

**DR. AMAR SINGH**

# **LAW OF CONTRACT IN INDIA**

**The Doctrine of Consideration**

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THE DOCTRINE OF CONSIDERATION

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*Foreword by*

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DEEP & DEEP PUBLICATIONS

D-1/24, Rajouri Garden, New Delhi-110027

P 198 C, 2, 2



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**Printed in India at Print India, Mayapuri, New Delhi-110064.  
Published by DEEP & DEEP PUBLICATIONS, D-1/24, Rajouri Garden,  
New Delhi-110027. Phone : 504498.**

*Dedicated to*  
**SHRI VIRBHADRA SINGH JI**  
*Chief Minister*  
*Himachal Pradesh*

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## FOREWORD

The doctrine of consideration is indeed a very important aspect of all contractual obligations. After having examined the scholarly work of Dr. Amar Singh of the Department of Laws, Himachal Pradesh University, I have the pleasure in writing this foreword to his book. A bare reading of the book apparently demonstrates that Dr. Singh has examined the subject very minutely and has put in good deal of labour in bringing out this publication.

The examination of various legal systems exhibit the fundamental notion of consideration as a foundation of contractual obligation. There appears to be uniformity in spite of different modes of expression of this doctrine. The institutions are like the organic world and they necessarily require to follow the Darwinian law of evolution of gradual transformation under the action of this law. As such, everything that is not in harmony and catering to the current needs of the developing society tends to disappear. The process of disappearance, however, is slow owing to what is known as the law of persistence. The past is never dead of living, the thoughts and actions of our forefathers continue to rule and fashion our conduct. The reason for the rule may vanish but the rule may be still in observance from blind imitation. There may be many errors in the doctrine of consideration which have been frankly pointed out by Dr. Singh. The origin and reasons of such errors may be traced to clever and idle attempts to justify the same, while some of them emerged mainly due to historical accident.

The emergence of the doctrine of promissory estoppel and voluminous social welfare legislations have added new dimensions to the doctrine of consideration. In Chapters III, IV and V, Dr. Singh has examined at length the inter-action thereof with the doctrine of consideration.

In Chapters VII and VIII, Dr. Singh has thoroughly examined the impact of the doctrine of public policy on the doctrine of consideration. I feel that Dr. Singh has rightly pleaded for the

modification of some of the aspects of consideration by judicial and legislative measures, in the social, moral, ethical, political and economical interests as also in the welfare of the society.

It gives me immense pleasure to recommend this work to the world of scholars with the hope that it will catch their imagination as also of the writers, authors and researchers in the field of contractual obligations, to produce still more valuable literature in this not much worked field.

Simla

**H.S. THAKUR**

## PREFACE

The doctrine of consideration has got multidimensional significance under the contractual obligations in the Indian social welfare state, i.e.,

- (i) as one of the essential of an enforceable agreement,
- (ii) as an element of an agreement to be determined freely by the parties to it,
- (iii) as an element the freedom of determination of which if curtailed beyond a certain degree through social welfare legislation touching contractual obligations would lead to non-existence of a transaction of a contractual nature,
- (iv) as a doctrine which inhibits and tends to stultify the operational efficacy and growth of the doctrine of promissory estoppel,
- (v) as an element of an agreement the illegality of which may vitiate the whole transaction or part thereof,
- (vi) as an element whose inter-action with the doctrine of public policy delimits the contractual freedom of the parties.

It shall be examined in its brief historical perspective by deliberately not touching the details of its historical development in the English legal system but merely specifying the forms of action and their operative sphere which were in vogue in the English legal system for enforcing the obligations of contractual nature. Before 15th century there had not developed a general theory of contract. Various theories regarding its origin and the process, methodology and various factors responsible for its reception into our legal system shall be dealt with. Its meaning and analysis shall be examined by the comparative and analytical research method in order to establish the common elements and the points of distinction in various legal systems. The textual categorisation i.e., good

and valuable consideration, distinction between the same, executed and executory consideration and distinction thereof, unreal, nominal, past, concurrent and continuing considerations etc., etc. shall be examined to point out the legal significance thereof. The relationship and the distinction between insufficiency and inadequacy of consideration shall also be looked into. The relationship between the concept of motive and consideration shall also be spelled out.

In the course of formulation of the doctrine of consideration certain rules governing its contents came into being, the privity rule was one of them which in the modern time appears to be causing inequitable hardships. The retention of such a rule is becoming disputable day by day. The interplay of the privity rule and consideration shall also be examined briefly. The dimensions of un-enforceable agreements shall also be discussed in some details.

The consideration had been one of the most important attributes of *laissez faire*. The modern planned and organised economy has made inroads to the operative sphere of the doctrine of *laissez faire*, thus influencing the doctrine of consideration too. The *laissez faire* state is being replaced by the social welfare state in India. Various definitions of social welfare state shall also be examined. The social welfare state is committed, besides performing its police functions, to ensure the welfare and well-being of its citizens, through the instrumentality of social welfare legislations. A brief reference to the orbit of social welfare legislation shall be made in two steps. In the first place a brief reference shall be made to that category of multi-dimensional social legislations which does not in any way involve contractual obligations. In the second place the relation of the other category of social legislation which touches the contractual obligations by interfering with the freedom in the determination of consideration shall be examined by specifically pointing out the reasons preferred to curtail the same in the larger social interest. However, it shall not be feasible here to examine the effect of whole of the present social welfare legislation touching contractual obligation, on the doctrine of consideration because of its vast and varied dimensions and in view of the limited objective of this work to establish its impact on the concept of consideration by examining some of the important social welfare legislations such as Children Pledging of Labour Act, 1933, The Bonded Labour System Act, 1976, The Urban House Rent

Control Act, the Money Lenders Act, etc. etc. Thereafter, the effect of the provisions of certain Control Orders on the consideration shall be examined. Again the impact of all control legislations on the concept of consideration is not feasible, however, the impact of only that section of control legislation shall be examined which has come to the scrutiny of the Supreme Court and the High Courts such as Sugar and Sugar Control Product Order, 1946, Panjab Bricks Control Order, Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1961, Colliery Control Order etc. etc. The two different and contradictory view points of Supreme Court judges with regard to the formation of contractual relations under these control legislations shall be critically examined.

The inter-relation of doctrine of consideration and doctrine of promissory estoppel is becoming significant day in and day out because the latter has been evolved through the judicial legislation to avoid injustice which may result by always sticking to the technical requirements of consideration. The conceptual origin and nature of promissory estoppel, if contractual or otherwise, scope and extent and its up-to-date development shall be examined. Its nature, scope, extent and development shall be examined by comparing the same with that of the other important legal systems such as English legal system, American legal system and the Indian legal system. Interplay of consideration and promissory estoppel has become significant in view of their being anti-thesis of each other. Other important aspects of promissory estoppel *vis-a-vis* consideration, such as, promissory estoppel as a basis of cause of action, and the existence of pre-existing contractual relation for invoking promissory estoppel if essential, shall be examined. These aspects shall be examined by taking into account the position of law as obtaining under the English, American and the Indian legal systems. Consideration may be comprised of profit or detriment. It shall, however, be examined that to rest cause of action on promissory estoppel, if suffering detriment is essential or merely altering of position will do. The merits of the recommendations of the Law Commission spelling out the inter-relations of promissory estoppel and consideration shall also be scrutinised.

Thereafter the categories of illegal consideration shall be analytically examined. To secure the public good the judiciary have been modifying the dimensions of consideration on the basis of rules of public policy. The sources of these rules, their legal status,

including positivist and pragmatic approaches, justification, handicaps suffered by these rules, nature and their effect on contractual liberty shall be investigated. Besides, the various frontiers of public policy as demarcated by the judiciary and operating as dimensional limitations on consideration shall also be critically examined which will include maintenance and champerty their conceptual meaning, scope and extent, judgment touchstone of maintenance and champerty in India, burden of proof thereof, stifling prosecutions, interference with the course of justice, bargains of separation, trading with enemy, marriage brokerage agreements, distinction between for receiving money by parents and marriage brokerage agreements, disparity image of bride and bride-groom, suit for recovery of money paid in marriage, family arrangements, inter-marriages, gifts made to bride or bride-groom, marriage agreements to third parties, agreements partitioning Yajmans, agreements to secure unfair remuneration, suicide, knock out agreements, trafficking in public office, agreements which tends to create interest contrary to duty etc. etc.

Finally, the conclusion of this study regarding the significance of doctrine of consideration in the Indian Social Welfare state shall be drawn.

The author would welcome the criticism and appreciate the suggestions from the learned readers.

Simla

AMAR SINGH



## ACKNOWLEDGEMENTS

I acknowledge the valuable and gracious help and guidance rendered by Professor Dr. B.R. Chauhan, formerly Dean, Faculty of Law, presently Legal Advisor to the Ministry of Irrigation, Government of India, Professor J.P. Gupta, Dean Faculty of Law, H.P. University, Professor. S.N. Jain, Director, Indian Law Institute, Professor D.K. Singh, Dean Faculty of Law, Delhi University, Delhi in preparing the manuscript of this book.

My thanks are due to my esteemed teacher, and a contractual jurist of international repute Professor I.C. Saxena, Dean Faculty of Law, Rajasthan University, Jaipur for his valuable suggestions. I also acknowledge the help rendered by my young friends Mr. Balram Singh Dogra, LL.M. and Mr. Kiran Pal Singh, LL.M.

I deeply acknowledge the co-operation extended by the members of the staff of H.P. University Library, Simla, Indian Law Institute Library, Delhi, Delhi University Library, Delhi, Supreme Court Library, and Rajasthan University Library, specially that of Shri Umed Singh Rathore. I also acknowledge the nice working atmosphere provided to me by the authorities and staff of Bishop Cotton School, Simla especially Brig. Mukand, Mrs. Mukand, Colonel B.N. Sharma, Mrs. Sharma and Mr. and Mrs. Hakin, Jose, Meena, Sulochna, Lyal, Mrs. Modi, Mr. Sagar, Jaya and David and Shri Kheyat Singh Negi.

I shall be failing in my duty if I fail to acknowledge the great contribution made by my wife Mrs. Archana Singh Rathore who had been a constant source of inspiration and strength. I also thank my twin-sons, 'Love' and 'Kush' for sparing me the time, for writing this book, which would have otherwise been theirs.

I express my deep debt of gratitude to those learned masters whose works have been consulted and referred to.

Finally I thank Dr. Satish Chandra and Deep & Deep Publications for facilitating the publication of this book.

Simla

AMAR SINGH