FREE CONSENT

Explanation of its vitiating factors; Coercion, Undue Influence, Mistake, Misrepresentation, and Fraud Under Indian Contract Act, 1872

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Difference between Consent and Free Consent

Basis	Consent	Free Consent
Meaning	When all the parties to a contract agree on the same thing in the same sense or in union of mind, it is considered to be consent.	When an agreement is entered into with the consent of the parties, and it is also free from fraud, misrepresentation, undue influence, mistake, and coercion, it is said to be free consent.
Voidability	In an agreement, when there is a lack of consent, the contract would be void	When in a contract there is a lack of free consent, it is voidable. The voidability of the contract depends on the option of the aggrieved party.
Essentials	All the parties to the contract must have the same subject In mind. They should agree on the same thing	In the case of free consent, the consent should be free from - fraud, misrepresentation, mistake, undue influence, and coercion.

Free Consent

Consent of the parties is considered free when its free from:-

1. Coercion (Sec 15)
2. Undue Influence (Sec 16)
3. Fraud (Sec 17)
4. Misrepresentation (Sec18)
5. Mistake (Sec 20, 21, 22)

Definition of Free Consent

Section 14 of the Indian Contract Act defines 'consent' - it is when two or **more persons agree** upon the **same thing** and in the **same sense**".

Example: 'A' agrees to sell his house to 'B'. 'A' owns three houses and wants to sell his house in Haridwar. 'B' thinks he is buying his Delhi house. Here 'A' and 'B' have not agreed upon the same thing in the same sense. Therefore, there is no consent and no contract afterwards.

- When a person risks the other person to do or not to do something with the intent to force a person to enter into a contract, it is said to be force.
- Ram forces Shyam to transfer him all his money, otherwise Ram will kill him. This is said to be coercion.
- When it is found that the contract is made under coercion, then the contract is cancelled.
- A person who is a stranger or not in the contract, coercion can be employed against coercion.

Coercion- Section 15

Coercion is committing or threatening to commit, any act which is forbidden by the Indian Penal Code or the unlawful detaining or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Coercion means:-

- Forcing an individual to enter into a contract.
- When intimidation or threats are used under pressure to gain the party's consent, i.e. it is not free consent.
- Coercion may involve the actual infliction of physical and psychological harm in order to enhance the credibility of a threat. Then the threat of further harm can lead to the threatened person's cooperation or obedience.

Example: 'A' went out for a walk, 'B' approaches 'A' with a stranger, pulls out his gun and asks 'A' to give all his possessions. The consent of 'A' is obtained by coercion here.

Coercion- Section 15

Consent is said to be caused by coercion when it is obtained by threatening or pressuring the subject by either of the following techniques:

1. Committing or threatening to commit any act forbidden by Indian Penal Code:

A person can only be held for coercion if he threatens to commit an act that is forbidden by the IPC and uses in order to attain the consent of the plaintiff.

If a person attains consent by threatening to do something that is legal according to the IPC, he cannot be held for coercion.

In ***Ranganayakamma vs. Alwar Setti (1889),*** the question before the Madras High Court was regarding the validity of the adoption of a minor aged 13 years, by his widowed mother. On the death of her husband, the husband's dead body was not allowed to be removed from her house 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 she was coerced into doing so.

2. Unlawfully detaining or threatening to detain any property:

Consent can be said to be caused by coercion if it is induced by illegal confining or threatening to hold a legal property of the plaintiff, by the defendant.

In ***Essar Steel Ltd vs. Union of India (2006),*** a Company had entered into a contract with Gas Authority of India Limited (GAIL) for purchase of gas. The Company constructed the pipeline for the carriage of gas and was also responsible for its maintenance. GAIL demanded transportation charges from the Company. The demand was also found to be against the price structure fixed by the Government.

It was held that GAIL was acting against the Government pricing order. It was held that GAIL was employing coercion and was withholding a lawful property of the Company (the gas bought). GAIL was not allowed to charge extra transportation charges.

Threat to commit suicide as coercion:-

Ammiraju vs. Seshamma (1917) primarily dealt with the question of threat to commit suicide amounting to coercion. There was a threat by the husband to commit suicide and he demanded his wife to release property in name of his brother. It was seen that the wife was prejudiced and it can't be forbidden by law. So here the threat to commit suicide by the husband amounts to coercion on the wife. The Indian Contract Act however cannot provide relief in such cases.

Burden of proof:-

- The burden of proof lies with the party defending the coercion. The burden of proof is heavier on him.
- This is because pure probability or fear is not a threat.
- In order to create coercion, a person must show that there was a risk that was prohibited by law and that forced him to enter into a contract that he would not otherwise have.

Undue Influence (Section 16):-

An influence will be considered as Undue Influence when:

- One party to the contract is in a position of trust and controls the other party wrongfully.
- Such a person uses his dominant position to gain an unfair advantage over the other.

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

Section 16 of the Indian Contract Act puts forward the concept of undue influence in contract law:

A person is deemed to be in a position to dominate the will of another where:-

1. he holds a real or apparent authority over the other; or
2. he stands in a fiduciary relation to the other; or
3. he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

Real or Apparent authority:-

- A person in authority is definitely able to dominate the will of the person over whom the authority is held.
- The authority may be real or apparent.
- The expression "apparent authority" would include cases in which a person has no real authority but is able to approach the other with a show of authority. For example, an Income Tax Officer in relation to his assessee.

Fiduciary relationship:-

- A fiduciary relationship means a relationship of trust and confidence.
- Includes the relationship of solicitor and client, spiritual adviser and his devotee, doctor and patient.
- In ***Mannu Singh vs Umadat Pande***, a guru influenced his disciple to take his property in gift by promising to secure benefits to him in the next world. The court set the gift aside as it was not formed with free consent.
- In ***Lakshmi Amma vs T. Narayana (1967)***, a person was suffering from a number of ailments, which confined him to a nursing home. There he made a deed gifting all his properties to one of his sons to the exclusion of others. The court held that the gift was caused by undue influence and is voidable.

- Mere presence of a party to a contract in a dominant position does not relieve the other party of his liabilities under undue influence. Similarly, it is not enough for the plaintiff to show the possibility of undue influence that may have been exercised by the dominant party. It must be certain that a person used his position to influence the plaintiff. A possibility of the same is not enough for the plaintiff to avoid a contract.

Effect of undue influence:-

The effect of undue influence makes an agreement voidable at the option of the party whose consent was caused. Any such contract can be set aside. Only a party to the contract can avoid or rescind the contract. This right does not lie in the hands of the third party.

Burden of Proof:-

The burden of proving that undue influence had been employed in gaining the consent of the plaintiff lies on the **plaintiff itself**.

In order for a plaintiff to prove that he was under undue influence, two things must be established:-

1. Not only must the defendant has a dominant position but,
2. He must use that positioning to gain an unfair advantage.

However, where a person who is in a position to dominate the will of another enters into a contract with him and **the transaction appears to be unconscionable**, the burden of proving that such contract was not induced by undue influence shall lie **upon the person in a position to dominate the will of the other.**

Difference between Coercion and Undue Influence

Basic	Coercion	Undue Influence
Nature of Action	Through coercion, by committing an offence or threatening to commit an offence, consent is gained.	Under the undue influence, consent is gained by suppressing other party's will.
Carried by	Coercion is typically physical in nature, in order to obtain consent, it requires a physical force of violent nature.	Undue influence is immoral in nature, using mental pressure to gain consent.
Criminal Action	Coercion includes a criminal act and is punishable under the IPC by a person who commits coercion.	Undue Influence requires unlawful act and is not punishable under the IPC by a person who has done undue influence
Relationship	Coercion does not involve a party's relationship.	Undue influence can only be exerted if there is a relationship between two-party.
Agreement	When coercion induces consent to an agreement, the agreement is null and void at the option of the party whose consent is induced.	When consent to an agreement is caused by undue influence, it becomes null and void at the discretion of the individual whose consent has been so affected.

Fraud – Section 17

Fraud under the Indian Contracts Act

'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 contract:

The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

- The active concealment of a fact by one having knowledge or belief of the fact;
- A promise made without any intention of performing it;
- Any other act fitted to deceive;
- Any such act or omission as the law specially declares to be fraudulent

Two essentials to prove that an act is a fraud:-

1. A person should make a false statement having the knowledge that the facts are false.
2. There should be a wrongful intention to deceive the other party.

Fraud – Section 17

Mere silence as to facts likely to affect a person's willingness to enter into a contract is not fraud unless the circumstances of the case are such that, having regard to them, it is the obligation of the silent person to speak or unless his or her silence is, in itself, equivalent to speech.

Example: 'A' sells his horse to 'B' by auction, which 'A' knows to be unsound, 'A' tells 'B' nothing about the unsoundness of the horse. This is a fraud on the part of 'A'.

A party is under no obligation to disclose all material facts unless there exists a duty to speak or when silence amounts to fraud, or when half-truths are uttered or when there is a change of circumstances.

In ***Keates vs Lord Cadogan***, A let his house to B which he knew was in ruinous condition. He also knew that the house is going to be occupied by B immediately. A didn't disclose the condition of the house to B. It was held that he had committed no fraud.

Fraud – Section 17

When Silence is Fraud: -

1. When there is a Duty to Speak
2. Where silence is deceptive
3. Change of circumstances
4. Half-truths

Case Laws:

1. In ***A.L Mustaneer Establishment vs Varuna Overseas Pvt. Ltd.***, it was held that 'Fraud' is a facet of dishonesty, fraud in connection with letters of credit.

2. In ***Ratan Lal Ahluwalia vs Jai Janider Parsad***, it was held that under common law, fraud will not only render the contract voidable at the option of the party whose consent is obtained but will also give rise to an action for damages in respect of deceit.

Fraud – Section 17

Active Concealment in Contracts: -

Active concealment can cause a contract to be invalid or result in liability to the concealing party, it includes hiding information from the other party by concealment intentionally.

In ***Hingawwa vs. Byrappa Shiddappa Hireknrabar,*** a husband persuaded his illiterate wife to sign certain documents telling her that by them he was going to mortgage her two lands to secure his indebtedness and in fact mortgaged four lands belonging to her. This was an act done with the intention of deceiving her.

Fraud – Section 17

Effect: -

- The contract arising from fraud is a null contract.
- The misled party has the right to withdraw from the contract.
- Due to the fraudulent agreement, the party is responsible for recovering the damages.

Evidence and Burden of proof : -

- In a large majority of cases, fraud can not be proved by concrete and observable proof. It’s hidden in its movement by its definition. If the evidence given is such as lead to wrongdoing, it is, therefore, appropriate that fraud must have been committed.
- In most cases, the only tool for dealing with fraud issues is circumstantial evidence.
- As a remedy for restitution, any real damages arising from fraud can be recovered. Due to contributory negligence, the penalties would not be diminished.

Misrepresentation – Section 18

Misrepresentation means the truth is misrepresented.
Misrepresentation is the release of deceiving details resulting in the presumption that the other party will enter into a deal and then lose.

Misrepresentation is said to be committed, when:

1. when the deceiving person declares that fact which is not true or half true leading to different presumption
2. there is a breach of an obligation that has caused the bias of one or the other.
3. a mistake was committed by a person because of the misrepresentation of the act or information.

A misrepresentation is an untrue or false statement of law or fact made by one party, which induces the other party to enter into an [agreement]() or [contract]().

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

Misrepresentation – Section 18

As defined in Section 18 of the Indian Contract Act, **Misrepresentation** means and includes:-

1. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true.

    - A statement is said to be warranted when it is received from a trustworthy source.
    - Unwarranted statements are statements that are not necessarily true with respect to the information that the speaker has.

2. Any breach of duty which, without intent to deceive, gains an advantage to the person committing it, or anyone claiming under him; by misleading another to his prejudice, or to the prejudice of anyone claiming under him. Such cases in courts of equity are stated as cases of **'constructive fraud';** in such cases, there is no intention to deceive, but the circumstances of the cases are such that they make the party which derives a benefit from the transaction, answerable as if he had acted with intent to cause fraud or deceit.

In ***Oriental Bank vs. John Fleming***, the plaintiff was given the impression by the defendant that a deed contained nothing but formal matters already settled between them. The plaintiff, having no time to read the contents of a deed signed it. The deed, however, contained a release in favor of the defendants. The Court set aside the agreement for the consent had been taken by misrepresentation.

Misrepresentation – Section 18

3. Inducing mistake with respect to the subject matter: Causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

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

Misrepresentation – Section 18

Three primary types of misrepresentation:

1. Fraudulent representation:

- Where a false representation has been made knowingly, or without belief in its truth, or recklessly as to its truth.
- Fraudulent misrepresentation will happen when an untrue representation is made and the party making the representation knew it was false or was reckless as to whether it was correct or incorrect.

2. Negligent misrepresentation:

- Representation made carelessly and in breach of duty owed by a party, to the other, to take reasonable care that the representation is accurate.
- A declaration is made by one contracting party to another negligently or without reasonable grounds for believing its truth.

3. Innocent misrepresentation:

- Misrepresentation made completely without fault or intent to deceive, is described as an innocent misrepresentation. It is a representation that is neither fraudulent nor negligent.

Remedies for misrepresentation: -

- For fraudulent and negligent misrepresentation, the plaintiff may claim rescission and damages.
- For innocent misrepresentation, the court has the discretion to award damages in lieu of rescission.

Difference between Fraud and Misrepresentation

Fraud	Misrepresentation
Fraud is more or less an intentional wrong.	Misrepresentation may be quite innocent.
Fraud means willful misrepresentation of a material facts.	Misrepresentation means a bonafide representation which is false.
Fraud is done to deceive the other party.	Misrepresentation is not done to deceive the other party.
Fraud is defined in Sec 17	Misrepresentation is defined in sec 18
In fraud, the aggrieved party can claim damages for any loss sustained.	Misrepresentation, the aggrieved party cannot claim damages for any loss sustained.

Misrepresentation – Section 18

Burden of Proof:-

The burden of proof is on the defendant to show that the misrepresentation was not rendered fraudulently by showing that "he had reasonable grounds to believe that the evidence portrayed were valid during the time when the contract was made."

The party making the misrepresentation carries a heavy burden of proof.

Effect:-

If the party that has suffered as a result of the misrepresentation when entering into a contract may choose to terminate the contract, rescind the contract within a reasonable time under the Specific Relief Act 1963.

Mistake under the Indian Contract Act

- Mistake is not defined in the Indian Contract Act.
- Sections 20, 21, and 22 deal with the concept of mistake.
- A mistake is said to occur when parties intend to do one thing by error to do something. Where both parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

In ***Phillips v. Brooks Ltd.***, it was held that a person is deemed to contract with the person in front of them unless they can substantially prove that they instead of them intended to deal with another person.

Illustration- A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away, and the goods were lost. Neither party was aware of these facts. The agreement is void.

Mistake under the Indian Contract Act

Two forms of mistake under Indian Contract Law:

1. The mistake of Fact,
2. The Mistake of Law.

Mistake of Fact: -

A mistake of fact arises when one or both of the contracting parties have misunderstood a term that is essential to the meaning of the contract;

- Such a mistake may be done due to confusion, negligence or omission, etc;
- A mistake is never intentional, it is an innocent overlooking.
- Such mistakes can be either unilateral or bilateral

Ignorance of fact can be an excuse under the law. Under Section 20 of the Indian Contract Act, 1872, a contract is said to be void when both the parties to the agreement are under a mistake as to a matter of fact. A mistake of fact can be one-way or both ways.

1. When both parties to an agreement are mistaken
2. Their mistake is as to matter of fact
3. The fact about which they are mistaken is essential to the agreement.

Effect of mistake of law (Section 21):

A contract is not voidable because it was caused by a mistake as to any law in force in India, but a mistake as to a law not in force in India has the same effect as a mistake of fact.

In ***Grant v. Borg***, a person was not knowing the clauses of the Immigration Act 1971, for staying beyond the time by the leave. Here, he cannot apply for defence under the mistake of law.

Bilateral Mistake (Section 21):

- When both the parties to a contract are under a mistake of fact, essential to the agreement, such a mistake is known as a bilateral mistake.
- Bilateral mistakes are also sometimes referred to as mutual or common mistakes.
- All the parties do not agree to the same thing and in the same way, which is the concept of consent. Since there is no consent, the contract is null and void.

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

Unilateral Mistake (Section 22):

- Contract caused by mistake of one party as to matter of fact - A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to matter of fact.

- A unilateral mistake occurs when only one party to the contract makes a mistake. The contract will not be void in such a case.

- It is specified in Section 22 of the Act that the contract will not be void just because one party made the mistake. The contract remains a valid contract.

Example: ‘A’ enters into an agreement with ‘B’ for the purchase of horse which he assumes to be a racing horse. ‘A’ do not confirm from ‘B’. In actual a horse is not a racing horse. ‘A’ cannot rescind the contract.

In ***The State of Maharastra v. Mayer Hans George***, A is an officer of the court and he is ordered to arrest Y. A arrests Z by mistake, as he believes Z is Y. Here, A can take the basis of bona fide intention as a defence in the mistake.

Mistake of Law:-

- Ignorance of the law is no excuse.
- Section 21 of the Indian Contract Act states that a contract cannot be said to be voidable due to the mistake of the parties in understanding any **laws that are in force in India**.
- Thus, parties to the contract cannot claim relief on the grounds that they were unaware of the Indian law. This will also include an incorrect interpretation of any legal provisions.

- However, similar treatment is not given to ignorance of foreign law. Ignorance of foreign law provides some leeway, the parties are not expected to know foreign law and its meaning. Therefore, under the Indian Contract Act, **an error of foreign law is actually treated as a mistake of fact.**

In ***Copper vs. Phibbs (1867),*** a nephew leased a fishery from his uncle. His uncle died. When the lease came up for renewal the nephew renewed the lease from his aunt. It later transpired that the uncle had given the nephew a life tenancy in his will. The lease was held to be voidable for mistake as the nephew already had beneficial ownership right in the fishery. It was held that a mistake as to the general ownership or right stands on the same footing as a mistake of law and therefore, was declared void.

Effect on Contracts Influenced by Any Factor Vitiating Free Consent

Coercion	Coercion means forcing an individual to enter into a contract. When intimidation or threats are used under pressure to gain the party's consent, i.e. it is not free consent	**Effect of Coercion** Coercion can make the contract voidable. This means the contract is voidable at the option of the party whose consent was not free. So the aggravated party will decide whether to perform the contract or void the contract.
Undue Influence	It states that when the relations between the two parties are such that one party is in a position to dominate the other party.	**Effect of Undue Influence** If the consent is not free due to undue influence, the contract becomes voidable at the option of the aggravated party. And the burden of proof will be on the dominant party to prove the absence of influence.
Fraud	It means deceit by one of the parties i.e. when one party makes a false statement knowingly.	**Effect of Fraud:** 1. The contract arising from fraud is a null contract. 2. The misled party has the right to withdraw from the contract. 3. Due to the fraudulent agreement, the party is responsible for recovering the damages.

Misrepresentation	It means the truth is misrepresented. It is also when a party makes a representation that is false, inaccurate, incorrect etc.	**Effect of misrepresentation:** 1. If misrepresentation is identified, the contract can be declared void. 2. If the party that has suffered as a result of the misrepresentation when entering into a contract may choose to terminate the contract, rescind the contract within the reasonable time under the Specific Relief Act 1963.
Mistake	It is a misunderstanding between the parties entering into a contract as to a material fact.	**Effect of mistake:** 1. A mutual mistake will only affect the validity of the contract if the mistake is so fundamental that it nullifies the contract. 2. If the mistake goes to the heart of the contract, the contract will be rendered void.

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