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NATURE OF CONTINGENT CONTRACTS IN INDIA

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Abstract

The purpose of this paper is primarily to explain the essence of contingent contracts in India and to illustrate how a contract fits under the concept of contingency. The aim of writing this paper is not only to explain how contingent contracts operate in India, but also to perform a comparative analysis on how a wagering arrangement varies from a contingent contract. This research would also discuss that, because of its wagering nature, those agreements fall under the purview of illegitimacy. Why are such arrangements such as insurance and reimbursement protected by contingent contracts, while betting is covered by a wagering arrangement that is invalid ab initio? This is the issue that this essay is basically aimed at exploring and addressing.

Keywords: *Contract; Contingent; Indian Contract Act, 1872; Section 31-36.*

I. INTRODUCTION

The discharge by execution of the contract is the scenario in which the contract has already established and the case is guaranteed. A deal that is open to negotiation is not a contract at all. The parties agree that they will not be bound by the arrangement until and until a written contract is executed, which is executed only at the will of the parties. The contingent contract relies on the volatility of the occurrence, i.e. the performance is deferred by the contingent contract before the unknown event happens[1].

In the case of discharge by fulfilment of the contract, the contract is still in effect once it has been signed by the parties. Whereas, as agreed by the parties, the contingent arrangement comes into being only when the occurrence arises or does not happen. Contract discharge by results is time specified as well as place-specific, though those provisions may not be included in the contingent contract. Since entering into the contract, the parties shall comply with the provisions in the event of discharge of the contract by success, and the discharge of the contract is done only when all parties have satisfied their obligations under the contract. In the case of a contingent contract, before an incident happens, the parties have the right to withdraw from the arrangement. The key contractual obligation is not enforceable in the contingent contract until and until the condition, which is an unpredictable occurrence of the case, is fulfilled[2].

A contract is defined by the Indian Contract Act, 1872, Section 2(h) as "an agreement enforceable by law." These arrangements are of various kinds and contingent contracts are one such kind. Contingent contracts are specified by Section 31 of the Indian Contract Act as a contract to do or not to do an act whether there is or is not an occurrence, case, or collateral to the said contract. A contingent contract is, thus, simply a binding contract on an unknown occurrence that will only be enforceable by statute if the circumstance or event agreed by both sides happens or does not occur. By anticipating a potential case, a contingent contract is usually made. In certain cases, it may also cover for a previous case, but there is confusion about not understanding how it occurred. A contract contingent in essence differs from a proposal since there is no contract in a proposal without meeting the terms, but the performance of the contract will not be requested in a contingent contract until an unknown future occurrence takes place[3].

The Supreme Court of India went still further to differentiate between the impossibility of contractual performance and the lack of contractual performance. Loss of a contract basically indicates the failure of the anticipated potential event, while the impossibility of executing the contract is attributed to the existence of an unpredictable event, on the other hand. The three key components of the contingency contract are as follows: the contingency is the collateral of the contract, the contingency depends on the will of the individual, and the state of the contingency is the precedent of the contract. The ICA has also laid down provisions which decide when it is possible to declare a contingent contract void. According to Section 32, where a contingent contract is formed upon the occurrence of an unknown future event, the contract becomes invalid if the said event becomes unlikely[4].

Similarly, under Section 33, a contingency deal concluded on the basis of the non-occurrence of an unknown future case immediately becomes unenforceable if such a future occurrence becomes unlikely. Examples of contingent arrangements include insurance contracts, reimbursement contracts, and promises. The court ruled, in the famous case of Chandulal Harjivandas v CIT, that insurance and indemnity arrangements are contingent contracts[5].

II. DISCUSSION

Provided that a contingent contract is a contractual contract in simplified words, the contingent provisions may either be predecessor or subsequent. If the contract is not to be valid before the occurrence stated happens, it may be termed as precedent. In the other hand, whether a previously binding contract determines whether or not the occurrence has happened, it is consequential. The duties resulting from a contingent arrangement will bind the parties to the following conditions: each party is entitled to withdraw from the deal before the incident happens. In the other hand, the major commitments are not accrued until the incident occurs, so as long as the event has the potential to occur, the parties will not withdraw. Thirdly, in order to keep the incident from happening, no side could do something[6].

In evaluating the role it plays in economic transactions, the use of contingent contracts is better known. The insurance agreements that are dependent in nature are one such essential feature. Insurance is simply a type of obligation to do anything if there is a potential incident, it will be contracted between the parties and the offeror will be responsible for it. The offeror, who is basically an insurance provider, offers to pick on the liability of the offeror in all types of insurance such as fire insurance, life insurance, auto insurance, etc., and with this, the offeror agrees to give the company a certain amount of premium/money[6].

In order to be valid, any insurance includes the presence of an insurable interest. An insurance policy is no more than a wagering deal without this, and therefore it will be invalid. Insurable interest means the probability of loss from which, owing to the existence of an enforceable potential case, the party is protected. In the other hand, none of the partners runs a chance of failure in a wagering deal, except for one of the arrangements itself. One of the other manifestations is that a contingent arrangement can be included equally in an assurance and warranty contract. Generally, this happens because the seller has no connection with the counterparty. In areas of Mergers and Acquisitions, where fees such as earn-outs, buyer stock, seller notes, etc. are part of it, a contingent deal is still used widely[7].

The term 'contingent' suggests that every other thing or reality relies on an event or situation. The 'contingent contract' suggests that the enforceability of that contract is explicitly dependent on an occasion arising or not occurring. In the Indian Contract Act, 1872, the term was used to mean conditional. An sign of the future is ambiguity[7].

Contingent contracts are all about predicting the probabilities of an uncertainty being probable, determining the effects if the occurrence does not occur, and evaluating the ability to change the implications. The Contracting Parties can provide that the success of a contractual obligation depends on a contingency, even if the contract is validly established. The parties agreeing to the terms accept that the rights will be upheld and therefore the obligations will be attributed to the event of the contingency of a legal business contract being signed[7].

The word 'Contingent Contract' is defined in Section 31 of the Indian Contract Act, 1872, as:
When an occurrence, collateral to such a contract, happens or does not occur, a contingent contract is a contract to do or not to do anything.

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In plain terms, contingent contracts are ones where the duty of the promisor is satisfied only after certain requirements are fulfilled. Insurance, indemnity, and warranty arrangements are some examples of contingent contracts.

Illustration: M is a private insurer and has entered into an insurance arrangement with N for M's property. Under the terms, if his home is burned against the annual premium of Rs 8,000, M offers to pay N a sum of Rs 1 lakh. This arrangement is also dependent. A Contingent Contract must have three basic features. They are:

1. The success of the contract depends on the existence or non-occurrence of a certain incident in the future. A contingent contract from a regular contract is differentiated by this reliance on a likely future case.
2. This case must be unpredictable, meaning the potential event's existence or non-occurrence is not definite, i.e. it might or may not occur.
3. The case must be a collateral or statutory occurrence.

A contingent arrangement may be focused on the outcome of a potential circumstance that is unknown. In those situations, once the incident occurs, the promisor is liable to do or not do anything. However, once the incident takes place, the contract cannot be enforced by statute. When it becomes unlikely for the occurrence to occur, so the contingent contract is invalid. Section 32 of the Indian Contract Act, 1872, establishes this provision.

The non-occurrence of an unknown potential circumstance may be the basis for a contingent contract. In those situations, if the incident does not happen, the promisor is liable to do or not do anything. The contract will not, however, be imposed by statute until it becomes unlikely for the occurrence to occur. If the occurrence takes place, so the contingent deal is invalid. In Section 33 of the Indian Contract Act, 1872, this provision is stated.

Section 34 of the Indian Contract Act, 1872 states that if a contract depends on how a person may act at a future time, until the party does something that makes it difficult for the event to happen, the event is considered impossible[8].

There will be a contingency arrangement where if a potential unknown occurrence exists within a specified period, a party agrees to do or not do that. If the occurrence does not occur and the time expires, such a contract is invalid. It is therefore invalid if the occurrence of the case becomes unlikely by the time specified. In Section 35 of the Indian Contract Act, 1872, this provision is stated[8].

Contingent arrangements may be focused on the non-occurrence within a specified period of an unknown future case. In such situations, if the incident does not occur during the said period, the promisor is liable to do or not do anything. If the fixed time has passed and the incident has not occurred previous to the expiry of the time, the arrangement will be imposed by statute.

Even, if it becomes clear that before the time has passed, the incident will not happen, then it will be implemented by statute. In Section 35 of the Indian Contract Act, 1872, this provision is stated[9].

If a contingent contract is based on an unlikely occurrence arising or not happening, so such a contract is invalid. This is unaware about whether or not the parties to the deal are mindful of the impossibility of doing so. Section 36 of the Indian Contract Act, 1872, establishes this provision[9].

III. CONCLUSION & IMPLICATION

Any basic aspects need to be there for a deal to be a contingent contract. These components form a contingent contract and a contract won't be contingent without them. To do or not to do anything, there must be a legitimate contract. The accomplishment of the deal must be conditional. The event should be collateral for those transactions, and the event should not be at the mercy of the promisor. There are certain laws that need to be enforced for the enforceability of a contingent contract. For eg, on the occurrence of an occasion, on the event not occurring, or on the event not occurring within a given time.

The advantages that contingent contracts provide are that they motivate the parties to deliver above or above the contractually specified standards. That is the drive behind the usage of contingent contracts, from sales fees to equity options, in all kinds of pay agreements. In order to inspire players and musicians, sports organizations and film firms routinely use contingent contracts. Yet dependent contracts are not only good for inspiring citizens. They can inspire enterprises as well. Contingent contracts promote excellent production by awarding outstanding results.

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