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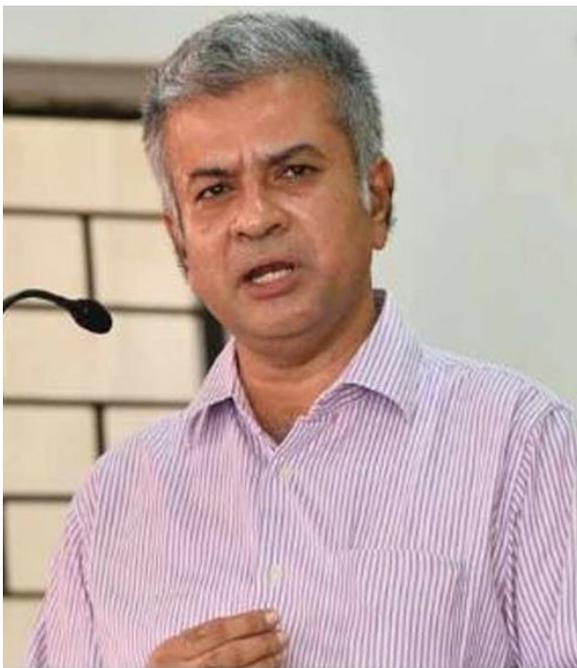
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



THE EVOLUTION AND THE CONTEMPORARY **APPLICATION OF THE DOCTRINE OF** **CONSIDERATION**

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Abstract:

In the dynamic landscape of legal theory and practice, the Doctrine of Consideration stands as a cornerstone, evolving through time to shape contractual relations. This abstract explores its historical journey and contemporary significance in the realm of law." The doctrine of consideration, a cornerstone in contract law, has undergone a significant evolution over centuries. The transition from formalism to substantive fairness marked a shift towards scrutinizing the fairness and equity of contracts. Under the Indian Contract Act, 1872, a valid contract is formed when certain essential elements are present. One of these essential elements is "consideration." Consideration is a crucial aspect of a contract and is defined in Section 2(d) of the Indian Contract Act. Consideration is 'when at the desire of the promisor, the promisee or any other person has done or abstains from doing, or does or abstains from doing or promises to do or abstains from doing something, such act or abstinence or promise is called consideration for that promise. Despite its historical significance, the Doctrine of Consideration has faced challenges and critiques over time. Hence, in order to know how the doctrine has evolved in response to changing legal landscapes and explores its contemporary application, while shedding light on potential reforms in modern contractual relations. The Doctrine of Consideration reveals that it has encountered with various challenges and critiques over time. Additionally, the study also sheds light on potential reforms aimed at enhancing fairness, efficiency, and adaptability in contract law. The aim of this study is to comprehensively investigate the challenges and debates surrounding the doctrine of consideration, including discussions on the role of bargain, the impact of standard form contracts, and considerations in a globalized legal landscape.

Key Words- Common law traditions, Contractual relationships, Doctrine of Consideration, Enforce agreements

I. INTRODUCTION:

One of the main pillars of contract law is the Doctrine of Consideration, which shapes the basis for contractual duties. This theory, which has its roots in English common law traditions, has evolved over centuries to accommodate shifting social mores, shifting economic conditions, and evolving legal frameworks. Its development reflects broader changes in the structure of society and business as well as the development of contract law itself. Over time, the Doctrine of Consideration has been criticised and challenged. Its strict implementation, according to critics, may make it more difficult to enforce contracts, especially where there hasn't been a typical exchange of consideration between the parties. But the Doctrine of Consideration has proven remarkably resilient in the face of these difficulties.

This paper embarks on an exploration of the evolution and contemporary application of the Doctrine of Consideration. By delving into its historical significance and tracing its development through various legal jurisdictions, the study seeks to unravel the ways in which the doctrine has responded to changing legal landscapes. Moreover, it aims to shed light on its relevance in the context of contemporary contractual relations, considering the challenges posed by globalization, technological advancements, and evolving business practices. This research will gain insights into the strengths and limitations of the Doctrine of Consideration, while also contemplating potential reforms aimed at enhancing its efficacy and aligning it with the demands of modern commerce. Ultimately, this study seeks to contribute to the ongoing discourse surrounding contract law and provide valuable perspectives for policymakers, legal practitioners, and scholars alike.

II. HISTORY AND EVOLUTOIN OF CONSIDERATION:

Although consideration has been used in contract law from ancient times, English common law traditions are largely responsible for its formal development and recognition. The concept emerged during the medieval period when contracts were primarily based on mutual promises, often enforced through moral or religious obligations rather than legal mechanisms. James Barr

Ames was of the view that it is not possible to refer consideration to a single source.¹ Various views exist in which some see it as a modified generalization of quid pro quo in action for debt; some see it as a modification of Roman causa; some trace it to the action of assumption.² Following are the various categories wherein the Doctrine of consideration is evolved:-

- 1. Medieval Origins:** Early contract law placed more emphasis on morally or socially acceptable promises than on legally binding duties. Rather than consideration in the contemporary legal sense, contracts were frequently upheld on the basis of confidence and trust.
- 2. Formalization in English Common Law:** The doctrine of consideration began to take shape in English common law during the 16th and 17th centuries. Courts started requiring some form of valuable consideration to enforce contracts, emphasizing the idea that contracts should be supported by mutual exchanges of benefits between parties.³
- 3. Nineteenth Century Legal Developments:** The doctrine of contemplation was further impacted by important legal changes that occurred during the 19th century. The idea was refined by well-known instances like *Currie v. Misa* (1875), which emphasised the need for parties to exchange both benefits and drawbacks.
- 4. Modern Challenges and Adaptations:** The idea of consideration is still crucial to modern contract law, although it has also been criticised and challenged. As a result of their struggles with concepts like nominal consideration, past consideration, and the sufficiency of consideration, courts and legal experts have developed sophisticated interpretations and modifications to take into account changing social mores and financial realities.

Overall, the history and evolution of consideration reflect its foundational importance in contract law, while also highlighting the ongoing debates and developments surrounding its application in modern legal contexts.

¹ James Barr Ames, *The History of Assumpsit. I. Express Assumpsit*, 2 **Harv. L. Rev.** 1 (1888), https://moglen.law.columbia.edu/twiki/pub/EngLegalHist/StatuteLaborers/2_Harv.L.Rev.1888_1.pdf (last visited Mar. 30, 2024)

² Ibid

³ *Chapter VI: The Doctrine of Consideration*, in [Book Title], [Author Name] (ed.), [Page Number] ([Year]), available at <https://academic.oup.com/book/7682/chapter-abstract/152756587> (last visited Mar. 30, 2024).

III. CONSIDERATION AND CONTRACT THEORY

Our understanding of the function of contract law influences whatever ideas we may have about what kinds of contracts the government should enforce. It becomes necessary for us to take a quick look at the several ways that legal theory conceptualises contract law. Because of the vast amount of scholarship that has been done on the subject, investigating contract ideas is a difficult endeavour in and of itself. Of all the theories of contractual obligation, the most widely accepted ones are the bargain, reliance, and promissory theories. The research will now concentrate on the three main theories—promise theories, reliance theories, and bargain theories—because our goal is now to comprehend the requirements of consideration.

1. Promise Theory:

The idea of consideration is incompatible with promissory theory since the law is not concerned with the sufficiency of consideration, even though the necessity of consideration necessitates an exchange. Here, the underlying presumption is that contract freedom is incompatible with contracts as exchanges. The simple fact that a promise has been made serves as the substantive justification for its enforcement; consideration does not. Any such statement is not a promise in the strict sense if the party making it does not intend to bind herself. Other justifications for not keeping a pledge include unlawful activity, coercion, unethical agreements, etc. Therefore, neither justification for keeping or breaking promises needs to be taken into account. Therefore, the requirement of consideration becomes unnecessary in promissory theory.

2. Reliance:

The foundation of reliance theory is the idea that if a promisor persuades a promisee to depend on her promise and suffer a consequence, the promisor is required to make up for the loss resulting from that reliance. In this way, the promisor takes on an obligation to uphold the conditions of the contract that the parties have made. Therefore, in such a system of contracts, the requirement of consideration is not necessarily required.

3. Bargain:

As a substance-based theory, bargain theory concentrates on the terms of the parties' agreement rather than the parties themselves. One can trace the origin of bargain theories back to the *assumpsit* action. According to bargain theory, the purpose of contracts is to

enforce bargains. In this sense, offer, acceptance, and consideration are an “indivisible trinity, facets of one identical notion which is ‘bargain’. In other words, a contract is binding only if it has a notion of mutual exchange in it.⁴

IV. CONSIDERATION UNDER INDIAN LAW

According to Pollock and Mulla, the position of the consideration requirement in the Indian law is substantially the same as in English common law. This position has been settled by the Supreme Court of India as well. Consideration, in Indian contract law, is a necessary requirement for an agreement to be enforceable as a contract, barring some exceptions such as in the case of gratuitous promises where the law imposes a requirement of writing.⁵

"When, at the promisor's desire, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise," states Section 2(d) of the Indian Contract Act, 1872.

According to the previously mentioned sections, a valid consideration is one that:

- i. Does not violate any laws or conflict with their provisions.
- ii. Is not acquired fraudulently.
- iii. Does not contravene any public policy or be deemed immoral by a court of law.
- iv. Does not entail or suggest harm to any of the contract's parties.

Consideration can be defined as "an act, forbearance, or promise done or given at the request of the promisor to any other person," according to Pollock and Mulla, a seminal work on the Indian Contract Act. The most authoritative books on the Indian Contract Act take the stance that there is a benefit-and-detriment component to India's need of consideration. In a number of situations, the courts have also reaffirmed this stance. According to the Law Commission of India's 13th report, the term itself implies that consideration must be genuine and have some legal worth; hence, it is not necessary to state this explicitly.

⁴ C.J. Hamson, *The Reform of Consideration*, 54 **L.Q. Rev.** 233 (1938), available at <https://www.jstor.org/stable/24862302> (last visited Mar. 30, 2024)

⁵ POLLOCK & SIR DINSHAW FARDUNJI MULLA, *THE INDIAN CONTRACT AND SPECIFIC RELIEF ACTS* 46 (14th ed. Lexis India 2012)

V. 13th LAW COMMISSION REPORT:

The Indian Contract Act has undergone numerous amendments, according to the 13th Law Commission Report. It has attempted to update, streamline, and bring the act into line with modern standards through its suggestions. The Doctrine of Consideration was the subject of considerable discussion regarding this anachronism. The authors of the Law Commission Report have used numerous instances from distinguished legal scholars and jurists to support their argument that the Doctrine of Consideration's expansive application has become detrimental and should really be curtailed. Many situations that should be carried out are prevented from doing so by the Doctrine's rigour. The Law Commission's members documented a series of occurrences that demonstrated how the Doctrine of Consideration changed throughout time and how it now has to be curtailed or abolished because it isn't in line with modern society.

The panel suggests that even in the absence of consideration, a contract would be deemed enforceable if one party thinks the other can be trusted. This ought to be true not just The panel suggests that even in the absence of consideration, a contract would be deemed enforceable if one party thinks the other can be trusted. Therefore, after "promise," the commission recommended adding the terms "express or implied." The Law Commission pleaded that an offer should be permitted to remain available even in situations where it is deemed to have existed for a specific amount of time but is deemed void for lack of consideration. Thus, a component of future consideration that the commission endorses is included here.

It is refreshing to see the modifications that the Law Commission suggested in this area elsewhere in the report. This and the other planned modifications show that the Indian Contracts Act has to be modernised, and western nations have stepped up their efforts to do so. There is an urgent need for change in the area of consideration, and the Law Commission has sufficiently handled it. It is essential that the agreement contain a legitimate consideration in order to be enforceable. Any agreement that contains an illegal consideration is automatically deemed null and void since it does not meet the requirements of a contract. Therefore, why is it impossible to consciously, purposefully, and solely without deliberation engage into an agreement? It seems unnecessary.

VI. CASE LAWS:

1. In the case of **Durga Prasad vs. Baldeo**⁶, the plaintiff on the order of the collector of the town on his own expense constructed some shops in the Bazaar. The defendants promised to pay commission on the items which will be sold on the construction of the shop. This agreement was considered as a void agreement because in this case the consideration was not moved at the desire of the promisee. This brings to light that consideration has to be given at the desire of the promisee.
2. In the case of **Chinmaya v Ramayya**, there was an old woman who gave some immovable properties to her daughter through a registered deed. She also gave directions to her daughter to pay some money annually to her aunt who is the sister of the old woman. She also directed her daughter to pay an annuity to Y – the old woman's sister. On the same day, her daughter entered into an agreement with the aunt to pay her the amount. The Daughter failed to pay the money annually and a case was filed by the aunt. The daughter took a plea that the consideration did not move from the old lady to her Daughter and hence it is not a valid contract. The court, in this case, held that the word 'the promisee or any other person' proves that the consideration need not only move from the promisee and hence the aunt was entitled to maintain a suit for recovery⁷.
3. In **Dunlop Pneumatic Tyres Co. vs. Selfridge & Co. Ltd, Selfridge & Co. Ltd**⁸ bought tyres from Dunlop and then sold them to a sub dealer. The sub-dealer agreed not to sell the tyres at a price which is less than the list price which has been given by Dunlop Tyres and for each tyre which will be sold below the list price Damages will be paid to Dunlop. It was held that Dunlop is a stranger to the Contract between the sub-dealer and Selfridge & Co. Ltd and hence the suit will not be considered as maintainable.
4. In **Advertising Bureau v. C.T. Devaraj**, the circus owner made a contract with the plaintiff for advertising about the circus. The advertiser did not make any contract with the financier of the circus. Also, the advertiser was not a party to the contract between financier and owner of the circus. Since there was no privity of contract between the advertiser and the financier, the suit was dismissed⁹.

⁶ *Durga Prasad v. Baldeo*, (1880) 3 ILR All. 221 (India)

⁷ *Chinnaya v. Ramayya Case Analysis*, iPleaders Blog, <https://blog.ipleaders.in/chinnaya-vs-ramayya-case-analysis/> (last visited Mar. 30, 2024)

⁸ *Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge & Co. Ltd.*, [1915] A.C. 847 (H.L.)

⁹ *Aries Advertising Bureau v. C.T. Devaraj*, (1995) 3 SCC 250 (India)

VII. CONCLUSION

In summary, it is indisputable that the doctrine of consideration has been and continues to be a crucial prerequisite for the creation of all legally enforceable agreements. However, the doctrine's reach has greatly expanded throughout time, from promoting legal certainty to occasionally endorsing the exact reverse, leading to conflicting results. Consequently, it is accurate to state that the law commission's proposals are both pertinent and essential. They are also modest because they simply call for restrictions on the ideology rather than its total abolition. In order for the Indian Contract Act to progress or become outdated in light of the times, it is necessary that modifications must be completed and put into effect as soon as practicable. Only then can India and England, its commonwealth partner, get back on equal footing. When a long-standing law becomes outdated or the general public demands a change, it is only barbarous to maintain it while ignoring the wishes of the populace. Legislators are instead expected to adapt to the times and welcome new legislation that fits in with the twenty-first century and contributes to improving the standard of the Indian legal system globally.

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