

A Study on Free Consent to Contract

***Gayathri. U**

*Corresponding Author: * Gayathri. U*

Date of Submission: 04 -07-2017

Date of acceptance: 20-07-2017

I. INTRODUCTION

In Indian Contract Law there are three contracts.

- 1) Valid Contract
- 2) Void Contract
- 3) Voidable Contract

In this, valid contract is an agreement which is enforceable by the law. Void contract is an agreement which is not enforceable by the law. In between valid contract and void contract there stands voidable contract. Voidable contract is a contract which is recognised by the Indian Contract Act and it is valid at the option of the aggrieved party to contract. Voidable contract arises out due to the flaw in consent . According to **John Salmond**, flaw in consent is known as error in Causa. In this case the consent of the party to contract would not be free.

According to **Section 10 of Indian Contract Act**, "All agreements are contract , if they are made with free consent, by the parties competent to contract by a lawful consideration for a lawful object. The free consent of the parties to contract is very important for the validity of the contract.

No Consent = No Contract. According **Section 14 of Indian Contract Act** , A consent is said to be free when it is not said to be caused by

- 1) Coercion – Section 15
- 2) Undue Influence – Section 16
- 3) Fraud – Section 17
- 4) Misrepresentation – Section 18
- 5) Mistake – Section 20, 21& 22

If the consent is not free and it is caused by these following elements, then the contract is said to be voidable. But if it is caused by Mistake then the contract is void. In this case the affected party has right to avoid the contract. A brief study on all these elements have been discussed below.

OBJECTIVE:

To study about the elements which is affecting the free consent of the contract .

HYPOTHESIS:

Consent to contract is very important for the validity of the contract.

SOURCES OF STUDY:

SECONDARY SOURCES-

The secondary sources includes book, journals, blogs, websites and e-sources have been referred on free consent to contract.

CHAPTERIZATION:

Chapter 1 – A Study on a contractual agreement which is arising out of Coercion

Chapter 2 – A study on a contractual agreement which is arising out of Undue Influence

Chapter 3 – A study on contractual agreement which is arising out of Fraud, Misrepresentation & Mistake.

CHAPTER - 1

CONTRACTUAL AGREEMENT ARISING OUT OF COERCION

Section 15 of Indian Contract Act deals with Coercion. Coercion is nothing but forcing a person to enter into a contract by adopting unfair means. In this case the basic idea of Coercion arises where a person may be forced to make an agreement by use of fear or physical harm. E.g., Agreement obtained at gun point.

According to Indian Contract Act,

- 1) Coercion is committing any act which is forbidden by IPC (Indian Penal Code)
- 2) Unlawfully detaining or threatening to detain any property of the party

Committing or threatening to commit any act

In this one party to contract actually commits or threatens to commit any act which is forbidden by IPC in order to get consent from the party to contract.

E.g. “A” threatens to shoot “B” if “B” does not sign promissory note 20,000 Rs to “A”.

In this “B’s” consent is obtained due to Coercion & “B” can cancel this agreement (has right to cancel this agreement).

Unlawfully detaining or threatening to detain property

In this if the party to contract actually detains or threatens to detain any property of the other party to contract in order to get consent to contract.

Coercion may move & direct towards anyone

The coercion may move from one person and may move to any person other than contracting party to the contract. It may even move to the close relations of the contracting party.

E.g. “A” kidnaps “B’s” son in order to obtain the consent of “B” to contract. Even though “B’s” son is not party to contract, the coercion has moved to him.

Not only that but also Coercion may be directed towards any person. In this case it is not necessary that the coercion should always be performed by the parties to contract, sometimes it can also be exercised by a third party to contract.

E.g. “A” hired “B” to kidnap “C’s” son in order to get consent from “C” to contract.

Does threat to commit suicide comes under coercion ?

Suicide or threat to commit suicide is not an offence under IPC. But attempt to commit suicide is an offence. A threat to commit suicide may amount to Coercion if the relation between the parties are close enough.

Intention

And a very important factor is that an act should be done to induce the other party with an intention.

Threat not amounting to coercion:

- 1) **Threat to sue** – Threat to prosecute a person or file suit against a person is not coercion . Approaching a court and seeking for remedy by filing suit is a fundamental right which is given to every citizen.
- 2) **Statutory Compulsion** –If anything done by the order of court, then it is not coercion.
- 3) **Threat to strike** – A threat by employees to go on strike is not coercion but it is a right given under Industrial Dispute Act to employees.

Effects of coercion:

When coercion is employed, then the contract is voidable at the option of the aggrieved party. In this case any benefit received by the either parties to contract must be restored back. If the aggrieved party has suffered loss, he can recover the loss from the other party to contract.

Duress vs Coercion:

Duress is a term applied under English Contract Law & Coercion is a term applied under Indian Contract Law. In coercion even third party can perform the act but in duress only the party to contract should perform the act. In Duress, it can only be applied for person and cannot detain property. Therefore the scope of coercion is wider than duress.

CHAPTER 2

CONTRACTUAL AGREEMENT ARISING OUT OF UNDUE INFLUENCE

Section 16 of Indian Contract Act defines Undue Influence. Undue Influence is nothing but unfair use of one's superior position in order to obtain the consent of a person who is in weaker position. It is applied by moral pressure.

“A contract is said to be induced by undue Influence where the relations subsisting between the parties are close, where one party is in

- 1) Position to dominate the will of other
- 2) & uses that position to obtain unfair advantage.

In this the party is in a position to dominate the will of other

- 1) When he holds real / apparent authority

- 2) If he stands in fiduciary relations
- 3) If he makes Contract with a person who is mentally in distress.

Real / Apparent authority:

In this a person has authority over the other person . And it is expected that he will not abuse that authority to gain an undue Influence.

E.g. Relation between employer & employee

Fiduciary relations:

Fiduciary relation means relationship of confidence and trust. When a person reposes confidence in the other & it is expected that he will not be betrayed. Suppose if the other party is betrayed then the suffering party has an option to avoid Contract.

Person in mental or bodily distress:

A person is in a position to dominate the will of other, when he makes a contract with a person whose mental capacity is temporarily or permanently affected by the reason of age, illness. Agreement caused by undue Influence is voidable.

CHAPTER 3

CONTRACTUAL AGREEMENT ARISING OUT OF FRAUD, MISREPRESENTATION AND MISTAKE.

Fraud – Section 17

Fraud is nothing but intentional or wilful misrepresentation of a material fact which is essential to the contract. If there is an intention to deceive the other party by knowing that it is not a true fact. If the promise is made without an intention of performing it , this also amounts to fraud . Such agreements arising out of fraud is a voidable contract at the option of the aggrieved party.

Misrepresentation- Section 18

Misrepresentation is nothing but an innocent misstatement or false statement.

In this it is not done with an intention to deceive the other party. Such agreements arising out of misrepresentation is a voidable contract at the option of the aggrieved party.

Mistake – Section 20, 21 & 22

In this the consent to contract of the parties is caused by mistake . This could be either mistake of the parties to contract or by mistake of important fact to the contract. At this position the agreements arising out of the mistake is said to be void and not voidable.

II. CONCLUSION

These are the elements which are effecting the consent of the contract.

Therefore the free consent to contract is very important for the validity of the contract. **No consent = No contract .**

And the consent given by the party to contract rather than the stranger is also very important for the validity of the contract.

IOSR Journal Of Humanities And Social Science (IOSR-JHSS) is UGC approved Journal with Sl. No. 5070, Journal no. 49323.

Gayathri. U. "A Study on Free Consent to Contract." IOSR Journal Of Humanities And Social Science (IOSR-JHSS) 22.7 (2017): 82-84.