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Free consent under Indian contract Act, 1872

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Abstract

Free consent is an essential element of a valid contract. It is mentioned under Section 14 of Indian Contract Act 1872. The consent is not said to be free when it is caused by following causes: coercion, undue influence, fraud, misrepresentation, Mistake. When both persons agree for the same thing or same sense the consent is said to be free consent. And that contract should be valid. When the consent is taken by following causes: coercion, undue influence, fraud, misrepresentation that contract should be voidable. When the consent is taken by mistake that contract should be void. When both parties are competent to make a contract, that is a valid contract and enforceable by law. This research paper deals with essential element of valid contract. In which free consent play an initial role.

Keywords: Coercion, undue influence, mistake, fraud, misrepresentation, valid contract

Introduction

In Section 14 of the Indian Contract Act, consent is defined as "it is when two or more persons agree upon the same item and in the same sense." Consent is not free said to be following causes: coercion, undue influence, fraud, misrepresentation and mistake. According to Section 15 of the Indian Contract Act of 1872, coercion is defined as the unlawful holding of property against the will of any person with the intent to compel that person to enter into an agreement, as well as the committing or threatening to commit any act that is prohibited by the Indian Penal Code (45 of 1860). In accordance with Section 16 of the Indian Contract Act of 1872, influence is deemed to be "Undue" when: One of the contract's parties is in a position of trust and unjustly has influence over the other.

Such a person takes unfair advantage of the other by taking advantage of his superior position. The Indian Contract Act's Section 17 defines fraud as any of the following actions taken by a contracting party, its accomplice, or its agent with the intent to deceive or convince the other party or its agent to enter into the contract:

a promise made without any intention of keeping it; the effective hiding of a fact by someone who is aware of it;

Meaning and Concept of free consent: According to Section 13 of the Indian Contract Act, consent is defined as "when two parties entered into the contract there should be a meeting of minds between the two parties," which means that both parties should agree on the same thing in the same way. When someone freely accepts to another person's proposal or desires, this is known as consent.

When someone freely agrees to another person's request or proposition, they have given their consent. According to the Indian Contract Act, free consent is consent that is not the result of coercion, undue influence, fraud, misrepresentation, or error. "Two or more persons are said to be in consent" (consensus-ad-idem), per Section 13, when they concur on the same matter in the same sense. A consent given freely to an individual is considered free consent. The consent is not said to be free when it is caused by the following cause:

Coercion

- Undue influence
- Fraud
- Misrepresentation
- Mistake^[1]

Definition of free consent: According to section 13 "When both parties agree to give their consent for same thing, for same places, on a same sense an agree to sell his watch to B. A

has three watches. B thinks to buy his third watch. Here A and B have not agreed upon a same item in a same sense. In this example A and B's consent is not free consent.

Types of free consent: There are five types of free consent:

- Coercion
- Undue influence
- Fraud
- Misrepresentation
- Mistake

Coercion: Coercion refers to the use of force to force an individual to enter into a contract. Thus, force or threat is used to obtain consent from the coerced party. When the consent is obtained by force, it is also known as coercion.

Ranganayakamma v. Alwar Setting: In this case, the Madras High Court checking the validity of an adoption of a boy by widow aged 13 years. On the death of her husband, her family members are not allow for cremation of her husband dead body until she adopt a child. The Court held that adoption was not binding on the widow and her consent was obtained by coercion^[2]

Inderjeet Singh vs Mr. Vikram Singh & Anr on 13 July, 2012: In Mrs. Anant Virendar Singh submit the affidavit on 5 May 2005 but the affidavit was unregistered by the family members. Moreover the agreement is null and void account has executed under the coercion. The disputes were ongoing between ground floor tenant and other defendant The Supreme Court held that the consent of the family member is taken by coercion^[4]

Example: "A has a gold watch. A go for a walk. B Approaches A as a stranger. B pulls his gun and ask A to give his possession and here, the consent of A is obtained by coercion.

Undue Influence: In accordance with Section 16 of the Indian Contract Act of 1872, influence is deemed to be "Undue" when:

One of the contract's parties is in a position of trust and unjustly has influence over the other.

Such a person takes unfair advantage of the other by taking advantage of his superior position.

House NO. 1070/1 V. Subedar Fateh Singh on 26 April, 2018:

In this case, the question arises between Smt. Kiran Wait and Subedar Fateh Singh, whether the gift or contract is induced by undue influence. And Supreme Court held that these two thing are necessary for undue influence. 1) the relation between donor and done such as done is in position to dominate the will of donor. 2) done has used the unfair advantages over the donor.

Judgment of Supreme Court: The court held that the gift or contract is not induced by the use of undue influence.^[5]

Example: 'A' sold his gold chain to his teacher 'B' for Rs 200 after he had been offered good marks by his teacher. Here, A's permission is not given freely, he was influenced by his teacher.

Fraud: The Indian Contract Act's Section 17 defines fraud as any of the following actions taken by a contracting party, its accomplice, or its agent with the intent to deceive or

convince the other party or its agent to enter into the contract:

The deliberate hiding of a fact by someone who is aware of it;

A commitment made without any willingness to follow through;

Any additional behaviour suited to trick;

Any action or inaction that the law deems fraudulent.

N Krishna Reddy vs C K Varkey on 27 November, 2019:

The appellants' father, Sri Narayana Reddy, had a brother named Sri Nagappa Reddy. Three items were included in the suit for partition that Sri Nagappa Reddy had filed against Narayana Reddy in O.S.No.54/1959 on the file of the Civil Judge. The suit was for the division and separate possession of joint family properties. The contested case was decided. Following that, all three things on the schedule were sold, and Narayana Reddy and Nagappa Reddy each received an equal share of the revenues in accordance with the decree in O.S.No.54/1959. Narayana Reddy received roughly Rs. 12,000.00. The site was then put up for public auction by the BDA, and the winning bid of Rs. 12,000 was used to purchase site No. 192.

Judgment: The lawsuit makes no claims that there was fraud. The lawsuit was brought after a five-year period had passed, and the Limitation Act also bars it. According to the respondent, Article 113 of the Limitation Act's Schedule does not apply to the current instance^[6]

Misrepresentation: According to Indian Contract Section 18:

The truth is misrepresented when something is misrepresented. Misrepresentation is when false information is made public, leading to the assumption that the other side will make a deal and lose it. Nevertheless, the guilty party's information was given genuinely believing it to be true. It is claimed that misrepresentation has been made.

Example: 'A' told 'B' that his car is in good condition, because of the confidence he had in 'A', 'B' bought the car from him. The car did not work properly after some time, 'B' thought he was misled by 'A', but 'A' believed his car was in good condition and had no intention deceiving him. So, here misrepresentation is in the part of 'A', because he did not know that the car is not working properly.

Ramesh Kumar & Anr vs Furu Ram & Anr. Etc on 18 August, 2011:

The two brothers who are the appellants participate equally in ownership of lands totalling 98 Kanals and 19 Marlas in the village of Udana, Tehsil Indri, District Karnal. On October 18, 1991, they entered into a contract to sell the aforementioned lands to the sons of Furu Ram and Kalu Ram (brothers), who are each the first respondent in these two appeals, for a price of Rs. 14,22,000 and received Rs. 1,000,000 as earnest money. According to the terms of the contract, the buyers were required to pay the remaining sum at the moment the sale deed was registered, and the transaction had to be finalised by 31.1.1992.

Judgment: His agreements dated 12.3.1992, the arbitration awards dated 13.3.1992, the consent decrees dated 30.3.1992, and the mutations in favour of respondents, according to appellants, were all unlawful, null and void, and non-est because they were the product of fraud and misrepresentation on the part of the parties.

Mistake: There are two forms of mistake under Indian Contract Law:

- The mistake of Fact,
- The Mistake of Law.

The Mistake of fact: When one or both parties to the contract misunderstand a phrase that is crucial to understanding its meaning, an error of fact results this mistake may be the result of confusion, ignorance, omission, etc. A mistake is always the result of a careless oversight.

Example: A, agrees to buy a horse from 'B', but it turns out that the horse was dead at the time of the deal, although the fact was not known to any party. The arrangement is considered invalid.

The Mistake of Law: Therefore, under the Indian Contract Act, an error of foreign. The Indian Contract Act therefore state the error could be caused by an error in Indian law or a mistake in a foreign legislation. The general rule is that ignorance of the law is not an adequate defence if the error relates to Indian laws. This implies that neither party can assert that the other is ignorant of the law. According to the Contract Act, no party may seek redress on the grounds that they were not aware of Indian law. An improper reading of any legal provisions will also fall under this category. However, disregard for international law is not treated similarly. Foreign law provides some wiggle room because the parties are not required to understand it. Thus, this is a foreigner's mistake ^[7].

Conclusion: An agreement must have free consent in order to be legally binding. Free consent is crucial, and this cannot be emphasised enough. The Party must freely and gladly consent. It is essential that you agree to the contract voluntarily and without being under any duress. The freedom of the parties' assent is crucial since it could jeopardise the contract's legality. The aggrieved party has the right to void the agreement if the consent was gained or caused by coercion, undue influence, fraud, misrepresentation, or error.

References

1. <https://lawbhoomi.com/free-consent-under-indian-contract-act/on 20-08-2022>
2. Book of Dr. R.K. Bangia's
3. <https://indiankanoon.org/docfragment/171984830/?formInput=coercion%20%20%20%20%20doctypes%3A%20judgments on 20-08-2022>
4. <https://indiankanoon.org/docfragment/86815917/?formInput=cases%20on%20undue%20influence%20on 22-Aug - 2022>.
5. <https://indiankanoon.org/doc/118584952/on 22-08-2022>
6. <https://blog.ipleaders.in/free-consent-3/ on 22-08-2022>