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**ANALYSIS ON THE EFFECT OF CONSENT OBTAINED BY
COERCION****ABSTRACT**

Since the intrusion of a contract, the consent is thought to be its most fundamental component. There are various components which impacts the assent of a man out of which coercion is a perceptible element. This paper gives a detailed and complete analysis on the effect of consent obtained by Coercion and the various remedies available to the aggrieved parties. Apart from this paper tries distinguish between Duress (defined under English Law) and Coercion (defined under Indian law) with the help of notable points. Notwithstanding all these, the paper counts on whom the weight of proof lies and how it can impact the contract. More or less this paper is a thorough and detailed analysis of coercion regarding Indian Contract Act, 1872.

KEYWORDS- *Coercion, Consent, Contract, Duress, Remedy*

INTRODUCTION

One of India 's oldest laws, the Indian Contract Act of 1872, has been in existence for a long time and is still in use today. Its goal is to manage the contractual connection involving multiple parties. It establishes norms and regulations that apply throughout India and must be followed while entering into a contract. For it to be enforceable by law and be valid, it is very essential that a contract's fundamental features must always be met in order as stated in Section 10 of the ICA, 1872.¹

These are:

“Free Consent of the Parties, Competency to Contract, Lawful Object & Lawful Consideration, Not forbidden by Law”

¹ Indian Contract Act, 1872, 10, No. 9, Act of Imperial Legislative Council, 1872 (India).

Consent of the parties plays a very instrumental role for a contract to be valid as provided under Section 13 of ICA, 1872.²

Coercion is the process of obtaining something from a person by intimidating them and forcing them to do something they may not otherwise do by jeopardizing their well-being and security.

CONSENT DEFINED

“Two or more persons are said to consent when they agree upon the same thing in the same sense.”

It is based on *“consensus ad idem”* which means the meeting of minds.

Illustration – "Julie" and "Rose" are the names of two horses owned by 'X.' 'X' is selling Julie, his horse, to 'Y.' 'Y' believes he is buying the horse Rose. The concept of consensus ad idem did not apply in this case since both sides did not agree on the same ideas, and there was no meeting of minds.

Judicial Interpretation:

Raffles v Wichelhaus, 1864³

In this case, the plaintiff offered to sale cotton to the defendant. According to the contract between the two parties, the cotton was to delivered on the ship named 'Peerless'. There were two ships named the same and hence there was a misunderstanding and the defendant mistook the contract for the first ship, which was to deliver cotton in October. On the other hand, the plaintiff was under the impression that the contract was for the second ship which was set to sail in December. Due to this, the defendant didn't agree and denied to accept the goods for which the plaintiff sued the other party for damages.

A reasonable person could not have the idea beforehand as for which sailing the contract had been agreed for, as a result of the lack of consensus ad idem, the contract was voided.

FREE CONSENT

Free consent is something which is not influenced by-

1. *“Coercion, as defined in Section 15 of ICA,1872*
2. *Undue influence, as defined in Section 16 of ICA, 1872*
3. *Fraud, as defined in Section 17 of ICA,1872*
4. *Misrepresentation, as defined in Section 18 of ICA ,1872*

² Indian Contract Act, 1872, 13, No. 9, Act of Imperial Legislative Council, 1872 (India).

³ Raffles v Wichelhaus, AIR 1864 EWHC Exch J19

5. *Mistake, subject to the provisions of Sections 20,21,22 of ICA,1872*

- *Mistake of Fact - Section 20 & 22*
- *Mistake of Law - Section 21”*

COERCION

Consent can be defined under Section 15 of the Indian Contract Act, 1872⁴ as:

- *“Coercion is the committing or threatening to commit any act forbidden by the IPC or*
- *The unlawful detaining or threatening to detain any property, with the intention of causing any person to enter into an agreement.”*

In other words, coercion refers to the act of forcing any other person to engage into a contract only for the goal of securing his or her assent by using force or fear of force. It's also important to have in mind that the location where compulsion is used has no bearing on the contract, and the offender will be tried in India.

Illustrations: X, while on board on an English ship on the high seas, coerces Y into signing a contract by criminal intimidation as defined by the Indian Penal Code. X then sues Y in Calcutta for breach of contract. X used coercion, despite the fact that his act was not illegal under English law and that section 506 of the Indian Penal Code was not in effect at the time or location of the act.

JUDICIAL INTERPRETATION:

Chikkam Ammiraju and Ors. v. Chikkam Seshamma and Anr (1917)⁵

In this particular case, the husband threatens to kill himself if his wife and child did not approve the sale in favour of the younger brother. They carried out the agreement, but afterwards filed a coercion charge. Suicide is illegal under the Indian Penal Code, which was enacted in 1860.

The threat to commit suicide will be considered as coercion and the person who will be affected by this, will have the right to rescind the contract.

EFFECT ON CONTRACT AFFECTED BY COERCION:

“Section 19: Voidability of agreements without free consent”

“When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.”

⁴ Indian Contract Act, 1872, 10, No. 9, Act of Imperial Legislative Council, 1872(India)

⁵ Chikkam Ammiraju And Ors. vs Chikkam Seshamma and Anr, (1917) 32 MLJ 494

REMEDIES AVAILABLE TO THE AGGRIEVED PARTY

- In addition to the remedies set out in this section, the offended party may have the agreement revoked under Section 27 of the Specific Relief Act of 1963.
- Alternatively, he may refuse to carry out the agreement and fight the claim for particular performance and/or compensation initiated against him.

RIGHTS TO RESCIND THE CONTRACT

If the contract is declared voidable, the injured party has the ability to cancel the agreement.

However, under the following circumstances, the right to withdraw the contract cannot be exercised

(EXCEPTIONS):

- If the harmed party affirms or ratifies the contract after learning that his consent was not freely given.
- If within a reasonable time period, the contract is not cancelled.

CONSEQUENCES OF RECISSION OF A VOIDABLE CONTRACT

Section 64 of ICA, 1872: "When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received."

Section 65 of ICA, 1872: "It deals with the doctrine of restitution, which comes into play when the contract is discovered to be void after some time and does not apply to void-ab-initio. It states that the advantageous party has the obligation to compensate or restore the loss that occurred to the other party of the contract."

SIMILARITY TO ENGLISH LAW

Duress is a term used in English contract law and coercion is a term used in Indian contract law. In the case of coercion, third parties can also take action, but in the case of duress, only the contracting party must take action. On the other hand, duress, unlike coercion, does not have a broad aspect, and it must be caused by direct violence. Illegal detention is not included in the definition of duress, but falls under the definition of coercion.

BURDEN OF PROOF

The party asserting the defence of coercion bears the burden of proof. He bears a greater burden of evidence. It is so because mere suspicion or possibility does not constitute coercion. To

prove that it's coercion, a person must be able to prove that he had faced a threat which was illegal under the law and that compelled him to enter into an agreement that he would not have entered into otherwise.

CONCLUSION

Coercion can be said to be one of the major factors influencing an individual's choice. It forces him to make a direct settlement, which he does not otherwise do. Knowledge of the law is crucial; it aids in the promotion of legal culture. Every citizen should have a fundamental awareness of the law. The fundamental reason for knowing the laws is that it allows a person to protect himself or herself while also ensuring that they are doing properly. Similarly, having a basic understanding of contracts and agreements will make running a business much easier.

After giving light with respect to the various case laws relating to the Indian Contract Act, 1872, it is evident and crystal clear as to why free consent is one of the most crucial and the most instrumental feature of a legally binding contract and how its autonomy constitutes the contract's basic foundation, without which any contract will be considered void.



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