

WHY IN PRINCIPLES OF CONTRACT LAW THERE IS A STRONG MORAL OBLIGATION FOR PERFORMANCE OF A PROMISE?

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INTRODUCTION

What is a contract?

According to Section 2 (h) of Indian Contract Act, 1872, “An agreement enforceable by law is a contract.”¹

All agreements are not enforceable by law which means that not all agreements are not contracts.

According to the Section 10 of the Indian Contract Act, 1872 ,

“All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void.”²

The term ‘Proposal’ has been defined in the Section 2 (a) of the Indian Contract Act, 1872 as follows,

“When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.”³

What is a promise?

According to Section 2 (b) of the Indian Contract Act, 1872:-

“When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.”⁴

This promise between two parties can also be called as an agreement. According to Section 2(e) of Indian Contract Act, 1872 :-“Every promise and every set of promises forming the consideration for each other is an agreement.”⁵

- 1- C. – Section 2 (h) of Indian Contract Act, 1872.
- 2- C. – Section 10 of the Indian Contract Act, 1872.
- 3- C. – Section 2 (a) of the Indian Contract Act, 1872.
- 4- C. – Section 2 (b) of the Indian Contract Act, 1872.
- 5- C. – Section 2(e) of Indian Contract Act, 1872.

What is a Promissory Estoppel?

As explained by Dr. A .S. Anand , C.J. in a decision of the Jammu and Kashmir High Court ,

“The doctrine of Promissory estoppel represents a principle evolved by equity to avoid injustice. The basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which is intended to create legal relationship to arise in the future , knowing as well as intending that the representation , assurance or the promise would be acted upon by the other party, the promise or assurance should be binding on the party making it and that party should not be permitted to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings , which have taken place or are intended to take place between the parties.”⁶

What is Moral Obligation ?

“Moral obligation is an obligation arising out of considerations of right and wrong. It is an obligation arising from ethical motives, or a mere conscientious duty, unconnected with any legal obligation, perfect or imperfect, or with the receipt of benefit by the promisor of a material or pecuniary nature. Moral obligation springs from a sense of justice and equity that an honourable person would have, and not from a mere sense of doing benevolence or charity.”⁷

Performance of a promise

“For ethical theorists the central task is an explanation of promissory obligations: How is it that we come to have a moral obligation to do what we promise we will? The question is particularly difficult because promissory obligations differ from other sorts of moral obligations in a number of ways. Unlike paradigmatic moral duties, the duty not to harm for

6- C. – M/s Ali Mohd. Sheikh v. State of J&K , AIR 1987 J.&K . 11 at 13.

7- - C.- <https://definitions.uslegal.com/m/moral-obligation/>, 14-02-2018, 18:59

example, promissory obligations are not owed equally to everyone, but rather only those we have promised. For this reason promissory obligations are often categorized as ‘special’ obligations, of a piece with the obligations owed to family and friends. This feature makes promissory obligations especially problematic for consequentialist theories of morality.”⁸

Furthermore it is said that a person is not morally obliged to make promises but if one does make a promise then they must make sure that they do fulfil the promise too.

As Hume acidly remarked in the Treatise

“I shall further observe, that, since every new promise imposes a new obligation of morality on the person who promises, and since this new obligation arises from his will; it is one of the most mysterious and incomprehensible operations that can possibly be imagined, and may even be compared to transubstantiation or holy orders, where a certain form of words, along with a certain intention, changes entirely the nature of an external object, and even of a human creature.”⁹

8. – C. - <https://definitions.uslegal.com/m/moral-obligation/>, 13-02-2018, 10:45.

9. – C.- <https://plato.stanford.edu/entries/promises/>.

MORAL OBLIGATION AS PART OF PERFORMANCE OF **A PROMISE**

“In law, contracts are created by a process of offer and acceptance. An offer to enter into a binding contract consists of an indication by the Offeror to be legally bound by the terms indicated in the offer once the person to whom the offer is addressed, the Offeree, has accepted the offer in the manner indicated in the offer (if any). Once acceptance has taken place, a binding contract has come into existence and both parties are legally bound by its terms. A contract is therefore a voluntarily assumed legal obligation. A party who fails to perform his obligations under the contract is said to be in breach of contract and is liable to compensate the other party. Compensation normally takes the form of payment of a sum of money sufficient to place the party entitled to damages in the same position as in which that party would have been if the contract had been performed.”¹⁰

It literally means that if after acceptance of an offer, the party refuses to act on the part of promise from their side they can choose to have a legal remedy for breach of contract.

Different types are made on a daily basis by everyone, the one commonly found in all parts of the world would be a promise taken in all families and every day, Marriage.

Marriage is literally a promise between two people to spend their lives together, reproduce and care for children together.

Marriages are also broken on a daily basis nowadays, in the form of a divorce. This is another example of promises that are not performed.

When marrying vows are taken, vows are promises with God as witness, and the couple promises to love, honour and cherish their partners for a lifetime and more. But when the same marriage is in jeopardy, is equivalent to breaking a promise.

While a couple opts for a divorce, it is frowned upon even in the 21st Century.

A divorce is the breaking or non-performance of a promise which has its moral implications on the society and their lives.

10 – C. - <https://en.wikipedia.org/wiki/Promise>, 12-02-2018, 10:20.

Like when a couple decides on a divorce, they have to think about the implications it will have on not only their children , if any , but also their families.

A divorce between two people is considered as a sign of poor or disturbed upbringing on the part of the parents

Morally it is expected out of all married couples to try and stay married either for the sake of children and for the sake of reputation of families or the most basic reason because you promised.

According to the wedding vows taken,

"Groom: I, _____, take thee, _____, to my wedded Wife, to have and to hold from this day forward, for better for worse, for richer for poorer, in sickness and in health, to love and to cherish, till death us do part, according to God's holy ordinance; and thereto I plight thee my troth.

*Bride: I, _____, take thee, _____, to my wedded Husband, to have and to hold from this day forward, for better for worse, for richer for poorer, in sickness and in health, to love, cherish, and to obey, till death us do part, according to God's holy ordinance; and thereto I give thee my troth."*¹¹

A person has promised which is the most profound and important reason to not divorce.

Kant describes that everyone simply understands that they have to perform promises because they must. They promised so they should do it and it is expected out of them morally.

Charles Fried in fact says that it happens as an instinct.

To quote him,

“An individual is morally bound to keep his promises because he has intentionally invoked a convention whose function is to give grounds – moral grounds – for another to expect the promised performance.”¹² “The trouble, the circle , is that there are no moral grounds to

11- C. - <https://pairedlife.com/relationships/Ten-Reasons-Not-to-Get-a-Divorce>, 12-02-2018, 10:22.

12.- C.-Fried, Contract as promise, 1981, pg.16 .

expect performance unless the individual is already to bound to keep the promise.”¹³

He also points out that the promisees have a correlative right to performing the promise. He calls moral obligation the ‘justifying ground’ of contract law.

The message very clearly being given is that

“The moralist of duty thus posits a general obligation to keep promises , of which obligation of contract will only be a special case – that special case in which certain promises have attained legal as well as moral forces. But since a contract is first of all a promise, the contract must be kept because a promise is kept.”¹⁴

13. -C- Fried, Contract as promise, 1981, pg.17.

14.-C.- Fried, Contract as promise , 1982, pg. 17.

MORAL OBLIGATION IN PERFORMANCE OF PROMISE **AS PART OF PHILOSOPHY**

“Philosophers have tried to establish rules for promises. [Immanuel Kant](#) suggested promises should always be kept, while some [consequentialists](#) argue that promises should be broken whenever doing so would yield benefits. In [How to Make Good Decisions and Be Right All the Time](#), [Iain King](#) tried to reconcile these positions, suggesting that promises should be kept 'unless they are worth less to others than a new option is to you,’¹³ “and that this requires a relevant, unforeseen and reasonably unforeseeable change in the situation more important than the promise itself arising after the promise is made.”¹⁴

“As opposed to Kant, some Russian pluralists believe that morality with regards to right and wrong cannot be formalized in writing. In certain circumstances, breaking one’s promise may be more beneficial than the cost of keeping it. These moral principles need guidance and good judgments to maximize the benefits of people involved.”¹⁵

Another famous example that signifies the breaking of a promise on a five yearly basis is the promises given to the masses by the politicians during every election. The politicians promise a lot of things to lure voters.

If we consider that we should be morally obliged to keep up with all our promises and also consider that these politicians must do so too. In this situation there is no legal obligation also on these politicians to keep promises they promised during elections.

Either some legal alternative should be put on the conduct of the politicians to regulate the promise making and performance or there should be some moral or external actions which will keep in line the performance of promises after elections.

13 – C. - *How to Make Good Decisions and Be Right All the Time: Solving the Riddle of Right and Wrong* (2008), p.142.

14. C.- [*How to Make Good Decisions and Be Right All the Time: Solving the Riddle of Right and Wrong*](#) (2008), p.143.

15- C. - <https://en.wikipedia.org/wiki/Promise>, 12-02-2018, 10:47.

MORAL OBLIGATION AS CONSIDERATION IN PERFORMANCE OF A PROMISE

“Correspondence accounts of the relationship between contract and promise hold either that contract law is justified to the extent it enforces a corresponding moral responsibility for a promise or unjustified to the extent undermines promissory morality by refusing to enforce a corresponding moral responsibility for a promise. In this Article, I claim that contract scholars have mistakenly presumed that they can assess the correspondence between contract and promise without first providing a theory of self-imposed moral responsibility that explains and justifies the promise principle. I argue that any plausible theory of self-imposed moral responsibility is inconsistent with strong correspondence account, which would impose legal liability for promises, including promises intended not to be legally.”¹⁶

This has been said by various authorities in contract law and can be seen as a sign of questioning the existence and need of morality in contract law.

It is interesting to note that generally moral obligation is one of the most important essentials of a promise.

Moral Obligation will always be necessary to the performance of a promise in contract law.

Another situation where the necessity of moral obligation is necessary is in the relationship between a Doctor and a patient.

According to the Hippocrates oath, that all doctors take before starting their medical practise and treating patients states that the doctors are taking an oath i.e. is a form of promise to treat their patients to the best of their capabilities and knowledge.

The breaking of this promise is what we call medical negligence in torts.

We know that a relationship between a doctor and a patient is a fiduciary relationship, which means it is a relationship based on trust. The patient and their family trust the doctor to help them fight for their health and well being.

The doctors promise their patients of doing their very best for them and doing it to the best of their abilities, it is when the this promise is broken , that the doctor has broken a promise and also committed breach of contract while jeopardizing their career by being negligent in their professions.

Another aspect to be taken into consideration would be the trust between parties when there is a promise between them.

The performance or non performance of a promise can potentially make or break relationships. Because there is trust involved that is why the performance of a promise will also have a lot of obligations from emotional to moral.

In *Manwill v. Oyler*, a few payments were done by the plaintiff on the defendants behalf and after that the defendant refused to payback.

Plaintiff's theory to support his cause of action was that the defendant was under a moral obligation to repay. In response to this claim, the court denied recovery stating:

“The difficulty we see with the doctrine is that if a mere moral, as distinguished from a legal,

obligation were recognized as valid consideration for a contract, that would practically erode to the vanishing point the necessity for finding a consideration. This is so because in nearly all circumstances where a promise is made there is some moral aspect of the situation which provides the motivation for making the promise even if it is to make an outright gift. And second, if we are dealing with moral concepts, the making of a promise itself creates a moral obligation to perform it In urging that the moral consideration here present makes a binding contract, plaintiff places great reliance on what is termed the material benefit rule as reflecting the trend of modern authority.”¹⁷

This is just a brief overview of what the consideration in the form of moral obligation plays in the performance of a promise and thereafter in the performance of a contract.

17- C. - W. J. Grosse, *Moral Obligation as Consideration in Contracts*, 17 *Vill. L. Rev.* 1 (1971).

CONCLUSION

In the end we can infer that moral obligation plays a very pivotal role in the performance of a promise.

“A moral obligation can be encoded into a contract, and some moral obligations are protected by law even without a contract. Some contracts, however, may contain provisions that some people find immoral.”¹⁸

By this what we mean is that when a party gets into contract with another party it can be for moral purposes or immoral, this should be determined by the parties of the promises. A number of examples and case scenarios have been discussed in this paper from the promises taken in marriages and how it is broken when the couple divorces and its moral implications on their children and reputation of their families. Divorcing and not being bound to your partner is considered immoral and therefore will be considered as the couple not obliging to the moral regulations of the society.

Some of the moral obligations are codified to law. One of the most obvious and famous example would be the moral obligation on parents to take care of their children until they are capable of maintaining themselves. But it is not only morally that they are bound to do that

but also legally, if they do not take care of their children they can be convicted for child abuse and negligence too.

But people are also morally expected to take care of their parents in their old age but they don't and there is not much legally that can be done, so the society relies on moral obligation to reel in the immoral behaviour of leaving their old parents to fend for themselves.

Another example that one can come across frequently is the promise a doctor or even a lawyer gives their patient or client before any surgery or case. This promise cannot be enforced in a court of law because the lawyers and doctors only have a moral obligation of performing their jobs and duties in such a way that they have done it to the best of their abilities and never ever promise them the absolute guarantee that any case or surgery would be a success.

This only goes on to prove that moral obligation reels in the breaking of promises and infact deters people in doing so too hereby making breach of contracts a rarity too.

18- C. - <http://smallbusiness.chron.com/moral-obligation-legal-contract-66668.html> , 14-02-2018, 22:20