# Definition of Free Consent

In the Indian Contract Act, the definition of consent is given in [Section 14](https://indiankanoon.org/doc/1728676/), which states that “it is when two or more persons agree upon the same thing and in the same sense”. Free consent must be free from coercion, undue influence ,misrepresentation, mistake and fraud.

## Example

‘A’ agrees to sell his house to ‘B’. ‘A’ owns three houses and wants to sell his house in Haridwar. ‘B’ thinks he is buying his Delhi house. Here ‘A’ and ‘B’ have not agreed upon the same thing in the same sense. Therefore, there is no consent and no contract afterwards.

# factors and their effect

## 1. Coercion (Section 15)

[Section 15](https://indiankanoon.org/doc/894399/) of the Indian Contract Act,1872 states that coercion is committing or threatening to commit, any act is 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.

Coercion means forcing an individual to enter into a contract. When intimidation or threats are used under pressure to gain the party’s consent, i.e. it is not free consent.  
Coercion may involve the actual infliction of physical and psychological harm in order to enhance the credibility of a threat. Then the threat of further harm can lead to the threatened person’s cooperation or obedience.

## Example

‘A’ went out for a walk, ‘B’ approaches ‘A’ with a stranger, pulls out his gun and asks ‘A’ to give all his possessions. The consent of ‘A’ is obtained by coercion here.

## Effect

Coercion has the effect of making the contract voidable. It implies that at the discretion of the party whose consent was not free, the contract is voidable. The aggravated party will, therefore, determine whether to enforce the contract or to cancel the contra

## 2.Undeu Influence (Section 16)

According to[Section 16](https://indiankanoon.org/doc/568692/) of the Indian Contract Act, 1872 an influence will be considered as Undue Influence when:

* One party to the contract is in a position of trust and controls the other party wrongfully.
* Such a person uses his dominant position to gain an unfair advantage over the other.

There are two key elements of undue influence-

1. The relationship- trust, confidence, authority.
2. Unfair persuasion- careful examination of the terms of the contract.

## Example

‘A’ sold his gold ring to his teacher ‘B’ for Rs 200 after he had been offered good grades by his teacher. Here, A’s permission is not given freely, he was influenced by his teacher.

## Effect

The effect of undue influence makes an agreement voidable at the option of the party whose consent was caused. Any such contract can be set aside. Only a party to the contract can avoid or rescind the contract. This right does not lie in the hands of the third party.

## Difference between Coercion and Undue Influence

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| --- | --- | --- |
| Basic | Coercion | Undue Influence |
| Nature of Action | Through coercion, by committing an offence or threatening to commit an offence, consent is gained. | Under the undue influence, consent is gained by suppressing other party’s will. |
| Carried by | Coercion is typically physical in nature, in order to obtain consent, it requires a physical force of violent nature. | Undue influence is immoral in nature, using mental pressure to gain consent. |
| Criminal Action | Coercion includes a criminal act and is punishable under the IPC by a person who commits coercion. | Undue Influence requires unlawful act and is not punishable under the IPC by a person who has done undue influence |
| Relationship | Coercion does not involve a party’s relationship. | Undue influence can only be exerted if there is a relationship between two-party. |
| Agreement | When coercion induces consent to an agreement, the agreement is null and void at the option of the party whose consent is induced. | When consent to an agreement is caused by undue influence, it becomes null and void at the discretion of the individual whose consent has been so affected. |

## 3.Fraud (Section 17)

According to [Section 17](https://indiankanoon.org/doc/299780/) of Indian Contract Act, Fraud includes any of the following acts committed by a contracting party or its connivance or its agent in order to deceive or induce a party or its agent to enter into the contract:

* The effective concealment of a fact by one who is aware of the fact;
* a promise made without any intention to carry it out;
* any other act fitted to deceive;
* any such act or omission as the law considers to be fraudulent.

Mere silence as to facts likely to affect a person’s willingness to enter into a contract is not fraud unless the circumstances of the case are such that, having regard to them, it is the obligation of the silent person to speak or unless his or her silence is, in itself, equivalent to speech.

## Example

‘A’ sells his horse to ‘B’ by auction, which ‘A’ knows to be unsound, ‘A’ tells ‘B’ nothing about the unsoundness of the horse. This is a fraud on the part of ‘A’.

## Effect

* The contract arising from fraud is a null contract.
* The misled party has the right to withdraw from the contract.
* Due to the fraudulent agreement, the party is responsible for recovering the damages.

## 4. Misrepresentation (Section 18)

As per [Section 18](https://indiankanoon.org/doc/1270593/)of the Indian Contract:

* Misrepresentation means the truth is misrepresented.
* Misrepresentation is the release of deceiving details resulting in the presumption that the other party will enter into a deal and then lose. Nevertheless, the information provided by the guilty party is the result of a genuine belief in the matter. Misrepresentation is said to be committed.

Firstly, when the deceiving person declares that no justified data is misleading a person is some way.

Secondly, there is a breach of an obligation that has caused the bias of one or the other. Lastly,  a mistake was committed by a person because of the misrepresentation of the act or information.

## Example

‘A’ told ‘B’ that his radio is in good condition, because of the confidence he had in ‘A’, ‘B’ bought the radio from him. The radio did not work properly after some time, ‘B’ thought he was misled by ‘A’, but ‘A’ believed his radio was in good condition and had no intention of deceiving him. So, here misrepresentation is in the part of ‘A’, because he did not know that the radio is not working properly.

## Effect

If the party that has suffered as a result of the misrepresentation when entering into a contract may choose to terminate the contract, rescind the contract within a reasonable time under the Specific Relief Act 1963.

## 5. Mistake (Section 20)

There are two forms of  mistake under Indian Contract Law:

1. The mistake of Fact,
2. The Mistake of Law.

## Mistake of Fact

* A mistake of fact arises when one or both of the contracting parties have misunderstood a term that is essential to the meaning of the contract;
* Such a mistake may be done due to confusion, negligence or omission, etc;
* A mistake is never intentional, it is an innocent overlooking.
* Such mistakes can be either unilateral or bilateral

## Bilateral Mistake (Section 21)

When both the parties to a contract are under a mistake of fact, essential to the agreement, such a mistake is known as a bilateral mistake. Bilateral mistakes are also sometimes referred to as mutual or common mistakes. All the parties do not agree to the same thing and in the same way, which is the concept of consent. Since there is no consent, the contract is null and void.

## Example

‘A’, agrees to buy a cow from ‘B’, but it turns out that the cow was dead at the time of the deal, although the fact was not known to any party. The arrangement is considered invalid.

## Unilateral Mistake (Section 22)

A unilateral mistake occurs when only one party to the contract makes a mistake. The contract will not be void in such a case. It is specified in [Section 22](https://indiankanoon.org/doc/949460/) of the Act that the contract will not be void just because one party made the mistake. So if only one party has made a mistake the contract remains a valid contract.

## Example

‘A’ enters into an agreement with ‘B’ for the purchase of horse which he assumes to be a racing horse. ‘A’ do not confirm from ‘B’. In actual a horse is not a racing horse. ‘A’ cannot rescind the contract.

## Mistake of law

The mistake may be related to the mistake of Indian laws, or it may be a mistake of foreign laws. If the mistake applies to Indian laws, the principle is that the  law’s ignorance is not a sufficiently good excuse. This means that either party cannot claim that it is not aware of the law.

The Contract Act states that, on the grounds of ignorance of Indian law, no party can claim any relief. This will also include an incorrect interpretation of any legal provisions.

However, similar treatment is not given to ignorance of foreign law. Ignorance of foreign law provides some leeway, the parties are not expected to know foreign law and its meaning. Therefore, under the Indian Contract Act, an error of foreign law is actually treated as a mistake of fact.