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DOCTRINE OF UNCONSCIONABILITY IN CONTRACT: A LEGAL ANALYSIS

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Introduction

The term Unconscionable literally means to be unethical or excessively unreasonable. In contract law, there exists a concept called the Doctrine of Unconscionability which originated in the 18th century in the English Courts. The concept explains that when the terms of a contract are highly inclined in the favour of one party or, if enforced, it will prove extremely detrimental or harsh on the other party, in such cases there exists this doctrine which states that under such circumstances the court can intervene and the contract can be held unenforceable. The concept has evolved in the realm of contract law as a defence to protect the aggrieved party from the enforcement of a contract which is highly unreasonable and against its interests.

Unconscionable contracts would not be void just because its execution would cause loss to one party but it must be of such a manner that it shocks the "Conscience of the Court". Although, the court is not supposed to interfere in a contract where the parties made an error in their judgement while giving their consent to the contract but, if the court should believe that the terms of the contract are so oppressive for one party that no reasonable person would willingly give his acceptance to enter into such a contract, then the court can interfere. Unreasonableness and Unconscionability were the original basis for the court's interference.[1] This is a common remedy undertaken by

[1] Simon M. Waddams, Unconscionability in Contracts, 39 Mod. L. Rev. 369, 369–93 (1976).

the defendant in various cases of breach of contract on his part for which he is being sued. The doctrine can be applied in the cases where it has been applied that the consent given was not free consent and has been taken by force or any wrongful method has been applied.

Evolution of the Doctrine of Unconscionability

Both the British and the Indian legal systems have been developed overtime based on the principles of equity, justice and good conscience, ensuring that unfair or exploitative contracts are subjected to judicial scrutiny. This doctrine emerged primarily in equitable jurisprudence[2], focusing on the protection of vulnerable parties from oppressive or exploitative contracts. In the 18th century, British law had recognized the need to intervene in cases where contracts were oppressive or exploitative, especially when there was a significant "imbalance of power" between contracting parties. Initially, the courts of equity developed the concept of unconscionability under the doctrine of unconscionable bargains. This doctrine aimed to prevent individuals from exploiting others by using their superior bargaining power to impose unfair terms in a contract. The courts traditionally intervened in cases where one party was at a disadvantage due to factors like age, mental incapacity, duress, or undue influence. The courts would make a contract unenforceable if they found that unfair terms of contract are taking advantage of a weaker party. Over time, Equity became the primary source of judicial intervention in unconscionable contracts. The Chancery courts adopted an approach that focused on the need for fairness and good conscience, with judges assessing the circumstances under which the contract was made.

The term "unconscionability" as a legal concept gained prominence in the 20th century, particularly in the Court of Appeal. One of the most prominent cases of it is the case of Lloyds Bank Ltd v. Bundy[3] In this case, the court found that the bank had exploited its superior knowledge and bargaining position to pressure an elderly individual, Bundy, into signing a document that was prejudicial to his interests. Lord Denning Mr in this case stated that, "the English law gives relief to one who, without

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[2] Equitable jurisprudence refers to the body of legal principles that emerged in the Courts of Chancery in England to address situations where the strict application of the common law would lead to unjust or unfair outcomes. Equity developed as a supplement to common law, focusing on principles of fairness, justice, and morality rather than rigid adherence to legal rules.

[3] Lloyds Bank Ltd. v. Bundy, [1975] Q.B. 326 (C.A.).

independent advice, enters into a contract upon terms which are very unfair or transfers property for a consideration which is grossly inadequate, when his bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or infirmity, coupled with undue influences or pressures brought to bear on him by or for the benefit of the other." The ruling solidified the notion that unconscionability is not merely about the terms of the contract but also the circumstances, here, the relationship of trust and confidence between the bank and Bundy, in which it was entered into.

In subsequent cases, the concept of unconscionability continued to develop, with the emergence of a two- pronged test. Courts began to assess whether there had been an inequality of bargaining power and whether one party had used undue influence or coercion to secure an unfair advantage.

Nowadays, the doctrine of unconscionability is firmly entrenched in English contract law. It operates primarily through the concept of equitable intervention, with the courts having the power to set aside unconscionable bargains. The Unfair Contract Terms Act 1977 and the Consumer Credit Act 1974 provide statutory backing to the idea that unfair terms in contracts, especially those that exploit consumer weakness, can be rendered unenforceable. The evolution of the doctrine of unconscionability in India follows a somewhat similar path to British law, though influenced by Indian legal principles and constitutional values. Indian Contract law has been influenced by British Common law due to its colonial history and many-atimes rely on precedents of English Courts to determine the implementation of a particular provision. Indian contract law is governed by the Indian Contract Act, 1872, which, while not explicitly mentioning "unconscionability," contains provisions that align with the doctrine. These provisions primarily focus on undue influence (Section 16), coercion (Section 15), and unlawful contracts. By Coercion or Undue Influence, one party is made to enter an unfair and unjust contract by the use of force, or higher authority over someone. Here, the consent given is not free consent. This is akin to the unconscionable bargain principle in English law, where the weaker party is coerced or manipulated into agreeing to terms that are substantially unfair. Indian courts have interpreted undue influence to include scenarios where there is a disproportionate power dynamic between the parties, leading to unconscionable agreements. The doctrine of unconscionability is thus reflected in the Indian legal system through this provision.

The Indian judiciary's interpretation of unconscionability is best exemplified in the case of Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly[4] The Supreme Court of India dealt with oppressive and one-sided contract terms in a contract of employment, emphasizing that unconscionable contracts are those that are so unfair and one-sided that they shock the conscience of the court. The court laid down the principle that unreasonably harsh or oppressive clauses could render a contract voidable. This case significantly expanded the scope of unconscionability in India, allowing for judicial intervention in cases of grossly unfair contracts.

Key Elements of An Unconscionable Contract

1) Unequal Bargaining Power: One of the fundamental elements of an unconscionable contract is the inequality of bargaining power between the contracting parties. An unconscionable contract typically arises where one party is in a dominant position and takes unfair advantage of the other party's weakness or vulnerability.

In Indian contract law, this imbalance is most commonly seen in cases of undue influence and coercion, where one party has significant power over the other due to factors like age, mental capacity, or lack of experience. For instance, in contracts involving minors, illiterate individuals, or people under economic pressure, the terms might be highly advantageous to the stronger party and therefore oppressive to the weaker one.

Section 16 of the Indian Contract Act defines undue influence as a situation where "the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other."[5] This could be due to relationships such as parent-child, guardian-ward, or employer-employee, where one party uses its dominant position to influence the decisions of the other. An example of this would be a contract where an employer imposes terms that are heavily one-sided, or a guardian forces a ward to enter into an unfair contract.

[4] Cent. Inland Water Transp. Corp. Ltd. v. Brojo Nath Ganguly, (1986) 3 S.C.C. 156 (India).

[5] Indian Contract Act, No. 9 of 1872, § 16, India Code (1872).

2) Lack of Free Consent: Free consent is a cornerstone of any valid contract in Indian law. A contract is unconscionable when the consent of one party is not voluntary or is coerced. Coercion and undue influence are particularly relevant here. Here, the party may lack the conscience to enter into a contract because of these factors involved in obtaining the consent.

Coercion, as it has been defined under Section 15 of the Indian Contract Act, is "the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860) or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement."[6] In cases of coercion or undue influence, the contract may be voidable at the option of the party whose consent was coerced, especially if the terms are grossly unfair.

3) Unfair Terms: An essential characteristic of unconscionable contracts is unfair or exploitative terms. These terms are so one-sided or excessive that they are against public policy or contrary to the principles of justice and fairness. For instance, a contract may impose an excessive penalty, require the performance of an unreasonable obligation, or involve an unfair transfer of risk or involve the performance of an unlawful act as part of the consideration of the contract.

Under Section 23 of the Indian Contract Act, a contract that involves an unlawful object or unlawful consideration is void. If the consideration for a contract is grossly inadequate or if the contract aims to achieve an unlawful purpose, it can be deemed unconscionable. Courts will examine whether the terms are too harsh, oppressive, or contrary to public policy.

For instance, in M/s. N. R. Dongre[7] case, the contract included terms that were heavily in favor of the buyer, leading to a dispute between the two parties. The contract, upon execution, contained unreasonable clauses that were deemed to be excessively unfair to the seller. The Supreme court stated that the contractual terms that are unreasonably oppressive, one-sided, or exploitative can be voided by the courts. The court emphasized that the unequal bargaining power between the two parties, combined with unfair contract terms, rendered the agreement unconscionable.

[6] Indian Contract Act, No. 9 of 1872, § 15, India Code (1872).
[7] N.R. Dongre v. Shiromani, (1993) 2 S.C.C. 732 (India).

4) Deceptive Practices or Fraud: A contract may also be unconscionable if one party has induced the other party to enter the agreement through fraud or misrepresentation. Fraud is defined under Section 17 of the Indian Contract Act and refers to deliberately providing false information or misleading a party to gain an unfair advantage. When one party intentionally conceals material facts, misleads the other party, or uses fraudulent practices to induce a contract, the resulting agreement is unconscionable. For example, fraudulent inducement through false promises or misrepresentation of facts could lead to the invalidation of the contract.

Types of Unconscionability

Unconscionability in Contract can be understood as of two types, namely, Procedural Unconscionability and Substantial Unconscionability based on the process and substance of the contract respectively.

(i) Procedural Unconscionability refers to the unfairness or biases that occurs at the stage of formation or negotiations, before the parties had actually entered into the contract. If the way parties create the contract seems to be unfair or unreasonable, and there exists a huge gap between the contracting parties, with one person at a dominant position over the other, it amounts to procedural unconscionability[8].
For instance, the knowledge or level of education, or the age of a person or his position can be a reason for procedural unconscionability.
(ii) Substantial Unconscionability is the one where the contract's terms are prejudiced against one party in favour of the other. It refers to the substantive portion of the contract, that is, its content rather than its procedure. The contract's goals in substantive unconscionability are rather severe.

The 199th Law Commission Report discussed both procedural and substantive unfairness within the framework of the proposed legislation and prescribed criteria for determining whether a contract could be regarded as procedurally or substantively unfair. The Report further recommended granting courts suo motu authority to examine substantive unfairness, even in the absence of specific pleadings by the

[8] Diganth Raj Sehgal, Unconscionability as a Ground to Avoid Agreement, iPleaders (Feb. 5, 2021), https://blog.ipleaders.in/unconscionability-ground-avoid-agreement/. (blog.ipleaders.in)

parties, and to award appropriate relief where an agreement is found to be unconscionable or unjust.[9]

The party whose consent was obtained by use of such unfair means may choose to make the contract void if it contains any unconscionable provisions.

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[9] Nivedita Arora, Unconscionable Contracts under the Indian Contract Act, iPleaders (Oct. 30, 2017), https://blog.ipleaders.in/unconscionability-a-ground-for-avoiding-agreements/.