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**ELEMENTS WHICH VITIATE THE CONCEPT OF FREE CONSENT:**  
**A CRITICAL ANALYSIS**- Akshita Jha<sup>1</sup>**ABSTRACT**

*Any act done without the application of any external illegal force is referred to as free consent. Further explaining we can say any act done without the use of any illegal force or where the parties voluntarily enter into the contract is referred to as free consent. But there are some elements like coercion, undue influence, mistake, and fraud which involve the usage of certain illegal methods, this involvement of illegal terms is the reason why these these terms are referred to as the factors which violate free consent. Further summarising it can be said due to these terms violating the basic concept of free consent they are referred to as the violating factors free concept. Through this research paper lets critically analyse as to how these factors can contribute to violation of the concept of free consent. Through this research paper we will also draw a comparative analysis between the past and current scenarios concerning these terms.*

**KEY WORDS:** Free consent, coercion, undue influence, mistake, fraud

**INTRODUCTION-**

Defined in section 13 of the Indian contract act<sup>2</sup> the term “consent” refers to the situation where two parties agree upon the same thing in same sense. Now for a contract to be valid we must ensure that it has to be given by free will of the parties, involving no external pressure or force. Section 10<sup>3</sup> of the Indian contract act states that all agreements are contracts if they are made by free consent of the parties. Section 14<sup>4</sup> of the Indian contract act states that when the consent is free from the interruptions of all the illegal elements like coercion, fraud, undue influence, mistake and misrepresentation. Example: A at a gun point, makes B agree to sell his

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<sup>2</sup> Indian Contract Act, 1872, Section 13

<sup>3</sup> Indian Contract Act, 1872, Section 10

<sup>4</sup> Indian Contract Act, 1872, Section 14

house to A for 40,000. Here B's consent has been obtained by coercion therefore this kind of consent can't be regarded as free consent. Now let's have a glance through these terms which are said to violate free consent. The first in this row is coercion, coercion refers to a situation where a person is forcefully compelled to enter into a contract, further elaborating coercion is

- committing any act forbidden by IPC.
- Threatening to commit any act forbidden by IPC.
- Threatening to commit unlawful detaining of property
- Threatening to file a suit
- Threatening to commit a succeed

The second element in this line is undue influence. Undue influence as defined in Section 16(I)<sup>5</sup> of the contract act describes a situation where one of the parties is in a position to dominate the other party

The third element violating free consent is fraud refers to a situation where one party is deceived by another party due to wilful misrepresentation of facts.

The fourth one is mistake. Whenever the formation of contract takes place through mistake they are considered to be formed without consent and are hereby declared void. Mistake can be further divided into mistake of law and mistake of facts. Mistake of facts can be acceptable at certain situations but mistake of law is clearly unacceptable. The last one is misrepresentation, defined in section 18<sup>6</sup> of the Indian contract misrepresentation refers to a situation where a representation is wrongly made either knowingly or unknowingly.

## RESEARCH OBJECTIVES

**The Main Objective of my research is to:**

- To understand what is consent
- To understand what is free consent
- To perform a careful study of all vitiating factors of free consent
- To perform a careful analysis of how these factors can be contributing factors to violating the concept of free consent

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<sup>5</sup> Indian Contract Act, 1872, Section 16

<sup>6</sup> ICA, 1872, Section 18

- To Perform a thorough analysis of the current scenario of the topic.

## RESEARCH QUESTIONS

- 1) What is consent?
- 2) What is free consent?
- 3) What are the terms which are known to be vitiating the concept of free consent?
- 4) What are the impacts of these vitiating elements on society?
- 5) What are the impacts of these elements in current scenario?

## RATIONALE OF STUDY

The main objective of me choosing this research paper is to firstly understand the concept of consent, then further trying to understand what is free consent and how is it important for a society as a whole. Then the third aim was to go through a in-depth analysis of the terms like fraud misrepresentation, undue influence and coercion and understand by what reasons these terms can be called a vitiating element to the concept of free consent. One of the most important motive to study the societal impacts of these vitiating elements, analysing the future impacts was also one of the reasons for opting for this research paper. Analyzing the cons of these terms on these practises on the young minds and further their contribution to the society in a negative manner was also one of the reasons for opting for this study.

## STATEMENT OF PROBLEM-

The main issue addressed in this research paper is how the simple looking terms like coercion undue influence misrepresentation fraud can contribute to be a violating factor to the concept of free consent..We can further examine how these factors just because of a presence of a illegal factor can be a violating factor towards the concept of free consent. The most important issue addressed in re- search paper is regarding the societal and future impacts of these terms. The most important issue addressed in this research paper is how the presence of these vitiating toxic elements in society can negatively impact the young minds of our society and they might grow up with u with such kind of negativity and toxicity—The term free consent refers to the situation where the person is obtained voluntarily without the application of any external illegal force. But in many instances this concept is violated and further speaking we can say violation of this concept by the use of certain terms like fraud

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misrepresentation coercion and undue influence can create disturbances in society as people will start protesting about their basic rights being violated. Now let's critically analyse how these terms are considered a bane for the society. First comes the coercion, if any person is forced to enter into a contract today due to any circumstances they may revolt or fight for justice in such a manner that might create nuisance or havoc in society. Next in the row is undue influence in such situations where the other person using his authority dominates the other, this will set a wrong example for our future generation as they will also inherit the same things which will further leave a negative impact on society. Thirdly let's talk about fraud, these days many kinds of frauds are taking place over the internet, as well as in personal, which further leads to lack of trust among consumers as once if they have been a victim of fraud they can never trust any company or any organisation with their business techniques, because trust broken is a very tough task to be restored. Now let's talk about mistake. Further elaborating we can say mistake is of two types mistake of law and mistake of fact. But in both these cases a small mistake can cost a lot to the aggrieved person as anyone who is already suffering plus becomes a victim of any kind of mistake faces a lot of mental trauma plus societal pressure adds to the sufferings of the victim as in both the cases (mistake of law and mistake of fact), the society also will leave no stone unturned to make the life of the victim no less than a hell. The last one in the row is misrepresentation, if any person or organisation or any website misrepresents itself to be someone else and commits something unjust or wrong, the next time even if they try to do something nice we will have trust issues and hence we won't be able to trust that person. Further elaborating we can say this can contribute to creating a gap due to differences between people. These days the concept of free consent has evolved largely as these days for any small thing the concept of democracy is involved and free consent is highlighted, as for any small contract also we need a free consent or else people may claim that their rights are violated.

## LITERATURE REVIEW

### ARTICLE-

**Why coercion is wrong and when it's wrong, by Benjamin Sachs<sup>7</sup>**

1) Basics of coercion

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<sup>7</sup> BENJAMIN SACHS., Why coercion is wrong and when it's wrong, available at <https://philpapers.org/rec/SACWCI>

- Arguments concerning Why coercion is wrong and when its wrong
- Harmful effects of wrongful coercion
- This article spoke about the basic meaning of coercion and how can it be harmful for a society

### 2) **Common mistakes in State contract law, By David capper**<sup>8</sup>

This article speaks about

- What is a mistake
- Analysis of different authors as to why a contract cold be rendered void due to a mistake
- Effects of mistake in law
- This article about basics of mistake and about authors arguments regarding mistake

### 3) **Misrepresentation of Randomised controlled trials in press release, By Amelie Yavchitz**<sup>9</sup>**This article talks about:**

- Situations where newspaper facts are distorted.
- Importance of a sorted newspaper facts
- Analyse whether newspaper findings are misinterpreted or not.

### 4) **Undue Influence: Vindicating relationships of influence,By Mindy Chen**<sup>10</sup>

This article speaks about:

- Basic meaning of undue influence
- Analysis of the situations where undue influence can harm relationships
- This article spoke about undue influence and basic situations whee undue influence can harm rela-tionships

### 5) **Accounting Fraud: a literature review, by Matteo merlo**<sup>11</sup>

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<sup>8</sup> David capper, common mistakes in contract law,available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1543639](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1543639)

<sup>9</sup> Amelie Yavchitz,Misrepresentation of Randomised controlled trials in press release, available at <https://journals.p-loos.org/plosmedicine/article?id=10.1371/journal.pmed.1001308>

<sup>10</sup> Mindy Chen,Vindicating relationships of influence, available at [https://www.researchgate.net/publication/259604382\\_Undue\\_Influence\\_Vindicating\\_Relationships\\_of\\_Influence](https://www.researchgate.net/publication/259604382_Undue_Influence_Vindicating_Relationships_of_Influence)

<sup>11</sup> Matteo Merlo,Accounting fraud: a literature review, available at [https://www.researchgate.net/publication/330697764\\_Accounting\\_fraud\\_A\\_literature\\_review](https://www.researchgate.net/publication/330697764_Accounting_fraud_A_literature_review)

This article speaks about

- Basic meaning of fraud
- Basic features of accounting fraud
- Steps to prevent fraud
- Importance of ethical education to prevent fraud

## **Judicial precedents in 18th and 19th Century-**

### **1. COERCION-**

#### **RANGAYANAKAMMA VS ALWAR SETTI, 1889**

Facts – A women was forced to adopt a child with the threat that her husband’s dead body won’t beremoved unless she adopts the boy.

Judgment- It was held that this contract is void as the consent was obtained through coercion<sup>12</sup>.

### **2. FRAUD**

#### **DERRY Vs PEEK ,1889**

Facts- Prospectus released by Defendants Company stated that company was permitted to use transpowered by steam, rather than horses

Judgement- The court held that the claims of shareholders will be rejected as the dishonesty of directors was not proved. <sup>13</sup>

### **3. MISTAKE-**

#### **TARSEM SINGH v . SUKHMINDER SINGH,1998**

Facts- Tarsem forgets to execute the deed due to which plaintiff sues him for specific performance.

Judgement- It was held that if both the parties are under a mistake of fact then the contract will bedeclared null and void <sup>14</sup>

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<sup>12</sup> Ranganayakamma vs alwar setti (1889) I.L.R 13.MAD 214

<sup>13</sup> Derry vs Peek(1889) UKHL 1

<sup>14</sup> Tarsem Singh vs Sukhminder Singh (1998 SC)

#### 4. MISREPRESENTATION

##### **BINDU SHARMA vs RAKESH SHARMA,1997**

Facts- Appeal was filed by a wife seeking annulment of her marriage

Judgement- In this case it was held that in matters of matrimony, qualification of a spouse is of immense importance and hiding the same would amount to misrepresentation.<sup>15</sup>

#### 5. UNDUE INFLUENCE-

##### **INDER SINGH vs DAYAL SINGH,1926**

Facts-Dayal singh contracted with Inder Singh for selling his land

Judgement- It was held that if one party taking the temporary or permanent advantage of another mental condition, they are said to be committing undue influence.<sup>16</sup>

### CRITICAL ANALYSIS OF JUDGEMENTS

In all of the above mentioned judgements we see that the victim either due to his physical incapability or due to his lower position had to suffer a lot. They were subjected to daily humiliation and torture just because they are ranked lower in society. This can have a negative impact on the future generations as seeing all these activities right from the childhood can have a very negative impact on their growing minds and they can intern create more ruckus in society's they will grow up with a negative and toxic mindset.

### JUDICIAL PRECEDENTS IN CURRENT SCENARIO

#### - **Ram Rattan vs Fateh Singh,2018**

Facts- This case was filed by the petitioners on the claim that the respondent is a poor lady and that her claims would not be considered valid.

Judgement- It was held that plaintiff would be eligible for compensation because the defendants took advantage of her poor state and conducted a fraud with her.

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<sup>15</sup> Bindu Sharma vs Rakesh Sharma Air 1997 All 429

<sup>16</sup> Dayal Singh vs Inder singh (1926) 28 BOMLR 1372

## CRITICAL ANALYSIS

The term free consent refers to the situation where the person is obtained voluntarily without the application of any illegal force. But in many instances this concept is violated and further speaking we can say violation of this concept by the use of certain terms like fraud misrepresentation coercion and undue influence can create disturbances in society as people will start protesting about their basic rights being violated. Now let's critically analyse how these terms are considered a bane for the society. First comes the coercion, if any person is forced to enter into a contract today due to any circumstances they may revolt or fight for justice in such a manner that might create nuisance or havoc in society. Next in the row is undue influence in such situations where the other person using his authority dominates the other, this will set a wrong example for our future generation as they will also inherit the same things which will further leave a negative impact on society. Thirdly let's talk about fraud, these days many kinds of frauds are taking place over the internet, as well as in personal, which further leads to lack of trust among consumers as once if they have been a victim of fraud they can never trust any company or any organisation with their business techniques, because trust broken is a very tough task to be restored. Now let's talk about mistake. Further elaborating we can say mistake is of two types mistake of law and mistake of fact. But in both these cases a small mistake can cost a lot to the aggrieved person as anyone who is already suffering plus becomes a victim of any kind of mistake faces a lot of mental trauma plus societal pressure adds to the sufferings of the victim as in both the cases (mistake of law and mistake of fact), the society also will leave no stone unturned to make the life of the victim no less than a hell. The last one in the row is misrepresentation, if any person or organisation or any website misrepresents itself to be someone else and commits something unjust or wrong, the next time even if they try to do something nice we will have trust issues and hence we won't be able to trust that person. Further elaborating we can say this can contribute to creating a gap due to differences between people. These days the concept of free consent has evolved largely as these days for any small things the concept of democracy is involved and free consent is highlighted, as for any small contract also we need a free consent or else people might revolt. Comparing these situations in present day we can say these days the people involved to keep a check on these measures are only misusing their powers, like these days when any victim goes to file an FIR, the police exploits them on the basis of rank and gender.

## SUGGESTIONS

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As a researcher I would like to suggest that as long as these vitiating elements exist in the society, there can never be scope of peace in society as these terms in some or the other way contribute to a a toxic atmosphere where the consent will not be voluntarily it will be violated by the presence of these factors. Further we can say if these terms continue to violate the concept of the free consent then a timewill come where the situation will be no less than that of Nazi Germany. Therefore stringent measures to keep a check that these violating factors don't harm the society at a large.

## CONCLUSION

To conclude and summarise the above mentioned points I would like to say that as long as these vitiating elements will continue to violate the concept of free consent piece can never be restored in society, and if these practises continue to exist in society the present young generation will also inherit this and further contribute to a negative manner in a society, so if we actually want peaceful and healthy environment we should at the earliest impose stringent measures so that these practises are checked and we can live in a peaceful and healthy surrounding.

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