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# **UNDERSTANDING THE CONCEPT OF CONSIDERATION UNDER THE INDIAN CONTRACT ACT: A COMPREHENSIVE OVERVIEW**

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## **ABSTRACT:-**

Consideration is a fundamental concept in contract law, serving as the cornerstone of contractual obligations. In the Indian Contract Act, 1872, consideration holds significant importance, as it delineates the essence of a valid contract. Consideration forms the bedrock of contractual relationships under the Indian Contract Act, 1872. It ensures that parties enter into agreements willingly and with a clear understanding of their obligations. Understanding the nuances of consideration is essential for drafting enforceable contracts and resolving disputes. By comprehending the intricacies of consideration, individuals and businesses can navigate contractual transactions with confidence and clarity. This article aims to provide a comprehensive understanding of consideration under the Indian Contract Act, exploring its definition, types, essentials, and legal implications.

## **INTRODUCTION:-**

Consideration is the foundation of every contract. The law insists on the existence of consideration if a promise is to be enforced as creating legal obligations. A promise without consideration is null and void.

## **Meaning and definition:-**

In the famous English case of *Currie v. Misa*, consideration was defined by Lush, J. as follows – ‘a valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.

Section 2(d) of Indian Contract Act defines consideration as: “When, at the desire of the promisor, 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.”

As per this definition, consideration is something in return of a promise which consists of :

1. an act, abstinence or forbearance,
2. done at the desire of the promisor,
3. by the promisee or any other person,
4. which can be either already executed or is in the process of execution or may still be executory.

Thus, if at the desire of A, B agrees to paint a picture for him at an agreed remuneration, the painting of the picture would be regarded as consideration moving from B and the remuneration as consideration moving from A.

#### **Essential elements/Requirements of consideration:-**

The elements of consideration can be described as follows :

##### **(1) Consideration must move at the desire of the promisor:-**

An act or abstinence without any request from the promisor is a voluntary act and does not come within the definition of consideration. Similarly, an act or abstinence done at the request of any person other than the promisor does not constitute consideration. In other words, an act shall not be a good consideration unless it is done at the desire of the promisor.

#### **Example:**

1. The collector of a district asked D to spend some money on the improvement of a market and he did so. The shopkeepers of the market promised to pay commission to D on their sale. Later on they refused to pay the commission. D cannot demand payment from the shopkeepers who are using the market for having improved the market as he had done so at the desire of the collector and not at the request of shopkeepers<sup>1</sup>.

2. A sees B drowning and saves his life. A cannot demand payment for his services as it is a voluntary act on his part and B never asked him to do so.

**(2) Consideration may move from the promisee or any other person who is not party to the contract :-**

It means that so long as there is consideration for promise, it is immaterial who has furnished it. It may move from the promisee, or from any other person if the promisor has no objection.

**Example:**

1. An old lady, by a deed of gift made over certain property to her daughter D under the direction that she should pay her aunt, P (sister of the old lady), a certain sum of money annually. The same day D entered into an agreement with P to pay her the agreed amount. Later, D refused to pay the amount on the plea that no consideration had moved from P to D. Held, P was entitled to maintain the suit as consideration had moved from old lady, sister of P, to the daughter D<sup>2</sup>.

That the above case is best example of **Doctrine of Privity of Consideration** according to which stranger to consideration can sue.

A consideration moving from third party who is a minor is no consideration.

**(3) Consideration is an act, abstinence, forbearance or detriment :-**

At times consideration is taken as misnomer of money form of exchange. The legal term consideration does not mean payment of money only. The Contract Act says that the consideration can be in the form of an act, abstinence, forbearance or detriment.

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<sup>1</sup>Durgaprasad v. Baldeo [1880] 3 All. 221

<sup>2</sup>Chinnayav. Rammaya [1882] 4 Mad. 137.

**(a) Consideration as an act :-**

An act done by a person can constitute consideration. Where a person executes an undertaking in favour of a bank on the basis of which he receives a substantial benefit of having a current overdraft account with a bank, the facility of overdraft account cannot be said to be without consideration.

**(b) Consideration as an abstinence –**

To constitute abstinence as consideration, one must refrain or promise to refrain from doing something that he or she is privileged to do.

**Example** – X promised to pay his nephew Y, a sum of Rs. 50,000 if he would refrain from drinking, using tobacco, and playing cards for money until he becomes 21 years of age. The nephew refrained from all the specified activities as he was requested to do but his uncle died without making the payment. He claimed the money out of the uncle's estate as his legal right. Held that, he abandoned his legal right and restricted his lawful freedom of action upon the faith of his uncle's agreement although it may seem that such performance actually did not prove to be a benefit to the promisor. Such detriment however amounted to consideration and he was granted the promised sum of Rs. 50,000.

**(c) Consideration as forbearance –**

Forbearance means foregoing one's legal right or claim. Creditor forbearing to enforce execution and allowing time to pay at the request of the debtor is a good consideration.

**Examples:**

1. An agreement to accept a decree and not to appeal against it when parties to it would have appealed is one which is supported by good consideration.
2. A promises to pay C, his law partner, Rs. 750 if C will give up his part-time job in a dance band for the next nine months. C lives up to the terms of the offer, but A refuses to pay. If C brings suit to recover Rs.750, A is liable. Here again we have a unilateral contract, promise in exchange for a negative act (or a forbearance) – the act of not playing in the band. C's refraining constituted both

an acceptance of the offer and a legal detriment to him; thus we can see that A's promise was supported by consideration.

**(d) Consideration as detriment :-**

A detriment suffered by the promisee or any other person, whether actual or prospective, can constitute a good consideration. The ordinary contract of guarantee is good example of detriment form of consideration. In consideration of A's lending B Rs.1000, C promises to repay the loan if B does not. Here C derives no benefit, but A suffers detriment by parting with his money, and this is enough consideration to support C's promise provided A lends the money at C's request.

**Example:** X, a publisher, promises Y: "If you will loan Rs. 5,000 to my nephew for one year, I will run all your advertisements during that time at half the regular rate." Y makes the loan, but X refuses to provide advertising space at the reduced rate. If Y sues X to recover damages for breach of contract – that is, Y seeks to enforce X's promise – X is liable. Y's act of making the loan to the nephew constituted not only an acceptance of X's offer but a detriment to Y – the parting with something of value where he was not otherwise legally obligated to do so. Thus X's promise, supported by consideration, is enforceable against him.

That it is not necessary for the promisor to receive any benefit as long as the promisee or someone else suffers a detriment.

**(4) Consideration can be past, present or future :-**

**(a) Past consideration** – A past consideration consists in an act already done by one as consideration for a promise of the other. Thus, when a person promises to compensate another in return for what the latter had done for the promisor in the past or before making of the promise, such promise is said to be for past consideration, *i.e.* consideration which took place in the past. Past consideration is as good as present or future consideration. **For example**, A does some work for B in the month of April without expecting any return from B. Later on, in June, B promises to pay him some money for the work done in April. This constitutes a valid contract as the work done by A is of the nature of past consideration.

**Example**– "A" provided extra services to B (his master), after which B promised him a bonus for the same. Later on B refused to pay the bonus. Held that, if the servants put forth extra work

in consideration whereof a bonus is subsequently promised to them by the masters, it is in law a promise for past services which is good under Indian Law.

Under the English law, past consideration is no consideration. But under the Indian Law past consideration is good consideration because of the use of the words “has done or abstained from doing” in the definition of “consideration”.

**(b) Present (Executed) Consideration** – The consideration which moves simultaneously with the promise is present consideration. It consists in “doing” or “abstaining from doing something”. The best example of present consideration is cash sale where performance by both the parties (seller and buyer) is simultaneous. Another example is a contract of marriage where there is simultaneous performance by both the parties.

The present consideration is also known as executed consideration because it emphasizes on the execution part of performance. A may offer B \$10 if B runs from London to Bath. Even though B says that he will accept A’s offer, yet until he has run from London to Bath, (*i.e.* B has performed his part of contract), there is no consideration for A’s promise. B accepts the offer and by running from London to Bath simultaneously executes the consideration which makes A’s promise a binding contract.

Past consideration must be distinguished from the executed consideration. The consideration (running from London to Bath) in the above case is executed after the offer or request and simultaneously with the acceptance. But, if A promises B \$10 in consideration of having run from London to Bath last week, the consideration is past. It is something wholly done before the offer or request and before acceptance of the offer.

**(c) Future (Executory) Consideration** – A promise to do something in future is legal consideration. When the consideration from one party to another is to move at some future date, it is called future consideration. The consideration for A’s promise to B may be a promise by B to A. The consideration is then said to be executory. If A *promises* to marry B in consideration of B *promising* to marry A, the promise made by each is the consideration for the promise made by the other.

**Examples:**

1. M and B enter into a contract in April under the terms of which M agrees to build a swimming pool for B in June, B promising to pay Rs. 2,500 in return. M later refuses to perform, and B sues him to recover damages for breach of contract. M is liable; that is, his promise is enforceable.

**(5) Consideration must be lawful** – According to section 10 of the Act, “All agreements are contracts if they are made for a lawful consideration”. So a consideration must be lawful without which an agreement is void. Section 23 states that consideration is unlawful if

- (a) it is forbidden by law;
- (b) or, is of such a nature that if allowed it would defeat some law of the country;
- (c) it is fraudulent;
- (d) it involves injury to the property or person of the other;
- (e) court regards it as immoral or opposed to the public policy.

**As per section 24** of the act an agreement void if consideration and objects unlawful in part. There may be cases where one part of consideration is unlawful but the other is not. In such cases the whole agreement is void if the unlawful part cannot be separated from the lawful part.

**Example** – A promises to work for B who runs both illegal and legal business for a sum of Rs. 4,000 per month and B agrees to pay this amount to A. The legal business can be separated from illegal business, the part of salary pertaining to legal business is lawful consideration.

In the above case, if legal and illegal businesses cannot be separated, whole salary of A will constitute unlawful consideration.

**NUDO PACTO NON-ORITUR, i.e An agreement without consideration is void. Exceptions to the doctrine of consideration:-**

So far, we have seen that an agreement has to be supported by consideration to be enforceable at law. But there may be certain circumstances where it will not be reasonable to apply the doctrine of consideration to meet the basic motives of the law. Section 25 of the Indian Contract Act, 1872 takes care of such circumstances. It says that,

“An agreement without consideration is void unless it is in writing and registered or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.”

Such circumstances are elaborated below:

**(1) Love and affection [Sec. 25(1)]** – An agreement is enforceable even if there is no consideration, if it is

(i) expressed in writing,

(ii) registered under the law for the time being in force for the registration of documents,

(iii) is made on account of natural love and affection, and

(iv) between parties standing in a near relation to each other.

In simple words, a written and registered agreement based on natural love and affection between near relatives is enforceable even if it is without consideration.

**Examples:**

1. A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B in writing and registers it. This is a contract.
2. An agreement by a person entitled to a certain share in the income of a Trust, to pay out of that share a certain amount to his mother over and above her own share of that income is supported by consideration as per section 25 (1) of the Act.

**Note:** The Act does not provide any guidance as to who is near relative. The expression would therefore include parties related by blood or marriage. Further, nearness of relationship does not necessarily import natural love and affection.

3. A Hindu husband, after referring to quarrels and disagreement between him and his wife executed a registered document in favour of his wife agreeing to pay her for maintenance, but no consideration moved from the wife. Held, the agreement was void for want of consideration – Rajlukhyv. Bhoothnath, (1900) C.W.N. 488 as the essential requirement

that the agreement is made on account of natural love and affection between the parties was missing.

**(2) Compensation for past voluntary services [Sec. 25 (2)]** – A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable, even though without consideration. In simple words, a promise to pay for a past voluntary service is binding.

**Examples:**

1. A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.
2. A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.
3. A says to B, "At the risk of your life you saved me from a serious accident. I promise to pay you Rs. 1,000." There is a contract between A and B.
4. X agreed to pay Y Rs. 5 per mensem for life in consideration of Y having trained X the art of singing. It was found that Y's sister and not Y himself had rendered those services for X. In a suit by Y it was held that as Y himself had done nothing for X, there was no consideration for the agreement and hence it was not enforceable. [AIR 1916 Pat. 80 (81)]

**(3) Promise to pay a time-barred debt [Sec. 25(3)]** – A time barred debt is a debt which is not recoverable because of lapse of specified time (presently 3 years) under the Limitation Act. In the normal course, once a debt becomes time barred, the lender is left with no remedy to get his money back. Therefore a debtor is not legally bound to pay the debt if it becomes time-barred.

In such a case, if the debtor subsequently promises to pay the time barred debt, apparently there is no consideration moving from the other party but the contract is still enforceable. This is because, under section 25(3) of the Act, a promise by a debtor to pay a time-barred debt is enforceable provided:

(i) it is made in writing,

(ii) is signed by the debtor or by his agent generally or specially authorized in that behalf, and

(iii) the debt must be such “of which the creditor might have enforced payment but for the Law of the limitation of suits.”

The promise may be to pay the whole or any part of the debt.

**Example** – D owes C Rs. 1,000 but the debt is barred by the Limitation Act. D signs a written promise to pay C Rs. 1,000 on account of the debt. This is a contract.

Section 25(3) applies only :

When a promisor himself was liable for the time barred debt. This means sub-section 25(3) would not apply to a case of a promise to pay a time barred debt payable by a third party.

**(4) Completed gift [Explanation 1 to Sec. 25]** – The rule “No consideration, no contract” does not apply to completed gifts. According to *Explanation 1* section 25, nothing in section 25 shall affect the validity, as between the donor and the donee, of any gift actually made.

Thus transfer of properties by one person to the other as a gift according to the provisions of the Transfer of Property Act (*i.e.* by a written and registered document) is valid and a person transferring the property cannot subsequently demand the property back on the ground that there was no consideration.

**(5) Consideration need not be adequate (Explanation 2 to Sec.25)**- An agreement to which consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the court in determining the question whether the consent of the promisor was freely given.

example:- A agreed to sell a watch worth Rs.500 for Rs.20, A's consent to the agreement was freely given. The consideration, though inadequate will not affect the validity of the contract.

**(6) Agency [Sec. 185]** – Under section 185 of the Indian Contract Act, no consideration is necessary to create an agency, *i.e.* a transaction of agency. For giving a person authority to act as agent, consideration is not necessary. Thus if A authorises B to act on his behalf (act as an agent) before C, and B agrees to do so, the contract is enforceable at the court of law although no consideration is moving from A to B. A will be bound by the acts done by B on his behalf as

against C. Even a gratuitous agent can be held liable for negligence. The principle of Promissory Estoppel emanates from this provision.

## CONCLUSION

Without lawful consideration contract is not meaningful. Consideration is an integral part or essential element of a valid contract. Lawful consideration follows some rule then we called it good consideration. But there are some exceptions to the rule – No consideration, No contract.

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