

**UNDUE INFLUENCE IN CONTRACT LAW WITH RESPECT TO
CURRENT SCENARIO: A CRITICAL ANALYSIS**- Vedant Palan¹**ABSTRACT**

Contract law focuses on circumstances in which one party is vulnerable to another's advantage. Two groups of cases exist. In certain cases, the person who exploits the susceptible party does so by chance and didn't cause it. This is called "Pure Advantage Taking". In some circumstances, such as coercion and undue pressure, the exploiter is partly to blame. In other cases, such coercion and improper influence, the person who exploits a susceptible situation is partly to fault. This is known as taking "Active Advantage" of a situation. Contract law always takes a permissive stance, restricting the available remedies to avoidance and restitution, regardless of the circumstances. This Research Paper makes the case that the permissive approach is inappropriate, particularly in circumstances in which the vulnerability is created. It is taking the position that these are instances of cognitive trespass and that they should be treated as torts; as a result, punitive damages should be made available in these cases. The analysis departs from the common practice of viewing coercion and improper influence through the lenses of free will, impairment of bargaining power, or the integrity of the deal. Instead, it argues that illegitimate pressure on its own constitutes a harm that ought to be addressed regardless of the result of the contractual negotiation.

Keywords: - Pure advantage taking, coercion, under pressure, improper Influence, active advantage, cognitive trespass, punitive damages, free will.

INTRODUCTION

Modern liberal democracies put a high value on the freedom of each person.

What is Undue Influence?

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“A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will and uses that position to obtain an unfair advantage over the other”

If we analyze this definition, two essentials of undue influence become clear:

- i. The parties' relationship must be such that one can dominate the other's will, and
- ii. The dominating party must have utilized that position to gain an unfair advantage over the other.

The Indian Contract Act requires a judge to consider two factors:

- i. Can the promisee overpower the promisor?
- ii. Has the promisee utilized this position to cheat the donor?

In the beginning, it is essential for the links between the parties to be of such a nature that one party is in a position to subjugate the will of the other party. When a person in a dominant position employs inappropriate measures, such as force or inducement, to enhance his or her own goals or the interests of another person, this is an example of undue influence. This type of influence occurs when the actions of the person who is being influenced are not, in the strictest sense of the word, the free and choice acts that they themselves have chosen to carry out. Instead, the activities of the person who is being influenced are the result of being influenced in some other way. It is any effect on a person entering into an agreement that, having regard to the age, innocence, or mental or physical capacity of the party, and taking into account all of the facts of the case, appears to have been such as to inhibit a person's exercise of free and voluntary acts. In other words, it is any circumstance that prevents a person from acting freely and voluntarily. To put it another way, it refers to any influence or effect that stops a person from acting freely and voluntarily. If one party exercises such dominance over the mind and will of the other that the other's independence of decision is substantially undermined and hindered, and if it was due to the influence of such a person in dominant position that the victim entered into a contract, then the victim will be entitled to relief on the ground that the other party entered into the contract due to the influence of such a person in dominant position, then the victim will be entitled to relinquish their rights under the contract and the other party will be required

LITERATURE REVIEW

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ARTICLES: -

1) Undue Influence; Vindicating relationships of Influence, By Mindy Chen”

This article talks 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 where undue influence can harm relationships.

2) Will or No will? The effect of Fraud and Undue Influence on testamentary Instruments.

- The article talks about the Influence of Undue Influence and Fraud on testamentary Instruments
- It talks in detail about what undue Influence is and how it came into existence from the Roman Law- forcing a testator to make a will under threat
- It also mentions about cases of Undue Influence in England, which effect the execution of a will.
- It also talks briefly about how Undue Influence is different from Fraud.

3) Undue Influence and Coercion

- It talks about the scope of doctrine of undue influence and how frequently it has been misunderstood.
- It explains in debt about Mutual Finance Ltd vs John Wetton Sons Ltd, and points out that the right to avoid a contract is not at present time confined to cases of duress.
- It also in details briefs about Undue Influence is chancery courts might exist where a promise was extracted by threat.

4) The Limits of Undue Influence

- It talks about the doctrine of undue influence, and how it represents a wide thought on undue Influence and widely discusses the limitations of Undue Influence
- The Doctrine of undue influence appears merely as a categorial illustration of a more comprehensive equitable jurisdiction.

5) Undue Influence, Unconscionability and Good Faith

- This article talks about position of banks in contracts of guarantee, and how they hold an undue Influence over their client.

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- It also covers the topic of Manifest Disadvantage, which discusses about how manifest disadvantages cause problems.

6) Common Undue Influence Mistakes in Contract Law, By David Capper

- This article speaks about what is mistake and what is Undue Influence.
- Analysis of different authors as to why a contract could be rendered void due to undue Influence
- Effects of Undue Influence in law
- This article about basics of mistake as well as Undue Influence and about authors arguments, which are one of the most prominent issues.
- They do differentiate between Undue Influence, Coercion Mistake.

BOOKS

1) Pollock & Mulla- The Indian Contract Act (1872) -15th edition

- Pollock & Mulla's The Indian Contract Act, 1872 includes recent Supreme Court and High Court rulings. The Supreme Court has established key business concepts, especially in arbitration cases. This book contains supreme court case from common law countries, such as the UK, Australia, Canada, Singapore, and Malaysia, have also been addressed.

- The book defines undue Influence as- "Where a person who is in a position to dominate the will of another enters into a contract with him and the transaction appears on the face of it, or on the evidence, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in the position to dominate the will of the other".

- It talks about Undue Influence in depth and also mentions in depth about the Reports of Law Commissions etc.

- It also talks in depth about the Statutory Intervention in Unfair or Unconscionable transactions.

2) AVTAR SINGH'S- CONTRACT LAW AND SPECIFIC RELIEF

- This book talks about how undue influence and duress has become a technique of judicial intervention in unfair bargains.

- It explains in depth about Rescission and talks about the power to set aside contract induced by undue Influence.

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3) CHESHIRE, FIFOOT, AND FURMSTON'S LAW OF CONTRACT

- It combines a clear and authoritative account of the principles of the law of contract
- with thought-provoking analysis and insights
- It briefly talks about Contract law in general, a part of which also discusses about Undue Influence and Its unfair means of Bargain.

STATEMENT OF PROBLEM

The primary concern of this research study is how a seemingly simple term like undue influence can be a component that violates the principle of free consent. We can analyze further how the mere presence of an illegal factor can make these elements incompatible with the concept of free consent. The most essential problem addressed in the study article is the current situation and society and future consequences of this phrase. The most essential problem addressed in this research article is how the existence of these corrosive and toxic substances in society might have a negative effect on the minds of our young people. The word free consent refers to the circumstance in which a person's consent is obtained without the use of external illegal force, yet this idea is frequently broken. This research study includes of evidence demonstrating that excessive Influence is detrimental to society.

To elaborate, we might state that this can create to a chasm between people owing to their differences. Currently, the concept of free consent has evolved significantly, as for even the smallest things the concept of democracy is involved and free consent is emphasized. Likewise, for even the smallest contracts, we require free consent; otherwise, individuals may assert that their rights have been violated.

RATIONALE OF STUDY

The main objective of me choosing this research paper is to firstly understand the concept of Undue Influence, then further trying to understand what is Undue Influence and how is it impacts the society of today's times.

Then the third aim was to go through an in-depth analysis of the terms like Misrepresentation, undue influence and understand by what reasons these terms can be called a vitiating element to the concept of free consent.

One of the most important motives to study the societal impacts of Undue Influence and analyzing the future possibilities and difficulties which can arise.

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It is also one of the reasons for opting for this research paper the difference between ‘Pure Advantage Taking’ and ‘Active Advantage Taking in Contracts Law.’”

RESEARCH OBJECTIVES

- To analyze the the difference between ‘Pure Advantage Taking’ and ‘Active Advantage Taking in Contracts Law’
- To determine how Modern liberal democracies put a high value on the freedom of each person.
- To determine whether contracts made with pardanashin women are valid.
- To examine and Understand Power to Set Aside Contract Induced by Undue Influence.
- To perform a careful study of all vitiating factors of free Consent.
- To perform a thorough analysis of the current scenario of the topic.

RESEARCH QUESTIONS

- 1) Whether Undue Influence involves moral and mental pressure?
- 2) What is Undue advantage? And how is it different from Fraud and Coercion?
- 3) Impact of these kinds of deeds on the society?
- 4) What are the terms which are known to be vitiating the concept of Consent?
- 5) Impact of these in current times?

RESEARCH METHODOLOGY

The methodology that would be applied for carrying out this research is Doctrinal, Analytical and Comparative research. In this research the primary sources of data are the Constitution, Indian Contract Act, 1872, IT Act, Specific Relief Act, Evidence Act, Government Orders, Judicial Precedents, Report of various Committees. The secondary sources of data comprise of published books, journals, scholarly articles, news releases, print media, online journals, research reports and others were used.

UNDUE INFLUENCE: - DEFINATION AND MEANING

It's a contract that can be revoked by the party whose assent was obtained by undue influence, as specified in Section 16 of the Indian Contract Act of 1872, according to Section 19A. In 1872, this clause was inserted.

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Section 13 of the Indian Contract Act, 1872 defines Consent as:

“Two or more persons are said to consent when they agree upon the same thing in the same sense.”

Influence can be defined as the superiority one person has over another.

"Undue Influence" is the improper use of ascendancy for one's own or another's profit, so the influenced person's conduct is neither free or choice. Improper influence is when someone abuses their superior position over another. This power discrepancy may render the less powerful party's consent voidable, and because he can't exercise his free will, the contract is voidable at his option.

Section 16(1) of the Indian Contract Act, 1872

Undue Influence as defined under section 16(1) of the Indian Contract Act, 1872:

“A contract is said to be induced by ‘undue influence’ where the relations subsisting between the parties are such that one of the parties is in the position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.”

The principle of undue influence suggests it's unethical to take advantage of one's dominant position over another

Section 16 activates when one of the following occurs:

- 1) Contract parties have a relationship.
- 2)The first parties will trump the second.
- 3) In a fight of wills, the winner has an unfair advantage.

Presumption of Domination of Will

You now see that the only time improper influence can be considered to exist is when one party has the ability to dominate the will of the other. The question that must now be answered is When someone can conquer another's will.

Section 16(2) answers this question. It says a person can dominate another's will if either of the following conditions are met:

- He wields real or ostensibly legitimate authority over the other: Examples include relationships between a master and a servant, a father and a kid, and so on, fall into this category. officer of the income tax and person being assessed, employer and person being employed, officer of the law and person being accused, licensing authority, and licensee are all terms that are used here.
- He is in a fiduciary relation to the other person. This means that he has a relationship of trust with the other person built on the foundation of trust and confidence. The field of fiduciary responsibility

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is an extremely important one wide. It encompasses both the role of guardian and ward, as well as that of spiritual advisor(guru) and his followers, the physician and the patient, the attorney and the represented party, and the trustee as well as

the beneficiary, a woman, as well as her anonymous managing agent and landlord in addition to the tenants, guardians, and wards. You should take note of the fact that according to judicial decisions It has been decided that one cannot presumptively assume that there was improper influence between husband and wife, landlord and tenant, creditor and debtor all play roles in this relationship.

A person can subjugate the will of another individual over whom they have some level of authority by imposing their own will on them. As described in subsection 2, this kind of authority can be broken down into the following three categories:

- i. Someone in a position of apparent or actual authority
- ii. Someone in a position of trust and confidence
- iii. A person who is not mentally fit

- Real Or Apparent Authority :-

Real authority is when a principle gives an agent particular power to act on their behalf. This power could be generic or specific. This is also called authority. Employer-employee, officer-subordinate, police officer-suspect, etc. have authority. Apparent authority is when someone has no real authority but can act authoritatively. The person with power has real or seeming authority and can therefore dominate the other party's will. They may be able to unfairly profit from the weaker party's position.

- Fiduciary Authority Or Fiduciary Relationship :-

A fiduciary relationship may form when one person is trusted by another or when the other party naturally trusts the first. Variable fiduciary relationships.

Fiduciary partnerships require trust. This is how parents, attorneys, and doctors engage. "Teacher and pupil" or "brother and unmarried, uneducated sister" have a similar relationship. The bank and employee are close. To develop a fiduciary relationship, one side must rely on the other with complete trust and confidence, allowing the latter to dominate the former.

When two persons have a trusting relationship, one may force their will over the other. Fiduciary relationships raise the "presumption of undue influence."

The presumption rule presumes the defendant utilized his position to acquire an unfair advantage after it's proved he could dominate the plaintiff's will. Defendant must prove plaintiff's consent was voluntary.

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- Person Not Mentally Fit

Undue influence is possible when a person's mental capacity is diminished by age, illness, or mental or physical anguish. Unless the other party has unfairly benefited from a troubled mind, it is insufficient to prove improper influence. In *Hart v. O'Connor*, Jack O'Connor, 83 and suffering from dementia, sold his home to Hart. Joseph O'Connor, one of Jack's brothers, became the estate's trustee when Hart moved in and sought to dissolve the contract. Jack's mental capacity to contract was impaired by his insanity, allowing the other party to control him. Because of this, O'Connor was able to prove that Jack's mental competence was impaired during the trial.

If undue influence was used to form the contract, the party whose consent was influenced has the option of declaring the agreement null and void. Individuals who are unable to freely express their assent have the option to withdraw from the contract.

Section 16(3) of the Indian Contract Act, 1872

It States that:-

“Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall be upon the person in a position to dominate the will of the other. Nothing in the sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872).”

A person in a dominant position who forms a 'shock-the-conscience' arrangement to benefit himself must prove undue influence. This person must prove the deal was fair. This clause applies when someone can dominate another's will and the transaction is unconscionable. Absent these, there is no presumption of undue influence and the bar of proof remains the same; actual use of a dominant position is also required.

In *Poosathurai v. KannappaChettiar*, "the individual in a position to employ his dominating power must show affirmatively that no dominance was practiced to bring about the transaction".

EFFECT OF UNDUE INFLUENCE

Contracts that were entered into under duress can be declared null and void by the individual whose assent was coerced. When consent to an agreement is caused by undue influence, Section 19 A of the Act states that the agreement is voidable at the discretion of the person whose consent

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was so affected. There are a variety of ways in which a contract might be voided, including completely or if the party entitled to avoid has reaped any benefit from the agreement.

With the help of undue persuasion, a money-lender got an agriculturist to create a bond for Rs. 200 with an interest rate of 6 percent per month by handing over Rs. 100. The court has the option of voiding the bond and requiring B to pay back Rs. 100 with interest as deemed appropriate by the court.

BURDEN OF PROOF-

Section 16(3)-

On the grounds of undue influence, a party to a contract must prove that; -

- 1) The other party was in a position to exert control over him. Remember that the court will not conclude that one person was in a position to influence the other's will merely because of their closeness of relations; rather, the dominant position of the stronger party must be proved.
- 2) The other side, in fact, exploited his position of power to acquire an advantage. For the aggrieved party to win, they must show that the stronger party took advantage of their dominant position and influenced their decisions in order to gain an unfair advantage over them. Another way of saying this is that the person who feels wronged must show that the person who has more power has abused his position.

The burden of proof transfers from the less powerful party to the more powerful party, who must now prove that he did not exert any undue influence and that the other party's assent was obtained voluntarily.

Unconscionable Transactions

Under section 16 (3), "unconscionable transactions" is used. Contracts that are unfair to the other party are called "unconscionable" when they are signed by someone who has power over the other party. The deal is unconscionable if the stronger side profited disproportionately from the other's suffering.

When a deal is unconscionable, the more powerful party must show that they did not exert undue influence. A borrows excessively from B, the local moneylender, because A owes him money. B must show that the deal was not affected in an unethical manner.

It is possible to disprove the notion of undue influence by demonstrating that:-

- 1) the offended party was given full disclosure prior to signing the contract; and/or
- 2) the stronger party did not exert undue influence.
- 3) The cost was reasonable, before signing on the dotted line, the weaker party acquired competent independent advice.

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Contracts with Pardanashin Woman

A pardanashin woman doesn't interact with anyone outside her family. Law protects pardanashin women since they lack worldly understanding. Undue influence is suspected in a pardanashin contract. The other party must show no undue influence.

- 1)The other party must prove that I the contract terms were adequately communicated
- 2)she understood the implications
- 3)she had free independent advice
- 4)she willingly consented to the deal.

Only a lady who observes parda has this protection. Parda or solitude won't get her unique protection.

CASE LAW: -

In Ashok Kumar vs. Gaon Sabha , the court decided that the law protects a pardanashin woman not only because of pardah, but also because of how the life of a portion of people living in seclusion causes the infirmities from which a pardanashin woman suffers.

When it comes to contracts, a Pardanashin lady is particularly vulnerable because of her cognitive impairments and inability to fully comprehend the terms. Even though the contract is bad for her, she can be influenced into signing it if she feels she has to. Anyone can take advantage of her limitations to their own ends.

Legislators were aware of this problem and agreed that protecting pardanashin women was essential. With the help of Contract law, they managed this.

Undue influence (section 16), which states:

This clause protects the person in a dominant position who 1) A contract is induced by "under influence" when one party dominates the other's will and exploits that position to gain an unfair advantage over the other.

2) A person is in a position to control another person's will when he signs a contract with a person whose mental ability is temporarily or permanently diminished by age, disease, mental or bodily distress.

- When he has real or seeming control over another or is their fiduciary.
- When he enters into a contract with a person whose mental capacity is temporarily or permanently impaired as a result of age, disease, mental or bodily anguish

Pardanashin women must meet the following criteria:

- She is illiterate

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- She is uneducated because she never set foot outside of the realm of the pardanashins.

Position of dominance necessary for presumption to arise or not- where there is no domination of will
One of the parties participating in this presumption must be in a position of strength or power that allows them to exert control over the other. The fact that an agreement is immoral does not imply that one party exerted undue influence over the other when both parties are on equal footing. Because the deal is challenging, this doesn't mean that relief should be denied. This does not mean an agreement is always unethical, even if it works against one party's interests in a given situation. Bankers are more likely to give a loan to someone who goes to them at a time when the money market is crowded. Unless the borrower agrees to pay an exceptionally high interest rate, the bank will not grant the loan. These are the terms under which A is willing to accept the loan. In the normal order of things, this transaction was not the product of any improper influence.

Power To Set Aside Contract Induced By Undue Influence

Section 19-A was inserted to the statute in 1899 as a result of a legislative revision. When assent to an agreement is obtained through undue influence, the agreement is a contract that can be terminated by the party who provided it. The amendment included this section. Even if the party that was entitled to avoid the agreement has obtained some benefit from it, the court may find that it is equitable and appropriate to nullify all or part of the agreement if that party has gained any benefit from it.

An example of how this subsection might be applied can be found here: Lender A uses unlawful influence to get agricultural businessman B to sign a bond for Rs 200, with interest compounded at a monthly rate of 6%. It's possible that the court would decide not to honour the bond and instead compel B to pay back Rs 100 plus interest at a rate it considers reasonable.

In the case of *Mannu Singh v. UmadatPande* an Indian spiritual teacher convinced one of his disciples to accept a gift of property from him by promising that he would be rewarded for his kindness in the afterlife. No free consent during its development meant that it was ruled invalid by a court.

CASE LAWS

- 1) Subhas Chandra Das Mushib Vs. Ganga Prosad Das Mushib and Ors:-

Facts:- Plaintiff alleged that he persuaded his father's will to leave the whole assets to his nephew. According to the deed, the donor and the defendant gifted the property out of love. When a claim arose

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on independent settlement deeds issued on the transferred property (before to the demise of the plaintiff's father, i.e., the donor), the donor declared explicitly that "he no longer has any interest in the property." Because the donor and defendant were grandfather and grandson, the High Court suspected improper influence.

Judgement:- According to the Indian Contract Act, undue influence is possible if one party has the power to influence the other. However, the existence of a relationship like this alone is insufficient to establish undue influence; proof that the defendant took use of the relationship to benefit the plaintiff must be provided.

Real or seeming authority" is defined in section 16(2)(a) as "relationships of the parties such that one naturally relied on the other for counsel and the latter was able to dominate the first's will in delivering it." When a gift is provided to a son, grandchild, or son-in-law during the donor's illness or old age, the Court notes that it does not show undue influence. When a lawyer represents a client, a spiritual counsellor represents a disciple, a doctor represents his or her patient, and a parent represents their kid, this assumption is made.

This reveals that the donor agreed to the transfer of property to the defendant by saying, "I no longer have any interest in the property.". Donor participation in property management does not imply any undue sway.

2) Mohanlal Jagannath v. Kashiram Gokul

Facts: - The defendant was given half of Panchas's inherited property so that his uncle could pay his debt. In exchange for his uncle's release from a non-compoundable criminal charge, the defendant agreed to this prize; nevertheless, the award made no mention of this. After his uncle's death, the plaintiff claimed ownership of the contested properties, despite the defendant's objections on the grounds of undue influence.

Judgement:- For a non-compoundable and serious offence filed by his uncle, the Defendant wanted to be spared, and his uncles agreed to do so in exchange for their promise that they would take care of his share of the debt owed by him under a preliminary decree for foreclosure if he transferred his share to them. As a result, his signatures on the award were tainted by undue influence in violation of Section 16 because of the fear of his criminal conviction. Unbelievably, his accusers, two uncles, took advantage of their power to extort a lenient plea bargain from the prisoner.

3) Lingo Bhimrao Naik v. Dattatrya Shripad Jamadagni

Facts :-Adoptive mother-in-law allegedly exerted undue influence on the plaintiff's signature on her daughters' non-watan gift deeds. While defendant and plaintiff's natural father had previously agreed to

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ratify such deeds, when plaintiff came of age he was compelled by defendant to ratify the gifts without consulting his natural father, who threatened him with: first, marriage will not be performed, second, his education will be stopped, and third, plaintiff's adoption will be cancelled. Elders and family members urged him to carry out the crimes or face a fate worse than death.

Judgement:- The plaintiff depended on his adoptive mother for support and education, so she could control his will. Plaintiff wouldn't have completed the gift deed without defendant's threatening attitude, pressure, and admonitions. Plaintiff didn't know his legal rights and wasn't allowed to consult his natural father; he didn't act with an open mind and the knowledge that invalid gift deeds could only be recognised by his signature. It's a Voidable deed.

4) Lloyd's Bank v. Bundy

Summary: - A grandfather insured his son's debts. Bundy's house was mortgaged for the guarantee. The bank's assistant manager assured the son's father they'd back his company provided he doubled the guarantee and price. The assistant manager liked that the father trusted him for transaction guidance. Promise and charge were void. Lord Denning trusted the bank and dad. The bank realised the father needed transaction advice. Father's bank The father's decision was affected. Bank shattered faith. The father damaged the house. Bank and father had a conflict of interest, but bank didn't realise it or recommend independent guidance. If the father had gone to a lawyer or businessman, they would have advised him not to sell his only asset because his son's firm was at jeopardy. Sir Eric Sachs explained that a bank's duty when it receives a consumer guarantee. It takes a "meticulous investigation" of the facts to decide if a bank has this duty. It broke for a reason.

5) Smt. Pranati Ghosh & Ors vs Sri Anil Kumar Ghosh

Facts: -In brief, on October 14, 1997, testator Bibhuti Bhushan Ghosh wrote and signed his final will and testament. This date also serves as the official Will registration date. Anil Ghosh, the testator's younger son, was named executor of the will. January 31st, 1998 was the day of Bibhuti's passing. An application for probate of Bibhuti's last will and testament was submitted, in which the executor asserted that Bibhuti was competent to execute the document, that he was of sound mind and body at the time of its execution, and that there were witnesses present who saw the testator sign the document. However, Pranati Ghosh and others, including Ashima Ghosh, one of Bibhuti's daughters and an attesting witness, claimed that the Will was executed by someone other than Bibhuti and that the signature in the alleged Will was not that of the late Bibhuti Bhushan, who was not present during the execution and registration and was accused of impersonation and forgery.

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Observations: - Anil Kumar Ghosh filed the testator's original death certificate issued by the Howrah Municipal Corporation. He testified as PW1 that the testator was mentally and physically fit to understand worldly affairs and execute the Will, that he was present when it was prepared by Rabindra Nath Ghosh per the testator's instructions, typed by Nityananda Guha, and executed in the presence of Kanailal Ghosh and Ashima Ghosh, who also signed. He further said it was registered with the Calcutta Additional Registrar of Assurance. Kanailal filed an affidavit-in-chief indicating he was present at the execution of the Will on October 24, 1997 and saw the testator, witnesses, lawyers, and others sign the Will. Bibhuti was fit and aware when he signed the Will in Kanailal's presence. Respondent's uncle is Kanailal. Rabindra was the respondent's cousin and, according to him, a Will witness. Rabindra nath Ghosh wrote the Will. Advocate Kanailal died during the proceeding, before cross-examination, without being cross-examined. Rabindra died 1-13-2003. Ashima was called as PW2 to prove her Will signing. PW2 Ashima Ghosh admitted signing the Will. On cross-examination, she said her brother forced her sign a blank page for no reason. She said the document wasn't explained to her either. This shows she signed a paper. Reading and studying a document only becomes necessary if it's not blank. She signed the Will. Ashima's inconsistent testimony after filing a written objection to the grant of probate strengthens the respondents' case. The Will was registered in Calcutta. The original registered Will shows compliance with the Registration Act. The trial judge also found that the Will was properly executed and registered based on the documentary and oral evidence.

Judgement:- Given the applicability of the concept outlined in this Section, as well as taking into account all of the facts and circumstances of the current case at hand, the Will should be considered to be genuine, as well as properly executed and registered by the testator. If there are other circumstances that also establish an inference, the exclusion of contested siblings will not create suspicion on its own unless it is accompanied by those other circumstances.

Due to the specifics of this instance, including the facts and the circumstances, the appeal has been rejected.

6) Bill Schrader v Nick Schrader (Schrader v Schrader)

Summary: - In the matter of Schrader v. Schrader, which involved a Will dispute regarding the inheritance of Jessica Schrader, who had passed away in January 2008 at the age of 98, the High Court has handed down their decision. In April 2006, Jessica drafted a Will, in which she gave her home to her son Nick, in addition to making a few token bequests to her grandkids and other loved ones. Nick and her other son, Bill, were each left an equal share of the remaining assets in their mother's estate. In her will, which she had drawn up in 1990, she had stipulated that Nick and Bill would share equally in the

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inheritance of the house and the rest of the estate. As a result, Nick received the entire house in the Will that was drawn up in 2006, rather than just half of it.

Bill began a protracted court struggle when he attempted to contest his mother's will on the grounds that she either did not have the necessary mental capacity to form it or was unfairly influenced by Nick in the process of creating it. Either way, Bill believed that his mother's Will was invalid.

In rendering his decision, the judge came to the conclusion that the will was reasonable, that there was insufficient evidence to show that Jessica did not have the mental capacity to make the will, and that she had knowledge of and approval of the contents of her Will. He also found that there was insufficient evidence to show that Jessica did not have mental capacity to make the will. However, the judge agreed with the argument that Jessica had been unduly influenced by Nick into changing her Will. The judge took into consideration Jessica's vulnerability, her dependence on Nick, the hiring of a will-writer at Nick's behest and with no prior contact with the family, as well as Nick's character and history of violent behavior. The judge found that Jessica had been unduly influenced by Nick into changing her Will.

As a result of this finding, the Will from 2006 was deemed to be invalid, and the Estate of Jessica is now distributed in accordance with the terms of the Will from 1990.

7) Malousek v. Meyer

Summary: - Molly and Greg moved in together in 2009 and started living together. In 2015, Molly received the news that she had cancer and immediately began treatment. By 2017, her health had significantly declined from the previous year. Midway through October of 2017, Molly and Greg tied the knot, changed the beneficiary designations on Molly's bank accounts to be in Greg's favour, changed the beneficiary designations on their life insurance policies to be in Greg's favour, and executed a quitclaim deed in order for Greg to inherit Molly's home in the event that she passes away. In addition, Molly gave Greg's son Mark the authority to act on her behalf by executing a power of attorney.

Molly had passed away by the 23rd of October. Her adult children, A.J. and Courtney, have initiated a legal proceeding to obtain a declaratory judgement in an effort to have all of the changes in property interest revoked and the marriage declared null and void. Their line of thinking was that Molly lacked the mental capacity to make these choices, that she had previously stated that she did not want to be married and that she did not want Greg or Mark to benefit from her estate, and that as a result, she had been the victim of undue influence. A.J. and Courtney won their case in front of the district court, which resulted in the court stating that the marriage was null and void and ordering that the property be transferred to Molly's estate. Greg and Mark submitted an appeal.

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CRITICAL ANALYSIS

The term "undue influence" is one that is frequently used in the context of estate litigation. It is the charge that one party took advantage of another party's vulnerability in order to defraud or steal from them.

In litigation involving undue influence, the terms of the individual's Will or other estate plans may be called into question. It makes the accusation that one party influenced the decedent to leave assets to them rather than distributing them equally among the natural heirs, who would have been members of the family and loved ones.

It is possible that accusations of undue influence are justified, that they are completely untrue, or that they are the result of resentment or misunderstanding. During the proceedings in the probate court, these charges are brought up. The person who contests the will has the responsibility of providing evidence to show that the terms of the will could not have been the wishes of the deceased person.

It is possible for there to be undue influence when:

- There does not appear to be a rational basis for excluding the immediate family members from the will. The accused was the person upon whom the decedent relied heavily, because of their illness or lack of capacity, the deceased person was open to being manipulated.
- In order to benefit themselves, the influencer either changed the Will themselves or persuaded the deceased person to make the change.
- When one prospective heir badmouths other prospective heirs in order to benefit themselves, this is an example of undue influence, which goes beyond meddling. Even though they are annoying, such actions are considered to be nothing more than opinions.
- The person making the will must be incapable of making reasonable judgments in order for there to be undue influence, and the influencer must take advantage of this weakness.
- The individual who is accused of exerting improper influence does not necessarily have to be "a bad person." When the person who wrote the will falls ill or develops mental impairments, the person who makes medical decisions for them may be a relative.

This person may believe that they have the right to exert influence over the person who made the will in order to get the will changed so that it benefits them. When a caregiver suggests using a different lawyer to make changes to the will, this should serve as a warning sign.

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The charge of undue influence is not one that is simple to prove. In most cases, it can only be demonstrated through circumstantial evidence. It is frequently the case that this is not the case. Wills are frequently updated by people who are getting close to their end of life.

When a change of this nature occurs, it is a good idea to inform family members at the time it occurs so that they are not taken aback by the news in the future. Keeping the change, a secret can have unintended consequences for the caregiver who will benefit from it.

Last but not least, it's possible that the intruder or Will-maker changes more than just the Will. Bank accounts, brokerage accounts, life insurance beneficiaries, Individual retirement account (IRA) beneficiary designations, and other designations can be changed to joint names or Payable on death (POD) money.

SUGGESTIONS:

In today's time, undue Influence can be avoided to a greater extend in Many ways: -

1. Establish competency: - Undue influence claims are sometimes paired with testamentary capacity concerns. Proving you were "of sound mind and body" when you signed your will will help fight undue influence claims. Create your estate plan while you're well. Get a mental competency exam before signing your will and any estate documents.
2. Talk to your family: - Give family members smaller shares or large sums to nonfamily members if you plan to disinherit them. Immediately express your decision to your family. If not, explain why in your will or a separate letter. If your family understands your plan, they're less inclined to oppose it. Consider inserting a no-contest language, which states that a beneficiary who successfully contests your will or trust will receive nothing. Leave something for those who will question your plan; otherwise, they have nothing to lose.
3. No guarantees: - If you leave family members less than they expect, they may fight your will.
4. Avoid the appearance of undue influence:-If you reward someone who can persuade you, avoid looking influenced. Consider leaving a large sum to your primary caregiver, a close friend. Prepare your will alone, without family or other beneficiary intervention, to avoid problems. When meeting with your attorney, don't bring beneficiaries. Nor should they sign your will or act as witnesses.

These are some of the steps one should keep in mind when drafting his Will, as all these points play a very major role in today's era.

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CONCLUSION

Thus, Undue Influence can be interpreted as a type of constructive fraud. When one person uses his dominant position to dominate the will of another contracting party in order to obtain an unfair advantage over another, that person falls under the purview of the legal concept of undue influence. This is because using one's dominant position to dominate the will of another contracting party in order to obtain an unfair advantage over another. If the agreement was the consequence of undue persuasion, the party to the contract whose free consent was not gained has the option of declaring the deal null and void and getting their money back. It is the responsibility of the party that occupies the more powerful position in the contract to provide evidence that he did not take advantage of his position in any way to exert undue influence over the business dealings. One can tell the difference between undue influence and other forms of influence based on the fact that, in the instance of undue influence, one person takes unfair advantage of another person.

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