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## A Rational Analysis of the Doctrine of Joint Liability

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*The majority of the time, when someone really commits a crime, they are held legally responsible and punished accordingly. According to the idea of criminal accountability, only the person who really commits the crime is responsible and may be found guilty. In circumstances when the issue of rights and liabilities arises, the courts will take into consideration a number of liabilities that are deemed to be joint conceptions along with the joint rights. The devolution of joint rights is a significant legal basis for the Contract Act. The borrower's obligation to credit any money obtained before the promisee passed away is a fundamental and important duty. To perform the contract, the promisor or promisors must be legally bound. There are several case laws and rules pertaining to the reasons for the devolution of joint rights, and numerous decisions have been rendered to help determine the correct basis and how to proceed with such cases. A common idea is the devolution of joint rights, which involves many obligations and responsibilities shared by the parties involved. Therefore, it is essential to establish specific guidelines that stipulate how much money that was lent by the promisor but was not repaid by the borrower must be paid to the promisee throughout their remaining days. It is a very solid foundation and may still be used to support emerging laws that are more firmly formed and clearly defined on the basis of the contract of devolution of joint rights.*

**Keywords:** *joint liability, contract, promise.*

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## INTRODUCTION

The Law of Contracts in India finds its roots in the English Common Law. However, the Indian Contract Act, of 1872<sup>1</sup> was enacted considering the diverse customs and usages in India. “The Contract Act provides for the legal framework for the formulation of trade, business and commercial relations in which contract is involved.” Though the Indian Contract Act, of 1872 has stood unscathed over time with no significant amendments, it was subject to interpretations by the High Courts and the Supreme Court of India from time to time. The “Sale of Goods” under Chapter VII<sup>2</sup> and Chapter XI<sup>3</sup> of the Act were repealed by the Indian Sale of Goods Act, 1930<sup>4</sup>(3 of 1930) and The Indian Partnership Act, 1932<sup>5</sup>(9 of 1932) respectively. The Indian Contract Act, 1872 in Chapter IV in Sections 42,<sup>6</sup> 43<sup>7</sup>, and 44<sup>8</sup> deals with the concept of joint liability. Black’s Law Dictionary defines joint liability as “Liability shared by two or more parties”<sup>9</sup> which means when two or more persons make a joint promise to a promisee, they are jointly liable to the latter for the performance of the contract. Even though the joint promisors are jointly liable for fulfilling the contract, they are jointly and severally liable to the promisee. The concept of joint liability has several intricacies to it like the devolution of the joint liability and the rule of survivorship. In this research paper, an attempt has been made by the author to discuss the very provisions dealing with the concept of joint liability and analyse the scope and limitation of powers enjoyed by the promisee and the joint promisors.

## LITERATURE REVIEW

The research paper is a conducive effort drawn out from various journals and cases. The paper provides a detailed analysis of the doctrine of Joint Liability. Out of all the sources utilized in drafting this paper, the primary source of data is the Indian Contract Act, 1872 wherein under

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<sup>1</sup> Indian Contract Act 1872

<sup>2</sup> Indian Sale of Goods Act 1930, chapter VII

<sup>3</sup> Indian Sale of Goods Act 1930, chapter XI

<sup>4</sup> Indian Sale of Goods Act 1930

<sup>5</sup> Indian Partnership Act 1932

<sup>6</sup> Indian Contract Act 1872, s 42

<sup>7</sup> Indian Contract Act 1872, s 43

<sup>8</sup> Indian Contract Act 1872, s 44

<sup>9</sup> Byran A Garner, *Black’s Law Dictionary* (West Publishing Co 2009) 997

Chapter IV, Sections 42, 43, and 44 discuss the concepts of joint liability. The book “Contract & Specific Relief”<sup>10</sup> by Avatar Singh was really helpful to the author in providing a better understanding of the topic.<sup>11</sup> Also, the book “Supreme Court Cases on Contract & Specific Relief”<sup>12</sup> by Surendra Malik and Sudeep Malik provided the author with various interpretations of the Supreme Court on the concept of joint liability. P. C. Markhanda’s book on “The Law of Contract”<sup>13</sup> was helpful to the author as the book highlights the changing trends of the present on joint liability in India. Apart from these books, several case laws helped provide the author with a better understanding of the topic.<sup>14</sup> The case of *Rasulan v Babu*<sup>15</sup> and *Union of India (UOI) v The East Bengal River Steamer Service Ltd.*<sup>16</sup> provided the scope and limitations of Sections 42 and 43 respectively.

#### THE SCOPE OF SECTION 42 OF THE INDIAN CONTRACT ACT, 1872

Section 42 of the Act states that “when two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and after the death of any of them, his representative jointly with the survivor or survivors, and after the death of the last survivor, the representatives of all jointly, must fulfill the promise.”

From a mere reading of the very section, it is clear that in case of death of one of the joint promisors, the joint liability is not only devolved on the other joint promisors but also to his legal representative which is contrary to the provisions under the English common law where the joint liability is devolved only on the joint promisors (i.e.; surviving partners). But the rule of survivorship among joint tenants is modified in India by Sections 42 and 45<sup>17</sup> of The Indian Contract Act, 1872. It was observed in the case of *Rasul v Babu*<sup>18</sup> that in the case of the demise of any of the joint tenants, the Act puts his representative in his place but in the absence of any

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<sup>10</sup> Avatar Singh, *Contract & Specific Relief* (12th edn, EBC 2020)

<sup>11</sup> *Ibid*

<sup>12</sup> Surendra Malik & Sudeep Malik, *Supreme Court Cases on Contract & Specific Relief* (EBC 2014)

<sup>13</sup> P C Markhanda, *The Law of Contract* (3rd edn, LexisNexis 2013) 810, 826

<sup>14</sup> *Ibid*

<sup>15</sup> *Rasulan v Babu* MANU/UP/0007/1930

<sup>16</sup> *Union of India (UOI) v The East Bengal River Steamer Service Ltd* MANU/WB/0037/1964

<sup>17</sup> Indian Contract Act 1872, s 45

<sup>18</sup> *Rasulan* (n 15)

such legal representative, the rule of survivorship applies among the joint tenants instead.<sup>19</sup>

But in the case of debt held by two joint creditors, the Maharashtra High Court in the case of *Govindlal Bhikulal Maheshwari and Ors. v Firm Thakurdas Bhallabhadass and Ors.*<sup>20</sup>, observed that the creditors hold the debt as tenants in common and not joint tenants. So, the payment of the debtor to any one of the joint creditors will not discharge him from the entire liability that the debtor owed to both the creditors. It was in the case of *Firm of Gokaldas Khataoo v Lachmandas*<sup>21</sup>, wherein a full bench in the High Court of Sind referred to the decision in the case of *Ellis v Wadeson* to analyse up to what extent the procedural rules are made to subserve the substantive law but observed that following the decision in *Ellis v Wadeson*<sup>22</sup> as a precedent would violate the substantive law in India and contended that “it would make the adjective law, not the servant of the substantive law but a tyrannical master.”<sup>23</sup>

#### **SCOPE OF SECTION 43 OF THE INDIAN CONTRACT ACT, 1872**

Section 43 of the Act provides that when two or more persons are into a joint promise, the promisee might compel any (one or more) of the joint promisors for performing the whole contract in the absence of any prior express agreement. Also, each or more of such joint promisors may compel the other joint promisor(s) to contribute equally to the performance of the contract unless a contrary intention appears from the contract. The section further provides that in case any one or more joint promisor(s) default(s) in contributing their share in the performance of the contract, the loss arising out of such default must be borne by the remaining joint promisors.

It was in the case of *Bishunath Sahay v Nanku Prasad Singh*<sup>24</sup>, that the High Court discussed the very question of law that arose in the case of whether the lender was competent to sue any one of the joint promisors excluding the others.<sup>25</sup> The court observed that under the provisions

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<sup>19</sup> *Ibid*

<sup>20</sup> *Govindlal Bhikulal Maheshwari & Ors v Firm Thakurdas Bhallabhadass & Ors* AIR 1974 Bom 164

<sup>21</sup> *Gokaldas Khataoo v Lachmandas* MANU/SN/0001/1926

<sup>22</sup> *Ellis v Wadeson* [1899] 1 QB 714

<sup>23</sup> *Ibid*

<sup>24</sup> *Bishunath Sahay v Nanku Prasad Singh* MANU/BH/0141/1923

<sup>25</sup> *Ibid*

of Section 43 of the Contract Act, the lender is competent enough to sue any or all the joint promisors. Also, in the case of *Jainarain Ram Lundia v Surajmull Sagarmull and Ors.*<sup>26</sup>, the federal court held, on similar lines, that it is open to the promisee if he wants to sue anyone or some of the joint promisors while excluding the rest. The court observed that “Unlike English law, the Indian law makes all the joint liability joint and several” and not making all the joint promisors a party cannot be a valid defence.<sup>27</sup>

Further, as held in the case of *Muhammad Askari v Radhe Ram Singh*<sup>28</sup>, a judgement against one of the joint promisors is not a bar on the promisee from filing suit against other co-promisor (s). But, there has been a difference in opinion among the various High Courts in India as The Calcutta and Madras High Courts had earlier adopted the rule in *King v Hoare* and held that “a decree against one was a bar to a subsequent suit against the other or others.”<sup>29</sup> Also, in *Union of India (UOI) v The East Bengal River Steamer Service Ltd*<sup>30</sup>, the court contended that the provisions of Section 43 allow a promisee to sue one or more of the several promisors while excluding the right of a joint promisor to be sued along with his co-promisors. In the case of partners of a firm, the court in the case of *Lakhmichand Ghandamal v Gokuldas Ranchordas*<sup>31</sup> observed that a cause of action against any one or more of the joint promisors would be a joint cause of action against all the partners as they are both jointly and severally liable for the whole claim and not the amount proportionates to the interest they might have as a member of the firm.

## RIGHTS AND LIMITATIONS OF POWERS OF THE JOINT PROMISEE

The parties to a joint promise are both jointly and severally liable to the promisee which means that even though the joint promisors are jointly liable for the performance of the contract, the promisee may separate the liability of any of the joint promisor(s) from the joint liability. Under the provisions of Section 44 of the Indian Contracts Act, 1872, the promisee might release any

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<sup>26</sup> *Jainarain Ram Lundia v Surajmull Sagarmull & Ors* MANU/FE/0018/1949

<sup>27</sup> *Ibid*

<sup>28</sup> *Muhammad Askari v Radhe Ram Singh* MANU/UP/0017/1900

<sup>29</sup> *In Re: Vallibhai Adamji* MANU/MH/0058/1933

<sup>30</sup> *UOI* (n 16)

<sup>31</sup> *Lakhmichand Ghandamal v Gokuldas Ranchordas* AIR 1926 Sind 75

one or more joint promisors from performing the contract. But the touch release of one or more joint promisors would not release the other joint promisors from the performance of the contract. The very law is in contravention with the English Common Law wherein the release of any one of the joint promisors happens to release other such joint promisors from fulfilling the contract. Sections 42 and 44 provide the promisee with the power to release any one or more of the jointpromisors from performing the contract while compelling any one or more of the joint promisors to fulfilling the whole of the contract. But, the promisee can in no way absolve anyof the joint promisor(s) so released from the liability they owe to the other non-released joint promisors and from contributing to them for performing the contract on the former's behalf.

It was observed in the case of *Mahadeosingh Hirasingh and Ors. v Balmukund Jayanarainand Ors.*<sup>32</sup> that the release of any one or more of the joint promisors does neither discharge theother joint promisors nor does it release them of their responsibility towards another joint promisor (s). In the case of *Narendra Chandra v Kumar Pashupati Nath Malia and Ors.*<sup>33</sup>, the court discussed the sections on joint liability and observed that in the case of a joint promise, there is an implied contract amongst the joint promisors to contribute equally to the performance of the contract unless there has been any contrary provision made under the contract and the promisee cannot absolve the released joint promisor from his liability to contribute to the other promisors who would have contributed for his share.

The promisee may also use any of the joint promisors while excluding the rights of the other such joint promisors under joint liability from being sued. The very provision on the principle of several liabilities as the promisors in a joint promise are both jointly and severally liable<sup>34</sup>. Also, a decree against any one or more of the joint promisors does not put a bar on the promisee from filing a separate suit against another joint promisor (s).<sup>35</sup> But in the case of *National Petroleum Co. Ltd. v Popatlal Mulji*<sup>36</sup>, the court observed that when a promisee proceeds

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<sup>32</sup> *Mahadeosingh Hirasingh & Ors v Balmukund Jayanarain & Ors* MANU/NA/0054/1946

<sup>33</sup> *Narendra Chandra v Kumar Pashupati Nath Malia & Ors* MANU/WB/0122/1948

<sup>34</sup> UOI (n 16)

<sup>35</sup> *Rasulan* (n 15)

<sup>36</sup> *National Petroleum Co Ltd v Popatlal Mulji* AIR 1936 Bom 344

against one co-promisor and also obtains a judgement then he can no longer proceed against any other co-promisors.<sup>37</sup>

## RIGHTS AND LIMITATIONS OF THE JOINT PROMISOR

According to Section 42 of the Indian Contract Act, 1872, the joint promisors during their joint lives and after their death is jointly liable for fulfilling the contract. Even though they are jointly liable under the contract, they are both jointly and severally liable to the promisee. The promisee can therefore release any one or more joint promisor(s) from performing the contract and compel any one of the joint promisors to perform the contract wholly.

But the joint promisor(s) so released from performing the contract by the promisee can also not be absolved by the promisee from performing the responsibility he owes to other co-promisors. When two or more persons enter into a joint promise, there is an implied contract between them to contribute equally to the performance of the contract unless a contrary intention appears from the contract. So, according to the provisions of Section 43 of the Act, each promisor may compel the other such promisors for contributing equally with himself to the performance of the contract.<sup>38</sup> The *Rajasthan High Court, in the case of Shankerlal v Motilal and Ors.*,<sup>39</sup> observed that the liability to contribute equally on the part of the co-promisors towards the performance of a joint and several promises appears to be primarily based upon an implied contract between the joint debtors themselves and although it is subject to contract to the contrary between the compromisers themselves, the promisee cannot by his unilateral act do anything to destroy it."<sup>40</sup> In the case of *S.P. Abraham Servai v Raphial Muthirian*<sup>41</sup>, it was observed that the duty of a promisor to contribute to the other joint promisors is distinct from his obligation to pay the promisee and even though the promisor has been released from the performance of the contract by the promisee, the former's responsibility towards the other joint promisors is not annulled.

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<sup>37</sup> *Ibid*

<sup>38</sup> *Bishunath Sahay* (n 24)

<sup>39</sup> *Shankerlal v Motilal & Ors* MANU/RH/0100/1957

<sup>40</sup> *Ibid*

<sup>41</sup> *SP Abraham Servai v Raphial Muthirian* MANU/TN/0191/1914

## CONCLUSION

The concept of joint liability, under the Indian Contract Act, 1872, is different from the English Common Law. Like, in the death of any joint promisor, the liability of such dead person, according to the English Common Law, devolves on the other surviving joint promisors but according to the Indian Contract Act, 1872, the liability not only devolves on the other joint promisors but also the legal representatives of a such dead person. Also, according to the English Common Law, the release of any one or more joint promisors by the promisee happens to release the other joint promisors from the performance of the contract but according to the provisions of the Indian Contract Act, 1872, the other non-released joint promisors are not released and are thus still liable for fulfilling the contract. Further, under the Contract Act, filing a suit against any of the joint promisors is not a bar from proceeding with subsequent suits against other co-promisors which is a bar under the English Common law. The Supreme Court and the High Courts of India have interpreted the very sections in a way to address the needs of the present.