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Overview of Various Modes of Discharge of a Contract

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Any agreement between two or more parties where one party promises to do or refrain from doing something in exchange for another item (or compensation)[1] *is called a contract and is legally enforceable. When a contract is no longer in effect, the rights and obligations that were stipulated in it are said to have been 'discharged'. When a contract is 'discharged,' the parties are released from their obligations under it, and the connection between them as a result of the contract comes to an end. Not only that but there are several ways in which contracts can be violated or discharged. Discharge of contract refers to the termination of all rights, responsibilities, and liabilities arising out of or in connection with a contract, and can occur when one or more of the parties to the contract no longer have any further obligations under its terms.* [2]*A contract loses its validity and cannot be enforced after it has been discharged. After the term of a contract has expired, there is no longer any legal obligation for either party to the other. In this paper, we will focus on the Indian Contract Act, of 1872 and its definitions of 'discharge,' 'rescission,' and 'termination,' as well as how a contract can be 'discharged.'*

Keywords: *discharge, terminate, obligation, contractual relationship.*

[1] Yam Kumar Yonjan, 'An Analysis on Major Elements of a Valid Contract under Muluki Civil Code, 2074' (2019) 5(3) SSRN <https://dx.doi.org/10.2139/ssrn.3437233> accessed 11 March 2023

[2] Oishika Banerji, 'Discharge of Contract by Operation of Law and Lapse of Time' (*iPleaders*, 03 March 2022) <https://blog.ipleaders.in/discharge-of-contract-by-operation-of-law-and-lapse-of-time/> accessed 11 March 2023

INTRODUCTION

When two people make a contract, they give themselves certain rights and responsibilities. One can ask a court to enforce these rights and responsibilities. These are also called contractual relationships between the people who are making a contract. One party's rights become the other party's obligations and vice versa. An agreement that is enforceable by law between two or more parties in which each promises to do or refrain from doing some action in exchange for the other parties' performance of some other action is called a contract. [3]When the parties to a contract are 'discharged,' the agreement between them is terminated. Discharge of contract occurs when all responsibilities, duties, and rights between the parties have been met. A contract loses its validity and cannot be enforced after it has been discharged. Hence, when a contract ends, the obligations that the parties have towards each other end, and the contract itself is rendered null and void.

As soon as the agreed-upon conditions are completed, the contract is considered fulfilled, and neither party has any further duties under it. The term for this is 'discharge.' The rights and obligations established by a contract are said to be 'discharged' after they have ceased to operate. Discharge of contract, in other terms, is 'termination of the contract between the parties.' The contract's rights and obligations were agreed upon by the parties before they're signing it. There are several methods to get out of a contract, including fulfilling the terms of the agreement and committing a breach.

DISCHARGE OF A CONTRACT

Discharging a contract means that the involved parties are no longer bound by the contract. When this kind of relationship ends, both sides are freed from their contractual obligations, and that's the end of the contract. In other words, a contract gets discharged, when all of the rights and responsibilities it created have ended. In general, the contract can be broken either by the act of the parties or through the operation of the law. The parties to a contract can get out of

[3] Yam Kumar Yonjan (n 1)

their obligations by meeting them or letting them go, or the law can release them from their obligations.

For example - Raj agrees to pay Balram Rs 1,000 if Balram will transport a package to Charles' residence. Raj agrees to pay Balram a certain sum, and in exchange, Balram does the work specified in the contract. The terms of the agreement between the parties have been met since both have carried out their obligations under the pact. A contract may be discharged or ended in any of the following ways:

- By performance – actual or attempted (S.37[4], S.38[5]);
- By mutual consent or agreement (S.62[6], S.63[7]);
- By subsequent or supervening impossibility or illegality (S.56[8]);
- By lapse of time (because the time has passed);
- By operation of law (because the law says so);
- By breach of contract i.e. by breaking the agreement (S.39[9]);

1) Discharge by Performance

When both sides of a contract do what they said they would do, the contract is said to be 'discharged.' It is called the natural mode of discharge or discharge by performance.

Performance may be

Actual: If both parties have fulfilled their respective commitments under the contract, they are no longer bound by the terms of the agreement. Completeness, accuracy, and conformity to the contract's requirements are all hallmarks of a job well done. Most contracts are fulfilled in this

[4] Indian Contract Act 1872, s 37
[5] Indian Contract Act 1872, s 38
[6] Indian Contract Act 1872, s 62
[7] Indian Contract Act 1872, s 63
[8] Indian Contract Act 1872, s 56
[9] Indian Contract Act 1872, s 39

manner. One could also say that performance takes place when all of the contracting parties have met their commitments.

Attempted (tender or offer of performance): Tender is not true execution; rather, it is merely an undertaking to carry out the obligations outlined in the contract. Real performance occurs when the promisor proposes to carry out his obligation but the promisee declines the offer. If your tender is accepted, you will be regarded to have fulfilled the contract. The tenderer is absolved of any obligation to carry out the agreement, but this does not waive his entitlements against the promise.

A valid tender or offer of performance must fulfill the following conditions:

- It must be true no matter what. A conditional tender is not a tender at all. For example, A is a debtor who owes money to company B and offers to pay if he gets equal shares. It is not a good offer or a valid tender.
- It must be done at the right place and time. A tender that is submitted before or after the deadline or in a different place than what was agreed upon is not valid. As an example, A rents from B. He gives him a rental offer at a wedding party. B doesn't have to accept the offer.
- It must be for the whole contract, not just for a part of it. So, when he decided on his own to pay in installments and offered the first payment, it was turned down and was an invalid tender because it wasn't for the full amount due **(Behari Lal v Ram Gulam)**[10].
- If the tender is for the delivery of goods, the promisee must be given a fair chance and reasonable opportunity to inspect the items to ensure that they conform to the contract.
- The person who makes the promise must be able to keep it and be willing to do so. A tender from a child or a fool or idiot is not a valid tender.
- It must be given to the right person, such as the person to whom the promise was made or his authorized agent tender or offer of performance made to strangers do not count and are invalid.

[10] *Behari Lal v Ram Gulam* (1902) ILR 24 All 461

- A valid tender is an offer to any of several people who are all promised the same thing. But the actual payment has to be made to all of the joint promises, not just one of them, for the contract to be legally fulfilled. S.45[11] says that if a promise is made to two or more people at the same time, they all have the same right to demand that the promise be kept.
- If you want to give money, you should give the exact amount in legal money. You can't offer a smaller or bigger amount as a bid. For instance, you can't give a bus conductor 100 Rs. note for a ticket that costs Rs. 50. In the same way, you can't pay with a check because it's not legal currency. But if the creditor takes the check, he can't later say something bad about it. If a properly made 'offer of performance' is not accepted, the promiser or tenderor is considered to have fulfilled the contract, and the promisee can be sued for breach of contract. So, a good bid fulfills the contract.

In the matter of **Re Moore and Landauer**[12], the parties agreed to sell 3,000 cans of fruit, each of which would be sold in a case of 30 cans. The stock's valuation on the market did not shift. The Buyer suffered no damages; nonetheless, the Appeals Court ruled that he was entitled to a full refund because of a breach of S.13[13] of the Sales of Goods Act (goods must correspond with the description).

2) Discharge by Mutual Agreement

Just as a contract is made when both parties agree to it, it can also be ended when both parties agree to do so. If the individuals involved in a contract agree to make a new contract instead of the old one, the old one is canceled. In any of the following ways, both parties can agree to end a contract. Illustration: A contract says that Nupur owes Alia a certain amount of money, but the two of them agree that Manya will pay back the money owed to Alia from now on. This means that the contract between Nupur and Alia is broken, and a new contract is made between Manya and Alia.

[11] Indian Contract Act 1872, s 45
[12] *Re Moore & Landauer* [1921] 2 KB 519
[13] Sales of Goods Act 1970, s 13

a) Novation: When a contract is 'novated,' a new one replaces the old one. This deal could be between the same people or between people who are not the same. The old contract is no longer valid, so the new one is needed. This is called the 'discharge of the original contract.' Since novation means making a new contract, all parties to the old contract must agree to it. S.62[14] of the Indian Contract Act says:

- Changing the contract must be for a good reason.
- All the people involved must agree.
- The old contract needs to be replaced before it runs out or is broken.

The defendant in **Manohur Koyal v Thakur Das**[15] breached the terms of their contract by failing to pay the plaintiff the whole sum due on the due day. Nonetheless, the defendant promised to pay the plaintiff Rs. 400 and execute a fresh kistibundi bond. The plaintiff accepted this, but the defendant never forked out the agreed-upon sum. This led the plaintiff to file a lawsuit against the defendant. Calcutta High Court ruled that the original contract could not be terminated by novation since the new bond was created after the first contract had been breached.

Examples:

1. Raja made a deal with Rishi that says Raja owes Rishi money. Raja, Rishi, and Ekta, all agree that Raja will no longer be Rishi's debtor. Instead, Rishi will treat Ekta as his debtor from now on. The old debt from Raja to Rishi has been paid off, and now there is a new debt from Ekta to Rishi. This is a novation where the parties have changed.

2. Yash owes Rs. 10,000 to Harsh. Yash makes a deal with Harsh and gives Harsh a mortgage on his house for Rs. 5,000 to pay off Rs. 10,000 in debt. This agreement is a new contract, and the old one is over.

The plaintiff in **Koyal v Thakur Das Naskar**[16] filed suit against the defendant to recoup money that was due to him by the latter. It was agreed that beyond the deadline, the plaintiff would

[14] Indian Contract Act 1872, s 62
[15] *Manohur Koyal v Thakur Das Naskar* (1888) ILR 15 Cal 319
[16] *Koyal v Thakur Das Naskar* (1888) ILR 15 Cal 319

take a certain sum in cash and the remainder would be paid by bond installments. However, neither the bond nor the cash was paid by the defendant. The initial bail was later sought from him in a lawsuit filed by the claimant. The court determined that the breach, and not the novation, discharges the original bond, therefore the plaintiff must bring a breach of contract claim.

In **Lata Construction v Rameshchandra Ramniklal**[17], the Supreme Court said that one of the most important parts of a novation of a contract is that the new contract completely replaces the old one. In some cases, the original contract does not need to be carried out again. The parties must both agree to replace the old contract with the new one if doing so would invalidate the original contract or change its terms in a significant way. The old contract should end when the new one starts.

b) Remission: remission refers to the acceptance of a smaller payment than what was negotiated for or a poorer fulfillment of performance than what was initially agreed upon in the contract. S.63[18] states that a party may: (a) waive or remit all or part of the performance; (b) request more time to perform; or (c) accept any other satisfactory remedy instead of performance. Illustration: Peter owes Paul 10 lakh rupees, but Paul will only be able to give Peter 6 lakh rupees by the due date. Peter's act of forgiveness breaks the agreement if he agrees to take the amount Paul could pay to pay off the debt.

c) Alteration: The term 'alteration' is used to describe when all parties to a contract agree to amend its terms. Changing the terms of a contract is the same as canceling it. Agreement from all parties involved is required for any contract modifications. A contract's terms may be modified by an amendment, but the original parties remain unchanged. As a result of a novation, the original parties may be replaced. The Supreme Court ruled in **United India Insurance Co. Ltd v M.K.J. Corporation**[19] that parties to a contract must deal with one another

[17] *Lata Construction v Rameshchandra Ramniklal Shah* (2000) 1 SCC 586
[18] Indian Contract Act 1872, s 63
[19] *United India Insurance Co. Ltd v M.K.J. Corporation* AIR (1997) SC 408

in good faith and that this duty continues even after the contract has been fulfilled, and that no material changes can be made to the contract without the agreement of both parties.

d) Recession: The term 'rescission' refers to the legal process through which a contract is terminated. If both parties to a contract agree to dissolve it, the agreement to dissolve it will be binding. Contracts are terminable before the performance deadline.

When one or both parties fail to carry out their obligations under a contract over an extended length of time without raising any objections, the contract is said to have 'rescinded' implicitly. The key distinction between rescission and novation is that the latter results in the creation of a new contract in place of the former, whereas the former simply results in the cancellation of the existing agreement.

e) Waiver: Waiver, in this context, denotes the explicit or tacit relinquishment of a right under the contract. Any duty under it is freed from the waiving party after that party has waived his rights under it. To provide just one example, suppose A says he'll paint B a painting but then B expressly refuses it. No longer is A obligated to keep the pledge.

3. Discharge by Impossibility of performance

An agreement to execute an impossible deed is null and void from the outset under S.56[20] of the Indian Contract Act. What this means is that no legally enforceable agreement can be reached when the opposite is patently clear. Any agreement to do the impossible is null and invalid from the start.

a) Pre-contractual Impossibility. which refers to an impossibility that existed before the creation of the contract. It's conceivable that the parties to the contract are already well aware of the difficulty of the task they've agreed to carry out. If A and B make a pact wherein A revives B's deceased wife, then the pact is null and invalid.

[20] Indian Contract Act 1872, s 56

b) The impossibility is not known to either party. The mutual error of fact may be the basis for the contract. Take, for instance, the agreement to sell B his Andaman home. Both parties are currently in Mumbai, unaware that the Tsunami has wiped away the mansion. Where the parties' ability to fulfill their contractual obligations is rendered impossible by events after the contract has been formed, the parties are released from any further performance of those obligations. For reasons of 'supervening impossibility,' a contract will be canceled in the following situations:

(a) Destruction of the Subject-matter.

(b) Failure of the Ultimate goal or purpose.

(c) Death or Personal Incapacity of Promisor.

(d) Subsequent Change of the Law.

(e) Start of war or Outbreak of War.

Some situations where being unable to do something is not a valid excuse are:

(i) Difficulty in Performance i.e., it is hard to perform.

(ii) There is a commercial impossibility.

(iii) Impossibility Due to the Default of a Third Person.

(iv) Strikes and Lock-outs.

(v) Failure of One of the Objects.

The term "impossible" under S.56[21] of the Act does not restrict itself to the realm of the physically impossible, as was pointed out in the seminal case of **Sushila Devi v Hari Singh**[22]. The

[21] *Ibid*
[22] *Sushila Devi v Hari Singh* (1971) AIR 1756

Gujranwala land at issue in this leasing dispute was moved to Pakistani territory as a result of the tragic partition, rendering the terms of the contract null and void.

4. Discharge by Lapse of Time

A contracting party may only be sued for breach of contract during the statute of limitations period. Unless that occurs, the agreement will expire once the specified amount of time has passed. If A were to sell B a gold chain on credit without imposing a deadline, B would have three years from the date of delivery to make the payment or bring a lawsuit. Therefore, the lapse of time alone may be grounds for contract termination in specific circumstances. If a creditor has not filed suit against a debtor within three years of the debtor's failure to pay, the debt will be 'time-barred' and the creditor will have no legal recourse to collect it. This signifies the obligation under the contract has been satisfied due to the passage of time.

If the contract specifies that 'time is of the essence,' and it isn't completed by the deadline, the contract is null and void, and the party who was not at fault is released from his obligations. As an alternative, they can file a lawsuit seeking compensation from the offending party. Illustration - K had to bring fresh fruits to P's storehouse within two days, but because he was careless, he didn't do it until two weeks later. In this case, the contract will be canceled because the required performance was not done by the time it was supposed to be done.

5. Discharge by Operation of Law

This mode of discharge of a contract doesn't let you keep the promise made in the contract, which is against the law. Things like death, going bankrupt, merging businesses, etc. make it impossible to keep a promise, so the contract is broken. Legally, a contract may be terminated under the following circumstances.

Death of the Promisor: If the contract is between two persons and one of them dies, the contract is null and void. When a person dies, his or her legal heirs often become responsible for any outstanding obligations and assume any rights that the deceased may have under the contract.

Insolvency: If a person is declared insolvent by an Insolvency Court, he is absolved of all of his debts. In this case, the promisor is released from his obligations upon his bankruptcy being finalized.

Merger: A contract is terminated when a party's lesser rights under the contract are superseded by the party's superior rights under the same or a later contract. It's possible that A leased some property from B. Soon after, A buys that plot of property. The previous lease agreement is null and void, and A is now the legal owner of the property.

Material alteration: If one party to a written contract changes the terms of the contract without the other party's permission, the contract comes to an end. A change that changes the rights, responsibilities, or positions of the parties is called a 'material change.' You should keep in mind that changes that are not 'material,' like correcting clerical errors or the spelling of a name, do not affect the validity of the contract.

6. Discharge by Breach of Contract

A party to a contract breaks it when he or she doesn't do what they or agreed to do or when they do something that makes it impossible for them to do or what they agreed to do. There are two ways that a contract is breached:

a) Actual Breach: Another valid cause for terminating a contract is when it is breached. This occurs when a party fails to uphold its obligations within the specified timeframe. A breach of contract can take various forms, including failing to fulfill, forgetting, refusing, or not attempting to perform the agreed-upon duties at the designated time. For instance, let's say A promised to deliver 100 pints of ice cream to B's wedding but failed to do so on the agreed-upon day; in that case, A would have committed a material breach of the agreement.

b) Anticipatory Breach: A breach that happens before the time for the contract to be carried out. This can happen if the person who made the promise does something that makes it impossible to keep, or if the person who made the promise does something that shows he doesn't want to

keep it. The agreement at issue in **Hochster v De La Tour**[23] was reached that April. On May 31, the parties reached an agreement wherein the defendant would use the claimant as his courier for an upcoming international trip beginning on June 1. Despite this, on May 11 the defendant told the plaintiff that his efforts were no longer required. The court held that the plaintiff need not wait until the date of performance to file a claim for damages. In **Bowdell v Parsons**[24], it was decided that if a person agreed to sell and deliver certain goods on a certain day in the future, but then sold and delivered them to someone else before that day, the person with whom he first agreed to sell and deliver can take legal action against him right away.

Woodar Investment v Wimpey[25] **-** Construction was a lawsuit heard in 1980 about Wimpey's promise to pay €850,000 for land and €150,000 to a third party, Transworld Trade Ltd. If a government agency "must have initiated" the process of forcibly acquiring the property before the sale is finalized, the buyer can cancel the agreement and get a full refund. When the contract was signed, it was understood on both ends that a binding purchase order was being drafted. This provision was the basis for Wimpey's attempt to terminate the contract. Woodar filed a lawsuit seeking compensation after claiming he had been wrongfully rejected. The third party's loss was included in their demand for compensation. With a vote of 3:2, the House of Lords ruled that a renunciation required a desire to break the contract. Wimpey wasn't just walking away from the agreement; they were utilizing its provisions to justify their decision to sever ties.

SUIT FOR QUANTUM MERUIT

Quantum meruit is a legal term that means "payment based on the amount of work done." In other words, the term "quantum meruit" means that a person can get paid based on how much work or service he did. A quasi-contractual remedy is what people call it. Quantum meruit is used to claim in the following situations:

- If one party does their part of the contract, but the other party breaks the contract in the middle, the party who did the work or service can get paid for it.

[23] *Hochster v De La Tour* [1853] 2 E&B 678
[24] *Bowdell v Parsons* [1825] 103 ER 811
[25] *Woodar Investment v Wimpey* [1980] 1 All ER 571

- The performer of services has the right to payment for services rendered even if the contract under which they were performed is later declared illegal.

EXCEPTIONAL CASES WHEN A CONTRACT IS NOT DISCHARGED

In the following situations, the doctrine of frustration or supervening impossibility does not apply.

- If something happens that makes it hard to keep a promise in a contract, the contract is not over.
- Difficulties in the business world make the contract unprofitable, but that does not get rid of the contract.
- Strikes, lockouts, civil disturbances, and riots don't get rid of the contract unless the contract has a clause that says it will get rid of the contract in those situations.
- Parties to a contract can't get out of it if they make themselves unable to do so.
- If a third party depends on the performance of a contract, it won't be over if the third party doesn't do what it says it will.

DIFFERENCE BETWEEN DISCHARGE, RECESSION, AND TERMINATION OF A CONTRACT

When both parties to a contract have done what was agreed upon and written in the contract, they are 'released' from their obligations. It's the best thing to do because both sides of the contract have done what they were supposed to do. When a contract is made under false or fraudulent pretenses, the person who was tricked out of something doesn't have to do what the contract says. The fraud could be overt and done on purpose, a lie about facts or circumstances, or a significant omission. No matter what kind of fraud is going on, the party can end the contract without having to pay anything. The end of a contract in this way is called 'rescission.' A contract can be ended in two ways: by being 'discharged' or 'rescinded.' However, if the contract says so, the parties to the contract may be able to end the contract even if they haven't done everything they were supposed to do. Also, a contract can sometimes be terminated because something has changed, making it impossible to keep.

SUMMARY AND CONCLUSION

There are different ways to end or break a contract. Some of the ways to get out of a contract that is talked about in this study are 'discharge by performance,' 'discharge by mutual consent,' and 'discharge by subsequent or supervening inability or illegality.' The promisor's death or inability to perform, a change in the law, the start of a war, the difficulty of performance, the commercial impossibility of performance, the impossibility of performance due to the default of a third party, labor disputes, the failure of one of the objects, the passage of time, the operation of the law, are also some of how a contract can be discharged due supervening impossibility.

Our talk about what happens when a contract is broken is over. When a contract is broken, the person who was hurt can ask for compensation, specific performance, an injunction, or something called 'quantum meruit.' The term "discharge of contract" is used when it is time to terminate a contract, such as when Adarsh and XYZ's agreement to construct a flyover in Varanasi comes to an end. In this case, Adarsh represents the local government, while XYZ stands in for the construction firm that had been awarded the contract but was subsequently terminated. At that point, the contract is null and void, and neither party has any further rights or obligations to the other.

There were also different ways to get out of a contract, but the best way was to follow all the rules. This is called 'performance,' and it is the best way to get out of a contract. 'Breach' is the worst way to get out of a contract because it leads to damages. In this case, neither party has to follow through with the contract. As we have seen, there are several ways to get out of a contract or discharge a contract, but keeping the promise within the time limit set in the contract is the best alternative. It's possible to terminate a contract in a variety of ways. All the other ways out of a contract are very unpleasant because they involve paying money.