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A Comparative Study of Voidable Contracts and Void Agreements

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The Indian Contract Act 1872 deals with contract law in India its rights, duties, and exceptions arising out of it. Section 2(h) of the act gives us the definition of a contract, which is simply an agreement enforceable by law. This paper analyses the difference between voidable contracts and void agreements with the help of case studies and relevant sections. It talks about sections 2(h), 2(a), 2(i), 2(d), 14, 16(3), and 15, 24, 25, 26, 27, and 28 of the Indian Contracts Act, 1873. It talks about the sub topics under voidable contracts like free consent, undue influence, and misrepresentation and also talks about sub topics like restraint of marriage, restraint of trade, restraint of legal proceedings, uncertainty in agreements, and wagering agreement in voidable contracts. It then goes on to discuss cases such as Chikham Ammiraju v Chikkam Seshama (1917). Ranganayakamma v Alwar Setti (1889) Mannu Singh v Umadat Pande, R v Kylsant 1931. Currie v Misa (1875), Rajlukhy Dabee v Bhootnath Mookerje, Shrawan Kumar @ Pappu v Nirmala, Mst. Rao Rani v Mst. Gulab Rani Madhub Chandra v raj Coomar 2003, New Delhi municipal committee v Tirath Ram Ahuja ltd which helps in understanding the above mentioned contract terms better. Free consent is properly explained with examples to give a clearer picture of what causes a contract to be voidable and it also talks about Section 19 of the ICA which renders all contracts voidable that are induced without free consent. Void agreements and their various factors are discussed in the latter half of the paper. It then goes on to figure out the similarity between Indian and English law regarding void agreements. The paper sums up all the issues and provisions under void agreements and voidable contracts in a precise manner along with differentiating between the two. The paper concludes by giving us a clear idea about the entire concept.

Keywords: *voidable contracts, agreement, void contracts, marriage, restraint of trade.*

INTRODUCTION

A contract is "An agreement enforceable by Law."[1] John Salmond explains a contract as "an agreement with obligations between two or more parties." In simple terms, a contract is a legally binding agreement between at least two parties, out of which one offers a proposal and the other party accepts it. This proposal is the willingness of a party to do or abstain from doing a specific act in return for something.[2] When two parties enter into a contract, they have the ability to set down their own terms and regulations of the agreement as long as there isn't any unlawful element present in it.

There are three broad types of contracts when it comes to validity. These are Valid contracts, void contracts, and voidable contracts. A valid contract is one that is lawful and can be enforced by Law while a void contract is an agreement not enforceable by law. A voidable contract, as explained in the ICA, is "An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others."[3]

WHEN IS A CONTRACT VOIDABLE?

A contract is voidable at the option of either party if a situation arises when any of the following situations are involved:

- If either of party doesn't have free consent while entering into the agreement.
- If either of the parties was mentally incompetent while entering into the agreement.
- If either of the parties misinterpreted the terms of the contract or made a mistake.

Free Consent

[1] Indian Contract Act 1872, s 2(h)
[2] Indian Contract Act 1872, s 2(a)
[3] Indian Contract Act 1872, s 2(i)

Free consent is defined under the Indian Contract Act as the consent which was given by the parties without the existence of "coercion, undue influence, fraud, misrepresentation or mistake."[4]

Coercion: It is the act of forcefully persuading someone to do something. The ICA defines coercion as "committing, or threatening to commit, any act forbidden by the Indian Penal Code."[5] This also includes unlawful threats and/or detainment of a person or property to induce them into entering an agreement. This act of coercion doesn't necessarily have to occur at a place where IPC is applicable. Anytime consent of a party is tampered with, it renders the contract voidable at the option of that party.

In the case of *Chikham Amiraju v Chikham Seshamma* (1917)[6], a man threatened his wife and son to transfer certain property to his brother on account of committing suicide. The Madras High Court held this action voidable under section 15 of the ICA because the threat of attempting suicide is forbidden under section 309 of the IPC and it amounts to coercion.

Similarly, in *Ranganayakamma v Alwar Sett* (1889), a widow wasn't permitted to remove the corpse of her husband until she accepted the adoption of a child. The court in its judgement held that the consent of the widow wasn't free and amounted to coercion because the obstruction of the removal of her husband's dead body is forbidden under section 297 of the IPC.[7] The burden of proof in coercion lies with the plaintiff. They have to prove that there was a threat prohibited by law which forced them to enter into a contract that they would've otherwise avoided.

Undue Influence: The rule of Undue Influence was first introduced by Lord Hardwicke, who used the relationship between a parent and their child to explain this. Scruton LJ explained this as "a contractual advantage obtained by a person within certain defined relations with another person." This is any relationship that involves influence by one party over another.[8]

[4] Indian Contract Act 1872, s 14
[5] Indian Contract Act 1872, s 15
[6] *Chikham Ammiraju v Chikkam Seshama* (1917) 41 Mad 33
[7] *Ranganayakamma v Alwar Setti* (1889) ILR 13 Mad 21
[8] W H D Winder, 'Undue Influence And Coercion' (1939) 3 The Modern Law Review

Section 16 of the ICA describes Undue Influence as a hindrance to free consent in a contract where one party dominates the other's will and takes advantage of their position.

This person dominating the agreement can be:

Any party holding **real or apparent authority** over the other. This is the direct or indirect authority of a person over another. For example father-son or guardian-child, manager-employee relationship, etc.

Any party in a **fiduciary relationship** with the other. When a party is in a relationship with another person to act for the benefit of that person on matters within the scope of their relationship, they are said to be in a fiduciary relationship. This includes professional relations such as doctor-patient or lawyer-client.

Any party getting into a contract with another party who is **mentally incapable.** This can be due to age, mental illness, or any form of mental distress. This incapacity can be permanent or temporary.

In *Mannu Singh v Umadat Pande*[9], the court held a guru for applying undue influence on his disciples because took their property as gifts with the promise of a better life in the next life.

These gifts were not given with free consent in the fiduciary relationship between the guru and his followers.

The burden of proof in the case of Undue Influence is placed on the weaker party. They are required to prove their inability to exercise free choice due to the influence placed by the dominant party. However, there is a shift in the burden of proof with the emergence of an unconscionable transaction such that the stronger party has to prove that they did not use their position to exert any undue influence.[10]

Fraud: This is an act of deception committed by one party to induce another party to enter into a contract. According to section 17[11] of the ICA, fraud involves the following acts:

[9] *Mannu Singh v Umadat Pande* Appeal No 34 of 1889
[10] Indian Contract Act 1872, s 16(3)
[11] Indian Contract Act 1872, s 17

- The suggestion of **wrong facts**: Under this clause, any act constitutes as fraud if a party suggests a fact that is not true and isn't believed to be true by that party, and this suggestion is made with the intention of deceiving and persuading the other party to enter into an agreement
- The **active concealment** of a fact: When one party actively conceals any information related to the contract, it amounts to fraud due to their failure of disclosing facts that might affect a party's will to enter into a contract. In some cases, silence might amount to speech. This happens when being silent about a fact changes the other party's knowledge inducing them to enter into the contract. For example: if a shopkeeper remains silent about a fact about the item he is selling, which greatly reduces the value of that product, his silence makes him liable for fraud.
- A party has a duty to speak when the other party specifically asks about any facts related to the contract. It also arises when one party lacks the resources to discover the facts and solely relies on the information conveyed by the other party.
- In certain situations, there might be a change in the facts. Earlier an assertion made by a party might be true which may later on change. In such a case, the party making the original assertion is required to inform the other party of the change in facts.
- Revealing half the facts and concealing the other half also amounts to fraud as the party is required to reveal the whole truth. For example, A shopkeeper is liable for fraud if he reveals only half of the materials used in a product when the other half might've changed the buyer's willingness to buy.
- A promise made by a party to induce the other party into entering into the contract without having the intention of going through with it. For example, A person in a market promises another party to provide them with some extra benefits as compared to other people in the market to catch their attention without actually having any intention of fulfilling it.
- Any act fitted to deceive or any act or omission declared fraudulent by the law. This includes all acts and unfair practices used by a party with the intention of fraudulently inducing or deceiving a person into entering into a contract.

Misrepresentation: Section 18 [12]of the ICA explains misrepresentation. It occurs when a party delivers false facts which induce another party to enter into a contract. Misrepresentation is similar to fraud, except in this case, the party providing the wrong information doesn't have the intention to deceive. If they aren't aware that the material fact they are sharing is wrong or has changed due to some circumstances, it amounts to misrepresentation.

In the case of *R. v Kylsant*[13], famously known as the 'Royal Mail Case', a company had made an impression that they had paid all of their dividends and were running at a profit while they were actually running at a loss. This was a suppression of facts leading to misrepresentation. Misrepresentation follows two remedies. One is the recession, which is the cancellation of the contract, taking both parties back to the situation before the existence of the contract. The other remedy is damages which can be given to the injured party as compensation for any loss incurred.

***Exceptions*:**

Section 19 [14]of the ICA renders all contracts voidable which are induced without free consent. However, there are some exceptions. Such as, if a party whose consent was induced by fraud or misrepresentation could've discovered the truth with "ordinary diligence", it doesn't render a contract voidable. Similarly, if the consent of a party is not affected by an act of fraud or misrepresentation, such a contract is not voidable.

VOID AGREEMENTS

Agreements that cannot be enforced by law are termed as void agreements. The agreements are not enforceable because they are against public policy or immoral. Void agreements are defined under The Indian Contract Act, 1872 under section 2(g). Sections 24 to 30 and then section 56 state the types of agreements or contracts that are void.

[12] Indian Contract Act1872, s 18
[13] *R v Kylsant* 48 T L R 62 (I931)
[14] Indian Contract Act 1872, s 19

CONSIDERATION

A consideration is an act or abstinence done at the desire of the promisor.[15] In Indian Law, there is no application of the doctrine of 'Privity of Consideration'. Hence, consideration can be given by any other party to the contract as well as the promise. Consideration is an essential part of forming an agreement and turning them void. Section 24 deals with unlawful objects and considerations in an agreement. It states that agreements are void if a part or the entire consideration is unlawful or illegal. However, the same agreement can be made valid if we delete the unlawful part from the agreement.

For example, if two people, X and Y, enter into an agreement for the supply of some cotton and illegal drugs for an amount of 10 thousand rupees, the agreement is void. This is because the agreement contains an invalid object. In order to make this agreement valid, the illegal object, i.e., the supply of drugs, can be removed.

A lack of consideration in an agreement also turns it void. This is contained under section 25. However, this has a few exceptions, such as:

i. Agreements are done out of natural love and affection between related members. Such an agreement must be written and registered for it to be enforced.

ii. Agreements are done where the consideration has already been voluntarily given in the past.

iii. Agreements are made with a written promise or a promise authorized by their agent, to compensate for the services provided in the future.

In *Rajlukhy Dabee v Bhootnath Mookerje*, the judgement stated that "A written and registered agreement which is based on natural love and affection between kins is enforceable without consideration"[16]

But what exactly counts as a valid consideration? This question is answered in a popular case, *Currie v Misa*[17], where the judgement defined the term 'valuable consideration' as any act

[15] Indian Contract Act 1872, s 2(d)
[16] *Rajlukhy Dabee v Bhootnath Mookerje* 4 CALWN 488
[17] *Currie v Misa* (1875) LR 10 Ex 153

or service which, in the sense of the law, may consist of "some right, interest, forbearance, detriment, loss or responsibility given, suffered or undertaken by the other."

RESTRAINT OF MARRIAGE

Section 26[18] – Under this section, any agreement in restraint of marriage completely or partly is said to be void. However, this doesn't apply to the marriage of minors (s). For example, if Naveed is provided some money by Vandana's father to abstain him from marrying her such agreements will become void under this section provided they are not minors.

The petitioner, in *Shrawan Kumar v Nirmala*[19], claimed that the respondent had made a promise to marry the petitioner but at present, she was planning to marry someone else therefore that marriage should be stopped applying a decree of 'permanent injunction' and stopping her from marrying anyone other than the petitioner. But however, the Allahabad high court dismissed this petition on grounds of restraint of marriage. The basic idea behind this law is that marriage is a sacred social institution and nothing should restrict it if it is between two adults. However, remarriages do not fall under this category. For example, if a penalty is imposed on a widow looking to remarry, it cannot be counted as a restraint of marriage.

In one of the famous cases *Rao Rani v Gulab Rani*[20], two widows of the same husband decided to share the inheritance equally with the condition that if anyone remarries, they lose their property rights. A petition was filed under section 26 for the agreement being in restraint of marriage. However, the judgement ruled that there wasn't any direct prohibition on the marriage.

RESTRAINT OF TRADE

The Indian constitution provides all citizens with the fundamental right to practice any trade or occupation under article 19(1)[21]. Section 27[22] of the ICA deals with the agreements in restraint of

[18] Indian Contract Act 1872, s 26
[19] *Shrawan Kumar @ Pappu v Nirmala* Writ C No 62174 of 2012
[20] *Mst Rao Rani v Mst Gulab Rani* ILR 1942 ALL 810
[21] Indian Contract Act 1872, s 19(1)
[22] Indian Contract Act 1872, s 27

trade. So, any agreement which limits or bars the occupation or trade of any person is, to that extent, void.

This section was observed in the case *Madhub Chandra v Raj Coomar*[23], where the respondent claimed that he was ready to provide the petitioner with a certain amount of money if he shuts down his shop in a certain area. However later on, after the petitioner closed down his shop believing the respondent's words, the respondent refused to pay him the promised money. The court judgement held that the agreement was void and the respondent is not liable to pay the amount due to there being a restraint over trade in the object of the agreement itself.

In the famous case, *Nordenfelt v Maxim Nordenfelt Guns and Ammunition Co. Ltd.*, Thorsten Nordenfelt, the defendant, was a Swedish and English gun manufacturer. Thorsten sold his company to an organisation, which then transferred it to Maxim Nordenfelt. So, Thorsten and Maxim agreed that for the next 25 years, he would not participate in the assembly of weapons and save what he develops for the organization's benefit. However, Thorsten abandoned his word, claiming that the agreement was unenforceable since it restricted trade. Thorsten won the case, and the court ruled in his favour. The exception to this section is the sale of the goodwill of the business being restrained.

RESTRAINT OF LEGAL PROCEEDINGS

Section 28[24] consists of two kinds of agreements that are void. One is the complete restriction of any legal proceeding in any ordinary court or tribunal rising from the contract and the other one is the restriction of time to enforce the contract.

In the *New Delhi municipal committee v Tirath Ram Ahuja Ltd.*[25], the plaintiff and the defendant entered into a contract to build a five-star hotel in New Delhi. This contract was reduced to writing with an agreement stating that the work should be completed within a specific time and a sum of 100000 rupees was also deposited by the plaintiff to the defendant as security. Further, the building was constructed by the plaintiff with the supervision of an architect whose name was also mentioned in the original agreement. Finally, the architect asked for the final payment

[23] *Madhub Chandra v Raj Coomar* 2003 (3) ARBLR 609 P H
[24] Indian Contract Act, s 28
[25] *New Delhi municipal committee v Tirath Ram Ahuja Ltd* (2003) 135 PLR 445

which was due but the plaintiff was however not satisfied and therefore asked for an arbitrator. Finally, the parties went for mediation, and compensation was provided to the plaintiff. The defendant here argued that the dispute can't be referred for arbitration after the expiry of 28 days as mentioned in their agreement. However, the counsel said that according to section 28 any agreement that invalidates any party's right to go for arbitration after a limited time like 28 days in this case is void according to the section.

UNCERTAINTY IN AGREEMENTS

Section 29[26]—According to this section, any contract which is uncertain or cannot be made certain is void. For example, if X decides to sell his watch to Y for Rs 500 and then increase its price by Rs. 50 if it works well, it is held void because there is no fixed clear price.

Wagering agreements

Wagering agreements are void and no suit is applicable against such agreements under section 30. For example, agreements which relate to betting in cricket matches are void because it is an uncertain event. However, this section follows an exception of betting in horse races for a value of Rupees five hundred and upwards.

SIMILARITIES BETWEEN INDIAN AND ENGLISH LAW REGARDING VOID AGREEMENTS

The basic principles regarding void agreements are similar more or less in English as well as Indian law which basically states restrain whether partially or wholly on trade is void. The only difference that arises between both is that in English law, the judgement on the legitimacy of restraint is based on reasonable grounds. The facts are inspected and a conclusion is reached. But in Indian Law, the judgement is majorly based on the pre-defined laws of restraint and exceptions. There isn't much of dissimilarity between the laws, except the fact that the term 'reasonableness' in English law is more flexible.

[26] Indian Contract Act 1872, s 29

VOID *v/s* VOIDABLE

Void agreements, are fundamentally invalid making them unenforceable by default. These agreements cannot be fulfilled as they consist of illegal elements and they can't be enforced even after subjecting it to both parties. So both parties have no option in this. However, in the case of a voidable contract, the agreement is initially enforceable but is later on denied at the option of either of the parties due to various reasons. Unless rejected by a party, this contract will remain valid and enforceable. The party who is at a disadvantage due to any circumstance applicable to the contract has the ability to render the contract void.[27] A void agreement is void ab-into making it impossible to rectify any defects in it while voidable contracts can be rectified. In case of a void agreement, neither of the parties is subject to any compensation for any losses but voidable contracts have some remedies.

CONCLUSION

From this research paper, we can recognize if an agreement is valid or void. A valid agreement forms a contract that may again be either valid or voidable. The primary difference between a void agreement and a voidable contract is that a void agreement cannot be converted into a contract. The presence of certain illegal aspects makes it impossible to be enforced. So it is void since the very beginning. But a voidable contract can only be made void at the option of one of the parties who faced a loss or legal injury. The validity of the contract depends on the facts of the case and the jurisdiction of the country presiding over the same. However, there are many exceptions present to the voidability of agreements and contracts which are often used to argue in favour of the cases arising from them.

[27] Binnall Group, 'Under What Circumstances Is A Contract Voidable?' (*Binnall Law Group*, 2018) <https://www.binnall.com/insights-news/under-what-circumstances-is-a-contract-voidable/> accessed 12 April 2022