

## CRITICAL ANALYSIS OF THE PRINCIPAL-AGENT RELATIONSHIP IN THE LIGHT OF CHAIRMAN L.I.C OF INDIA V. RAJIV KUMAR BHASKAR

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### ABSTRACT

*In this research paper, the researchers will try to critically analyse the relationship between the agent and the principal under the contract of agency. The contract of agency creates a legal relationship between the agent and the principal, as by coming into this contract the principal agrees to give a certain authority to the agent to perform the activity on his/her behalf. This research paper also focuses on the basic essentials for the contract of agency to become valid, the creation and working of the contract of agency, and discussed the rights and duties of the agent and the principal in the contract of agency individually and also towards each other. The liabilities which stand by any misconduct in the contract of the agency by the agent or the principal are also brought into light. The justification of the extent of the liability of the principal which arises due to the actions of the agent is also researched upon in the following research paper. The following research is done in the light of the case law of "Chairman L.I.C of India v. Rajiv Kumar Bhaskar"<sup>1</sup> through which the legal relationship between both the parties (the agent and the principal) is described.*

**Keywords** - Agent, Principal, Relationship, Liabilities, Contract of Agency.

### INTRODUCTION

In **Section 182** of the Indian Contract Act<sup>2</sup>, the principal is defined as "a person who employs another person and gives him/her the authority to perform any act or do any kind of dealing with any third party on his/her (principal) behalf" and the agent is defined as "a person who is employed or given authority by another person (principal) to perform any act or do any kind of dealing with the third party".<sup>3</sup> Not every person working for any other person is not an agent as explained in the case of P. Krishna Bhatta v. Mundila Ganapathi Bhatta<sup>4</sup>, only when the

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<sup>1</sup> Chairman L.I.C of India v. Rajiv Kumar Bhaskar, 2003 ACJ 86

<sup>2</sup> Indian Contract Act, Section 182, 1872

<sup>3</sup> 12<sup>th</sup> Edition, Avtar Singh, Contract and Specific Relief 736, 2021

<sup>4</sup> P. Krishna Bhatta v. Mundila Ganapathi Bhatta, AIR 1955 Mad 648, 651

person is acting as a representative of someone else only then he/she can be termed as an agent and there is a line of difference between the meaning of “servant” and the meaning of “agent” which is explained in the case of “Lakshmi Narayan Ram Gopal and Sons Ltd v. Govt of Hyderabad”.<sup>5</sup>

When the principal employs the agent for any kind of act or dealing they both enter into a legal agreement which is termed as the “contract of agency”. By entering into the contract of agency the principal gives legal authority to the agent to represent him/her in the act or dealing.

When the contract of agency comes into existence it imposes some duties on both the parties (the principal and the agent) but at the same time to provide a safeguard in the contract it gives some rights to both parties.

### **DUTIES OF THE PRINCIPAL**

The principal in the contract of the agency has some duties to perform which are as follows:

- To indemnify the agent: According to Section 222 of the Indian Contract Act<sup>6</sup>, it's the duty of the principal to indemnify the agent for all the outcomes of the lawful act for which he/she has been employed for. The agent has the right to claim the indemnity from the principal as mentioned in the case of *Kishanlal v. Bhanwar Lal*.<sup>7</sup>
- To pay dues and remuneration to the agent: Under Section 217 of the Indian Contract Act<sup>8</sup>, the principal should pay off all the dues and remunerations to the agent for the work done by the agent representing the principal
- To pay the compensation to the agent: Under Section 225 of the Indian Contract Act<sup>9</sup>, the principal employs the agent for a certain act to be done on his/her behalf does the principal holds the duty to pay the agent compensation for any type of injury or loss to the agent during the course of doing the act due of the neglect of the principal.

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<sup>5</sup> *Lakshmi Narayan Ram Gopal and Sons Ltd v. Govt of Hyderabad*, AIR 1954 SC 364: (1955) 1 SCR 393

<sup>6</sup> Indian Contract Act, Section 222, 1872

<sup>7</sup> *Kishanlal v. Bhanwar Lal*, AIR 1954 SC 500 (1955)

<sup>8</sup> Indian Contract Act, Section 217, 1872

<sup>9</sup> Indian Contract Act, Section 225, 1872

## DUTIES OF THE AGENT

The agent also possesses some duties which he/she should take care of. These are as follows:

**Duty to implement a decree:** The agent's foremost and most important responsibility in the contract of agency is to perform the task for which the principal has employed the agent as failing in performing the act can impose liability on the agent to pay the principal's loss. This is held in many cases that an agent can be held liable if he/she fails to perform the act as in the case of "Pannalal Jankidas v. Mohanlal".<sup>10</sup>

**To perform the act by following instructions and customs:** The agent has the duty to perform the act for which the principal has employed him/her with taking care of the instructions and directions given by the principal as written in Section 211 of the Indian Contract Act<sup>11</sup> and stated in the case of Liley v. Doubleday.<sup>12</sup>

**Duty to showcase a reasonable level of care and skills:** As the principal employs the agent for a certain activity to be done on behalf of the principal, so the agent is bound to perform that activity with reasonable diligence and with a skill that is necessary for that act to be done unless the principal demands for certain "want of skill" as stated in Section 212 in the Indian Contract Act<sup>13</sup> and exemplified in the case of Agnew v. Indian Carrying Co.<sup>14</sup>

**Duty to pay amount accepted for the principal:** Under Section 128 in the Indian Contract Act<sup>15</sup>, the agent has the duty to give the amount which he/she has obtained after the completion of the act for which the principal employed the agent after getting his/her dues<sup>16</sup>. For example, A employed agent X to collect the amount of \$15000 from B by selling his horse. After the completion of the deal X has the duty to pay \$15000 to the principal i.e., A. Thus, exemplified in Bhola Nath v. Mul Chand.<sup>17</sup>

**Duty not to delegate:** Under Section 190 in the Indian Contract Act<sup>18</sup>, the agent is employed by the principal to perform any act because he/she has belief in the expertise and competence

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<sup>10</sup> Pannalal Jankidas v. Mohanlal AIR 1951 SC 144: 1950 SCR 979: (1951) 21 Comp Cas 1

<sup>11</sup> Indian Contract Act, Section 211, 1872

<sup>12</sup> Liley v. Doubleday (1881) 7 QBD 510

<sup>13</sup> Indian Contract Act, Section 212, 1872

<sup>14</sup> Agnew v. Indian Carrying Co. (1865) 2 Mad HC Cases 449

<sup>15</sup> Indian Contract Act, Section 128, 1872

<sup>16</sup> See Indian Contract Act, Section 217, 1872

<sup>17</sup> Bhola Nath v. Mul Chand, ILR (1901-03) 25All 639

<sup>18</sup> Indian Contract Act, Section 190, 1872

of the agent, thus the agent has the duty to perform that act on his own and don't delegate another person to perform the act as laid in the case of "John McCain and Co v. Pow".<sup>19</sup>

Certain exceptions are laid down when the agent can delegate a sub-agent<sup>20</sup> to do the act for the principal:

- a) **Nature of the assigned work:** When the principal assigns a certain act to the agent but the act requires different skills to be done, then the agent can delegate a sub-agent to do a certain work in which he/she has specialisation as in the case of "Summan Singh v. National City Bank of New York".<sup>21</sup>
- b) **Trade customs:** A sub-agent can be appointed and delegated the work when there is the ordinary custom of trade to that effect; Moon v. Witney Union.<sup>22</sup>
- c) **Ministerial action:** A agent can delegate the work which is ministerial in nature, for example, authority to sign but can't delegate the work which he/she has personally undertaken from the principal; Mason v. Joseph.<sup>23</sup>
- d) **Consent of the principal:** The agent can delegate the work to the sub-agent with the consent of the principal.

**Duty to maintain accounts:** The maintenance of the accounts by the agent is necessary to fulfill other duties like to render the sums to the principal. So, the agent is required to maintain proper accounts of the transactions done during the course of employment as stated in the case of S. Paul and Co. v. State of Tripura.<sup>24</sup>

**Duty to make any secret profits:** The employment of the agent is done in good faith by the principal as trust is important in the contract of agency as it is of fiduciary nature, thus agent has the duty to not make any secret profits during the course of employment.

**Duty to avoid conflict of interest:** As the agent is working as a representative of the principal thus, he is required to work according to the interest of the principal and not for his/her personal benefits in the contract of agency as under Section 215 of the Indian Contract Act.<sup>25</sup>

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<sup>19</sup> John McCain and Co v. Pow, (1974) 1 WLR 1643 (CA)

<sup>20</sup> Indian Contract Act, Section 191, 1872

<sup>21</sup> Summan Singh v. National City Bank of New York, AIR 1962 Punj 172: ILR 1952 Punj 189

<sup>22</sup> Moon v. Witney Union, (1837) 43 RR 802

<sup>23</sup> Mason v. Joseph, 1804) 1 Smith KB 406

<sup>24</sup> S. Paul and Co. v. State of Tripura, AIR 1984 Cal 378

<sup>25</sup> Indian Contract Act, Section 215, 1872

During the contract of the agency, both the principal and the agent should fulfill their duties so as to ensure the completion of the contract. The business of the agency also provides certain rights to the principal and the agent to defend themselves in the case of misconduct by the other party.

## **RIGHTS OF THE PRINCIPAL**

The rights of the principle are as follow:

1. To repudiate the contract: The principal has the right to repudiate any transaction or the contract if the agent does any act without taking the consent of the principal under section 215.<sup>26</sup>
2. To claim the benefits: The principal employs the agent to do certain acts on him/her behalf in order to obtain certain benefits. Thus, on completion of the act by the agent, the principal has the right to claim that the agent has received on the account of the principal in the contract of the agency.
3. To ratify the agent's act: Under Section 196 in the Indian Contract Act<sup>27</sup>, the principal who is the employer of the agent has the right to disown or ratify any of the agent's acts which he/she has done without taking the consent of the principal.
4. To revoke the authority of the agent: Under Section 203 in the Indian Contract Act<sup>28</sup>, the principal may revoke the agent's authority to perform the activity on his behalf before the authority came into exercise.
5. To demand the agent's account: Under Section 213<sup>29</sup>, the agent is required to maintain accounts of all the transactions during the contract of the agency as it is necessary to see the dues of the agent and the principal can demand the accounts anytime he/she wants.
6. To refuse to pay the dues of the agent: Under Section 220<sup>30</sup>, the principal can refuse to pay off the agent his/her remuneration if the agent has conducted the assigned task with misconduct as laid in the case of *Municipal Corporation of Bombay v. Cuverji Hirji*.<sup>31</sup>

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<sup>26</sup> Indian Contract Act, Section 215, 1872

<sup>27</sup> Indian Contract Act, Section 196, 1872

<sup>28</sup> Indian Contract Act, Section 203, 1872

<sup>29</sup> Indian Contract Act, Section 213, 1872

<sup>30</sup> Indian Contract Act, Section 220, 1872

<sup>31</sup> *Municipal Corporation of Bombay v. Cuverji Hirji*, ILR (1895) 20 Bom 124

## RIGHTS OF THE AGENT

The rights which the agent exercises are:

- 1) Right to remuneration: According to Section 219 of the Indian Contract Act<sup>32</sup>, the agent can hold the money received from the completion of the work given by the principal.
- 2) Right to get indemnified: According to Section 222 of the Indian Contract Act<sup>33</sup>, the agent has complete rights to get indemnified by the principal for all the lawful acts done by him/her during the course of employment as held by the Supreme Court of India in the case of *Kishanlal v. Bhanwar Lal*.<sup>34</sup>
- 3) Right to get compensated: According to Section 225 of the Indian Contract Act<sup>35</sup>, the agent can claim compensation from the principal for any injury or loss that occurred during the completion of the act because of the neglect of the principal as in the case of “*Federal Insurance Co. v. Nakano Singapore (P) Ltd*”.<sup>36</sup>
- 4) Right to lien: According to Section 221<sup>37</sup>, the agent is entitled to retain the goods and property belonging to the principal until his/her dues for the act done for the principal are cleared; as stated in the case of *Gopaldas v. Thakurdas*.<sup>38</sup>

In the business of the agency, the principal and the agent share a legal relationship that arises from a situation in which the principal has the powers upon the agent as the principal has employed the agent to represent him/her during some dealing or to do any act. Thus, the agent is expected to do the work as per the wish of the principal.

## RESEARCH QUESTIONS

The research questions that will be answered via this research paper are:

1. How can an agency be created?
2. What are the essential features of a contract of agency?
3. Is it justified to hold the principal liable for the acts done by the agent?
4. What is the extent of an agent's authority?

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<sup>32</sup> Indian Contract Act, Section 219, 1872

<sup>33</sup> Indian Contract Act, Section 222, 1872

<sup>34</sup> *Kishanlal v. Bhanwar Lal*, AIR 1954 SC 500 (1955)

<sup>35</sup> Indian Contract Act, Section 225, 1872

<sup>36</sup> *Federal Insurance Co. v. Nakano Singapore (P) Ltd*, (1992) 1 Curr LJ 539

<sup>37</sup> Indian Contract Act, Section 221, 1872

<sup>38</sup> *Gopaldas v. Thakurdas*, AIR 1957 MB 20,22

5. When can an agent be held liable for the contracts that he has entered into on behalf of the principal?
6. What does the case of Chairman L.I.C V Rajiv Kumar Bhaskar say about the relationship of an agent and principal?

## **RESEARCH OBJECTIVE**

The research objectives that are to be achieved via this research paper are:

1. To analyze the agent-principal relationship.
2. To understand the principles of agency.
3. To list out the liabilities of the agent and principal.
4. To closely study cases related to the topic.
5. To examine the contract of the agency.

## **SCOPE**

Although, the Agent and Principal relationship has been interpreted in various ways by numerous researchers, the present research paper on the Principal-Agent relation has achieved a well-defined and clear understanding of its works and its components. The present topic is broad and has multiple aspects that can be covered, but in the present research paper the extent of the topic is from the contract of agency to liabilities of agent and principal to principles of agency to the principal-agent relationship in the light of the case “Chairman L.I.C. V Rajeev Kumar Bhaskar”. For a better idea, the researchers have broadened the scope by analyzing further more case laws that have been of huge importance in the formation of the legal background of the law.

## **RESEARCH METHODOLOGY**

In this research article, the focus of the researcher is on the articles, books, and papers published on the law of agency, and the different aspects related to the same topic. Along with the theories, we deal with different types of cases as well which ultimately supports the theoretical part.

## **ANALYSIS: What is the Principal-Agent relationship?**

## **WHAT IS AGENCY?**



Under Section 182 of the Contract Act, an 'Agent' is someone employed to carry out any act for some other or to symbolize some other in dealings with 3rd party. The individual for whom such an act is carried out or who's accordingly represented is called the 'principal.' implied employer. When one party assigned particular authority to another and the latter acts on behalf of the first, the relationship is referred to as an agency in an independent manner. It is possible to have express or implied agency.

### **WHO IS AN AGENT?**

A person employed to execute any act for another or to represent another in contact with third parties is defined as an "agent" in Section 182 of the Indian Contract Act of 1872. An agent acts as a link between his client and the rest of the world.

According to Section 183, anybody who has reached the age of majority and is of sound mind can designate an agent. Anyone who understands how to enter into a legally binding contract can appoint an agent. Similarly, under Section 184, anybody who has reached the age of majority and is of sound mind can become an agent. As an agent, you must report to the principal and be of sound mind and age to do so.

### **NATURE AND EXTENT OF AGENTS' AUTHORITY**

1. **Actual or real Sec. 188** – When an agent is given the authorization to carry out work, he or she has the legal power to do whatever is required to complete the job. An agent who has been granted authorization to do business has the authority to do everything legal that is necessary for the operation of the business or is routinely done in the course of the business.
2. **Ostensible or apparent**-An agent's ability to act on behalf of a principal. This authority exists only when a party can reasonably conclude that the principal provided the agent such authority based on the main's actions.
3. **Emergency**- The agent must assume responsibility in the case of an emergency. This authority exists only if the principal's act was prior assigned.



## WHO IS A PRINCIPAL?

The "principal" is the person who conducts or is represented in such an act under Section 182. as a result, the principal is the one who has been given his authority.

## ILLUSTRATION

The employer was required to withdraw the premium from the employee's wage and deposit it with L.I.C. under the salary saving program in *Chairman L.I.C. v Rajiv Kumar Bhaskar*. When the employee died, his heirs learned that the employer had failed to do so, therefore invalidating the insurance. According to a section of the acceptance letter, rather than the L.I.C.s, the employer will act as the employee's agent. The employer was found to be acting as the firm's agent as a consequence of the Agent's violation, making the company (L.I.C) accountable as a Principal (the employer).

Here L.I.C is the principal as they chose to carry out their program through an agent.

## PRINCIPLES OF AGENCY

Except for contracts covering personal services such as painting, marriage, singing, and so on, agency contracts are based on two essential principles:

1. Anything a person can do independently may also be done through an agent.
2. He who acts without the assistance of a lawfully authorized agent acts alone, i.e., the agent's actions are considered the principal's actions (Sec. 226)

## ESSENTIAL FEATURES OF THE CONTRACT OF THE AGENCY

1. Agreement between agency and principal
2. Competency is not required for an agent
3. Creation of legal relations
4. The intention of the person to act
5. Competency of principal
6. Contractual relationship
7. Consideration not required

## CREATION OF AGENCY

To start an agency, you can utilize any of the following methods:

1. Express Agreement (Section 186) - An agency contract might be express or implicit, according to Section 186 of the Indian Contract Act, 1872. You have the option of verbal or written communication. Using a power of attorney on stamped paper to designate agents is typical practice in many circumstances.
2. Section 187 (Implied Agreement): The following definitions of express and implied authority are found in Section 187: It is considered to be expressed when authority is given through spoken or written words. Implied authority is defined as "where things stated or written, or the ordinary way of doing business, are accounted conditions of the case." Implied authority can be generated by the parties' behavior, situation, or relationship.

It's conceivable to deduce it from the situation's facts. Here are some examples of implied agency:

- Estoppel's Agency is founded on the 'Doctrine of Estoppel.' If the principal convinces another person to believe that a person is his agent through his actions or statements, he cannot afterward renounce that person as his agent.
  - The Estoppel Agency includes the Holding Out Agency. If a person consciously authorizes and permits someone to act on his behalf, he or she cannot afterward renounce that person's conduct. If he doesn't like it, he should express his unhappiness with the behavior right away.
  - In the event of an emergency, a requirement agency is formed. Before providing their services, the agents in these situations do not seek authorization or appointment from the principals. The principals are also in a difficult situation, and they are powerless to provide their assent or decline the services given by these persons, so they must accept them. As a result, the law allows someone to operate as an agent for someone else without their consent (principal). The name given to such an organization is 'Agency by Necessity.'
3. By ratification - According to Section 196 of the Indian Contract Act, agency by ratification occurs when a person expressly or implicitly accepts activities performed on his or her behalf without his or her knowledge or authority.

4. By operation of law- When the law treats one person as the agent of another, this is known as the agency by operation of law.

### **LIABILITY OF PRINCIPAL**

Acting on behalf of a named principal as an agent. The following are the rights and liabilities of a named principal for the acts of his agent:

- Acts done by an Agent that is within the Authority of the Agent: When an agent acts within his power, his actions are binding on the principal. However, the action taken must be legal.
- The principal is not obligated by the transaction if an agent does more than he is entitled to do, and such an act cannot be separated from that which is within his jurisdiction. In such a circumstance, he has the right to reject the entire deal. As a result, if the agent acts outside of his authority, the transaction is not binding on the principal.
- Misrepresentation or Fraud Liability: The principal is responsible for his agent's misrepresentation or fraud when operating in the course of his business. It makes no difference whether the misstatement or fraud was done for the principal's or the agent's gain.
- Acts of an Agent Exceeding His Authority: Where the Task Can Be Separated - When an agent exceeds his agency to complete the principal's work, the principal is obligated by the portion of the work that falls within his authority if it can be distinguished from the portion that falls outside his authority.

### **AGENT'S RIGHTS AND OBLIGATIONS**

In this case, the agent signs contracts in his own name. As a result, the contract binds him. In addition, he is personally accountable to the third party. He can sue and be sued in his own name on such contracts since he is the true contracting party in the eyes of the law. In such instances, both the principal and the agent have rights against one another.

### **PRINCIPAL'S RIGHTS AND RESPONSIBILITIES**

The principal has the power to intervene and demand that the third party perform the contract. The opposite party may sue either the principal or the agent, or both, in such instances. If the principal so desires, he may also demand that the other party perform the contract. However,

in this scenario, he should allow the third party to profit from all payments made by the third party to the agent.

## LITERATURE REVIEW

**“P. Krishna Bhatta v Mundila Ganapathi Bhatta”<sup>39</sup>**: In which Justice Ramaswami stated that not everyone who does an act for another is an agent in the legal sense; rather, only when the person (agent) serves as a representative of the other (principal) in negotiations and contracts can he be termed an agent.

**“Lakshminarayan Ram Gopal v. Govt. of Hyderabad”<sup>40</sup>**: The court concluded that everything the appellant does for the company is a form of business, and the remuneration and other benefits that the agents receive from the contracting party are a portion of the profits and gains that he receives under the contract's terms after considering all relevant factors, including the agents' agreement and the appellant's terms. As a consequence, he can't argue that the money isn't taxed, and the Supreme Court dismissed his appeal.

**“Pannalal Jankidas v. Mohanlal”<sup>41</sup>**: The Supreme Court ruled that a party in breach must only compensate for the violation's direct effects, not for damage or suffering induced indirectly or remotely. This idea is founded on the general premise that, to the degree that monetary restitution permits, the party who has suffered a loss should be placed in the same position as if the party in breach had completed his contract or fulfilled his responsibility. Fortune Infrastructure's decision follows Pannalal Jankidas and Balbir Singh's ruling that contract law damages must be compensatory or restorative, not excessive. To summarise, an adjudicatory body must take a balanced approach when determining the number of damages to be awarded.

**“Liley v. Doubleday”<sup>42</sup>**: The agent was held liable after he failed to execute the principal's instructions and the items were destroyed. An estate agent cannot engage in a contract with a third party that is punishable by his principal, according to the court.

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<sup>39</sup> P. Krishna Bhatta v. Mundila Ganapathi Bhatta, AIR 1955 Mad 648, 651

<sup>40</sup> Lakshmi Narayan Ram Gopal and Sons Ltd v. Govt of Hyderabad, AIR 1954 SC 364: (1955) 1 SCR 393

<sup>41</sup> Pannalal Jankidas v. Mohanlal AIR 1951 SC 144: 1950 SCR 979: (1951) 21 Comp Cas 1

<sup>42</sup> Liley v. Doubleday (1881) 7 QBD 510

## SUGGESTIONS AND CONCLUSION

Contracts establishing an agency relationship are quite common in corporate law. These can be direct or indirect. An agency is founded when a person delegated his authority to another person, appointing them to carry out a certain task or a series of tasks in a specific field of activity. A Principal-Agent relationship establishes both parties' rights and duties. Factors, brokers, del credere agents, insurance agencies, advertising agencies, travel agencies, and so on are all examples of this type of partnership. In this relationship, the principal appoints a person with the same interest, to act on his behalf. The contracting agency plays a significant part in the devolution of authority from the principal to the agent in modern times, as the company organization grows. The Indian Contract Act, Chapter X<sup>43</sup>, explains the numerous complexities of an agency contract, including the responsibilities of the third party, the principal, and the agent, the rights, duties, etc. It further indicates that the use of an agency is not required; this might be inferred from the parties' implicit behavior. Furthermore, this contract outlines the many methods through which the principal and agent might revoke the agency contract.



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<sup>43</sup> Indian Contract Act, Chapter X, 1872