

Freedom of Choice under Indian Contract Act: A Critical Evaluation

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Abstract – MAN is a social animal. He has been in dealing with others since a long period of time. Earlier he used diverse methods to regulate his relations with others. But with the passage of time and the extreme flourish of business globally, the main mechanism of regulation of the relationships b/w different individuals have been the instrument of contract. Contracts are serious affairs. They have an extreme effect over the parties to the contract. This seriousness must reflect right from starting means when a person is entering in contract, he must have desire to enter into a contract. He must have freedom to make choice whether he wanted to enter into contract or not as at end, only the parties to the contract have to bear the effects and consequences of making a contract. This freedom of choice has been secured to the parties by The Indian Contract Act, 1872 in Sections 13- 22. It provides for various situations under which the consent of a party can be vitiated and the effects of such vitiated consent over the contract entered into.

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INTRODUCTION

Contracts are voluntarily created civil obligations. Voluntariness requires that person has exercised freedom of choice without any fraud or force or defective knowledge of facts dealing with agreements.

If freedom of choice is defective on the part of one party, on removal of defect a chance is given to that person to cure it and it is left at his discretion whether to avoid or to accept the terms in the same way as if there was no defect in giving the consent. In simple words a chance to ratify the defect which is imposed on him is given to him himself.

But the case where the consent of both the parties is defective i.e mistake, then such agreements are void.

Relevant provisions dealing with this are sec 10, sec 13 to 22. Section 10 requires consent of parties to the agreement must be given freely to result into a binding contract.

Sec 13 provides for consent and it talks about the concept of "consensus at idem" i.e. The meeting of mind.

If party's consent is not resulting into meeting of mind for same thing in the same sense then such agreement is void because of mistake of parties. Here, mistake is in relation to different facts and the mistake given under sec 20 provides for mistake of

party as to common fact. If there is no meeting of minds then agreement is void reason being there is no consent in this case¹.

But for agreement to be contract this consent i.e meeting of mind must be free and relevant provisions for free consent are provided in sec 14 of the INDIAN CONTRACT ACT 1872. It provides that for consent to be free it must not be arising out of

1. Coercion (sec 15)
2. Undue influence (sec 16)
3. Fraud (sec 17)
4. Misrepresentation (sec 18)
5. Mistake (sec 20)

1. COERCION:-

When a person is made to do a thing because of fear that affects his mind from taking a rational decision. In the fear of injury the actual freedom of choice cannot be made by a person which he otherwise would have made.

Coercion is one of the factors affecting the consent and if consent is given because of coercion then it is the vitiated consent and as per Sec 19 of the

¹ Raffles V/S Wichelhaus

Indian Contract Act, 1872, such contracts are voidable contracts at the option of person whose consent was such taken.

Law in relation to coercion is provided under sec 15 of contract act.

Essentials of coercion

Coercion means when consent to an agreement is taken by

1. Committing or threatening to commit any act forbidden by I.P.C. OR
2. Detaining unlawfully or threatening to detain unlawfully, any property

To the prejudice of person whose consent is so taken.

A) Committing or threatening to commit

Committing means you have done any act forbidden by I.P.C

Threatening to commit means you have not done but showing an aggression that you may commit any act forbidden by I.P.C if consent by other person is not given.

B) Any act

It means anything, may be an offence against body, property or anything else but this act must affect the mind of person if this is not having any effect on mind of person then such act will not lead to coercion.

Suppose a person says I will kill anybody not related to person whose is to be taken, then, such act will not constitute coercion.

The word "act" is used because it is immaterial whether I.P.C is applicable at the place of formation of contract or not. Certain acts which are offence under I.P.C may not be offence outside India even if a person threatens or commits any act outside the limit of India then such contract is a contract because of vitiated consent.

C) Forbidden by I.P.C

Here, act must be forbidden by I.P.C only. All the forbidden acts by any law enforceable in India other than I.P.C are not included in the definition of coercion.

The classical example of this is threat by a person to commit suicide if consent to contract is not given then under Indian Contract Act in the case of **AMIRAJU V/S SHESHAMMA**, a three judge bench of Madras H.C. held in minority judgement by Justice

Oldfield that since threat to suicide is not punishable under I.P.C. so it does not amounts to coercion. But majority gave a reasonable judgement that a person committing a suicide is not punished because of practical reasons as someone who has already died can't be punished. Therefore, it was held that threat to commit suicide must also amount to coercion.

D) Unlawful Detaining of Property

"UNLAWFUL" means which is not warranted by law. **"Detaining"** means to prevent from proceeding in relation / sense of person. For the purpose of this section, custody of property must be taken by unlawful act and the object of this is to prejudice the person, to make him enter in to contract. Here, even if a person threatens to detains property, then it will be coming under coercion. It means that actual detaining is not necessary. If there is reasonable apprehension that person will detain property if contact is not made by victim, then also it will come under coercion.

In **WORKMAN OF APPIN TEA ESTATE CASE**², it was held that threat to strike is a legal statutory right for collective bargains in industries provided by INDUSTRIAL DISPUTES ACT. That is why, it will amount to coercion.

2. UNDUE INFLUENCE:-

In undue influence, one person is under the influence of other and that other person uses that influence to gain unfair advantage. Here, person acted under the influence of other. Therefore, his mind was not working in fully conscious way. Being affected by the influence of other party, it was not in a condition to make choice freely.

Influence may be b/z of any reason which is sufficient to affect the mind of person of ordinary prudence of the same background. It may be real. Apparent or b/z of fiduciary relationship or b/z of disease or weakness of a person made to enter into contract. The relevant provisions dealing with undue influence are Section 16 & 19A.

ESSENTIALS OF UNDUE INFLUENCE

- 1)- Person is in position to dominate the will of other person
- 2)- that position is used by the person to make other person enter into contract for obtaining unfair advantage.

² WORKMEN OF APPIN TEA ESTATE V/S INDUSTRIAL TRIBUNAL

A)- DOMINAT POSITION

The term is not defined in Indian Contract Act, but Section 16(2) provides for certain conditions when person is in position to dominate the will of other:-

- 1)- Real or Apparent Authority
- 2)- Fiduciary relationship b/w parties.
- 3)- Mentally affected person.

“REAL or APPARENT AUTHORITY” means where person is having influence over the mind of other b/z of some official position or status.

“FIDUCIARY RELATIONSHIP” means relationship of confidence and trust b/w parties. Undue influence is considered as subtle species of fraud where mastery is obtained over the mind of victim by insidious approach and sedative artifices³.

“MENTAL or BODILY DISTRESS” means the mental capacity of a person is affected. It can be either temporarily or permanently affected. The reason behind such affect can be AGE, ILNESS, MENTAL or BODILY DISTRESS.

Merely dominant position does not leads to undue influence. It arises only when this position is used for gaining undue advantage. Undue advantage emeans any kind of advantage which is not warranted by the circumstances in which contract was entered.

3. FRAUD:-

Causing error of judgement in the mind of other intentionally to mislead the person by making a false statement intentionally is called as fraud. When a person is giving his consent without correct knowledge of actual facts and was not in a condition to make actual assessment about the effects of the contract on his interests as per existing circumstances, he can't be said to have given consent freely. That's why, he is given an option to avoid the contract. Law related with fraud is given in SECTION 17 of Indian Contract Act, 1872.

ESSENTAILS OF FRAUD:-

- 1)- Person must have wrongful intention to deceive a person
- 2)- The object of such deceiving is to induce the person to enter into a contract.
- 3)- And the person does any of the following acts:-

- a)- False representation of a true fact.(Suggestio Falsi)
- b)- Active concealment(Suppresiovari)
- c)- Promise made without intention of performing it
- d)- Any other act fitted to deceive(Residuary Provision)
- e)- Any act expressly declared by law to be fraudulent.

This false statement must be made intentionally⁴. Here both object and consideration are legal, only the method by which one party has made other party to enter in contract is fraudulent. Inducement must be having potential to move the mind of the person.

A)- SUGGETIO FALSI

It means person made representation of a fact and person knows or has a reason to believe that the representation made by him is false. This representation can be given by word, either spoken or written, OR it may be made impliedly.

B)- Suppressio vari

“CONCEALMENT” shows that person did not state anything which he should have stated. “ACTIVE” means that this concealment deliberates on his part and he does something deliberate on his part to stop disclosure of such fact. Non-disclosure implies some duty on part of person concealing. Silence in case of half-truths amounts to fraud⁵. If person have means of discovering the truth with ordinary diligence, then this will not amount to fraud⁶.

C)- Contract made without intention of performing it:-

This intention is gathered from facts and circumstances of the case. If a person made a contract w/o having any intention to perform it, then it do amount to fraud.

D)- Any other act fitted to deceive

This clause is residuary clause & its general in nature. It covers all the situations which are not covered under 1, 2 & 3 type of act.

³ MAHBOOB KHAN V/S HAKIM ABDUL RAHIM

⁴ DERRY V/S PEEK

⁵ BIMLA DEVI V/S SHANKAR LAL (AIR 1949 N.P.8)

⁶ SHRI KRISHNA V/S KURUKSHETRA UNIVERSITY

4. MISREPRESENTATION :-

It involves the innocent representation of a false fact. It means that person giving the representation is not aware that such fact is false.

Misrepresentation is doing of any of the following acts w/o any intention to deceive:-

- a)- Unwarranted statement/ Positive assertion not supported by law.
- b)- Breach of duty
- c)- inducing mistake in other party about subject matter of agreement.

A)- “Unwarranted statement not supported by law” means person makes a statement which is not true but this statement is also made innocently which conveys that there is no intention to deceive on the part of person giving the representation.

B)- “Breach of duty” means a person makes omission or breach of duty and it results in some advantage to him by misleading other to his prejudice but this is done innocently.

5. MISTAKE:-

Mistake is that mental supposition which do not corresponds to the real facts. Whenever a person is acting in erroneous believe as to facts unaware of the real facts, then we cannot say that he has exercised his freedom of choice voluntarily. Mistake affects the validity of agreement at the root itself, so, here agreement is rendered void as both the parties are under error of judgement about facts and it will be very difficult to make an assessment of the real facts.

Mistake is of two types:-

- 1)- When there is no meeting of mind.(Section 13)
- 2)- When meeting of mind is there but there is mutual mistake as to essential fact.(Section 20)

SECTION 13:-

IF the parties are not able to agree for the same thing in the same sense, it means there is no meeting of mind. Hence, it will not result into a valid contract.

SECTION 20:-

For applicability of the section 20, following essentials must be fulfilled:-

- a)- There must be a wrong believe about a fact i.e. mistake.
- b)- This mistake must be by both the parties to an agreement i.e. it should be bilateral.
- c)- Mistake must be regarding a fact and this fact must be material fact to the agreement.
- d)- Such mistake must be existing independently i.e. it should not be caused by one prty over the other.

Mistake must be mutual. If it is existing only in mind of one party, then it does not affects the validity of a contract. As the true state of facts can be established. Also this mistake must be about a material fact and not any law. This is provided because it will otherwise provide an absolute ground to the offenders. Facts which are considered as essential by courts in India are:-

- A)- Mistake as to existence of Subject Matter.
- B)- Mistake as to nature of contract.
- C)- mistake as to quality of articles sold.
- D)- Mistake as to quantity of articles sold.
- E)- Mistake as to medium of performance⁷.

CONCLUSION:-

Contracts are the voluntarily created civil obligations. They have a very deep effect over the parties to the contract. So, it is extremely necessary that this contract must be entered into by parties with full freedom of consent only. Because once a contract is entered into, state looks towards its compliance because contract is very serious affairs. Keeping in mind the extent of effect of contract over the parties to contract and their protection , various provisions from Section 13-22 has been provided by the INDIAN CONTRACT ACT, 1872 to safe guard the interests of the party to the contract.

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⁷ RAFFLES V/S WITCHELHAUS