The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

CAN SILENCE IN CONTRACTS AMOUNT TO FRAUD UNDER INDIAN CONTRACT LAW?

- Stuti Sharma

I. INTRODUCTION

Silence has long held a place of ambiguity in law. It is neither intrinsically guilty nor innocent. Indian Contract Act illustrates this duality. Section 17 states that mere silence does not amount to fraud.[1] Firstly, the author focuses on carving out the distinction between contracts where silence does not amount to fraud and contracts where silence amounts to fraud.

Modern transactional settings have led to information asymmetries in contracts being the norm rather than the exception which has weakened the distinction between 'mere silence' and 'fraudulent silence.' The Indian Contract Act has addressed this and provided exceptions where mere silence can amount to fraud. Within contracts where silence amounts to fraud, the paper clarifies various circumstances where mere silence can amount to fraud. Firstly, the author examines contracts where the duty to speak arises when one party relies on the trust and confidence (Uberrima fides) of the other party with no means to discover the truth in the contractual obligation.[2] Secondly, the author examines contracts where silence amounts to speech itself, when a person who knows his silence will be observed as deceptive, remains silent.[3] Thirdly, the author examines contracts where staying silent when a circumstance, which was earlier agreed upon, changes making it false without informing the other party is fraudulent. Fourth, the author examines contracts where even with no duty to speak, one can be held liable for fraud if one stops midway (becomes silent) while voluntarily disclosing

[1] Indian Contract Act, 1872, § 17, No. 9, Acts of Parliament, 1872 (India).
[2] Indian Contract Act, 1872, § 17, Explanation, No. 9, Acts of Parliament, 1872 (India).
[3] Indian Contract Act, 1872, § 17, Explanation, No. 9, Acts of Parliament, 1872 (India).

information as he then has a duty to speak the whole truth once he starts speaking. The author then analyses court cases which apply this principle to assert that silence can amount to fraud.

Similarly, other laws also reiterate how silence may amount to fraud in contractual obligations. Central to this, the author examines Transfer of Property Act (1882) and Hindu Marriage Act (1955) with pertinent cases which examine silence amounting to fraud in these fields. Section 55(i)(a) and Section 55(v)(a) of the Transfer of Property Act (1882) explain an omission to make disclosures as explained under these sections by the seller and buyer amounts to fraud.[4] Furthermore, Section 12 (i)(c) of the Hindu Marriage Act (1955) elucidates how silence can amount to fraud if the consent has been obtained through fraud (silence or omission of disclosure of material facts) making the marriage voidable with the option of annulment.[5]

While these laws impose responsibility on one party's deceptive silence, section 19 of Indian Contract Act also imposes a responsibility on the other party. Any silence regarding a material fact amounting to fraud does not make a contract voidable if it can be easily discovered by the ordinary diligence of the other party.[6] The author also examines cases where the Court has applied this section to ensure equity. Therefore, the paper demonstrates the need to recognise silence can amount to fraud in specific circumstances subject to ordinary diligence being exercised by the other party to suit the evolving needs of society.

II. CONTRACTS WHERE SILENCE DOES NOT AMOUNT TO FRAUD

Under section 17 of the ICA, a party is generally under no obligation to disclose facts that might affect the willingness of one party to enter into a contract.[7] This applies in contracts where material facts are within the means of knowledge of both parties, thereby leading to mere silence not amounting to fraud. Stelios Tofaris has traced how the drafting of the colonial Indian Contract Act(1872) was guided by will theory like other statutory frameworks on contracts.[8] Under Will Theory by Pothier, contracts are entered into from autonomy and meeting of the wills of parties. From a will theory perspective, mere silence in a contract does not amount to fraud as mere non-disclosure of facts is consistent with respecting autonomies and wills of

[4] Transfer of Property Act, 1882, §§ 55(1)(a), 55(5)(a), No. 4, Acts of Parliament, 1882 (India).
[5] Hindu Marriage Act, 1955, § 12(1)(c), No. 25, Acts of Parliament, 1955 (India).
[6] Indian Contract Act, 1872, § 19, No. 9, Acts of Parliament, 1872 (India).
[7] Indian Contract Act, 1872, § 17, No. 9, Acts of Parliament, 1872 (India).
[8] Stelios Tofaris, The Regulation of Unfair Terms in Indian Contract Law: Past, Present, and Future, in CONTENTS OF CONTRACTS AND UNFAIR TERMS 113, 113–14 (Mindy Chen-Wishart & Stefan Vogenauer eds., 2020).

parties.[9] The basic assumption is freedom of will as each party is free to reveal or conceal facts unless the law imposes a specific duty to speak. This view holds true when bargaining parties are presumed equal, rational, and capable of self-protection. The law safeguards freedom of contract, not fairness.

In *Bell v Lever Bros Ltd*, the House of Lords held that the directors were under no duty to disclose their breaches to the company.[10] Similarly, in *Shri Krishnan v Kurukshetra University*, the Court held that the student's act of not disclosing his ineligibility for the exam did not amount to fraud as his ineligibility could have been easily discovered by the due diligence of the university.[11]

Mere, passive silence of material facts is different from active concealment. Active concealment when one party intentionally, actively induces another to enter into a contract through 'the active concealment of a fact' of which the inducer had knowledge or belief.[12] While active concealment is fraud, mere silence does not amount to fraud unless it falls under the exceptions explained below.

III. CONTRACTS WHERE SILENCE CAN AMOUNT TO FRAUD

Section 17 has also carved out distinctions where silence can amount to fraud. These exceptions arise in contracts where there is a duty to speak or silence amounts to speech itself.[13] The explanation and the illustrations as to when 'silence' may be fraudulent are accurate, helpful, and concise.[14] It is argued that the duty of good faith underlies these exceptions. Chen-Wishart and Dixon have developed a framework for understanding the duty of good faith. Good faith at its essence is as an attitude of respect for (1) the counterparty's interests, reflecting as a duty of honesty and fair dealing, and (2) for the contract itself, reflecting in faithfulness to contractual purpose.[15] The exceptions impose positive duties of disclosure[16] to ensure honesty and fairness, overriding the strict doctrine of caveat emptor.

---

[9] Warren Swain, History and Drafting of the Indian Contract Act 1872, in FOUNDATIONS OF INDIAN CONTRACT LAW (K.V. Krishnaprasad et al. eds., 2024).
[10] Bell v. Lever Bros. Ltd., [1932] AC 161.
[11] Shri Krishan v. Kurukshetra University, (1976) 1 SCC 311.
[12] Indian Contract Act, 1872, § 17(2), No. 9, Acts of Parliament, 1872 (India).
[13] Indian Contract Act, 1872, § 17, Explanation, No. 9, Acts of Parliament, 1872 (India).
[14] M. Bryan, Historical and Theoretical Perspectives on Silence and Deception in Private Law, in MISLEADING SILENCE (Elise Bant & Jeannie Paterson eds., 2020).
[15] M. Chen-Wishart & V. Dixon, Good Faith in English Contract Law: A Humble "3x4" Approach, in 1 OXFORD STUDIES IN PRIVATE LAW THEORY 196, 196–97 (P.B. Miller & J. Oberdiek eds., 2020).
[16] Manasi Kumar & Poorna Mysoor, The Duty of Good Faith, in FOUNDATIONS OF INDIAN CONTRACT LAW (K.V. Krishnaprasad et al. eds., 2024).

A. DUTY TO SPEAK

Mere silence can amount to fraud when the duty to speak arises. It arises when one party relies on the trust and confidence (Uberrima fides) of the other party. This duty arises in two ways. Firstly, when a party reposes and the other party accepts the confidence. Secondly, when the other party has no way of finding out the truth and relies on the good faith of the party.[17] This duty usually arises in fiduciary, familial, insurance and partnership obligations. In *Haji Ahmad Yarkhan v Abdul Gani khan*, the court held that suppression of blemishes about one's daughter was not fraudulent as there was no fiduciary relationship between the two parties.[18] In *Rajesh Kumar Chaudhary v United India Insurance Co Ltd, And anr*, the Court held that non-disclosure of the party that they were already rejected by the same insurance company was suppression of a material fact.[19] This is because the insurance companies have no way of finding out the truth and rely on the good faith of the party. In *Gluckstein v Barnes*, the House of Lords held that the promoters have a fiduciary duty to disclose all profits that they make from a transaction.[20]

B. SILENCE AMOUNTS TO SPEECH ITSELF

Contracts where silence amounts to speech itself are fraudulent. This is when a person who knows his silence will be observed as deceptive, remains silent. There are three circumstances when silence is considered equivalent to speech. These are change of circumstance, half-truths and 'the active concealment of a fact' of which the inducer had knowledge or belief.[21]

The Madras High Court in *Subramanian Chetti v Official Assignee of Madras* illustrates this principle. In this case, a plaintiff assigned a decree because the defendant's agent stated the decrees were 'unrealizable' and 'not worth even 20 per cent of their face value.' However, the agent failed to state that the decree was secured. The court held that this silence went beyond 'mere silence' and was 'equivalent to speech,' thus constituting fraud.[22]

C. CHANGE OF CIRCUMSTANCE

[17] AVTAR SINGH, CONTRACT AND SPECIFIC RELIEF 214 (12th ed. 2022).
[18] Haji Ahmad Yarkhan v. Abdul Gani Khan, [1936] Nag 203.
[19] Rajesh Kumar Choudhury v. United India Insurance Co. Ltd., [2005] Gauh 102.
[20] Gluckstein v. Barnes, [1900] AC 240 (HL).
[21] K.V. Krishnaprasad, Fraud, Misrepresentation, and Mistake, in FOUNDATIONS OF INDIAN CONTRACT LAW (K.V. Krishnaprasad et al. eds., 2022).
[22] Al. Sp. S. Rm. Subramanian Chettiar v. Chinnamuthu Batcha Rowther, (1941) 2 MLJ 751.

Staying silent when a circumstance, which was earlier agreed upon, changes making it false without informing the other party is fraudulent.[23] In *TS Rajagopala Iyer v. South Indian Rubber works ltd. 1942*, the company had written that individuals would be allotted as directors in the prospectus. The Court held that the company's non-disclosure of certain directors retiring after was enough to stop one from applying. Here, the company's actions were held fraudulent due to their inability to inform about the change of circumstance.[24] In *With v. O'Flanagan* 1936, When the conditions that led a party to engage into a contract changed, the Court ruled that the party was required to be informed. Until the contract was signed, the defendant's representation would be regarded as continuous as it was meant to persuade the claimant to sign it. This implied that the representation made at the time of contract signing was false, and the defendant should have informed the claimant of the change in circumstances.[25]

D. HALF-TRUTHS

Contracts where even with no duty to speak, one can be held liable for fraud if one stops midway (becomes silent) while voluntarily disclosing information as he then has a duty to speak the whole truth once he starts speaking.[26] In *Junius Construction Corpn. v Cohen 1931*, the Court held that the seller by selectively mentioning minor issues while remaining silent on the major issue of a bisecting street, engaged in a half truth. This silence altered the very essence of the contract and with its disclosure no reasonable buyer would have entered into the contract. Furthermore, the Court held that subsequent remedy of the defect for which the seller is at fault at the time of the sale does not mean that the buyer is liable to perform the contract after circumstances have changed.[27]

Thus, these exceptions are against good faith as silence in such circumstances is an active disregard of the counterparty's interests and the contractual purpose. Not amounting these to fraud, will lead to unfair and dishonest outcomes in modern, contractual settings with informational asymmetry.

IV. OTHER LAWS ON SILENCE AMOUNTING TO FRAUD IN CONTRACTUAL OBLIGATIONS

[23] AVTAR SINGH, CONTRACT AND SPECIFIC RELIEF 215 (12th ed. 2022).
[24] T.S. Rajagopala Iyer v. South Indian Rubber Works Ltd., (1942) 2 MLJ 228 (Mad.).
[25] With v. O'Flanagan, [1936] Ch 575.
[26] AVTAR SINGH, CONTRACT AND SPECIFIC RELIEF 215 (12th ed. 2022).
[27] Junius Constr. Corp. v. Cohen, 257 N.Y. 393 (1931).

Section 4 of Transfer of Property Act (1882) states that sections relating to contracts shall be seen as part of the Indian Contract Act.[28] Section 55(i)(a) and Section 55(v)(a) of the Transfer of Property Act (1882) explain an omission to make disclosures as explained under these sections by the seller and buyer amounts to fraud.[29] In *Haryana Financial Corporation v. Rajesh Gupta,* the court held HFC liable under Section 55 of Transfer of Property Act as it was their duty to disclose to the seller that there was a lack of road to the factory. The principle of caveat emptor did not apply here as Rajesh had enquired about the road and his deposit unjustly enriched the HFC who sold the property to someone else.[30] In *Ram Swarup v Fattu*, the court held that a buyer is not required to investigate every detail of the seller's title and can rely on the information provided by the seller. If the seller makes a specific promise about the property(either a written or implied), then that promise is enforceable. The court held that even if the buyer had a hunch or a vague suspicion about a defect with the seller's title, it does not cancel out the operability seller's promise.[31] Thus, the strict doctrine of caveat emptor is overridden when the buyer accepts conveyance.

Furthermore, for the scope of this paper, marriage is presumed to be a contractual obligation. Section 12 (i)(c) of the Hindu Marriage Act (1955) elucidates how silence can amount to fraud if the consent has been obtained through fraud making the marriage voidable with the option of annulment.[32] In *Anurag Anand v Sunita Anand,* the court held that caste, age, income, nationality, religion, educational qualifications, marital status, family status, financial status are material facts. Silence or non-disclosure of these material facts is fraudulent.[33]

From an analysis of the above two, an implicit right to be informed of the one party arises which translates to a duty to inform for the other party. This emanates from principles of equity, informed consent, and corrective justice. This ensures that when a party has superior knowledge, the informational asymmetry is corrected and the contract reflects genuine free consent.

---

[28] Transfer of Property Act, 1882, § 4, No. 4, Acts of Parliament, 1882 (India).
[29] Transfer of Property Act, 1882, §§ 55(1)(a), 55(5)(a), No. 4, Acts of Parliament, 1882 (India).
[30] Haryana Fin. Corp. v. Rajesh Gupta, (2010) 1 SCC 655.
[31] Ram Swarup v. Futtu, AIR 1960 All 367.
[32] Hindu Marriage Act, 1955, § 12(1)(c), No. 25, Acts of Parliament, 1955 (India).
[33] Anurag Anand v. Sunita Anand, AIR 1997 Del 94.

V. SECTION 19 OF INDIAN CONTRACT ACT

Section 19 of Indian Contract Act also imposes a responsibility on the other party of a contract. The exception in section 19 states that any silence regarding a material fact amounting to fraud does not make a contract voidable if it can be easily discovered by the ordinary diligence of the other party.[34]

Courts have regularly applied this section in cases to ensure fair outcomes. In *Shri Krishnan v Kurukshetra University*, the Court held that the student's act of not disclosing his ineligibility for the exam did not amount to fraud as it could have been easily discovered by the due diligence of the university.[35] In *Keats v Earl of Cadogan*, the landlord did not inform the tenant about the bad condition of the house. The court held that the landlord was not liable as it was the tenant's duty to check the condition of the house. The landlord could only be held liable in two circumstances: 1] If the landlord promised something specific/warranty about the property's condition, 2] If the landlord actively did something to hide the problem.[36]

Steven Elliott KC and Divya Behl state the difficulty to interpret Section 19 sensibly as it is difficult to defend someone who purposefully leads another to act dishonestly by saying that they ought to have exercised more caution. Indian courts have held that the phrase 'fraudulent' merely qualifies the word 'silence' but it is unclear why fraudulent silence should be an exception.[37] From an analysis of the cases above, it is argued that this exception works on the principle of caveat emptor where it is the buyer's duty to check the products before buying them. Combing sections 17 and 19, there is an equitable distribution of responsibilities in a contractual obligation when it comes to silence amounting to fraud, so that one party is not unjustly burdened in law.

VI. CONCLUSION

Therefore, Indian Contract Act illustrates the duality of silence. Under Section 17, mere silence does not amount to fraud which is distinct from active concealment. From a will theory perspective, this is consistent with respecting the wills and autonomy of parties. Section 17 has

---

[34] Indian Contract Act, 1872, § 19, No. 9, Acts of Parliament, 1872 (India).
[35] Shri Krishan v. Kurukshetra University, (1976) 1 SCC 311.
[36] Keates v. Earl of Cadogan, (1851) 10 CB 591.
[37] Steven Elliott KC & Divya Behl, Rescission of Contracts Voidable for Lack of Free Consent, in FOUNDATIONS OF INDIAN CONTRACT LAW (K.V. Krishnaprasad et al. eds., 2022).

also carved out distinctions where silence can amount to fraud to which is in line to address modern transactional settings which have information asymmetries in contracts. Silence can amount to fraud if there is a duty to speak, silence amounts to speech itself, half-truths, and change of circumstances. It is argued that these exceptions are based on the duty of good faith to ensure equity, fairness and just outcomes. Other laws such as Transfer to Property Act and Hindu Marriage Act reiterate the need to consider silence as amounting to fraud. An analysis of these give rise to implicit right to be informed of the one party arises which translates to a duty to inform for the other party which emanates from principles of equity, informed consent, and corrective justice. Section 19 of Indian Contract Act also imposes a responsibility on the other party of a contract. This exception works on the principle of caveat emptor where it is the buyer's duty to check the products before buying them. Combing sections 17 and 19, there is an equitable distribution of responsibilities in a contractual obligation when it comes to silence amounting to fraud, so that one party is not unjustly burdened in law.