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A STUDY ON ADEQUACY OF CONSIDERATION: INDIAN CONTRACT ACT, 1872

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ABSTRACT

Adequacy of consideration is a legal term that refers to the fairness or reasonableness of the value exchanged between parties in a contract. The legal word for the value exchanged between parties in a contract is called consideration, and it is a requirement for a contract to be enforceable. The law generally does not require that the value of the consideration given to each party be equal, but it does require that the consideration be sufficient, or at least have some value. A contract comes into existence when individuals or groups agree to something, with a few of them typically presenting a proposal and another approving it. This research paper focuses on the adequacy of consideration and the principles to fulfil the adequacy of consideration. This paper also mentions different cases which have been presented in courts of India and England for adequacy of consideration. This research paper provides an overview of the concept of adequacy of consideration in contract law. Adequacy of consideration refers to the fairness or reasonableness of the value exchanged between parties in a contract. The appropriateness of consideration is a key aspect in assessing whether a contract can be enforced. This study explores this concept's legal underpinnings, relevant instances, and factors that affect a court's conclusion. Conclusion: While the appropriateness of consideration is a crucial factor in contract law, the enforceability of a contract is not always determined by it; other crucial factors and legal precepts must also be taken into account.

KEYWORDS

Adequacy of Consideration, insufficient consideration, consideration for promise.

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INTRODUCTION

A key idea in contract law is the sufficiency of consideration. It speaks to the rationality or fairness of the value that is transferred between parties in a contract. This paper seeks to offer a thorough overview of the adequacy of consideration in contract law, including its meaning, its significance in evaluating whether a contract can be enforced, and some of the most important legal precedents and principles that touch on this idea. Consideration²- A consideration entails a monetary exchange or something in return. A contract is void if it is not paid for. When the contract is between close relatives, such as blood relatives or their spouses, consideration is not required.

Past, present, or future considerations are all possibilities. Consideration alone is insufficient. It must be legal to take into account.

There are two types of method: -

1. The term "executed consideration" refers to when a contract's promises are fulfilled right away (e.g., delivery of goods)
2. Executory Consideration is when a contract's commitments will be fulfilled in the future (e.g., a commercial property lease).

For consideration to be enforced:

- A contract must possess an important feature in order to be fully enforceable.
- Like the expression goes in valid contract, "consideration must come through either your promisee."
- Take this into consideration to highlight the complexity of this comment:
- If there is indeed a "promisee," there must have been a promisor.
- The offeror has indeed come to an agreement to the promisee, which in itself is sufficient to form an agreement (even if it hasn't been created officially).
- The offeror wants the party to a contract to fulfil a commitment to him.
- A lawful contract comes into existence when a promisee concurs to do something in return for the payment (that does not have to be provided to the promisor).

The various types of consideration are:

² NPF, Contracts: Charitable Subscriptions: Adequacy of Consideration and Definiteness of Promise. *Michigan Law Review*, 88-93 (1928).

- A promise- When a promise is made in lieu of something in exchange is said to be consideration
- an act other than a promise- If there is some sort of exchange in material which can be in any form for example- Monetary or Materialistic
- Forbearance-Staying away from doing anything is known as forbearance. It is the act of postponing the enforcement of a privilege, responsibility, or payment in the legal scope.
- A change in a legal relation of the parties- This happens when one or more party is unable to uphold their part of terms.

Definition of Adequacy of Consideration³:

In a contract, the parties exchange value, which is referred to in law as consideration. The law generally does not require that the value of the consideration given to each party be equal, but it does require that the consideration be sufficient, or at least have some value. Contrarily, adequate consideration requires that the value of the consideration be fair or reasonable in light of the contract's subject matter.

Adequacy of Consideration and the Ability to Enforce a Contract:

A contract needs some fundamental components, such as an offer, acceptance, and consideration, in order to be enforceable. One of a contract's fundamental requirements for enforceability is adequate consideration, which must be present.

The sufficiency of the consideration, however, does not decide whether a contract can be enforced on its own. If the other necessary components of a contract are present, a court may in some circumstances decide that the consideration was insufficient while nevertheless upholding the agreement. On the other hand, if there was a lack of consent from both parties or other reasons that render the contract unlawful, a court may rule that the consideration was sufficient but nevertheless decide not to enforce the agreement.

HISTORICAL BACKGROUND

The concept of adequacy of consideration has its roots in English common law. Early contract law commonly construed consideration to be any advantage or disadvantage that a party received in exchange for a pledge. Law required that the consideration be of value,

³ Hyman, W. H., Adequacy of Consideration and the Unconscionable Contract. Com. LJ, 86, 500 (1981).

even if it was only a tiny or nominal sum, even while it was not necessary that it be of equal worth to the promise made. In certain instances, the value of the consideration given in exchange was so disproportionately low that the fairness or rationality of the contract was eventually questioned by the courts. As a result, the term "inadequate consideration" came to be used to describe circumstances in which the value of the consideration was so low as to render the contract unconscionable or otherwise unfair. The courts started to develop the idea of adequate consideration in the 19th century as they realised that even while the law did not demand equal worth, the consideration nevertheless needed to be of some fair value in order to support the promise made. As a result, the term "nominal consideration" was created to describe circumstances in which the consideration was so negligible as to be without any real worth. The idea of adequate consideration continued to develop during the 20th century, with courts adopting a more subtle approach to deciding whether the consideration was sufficient or not. The law now acknowledges that the degree of consideration is not merely based on the amount paid, but also on the nature of the promise made, the negotiating position of the parties, and if the contract contains any unjust or oppressive terms. In general, the historical development of the notion of "adequacy of consideration" demonstrates a growing understanding of the significance of fairness and reasonableness in contractual relationships, as well as a willingness on the part of courts to shield parties from unfair or unconscionable contracts.

LEGAL PRINCIPLES

Under the Indian Contract Act 1872, the concept of adequacy of consideration is similar to that under English common law. The definition of consideration is given in Section 2(d) of the Act as follows: "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." An agreement without consideration is void unless it is formed in writing, recorded, and based on natural love and affection between parties who are close relatives, according to Section 25 of the Act. The Act just demands that there be some compensation of some worth; it makes no demands that the consideration match the promise made in terms of value. Indian courts have adopted a strategy for judging the sufficiency of consideration that is comparable to English common law. The fact that the consideration must have some reasonable worth in order to sustain the promise is acknowledged, despite the fact that the law does not mandate that it must be of equal value to the promise made.

Judges also take into account things like the promise's nature, the parties' negotiating positions, and if the contract contains any unfair or oppressive clauses. The Indian Contract Act also acknowledges some circumstances in which the sufficiency of the consideration may be assumed. For instance, if a negotiable document is made, accepted, or endorsed for a valuable payment, it is presumed under Section 118 of the Act that consideration was given for the instrument. The Indian Contract Act of 1872, in its whole, acknowledges the significance of consideration in contract law and offers a framework for assessing the sufficiency of consideration in contractual transactions.⁴

The adequacy of contemplation is governed by a number of legal rules and cases. The doctrine of economic duress, which is applicable when one party threatens to take action that will significantly hurt the other party's finances unless they agree to a contract, is one such principle. Under such circumstances, a court can decide that the contract is void because the compelled party lacked free will, rendering it unenforceable. The idea of unconscionability is another notion connected to the sufficiency of deliberation. This rule is applicable when one party seeks to negotiate an unjust contract by taking advantage of the other party's gullibility or ignorance. In certain situations, a court can rule that the contract is unenforceable because the terms are unjust. The topic of adequate consideration has also come up in a number of cases. In one such case, *Hamer v. Sidway*, a nephew agreed to give up drinking, smoking, and gambling in return for a sizable sum of money from his uncle. Notwithstanding the fact that the pledge made by the nephew did not directly benefit the uncle, the court determined that it nevertheless represented enough consideration.

DISCUSSION

According to the legal principle of "adequacy of consideration,"⁵ a contract must involve some sort of advantage or harm exchanged between the parties in order for it to be upheld. In other words, for the contract to be enforceable, both parties must get something of value. The common law's "adequacy of consideration" premise is more concerned with the fact that some sort of consideration was exchanged than it is with the actual worth of the consideration that was given in exchange. This indicates that the contract may still be

⁴ Malone, R., Contracts-If Adequate Consideration is Present, an Agreed-upon Revision to a Memorandum of Understanding Is Binding, Absent Duress-Centech Group, Inc. v. Getronicswang Co. Transactions: Tenn. J. Bus. L., 4, 74 (2002).

⁵ Bock Jr, E. S., *Specific Performance--Must Plaintiff Plead Adequacy on Consideration?*, 40(2) West Virginia Law Review, 1, 14 (1934).

enforceable even if the value of the consideration exchanged was relatively low, provided⁶ that some benefit or harm was also exchanged. The significance of adequate consideration is found in its ability to guarantee that agreements are made voluntarily and that both parties stand to gain something from the deal. The law aims to prevent scenarios where one party is unfairly taking advantage of the other by requiring consideration to be transferred. In the event of a disagreement or breach, the parties to a contract are also protected by the adequacy of the consideration. The opposing party may take legal action to enforce the agreement or to recover damages for any losses suffered if one party breaches their contractual commitments. But, if the court decides that the contract is unenforceable because there was insufficient consideration, the damaged party would be without a legal recourse. Adequacy of consideration is a fundamental legal principle that ensures that agreements are entered into voluntarily and that both parties stand to gain from them. It is essential for the validity of contracts and for safeguarding the parties in the event of a disagreement or breach.

Economic duress and unconscionability are two significant ideas that are strongly related to the question of adequacy when analysing the legal principles and cases relating to sufficiency of consideration.

When one party is coerced into signing a contract by unfair threats or pressure from the other, this is known as economic duress. The threat must be improper in nature and made by a party who knows it will likely lead to the other party signing the contract. For instance, if a tenant refuses to sign a lease with unfair terms, the landlord may threaten to evict them. The lease could be voidable due to economic duress if the renter signs it under these conditions.

Unconscionability is a circumstance in which a contract is so unjust or one-sided that it shocks the court's conscience. In such circumstances, the court may rule that the agreement is void even though the parties were in agreement with its terms. An unconscionable contract can, for instance, demand a consumer to forfeit all legal rights in exchange for a good or service.

⁶ Laidey, N., *Adequacy of Contracts Act 1950 in Governing the Formation of E- Contracts in Malaysia: UNCITRAL Model Law in E-Commerce as Benchmark*, SSRN (2016).

ROLE OF JUDICIARY

Several cases illustrate the application of economic duress and unconscionability in relation to adequacy of consideration. The court determined that a contract was entered into under economic duress in the 1989 case of *Atlas Express Ltd. v. Kafco (Importers & Distributors) Ltd.*⁷ when one party threatened to withhold payment until the other party agreed to new conditions that were averse to them.

Similar to this, the court determined that a contract in *Williams v. Walker-Thomas Furniture Co.* (1965)⁸ was unconscionable because it was written in such a way that the debtor could never pay it off and the creditor may seize whatever item the debtor had previously purchased from the store. Due to this unfair condition, the debtor was unable to pay off the obligation.

One of the best English cases on this is the case of *De La Bere v Pearson Ltd.*⁹ The facts of this case are that the defendants, who are newspaper owners, volunteered to respond to questions of their customers seeking monetary support. That giving determination a guaranteed return as well as a reputable brokerage, to which the defendants responded with a firm that later turned out to be bankrupt. Following this, the plaintiff invested funds that were promptly plundered. The question in this case would be when the offer is made consideration was adequate. Because this had to raise the plaintiff's sale, it was decided that once accepted, the contract was made and the consideration was acceptable. These instances show how the appropriateness of consideration in a contract can be impacted by economic duress and unconscionability. The court may decide that the consideration is insufficient and refuse to uphold the agreement if it is determined that a contract was made under economic duress or in an unconscionable manner.

CONCLUSION

In conclusion, the adequacy of consideration is an important concept in contract law, as it is one of the essential elements of a contract that must be present in order for the contract to be enforceable. The law does not require that the value of the consideration given by the parties be equal, but it does require that the consideration be sufficient and that the amount

⁷ *Atlas Express Ltd. v. Kafco (Importers & Distributors) Ltd.*, [1989] 1 QB 833.

⁸ *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965).

⁹ *De La Bere v Pearson* 1908.

be reasonable or fair given the nature of the contract's subject matter. In the end, the enforceability of a contract will depend on a variety of criteria, such as the sufficiency of the consideration, the presence of other crucial contract components, and any applicable legal norms and principles. Adequacy of Consideration is an important concept in terms of having a consideration but with the context, till now the understanding came up to be that the consideration need not be adequate but needs to be sufficient. Whenever it comes to the hands of the court to see whether there is adequate consideration, they leave that to the other parties, which sums us up to a conclusion which is that you can't define when the consideration is adequate. For a contract to bind you will need just some sort of consideration. Despite the fact that the act does not define the distinction between nominal and insufficient consideration, the court has established it through case law. Midland Bank Trust Vs Green is one such case. Although the regulations governing these are clear and without loopholes, establishing a lack of regard may be a challenging task for the court. It's worth noting that the court's decisions in each case were based on the parties' agreement to enter into the contract. Once the appropriateness of consideration has been established, the court will not explore the problem. The court recognises that the parties are concerned, but it will not intervene if the parties have exercised their free will. When a court determines that the consideration is insufficient, the contract does not become void; rather, it becomes unenforceable, casting doubt on the parties' negotiating power.