

"Public Policy and Contract Law in India": An Examination of the Evolving Nature and Legal Implications.

Name – Mayank Tinker (Research Scholar)

Department of Law

Maharaja Ganga Singh University, Bikaner(Raj)

Address – Shri Subhash Sr. Sec. School Krishnapuri Madanganj Kishangarh, Ajmer Raj. 305801.

Abstract:

This article explores the concept of public policy in the context of contract law in India. The public policy serves as a check on the freedom of contract, ensuring that contracts are not against the interests of society and the public at large. The Indian Contract Act of 1872 recognizes the importance of public policy and its impact on the formation and enforcement of contracts.

The article examines the various aspects of public policy and its implications on contracts, including the types of contracts that violate public policy and the legal consequences of such contracts. It discusses the role of the Indian Contract Act of 1872 in regulating contracts that violate public policy and examines some of the important case laws that illustrate the evolving nature of public policy in India.

The article highlights that public policy is a dynamic and constantly evolving concept, reflecting the changing needs and expectations of society. The courts in India have taken a broad view of the concept, ensuring that contracts are aligned with the interests of society and the public at large. The article emphasizes that parties to contracts must be aware of the legal implications of public policy and ensures that their contracts comply with all relevant laws and regulations to avoid the risks associated with contracts that violate public policy.

In conclusion, the article demonstrates that public policy plays a vital role in contract law in India, and parties to contracts must be aware of its implications and ensure that their contracts comply with all relevant laws and regulations.

Keywords: *Public policy, Contract law, Voidable contracts, Illegal contracts, Evolving nature of public policy, Legal implications*

I. INTRODUCTION

In India, the law recognizes the importance of public policy in shaping and regulating contracts. The Indian Contract Act of 1872 provides for the voidability of contracts that violate public policy, emphasizing the need for parties to ensure that their contracts are aligned with the interests of society and the public at large. [5]

Public policy refers to the principles and values that guide the functioning of society and the state. It represents the collective will of society and aims to promote the well-being of the people. In the context of contracts, public policy serves as a check on the freedom of contract, ensuring that contracts are not against the interests of society and the public at large. Contracts that violate public policy are considered to be illegal and void ab initio, which means that the contract is not valid from the beginning and cannot be enforced in a court of law. [1] Such contracts are deemed to be against the interests of society and the public at large, and parties to such contracts may face criminal charges or civil penalties. The concept of public policy is dynamic and constantly evolving, reflecting the changing needs and expectations of society. As such, the courts in India have taken a broad view of the concept, ensuring that contracts are aligned with the interests of society and the public at large. [2]

In this article, we will explore the concept of public policy in the context of contract law in India. We will examine the various aspects of public policy and its implications on contracts, including the types of contracts that violate public policy and the legal consequences of such contracts. We will also discuss the role of the Indian Contract Act of 1872 in regulating contracts that violate public policy and examine some of the important case laws that illustrate the evolving nature of public policy in India.

The Indian Contract Act, of 1872 lays down the legal framework for the formation and performance of contracts in India. The Act defines the rights and obligations of parties to a contract and provides for the enforcement of contractual obligations. However, there are certain situations where contracts may be deemed illegal or against public policy, and the Act provides remedies in such cases. This article will discuss the concepts of illegality and public policy under the Indian Contract Act, of 1872, and their impact on the formation and performance of contracts. We will also examine some case laws to illustrate the application of these concepts in practice. [3]

II. Illegality under the Indian Contract Act, of 1872:

Section 23 of the Indian Contract Act, of 1872 specifies that a contract is considered illegal if it is forbidden by law, opposed to public policy, or involves fraudulent or unlawful activities. The term "forbidden by law" refers to situations where a contract is

prohibited by a statute, such as contracts for the sale of illegal drugs or weapons. Contracts that involve fraudulent or unlawful activities, such as theft or fraud, are also illegal. Under the Indian Contract Act, of 1872, a contract that is illegal is deemed to be void ab initio. This means that the contract is not valid from the beginning and cannot be enforced in a court of law. Section 23 of the Act lays down the various grounds on which a contract may be considered illegal. These include:

- **Contracts that are forbidden by law:** A contract that is expressly prohibited by law is illegal. For example, a contract to smuggle goods is illegal as it is against the law.
- **Contracts that are fraudulent or involve misrepresentation:** A contract that is based on fraudulent or misleading information is illegal. For example, a contract to sell a property with the knowledge that the property is encumbered with a mortgage is illegal.
- **Contracts that are opposed to public policy:** A contract that is against public policy is considered illegal. Public policy refers to the interests of society and the public at large. For example, a contract to carry out illegal activities is against public policy and is therefore illegal. [6]

Contracts that involve unlawful consideration or object: A contract that involves unlawful consideration or object is considered illegal. For example, a contract to pay a bribe to a public official is illegal as the consideration for the contract is unlawful. Contracts that restrain marriage: Any contract that restrains a person from getting married is considered illegal.

It is important to note that a contract that is illegal is not the same as a contract that is merely voidable. A contract that is voidable is one that can be cancelled at the option of one or both parties, whereas a contract that is illegal is void ab initio and cannot be enforced in a court of law. [7]

In conclusion, illegality is an important concept under the Indian Contract Act, 1872, and it is essential for parties to ensure that their contracts do not violate any of the grounds for illegality laid down in the Act. Failure to do so may result in the contract being declared illegal and unenforceable.

III. OPPOSED TO PUBLIC POLICY

A contract may be deemed opposed to public policy if it is harmful to society or its interests. The term "public policy" is not defined in the Act, but it has been defined by the courts in several cases. The courts have held that a contract may be considered against public policy if it is:

- i. **Immoral or opposed to public order:** Contracts that involve activities those are immoral or against public order are considered against public policy. For example, a contract for the sale of prostitution services would be against public policy.
- ii. **Injurious to the state:** Contracts that may harm the interests of the state or its citizens are against public policy. For example, a contract that involves the sale of sensitive military information to a foreign country would be against public policy.
- iii. **Injurious to the public:** Contracts that may harm the interests of the public, such as contracts for the sale of adulterated or harmful goods, are against public policy.
- iv. **Opposed to the administration of justice:** Contracts that interfere with the administration of justice or impede the course of justice are against public policy. For example, a contract for the suppression of evidence in a criminal case would be against public policy.
- v. **Unlawful consideration or object:** Contracts that involve unlawful consideration or object are against public policy. For example, a contract to commit a crime or for the payment of bribes would be against public policy. [8]

IV. REMEDIES FOR ILLEGAL CONTRACTS

When a contract is deemed illegal under the Indian Contract Act, of 1872, the parties cannot enforce the contract in a court of law. The Act provides for the following remedies for illegal contracts:

- i. **Void contract:** A contract that is illegal from the beginning is void ab initio, which means that it is null and void from the start. The parties cannot enforce a void contract, and they are not liable to perform their obligations under the contract.
- ii. **Unenforceable contract:** A contract that is illegal due to a subsequent event, such as a change in the law, is unenforceable. The parties cannot enforce an unenforceable contract, but they may be liable for damages for any loss caused to the other party.
- iii. **Restitution:** When a contract is found to be illegal, the parties must restore any benefits that they have received under the contract. This is known as the principle of restitution.[9]

V. PUBLIC POLICY AND CONTRACTS

Public policy plays an important role in the formation and performance of contracts in India. Contracts that are against public policy are not enforceable, and the courts have the power to declare them void or unenforceable.

In determining whether a contract is against public policy, the courts will consider the interests of society and the public, as well as the integrity of the legal system. The courts will also consider the reasonableness of the contract and whether it is consistent with the basic principles of fairness, justice, and morality. [10]

In some cases, the courts may also take into account the social and economic conditions prevailing at the time the contract was formed. For example, in the case of **Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly (1986)**, the Supreme Court held that an employment contract that allowed an employer to terminate an employee's services without cause or notice was against public policy, as it was unfair and oppressive to the employee.

Similarly, in the case of **Superintendence Company of India (P) Ltd. v. Sh. Krishan Murgai (1980)**, the Supreme Court held that a contract that sought to exclude the jurisdiction of the courts in case of disputes was against public policy, as it undermined the integrity of the legal system. [4]

Along with these cases there are several case laws in India where the courts have taken a stance on contracts that violate public policy. Here are some of the important ones:

- **Murlidhar Aggarwal v. State of UP (1974)**: In this case, the Supreme Court held that a contract that involves cheating or fraud is against public policy and cannot be enforced in a court of law. The Court held that such a contract is illegal and void ab initio.
- **Gherulal Parakh v. Mahadeodas Maiya (1959)**: In this case, the Supreme Court held that a contract to bribe a public official is against public policy and is therefore illegal. The Court held that the payment of a bribe is against the interests of society and the public at large and is therefore against public policy.
- **Gujarat Maritime Board v. Larsen & Toubro Ltd. (2016)**: In this case, the Supreme Court held that a contract that violates environmental laws is against public policy and cannot be enforced in a court of law. The Court held that such contracts are against the interests of the society and the public at large and are therefore against public policy.
- **Mohd. Hafeez Khan v. The State of Andhra Pradesh (2000)**: In this case, the Supreme Court held that a contract that involves trafficking in human beings is against public policy and is therefore illegal. The Court held that such a contract is against the interests of the society and the public at large and is therefore against public policy.
- **ONGC Ltd. v. Saw Pipes Ltd. (2003)**: In this case, the Supreme Court held that a contract that seeks to exclude the jurisdiction of the courts in case of disputes is against public policy and is therefore illegal. The Court held that such a contract undermines the integrity of the legal system and is therefore against public policy. [11]

These cases illustrate the evolving nature of public policy in India and the broad interpretation of the concept by the courts. The courts have consistently held that contracts that violate public policy are against the interests of society and the public at large and cannot be enforced in a court of law.

The concept of public policy is not static and may evolve over time, depending on social, economic, and political developments. For example, in recent years, the Indian courts have taken a more expansive view of public policy in the context of contracts that violate environmental laws or human rights. Contracts that violate public policy can have serious consequences, and parties to a contract must be aware of the legal implications of such contracts. If a contract is found to be against public policy, it is considered to be illegal and void ab initio, which means that the contract is not valid from the beginning and cannot be enforced in a court of law. [9]

Furthermore, parties to such contracts may also face criminal charges or civil penalties. For example, a contract to carry out illegal activities may result in criminal charges against the parties involved, whereas a contract that violates environmental laws may result in civil penalties and legal liabilities. Therefore, it is essential for parties to ensure that their contracts do not violate public policy. This can be done by consulting with legal experts and ensuring that the contract complies with all relevant laws and regulations. Parties must also be aware of the evolving nature of public policy and its implications on their contracts. [6]

In conclusion, public policy plays a critical role in the formation and enforcement of contracts in India. Parties to a contract must ensure that their contracts do not violate public policy, as such contracts are deemed to be illegal and void ab initio. The evolving nature of public policy requires parties to be aware of the changing legal landscape and to ensure that their contracts comply with all relevant laws and regulations.

VI. CONCLUSION

Illegality and public policy are important concepts under the Indian Contract Act, of 1872, and they play a crucial role in ensuring that contracts are fair and equitable. When a contract is deemed illegal or against public policy, the parties cannot enforce the contract in a court of law, and they may be liable for damages for any loss caused to the other party.

In practice, the courts have interpreted the concepts of illegality and public policy broadly, taking into account the interests of society and the public, as well as the integrity of the legal system. The evolution of public policy in India reflects the changing social, economic, and political landscape of the country, and the courts have played a vital role in shaping and defining the contours of public policy in the context of contracts.

In conclusion, the Indian Contract Act, of 1872, provides a robust legal framework for the formation and performance of contracts, and the concepts of illegality and public policy are integral to this framework. By ensuring that contracts are fair and equitable, the Act promotes commercial and economic growth in India and contributes to the overall welfare of society. Public

policy is a crucial aspect of contract law in India, as it serves to protect the interests of society and the public at large. Contracts that violate public policy are considered to be illegal and void ab initio and parties to such contracts may face criminal charges or civil penalties.

The Indian Contract Act of 1872 recognizes the importance of public policy and its impact on the formation and enforcement of contracts. The Act provides for the voidability of contracts that are against public policy and emphasizes the need for parties to ensure that their contracts comply with all relevant laws and regulations.

The concept of public policy is dynamic and constantly evolving, and the courts in India have taken a broad view of the concept to ensure that contracts are aligned with the changing needs and expectations of society. The courts have consistently held that contracts that are against the interests of society and the public at large are illegal and cannot be enforced.

Therefore, it is essential for parties to contracts to be aware of the legal implications of public policy and to ensure that their contracts do not violate public policy. Parties must seek legal advice and ensure that their contracts comply with all relevant laws and regulations to avoid the risks associated with contracts that violate public policy.

In summary, public policy plays a vital role in contract law in India, and parties to contracts must be aware of its implications and ensure that their contracts comply with all relevant laws and regulations.

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