Coercion (Section 15)

It is defined under S[ection 15](https://indiacode.nic.in/handle/123456789/2187?view_type=browse&sam_handle=123456789/1362). Coercion is using force or creating circumstances wherein the other parties’ consent is not free. It might be through taking some property, doing something which is an offence under IPC, the purpose of these things should be to get the other parties’ consent.

Techniques of causing coercion

Consent is said to be caused by coercion when it is obtained by some act which compels the other party;

1. Threatening or doing something which is a crime under IPC; or
2. Seizing or confining someone.

An illustration under the First category would be Consent given at the point of a knife, or by threatening to injure someone, or by intimidation or by threatening to destroy a man’s property.

An example of the second type will be a case where the plaintiff had pledged his plate with the defendant for $20. When he went to redeem it the pledge insisted that an additional $10 interest was also owed. The plaintiff paid this to redeem his plate and then sued to recover it back. The court allowed it and the defendant had taken advantage of the situation and extracted an amount which was not lawful.

Undue influence (Section 16)

This is defined under Section 16.  It is using one’s position to influence the decision of the other person to his prejudice. There is a subtle difference between fraud and undue influence. The party is able to persuade because of the relation they share or he enjoys a certain degree of confidence of the other person.

What amounts to apply undue influence on someone?

Sometimes the parties to an agreement are so related to each other that one of them is able to apply undue influence to the expression of choice, willingness and consent of the other.

The person who is in commanding position may use his position and the trust that the other person reposes on him to his advantage. By ‘’advantage’’ we mean to cause the other person to express his assent to the proposal.

It is the nature of the relationship that is a Sine qua non in these types of cases, which enables one party to be at a superior position.

For Example: A spiritual adviser(guru), for example, in a case induced the plaintiff, his devotee, to gift to him the whole of his property to secure benefits to his soul in the next world. Such consent is said to be obtained by undue influence. The test is to examine this from a prudent man’s point of view. Whether in the absence of the nature of the relationship a prudent man would have done the same?

Subtle species of fraud

The court describes this in [Mahboob Khan v. Hakim Abdul Rahim.](https://indiankanoon.org/doc/269316/)Undue influence is a kind of fraud wherein the parties’ mind is hacked in a pernicious way. It can be through various means such as coercion, fear or other methods which are directed to impair the reasoning of the person. The result is the person thinks he is using his volition but in reality, his free will is affected by other parties’ scheme,

Undue influence and coercion

Coercion (duress) in the execution of a contract or deed involves some kind of physical or bodily threat. The threat is not restricted to the party but to any person, the party is interested in.

When compared to Undue influence, the difference is that undue influence may exist without violence or threats of violence against the victim. Undue influence exists because of the relationship the parties share. It is usually without violence or threats against the victim. The confidence which the other party reposes in the other is used to one’s advantage.

A person is said to be in a position to dominate the will of another in the following cases-

1. Where he holds a position of dominance or authority or some kind of trust is reposed in him.
2. Where the victim doesn’t have the mental capacity to understand the consequences of his actions.

Fiduciary relation

Trust and confidence are essential elements of Fiduciary relation. Confidence is involved in many of our interactions in everyday life. This category is, therefore, a very wide one. It includes the relationship of solicitor and client, spiritual adviser and his devotee, doctor and patient, woman and her confidential managing agent, parent or guardian and child, and creditor and debtor.

Presumption of undue influence

In certain cases, the presumption of undue influence is raised. The effect of presumption is once it is prima facie established that the defendant has overpowered the will of the other, it will be assumed he has used his position to influence the outcome. The defendant has to establish the contrary.

The presumption is raised at least in the following cases:

* Unconscionable bargains, inequality of bargaining power or economic duress

Unconscionableness: Where one of the parties to a contract is in a position to use undue influence on the other and the contract is apparently skewed in one parties’ favour, the law presumes that consent must have been obtained by undue influence. The burden is shifted to the stronger party to prove that he did nothing to dominate the will of the other.

This case illustrates the above point wherein An old and illiterate woman, incapable of any business, conferred on her confidential managing agent, without any valuable consideration, an important pecuniary benefit under the guise of trust. The onus is on the grantee to show conclusively that the transaction is honest, bona fide, well-understood, the subject of independent advice and free from undue influence’’.

Position of dominance necessary for presumption to arise

For this presumption to be successful, one of the parties’ have to be in a superior position or in a dominating position. Where the parties are on equal footing the mere unconscionableness of the bargain does not create a presumption of undue influence. The mere fact that the bargain is a hard one is no guard in itself for granting relief.

In [Raghunath Prasad Sahu v. Sarju Prasad Sahu](https://indiankanoon.org/doc/719536/" \t "_blank)The defendant and his father were equal owners of a vast joint family property over which they had quarrelled. Consequently, the father had instituted criminal proceedings against the son. The defendant, in order to defend himself, mortgaged his properties to the plaintiff and borrowed from him about ten thousand on 24% compound interest. In eleven years this rate of interest had magnified the sum covered by the mortgage more than elevenfold, viz., Rs1,12,885.

The defendant had contended that the lender had, by exacting a high rate of interest, taken unconscionable advantage of his mental distress and, therefore, there should be a presumption of undue influence.

Their lordships, however, held that there should be no such presumption in the circumstances of the case.

Sub-Section (3) of Section 16, deals with three matters. There is a particular order which should be followed while determining whether a party has dominated the will of the other.

In the first place, the relation is of a kind where the party can overpower the volition of the other.

Then comes the second stage where it will be examined whether the contract has been induced by undue influence.

This leads to the third stage, where onus probandi emerges. The burden of proving that plaintiff consent is not vitiated by any of the factors shifts on defendant.

This order should be maintained lest error is avoided Unconscionableness of the bargain cannot be the first thing to be considered. We have to start from the relation that the parties share with respect to each other.

1. Contracts with[Pardanashin woman](https://www.legalcrystal.com/dictionary/definition/102245/pardanashin-lady)

A contract with a Pardanashin woman is presumed to have been induced by undue influence. She can avoid the contract unless the other party can show that it was her ‘’intelligent and voluntary act’’.

According to the Bombay High Court, a woman does not become pardanashin simply because ‘’she lives in some degree of seclusion’’. The concept probably means a woman who is totally ‘’secluded from ordinary social intercourse’’.

Once it is shown that a contract is made with a pardanashin woman, the law presumes undue influence. In [Moonshe Buzloor Raheem v. Shumsoonisa Begum,](https://www.casemine.com/judgement/in/5779f24ae561096c9312f7ae" \t "_blank) A window remarried. Subsequently, she endorsed and delivered to her new husband certain valuable Government papers. In an action to recover them back from him, she proved that she lived in seclusion and that she had given over the papers to him for collection of interest. He contended that he had given her full consideration for the notes. It was held that the mere fact of endorsement and the allegation of consideration were not sufficient to lift the presumption of undue influence. He should prove that the transaction was bona fide sale and that he gave full consideration for the paper which he received from his wife.