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# Free Consent in Indian Contract Law: Balancing Autonomy and Protection

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## ABSTRACT

*The doctrine of free consent is fundamental to the validity of contracts under Indian law. Enshrined in Sections 13 to 22 of the Indian Contract Act, 1872, it ensures that agreements are entered into voluntarily, without coercion, undue influence, fraud, misrepresentation, or mistake. This paper delves into the legal framework governing free consent, analyzing statutory provisions, landmark judgments, and contemporary challenges, especially in the digital era. By examining the balance between individual autonomy and legal protection, the paper highlights the evolving nature of consent in contractual relationships and the necessity for legal adaptations to address modern complexities.*

## KEYWORDS

*Free Consent, Indian Contract Act, Contract Law,  
Autonomy, Legal Protection*

## 1. INTRODUCTION

Consent is the cornerstone of contractual obligations. The binding force of a contract arises not merely from the presence of offer and acceptance but from a genuine and uninfluenced meeting of minds. In India, the Indian Contract Act, 1872, enshrines the principle of "free consent" in Section 14, which enumerates various factors that can vitiate consent. As societies evolve and commerce shifts towards digital platforms, traditional ideas surrounding consent are being challenged.

While the legal framework has largely remained rooted in 19th-century principles, the judiciary has proactively expanded

interpretations to safeguard parties, especially the economically and educationally vulnerable. This paper investigates the interplay between autonomy and protection, assessing how the law can better respond to challenges presented by modern contracting environments.

Consent is the foundation of contractual obligations, serving as the lynchpin that transforms an agreement from a mere exchange of promises into a binding legal relationship. In India, the Indian Contract Act, 1872, codifies this principle, with Section 13 defining consent as a meeting of minds-*consensus ad idem*-where parties agree upon the same thing in the same sense<sup>23</sup>. However, it is Section 14 that elevates this concept by insisting that consent must be "free," untainted by coercion, undue influence, fraud, misrepresentation, or mistake<sup>123</sup>. The law recognizes that only when parties voluntarily and knowingly agree can a contract be considered valid and enforceable.

### ***The Legal Framework: Free Consent Under the Indian Contract Act***

Section 14 of the Indian Contract Act, 1872, explicitly enumerates the factors that can vitiate consent:

- **Coercion:** Forcing a party to enter into a contract through threats or physical force renders the consent involuntary and the contract voidable at the aggrieved party's option<sup>23</sup>.
- **Undue Influence:** Where a relationship allows one party to dominate the will of another-such as between employer and employee, guardian and ward, or doctor and patient-the law presumes the possibility of undue influence. The burden then shifts to the dominant party to prove the absence of such influence<sup>4</sup>.
- **Fraud and Misrepresentation:** Any deceit or false statement knowingly made to induce another into a contract undermines the authenticity of consent. The misled party is entitled to rescind the contract and seek damages<sup>23</sup>.
- **Mistake:** If consent is given under a fundamental misunderstanding, the contract may be rendered void or voidable, depending on the nature of the mistake<sup>23</sup>.

These safeguards are not merely procedural; they are designed to uphold fairness and equity, particularly for those who may be economically or educationally disadvantaged.

### ***Evolving Notions of Consent in the Digital Age***

As commerce increasingly migrates to digital platforms, traditional notions of consent face unprecedented challenges. E-contracts and digital agreements often lack the personal interaction that facilitates a genuine meeting of minds. Issues such as misrepresentation, the inability to verify the competence of parties, and the prevalence of standard-form contracts (where terms are rarely negotiated) complicate the determination of free consent<sup>5</sup>.

Moreover, the advent of smart contracts and artificial intelligence (AI) introduces new complexities. Smart contracts, which are self-executing digital agreements, automate performance but may obscure the nuances of negotiation and understanding. AI-driven processes can further distance parties from the substance of their agreements, raising questions about transparency, accountability, and the very existence of informed consent<sup>6</sup>.

### ***Judicial Response and the Balance Between Autonomy and Protection***

Indian courts have proactively interpreted the provisions of the Contract Act to protect vulnerable parties. In cases involving undue influence, for example, the judiciary has placed the burden on the dominant party to prove that consent was genuinely free<sup>4</sup>. This approach reflects a recognition that autonomy must be balanced with protection, especially in situations where disparities in power, knowledge, or resources exist.

The judiciary's evolving stance is evident in its willingness to scrutinize not just the form but the substance of consent, ensuring that contracts are not instruments of exploitation. This is particularly relevant as digital transactions become more prevalent, and the risk of abuse through opaque or one-sided terms increases.

### ***The Way Forward***

To address the challenges posed by modern contracting environments, the law must continue to evolve. This may involve:

- **Updating statutory definitions and frameworks** to account for digital realities and the use of AI in contract formation and execution.
- **Strengthening consumer protection** in e-contracts, particularly regarding standard-form agreements and the disclosure of material terms.

- **Promoting digital literacy and access to legal remedies** for those who may be disadvantaged in online transactions.

Ultimately, the interplay between autonomy and protection remains central to contract law. As technology reshapes the landscape, the legal framework must adapt to ensure that the principle of free consent retains its relevance and efficacy in safeguarding the interests of all contracting parties.

## **2. LEGAL FRAMEWORK OF FREE CONSENT**

### **2.1 Definition of Consent and Free Consent**

**Section 13** of the Indian Contract Act defines consent as when two or more persons agree upon the same thing in the same sense—a principle known as *consensus ad idem*.

**Section 14** further clarifies that consent is free when it is not caused by:

- Coercion (Section 15),
- Undue Influence (Section 16),
- Fraud (Section 17),
- Misrepresentation (Section 18),
- Mistake (Sections 20–22).

If consent is affected by any of the above, the contract is either void or voidable depending on the nature and impact of the defect.

### **2.2 Importance of Free Consent**

Free consent ensures that parties enter into agreements voluntarily and with full understanding of the terms. It protects individuals from being bound by obligations they did not willingly assume and maintains the integrity of contractual relationships.

## **3. COERCION**

### **3.1 Definition and Legal Provision**

Section 15 of the Indian Contract Act defines coercion as committing or threatening to commit any act forbidden by the Indian Penal Code (IPC), or the unlawful detaining or threatening to detain property, with the intention of causing any person to enter into an agreement.

### **3.2 Essential Elements of Coercion**

- **Act Forbidden by IPC:** The act must be prohibited under the IPC.
- **Threat to Commit Such Act:** Even a threat suffices.
- **Unlawful Detention of Property:** Holding property unlawfully to compel agreement.
- **Intention to Cause Agreement:** The act or threat must be intended to induce agreement.

### 3.3 Judicial Interpretation

In *Chikham Ammiraju v. Chikham Seshamma*<sup>1</sup>, the Madras High Court held that a threat to commit suicide amounts to coercion under Section 15, even though suicide is not punishable under the IPC. The court reasoned that the act is forbidden by law, thereby constituting coercion.

Similarly, in *Ranganayakamma v. Alwar Setti*<sup>2</sup>, a widow was forced to adopt a boy immediately after her husband's funeral. The court held the adoption deed voidable due to coercion, as the consent was not free.

### 3.4 Legal Consequences

Contracts entered under coercion are voidable at the option of the coerced party. The aggrieved party can choose to enforce or rescind the contract.

## 4. UNDUE INFLUENCE

### 4.1 Definition and Legal Provision

**Section 16** addresses situations where one party is in a position to dominate the will of another and uses that position to gain an unfair advantage.

### 4.2 Essential Elements of Undue Influence

- **Dominant Position:** One party must be in a position to dominate the will of the other.
- **Use of Position:** The dominant party uses this position to obtain an unfair advantage.

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<sup>1</sup> (1917) ILR 41 Mad 33.

<sup>2</sup> (1889) ILR 13 Mad 214.

- **Unfair Advantage:** The resulting contract benefits the dominant party unfairly.

#### **4.3 Presumptions of Undue Influence**

The law presumes undue influence in certain relationships, including:

- Parent and child,
- Guardian and ward,
- Religious advisor and disciple,
- Doctor and patient.

#### **4.4 Judicial Interpretation**

In *Raghunath Prasad v. Sarju Prasad*<sup>3</sup>, the court struck down a gift deed made under the spiritual influence of a religious advisor, highlighting the misuse of trust.

In *Mannu Singh v. Umadiat Pande*<sup>4</sup>, the agreement was voided when a spiritual leader manipulated a devotee to donate his entire property.

In *Subhash Chandra v. Ganga Prasad*<sup>5</sup>, the Supreme Court emphasized that the relationship and the nature of the transaction determine whether undue influence was exerted.

#### **4.5 Legal Consequences**

Contracts formed under undue influence are voidable at the option of the influenced party. The burden of proof lies on the dominant party to show that there was no undue influence involved.

### **5. FRAUD**

#### **5.1 Definition and Legal Provision**

**Section 17** defines fraud as acts committed by a party to a contract with intent to deceive another party or to induce them to enter into the contract.

#### **5.2 Acts Constituting Fraud**

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<sup>3</sup> AIR 1924 PC 60.

<sup>4</sup> (1890) ILR 12 All 523.

<sup>5</sup> AIR 1967 SC 878.

- Suggesting a fact that is not true, knowing it to be false.
- Active concealment of a fact by someone with knowledge or belief of the fact.
- Making a promise without any intention of performing it.
- Any other act fitted to deceive.
- Any such act or omission as the law specifically declares to be fraudulent.

### **5.3 Judicial Interpretation**

In *Derry v. Peek*<sup>6</sup>, the House of Lords held that a false statement made knowingly or without belief in its truth constitutes fraud.

In *Mithoolal Nayak v. LIC*<sup>7</sup>, the Supreme Court held that concealing a material fact in an insurance application constitutes fraud, even if the applicant did not intend harm.

### **5.4 Legal Consequences**

A contract induced by fraud is voidable at the option of the deceived party. The aggrieved party can rescind the contract and claim damages.

## **6. MISREPRESENTATION**

### **6.1 Definition and Legal Provision**

**Section 18** defines misrepresentation as:

- The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true.
- Any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him, by misleading another to his prejudice.
- Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

### **6.2 Judicial Interpretation**

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<sup>6</sup> (1889) 14 App Cas 337.

<sup>7</sup> AIR 1962 SC 814.

In *Shringar Cinema Ltd. v. Commissioner of Income Tax*<sup>8</sup>, an innocent misrepresentation was held not to constitute fraud but gave grounds to rescind the contract.

In *Satyabrata Ghose v. Mugneeram Bangur & Co.*<sup>9</sup>, the Supreme Court held that both innocent and fraudulent misrepresentation can render a contract voidable if they result in the absence of free consent.

### **6.3 Legal Consequences**

Contracts induced by misrepresentation are voidable at the option of the misled party. However, if the misled party had the means of discovering the truth with ordinary diligence, the contract is not voidable.

## **7. MISTAKE**

### **7.1 Definition and Legal Provisions**

Mistakes in contract law are classified into:

- **Bilateral mistake (Section 20)** – when both parties are mistaken about a fact essential to the contract. The contract is void.
- **Unilateral mistake (Section 22)** – the contract is generally not void unless the other party is aware of the mistake and exploits it.

### **7.2 Judicial Interpretation**

In *Bell v. Lever Brothers*<sup>10</sup>, the court held that for a mistake to void a contract, it must go to the root of the agreement.

In *Tarsem Singh v. Sukhminder Singh*<sup>11</sup>, the sale of land was in question, where the seller intended to sell his land in terms of Kanals, whereas the buyer intended to purchase the same in terms of Bighas. The court held that the facts were not clear to both parties, and it falls under the mistake of the parties.

### **7.3 Legal Consequences**

- **Bilateral Mistake:** The contract is void.

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<sup>8</sup> AIR 1961 SC 1093.

<sup>9</sup> AIR 1954 SC 44.

<sup>10</sup> [1932] AC 161.

<sup>11</sup> AIR 1998 SC 1400.

- **Unilateral Mistake:** The contract is valid unless the mistake is known to the other party and exploited.

## 8. FREE CONSENT IN THE DIGITAL AGE

### 8.1 *Emergence of E-Contracts and Digital Consent*

With the rapid advancement of technology, the nature of contracts has significantly evolved. Electronic contracts (e-contracts), formed through online platforms and digital communication, have introduced new dimensions to the concept of free consent. The Information Technology Act, 2000, recognizes the validity of electronic records and digital signatures, aligning traditional contract principles with the digital world.

However, the mode of communication and the lack of physical presence bring challenges in ensuring that consent is genuinely free and informed.

### 8.2 *Challenges to Free Consent in Digital Contracts*

- **Clickwrap and Browsewrap Agreements:** Often, users agree to lengthy terms by clicking "I Agree" without reading or fully understanding the terms. This raises questions on whether consent is truly free and informed.
- **Automated Contracts and Bots:** Consent obtained through automated responses may lack genuine human intent.
- **Data Privacy and Consent:** Users' consent to data collection or usage in digital services often lacks transparency, raising concerns about informed consent.
- **Manipulative Interfaces (Dark Patterns):** Digital platforms sometimes employ design techniques to nudge users towards consent, which may amount to undue influence or misrepresentation.

### 8.3 *Judicial Response and Legal Safeguards*

Courts in India have started acknowledging these challenges. For example, in *Justice K.S. Puttaswamy (Retd.) v. Union of India*<sup>12</sup>, the Supreme Court recognized privacy as a fundamental right, which has implications on consent for personal data use.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, emphasize transparency and

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<sup>12</sup> (2017) 10 SCC 1.

informed consent in digital communication.

However, the absence of specific statutory provisions addressing nuances of free consent in digital contracts indicates a need for legislative reforms.

## **9. COMPARATIVE JURISPRUDENCE**

### ***9.1 United Kingdom: Balancing Misrepresentation and Consumer Protection***

The UK law protecting consent is built on a dual foundation of statute and judicial protection. The Misrepresentation Act 1967 creates strong protection from fraud, through rescission and damages, against fraudulent, negligent, or innocent misrepresentations. Significantly, Section 3 renders clauses attempting to oust liability for misrepresentation ineffective, precluding parties from contracting out of responsibility 1. Transparency has also been strengthened by courts reviewing standard-form contracts through the Consumer Rights Act 2015, which renders unfair terms that cause substantial imbalances ineffective. For example, in *Glaser v Atay*, the court struck down a one-sided payment clause, highlighting the Act's ability to safeguard vulnerable parties from unfair terms.

Recent legislation under the Digital Markets, Competition & Consumers Act 2024 addresses contemporary challenges, requiring transparent disclosure of terms of subscription, easy cancellation, and sanctions for failure to comply (up to 10% of turnover). This amounts to a move toward proactively regulating digital consent, with a focus on transparency in automated or repeat agreements.

### ***9.2 United States: Unconscionability and Regulatory Vigilance***

US contract law responds to imbalances of consent under the doctrine of unconscionability, which blends procedural deficiencies (e.g., imbalance of bargaining power) with substantive injustice (exploitative terms). Originating in equity, the doctrine allows courts to set aside contracts in which terms "shock the conscience," such as in cases of exploitative lending or adhesion contracts.

The Federal Trade Commission (FTC) further strengthens these safeguards by enforcing deceptive practices. Some of the important measures are:

- Prohibitions on bait-and-switch: Preventing deceptive ads promoting false deals 5.
- Price transparency regulations: Enforcing honest savings claims and discouraging unfair hidden charges.
- Top-in consent requirements: For sensitive information (e.g., geolocation, children's data) by legislation such as COPPA and state privacy laws.

These practices provide informed and voluntary consent, especially in technology markets where obscure terms are common.

### **9.3 Lessons for India: Toward a Modern Consent Framework**

India's Contract Act may consolidate findings from the UK and US to solve digital-age problems:

#### **1. Statutory Reforms for Digital Consent**

- Implement disclosure requirements similar to the UK's 2024 Act, requiring plain-English summaries of important terms in digital contracts (e.g., auto-renewal clauses).
- Ban unfair terms by statutory definition of "good faith" and "substantive fairness," taking cues from the UK's Consumer Rights Act.

#### **2. Strengthened Judicial Tools**

- Formalize the unconscionability doctrine in Indian law, allowing courts to consider both procedural and substantive fairness.
- Transfer the burden of proof to powerful parties in undue influence cases (e.g., tech platforms against individual users), echoing UK precedents.

#### **3. Regulatory Enforcement**

- Create a specialized digital commerce regulator to police deceptive trade practices, drawing inspiration from the FTC's efforts to quash bait-and-switch practices
- Mandate opt-in consent for data-driven contracts, in line with US standards for sensitive data.

#### **4. Consumer Empowerment**

- Implement cooling-off periods for online subscriptions, as suggested in the UK's 2024 reforms, to enable consumers to reconsider binding contracts.

- Offer automated remedies (e.g., one-click cancellation) to counter digital coercion and dark patterns.

Through combining these strategies, India can update its consent framework to support autonomy while reducing power imbalances in changing contractual environments.

## 10. RECOMMENDATIONS AND CONCLUSION

### 10.1 *Recommendations*

- **Legislative Reforms:** Amend the Indian Contract Act to explicitly include provisions addressing consent in digital contracts.
- **Consumer Awareness:** Promote education on rights related to contract consent, especially in the digital domain.
- **Judicial Training:** Equip judiciary with technical knowledge to better interpret digital consent issues.
- **Technology-Neutral Legal Framework:** Develop laws adaptable to emerging technologies ensuring free, informed, and voluntary consent.

### 10.2 *Conclusion*

Free consent lies at the heart of valid contractual relationships, safeguarding individual autonomy while ensuring fairness and justice. The Indian Contract Act, 1872, through its detailed provisions on coercion, undue influence, fraud, misrepresentation, and mistake, provides a robust framework for assessing the validity of consent.

Judicial interpretations have further refined these concepts, balancing protection with autonomy. However, the rapid digital transformation presents new challenges where traditional notions of free consent may falter. Automated contracts, opaque terms, and manipulative design threaten the principle that consent should be both free and informed.

Addressing these challenges requires a multi-faceted approach — legislative reform, judicial adaptation, and public awareness — to uphold the sanctity of consent in all contractual dealings. Only by evolving legal frameworks in step with technological advancements can the balance between autonomy and protection in contract law be truly maintained in the 21st century.

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