

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

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ISSN

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# **FRANCHISEE AGREEMENT: AN ANALYSES**

AUTHORED BY - DEEP KAPADIA

## **Abstract**

Franchisee concept is growing with leaps and bounds, it is seen out of every 7 businesses 1 turns up into the franchisee systems. A wide analyses shows that the franchisee system is cost effective but gives commanding returns.

Also, the risk involve of investment, dependency on employees, non-attention of employees and is divided as we get the franchisee owner who himself is involved in business as if it is his own, and act with full interest and enthusiasm to grow the business.

Though the Franchisee system is highly preferred but there are yet no laws in India. So, how do we look towards the Franchisee development in India. Very simple answer is Franchisee can be analysed or measured in law on following aspects:

1. Intellectual Protection Act
2. Supplier-Distributor relationship/ service provider relationship
3. Taxation systems
4. Franchisee and Franchisor relation
5. Dispute resolution<sup>1</sup>

But, above it, most important is Franchisee Agreements, and majorly entire India depends on working of franchisee under the roof of 'agreement' i.e. Contract Act, 1856.<sup>2</sup>

This Research paper, probe in the analyses of the agreement formation for the 'Franchisee'. Generally, the franchisee agreement or any business agreement goes with following terms:

1. Parties involved in the franchisee
2. Purpose or type of franchisee
3. Grant of Franchisee- Territorial rights, Terms and renewals and Franchisee IP rights.

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<sup>1</sup> In my last research paper on 'Arbitration in Franchisee System', published by IJLRA, p.49 have given details on dispute resolutions.

<sup>2</sup> It is very difficult to understand how the company law is extrapolated in determining the franchisee system

4. Franchisee Income: Franchisee fees and Royalty or terms of payments
5. Franchisor obligations- Training support, advertising and branding support and other facilities
6. Franchisee Obligations- SOPs, Reporting requirements, any compulsions of buying products or other aspects, and Non-compete Clause.
7. Intellectualproperty rights-  
Ips, Its grant extends, Protecction and infringement clause
8. Dispute resolution- Arbitration and Governing laws
9. Considerations- Earning claims and capital Investments
10. Termination and Exist clause- Grounds of termination, Exit clause and post termination obligation.
11. Risk information terms- Business risk and legal risk
12. Miscellaneous Provisions- amendments, assignment and transfer, and force majeure

Franchisee Contract is amalgamation of the franchisor rights to protect its idea, create his right of the royalty, give right of the franchisee, create the roles of the both party and reserve the profits with restriction on production/ services within the area limitation and granting the rights of area and accordingly give the sufficient earning.

When franchisee agreement is develop the content is not related to one law, rather it is related to 14 types of law Viz, The Indian Contract Act, Labour Law, Competition act, IPR, Companies act/ Partnership acts, Consumer protection act, Income tax/ GST, Banking laws, copy rights and trade mark, Arbitration act and FEMA (in concern with international brands) etc.

While constructing such agreement one needs to also take care of:

1. Uniqueness of franchisee
2. Exclusivity of product / area
3. Price restriction
4. Resale rules and rates.
5. Model of operation, specially marketing and product display
6. Maintaining the position, charges and royalty of franchisee consultant.

These all the above mentioned points clearly explains that Contract law alone is not sufficient to handle such agreement. So, it makes such agreement unique and competitive. So, we are inclined to place such agreement under the special contract yet out of the scope of contract act. These give the need of giving special concern for creating new law of contract.<sup>3</sup>

So, let's unlearn the contract with special view of making regular contract, under 14 laws and few landmark judgments over agreement issues in franchisee agreement.



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<sup>3</sup> Mentioned in my LLM dissertation at Mumbai university.