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The complexities of Section 15 of the Indian Contract Act - The factors that make this section intrinsic to Justice

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According to the Indian Contract Act of 1872, Section 15¹ defines what ‘coercion’ is: Coercion is the “committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860) (hereinafter referred to as IPC) or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, to cause any person to agree. “This is, one level, rather comprehensive and helps us to understand what this word means. It expresses that an agreement where consent has been obtained by threatening a prospective party with force, unlawful detainment or confinement, or any other act that is expressly prohibited in the Indian Penal Code of 1860 ought not to transform into an agreement legally.

Keywords: *coercion, free will, contract, threat, Indian penal code, intention.*

INTRODUCTION

We need to understand that *Section 15²* relies extensively on the IPC for its very existence, the *IPC, 1860* is the official criminal code followed by courts and law enforcement agencies in India.

¹ Indian Contract Act 1872, s 15

² *Ibid*

It was first prepared in 1834 by the first law commission chaired by Thomas Babington Macaulay. It was passed as a law on the 6th of October, 1860, and enforcement of the Code began on the 1st of January, 1862. There are parts of the *IPC that deal with criminal acts such as criminal conspiracy, offences concerning the human body, offences against property, and offences related to documents and property marks*. Even those not well versed in the law can notice the relation between these chapters and *section 15 of the Indian Contract Act*³. These chapters include offences that can be applied to cases that concern Section 15. We may take an example by choosing an offence and comparing it with the definition of coercion.

Let person A be an owner of a cement firm and person B be a debt collector of a bank. If person A has taken a loan from person B and person B wishes to take control of one of the factories owned by person A by threatening him with death if he does not pay the loan back or consequently transfer ownership of the factory to person B, we can clearly say that coercion has occurred. This is because what transpired in the example given above was a violation of the IPC.

Section 383⁴ to 389⁵ deals with extortion, which is exactly what coercion relies on for it to be violative of Section 15⁶. Let another example be that of two persons (A and B) walking on a road where one person happens to come across the other. Person A takes a knife out and stabs person B once to threaten Person B to give his/her wallet up. This is an example of an offence under IPC. This allows us to establish a connection between the IPC, 1860, and the ICA, 1872, especially section 15, which lays down the meaning of coercion⁷.

CRITICAL ANALYSIS

UNLAWFUL DETENTION - CAN IT BE CONSTRUED AS COERCION?

³ *Ibid*

⁴ Indian Penal Code 1860, s 383

⁵ Indian Penal Code 1860, s 389

⁶ Indian Contract Act 1872, s 15

⁷ Harsh Mehta, 'A Critical Analysis on Coercion With Respect To Indian Contract Act' (*Manupatra*, 12 November 2017) <<http://docs.manupatra.in/newsline/articles/Upload/94FBB7C2-19A0-483D-AE76-9C9BC8A35E4C.pdf>> accessed 12 November 2022

Detention by police is a legal way for a state to hold someone against their will by stripping them of their current freedom or liberty. Since "illegal detention" is defined as the unjustified imprisonment or unlawful deprivation of liberty of an individual by arrest for an illegitimate reason or suspicion, as well as continuous restraint on one's liberty by detaining such an individual in custody, police actions and accountability play a significant role in this case. A police officer may detain a subject for a brief length of time while investigating if he or she has a reasonable suspicion that a crime has been or will be committed, or if the officer has a reasonable opinion that the subject may know something about the crime. But this may be abused to take away someone's freedom.⁸

Unlawful detainment has been used many times in many cases to force individuals and groups to enter contracts against their will. This can be found in cases where policemen and other personnel of law enforcement agencies file fake cases against individuals and groups to extort money or to force them to give up certain objects that include both movable and immovable property. This is a case where it is clear that *section 15 of the Indian Contract Act of 1872*⁹ can be invoked to declare the agreement null and void. This allows those who were being forced to enter into contracts or agreements by arresting them and keeping them in custody illegally to seek recourse and declare the agreement null and void. This is especially important since coercion requires one party to have greater power or influence over the other and many times the only way for the party being coerced to regain its rights is the law.¹⁰ This may be seen in many cases such as when the refusal of a government official to discharge a temporary worker's installment until he relinquished his demand for extra charges, amounts to intimidation.

STRIKE- A FORM OF COERCION?

A common question is if striking is a form of coercion. In *Appin Tea Estate Employees v Industrial Tribunal*, striking tea estate workers wanted a bonus for their labour and threatened

⁸ 'Unlawful Police Detentions & Remedies for Victims' (Shouse California Law Group, 11 November 2022) <<https://www.shouselaw.com/ca/civil-rights/unlawful-detention/>> accessed 12 November 2022

⁹ Indian Contract Act 1872, s 15

¹⁰ Avayaraj Singh, 'The Perils of Unlawful Detention and Arbitrary Arrests' (2021) 4(5) International Journal of Law, Management and Humanities <<https://www.ijlmh.com/paper/the-perils-of-unlawful-detention-and-arbitrary-arrests/>> accessed 12 November 2022

to go on strike if their demands were not met. The demand was accepted. The question was whether such a resolution between the Union of Workers and the Indian Tea Association may be ruled void due to coercion. The court found that there was no compulsion because they did nothing improper under the IPC, 1860. This is also because the right to strike is protected under the *Industrial Relations Act*.¹¹

The defendant using compulsion as a defence should detail all of the facts that constitute these invalidating conditions. A mere suspicion or possibility is insufficient to sustain a request for compulsion. In a contract made between parties where duress was not the sole reason for entering into a contract, the burden is not on the party threatened to show that no agreement would have been made but for the threat. Under English law, such an agreement was void unless the party who made the threats could demonstrate that the threats had no bearing on the other party's decision to enter into a promise.¹⁴

DURESS

Duress is defined as "an illegal constraint put upon a man whereby he is forced to execute some act that he otherwise would not have done" in Black's Law Dictionary. It can be either "duress of imprisonment," in which the subject is imprisoned and forced to fulfill the terms of the agreement, "duress per minas," in which the subject is imprisoned and forced to fulfill the terms of the agreement, or "duress per minas, including threats of imprisonment or any other form of bodily harm or death." Only when the alleged victim was in imminent danger of being murdered by himself or another known individual may the defence of duress be invoked.

How Is Duress Different?

People believe duress and coercion to be synonyms, however, there is a fine line that separates the two philosophies –

- While duress is used to protect a person's life or the lives of his or her family or close relatives, coercion can be used against anybody.

¹¹ Industrial Relations Act 1971

- Duress poses an immediate threat to an individual, whereas compulsion does not pose an immediate threat.
- Under English law, unlawful imprisonment is not considered duress, however, the custody of commodities is considered a form of coercion.

Interpretations of duress by Courts

The Madras High Court in *Karuppayee Ammal v Karuppiyah Pillai*¹² said - "What the Indian law calls, coercion is called in English law 'duress or menace'. Duress is said to consist of actual or threatened violence or imprisonment of the contracting party or his wife, parent, or child, by the other party or by anyone in s.15 is much wider and includes the unlawful detention of property also. Further, coercion may be committed by any person, not necessarily a party, or his party, or his parent, wife, or child. It may be directed against any person, even immediate violence, and also unnerve a person of ordinary firmness of mind, these requests are not necessary for Indian law."

In *State Bank of Patiala v SK Sharma*¹³, it was held that "an order cannot be set aside altogether for any and every violation of a facet of natural justice, and the complaint must be examined on the touchstone of prejudice. It was further observed that all things taken together, whether or not the delinquent officer was afforded a fair hearing, is what has to be seen in cases involving objection to compliance of procedural provisions."

This poses the question, what is prejudice? Prejudice refers to the situation when one party is when a bias for one side of a cause for reasons other than a belief in its fairness exists. A famous example is that of *Chikkam Amairaju and Ors. v Chikkam Seshamma and Anr.* The defendants were Chikkam Ammiraju and five others, with the first defendant being the younger brother of the first plaintiff's spouse, Chikkam Seshamma. The first and second plaintiffs claimed that the property in the defendants' possession belonged to the first plaintiff's father, who is now deceased. The plaintiff's mother, the plaintiff's father's widow, had conveyed the property to the

¹² *Karuppayee Ammal v Karuppiyah Pillai* (1987) 1 MAD LJ 138

¹³ *State Bank of Patiala v SK Sharma* (1996) 3 SSC 364

defendants without reason. As a result, the plaintiff filed a motion to vacate the alienation and obtained a ruling that the alienation was not binding on the reversion. In addition, the spouse of the first plaintiff and the father of the second plaintiff was put under duress by his younger brother and father (the defendants). As a result, the first plaintiff's spouse threatened suicide if his wife and son did not complete a deed of release of property in favour of his brother. As a result of the first plaintiff's husband's threat, she was forced to transfer the aforementioned properties to her husband's brother via a deed. This transfer was then intended to be revoked by the plaintiffs.

Economic Duress

However, this does not mean that not every forceful act can be classified as coercion. This includes economic duress. When one party makes the other sign a contract on the condition that they comply with their demands, economic duress has taken place. It appears when the opposing party is coerced into accepting the new contract terms because there are no other workable options.

In other words, a party is under economic duress when it has no choice and is forced to accept the terms of the other party. If the affected party can demonstrate that it entered into a contract under duress, it can sue the other party in court. The meaning of "economic hardship" is rigorously applied by Indian courts in the context of Section 15. The notion of coercion was incapable of accepting this scenario of economic pressure in *Daichi Karkaria v ONGC*¹⁴ since there was no threat to withhold property or an infraction under IPC. Furthermore, economic stress cannot be accommodated under section 15 unless it corresponds with the danger of committing an infraction or the seizure of property, as was the case in *Universe Tankships of Monrovia v International Transport Workers Federation (The Universe Sentinel)*¹⁵. The notion of economic hardship, on the other hand, is forcibly enforced in section 15, which is too restrictive to encompass all circumstances of "economic duress." A party must establish numerous things

¹⁴ *Daichi Karkaria v ONGC* (1992) Bom 309

¹⁵ *Universe Tankships of Monrovia v International Transport Workers Federation* (1982) 2 All ER 67

to assert that it entered into a contract under economic duress. All of the following requirements must be met:

- A continuing contract must exist between the afflicted and defending parties.
- The opposing party has threatened to terminate the contract.
- The party accepted the revised contract conditions because it was under pressure and it had no other options.

Whenever consent is acquired as a result of illegally holding onto the property or the threat of doing so, it may be said to have been forced. It is not criminal to hold or threaten to hold any property when a mortgagee refuses to give up the equity of redemption absent special conditions, according to this Section. The release of a terminated agent was when he held accounts to guarantee his release. The payment paid by the father to prevent the property from being sold was deemed compelled when the government attached the property owned by both the son and his father to recover a fine owed by the son.

BURDEN OF PROOF

The onus of proving that no contracts would have been struck absent the threats does not lie with the wrongdoer. It is the burden of the party allegedly issuing the threats to establish that any purported threats or illegal coercion had no impact on the other party's acceptance of the contract. It's also critical to understand what the burden of proof entails. The term "burden of proof" often refers to the standard that a party presenting evidence in court must reach before that fact may be considered legally established. Different standards apply in various circumstances. For instance, in criminal proceedings, it is the responsibility of the prosecution to prove the defendant's guilt beyond a reasonable doubt. In other instances, the plaintiff just has to show that the disputed fact is more likely than not since they must prove their case by a preponderance of the evidence. The criteria of a preponderance of the evidence and beyond a reasonable doubt require various degrees of proof. When the party with the burden of proof convinces the fact-finder that there is a more than 50% chance that the claim is true, the preponderance of the evidence standard is satisfied.

DOES FORCE OF LAW AMOUNT TO COERCION?

According to this Section, the application of force of law does not constitute coercion, and the contract was willingly entered into. The Andhra Pradesh Sugar Act of 1961¹⁶ did not require the cane producers in the case of *Andhra Sugars v State of Andhra Pradesh*¹⁷ to pay the sales tax on the "sale" of sugar. This agreement was found to have not been the product of fraud, deceit, misrepresentation, coercion, or mistake. The contract was legitimate and not voidable by section 10.¹⁸

In *Vishnu Agencies v Commercial Tax Officer*¹⁹, the court found that cement provided by the West Bengal Cement Control Act's orders was a sale and that the fact that the contract lacked will or was established under duress had no bearing on its legal status as a contract. As long as there was some degree of mutual agreement, it was a contract. Under legislative restrictions on the supply of sugarcane, sugar mills are required to enter into an agreement with cane producers on a variety of terms and conditions, including the State Advised Price. Even though the sugar plant may not be happy with the pricing, s. 15 is not at all relevant. It is widely accepted that a transaction's essential elements are preserved even in forced sales.

According to the legislation, the state has the power to regulate sugarcane prices. These sales do not involve the coercive factor specified in section 15 at all. The consensual elements of the contract are not violated by the simple need that they are entered into in line with and subject to the limitations imposed by law. Even if there may be some duress, the agreement is nevertheless considered to have been voluntarily created in the eyes of the law.²⁰

It is sufficient that the victim's safety was a factor in his decision to enter into the contract; he does not need to show that he would not have done so without the threat, and the other party may show that the threat had no bearing on the victim. In *Barton v Armstrong*, A and B were at odds over L Ltd. A had repeatedly threatened B with murder if L Ltd did not agree to pay a

¹⁶ Andhra Pradesh Sugar Act 1961

¹⁷ *Andhra Sugars v State of Andhra Pradesh* (1969) AIR 599

¹⁸ Indian Contract Act 1872, s 10

¹⁹ *Vishnu Agencies v Commercial Tax Officer* (1978) AIR 449

²⁰ *Workmen of Appin Tea Estate v Industrial Tribunal & Ors* (1967) IILLJ 371 Gau

certain amount of money and buy his shares. The evidence showed that B was intimidated by the threats, but that he nonetheless decided to carry out a deed on behalf of L Ltd notwithstanding that. B requested a ruling that the deed was invalid since it was obtained under duress.

The Privy Council decided that a person must bear the danger that his threat would be magnified by unrelated events for which he is not responsible if he threatens another with unfavourable consequences and the other does not respond in a particular way. They also argued that even if A's threats weren't required, it wouldn't be fair to say that B's choice to sign the papers and suggest their execution was unaffected by A's threats. Instead, B's choice to sign the documents and propose their execution was influenced by threats and illegal coercion. The Privy Council ruled that the deeds in question were void as to the rights or duties of the parties because B was forced to sign them under duress.

DO ALL THREATS AMOUNT TO COERCION?

Not all threats are improper or prohibited. It is prohibited to threaten to commit a crime or tort. If the victim was impacted by the threatened action, the threat of breaching the contract may not be considered duress. Commercial pressure alone won't suffice. Although threatening to file a lawsuit cannot be viewed as coercion, it would be permissible to do so if the accusation was untrue and the threat was made for an inappropriate motive. Except when coupled with excessive demands, a threat to act on one's rights does not constitute coercion. In *CTN Cash & Carry Ltd v Gallaher Ltd*,²¹ it was noted that, while a threat to carry out a lawful act coupled with a demand for payment may constitute economic duress in some circumstances, extending such duress in a commercial context would have far-reaching implications and would introduce a significant and unwelcome element of uncertainty in the commercial bargaining process. This is because it would allow legitimately settled accounts to be reopened when part payment was made.

²¹ *CTN Cash & Carry Ltd v Gallaher Ltd* (1994) 4 All ER 714

ANALYSIS OF CASE LAWS

It is occasionally questioned if the Indian Contract Act of 1872's definition of compulsion or coercion, which is analogous to the Indian Criminal Justice System, which has not seen major revision since India's independence 72 years ago, needs to be updated. The IPC is only the main branch of the Indian Criminal Justice System; as a result, they are interchangeable. It would be unnecessary to innovate when it comes to amending Section 15 of the Indian Contract Act of 1872 since compulsion has the same meaning across all languages, the same effect, and the same pattern of settlement. This can be seen through the decades, especially in cases such as *Chikham Amiraju v Chikham Seshamma*²² In this case, a man threatened to commit suicide if his wife and child did not consent to the handover of certain assets to his brother. The wife and son then threatened to commit suicide to finish the deed. The court determined that the consent was given involuntarily, and hence the contract is voidable. The court also held that the threat of suicide falls under IPC and that doing any conduct prohibited by IPC amounts to coercion under Section 15 of the ICA, 1872. *Askari Bibi v Bibi Jai Kishori*²³ is another example where a minor had two properties mortgaged and borrowed money from a money lender. A contract with a minor, on the other hand, is voidable. The moneylender threatened the youngster with prosecution for misrepresenting his age unless he agreed to a compromise, to which the kid consented. Following that, the youngster refused to pay, claiming that the agreement was made under threat of criminal prosecution. The third and final example may be the case of *Ranganayakamma v Alwar Sett*, the widow couldn't take her husband's body home unless she approved of the adoption. The court ruled that she was forced to consent, not voluntarily. Coercion is defined as carrying out or threatening to carry out any unlawful act.

Coercion can also be detected using two conditions, which are given below:

- The aforementioned behaviour toward "any individual" is a fundamental necessity. There are no exceptions to the rule that anybody can be the target of coercion, regardless

²² *Amiraju v Chikham Seshamma* (1917) 41 Mad 33

²³ *Askari Bibi v Bibi Jai Kishori* (1912) 16 IC 344

of their standing, however it is important to consider whether the act was carried out against a party to an agreement or an unrelated third party.

- If the aforementioned act compels one person to enter into an agreement that he would not have done otherwise, then the second component is likewise accomplished. As a result of fulfilling these two components, the person commits coercion. As a result, the person who is coerced into entering into a contract must not be the victim.

CONCLUSION

In its 500-year existence, the idea of compulsion hasn't altered much; even while other countries deal with it differently, the end effect isn't different from what common law countries get. The most significant element that forces someone to agree with his will is coercion. The person using coercion to protect themselves has the burden of proof, which is also a valid strategy because any random person would rush into court and claim they were the victim of coercion. Coercion can only be associated with negative terms because it is merely a dissenting term.

Additionally, the repercussions are subjective in nature for the person who used coercion. If there is even the slightest chance of compulsion and the contract depends only on the person who was wronged, it is avoidable. The state has the complete ability to maintain order when compulsion is used, even if it means fairly forcing its citizens to do what is necessary to uphold important decorum. Moreover, it prevents private persons from committing a crime that might jeopardise the contract's legality.