

A Critical Analysis on Coercion With Respect To Indian Contract Act

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Abstract- Since the intrusion of a contract, the consent is thought to be its most fundamental component. There are different elements which impacts the consent of a man out of which coercion is as far as anyone knows a noticeable factor. Lately there has been a considerable measure of complexities in drawing a line amongst coercion and undue influence and significantly more. This paper goes for endeavoring to understand the complexities of intimidation as set around the Indian Contract Act (Section 15). Also the paper points toward a definite examination of this area by covering every one of the demonstrations that are managed under coercion, the demonstrations which are out of its ambit. Other than this paper tries to draw a line between Duress (that is secured under English Law) and Coercion (that is secured under Indian law) with the assistance of point of interest judgments. Notwithstanding all these the paper likewise counts on who does the weight of proof lies and how it can impact the contract. More or less this paper is a thorough investigation of compulsion regarding Indian Contract Act, 1872.

Keywords- Coercion, threat, consent, contract

INTRODUCTION

Coercion is committing, or threatening to commit, any act forbidden by the Indian Penal Code (Section 45 of 1860), 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. The words in this segment are significantly more extensive which existed amid the English authorities¹. This definition expresses that the coercion which refutes a contract ought to not really go from a gathering to an agreement², or ought to be quick against a man whom it was proposed to cause to go into a contract or anything which influences his property. For example – 1) A was going out for a walk, B a stranger comes to A, takes out his gun and asks A to give all his possessions. Here A's consent is obtained through coercion.

2) A government in order to realize fine, due from the son, has attached the property belonging to the son and the father pays the fine in order to save the property from being sold; here the payment is made out of the coercion.³

The definition contained in section 15 is exclusively expected to consider whether the consent in a specific case is a free consent falling inside area 14 and it doesn't administer the importance of the word coercion as utilized as a part of segment 70 of the Act.⁴

There are certain words in this section that needs to be defined:

- Act forbidden by IPC- The word act forbidden by Indian Penal Code make it necessary for the court to decide in a civil action, whether the alleged act of coercion is such as to amount to an offence.⁵ A threat of bringing a false charm with the object of making another do a thing amount,

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¹ (1912) 15 Oudh Cas 192

² Chuni Lal v. Maula Baksh, AIR 1936 Lah 6

³ Bansraj v. Secretary of State, AIR 1939 All 373: 183 IC 134.

⁴ P.B. Mills Co. v. Union of India, AIR 1970 Guj 59:

⁵ Ammiraju v Seshamma AIR 1918 Mad 414

to blackmail or coercion.⁶In the case of Ranganayakamma v Alwar Setti⁷, where the widow was obstructed from removing the corpse of her husband until she consented for the adoption. The court held that her consent was not free and it was coerced. It is clear that coercion is committing or threatening to commit any act which is contrary to law.⁸

- Unlawful Detaining of Property: A consent can be said to be caused by coercion, if it is caused because of unlawful confining of a property, or a risk to do as such. Where with a specific end goal to acknowledge fine due from child, the legislature appended the property having a place both of him and his dad, installment at that point made by the father keeping in mind the end goal to spare the property from being sold was held to have been made under coercion.⁹ Refusal by government office to discharge the installment of a temporary worker unless he surrendered his claim for additional rates added up to intimidation under the class of detention of property.¹⁰
- Prejudice: Mere sentimental prejudice is no ground for coercion rather there should be some legal injury in order to be prejudiced. For instance a wife been threatened by her husband to commit suicide.¹¹
- Causing any person to enter into an agreement- In the case of Vibha Mehta v Hotel Marina¹² at the point when coercion is charged, the claim like extortion or distortion must be upheld by particulars. It is simply after entire particulars of the affirmed coercion are given that the court can ask into it and choose whether it stands demonstrated or not.

Some illustrations of Coercion-

- When Coercion:
 1. In case of detaining a property even if the person has the right to do is said to be coerced.¹³
 2. A case in which an operator negated to hand over the charge of book, records and money of his main unless the last executed of deed of discharge in regard of claim against him, held that deed was under coercion.¹⁴
 3. A partner detained the money given by his co-partner to a creditor of the firm, resulted the bond to execute in their favour, and held that it was coercion.¹⁵
- When not Coercion:
 1. A threat to withdraw pre-existing criminal proceeding until the bond is executed is not coercion¹⁶ whereas instituting false criminal bond is coercion.¹⁷
 2. If the employees threat to go on strike, it will not lead to coercion¹⁸. Rather it's their right guaranteed under Industrial Dispute Act.
 3. If someone pays money voluntarily for compounding or non compounding offences, it can't be said to come under coercion.¹⁹

Coercion and Duress-

Under the English law, actual or threatened violence to the victim's person has long been recognized to amount to duress.²⁰ Duress is a term applied under English Contract Law & Coercion is a term applied

⁶ AIR 1936 Lah 6.

⁷ (1890) ILR 13 Mad 214

⁸ Gobardhandas v. Jai Kishan, ILR 22 All 224.

⁹ Bansraj v. Secretary of State, AIR 1939 All 373: 183 IC 134

¹⁰ Irrigation Deptt v Progressive Engg Co, (1977) 4 ALD 489 (AP)

¹¹ Ammiraju v Seshamma AIR 1918 Mad 414

¹² 2012 (132) DRJ 638

¹³ Hla Maung v. Ma Toke, 12 Bur LT 195: 55 IC 741.

¹⁴ Muthiah v. Karippan, 50 Mad 786: 1927 Mad 852: 103 IC 5.

¹⁵ Dinshaji v. Sheriaajt, 1880 PJ 287.

¹⁶ Rameshwar v. Upendra, 29 CWN 1029: AIR 1926 Cal 455: 90 IC 463.

¹⁷ Sanallah v. Kalimullah, 1932 Lah 446: 137 IC 790.

¹⁸ Workmen, Appin Tea Estate v Industrial Tribunal, Gauhati AIR 1966 Assam 115

¹⁹ Maung Chit v. Maung San, 6 Rang. 238: 1928 Rang. 173: 111 IC 21.

²⁰ Barton v Armstrong [1975] 2 All ER 465 (PC)

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 is only applied for person and cannot detain property. Also coercion can be seen as the practice of putting someone under duress (i.e almost like stress.) Coercion is the act of forcing, while duress is more the consequence (or stressful feeling) that happens as a result of coercion. In this way the extent of coercion is more extensive than duress. For ex- Pointing a gun is coercion and signing the contract is coercion.

Coercion and Undue Influence-

'Coercion' is the demonstration of debilitating a man, to urge him/her to go into the agreement and play out the commitment. Despite what might be expected, 'Undue Influence' is a demonstration of controlling the will of the other party, because of the prevailing position of the main party. At the point when the consent of any of the gatherings to contract is influenced by coercion or undue influence, it is said that consent isn't free. The burden of proof lies on the aggrieved party in case of coercion while in undue influence it lies on the other party.

Burden of proof-

The burden of proof lies on the party taking the defence of the coercion.²¹ The onus of proof on him is heavier.²² It is so as mere probability or suspicion doesn't amount to coercion. To establish coercion a person must prove there was a threat which was forbidden by law and that compelled him to get into a contract which otherwise he wouldn't have.²³

Effects of coercion in a contract- A contract obtained by means of duress exercised by one party over the other is void.²⁴ 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.

Power of the court under the Specific Relief Act, 1963-

Whenever there is an unfair advantage to the plaintiff over the defendants while making a contract, the court may refuse specific performance to the plaintiff. On the contrary if the defendant had entered into contract which makes it unfair to enforce specific performance in that case he may be refused too for the specific performance.²⁵

Coercion under Section 72-

The meaning of coercion in this section objectifies to show whether the consent falls under section 14 it doesn't covers the same meaning as in section 72 of the Contract Act²⁶, which covers all the compensation even if it doesn't show up in Section 15²⁷.

Conclusion-

It can be said that coercion is one of the major factor which influences the decision of an individual, it compels him to enter into a contract which otherwise he wouldn't. The section also enumerates how a person can distinguish an act from coercion or not. In case of coercion the burden of proof lies on the person taking defence of coercion. The reason behind it is that if it was not so anybody could have approached saying that he has been coerced. There is a fine line between the narrower aspect under

²¹ Palanippa Mudaliar v Kandaswamy Mudaliar, (1971) 1 Mys LJ 258

²² Alva Aluminium Ltd v Gabriel India Ltd, (2011) 1 SCC 167

²³ (1912) 15 Oudh Case 192.

²⁴ Halsbury's Laws of England, Vol.9 (1), 14 edn, Reissue 30 June 1998, CONTRACT, para 710

²⁵ Specific Relief Act, 1963, s.20(2)

²⁶ Kanhya Lal v National Bank of India Ltd, (1913) 40 IA 56

²⁷ TGM Asadi v Coffee Board, AIR 1969 Mys 230

English law that is duress and the wider aspect of the Indian Contract law that is coercion. To conclude, any contract under coercion is voidable at the option of the aggrieved party.