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INFLUENCE OF ENGLISH LAW ON THE INDIAN CONTRACT ACT WITH EMPHASIS ON THE BROADER NATURE OF THE INDIAN CONTRACT ACT

Navika Sharma

Bharti Vidya Peeth, New law college, Pune

The law has a great history of evolution and influencing the near geography. The idea of law is very primitive as it is said to be intrinsic to the very desire of the human mind. From the code of Hammurabi to the Roman law the roots of law can be traced in many ancient texts, while the Indian law evolved from the Dharmshastras, Vedas and Upnishades but when the time came of its codification it was heavily introduced by the common law principals and the English law.

Similarly, the Indian Contract Act of 1872 was drafted by the third Indian Law Commission, headed by Sir James Fitzjames Stephens. Albeit, it was codified while keeping in mind the structure of Indian society and Indian economy. Before the codification of the act, the enforcement of contracts in the presidency towns of Madras, Calcutta and Bombay was governed by the charter of 1726. The English law worked on the assumptions that promises were generally enforceable with exceptions for undesirable promises, or promises were generally unenforceable with exceptions for desirable promises. Outside the presidency towns contracts were based on good faith and general conscience. Ever since the establishment of courts, the matters were dealt by personal laws. The need for codification emerged due to the diversity of cultures in the Indian subcontinent, followed by their own personal laws and the English law being not too effective for the Indian masses. Thus the Indian Contract Law of 1872 was drafted, which came into effect on 1 September 1872.

The contract act, just like many others Indian laws adopted many of its principles from the English law. Consideration, offer and acceptance, breach of a contract, these are the prerequisites of contract. Other than such basic principles there are other concepts too which we have adopted from the English law which are discussed below-

1. **Quasi contracts**- These are also known as certain relations resembling those formed by contracts.
   In certain situations a person may receive a benefit to which the law considers another person better entitled to. Thus even though there is no contract between the parties the law believes he who has benefitted at the expense of other must pay him back. Such kinds of relations are called quasi contracts because even though there was no contract between the parties, yet they were put in similar position as if there was a contract between them. They are the creation of law and not the parties. They are based on the doctrine of unjust enrichment, a doctrine of English law.

2. **Section 73 of the ICA**- It talks about compensation for loss or damage caused by breach of contract. This section is the replica of the words of Justice Alderson B's judgement of '*Hadley v Bexandale 1854 9Ex. 341'*, a fundamental case law highlighting the principle of remoteness to damage and further differentiating between general and special damages. General damages are those which arise naturally in the usual course of things from the breach itself. Another mode of putting is that the defendant is liable for all that which naturally happens in the usual course of things after the breach.
   Special damages are those which arise on account of the unusual circumstances affecting the plaintiff. They are not recoverable unless the special circumstances were bought to the knowledge of the defendant so that the possibility of the special loss was in the contemplation of the parties. In case the special circumstances were not known, special damage cannot be recovered.

The Broader view of the Indian Contract Act-

The nature of the Indian contract act is wider than the English law, it is such that it tries to permit the formation of as much contracts as possible.

Some distinctions between the English law and the Indian law are stated below-

1. **Mode of acceptance**- As per the English law, acceptance must be given in the mode prescribed by the promisor and if not specified then in any other reasonable mode, otherwise acceptance would not be considered to be given. As happened in the famous case of '*Elliason v Henshaw 17 U.S. 225*'- Mr. A was a dealer of flour and Mr. B was one of his buyers. A sent an offer through his driver to Mr. B of a huge deal and said to only convey his acceptance through the driver he sent. Mr. B was overjoyed with excitement and in this moment he himself posted the letter

thinking it would reach earlier than the driver but unfortunately it reached after the driver; thus it was not considered a valid acceptance as acceptance must be given in the prescribed mode.

However, if the same case had occurred in india the situation would be different. As per Section 7 of the Indian Contract Act, if the offeree has not given the acceptance in the prescribed manner, it is upto the offeror, either he could accept the acceptance as it is or he could ask the offeree within reasonable time to send back the acceptance in the prescribed mode. Thus making the acceptance valid.

2. **Privity of consideration**- It is the principle of English law that consideration moves from between the offeror and the offeree and no other person can enforce it. However in Indian contract act there is no such provison. As per section 2d of the act, consideration has been defined as "When at the desire of the promisor, promise or **any other person**, does or abstains from doing, promises to do or abstain from doing, has done or abstained from doing, something, such act or abstainence is called a consideration for the promise". The words 'promisee or any other person' suggests that consideration can move to any other person having interest in the case as well.
   As observed in the case of '*Chinnaya v Rammaya (1882) ILR 4 Mad 137'.* In this case an old lady made a gift deed for her daughter, as per that the daughter had to pay her aunt rupees 656 annually, so she signed an iqrarnama(contract) stating she would be paying her aunt. Later she refused to pay saying that she is not getting anything in return from her aunt. Here the wordings, 'promise or any other person' were used and the case was held in the aunt's favour as it was valid consideration.

3. **Past consideration**- The English law doesn't take into account any consideration given or done in the past, but the Indian law covers all past, present and future considerations, as is clear from the above stated definition of consideration in Section 2(d).

4. **Doctrine of restitution of Minor agreements**- It is a known fact that minor agreements are void ab initio, one of the effects of a minor agreements is the doctrine of restitution, anything trackable at the hands pf minor can be restored, however this does not apply in case of money.

As observed in the case of '*Leslie v Sheill 1914 3 KB 607'*- A minor lend £400 from a moneylender and refused to pay it back. The moneylender claimed for restitution but it was ruled that the doctrine is not applicable in the cases of money.

However, the Indian law takes a broader view of this doctrine and believes the judgement of Leslie v. Sheill to be narrow and is no longer practiced in India. As it may be that these minors may fraudulently try to encroach the money from other parties knowing that they don't have to pay back. So if money is taken unjustly by them it would also come under this doctrine.

As observed in the case of '*Khan Gul v. Lakha Singh AIR 1928 Lah. 609'*–

A minor entered into a contract with Ms. B for selling a land for ₹12,500. Ms. B paid ₹7,500 but the minor refused to hand over the possession and said that he is a minor.
Ms. B asked the court to either give the plot or return the money.
To this the court said that giving him the plot would amount to enforcing the contract and as per the demand of money the minor argued the doctrine of restitution. However Justice Shadilal observed the nature of these contracts and said a broader view should be taken of this doctrine, Leslie v Sheil is an old judgement and the scenario have changed since then. Thus it was ruled in certain cases even money can be restituted.

1. **Joint Performance of a contract**- According to the English law, if one of the several joint promisors dies, the rights and liabilities under the contract devolve upon the surviving joint promisor. The representatives of the deceased promisor neither obtain any rights nor assume any liability unless they are the representatives of the last surviving promisor.

   This rule sometimes causes injustice either upon the surviving promisors as they are left to fulfil the obligations alone or on the family members of the deceased as they do not inherit any rights from the contract.
   However the Indian law has certain inclusive provisions
   According to the Section 42 of the Indian Contract Act, the joint promisors during their joint lives must fulfill their promises and if any one of them dies his representatives must jointly along with the surviving promisors fulfill the promise and so on.
   And upon the death of the last surviving promisor the representatives of all of them must fulfill the promise unless there is any private arrangement made by the parties.

2. **Intention to Enter into a Legal relationship**- It is a settled principle of English Law, that "to create a contract there must be a common intention of the parties to enter into legal obligations."
   It Is to be understood that contracts are not games for an idle time, mere matters and loose conversations which were never intended by the parties to have an effect cannot be termed as contracts. There might also be situations where parties do mean business but rely on mutual trust and good faith to honour the promise rather than the law.
   Thus Lord Atkin observed –
   There are agreements between parties which do not result in contracts within the meaning of that term in our law.
   Examples of such promises are where two people agree to take a walk together, or inviting someone at your house for dinner and the most usual form of agreement which does not constitute a contract are arrangements made between husband and wife. These are arrangements made in natural love and affection and near relation and thus cannot constitute as what we regard as contracts.

The most famous example of such agreement is the case of '*Balfour v Balfour 1919 2 KB 571'*.
The defendant and his wife were in England when the defendant was due to return to Ceylon to his job. His wife was advised due to her health to stay back in England. The defendant agreed to send her an amount of £30 a month for the probable expenses of maintenance. He did send the amount for some time but afterwards differences arose between them and he stopped sending the money.
The wife's action to recover the amount was dismissed as it was ruled the offer was just a domestic conversation between husband and wife and not an actual contract. There was no intention to enter into a legal relationship.

The Indian law, however does not necessitates a legal intention and thus permits the formation of a contract on any grounds given that the basic aspects of a contract such as offer and acceptance, adequacy of consideration, lawful object and consent of parties are fulfilled.

From the forementioned points, it can be concluded that though influenced by the English law, stands by it's true nature and facilitates the formation of as many contracts as feasible and makes it easier for the parties to enter into contracts and enforce them, thus such an old act is still in effect to date and continues to guard the everyday legal relationships of the people.