

The Importance of Contracts in Our Society and the Role of Legislation

Pallavi Tripathi¹; Dr. Sunita Shrivastava²

¹ResearchScholar; ²Professor

Department of Law, Sage University, Indore (M.P.) India

Abstract

Contracts form the foundation of social, economic, and commercial interactions in modern society, enabling individuals and entities to exchange goods, services, and promises with legal enforceability. In India, the Indian Contract Act, 1872 (ICA), serves as the cornerstone legislation governing contract formation, performance, and remedies. This paper examines the pivotal role of contracts in fostering trust, economic stability, and dispute resolution within society. It delves into the concept of public policy under Section 23 of the ICA, which renders agreements void if they contravene societal interests, morality, or law. Through an analysis of key provisions, judicial precedents, and implications for corporate transactions, the study highlights how legislation balances contractual freedom with public welfare. Public policy, being dynamic and evolving, reflects societal changes, as evidenced in cases addressing immorality, fraud, and harm to public interest. The paper concludes that adherence to public policy ensures equitable contracts, while violations lead to unenforceability and potential penalties. Parties must navigate these principles to mitigate risks in mergers, acquisitions, and other dealings, promoting a just legal framework.

Keywords: Public Policy, Contract Law, Indian Contract Act 1872, Void Agreements, Illegality, Corporate Transactions, Judicial Interpretation, Legal Remedies.

1. Introduction

Contracts are indispensable to civilized society, serving as binding agreements that regulate relationships between individuals, businesses, and institutions. They facilitate economic growth by providing predictability and security in transactions, from simple sales to complex corporate mergers. In India, the ICA, 1872, codified during British colonial rule, remains the primary legislation defining contracts as enforceable agreements (Section 2(h)). This Act emphasizes

essential elements like offer, acceptance, consideration, and lawful object, while imposing restrictions to protect public interest.

Public policy, a fluid concept under Section 23, acts as a safeguard against agreements that undermine societal values, morality, or law. As noted in judicial interpretations, public policy evolves with social, economic, and political changes, ensuring contracts align with collective welfare. Contracts violating public policy are void ab initio, meaning they lack legal validity from inception and cannot be enforced. This provision prevents exploitation, fraud, and harm, while promoting fairness.

In corporate contexts, contracts govern mergers, acquisitions, joint ventures, and partnerships, addressing risk allocation, indemnification, and dispute resolution. Statutes like the Companies Act, 2013, and Competition Act, 2002, complement the ICA to ensure compliance and stakeholder protection. However, breaches or illegal objects can lead to civil penalties or criminal charges.

This paper explores public policy's implications on contracts, analyzing illegality under Section 23, key elements of valid contracts, and landmark cases. It underscores legislation's role in balancing individual freedoms with societal needs, drawing on doctrinal analysis to propose reforms for contemporary challenges like digital contracts.

2. Literature Review

The literature on contract law and public policy in India highlights the ICA's enduring relevance while critiquing its adaptability to modern contexts. Nilima Bhadbhade's *Contract Law in India* (2022) provides a comprehensive analysis of the ICA, emphasizing public policy's role in voiding agreements that defeat law or involve fraud. Bhadbhade argues that judicial discretion in interpreting public policy ensures flexibility but risks inconsistency.

Siva Prasad's *Introduction to Contract Law in India* (2022) discusses how contracts underpin economic transactions, with public policy serving as a moral compass. Prasad examines corporate applications, noting that legislation like the ICA protects consumers and promotes competition.

Recent articles, such as Mansi Rajpal's "Necessity of Contract Law to Changing Business" (2021), explore how evolving business laws, including public policy doctrines, impact daily operations and risk management. [ijdsr.org](https://www.ijdsr.org) Rajpal highlights the need for updates to address digital and cross-border contracts.

M.N. Rao's "Public Policy in Indian Contract Law: An Analysis of Select Case Laws" (2016) reviews judicial evolution, citing cases like *Central Inland Water Transport Corp. v. Brojo Nath Ganguly* (1986), where unequal bargaining power was deemed against public policy. [legalserviceindia.com](https://www.legalserviceindia.com) Rao critiques the broad judicial interpretation, advocating clearer statutory guidelines.

P.K. Ray's *Contract Law in India* (2019) analyzes illegality under Section 23, linking it to societal welfare. [thelegalwatch.in](https://www.thelegalwatch.in) Ray emphasizes that public policy's dynamism reflects India's socio-economic shifts.

S.K. Sharma's "Public Policy in Indian Contract Law" (2014) discusses implications for corporate transactions, arguing that non-compliance leads to unenforceability and economic losses. [ijlmh.com](https://www.ijlmh.com)

N.N. Menon's chapter in *Legal Essays and Reflections* (2018) traces public policy's historical roots in the ICA, noting its alignment with common law principles. papers.ssrn.com

A 2023 study in the *International Journal of Law Management and Humanities* on "Public Policy in Contract Law" examines recent digital challenges, suggesting amendments for e-contracts. [ijlmh.com](https://www.ijlmh.com)

Overall, the literature underscores contracts' societal importance and legislation's regulatory role, with calls for reforms to address globalization and technology.

3. Objectives of the Study

- To examine the laws related to contract formation, interpretation, performance, and remedies in the corporate context.
- To analyze the crucial role of contract law in society and legislation.

- To evaluate relevant contract law principles and precedents.

4. Research Questions

1. How does Indian contract law define and regulate different types of contracts, such as sales, leases, partnerships, and service agreements?
2. What are the legal implications of breach of contract in corporate transactions under Indian law?
3. How does Indian contract law address issues of contract interpretation and enforcement in the context of complex corporate transactions?

5. Research Methodology

This study employs a doctrinal research methodology, focusing on qualitative analysis of primary sources like the ICA, 1872, judicial precedents, and secondary sources including books, articles, and reports. Data is collected through library research and online legal databases. The approach involves descriptive and analytical techniques to interpret statutes and cases, ensuring objectivity and relevance to contemporary issues.

6. Elements of a Valid Contract under the Indian Contract Act, 1872

Section 10 of the ICA outlines that all agreements are contracts if made with free consent by competent parties, for lawful consideration and object. Key elements include:

- **Offer (Section 2(a)):** A proposal to do or abstain from doing something, creating legal relations. It must be clear and communicated.
- **Acceptance (Section 2(b)):** Unqualified agreement to the offer, communicated to the offeror. Silence does not constitute acceptance, as established in *Felthouse v. Bindley* (1862).lawteacher.net In this English case (influential in India), an uncle offered to buy his nephew's horse, stating "if I hear no more, I consider it mine." The nephew did not respond, but the horse was auctioned. The court held no contract formed due to lack of communicated acceptance.
- **Consideration (Section 2(d)):** Something of value exchanged, past, present, or future, at the promisor's desire. It must be lawful and not illusory.

- **Capacity (Section 11):** Parties must be of majority age, sound mind, and not disqualified by law.
- **Free Consent (Sections 13-22):** Absence of coercion, undue influence, fraud, misrepresentation, or mistake.
- **Lawful Object and Consideration (Section 23):** Not forbidden by law, fraudulent, injurious, immoral, or opposed to public policy.
- **Intention to Create Legal Relations:** Parties must intend enforceability.

These elements ensure contracts are voluntary and beneficial to society.

7. Illegality and Public Policy under Section 23

Section 23 voids agreements if their object or consideration is: indiankanoon.org

- Forbidden by law (e.g., smuggling).
- Defeats any law's provisions (e.g., tax evasion schemes).
- Fraudulent.
- Injurious to person or property.
- Immoral or opposed to public policy.

Public policy encompasses societal interests, evolving through judicial decisions. Key cases:

- *Gherulal Parakh v. Mahadeodas Maiya* (1959): Agreement to wager on cotton prices held void as against public policy. blog.ipleaders.in
- *Central Inland Water Transport Corp. v. Brojo Nath Ganguly* (1986): Unconscionable employment terms deemed violative of public policy under Article 14. ijsdr.org
- *Nazir Ahmed v. King Emperor* (1936): Contracts stifling prosecution are void.

Implications include unenforceability, restitution denial, and penalties. In corporate transactions, this ensures ethical practices.

8. Risk Allocation and Performance in Corporate Contracts

Contracts allocate risks via indemnification, warranties, and dispute clauses. Breach remedies include damages, specific performance, or rescission (Sections 39-75). Legislation ensures performance timelines and consequences, vital for economic stability.

9. Conclusion

Contracts are vital for societal order, enabling trust and economic efficiency, while legislation like the ICA regulates them to prevent abuse. Illegality and public policy under Section 23 safeguard public welfare, evolving with societal needs. Judicial precedents illustrate this balance, but reforms are needed for digital eras. Parties must ensure compliance to avoid invalidity, fostering a fair legal system.

References

- Siva Prasad, *Introduction to Contract Law in India* (Notion Press, 2022).
- Mansi Rajpal, "Necessity Of Contract Law to Changing Business", DJN (2021).
- Nilima Bhadbhade, *Contract Law in India* (Wolters Kluwer, 2022).
- Menon, N.N. "Public Policy and the Indian Contract Act, 1872." In *Legal Essays and Reflections* (Springer, 2018), 163-182.
- Mulla, D. *Indian Contract Act*. 13th edn. (Lexis Nexis, 2016).
- Rao, M.N. "Public Policy in Indian Contract Law: An Analysis of Select Case Laws." National Conference on Contemporary Legal Issues, Osmania University (2016), 235-240.
- Ray, P.K. *Contract Law in India* (Oxford University Press, 2019).
- Sharma, S.K. "Public Policy in Indian Contract Law." *Indian Journal of Scientific Research and Reviews* (2014): 63-69.
- "Public Policy and Contract Law in India." *IJS DR* (2023). ijsdr.org
- "Agreements Against Public Policy Under Law of Contracts." iPleaders Blog (2020).