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**RESEARCH PAPER**

## The Principles Revolving Coercion under Pakistani Contract Law: A Case Law Contemplation

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### ABSTRACT

Coercion is any physical or mental act that involves pressuring the other party to perform an act he would rather not wish to do, thus infringing upon his free will and consent to perform said act. These actions can include restraining, detaining, manipulation, threatening etc. The objectives of this research are to deliberate and understand the meaning, scope and extent of coercion. This research aims to deliberate upon this doctrine as evinced within the law and enunciated by the Superior Courts. This research has adopted the doctrinal methodology in order to reach its conclusion. The results show that the Superior Courts have settled the principles involving coercion by relying on British and Indian judgments. It is recommended that the scope and extent of coercion can be widened even more by relying on other foreign judgments such as that of Bangladesh, the USA amongst others etc.

**KEYWORDS** Agreement, Coercion, Consent, Contract, Elements, Vitiating Elements

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### Introduction

A legally binding agreement is considered a legitimate contract but a non-binding agreement is not a contract. In order for an agreement to become binding, it must contain certain elements or ingredients as stipulated by Section 10 of the Contract Act, 1872 ("Act"). These ingredients include: free mutual consent, competency/capacity, lawful object and lastly consideration. Therefore, an agreement without the ingredients mentioned hereinabove is not a binding contract. (Ibn Munir, 2023).

As discussed hereinabove, free mutual consent is an essential element of a legitimate contract. It must be made mutually by both parties on the same object within the same context as per Section 13 of the Act. It is also considered to be caused freely and without any influence by a third party should there be no existence of undue influence, mistake, misrepresentation, fraud and coercion according to Section 14 of the Act. Should the existence of these five factors be proved, then the contract shall be considered voidable on the option of the aggrieved party. This is evinced under Section 19 of the Act. Furthermore, this same provision provides that the aggrieved party may either render the contract invalid or have it enforced as per his discretion.

This work shall deliberate upon the meaning of coercion and as well as its scope and extent as settled by the Superior Courts of Pakistan; it shall also contemplate on the effect of coercion as per the settled judicial interpretation on the law of contract related to the same subject.

### Literature Review

What is coercion? It has been defined as

*“Compulsion; force; duress. It may be either actual, (direct or positive,) where physical force is put upon a man to compel him to do an act against his will, or implied, (legal or constructive,) where the relation of the parties is such that one is under subjection to the other, and is thereby constrained to do what his free will would refuse.” (Black, 1910, p. 212).*

It has also been defined as

*“The intimidation of a victim to compel the individual to do some act against his or her will by the use of psychological pressure, physical force, or threats. The crime of intentionally and unlawfully restraining another’s freedom by threatening to commit a crime, accusing the victim of a crime, disclosing any secret that would seriously impair the victim’s reputation in the community, or by performing or refusing to perform an official action lawfully requested by the victim, or by causing an official to do so.” (West, 2005, p. 472).*

Section 15 of the Act provides that

*“Coercion is the committing, or threatening to commit, any act forbidden by the Pakistan Penal Code (XLV 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.”*

Hence, coercion is when one person threatens to commit or actually commits any crime. One may consider it as the unlawful detainment or the threat of unlawfully detaining someone’s property purely for the sake of causing the other person to enter into an agreement with him. Thus, from the definitions mentioned above and the provision of the Act, we can see that the act of coercion involves both an actual physical act and a non-physical act but with the threat of committing said physical act. These acts include any crime which is forbidden in the Pakistan Penal Code, 1860 (hereinafter referred to as the “PPC”) and also includes the detainment of someone’s property, whether it is actually done or is only threatened to be done so for the sake of compelling another party to enter into a contract with him. It is very reminiscent of the concept of battery and assault, where the latter is the threat of the commission of a physical act while the former is the actual commission of it.

However, in the case of coercion, the act is done so as to compel a person to enter into a contract unwillingly. Thus, we can define coercion to be any physical or mental act that involves pressuring the other party to perform an act he would rather not wish to do, thus infringing upon his free will and consent to perform said act. These actions can include restraining, detaining, manipulation (this comes within the ambit of undue influence as well), threatening etc. Our law also includes those acts which are considered to be crimes within Pakistan as provided by the PPC and also the act of detaining someone or his property. We shall deliberate on the scope and extent of coercion as set by the Pakistani courts.

In a case where there was a suit for recovery for money. The suit was time-barred and thus came within the ambit of Section 25(3) of the Act. The appellant also claimed that the same was executed by him due to threat of the initiation of criminal proceedings by the other party. The court while relying on a UK judgment held that the simple act of threatening by a creditor to a debtor to involve him in a criminal case does not bring it under the scope of coercion. A debtor in such a case must prove that there was actual pressure by the creditor in order to prove coercion (*Kazi Noor Mohammad v. Pir Abdul Sattar Jan*, PLD 1959 (W. P.) Karachi 348, p. 355).

This observation is laudable as coercion was proved by the fact that there was pressure from the other side to procure the concerned party's consent. A similar observation was also made in subsequent cases as well. (*Sheikh Muhammad Obaid v. Muhammad Rafi Qureshi*, PLD 1962 (W. P.) Karachi 409, p. 418; *Irshad. H. Khan v. Mrs. Parveen Ijaz*, PLD 1987 Karachi 466, para 6.). The courts have also observed that "undue influence can also be played on a party by means of coercion." (*Sheikh Muhammad Obaid v. Muhammad Rafi Qureshi*, PLD 1962 (W. P.) Karachi 409, p. 417). Thus, undue influence can also be used by a party as a means of coercion.

In another case where there was a dispute on the validity of a contract due to the allegation of coercion, the court had to deliberate in detail upon the meaning of coercion which was not defined in the Industrial Relations Ordinance 1969. The proposition was whether the characterization of coercion as incorporated within Section 15 of the Act could be read into the Industrial Relations Ordinance 1969. The court after a detailed deliberation upon the meaning of coercion with reference to various law dictionaries and caselaw held such characterization of coercion can indeed be read into the Industrial Relations Ordinance 1969. The court however held that there was no evidence to suggest that coercion had occurred in the instant case. We shall of course concern ourselves with the court's observations on the meaning of coercion. The court observed that

*"Thus, the meanings of the words coercion as noun and coerce as verb, commonly understood are the act of coercing, restraint, compulsion or, constraint or the act of compelling by physical or mental force or arms; to repress, to compel, to compliance. A person is coerced who under pressure does that which he would prefer not to do, a negation of choice and free will etc."* (*Javed Akhtar v. The Daily Jang, Lahore, National Industrial Relations Commission*], 1984 P L C 259, at para 6).

The court's observation is laudable. Coercion does indeed mean any act done under pressure by one person to another to make him perform an act he would rather not do, thus causing a negation of his free will, willingness and choice. These acts include both physical and mental acts such as restraining, manipulating (this also comes within the ambit of undue influence) to compel the other person to perform a particular act that he would rather not do. Our law also includes all crimes that are incorporated within the PPC and also the act of detaining or threatening to detain someone and also his property.

In another case where the arbitrator's award in a contract was disputed between two parties. The court held that the arbitrator's observation that the appellant had given their undertaking under 'forced circumstances' was the layman's version of saying that the certificate in the instant case given by means of coercion or undue influence. (*Zakaullah Khan v. Government of Pakistan*, PLD 1998 Lahore 132, para 7). The courts have also held that any allegation of the vitiating elements including coercion must be proved through strong and independent evidence. (*Haji Sharif Khan v. Raja Abdur Rahman*, 2000 CLC 4 [Karachi], para 20; *Barkat Ali v. Sakhi Muhammad*, 2005 YLR 2689 [Lahore], para 16; *Amber Ahmed Khan v. Pakistan International Airlines Corporation, Karachi Airport, Karachi*, PLD 2003 Karachi 405, para 19).

In another case where the court had to examine whether there was sufficient evidence to hold that certain documents were obtained from the appellants under coercion and duress. The court dismissed this appeal and also relied on the characterization of coercion as incorporated within Section 15 of the Act. The court observed that

*“...mere facts that an agreement was entered into under fear of a criminal proceeding was not sufficient to avoid the agreement on the ground of coercion, and that simply because a creditor threatens to his debtor to involve him in criminal case, it will not be coercion, if there are some basis for such a prosecution.” (Dilbar Hussain Hashmi v. Muslim Commercial Bank, Shahra-E-Iqbal Branch, Quetta, 2001 SCMR 256, para 9).*

Hence, the same position has once again been upheld. The courts have also held that coercion must be proved by the person alleging it. (*Alla-Ud-Din Butt v. Qamar-Ud-Din Butt*, 2006 CLC 1863 [Lahore], para 6; *Bibi Sakina v. Haji Asmatullah*, 2012 YLR 1454 [Balochistan], para 15). Thus, the burden to prove coercion is on the one who claims it.

In another case where there was suit for recovery of damages, the court dismissed the petition citing that the petitioners have not led any evidence in respect of coercion within the meaning of Section 15 of the Act to prove that the said No Demand certificate given to them by means of coercion exercised by the respondents (*Enayat Sons (Pot.) Ltd. v. Government of Pakistan*, 2007 SCMR 969, para 6).

Hence, from the discussion hereinabove, we can conclude that coercion is any act done under pressure by one person to another to make him perform an act he would rather not do, thus causing a negation of his free will, willingness and choice. These acts include both physical and mental acts such as restraining, manipulating (this also comes within the ambit of undue influence) to compel the other person to perform a particular act that he would rather not do. Our law also includes all crimes that are incorporated within the PPC and also the threat of detainment or actual detainment of the either an individual or his property. And that coercion must be proved by the party who alleges it.

As mentioned hereinabove, agreements made without free consent are voidable on the option of the party whose consent was not freely given as stipulated under Section 19 of the Act.

In this respect, we must not forget section 19A of the Act. While section 19 is a provision that provides for fraud, misrepresentation and coercion, section 19A is a provision which provides exclusively for undue influence. It provides that

*“When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.”*

Thus, any agreements in which the consent was not given freely but was given due to means of misrepresentation, fraud, undue influence and lastly, coercion shall be a voidable contract at the behest of the individual whose consent was not given by his own free will. He can either set it aside and have it be of no legal effect or he could enforce it if he deems it beneficial for himself.

Hence, where an individual's consent was obtained by the means stipulated under Section 19 as mentioned hereinabove, that same individual at his own discretion may either render the contract invalid or have it enforced.

In a case where there was a dispute over the car's specifications when it was bought. The court observed that

“Section 19 of the Contract Act, 1872 enacts that if the consent to an agreement has been caused by coercion, fraud or misrepresentation the agreement is not void but is a contract voidable at the option of the person who has been subjected to coercion, fraud or misrepresentation but that general rule is subject to certain conditions mentioned in that very section.” (*The Eastern Automobile Company Ltd. v. Tasdiq Hussain, I.F.S., Conservator of Forests*, PLD 1959 (W. P.) Lahore 681, p. 686).

In another case where there was a dispute on trust property, the court while relying on Indian case law observed that if an instrument is hit by coercion or other elements that vitiate consent as per Sections 19 and 19A, then the same is a voidable contract. However, should a competent court does not set it aside then the instrument shall still remain operative (*Hamida Begum v. Murad Begyum*, PLD 1975 SC 624, p. 637; *Mst. Jamila Hamid v. Atta Muhammad*, 1990 SCMR 1651, para 24; *The Hub Power Co. v. WAPDA*, 1999 CLC 1320 [Karachi], p. 1333).

In another case where there was a dispute on the sale of land, the court while discussing the scope of section 19 of the Act observed that in order for this section to be applicable, the consenting party should be made aware of the nature of the agreement, that is to say, the contracting parties consciously agree about the subject matter of the contract. (*Mst. Izzat v. Allah Dita*, PLD 1981 SC 165, p. 171).

In another case where there was a land dispute by the means of inheritance and there was an allegation of fraud and misrepresentation with regard to the exchange deed, the court observed that Section 19 was not applicable as the concerned party could have discovered the truth by exercising ordinary diligence when they executed the exchange deed (*Ghulam Muhammad v. Fateh Muhammad*, 1987 CLC 2244 [Lahore], para 24).

In another case where there was a dispute in the validity of the marriage, the court held that “any consent obtained by coercion or undue influence from any of the parties would make the marriage invalid.” (*Haleem Bibi v. Azeem*, 2020 CLC 1691 [High Court (AJ&K)], p. 1694). Hence, from the brief contemplation hereinabove, we can conclude that any contract which is obtained by way of coercion is a voidable contract. The concerned party can either render it invalid or have it enforced as per his own discretion. The same goes for misrepresentation and fraud. However, for our purposes, we will only concern ourselves with coercion as anything more would be beyond the scope of this paper.

## Methodology

This paper adopts the doctrinal research methodology as it directly peruses and comments on the applicable statutory law, the judgements of the superior courts and as well law dictionaries in order to understand the actual legal philosophy surrounding coercion.

## Results and Discussions

By directly analyzing the law and its interpretation and application by the Superior Courts in their various judgements, the results and discussions of this research show that the Pakistani Superior Courts while contemplating on the doctrine of coercion ultimately rely on foreign judgements particularly that of the UK and India in order to widen its scope and extent.

## Conclusion

In this paper, we can conclude that coercion is any physical or mental act that involves pressuring the other party to perform an act he would rather not wish to do, thus infringing upon his free will and consent to perform said act. These actions can include restraining, detaining, manipulation (this comes within the ambit of undue influence as well), threatening etc. Our law also includes those acts which are considered to be crimes within Pakistan as provided by the PPC and also the act of detaining someone or his property. It is incorporated within Section 15 of the Act. It's scope and extent has been deliberated upon by the Pakistani courts mainly by relying upon foreign judgements, particularly that of the UK and India. The courts have also ruled that the burden of proving coercion is on the party who alleges it. The effect of coercion is that it becomes a voidable contract and the concerned person can either render it invalid or have it enforced as per his own discretion.

### **Recommendations**

As discussed hereinabove, this research adopts the doctrinal research methodology in which the applicable statutory provision and its interpretation and application by the Superior Courts in their judgements have been thoroughly analyzed.

The results show that the Superior Courts rely too much on the judgements of UK and India in order to widen the scope and extent of coercion. While this is a very good step, however in order to enunciate more and better principles revolving this doctrine, it would be ideal should the Pakistani Superior Courts also rely on the judgments of other countries, particularly those who follow the common law legal system such as the USA, Bangladesh, Australia amongst others.

Additionally, the principles surrounding this subject as incorporated under other legal systems such as the civil law legal system or the *Shari'ah* legal system may also be relied upon.

By doing so, coercion's effect will become far reaching and therefore more and more people that are affected by it may be able to seek better remedies for their unique cases.

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