the promisor's death or incapacity

(ii) Bankruptcy

(iii) Rights and liabilities [Merger of Rights and Liabilities] vest in the same person.

(iv) Material Alteration without Permission.

(v) Loss of the only proof of contract

3. Discharge by Lapse of Time: - When a contract is expected to be completed within a certain amount of time, the failure of one party to do so leads in the contract being discharged due to lapse of time.

4. Discharge due to impossibility: A contract that was legitimate at the time of creation may later become impossible or unlawful to fulfil, and the contract will be dismissed as a result.² In any of the following situations, a contract becomes void due to supervening impossibility:-

(i) Subject matter destruction

(ii) Legislative Amendment

(iii) Circumstances that do not coincide

(ii) Infirmary for personal services due to death or incapacity

(v) The start of a conflict

² Taxmann “What is Discharge of a Contract under Indian Contract Act 1872? Ft. Case Studies” tax and corporate laws of India(19/03/2022)

(vi) The contract's ultimate goal is not achieved.

5. Discharge by Breach: A contract is said to be discharged by breach when a contractual party refuses or fails to perform, or disables himself from performing, or makes the execution of the contract impossible due to his actions. Actual or Anticipatory Breach can be used to terminate a contract. Actual breach occurs when the default occurs on the due date of performance, whereas Anticipatory Breach occurs when the default occurs before the due date of performance.³

6. Discharge By Mutual Agreement

A contract may be dissolved, its terms revised, or a new agreement substituted for it if all parties agree. The old contract will be cancelled if any of these things occur.

“If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.” Sec.62.

A subsequent condition is a manner of discharge specified in the initial contract. A subsequent agreement may also result in a discharge. This ensuing agreement might take some time. A release under seal, mutual rescission, or a replaced contract is all options. The sealed release is capable of discharging any type of substance. It's a kind of contract that doesn't demand any payment. The alleged offender only its implementation and delivery must be alleged and proven. A shared interest only a bilateral contract that has been terminated is eligible for rescission. Neither party has completed the task in its entirety. One thing to think about is for a non-sealed release or rescission, this is essential.

If one of the parties to a bilateral contract has fully executed his share, he has nothing to gain and the other party has nothing to lose by rescinding the deal. A substituted agreement is a mutual retraction that includes one or more new duties in place of the old. However, the rescission and substitution are entwined in one body and one breath, with neither possessing the ability of independent life. The defendant must state the same things that a plaintiff who sues on a contract must allege, with the exception that he does not have to establish a breach of contract.⁴ Because the defendant is not seeking a remedy, he is not required to prove the existence of any secondary responsibility. He only needs to allege the agreement and establish that it contains a rescinding of the previous duty.⁵

³ Taxmann “What is Discharge of a Contract under Indian Contract Act 1872? Ft. Case Studies” tax and corporate laws of India(19/03/2022)

⁴ Ibid.

⁵ Taxmann “What is Discharge of a Contract under Indian Contract Act 1872? Ft. Case Studies” tax and corporate laws of India(19/03/2022)

There is no need to use any technical jargon. The facts must be provided in such a way that the Court can establish whether or not an agreement existed and what its conditions were.” It is not necessary to claim explicitly that the original obligation was discharged; in fact, such an allegation would be unfounded if a reasonable evaluation of the circumstances reveals that a rescission was not included in the new agreement and therefore was not "replaced." “The plea is adequate if the facts as described are incompatible with the previous obligation's ongoing existence. One type of substituted agreement is a novation.”

There are certain issues with the statute of frauds and contracts under seal, but they will not be discussed in this article. To avoid circuity of action, a commitment not to sue on an obligation has been given the effect of a discharge.

III. TYPES OF DISCHARGE BY AGREEMENT OR CONSENT

"If the parties to a contract agree to substitute a new contract for it, or to rescind or amend it, the previous contract need not be fulfilled," says Section 62 of the Indian Contract Act, 1872, which is titled – Effect of novation, rescission, and alteration of contract.

The following are the six different ways that a contract can be discharged by agreement or consent:

- Novation
- Rescission
- Alteration
- Remission
- Waiver
- Merger
- Accord and satisfaction

NOVATION

Novation occurs when a new contract replaces an old one between the same parties, or when a contract between two parties is cancelled in exchange for a new contract between one of the parties and a third party on the same conditions. In the landmark case of **Scarf v Jardine**⁶, Lord Selborne stated the following on the meaning and impact of novation:

There is an existing contract, thus it is replaced by a new contract, either between the same parties or between other parties, with the mutual consideration being the discharge of the

⁶ (AIR 1973 All 442) and *Scarf v. Jardine*

previous contract.⁷

When a partnership dissolves, the persons who will continue in business agree and undertake, as between themselves and the retiring partner, to assume and discharge all of the partnership's liabilities, usually by taking over the assets, and if they give notice of their arrangement to a creditor and ask for his accession to it, it becomes a contract between the creditor who accedes and the creditor who does not.⁸

- A novation is a change of party.
- A novation is the process of replacing an existing contract with a new one.

CHANGE OF PARTIES

The first example of Section 62 is a novation by change of parties. In this example, A owes B money under a contract, A, B and C has decided that B will now take C as his debtor instead of A. The previous debt between A and B has come to an end, and a new debt between C and B has been formed. The initial contract between the creditor and A is at an end if A is a debtor and the creditor agrees to take B in his place as the debtor.

SUBSTITUTION OF NEW AGREEMENT

When the parties to a contract agree to replace it with a new contract, the old contract is discharged and no longer has to be fulfilled. The original contract must still be valid and unbroken in order for this concept to be applied.

"There should be a total substitute of a new contract," the Supreme Court said in **Lata Construction v Dr Rameshchandra Ramniklal Shah**.⁹ The original contract does not have to be fulfilled in this circumstance."

In other words, it will be termed Novation if the new contract simply modifies the core of the deal or the root of the primary contract. So, what happens if the contract's core isn't modified but just small changes are made? Material adjustment to the contract is any minor change to the contract that both parties agree to, and it is legally binding on both sides.

The defendants in **Nagendra Kumar Brijraj Singh v Hindustan Salts Ltd** advertised employment positions at a fixed wage on their website. The job was filled by the petitioner. On the first day, he was given a lower-paying position. He accepted the new contract, which paid him less than the specified wage. He then sued the defendants for the stated compensation.

⁷ Anurag Mohan Bhatnagar and Simhadri Bharadwaja. "Discharge of contract by agreement" *ipleader* (25/06/2019)

⁸ *ibid*

⁹ *Lata Construction v Dr Rameshchandra Ramniklal Shah* CPIJ 46 (SC) 12 August, 1999

The court dismissed this claim, finding that the contract was novated and hence lawful because the plaintiff agreed to a new contract with a reduced wage. The pay scale is crucial to the contract, and changes to it may make or break it. As a consequence, the defendants were acquitted.

The Calcutta High Court stated in another case, **Juggilal Kamlatpat v N.V. Internationale**, that "for novation to take effect, contract modification must reach to the core of the original contract and affect its basic nature."

In another identical case, **Manohar Koyal v Thakur Das Nasker**¹⁰, the defendants owed the plaintiff Rs 1173, which was receivable on a bond. The payment, however, was not paid on time, and the plaintiffs agreed to accept Rs 400 in cash and a new bond of Rs 700 payable in installments after the due date had passed. The defendant defaulted again, failing to pay the Rs 400 cash deposit or the Rs 700 bond.

Plaintiffs filed a claim for the Rs1173 first bond. The court found that the first contract was defective owing to the plaintiff's breach of contract, not novation, and that the plaintiff had standing to sue for breach of contract. When a contract is breached, the transaction is null and void, and the plaintiff is entitled to sue for damages.

The court went on to rule that the parties' second agreement was illegal since novation could only occur with an existing contract. Because the initial contract is no longer valid, it cannot be novated.¹¹

RESCISSION

Section 62 of the Indian Contract Act also allows the parties to cancel their contract.

The Supreme Court authorised the parties to dissolve a contract for the sale of forest coupes under this provision due to considerable disparities in the volume and quality of wood held out at the time of the auction and the timber actually available.

The contractor was offered the option of having his money refunded.

However, because the contract prohibited reimbursement in such cases, he was not entitled to compensation for his loss.

This was determined in the well-known case of *Syed Isar Masood v State of MP*.

When an old contract is terminated and replaced by a new one, the old one is not resurrected

¹⁰ *Manohar Koyal v Thakur Das Nasker* (1888) ILR 15 Cal 319

¹¹ *Anurag Mohan Bhatnagar and Simhadri Bharadwaja. "Discharge of contract by agreement" ipleader(25/06/2019)*

since the new promise was not honoured. The parties may, however, restore the original by mutual agreement, in which case the original will be resurrected and become binding on the parties.

ALTERATION

Alteration is defined under Section 62 of the Indian Contract Act of 1872. When one or more of the contract's conditions are changed by mutual consent of the contract's parties, the contract is said to have been amended. In this instance, the old contract is terminated.

In the case of **United India Insurance Co Ltd v M.K.J. Corpn**¹², it was said in the judgement that "good faith is an ongoing requirement insofar as no major adjustment to the terms of the contract may be made by a party without the approval of the other."¹³

When a contract is embodied in a deed and the party in possession of the deed makes a significant change to it without the approval of the other party, the impact is the same as if the deed were cancelled. Both parties will be free of their respective responsibilities. The Supreme Court considered the notion of "significant alteration" in **Kalianna Gounder v Palani Gounder**¹⁴. In this case, the plaintiff had a memorandum of agreement for the sale of land, under which Rs. 2000 had been paid in advance. The defendant refused to hand over the land, saying that the plaintiff tampered with the document by adding the terms "discharge the liabilities and execute the selling deed free of encumbrance" to it.

"Even if it is presumed that the clause about encumbrances was inserted after the deed was performed," Shah J ruled, "it will not invalidate the deed." "Normally, when a price is agreed upon for a property, it is the vendor's responsibility to clear it of any encumbrances before finalising the sale transaction." As a result, any modification, if any, cannot be regarded significant.

REMISSION

A promisee may completely or partially relinquish or transmit the fulfilment of an assurance under an agreement. He can also prolong the time allocated for completing the work. A remission is prevalent when it occurs as a consequence of a bank's direct gift to the account holder. It is inferred when the leaser intentionally surrenders the first title to the obliged person under a private mark that includes the promise. The phrase remission can also refer to the

¹² United India Insurance Co Ltd v M.K.J. Corpn

¹³ *Anurag Mohan Bhatnagar and Simhadri Bharadwaja. "Discharge of contract by agreement" ipleader(25/06/2019)*

¹⁴ *Kalianna Gounder v Palani Gounder* 1970 AIR 1942 1970 SCR (2) 455 1970 SCC (1) 56 ACT

forgiveness or approbation of a crime or offence, as well as the showing by which a confiscation or punishment is discharged.¹⁵ Reduction has agreed to accept a smaller display than was originally planned under the terms of the agreement. Section 63 allows a gathering to shed or pass the execution of the assurance supplied to him in whole or in part. He may also extend the date for such execution or accept any other adequate fulfilment in its stead. Even if there is no purpose to do so, a commitment to do so is binding.

WAIVER

Waiver denotes a person giving up any or all of their rightful rights under a contract. There are several ways to postpone a privilege, and a waiver might occur either intentionally or unintentionally. Waiver is just the voluntary surrender of one's right. In **M. Sham Singh v. State of Mysore**¹⁶, M was sent to the United States on a scholarship with the understanding that he would return to work for the State. The contract also stated that if the state did not offer work within 6 months, the contract would be voided, and if M did not comply, he would be required to refund the scholarship money. M claimed that while in India, he was not recruited within the necessary 6-month period and that the State acted in such a way as to surrender their rights.

MERGER

An agreement can also be discharged by a merger, which occurs when a substandard right accruing to a party in a dispute merges with a better right accruing to a comparable group. For example, B rents an industrial facility for assembling movement for a year, but 3 months before the lease expires, B buys the same premises. Since A has become the owner of the structure, his rights to the rent have converged into the privileges of possession. The previous rental agreement is no longer valid. In some cases, it's possible that a person's inferior and dominating rights connect to one another.¹⁷ In such cases, both rights combine, resulting in the termination of the agreement that governs the sub-par rights.

IV. ACCORD AND SATISFACTION

After a contract has been broken, an accord is reached in which a party agrees to accept a valuable compensation in exchange for the right of action that he has against the other party. After a breach has occurred, satisfaction refers to the fulfilment of the obligation established

¹⁵ *Anurag Mohan Bhatnagar and Simhadri Bharadwaja. "Discharge of contract by agreement" ipleader(25/06/2019)*

¹⁶ *M. Sham Singh v. State of Mysore AIR 1972 SC 2440, (1973)*

¹⁷ *Anurag Mohan Bhatnagar and Simhadri Bharadwaja. "Discharge of contract by agreement" ipleader(25/06/2019)*

under the new agreement. A contract's discharge by consent and satisfaction refers to the old contract's discharge as a result of the new substituted obligations' fulfillment.

The obligation for breach of contract can be discharged via agreement and satisfaction. Unlike Novation, Accord and Satisfaction can only be obtained after the initial contract has been breached. Under the Accord and Consensus Act, consensus is also required to conclude a contract.

The banks would be unable to back out of their new requirements since the new contract was presented to resolve the old contract's breach and the banks willingly consented to it.

In the case of **Kapurchand Godha v Mir Nawab Himayatalikhan Azamjah**¹⁸, the plaintiff, though first reluctant to accept the revised arrangement, eventually indicated willingness to accept the sum supplied in exchange for complete fulfillment of his claim and cancellation of the promissory note. The Supreme Court of India decided that Section 63 of the Contracts Act addressed this situation entirely.

Whatever the parties' respective rights were under the old agreement, they are waived in exchange for the acceptance of a new one. As a result, earlier rights of the parties are terminated when such an agreement and satisfaction is reached. The new rights have effectively eliminated them.¹⁹

V. CONCLUSION

In conclusion, "discharge of a contract" simply means the completion of a contract's obligations. This is because the rights and obligations under the contract's terms were set by the parties who signed it in the first place. As a result, the contract is considered to be discharged once such rights and duties are established. Even though the contract's obligations remain unmet, the parties to it are no longer bound or liable after it is discharged. When it comes to specific topics relating to discharge, there is a considerable deal of uncertainty or lack of understanding in contract law. It's because few individuals swap terms like condition and warranty, and the rest is due to erroneous thinking about topics that are admittedly difficult. Performance is the most effective technique of cancelling a contract. As a consequence, both parties abide by the contract's terms before seeking to terminate it. Discharge by breach, on the other hand, is the most inconvenient method of absolving oneself of responsibility. As a result, a contract violation might result in financial losses.

¹⁸ Kapurchand Godha v Mir Nawab Himayatalikhan Azamjah 1963 AIR 250

¹⁹ Anurag Mohan Bhatnagar and Simhadri Bharadwaja. "Discharge of contract by agreement" *ipleader*(25/06/2019)