

ANALYSE CONSENT

***Garima Jain**

ABSTRACT

Since the beginning of a contract, consent has been considered the most important component. Coercion is, as far as anyone knows, one of the factors that influences a man's permission. Drawing a boundary between coercion and undue influence, as well as other issues, has become increasingly difficult in recent years. The purpose of this study is to try to comprehend the complexities of consent in the context of the Indian Contract Act, 1872 (Section 15). Also, by covering all of the demonstrations that are handled under consent, as well as those that are outside of its scope, the paper hints toward a comprehensive examination of this subject.

KEYWORDS: Consent, Parties, Competent, Prejudice, Contract, Unlawful.

INTRODUCTION

The Indian Contract Act of 1872 governs contracts in India. According to the Act, no contract can be made unless both parties are fully committed and determined to see it through to completion. As a result, the concept of free consent takes on new significance. In order for a contract to be legally enforceable and binding, it must have the free assent of both competent parties, according to Section 12 of the Indian Contract Act. Two people are considered to consent when they agree on the same thing in the same sense, according to Section 13 of the Indian Contract Act. The primary focus of this paper will be on Section 14.

SOURCE OF RESEARCH

The research paper will be primarily based on the secondary sources that include both that are printed and non-printed materials. In printed material we will include several books, while non-printed material include data which we will get from the online database and some blogs.

*BBA LLB, INDORE INSTITUTE OF LAW.

RESEARCH METHODOLOGY

To address the key research objectives, this research used qualitative method and constitution of primary and secondary sources.

The dates which are going to include in this research paper will be secondary sources of information. The study area, data sources information are available on internet in the research paper.

ABOUT INDIAN CONTRACT ACT, 1872

About Indian contract act, 1872

The Indian Contract Act is one of our country's earliest mercantile laws. It went into effect on September 1, 1872, and it applies to the whole country of India, with the exception of Jammu and Kashmir. It is the primary legislation governing contracts in India, with a total of 266 parts. In India, the Indian Contract Act is the primary source of contract law. The act was passed by British India and is based on English common law principles. The Indian Contract Act, 1872, establishes the law governing contracts in India and is the most important piece of legislation governing Indian contract law. The Act is founded on English Common Law principles. It can be used in all 50 states. It establishes the conditions under which commitments made by contracting parties are legally enforceable. A contract, according to the Indian Contract Act, is a legally binding agreement. According of the Indian Contract Act, 1872 there are mainly four conditions which have to be satisfied to form a valid contract, i.e. free consent of parties to the contracts, competent to contract, for a lawful consideration and with a lawful object.

ANALYSE CONSENT WITH CASE LAWS

Consent is a sort of consideration when it comes to contracts. When a person has the mental capacity to make a rational decision, they can show their agreement by performing an activity that has been requested by another person. It is assumed that you have the physical ability to act when you assent. A party should not be affected by outside forces in order for permission to be present.

CONSENT IN CONTRACTS

When two parties want to make an agreement, they can use a contract, which spells out all of the parties' rights and responsibilities. A contract contains several key parts, including permission. In its most fundamental form, consent refers to the parties' shared understanding of the contract. Both contracting parties must willingly provide their approval. Consent will not be regarded voluntary or genuine if certain mistakes are made, or if one person tries to deceive or push the other. One of the necessary elements of a valid contract, as stated in section 10, is that the parties engage into the contract freely. According to section 14, consent is said to be free when it is not influenced by the first question (defined in section 15), being under the influence (defined in section 16), fraud (defined in section 17), MS in depression (described in section 18), or a mistake (defined in sections 20 21 and 22).

Send a set to be caused when it would not have been given if such a question and and mens, fraud, misinterpretation, or error had not existed. The consent of one of the parties is not free consent that is it has been caused by one or the other of the above stated factors, the contract is not a valid contract if caused due to:

- 1.coercion
2. undue influence
- 3.fraud
- 4.miss-interpretation of the agreement and Juridical Sciences
- 5.mistake

COERCION

According to **section 15**, "coercion is the committing, or threatening to commit, any act forbidden by the Indian penal code, or the unlawful detainment, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement¹.

Coercion is said to be there where the consent of a person has been caused either by

1. committing threatening to commit any act forbidden by the Indian penal code or by
2. unlawful detaining, or threatening to retain any property.

Such an act should be to the prejudice of any person or whatever.”

IN RANGANAYAKAMMA V. ALWAR SETTI CASE²

The question before to Madras High court was regarding the validity of the adoption of a boy by a widow, aged 13 years. On the death of her husband, and the husband's dead body was not allowed to be removed from her house for cremation, by the relatives of the adopted boy until she adopted the boy. It was held that the adoption was not binding on the widow as her consent had been obtained by coercion.

"DURESS"

Under common law duress consists in actual violence or threat of violence to a person. It only includes fear of loss to life or bodily harm including imprisonment, but not a thread of damage to goods. The thread must be to do something illegal that is to commit a tort or a crime. There is nothing wrong in thread to prosecute a person for an offence or to sue him for a tort committed by him, although threatening illegal detention would be duress. Moreover, duress must be directed against a party to the contract, or his wife, child, parent or other near relative, and also caused by the party to the contract, or with his knowledge.

In **Union of India versus M.V. Damodar³**, the defendants took loan for purchase of vessels, which purchase was required to be made through shipping development fund committee, which enjoyed monopolistic character. it was not obligatory for the defendants to take loan from the committee. the loan was advanced by the committee at a subsidized rate of interest which was below the rate of interest then prevailing in the market. Keeping view the facts of the case the Bombay High court held that the contention of the defendants that they were forced to enter into contract with the plaintiff because of economic duress due to monopolistic character of the committee was not tenable.

UNDUE INFLUENCE

The consent of a contracting party was obtained through undue influence, and it is not the free consent required for the contract's validity. When a party's permission is influenced, the

² ILR (1889) 13 MAD.214. INDIAN CONTRACT ACT,1872

³ AIR 2005 BOM. 137, INDIAN CONTRACR ACT,1872

contract is available at the discretion of the party whose consent was influenced. Section 16 defines undue influence as under:

"Section16. "Undue influence" defined – "(1) A contract is said to be induced by undue influence with the relations of subsisting between the parties are such that one of the parties is in a position to dominate that the will of the other, and uses that position to obtain an unfair advantage over the other.⁴

(2) in particular and without prejudice to the generality of the foregoing principal a person is deemed to be in a position to dominate the will of another –

(A) where he holds a real or apparent authority over the other, or where he stands in a fiduciary in relation to the other; or

(B) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness and mental bodily distress.

(3) where a person who is in a position to dominate the will of another, enters into contact with him and the transaction appears, on the face of it on the evidence adduced to be unconscionable, the burden of proving that such content was not induced by an undue influence shall lie upon the person in a position to dominate the will of the other."

M VENKATASUBBAIAH V. M SUBBAMMA⁵ Juridical Sciences

The party or its legal representatives who executed the document or made the contract under such influence from the other party must make the claim of undue influence. Any third person, even if he believes it, is not authorised to claim adversity or a lack of unanimity in any way. However, if any other (third party) party exerted undue influence on the deal, the contract should be voided. Similarly, if a contracting party was in collusion with a third party, was the third party's agent or principle through which the third party was able to exert control over the contract, the contracting party's rights under the contract may be forfeited.

⁴ INDIAN BARE ACT,1872

⁵ 1915 MAD 1052(1) (AIR V 2) (C),INDIAN CONTRACT ACT,1872

FRAUD

When the consent of a party of the contract has been obtained by fraud, the consent is not free consent which is necessary for the formation of a valid contract. In such a case the contract is voidable at the option of the party whose consent has been so obtained. Fraud or Deceit is also a tort, for which an action for damages can also lie.

Section 17 defines fraud as follows: "fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent or to induce him to enter into the contract⁶:

“(1) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made with any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.”

ROBERT TAPPAN MORRIS CASE⁷

Journal of Legal Research and Juridical Sciences

Robert Tappan Morris was a Cornell University student who, after being granted access to the Cornell computer, created one of the earliest internet bugs, the Morris worm. The worm spread throughout the internet using send mail, the finger software, and trusted hosts after being distributed by Massachusetts Institute of Technology. Morris was found guilty of violating 18 U.S.C. 1030(a)(5)(A), which is part of the Computer Fraud and Abuse Act, by the United States District Court for the Northern District of New York. He was given a three-year sentence, as well as 400 hours of community service and a fine of \$10,050. The cost of repairing an infected PC ranged from \$200 to \$53,000.

⁶ INDIAN BARE ACT,1872

⁷ 928 F.2d 504, 1991 U.S. App.3682.

MISREPRESTATION

The transmission of false information to induce a receiver to engage into a contract is known as misrepresentation contract law. A contract, at its most basic level, is the exchange of rights, property, and consideration between parties, such as individuals and businesses. Contract law that prohibits misrepresentation serves to eliminate unethical and negligent behaviour in contract agreements.

In business negotiations, where significant transactions occur often, misrepresentation contract law is very relevant. Misrepresentations of an agreement's value and/or risk can result in significant financial losses for firms and individuals, while also raising the risk of collaborative business endeavours. As a result, contract law governing misrepresentation is critical for maintaining fairness and lowering the risk of entering into agreements between individuals and organisations.

SMITH VS LAND AND HOUSE PROPERTY CORP⁸

The plaintiff advertised his hotel for sale, claiming that it had been leased to a "very desired tenant." The defendants reached an agreement to purchase the hotel. The tenant was unable to pay his rent since he was insolvent. As a result, the defendants refused to fulfil their obligations under the contract, and the plaintiff sued them for specific performance. The plaintiff's declaration was not an opinion, but a reality, according to the Court of Appeal.

EDGINGTON VS FITZMAURICE ⁹

The plaintiff shareholder got a circular from the board asking £25,000 in interest-bearing loans. The corporation had purchased a lease on a significant property, according to the circular. Money was required for property improvements and extensions, as well as the transportation of fish from the shore to London for sale. The circular was criticised for being misleading in some areas. It was asserted, among other things, that it was framed in such a way that the debentures would constitute a charge on the company's property, and that the entire purpose of the issue was to pay off the company's pressing liabilities, not to complete the renovations, etc.

⁸ (1884) LR 28 Ch D 7, INDIAN CONTRACT ACT,1872

⁹ (1885) 29 Ch D 459, INDIAN CONTRACT ACT,1872

The plaintiff, who had purchased debentures, demanded his money back, claiming that it had been gained through deceptive misstatements.

The plaintiff was entitled to rescind the contract since the statement of purpose was a statement of truth and amounted to a misrepresentation, according to the Court of Appeal. Despite the fact that the remark was a promise of purpose, the court determined that the defendants had no intention of following through on their promise at the time they made it.

MISTAKE

“A mistake in contract law is when one or both parties have a false belief about a contract. A mistake might be a misunderstanding about terms, laws, or information relevant to a binding contract.”¹⁰ If a party can prove their false belief has legitimate mistake grounds, the contract would become void. A court may also rule that a new contract is negotiated through mutual assent or reparations are made for the mistake, depending on the specific mistake case. Mistakes in contract law fall within three main categories: mutual mistakes, common mistakes, and unilateral mistakes.

CASE LAWS

BELL V LEVER BROS (1932) AC 161¹¹

Facts: The two defendants were appointed to oversee a second firm, Niger, by Lever Bros. Their employment agreements were believed to be for a period of five years. However, because the Niger firm was struggling, Lever Bros chose to merge it with another, making the defendants redundant. Lever Bros. devised a deal in which each defendant would receive £50,000 if they agreed to terminate their contract, which was approved. The defendants were then determined to have committed a major breach of duty while working in Niger, where their contracts may have been terminated without notice. The contract for £50,0000 should be unlawful, according to Lever Bros, because there was no legal requirement for them to pay compensation to the defendants.

Held: Lord Atkin believes it was "both parties' mistake" and a misunderstanding regarding the "presence of some characteristic" that caused the contract to diverge from what was intended.

¹⁰ INDIAN CONTRACT ACT,1872

¹¹ (1932) AC 161, INDIAN CONTRACT ACT,1872

As a result, there is no operative mistake because Lever Bros. got exactly what they desired (the defendants terminating the contract), and the fact that this might have been done without Lever Bros. giving the defendants compensation DOES NOT MATTER.

COOPER V PHIBBS (1867) UKHL 1¹²

Facts: His uncle leased a fishery to a nephew. His uncle passed away. When the lease from his aunt came up for renewal, the nephew renewed it. The uncle had left the nephew a life tenancy in his will, it was later discovered. Because the nephew already had a beneficial ownership right in the fishery, the lease was deemed voidable by mistake.

Held: This is a case of *res sua res sua res sua res sua res sua* When a contract is discovered to have been put into by mistake, it is usually declared void rather than voidable. The lease was deemed voidable rather than void since the claim was grounded in equity and concerned beneficial ownership rather than legal ownership.

BHAURAO DAGDU PARALKAR V. STATE OF MAHARASHTRA

The apex court explained:

"Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinator stand as a response to the conduct of the former either by words or letter." In the instant case the apex court appointed A commission to examine 354 cases who were granted pensionary benefits under the freedom fighters pension scheme on the basis of a word document making false claims of participation in freedom struggle, the court said amounted to disrespect to the whole country, a dishonorable venture, which was required to be dealt with sternness to send out a message that they were not freedom fighters but were traitors sullyng the name of freedom fight.

According to two **section 17**, following are the essentials of fraud:

“1. There should be a false statement of fact by person who himself does not believe the statement to be true.

2.The statement should be made with the wrongful intention of deceiving and other party is there to inducing him to”.

¹² (1867) UKHL 1, INDIAN CONTRACT ACT,1872

IN SHRI KRISHAN VS KURUKSHETRA UNIVERSITY¹³

Shree krishan, a candidate for the LLB part 1 exam who was absent, did not disclose this in his admission form. Neither the head of the law department nor the University authorities took the necessary precautions to ensure that the truth was discovered. The top court ruled that the candidate had committed no fraud, and that the University had no authority to reject the candidate's candidature on that basis.

IN AYEKAM ANGAHAL SINGH VS. THE UNION OF INDIA¹⁴

There was an auction for the sale of fishery rights, and the plaintiff came out on top, earning about Rs. 40,000. For three years, the fishery rights had been auctioned. In actuality, the annual rent was Rs. 40,000. The plaintiff is attempting to avoid the contract on the grounds that he made a mistake and believed he had made a small profit of Rs. 40,000 for the three years of rent. It was decided that because the mistake was made unilaterally, the contract was unaffected and could not be avoided.

CONCLUSION

It might be claimed that Free Consent is critical to reaching an agreement with a legally binding contract. The significance of unrestricted consent cannot be overstated. The consent of the Party must be given freely and voluntarily. It is vital to sign the contract without being under any duress or compulsion. It's critical that the parties' consent is unrestricted, as it could jeopardise the contract's legitimacy. The injured party has the right to void the agreement if it was obtained or caused by coercion, undue influence, fraud, misrepresentation, or mistake.

¹³ 1976 AIR 376,1976 SCR(2) 122, INDIAN CONTRACT ACT,1872

¹⁴1980 AIR 1447,1980 SCR(3) 485 , INDIAN CONTRACT ACT,1872