



Consideration in the Law of Contract: A Critical Analysis

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ARTICLE DETAILS	ABSTRACT
Research Paper	<i>Consideration is a fundamental element in contract law, ensuring that agreements are legally enforceable. This paper examines the concept of consideration, its role in contract formation, exceptions to the rule, and judicial interpretations. The study compares common law and statutory perspectives, with a focus on Indian, English, and American contract law. The research highlights evolving trends, including the role of promissory estoppel and the growing flexibility in contractual enforcement.</i>
Keywords :	
<i>Consideration, contract law, promissory estoppel, contractual obligation, common law.</i>	

1. Introduction

The doctrine of consideration plays a crucial role in determining the enforceability of a contract. Rooted in common law, it ensures that a contract is not merely a gratuitous promise but involves reciprocal obligations. Consideration can take various forms, including money, goods, services, or even forbearance. However, modern legal systems have introduced exceptions and alternative doctrines, such as promissory estoppel, to address rigidities in traditional consideration rules.

This paper explores the origins, definitions, and practical applications of consideration in contract law while analyzing its evolution through judicial precedents and statutory modifications.

2. Definition and Essentials of Consideration

2.1 Definition

Section 2(d) of the Indian Contract Act, 1872, 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."



Under English law, consideration is commonly defined as something of value given in return for a promise (Currie v. Misa, 1875). Similarly, American contract law recognizes consideration under the Restatement (Second) of Contracts.

In Indian contract law, consideration does not necessarily have to move from the promisee alone. Unlike English law, which strictly adheres to the doctrine of privity of consideration, Indian law permits a third party to furnish consideration for a contract. This principle is evident from the definition of consideration under Section 2(d) of the Indian Contract Act, 1872, which states that consideration may move from “the promisee or any other person.”

The Indian courts have upheld this broader interpretation in various judgments. In Chinnaya v. Ramayya (1882), the Madras High Court ruled that a contract is enforceable even if the consideration is provided by a third party, as long as it is done at the desire of the promisor. This position contrasts with the English case Tweddle v. Atkinson (1861), where it was held that a third party cannot sue on a contract even if the contract was made for their benefit.

Despite this flexibility in consideration, the doctrine of privity of contract still applies in India. A third party who is not a party to the contract generally cannot enforce the contract, even if they have provided consideration. However, exceptions exist, such as beneficiary contracts (e.g., trust arrangements) and family settlements, where Indian courts have allowed third parties to enforce rights.

Thus, while Indian law does not strictly follow the doctrine of privity of consideration, it maintains the general rule of privity of contract with certain exceptions based on equity and fairness.

In Indian contract law, consideration can be classified into three types based on the timing of its execution:

1. **Past Consideration** – A benefit or act done before the promise is made, which later becomes the basis for a contract. Indian law recognizes past consideration as valid if it was done at the promisor’s desire. For example, if A performs an act for B without any prior agreement, and B later promises to pay A for it, this constitutes past consideration. This is valid under Section 2(d) of the Indian Contract Act, unlike English law, which generally does not recognize past consideration.
2. **Present Consideration (Executed Consideration)** – When consideration is provided simultaneously with the promise, it is called present or executed consideration. This occurs when one party performs an act in exchange for an immediate promise or benefit. For instance,



purchasing goods from a shop by making an instant payment is an example of executed consideration.

3. **Future Consideration (Executory Consideration)** – When a promise is made in exchange for a future performance, it is called future or executory consideration. In such cases, both parties agree to perform their respective obligations at a later time. For example, in a contract where A agrees to deliver goods next month and B agrees to pay upon delivery, the consideration is executory.

Indian law is more flexible than English law in recognizing past consideration and allows third-party consideration, provided it is given at the desire of the promisor.

2.2 Essentials of Valid Consideration

For consideration to be valid, it must satisfy the following conditions:

1. **Must Move at the Desire of the Promisor** – The act or forbearance must be done at the request of the promisor (*Durga Prasad v. Baldeo*, 1880).
2. **May Move from the Promisee or a Third Party** – Unlike English law, Indian law permits consideration from a third party.
3. **Must Be of Some Value in the Eyes of the Law** – The courts generally do not assess adequacy but require some value to exist.
4. **Can Be Past, Present, or Future** – Indian law accepts past consideration, unlike English law, which typically does not recognize past consideration.
5. **Must Be Lawful** – Consideration must not be illegal, immoral, or opposed to public policy.

3. Consideration in Different Legal Systems

3.1 Common Law (English Law)

Under English law, consideration is a prerequisite for a valid contract. The courts emphasize the need for reciprocity (*Dunlop v. Selfridge*, 1915). However, exceptions like promissory estoppel (*Central London Property Trust v. High Trees House Ltd.*, 1947) allow enforcement of promises without consideration in specific circumstances.

3.2 Indian Contract Act, 1872



Indian law follows the traditional concept of consideration but is more flexible in terms of past consideration and third-party involvement. Additionally, Section 25 of the Indian Contract Act lists exceptions where agreements without consideration are still enforceable, such as:

- Agreements made out of natural love and affection (if registered).
- Compensation for past voluntary services.
- Promises to pay a time-barred debt.

3.3 American Law (Restatement of Contracts)

The American legal system has moved toward a more equitable approach by recognizing doctrines like promissory estoppel as an alternative to consideration (Restatement (Second) of Contracts, Section 90).

4. Exceptions to Consideration

Several exceptions exist where a contract may still be enforceable despite the absence of consideration:

1. **Promissory Estoppel** – Recognized in both English and American law but not explicitly codified in Indian law (*Central London Property Trust v. High Trees House Ltd.*).
2. **Contracts under Seal** – In common law jurisdictions, a deed does not require consideration.
3. **Charitable Pledges and Gratuitous Promises** – In some cases, such promises are enforced based on reliance.
4. **Agency Contracts** – Under Indian and English law, a contract of agency does not require consideration.

5. Judicial Trends and Contemporary Developments

The doctrine of consideration has evolved, particularly with the rise of unjust enrichment and reliance-based enforcement in modern contract law. Courts are increasingly willing to uphold promises even in the absence of traditional consideration if equity and fairness demand it.

For example, in *Williams v. Roffey Bros & Nicholls (Contractors) Ltd.* (1991), the English Court of Appeal expanded the scope of consideration by recognizing practical benefits as valid consideration. Similarly, Indian courts have upheld the enforceability of oral agreements based on reliance and performance.

6. Conclusion and Recommendations

Consideration remains a cornerstone of contract law, but its rigid application is increasingly being softened by doctrines like promissory estoppel and unjust enrichment. While English and American law have shown greater flexibility, Indian law continues to adhere to a more structured framework.

Recommendations:

1. **Codification of Promissory Estoppel in Indian Law** – Given its growing significance, promissory estoppel should be explicitly recognized under the Indian Contract Act.
2. **Recognition of Reliance-Based Enforcement** – Courts should increasingly consider the doctrine of reliance as a basis for enforcing promises.
3. **Balancing Formality with Commercial Realities** – Modern commercial transactions require a pragmatic approach to consideration rather than strict adherence to historical doctrines.

By embracing these changes, contract law can remain robust while adapting to contemporary economic and social needs.

References

- The Indian Contract Act, 1872.
- Currie v. Misa (1875) LR 10 Ex 153.
- Dunlop v. Selfridge [1915] AC 847.
- Central London Property Trust Ltd. v. High Trees House Ltd. [1947] KB 130.
- Williams v. Roffey Bros & Nicholls (Contractors) Ltd. [1991] 1 QB 1.
- Restatement (Second) of Contracts (1981).