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An Appraisal of the Indian Contract Act: Loopholes, Ambiguities, and Reform Imperatives

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Abstract: ***The Indian Contract Act, 1872 has long served as the foundational statute governing contractual relations in India, providing a comprehensive and meticulously drafted framework that has effectively regulated contractual obligations for over a century. Owing to its detailed and principled structure, the Act has required minimal substantive amendments and has successfully governed contracts across the Indian corporate and commercial sectors for an exceptionally prolonged period. Its enduring relevance reflects the foresight of the legislative drafters and the robustness of its underlying legal principles.***

However, the rapid evolution of technology, particularly the emergence of blockchain technology and digitally driven business models, has significantly altered the contours of contractual relationships in the twenty-first century. In light of these transformative developments, it has become imperative to re-examine and modernize the Indian Contract Act to ensure that it adequately reflects contemporary commercial realities. From the perspective of modern corporate governance and global trade practices, targeted reforms within the existing statutory framework are essential to facilitate innovation, certainty, and efficiency in contractual dealings.

This paper critically examines the necessity of incorporating smart contracts founded on blockchain technology within the ambit of the Indian Contract Act. It further explores the need for contractual reform in emerging and sensitive sectors such as medical surrogacy, where traditional principles of consideration and contract formation pose unique legal and ethical challenges. Additionally, the study revisits evolving interpretations of Article 11 and Article 27 of the Act in the context of contractual capacity and restraint of trade, particularly in an era marked by digital platforms, gig economies, and cross-border engagements. The paper also emphasizes the need for explicit statutory recognition of digital and electronic contracts, alongside a critical reassessment of Section 74 of the Act concerning liquidated damages and penalty clauses, to address ambiguities that frequently arise in modern commercial disputes.

These areas represent significant legal gaps within the century-old legislation that warrant timely amendment to ensure legal certainty and to prevent misuse or misinterpretation. The paper offers pragmatic suggestions for statutory reform aimed at aligning the Indian Contract Act with global contractual standards, thereby making India a more attractive jurisdiction for both domestic and international enterprises seeking to enter into diverse commercial arrangements with Indian entities and individuals.

Finally, this research provides a comprehensive overview of the Indian Contract Act while highlighting persistent difficulties in the interpretation and application of certain provisions within the Act. It is argued that progressive reforms—particularly those accommodating smart contracts enabled by blockchain technology—represent the most viable path forward. In addition to addressing technological advancements, the paper delves into the complexities surrounding consideration and contract formation in surrogacy agreements and advocates for a systematic revamp of existing provisions. Overall, the study underscores the tangible benefits of updating the archaic framework of the Indian Contract Act, 1872, to ensure its continued relevance, adaptability, and effectiveness in an increasingly digital and globalized contractual landscape.

Keywords: Blockchain, Section 27, Section 74, Section 11,Amendment, Indian Contract Act 1872, Digital Contracts

I. INTRODUCTION

TheIndianContractActisavastpieceofdocumentationthatenablesthebusinessesaround India to engage in multitude of contracts. However, there is a certain need for a relook at theactsothatitcanbecalled“Up-toDate”withtherecentstandardsandjudgements.This article provides a look at the Indian Contract Act with the objective of reviewing it and advancingtheloopholesthatpersistintheAct. Likeanyswordwhichneedspolishingafter its usage, the Indian Contract Act too demands a regular timely update so that it shines brighter.

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II. LITERATURE REVIEW

A. ARTICLES

1) *CriticalAnalysisofSection27 oftheIndianContract Act*[1]

- ThisarticleexaminesSection27oftheIndianContractActinavariedway.
- It talks about the various type of restraints- whether partial or total restraint exercised by individuals and companies to compete with each other in the market.
- Italsodrawsuponthethinlinesofconclusionbetweenwhatconstitutesasfairrestraintand what does not constitute into fair restraint.
- This article provides cases to substantiate the voidability of certain restraints to trade and alsotalksabouttheprevalentideaofcontractsandrestraintsfromtheviewpointofEnglish Law.
- Lastly, this article talks about the two exceptions to the restraint of trade mainly- judicial interpretationsandstatutoryprovisions.Italsotalksaboutthenarrownessofthesectionand how certain improvements are needed for it to be complaint in the modern times.

2) *EnglishContractProblemsinIndianCodeandCaseLaw*[2]

- ThejournalgivesusacomparisonbetweentheIndianusageofContractlawandthesimilar or dissenting perspective adopted by the English courts in certain perspectives,
- Itdiscussesabout limitationsgoverningtheIndianContractAct1872incertainprovisions like Section 70, Section 11 etc. These limitationsshow their contradictory opinions when faced with the conflict of opinion both in English courts and Indian Courts.
- ItalsotalksabouttheimportanceofEnglishjudgementswhichmakeaprofoundimpacton the Indian judges which consider the judgements while giving orders for the same in a disputed case of Indian contract act.
- Thejournalalsodiscussesthevariationsfollowedinsimilarfactcasesin EnglishandIndian courtsalike.Itisobservableincasesthatwhatmightbefollowedby Englishcourtsmaybe considered in the Indian decisions but with a slight variation in the implementation. One suchexampleistheTinnHoffman3caseandSurendraNathv.Kedarnath4,whereinsimilar factual scenarios led to the same judgement but with variations arising in the Indian counterpart.
- Lastly, it talks about the infant cases which the author finds to be unsatisfactory with no clarity on the principles either. The author takes note of minors who have to engage in contractssuchasfilmoradvertisementcontractsandfocusesonthedifficulty,theyhaveto engageinwhileenforcementofcontract.TheprovisionsofIndianContractActbarminors from contracting unless the contract is of a necessity.

3) *LegalImpactofTechnologyonE-ContractsCommunicationinIndia*[5]

- The following paper discusses E-contracts ingreatdetail. It talks about the modes of acceptance, offer and how E- contracts come under the purview of Indian Contract Act 1872.
- The paper also discusses the similarities of E-contracts to normal contracts and how such contracts are governed under IT Act,2000, and Indian Contract Act 1872.
- IttakesintoconsiderationabouthowtheaspectofcommunicationworksinE-contractsand how digital and E signatures work in real time.
- This paper also talks about the legal problems faced in such contracts and goes in detail to showcase the same in the current factual existent like jurisdictional barriers, cyber-crime etc.
- However, this paper doesn't give any suggestions as to what to do for the persistent problems in E-contracts.
- ContractualliabilityofaminorinIndia
- This article talks extensively aboutthe perception of minors through the eyes of Indian Contract Act 1872. It talks about ratification of contracts by minors in a broad sense along with their accountabilities in certain contractual obligations.
- This article also deals with minors under Negotiable Instruments Act,1881 and also in the case of agency.
- Various cases have been discussed in this article related to minors and in a very thorough fashion.
- However,thisarticlefailstoestablishfreshrelevanceonthetopicofminorsinthemodern- day world. It also fails to provide any suggestions as to how we can make it better for contracting parties in case of a fraud by minor.

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4) *TheIndianContractAct:ItsWanderlustAndWarmerClimes*[7]

- ThisarticleprovidesacomprehensiveworldwideviewofimplementationofIndian Contracts Act, 1872 in countries like Pakistan, Bangladesh and Burma.
- Itstartswiththehistoryofcontractsactanddives brieflyintoitsoriginsfromthetimesof Dharmasastra.
- However,themaincontentincludesdistinguishablefactsbetweenEnglishCommonlaw andtheIndianContractAct1872.Italsotalksabouttherestrictivemannerof Section27 which doesn't allow the principle of Laissez-faire.
- ItalsoruminatesontheeffectofSection74oftheIndianContractActandhowthe implementation of these relevant provisions differs in countries according to their respective societies. This happens despite the usage of the same law.
- However,thisarticledoesn'ttalkabouttheshortcomingsofsomeprovisionsandtheneed for amendments in certain provisions of the act.

B. *BOOKS*

1) *AvtarSingh'sLawofcontractandSpecificRelief*[8]

- This book talks extensively aboutIndian Contract Act 1872 and also discuss about many provisionsandtopicssurroundingit.Itisbasedoncourtdecisionsandlatestprecedentsset by the court.
- It also includes new decisions about the problems related to email related decisions, arbitrationargumentsandcoversvariousaspectsrelatedtoagreements,acceptance,legality, mistake etc.
- However, this book does not cover e-contracts or upcoming new sectors like smart contracts. It also does not cover any limitations governing the act or any amendments suitable for the act given the latest scenario.

2) *Cheshire,Fifoot&Furmston's-LawofContract*[9]

- It is a detailed book concerning itself with law of contracts along with various doctrines associated with it.
- It covers theoriginsof thecontract with a diveinto the medievaltimes with afollowup to the modern times to give a historical introduction of how the law of contracts came to be what it is today.
- However, itfailsto establishamodernrelevancewhentalked abouttheproblemsfacedby peopleincontractformationinelectronicform. Furthermore,itdoesn't considerloopholes of various provisions of the Indian Contract Act and provides a global view instead of a tailored Indian view.

3) *Anson'sLawof Contract*[10]

- This book is a detailed manifestation of contracts law. It talks a lot about express and implied terms in a contract along with a clear focus on the exemption clauses.
- AlthoughittakesaUKcentricviewuponthetopicsofcontractsdiscussedinit,itprovides ausefulcomparative narrativeastohowthecasesaredealtintheEuropeanviewpointand how they differ in the Indian context.
- However, like the other books, it doesn't reflect the modern technologies being implemented in the field of contracts during the 21st century. It is a well detailed piece of writingwhichcoversmostaspectsofthecontractlawbutfailstoobservethenewchanges.

4) *Pollock & Mulla, The Indian ContractAct & Specific Relief Act, 1872*[11]

- ThebooktalksaboutIndianContractActinacomprehensivemanner.Ittakesintoaccount the Indian Setting of scenarios and justifies it through cases tailored for the Indian setting.
- It deliberates the scope of the act and also talks about main provisions governing the act like consideration, promises, communication, revocation etc.
- Italsodivesdeepintothetopicofinfancy,estoppel,ratification,andspecificperformance. Thebookalsomakesiteasiertounderstandspeculativeandwageringtransactionsaredealt in the Indian Courts.
- Although it talks a little bit about governance of E-Contracts through the IT act, it is still very barebones in giving a full context about the E-Contracts. It is also lacking in terms of defining surrogacy contracts and other new concept contracts.

5) *CharlesL.Knapp,ProblemsinContractLaw*[12]

- Thisbookisawell-documentedpieceofworkwhichtalksabouttheproblemsarisinginthe Contract Law.
- Itcogitatesthevariousproblemslikelimitationsinexpectationdamages,RightsandDuties of the third parties, statute of frauds etc.
- Theproblemwiththisworkistheoutdatedcontentofthebook.Ittalksabouttheproblems in contracts from 20th century perspective with no consideration about the technological perspective.
- Italsodoesn'ttalkaboutcontractlawproblemsfromaspecificIndianpointofview.

C. STATEMENT OF PROBLEM

While dealing with the contracts of the modern era, it is imperative that we take a study of amendmentsandchanges thatshouldbetakenintoconsiderationforthemodernepoch.Thelatestadvancementsintechnology,theclosingboundariesofbusinessesduetoglobalization and a relook at some of the old-fashioned sections of the Indian Contract Act 1872 to plug in the loopholes is verymuch needed.Our problem mainly deals with gaps in the Indian ContractAct1872regardingsurrogacycontracts,anon-existentapproachtothelatestsmart contracts and how certain sections of the Act pose problems to the Global MNC's in conducting their business in India.

D. RATIONALE OF STUDY

Contractsformadailypartofourlife.Weengageinexpressandimpliedoffersinourdailylifeonapersistentbasis.Theneweonsofstartupsandsharedglobalsolidaritythroughnew companiesestablishingproductionplantsinIndiameansthatcontractswouldbeoneofthe first things that these companies would be doing in plethora due to nature of a business transaction. However, with the modern changes required in running a business, it is also quintessentialtoupdatethecontractswhichwouldbegoverningbusinesstransactions. The problem arises in identifying the key areas wherein the Contract Act needs to be updated. Theintentionbehindthisarticleisto discussindetailwhataresomeoftheproblemsfacedbyusduetoanoutdatedcontractactandthechangesrequiredforthemodernbusinessestoconducttheircontractswithease.Itisalsoanoutlookofthenewtechnologywhichisbeing implemented by MNC giants in the contract formation sector and how the legislation can keep up with it through certain changes in the Act. Thus, this study explores the reforms which can be implemented in the century old Contract Act to bring it to the level of modernity.

E. RESEARCH OBJECTIVES

Thepurposeofthisresearchis

- TotakeacriticaloutlooktowardsSection27oftheIndianContractAct.
- To take a outlook at the present problem of minor dealings in modern contracts according to Section 11.
- TotakeacriticalapproachatanalyzingSection74oftheIndianContractAct
- Toanalyzethecurrentsituationofsmartcontractsbasedonblockchaintechnology
- Tocontemplateontheproblemsthatariseinasurrogacycontract.
- Toprovideeffectivesuggestionsonthechangesneededintheindian ContractAct,1872.

F. RESEARCH QUESTIONS

- DoesthecurrentIndianContractAct,1872needarelookatSection27inthemodern business world?
- Isitjustifiedtodeclarecontractswithminorsvoidotherthanthatofnecessityintheageof global uprising of contracts with influencing teens?
- DoesSection74ofIndianContractAct,1872needtobebroughtupwiththecurrent changing scenarios of the 21st century?
- Cantherebeaprovisionforoutliningsurrogacycontractsasaspecialprovisionintheindian Contract Act, 1872?
- Can the Indian Contract Act 1872, incorporate the automation of smart contracts based on automation?

G. RESEARCH METHODOLOGY

Themethodologythatwouldbeappliedforconductingthisresearchis Doctrinal,Analytical and Comparativeresearch. In this research theprimary sources of dataareIndianContract Act, 1872 and Judicial Precedents. The secondary sources of data comprise of publishedbooks, journals , scholarly articles, online journals, research reports and others were used.

1) ARELOOKATSECTION27OFTHEINDIANCONTRACTACT,1872

Section 27 of the Indian Contract Act states,1872that, "Every agreement by which one is restrainedfromexercisingalawfulprofession,tradeorbusinessofanykindistothatextend void."[13]

A good case study of the current exploitations of the Restraint of profession, trade or business topic can be traced back to sport clubsand agents. They hide the exploitations behind a long-term contractual obligation as they don't like to give up on theirtreasured assets. In this way, they are denied the right to play and consequently the right to earn throughshadycontractclauses.Oneoftheprimaryinternationalcasesthatgovernsthisidea istheBosmancase.[14]

Inthiscase,thecourtwasquestionedwiththeidea ofrestraintinthe free movement of players practiced by the football clubs by charging a fee for the transfer of players whose contract has ended.There were also other aspects which were further lookeduponintheBosmanCase.Someoftheseaspectsincludedrulingquotaswhichwerechangedtoincludethequotaofonlyrestrictingthenumberofnon-EUplayersoneachteam. The Bosman ruling turned out to be a landmark judgement for most players around the world and was a first step towards removing the restraint practiced by clubs likewise. The players could now freely move to any club which they liked without having to give substantial fees to their old clubs.

However,this was just a small firing in a big warfare. The current FIFA regulations are still subjective to reforms in the transfer mechanism. Players are still considered tradable possessions where rights of theplayers are blatantly violated in a contractual obligation. Their regulations can be termed to be anti-competitiveand to some extent very illicit and unpardonable.

TheIndiansideofthesportscompetitivemarketisequallyguiltyofsomeoftheregulations they pose on athletes[15]. A prime example of it would be the Percept case against Zaheer Khan.[16]

In this case, Percept repeatedly tried to enforce Right ofFirst Refusal (ROFR) clause on Zaheer Khan, practically handicapping him from wielding any bargaining power leaving himatthemercyofPerceptinanyofferreceived.Thisclausegrantedthecompanytomatch anyoffersmadebyathirdpartyandretaintheclienteleiftheysodesired.Theclientisonly deemed to work with any other party if the first party can't match the other party's offer. This is a practice followed by many Indian companies in the name of restrictive covenants and is a major plughole to be resolved. Like FIFA, this practice also seems very anti- competitive, deleterious, and one-sided. A similar story unfolds in Yuvraj Singh case,[17] which held that negative covenants like these are a restraint on trade for the athletes and should not be followed. The cases have not been going down, albeit there have been some caseslikethatofAlexanderZverevthathavereachedoutofthecourtsettlementsin cases of restraint of trade.[18] It can be analyzed from the above discussions that there exists aclearlopsidedbargainingpowerbetweenclubsoragentsinthesportingworldwhotryto parasitically rip off from the personal off pitch brand of an athlete. In this process, they enforcevariouscontractualobligationsin thenameofreasonablerestrictionsonrestraintof trade whichneed to be relooked.

2) OUTLINING SURROGACY CONTRACTS IN THE INDIAN CONTRACT ACT, 1872

CommercialsurrogacywasgivenaformalgreenlightinthelandmarkcaseofBabyManajiYamandav.UnionofIndia.[19]ItisgovernedbytheIndianContractAct,1872inthemodern times. However, there is still a wide gap in his implementation through the Contract Act. This gap arises in the form of applicability of contractual remedies upon the breach of any such surrogacy contracts. The innate nature of the contract involving the handover of a human child to the inherited parents and the complications which arise on specific performance on the account of pregnancy problems makes it difficult to provide for any reliefs; whether those reliefs be governed by Indian Contract Act itself or Specific Relief Act.Another gapis the prima facie commodification of the human child and damages proposed on the account that the child born is deficient in some area.[20] It makes a problem forthesurrogatemothertocompensatetheothercoupleifsuchasituationarisesorincasesofdeceptionbysurrogatemother.ThecaseofReP(Surrogacy:Residence)[21]isanexample ofsuchcasewherethemotherbreachedthecontractbyfalselydeclaringthatamiscarriagehappened.Itwaslaterfoundoutthatshewasraisingthekidsonherownandhaddeceived the original intended parents.

Lastly, there arises the issue of free consent in the surrogacy contracts as there are many cases wherein the mothers change the decision of giving away thechild.TheIndianContractActdoesn'tdealwithsurrogacycontractsinthewayitshould be intended. The Surrogate contract places a compulsion rather than a free consent on the surrogate mother to deliver the child at the end. The Law commission report of India recommendsthatcertainprovisionsshouldbeaddedforsecuringtheconsentofthemother in such cases[22]. Thus, it would be beneficial for the commercial surrogacy medical hub if certain exception clauses related to surrogacy in Indiais implemented in sucha way thatit protects the rights of surrogate mothers like in the situations of maternity leave[23] and also help in clear implementation of surrogacy contracts that are governed under the Indian Contract Act.

3) ADDITION OF SMART CONTRACTS BASED ON BLOCKCHAINTECHNOLOGY IN THE INDIAN CONTRACTS ACT 1872.

The Smart contracts can be the answer to the renewable leasing agreement problem faced bymanypeopleinthebusinesssector.Therealestateboombacksthesmartcontractswhich offers ease and convenience for renewing short term and long-term dynamic business catered leases. Indian Companies are jumping in on the bandwagon with companies like Bajaj Finserv[24] and Tech Mahindra[25] being the first hoppers. A blockchain can be defined asa shared, immutable ledger that facilitates the process of recording transactions and tracking assets in a business network. Not only is it faster and more efficient that other services but it is also very diverse.[26]

A smart contract gets stored on a blockchain andself-execute itself based on certain parameters and if-then conditional statements imbibed in its code. Based on external activitiesandcertifiableproofsofexecutionoftriggerevents,thesecontractsareexecuted. Thus, they minimize the need for liaisons or other third-party interference in making and execution of a contract. They also help in minimizing the costs for parties in terms of contract formation and litigation.[27]

However, these smart contracts are a relatively new insignia in the world of contracting as theseareincorporatedasasubsetwithintheEcontractsgovernedunderITact,2000,andIndianContractAct1872.Thismeansthattheyarerecognized asvalidunderSec.10 ofthe IndianContractAct.[28]Thesecontractsdoposesomehurdlesintheirimplementationasthe essentials of a valid contract work a little differently in smart contracts. These smart contracts are coded by a programmer and self-executory in nature. The theme of binary languages may not besomething which a laymanor anordinarylawyernot specializing in techfieldmaybeabletointerpret.Itcanalsobecomedifficulttoprovideacommonconsensusbetweentwopartiesagreeinginasmartcontractasconsensusadidemwouldbe absent based on dearth of knowledge of programming code.

ItalsobecomesdifficulttoincorporatesuchcontractsintheIndianRealmasthelegislative frameworkis not that capable to interpret such contracts. Smart contracts are a lucrative incentive for MNC's to sign more contracts and can strengthen the economic pipeline by inducing more people to enter the Indian subdivision. Since there are regular triggers in a smart contract which execute auto debit or auto credit functions, it helps in maintaining stability and reduces risk in a risk dominated society. In the leasing sector, it can prove to beabeneficialthirdpartywhichautodebitstheleasepaymentandautocreditsthesecurity deposit on expiry of lease. It can also facilitate complete transparencyand traceability through a publicly seen audit on the blockchain ledger. During the leasing, any function whichrequirestransferoffundsfromoneplacetoanotherbasedonspecificconditionscan beexecutedautomaticallymakingitatimesavingfeature.Lastly,itcanexecuteconditions and funds based on a court or arbitration decision. Not only this but the talks of implementation have had afar-reaching implication on thegovernment of UKtoo through its latest law commission report[29]. Thus, the repetitive costs can be saved through a one- time investment in a smart contract. Hence, this would prove to be beneficial for the commercial businesses who have to enter into smart leasing contracts based on lands and various other assets on a daily basis.

4) A NEW OUTLOOK ON INDIAN CONTRACT ACT, 1872 IN THE 21STCENTURY WITH THE CHANGING CONTOURS OF MINORS .

Minorsintheentertainmentindustryisnotaverynewfangledfascination.Childactorshavebeengainingutmostimportancesincethe20th century.TheCooganAct[30]isoneofthemost famous lawsinthe entertainmentindustry arisingfromtheCooganCase whereinthechild actor took parents to the court as the parents' didn't allow the child to retain his earnings fromfilms.Itisinthisrespectthatminorsaregainingutmostimportance.ChildYoutubershavelatelyfoundthemselvestobeinthescopeoffameandhugeamountsofearningsfrom their uploaded videos.[31] In the Dawn of technical scams being circulated all across the Internet,itbecomesimportanttoincludetheaspectofminorsindulginginsuchfraudulentactivitiesandnotkeepthemsafeundertheviewofvoidabilityinIndianContractsAct,1872. Aminorwhohasenoughtechnicalknowhowinthecirculationofscams,banktransfersand more is well aware of the act he is doing and should not be safeguarded in the name of voidability. A new approach should be taken when it comes to Minors in the 21st century who are not only faster than the previous generation in analyzing and implementing technical knowhow but also wary of their actions amounting to an illegal activity.

Ifaloopholelikethisisnotplugged,thenitincentivizesthenewagechildrentoengageinonlinecrimesandfraudswithoutthefearofseriousreperc ussions.[32]Section11oftheIndian Contract Act qualifies a person of age of majority to be competent to contract.[33] The act however talks only about competencyand majority to be major factors governing the qualifyingfactorsofacontractingparty.Theactdoesnotincludemuchaboutminorityandtheliabilityofminorsincases.Theminorshavebeensubjugatedtothe ContractActwithout taking in the aspect of modernity and altering extent of the minors in the new age of technology and contractual obligations. Minors are also sponsored by many companies in therealworldtoeffectivelypromote theirproductsthroughacommunicatingmediumlike YouTube.

If this scenario persists and grows, it is necessary for the Indian Contract Act to make some exception clauses that make some minors liable for specific performance or breachofthecontractforendorsements.[34] Theminors in the era of E-Contracts have alsobeensubjectedtotherisksposed byvariouswebsiteswhotaketheconsentinnocently throughabigbuttonof'IAgree.'[35]

Thereisalso anewneedto bringreformsintheIndian ContractActrelatedtominorswhoaccessInternetonadailybasisandregisterforcookies inaAcceptorDenyform.Itisdangerousfortheseminorstoenterintoclickwraparguments without being given a healthy strict warning from the websites themselves.

5) A CRITICAL APPROACH TOWARDSSECTION 74 OF THE INDIANCONTRACT ACT, 1872.

Section 74 of the Indian Contract Act states that , "When a contract has been broken, if asumisnamedinthecontractastheamounttobepaidincaseofsuchbreach,orifthecontractcontainsanyotherstipulationbywayofpenalty,thepartycomplainingofthe breachisentitled,whetherornotactualdamageorlossisprovedtohavebeencaused thereby,toreceivefromthepartywhohasbrokenthecontractreasonablecompensationnot exceeding the amount so named or, as the case may be, the penalty stipulated for"[36] Section74talksaboutprovidingfor reasonablecompensationinthecas ethecontract contains a stipulation by way of penalty or an assured sum in the contract. However there havebeenvariouscaseswhere inthecourtshadtodistinguishbetweenaLiquidatedDamagesClause(LD)fromapenaltyclause.Thecourtlimitsthepenaltyclauses to pecuniary compensation which exemplify the deterrent effect that a party goes through on theaccountofbreachofacontractasapunishment.Ontheotherhand,theliquidated damagesrefertogenuinepre-estimateoflossesandnotagrandexemplificationofthe amount towards a specific breach.[37]However, it can be seen from the recent development ofcasesofSection74oftheIndianContractActintheSupremeCourtthatthesedecisions arehamperingth esetperi pheriesofpublicandprivatelaw.[38]Oneofthemosttalkedaboutmechanismsofthisactistheclaimofcompensationeventhoughpeoplearenotable to prove, whether or not theysufferedany actual severeloss. Kailash Nath case has critically subjected theissueto enable Damage or loss sufferedassinequanon for the applicability of Section 74.[39]

Section 74 becomes an inquisitive case forsubjection to a study. The development of Section 74 through the cases of Maula Bux[40], Fateh Chand[41] and Saw pipes[42]. Section 74 has also been held in government contracts that the extent of damages for a breach of contract held for government agencies is based on the inconvenience caused to the public. Itisnotbecauseofthemonetarylossthatissufferedbythegovernmentagenciesatthattime.[43]Itisimportantthatthemultinationalgiantsarenotgiventhefreelibertyto interpret section 74 as an advantageous position for them in Legal Battles. This would prove to be very detrimental to the startups and new players in the market who would be bombarded withcompensationofbreachwhetherornotdamagesareoccurred,orlossissuffered.Also, it is important that the clause specifies the difference between liquidated damages in the form of penalty and actual penalty clauses that mean pecuniary compensation. The Legislativeshouldalsoconsiderthatprovisionsregardingliquidateddamageswhichshould come into play while dealing with government contracts. The provision of public inconvenience while dealing with liquidated damages should also be added in the Indian Contract Act 1872.

III. CRITICAL ANALYSIS AND SUGGESTIONS

While the Indian Contract Act 1872 has been going on for so many years, it is time for the implementation of some changes. These changes are required to make the act more useful and relevant in the modern case and remove ambiguity in certain contemporary scenarios. Italsosavestimeinthecourtsasthecourtscouldthendirectlyrefertothenewsectionsand giveafairandjustanswerincontractdisputes,savingtimeandmoneyinthelongrun.The analysisshowsthatthecontractmajorlyneedstofocusontherelookofsurrogacycontracts and clear confusions on the performance of such contracts and damages available to the aggrievedincaseofabreach.Thestudyfurtherdeepenswiththetopicof MinorsinSection 11 of the Indian Contract Act 1872. It can be seen thatincreasing complexity in the way minorsareperceivedinthesocietyandtheirnewengagementwithbusinessforcesthrough techenabledsharedsp aceshasopenedawidespeculationforcontractswithminors.Alook at the increasing difficulty of children specific sites on obtaining of consent of cookies for tracking is a grey area too which needs to be debated upon. The analysis also points to additionofanewwayinwhichacontractisenteredintoi.e.,"SmartContract".Itbecomes imperativetousethenewblockchaintechnologytoouradvantagetofacilitatecost-effective and nifty contracts which can be performed based on the changing dynamics of a business environment.This givesathriving opportunityfor abusiness and lowerstherisk for them, making it easy to engage in regular contracts easily and in a risk-free manner. Lastly, the analysis points to two of the most important sections of Indian Contract Act 1872, namely Section27andSection74.

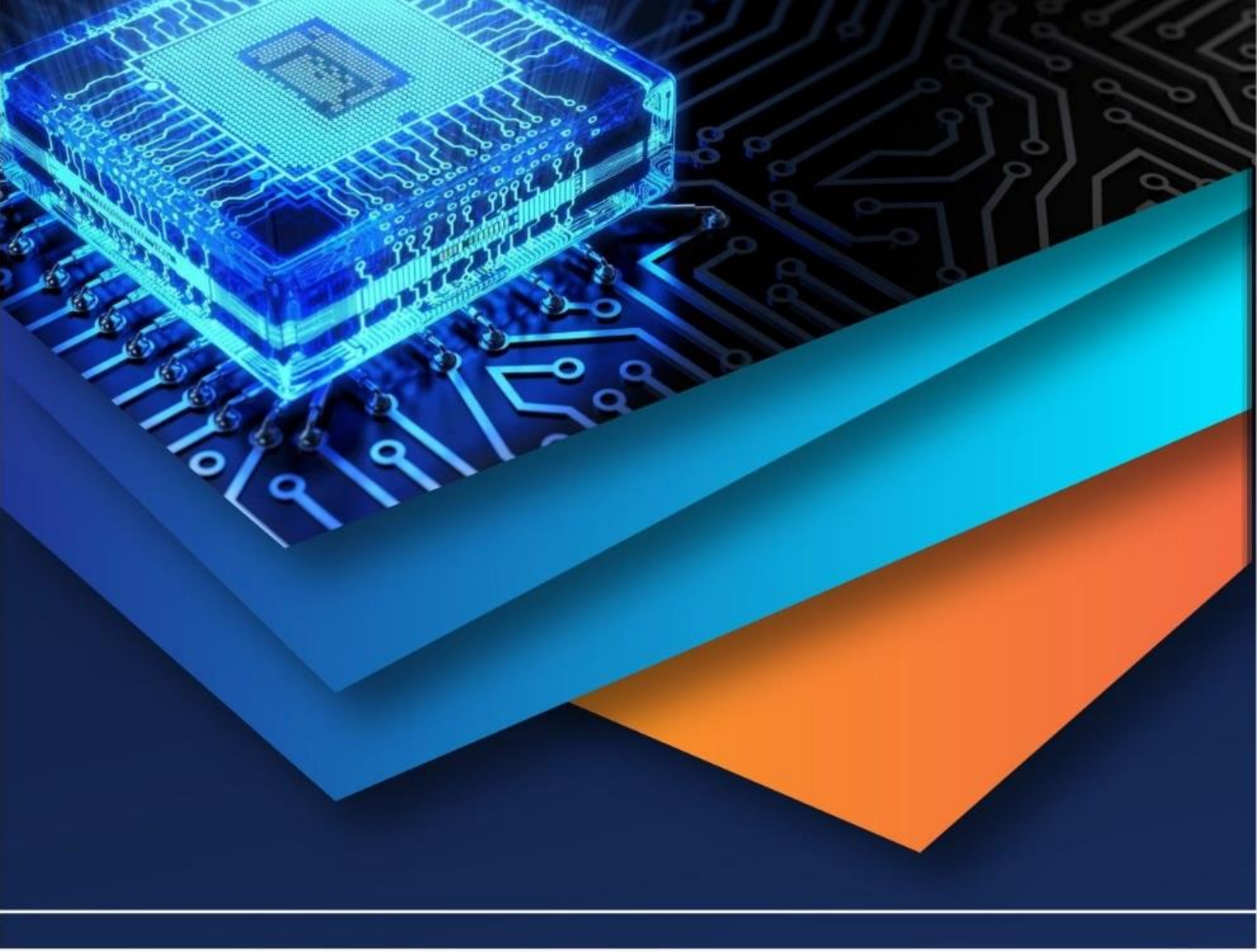
Thelegislationshouldconsiderthefree-marketexploitation being done in the name of reasonable restrictions to trade under Section 27, particularly in theSportsSector.TheContractprovisionsshouldbefairtotheplayerswhohavearightto make use of their brand name and get the best possible value out of it.Section 74 needs a relookatthesectionofdamages inagovernmentco ntractand theideaofnotprovingactual damage caused or loss suffered. It is important that a keen look towards the present judgementsismade.Itisalsovitalthatthesectionismadefairtothenewunderdogsinthe market and does not prove to be profitable only for the giants.

IV. CONCLUSION

It is quite certain from the recent scenarios that some major amendments should be underway for the Indian Contract Act, 1872 to bring it at par with 21st century. It is high time for the legislature to break the monotony of the Act and incorporate some must have changes in the Act. Although the Indian Contract (Amendment) Bill of 2017 makes the first step towards amendment, it is limited to contractual farming agreements and does not account for the changes analysedinthestudy. Hence,thetimeforchangeis 'Now'.

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