DE JURE NEXUS LAW JOURNAL

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DISCHARGE OF CONTRACT BY AGREEMENT BETWEEN PARTIES- ANALYSIS

Abstract:

In India, the statute under which contracts are governed is the Indian Contract Act of 1872. So, as per the definition provided in the Indian Contract Act, 1872, "an agreement enforceable by law is a contract."[1] *Therefore, when two parties with a common intent agree on for the same purpose considering all other legalities enlisted, they are said to form a contract. Generally, it is the consideration aspect that when added to a promise, makes it an agreement. And when the parties fulfil their obligations under the contract, it is said to be concluded. But then there are certain cases where the parties do not wish to carry out the contract or carry it out with similar terms but not the same or original ones. They might want to rescind it, alter it, or form a new contract altogether. In such cases, it is required for the parties to nullify the original contract, that is, to discharge it. So, when parties decide to discharge it, they are in a way, forming a contract to end the original one as their intent to discharge it essentially forms the bilateral consideration part of their promise. Section 62 of the Indian Contract Act deals with the discharge of contract by the agreement of parties and enumerates some methods in which it can be done. They are, namely, novation, rescission, alteration, remission, merger, waiver, and accord & satisfaction.*[2]

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[1] Indian Contract Act, Acts of Parliament,1872

[2] Anurag Mohan Bhardwaj and Simhadri Bhardwaj, *Discharge of Contract by Agreement under Contract Law,* **iPleaders**, (February 14, 2022, 5:56 pm) <https://blog.ipleaders.in/contract-discharge/#:~:text=To%20discharge%20a%20contract%20is%20to%20end%20it.&text=When%20the%20contract%20is%20formed,consideration%20or%20made%20under%20seal. >

Keywords:
Discharge, contracts, breach, novation, rescission, alteration, remission, merger, accord, satisfaction, consensus ad idem.

Introduction:

A contract is terminated when it is discharged. As a result, there are as many types of discharges as there are ways to complete a legally obligated promise. The least complex type of release is the execution of a contract on the two sides, once in a while called "discharge by performance". On the other hand, there is the "release by breach" since, while a breach may stop a legally bound relationship, it does not end the lawful remedies. Further, we consider a discharge in which the deed or document conveying the agreement is lethally altered or destroyed; or in which execution is halted due to difficulty, wrongdoing, or the statute of limitations. "Finally, a contract is released in which the parties express their express assent to this influence or to make or reconsider their different circumstances and cures." Without a doubt, there are several techniques for obtaining such a discharge, since the parties may terminate an existing agreement either by parol or under seal, or after execution or while the agreement is still in effect, or before or after a break. These methods of discharge agreed upon by the parties will keep us going here. Because the law is still quite disorganized, we simply need to know a lot more about what it is and why it is what it is.

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Objectives:

1. To interpret the meaning of types of discharge in simple and crisp language.
2. To cite leading case-laws for better interpretation of the concept.

Consensual Discharge of Contract by Parties:

The verbatim of Section 62, Indian Contract Act, 1872 is so given as, *Effect of novation, rescission, and alteration of contract, "If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."*[3] Let us try to understand the types of discharge methods by taking instances from judicial pronouncements under each type.

1. **Novation-** this is the method where a new contract is created in place of the existing one where the existing is one rescinded as consideration for the new one. It is of two types, first, between the same parties for different contractual terms and obligations

[3] Indian Contract Act, Acts of Parliament,1872

and, second, for the same terms and conditions but with a change of parties. In case of novation, it is a prerequisite that the old contract should be discharged. It is also required that while changing the terms of the contract, the essential terms should be modified, not the non-essential terms as then it would not be considered novation. In the provisional section it is also mentioned that when a new contract is created, the parties escape their contractual liability under the original contract.

In **Manohur Koyal v Thakur Das**[4], the defendant owed a certain amount to the plaintiff which the defendant had not paid on the due date. So, he promised that he will pay him Rs.400 and will also execute a bond. He again failed. The plaintiff sued him for the amount in the original bond. The court stated that in this case, novation did not take place as the original contract had been discharged by way of breach of contract. Therefore, the defendant was liable to pay back the amount to the claimant, that was promised in the original bond.

2. **Rescission-** the Indian Contract Act, 1872 under the same Section 62 also provides for the parties to a contract to rescind it by mutual consent or agreement. Here, the parties are supposed to follow the same rules that are used for the communication of offer, acceptance, and their revocation for the communication of recission of contract or its revocation which is mentioned under Section 4,5 & 6 under the ICA, 1872, and this very provision is mentioned under section 66 of the same act. If the parties rescind the original contract and move on to a new one then they can not go back to the original one for a petty reason of the new contract being unsuccessful. However, if there is a consensus ad idem between the parties, they can bring it back.

   Rescission can take place in many ways. By consensus ad idem, by the party who has been breached, by the party whose consent was not free, and also by implied consent of the parties. Upon the rescission of the contract (maybe void or voidable), the parties (defaulting party in case of breach) are liable to compensation of any benefits claimed during the contract to restore the other party to their original state (status quo ante). In **HD Hanumanthappa v. Mohd Sab**[5]**,** it was held that in contrast to a void agreement, which does not need avoidance, the court said that the party injured by the conditions that constitute the contract voidable must avoid it since it otherwise remains valid.

[4] Manohur Koyal v Thakur Das, (1888), 15 ILR, 319 Cal (India)
[5] HD Hanumanthappa v. Mohd Sab, (2011) 1 Kant LJ 49 (India)

3. **Alteration-** Alteration is defined under section 62 of the ICA, 1872. It means that the terms of the contract can be changed or altered by the mutual agreement of the parties. Alteration of the contract leads to the discharge of the existing contract and contractual obligations between the parties. It is also important that the contract should be altered bilaterally that is there should be the consent of both or all the parties as otherwise the contract will be rendered void. It should also be noted that in alteration, there can only be changed in terms of the contract but in novation, there can be a change of parties too.

   It was apprehended in the case of **Suresh Kumar Wadhwa v. State of Madhya Pradesh**[6], it was stated that a party to a contract has no right to unilaterally change the terms and conditions of the contract, nor does he or she have the right to add any additional terms and conditions unless both parties agree to change such terms in the contract. A contract modification cancels the parties' obligations under the former agreement, and the parties are bound by the new updated agreement.

4. **Remission-** in case of remission, considering less fulfilment or completely discharging the other party of the promise they had made. For instance, A owes B Rs.1,00,000 but could pay back only Rs. 40,000 which B duly accepts in consideration of Rs.1,00,000. Here, A is discharged off of his complete and is not further liable to pay B any amount. Remission can also mean increasing the duration of time in which the promise has to be fulfilled. For instance, X promised Y to supply him with 100 cars in 6 months. If X is unable to supply them within the stipulated time, Y can extend the duration for the same and it will be considered valid and lawful. So, remission can take place in two ways- either by remitting the whole or partial debt or by extending the stipulated time of performance promised under the agreement. It can also take place if something in exchange for the debt is paid if the other party agrees. For instance, Ramesh owes Suresh Rs.5,000, he gives his Rolex watch to him in substitution of the debt which Suresh agrees to take. Here, also remission has taken place and Ramesh is discharged off of his debt.

5. **Waiver-** waiver means to give up one's rights. When the parties to a contract, decide to give up or postpone their rights, the contract is said to be discharged. It is inferred that here the parties concur to not be involved in the contract again. The waiver is done in two ways. One, by way of contract in which the party agrees to surrender their rights

[6] Suresh Kumar Wadhwa v. State of Madhya Pradesh, (2017) 16 SCC 757

and two, by way of decision, where the case is of a breach of contract and the aggrieved party has the right to either end the contract or to forgo the injury caused and proceed with the contract.

In the judicial pronouncement of **Charles Richards Ltd v. Oppenheim**[7], the case facts were such that the plaintiffs promised to provide the defendants with the chassis of a car within a stipulated time, where time was the essential factor. The plaintiffs failed to supply it within time, but the defendants gave them an extension of four weeks and asserted that further delay would not be entertained. The plaintiffs supplied it after the extension to which the defendant refused. The plaintiffs sued them and contended that upon giving them an extension, the defendants had waived their right to receive performance within time. The court dismissed their plea stating that the defendants had clearly asserted that time was an important factor and are hence entitled to rescind the contract.

6. **Merger-** A merger, which happens when a substandard right accruing to a party in a dispute, merges into a superior right owing to a comparable party, can also discharge an agreement. We can take, for instance, A leases an industrial facility space from B for a year, but three months before the lease expires, A acquires the same space. Now that A is the owner of the structure, his rights to the rent (substandard rights) have merged into the privileges of possession (unrivalled rights). The prior leasing agreement is no longer in effect. In some circumstances, a similar individual may have both inferior and dominating rights. In such cases, both rights combine, resulting in the discharge of the agreement that rules the sub-par rights.
7. **Accord and Satisfaction-** An accord is an agreement in which a person, following a violation of some or all terms of the contract, agrees to take some substantial payment in exchange for the right of action that he has against the other party. And satisfaction refers to the fulfilment of the responsibility created by the new contract or accord following the breach. Discharge by accord and satisfaction refers to the discharge of the original agreement as a result of the execution of the new substituted obligations.

   While initially hesitant to accept the amended settlement in **Kapurchand Godha v Mir Nawab Himayatalikhan Azamjah**[8], the plaintiff finally expressed readiness to accept

[7] Charles Richards Ltd v. Oppenheim (1950) 1 KB 616
[8] Kapurchand Godha v Mir Nawab Himayatalikhan Azamjah 1963 SCR (2) 168

the cash offered in exchange for total satisfaction of his claim and discharge of the promissory note. The Supreme Court of India concluded that Section 63 of the Indian Contract Act addressed this case completely. In exchange for the acceptance of a new agreement, the parties relinquish their respective rights under the previous agreement. As a result, the parties' earlier rights are ended when such an accord and satisfaction are established. The new rights have effectively rendered them obsolete.

Point of Similarity & Difference among the Different Types:

One very obvious and evident similarity among all of them is that all pertain to discharge or end a contract and all the obligations attached to it. When it comes to novation and alteration, alteration does not involve discharging of an old contract and making of a new contract but only altering the terms of the contract whereas novation involves changing of either terms or parties to the contract along with the making of a new contract. When talking about novation and accord & satisfaction, accord & satisfaction can only take place if there has been a breach of contract while with novation this is not a requisite.

Conclusion:

It can be interpreted well that the law of contracts is progressing or rather say developing but it cannot be asserted that it has totally developed because no law can ever be. Discharge of contracts is often a topic of misconception as people do not try to understand it well also because of the complex language under the statute. Nevertheless, it has been simplified in many landmark judgments, so by ample research by a person, it can be easily understood or at least be attempted to understand. Discharge can take place in many ways and one of the ways is by the mutual assent of the contracting parties. Leading case laws have justified their take on its types. Discharging by agreement seems to be a pleasant way as it is done after enough discussion between the parties and consensus ad idem is taken care of well.

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