

## Conceptual Framework of Economic Coercion under Commercial Law

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### ABSTRACT

In Commercial Agreement, the fundamental principle is that competent parties must make agreements without any compulsion or hindrance. If one party places unreasonable pressure on another, the integrity of contractual (Free consent) is compromised. Commercial organizations frequently experience economic pressure due to the power disparity between large corporations and smaller businesses. Economic pressure is still a major concern in modern business. When there is market hegemony, supply chain dependencies, and financial pressures leading to power imbalances, large corporations may apply economic pressure to impose unfavorable conditions on suppliers, employees, or competitors. Governments and regulatory bodies have implemented laws and policies to prevent abusive contractual practices in response. The Doctrine of Economic Duress is not specifically mentioned in the Indian Contract Act, of 1872, however, its ingredients come under the purview of Section 15 (coercion) and Section 16 (undue influence) of the Indian Contract Act, 1872. In this article the researcher want to analysis further shall delve into explore the evolution and effect of “economic coercion” in Commercial Law and the Indian judiciary’s role in protecting the interests of the aggrieved party by upholding their legal rights.

## 1. INTRODUCTION

Modern commerce revolves around contracts, which provide individuals, businesses and governments with the ability to make business decisions with confidence knowing that any deal will be a contract. However, contractual freedom is not absolute. Why? One party may leverage their top-notch bargaining power to compel another person to agree, which can lead directly or indirectly to questions of impartiality and justice. When a party is coerced to enter or modify Accords by means of economic force, it can be problematic. Economic coercion (or “economic duress”) is a key area of contract law where ethical, legal, and economic issues are challenged in the context of voluntary agreements. The researchers discuss economic coercion in contract law, examining its legal basis, historical advancement, interpretation by courts of justice, and relevance to contemporary commercial conduct. A summary of this paper is available here. The opening paragraph explicates the concept of economic coercion, its relevance, and the justification for pursuing legal remedies to combat it.

Financial or economic pressure can lead to the encroachment of an individual party on another person and their compulsion to enter into or modify a contract. Physical coercion involves threats of physical harm or violence, whereas economic pressure relies on the manipulation of economic conditions through withholding of essential goods, disruption in business operations, or harsh financial penalties. The latter is known to be more common than the former. In such cases, the main concern is whether the compelled individual had a reasonable alternative or was not obligated to do so.

Economic coercion is particularly evident in commercial contracts, where power distribution often results in a disparity situation. Smaller businesses or individuals may be pressured into accepting unfavorable deals by large corporations, financial institutions, and monopolistic actors due to their economic superiority. Concerns about equitability and the extent to which contracts should be enforced when economic pressure forced one party's consent was present arise.

Contractual fairness serves as the foundation for economic coercion. According to both common law and statutory provisions, contracts must be based on genuine consent, and those that are obtained through coercion may be invalidated. It serves to safeguard contractual relationships and to prevent the abuse of power by more powerful parties. Additionally, it is a law.



The use of duress in contract law is closely linked to the influence of economic forces. The practice of physical intimidation was once widespread, but the courts eventually widened its scope to encompass financial pressures. Jurisdictions with different standards have determined that if a party can prove that they were subjected to severe economic pressure, their agreement may be invalidated. It is challenging to demonstrate that economic pressure was induced, as courts must establish with absolute certainty that the pressure applied was not legitimate and had no justification for punishment.

Contract law in English and American legal systems acknowledges economic duress as a basis for cancelling responsibilities. The courts take into account variables like the nature of the threat, the possibility of alternative options, and whether the compelled party objected to the deal as soon as possible. Economic duress is a legal issue that requires determining whether the pressure was justified or not, as it can affect the victim's ability to choose freely.<sup>1</sup>

The development of economic coercion in law is a manifestation that corresponds with wider shifts in public attitudes towards fairness and the distribution of power. "*Pragma sunt servanda*" was the fundamental principle that guided courts in early contract law, with regards to enforcing agreements. Despite this, as economic structures became more intricate and industrialization resulted in greater disparities in bargaining power, legal theories developed to address coercive practices.<sup>2</sup> "*The legal concept of economic duress was not commonly accepted during the 1800s or early 1900s. The courts upheld the classical contract theory and emphasized that contracts are sacred, with parties being expected to sign agreements willingly. The recognition that financial pressure can be as harmful as physical harm grew with the increasing awareness of economic exploitation in courts*".

A significant change occurred in the mid-20th century when courts across various jurisdictions began to accept economic coercion as a means of exoneration in contract disputes. Examples of cases include *The Atlantic Baron* (1979) case in English law and *Austin Instrument, Inc. v. (e.g.) Loral Corp. (1971)* is an important example of the modern doctrine of economic duress in American law. It was found in these cases that if one party utilized unjust economic pressure to gain a contractual advantage, the other party could seek relief.

One of the most significant cases in English contract law involves *The Atlantic Baron* case (1979), "*where a shipbuilder threatened to withhold delivery when he demanded extra payments from another shipowner. Despite the court's ruling that the shipowner was subjected to economic pressure and allowed to recover the excess payments, their tardiness in protesting the demand had an impact. It was determined in this case that economic threats may invalidate the contract if it leaves the victim with no reasonable means of alternative action*".

Even in "*American law's Austin Instrument, Inc. v... A subcontractor in Loral Corp. (1971) threatened to stop supplying essential parts unless the buyer agreed to a price increase, which was deemed eminent. Economic pressure was deemed due to this as the buyer had no practical choice but to accept. That decision also emphasized that genuine consent in contracts is compromised by economic pressure*".

While economic pressure has been acknowledged as a defense by other regions, its application may differ in some jurisdictions. In general, courts consider to what extent the pressure was applied to the party, whether it was justified, if any reasonable alternatives were available, and a parties' willingness or capacity to disavow such imposed force.

The globalized economy's tendency to rely on economic pressure remains prevalent, particularly in sectors where market dominance, supply chain dependencies, and financial leverage contribute to unbalanced power. Under economic pressure, major corporations can impose unfavorable conditions on suppliers, employees, or competitors. Anti-abusive contractual practices are now protected by laws and policies implemented by governments and regulatory bodies in response.

## 2. ANALYTICAL BACKGROUND OF ECONOMIC COERCION IN CONTRACT LAW

Contract law has historically incorporated economic coercion, reflecting changes in economic and social structures. The legal defense of economic duress was not a common feature of early contract law. Most courts embraced the classical contract theory, which maintained that all agreements were voluntary in nature. Courts began to recognize that financial pressure could be as harmful as physical threats, especially with the development of complex economic systems and industrialization resulting in significant power imbalances. Cases that have become famous in English law include *The Atlantic Baron* (1979) and *Austin Instrument, Inc.* The modern theory of economic duress was largely developed in American law, as evidenced by the widely recognized *Loral Corp. (1971)*. These examples showed how one party could seek relief if it used "unjustified economic pressure" to gain a contractual advantage.

While the legal definition of economic coercion varies by jurisdiction, courts typically require concrete evidence of unlawful pressure. In a book called *The Atlantic Baron*, for example, he threatened to withhold delivery of his work after the

<sup>1</sup> *Petroleum Geo-Services ASA v. DSND Subsea Ltd* [2000] BLR 530

<sup>2</sup> In *Atlas Express Ltd v. Kafco* [1989] QB 833, the court upheld the doctrine's applicability in business settings by ruling in favor of a small company that had been forced to sign a new contract under threat of delivery services being suspended.



shipbuilder demanded extra payments from the vessel owner. Despite the ship owner's economic hardship, their tardiness in protesting the demand had an impact on the case as per the court's sentence. Similar to *Austin Instrument, Inc. v.* The subcontractor at Loral Corp. threatened to halt the supply of essential parts until a price increase was agreed upon by the buyer. This was considered economic duress by the court, as the buyer had no practical choice but to accept. Economic coercion can undermine genuine consent in contracts and serve as a basis for revoking, as demonstrated by these cases.

Economic pressure is still a major concern in modern business. When there is market hegemony, supply chain dependencies, and financial pressures leading to power imbalances, large corporations may apply economic pressure to impose unfavorable conditions on suppliers, employees, or competitors. Governments and regulatory bodies have implemented laws and policies to prevent abusive contractual practices in response. Anti-trust laws are designed to prevent monopolistic firms from using their economic strength to force smaller entities into unfair contracts. Labor laws also safeguard employees from being compelled to sign exploitative contracts due to economic pressure.

Economic coercion has been made more complex by the emergence of global trade and international commerce. Unfair trade practices, economic sanctions, or restrictive agreements can all serve as forms of economic pressure against weaker parties. The impact of multinational corporations and international financial institutions on smaller nations or businesses can cause questions about economic sovereignty and fair trade. These difficulties must be addressed by legal frameworks at national and international levels to ensure a fair and equitable commercial environment.

New forms of economic coercion have been facilitated by the proliferation of digital platforms and technology-driven economies. Economic dependencies, such as online marketplaces, algorithmic pricing models, and digital contracts, can restrict bargaining power. The strict contract terms enforced by major e-commerce sites can be too burdensome for small businesses to follow. Why? With the growing use of digital contracts by businesses and consumers, new forms of economic pressure must be incorporated into existing legal systems.

While contract law acknowledges the concept of economic coercion, it presents difficulties in proving and applying claims of financial pressure. It is important for courts to maintain the stability of contracts while also ensuring that no coercion can be applied. Distinguishing between lawful commercial pressure and illicit economic force is a significant issue. The line between aggressive negotiations and coercive measures is often blurred, despite the fact that businesses frequently negotiate for favorable bargains. The application of legal measures to account for economic pressure must be carefully monitored to prevent false accusations while ensuring that those who were truly coerced received justice.

Finally, economic coercion is a key issue in the context of contract law that challenges fundamentally voluntary treaties. Although contract law is primarily concerned with ensuring the freedom of contract, it also prioritizes protecting against unfair economic pressure. Due to economic pressure and the need for a just system of financial representation, various legal measures, legislative actions, and regulatory frameworks have been developed. New forms of coercion must be integrated into legal systems as economic structures undergo transformations. The delicate balance between preventing exploitation and maintaining the obligations of contract law remains an important challenge.

### 3. LEGAL FOUNDATIONS OF ECONOMIC COERCION IN CONTRACT LAW

#### *Common Law and the Doctrine of Duress*

The concept of duress under common law initially applied to coercing someone into signing a contract by threatening them with bodily injury or illegal incarceration. Because there was no true consent, contracts made in these situations were deemed voidable. Courts gradually came to recognize that threats to property or financial interests are examples of non-physical forms of coercion. As a result, the definition of duress was expanded to include economic pressure when it compromises the contractual party's free will.

#### *Development of Economic Duress as Legal Doctrine*

In the second part of the 20th century, economic duress started to develop into a separate legal theory. Courts acknowledged in cases such as *The Universe Sentinel* [1983] and *The Siboen and The Sibotre* [1976] that illegal economic pressure could render a contract void. In *DSND Subsea Ltd v. Petroleum Geo-Services ASA* [2000], Lord Justice Dyson further developed the theory by stressing the significance of differentiating between reasonable commercial pressure and unlawful coercion. This was a big change since, if certain legal requirements were fulfilled, victims of unjust financial pressure may now seek relief.

#### *Key Elements Required to Prove Economic Coercion*

The following factors must typically be proven by the claimant in order to effectively establish a claim of economic coercion or economic duress: **Illegitimate Pressure:** The stronger party's actions must be wrong or illegal. This could entail making threats to break a contract, gaining undue control over necessary products or services, or abusing one's position of authority. **Lack of Practical Choice:** The victim must demonstrate that they were forced to accept the terms under duress, such as the threat of financial disaster or serious business harm, and that they had no other viable option. **Causation:** The claimant must have been persuaded to sign the contract or agree to its terms by the pressure that was applied. **Protest or Prompt Repudiation:** If the victim protested or took action to nullify the contract soon after the coercion, it would help the case.



These elements aim to maintain the balance between protecting parties from coercion and allowing vigorous commercial negotiation.

#### *Burden of Proof and Evidentiary Challenges*

The party making the allegation of economic coercion bears the burden of evidence. They have to provide solid proof that the pressure they were under was unlawful and that it affected their contractual choice. Since economic hardship sometimes takes place in high-pressure business settings where fierce negotiating is typical, proving it can be challenging. The type of pressure, the available options, the parties' relative bargaining position, and the actions of both sides will all be closely examined by the courts. When proving allegations of economic pressure, documentation such as letters, schedules, and contract terms often proves crucial.

#### **4. EXPANSION OF THE DURESS DOCTRINE TO INCLUDE ECONOMIC COERCION**

Over time, the conventional definition of duress changed as courts realized that compulsion may be non-physical. By the middle of the 20th century, judges and legal experts were starting to question the doctrine's limited application, particularly in light of the increasing complexity of business transactions.<sup>3</sup> A deeper comprehension of how economic power could be misused to compel contractual compliance was reflected in the expansion to encompass economic duress. The courts began to recognize that, just as much as physical threats, lawful consent may be weakened by improper financial or commercial pressure.<sup>4</sup>

#### **5. ECONOMIC COERCION IN CORPORATE AND COMMERCIAL CONTRACTS**

Economic coercion frequently appears in high-stakes negotiations, mergers, supply agreements, or when dominant corporations use their market position to impose harsh conditions in modern corporate contexts. By threatening to stop providing necessary services, end existing partnerships, or deny access to important markets, multinational corporations or other powerful parties may coerce smaller businesses into agreeing to strict contractual terms. Aggressive negotiations are common in business, but they may legally be considered economic coercion if they go beyond legitimate boundaries, such as when they exploit a crisis or threaten a violation with the intention of dominating.

#### *Supply chain pressure and unfair trade practices*

Economic coercion is ubiquitous in international supply chains, as dominant buyers such as large retailers or manufacturers impose unjust conditions on suppliers. Sudden price reductions, unilateral contract modifications, or forceful payment terms with the threat of contract termination are a few examples. Smaller suppliers are forced to comply since they frequently lack other clientele or bargaining leverage. In these situations, economic pressure turns into a coercive instrument. Legal and regulatory frameworks including unfair trade practices statutes and competition law aim to prevent these actions, but enforcement remains hard.

#### *Labor Contracts and employee exploitation*

Economic coercion in the workplace can take the shape of exploitative contracts, in which companies utilize an employee's lack of job options, immigration status, or financial weakness to force them to accept unjust terms. Forced overtime, the repression of worker rights, and non-compete agreements that limit mobility are a few examples. Although labor rules in many legal systems address this kind of exploitation, they frequently fall short of the complex realities of power disparities, particularly in the gig economy and informal employment sectors. The possibility of economic coercion in workplace conflicts is becoming more widely acknowledged by courts, particularly in situations where employees have little practical agency.

#### *Digital platforms & emerging forms of economic coercion*

Economic coercion has taken on new and dynamic forms as a result of the digital economy. Platforms for the gig economy, app-based services, and e-commerce behemoths may employ data-driven pressure, algorithmic control, and unilateral contract modifications to sway user and employee behavior. For example, subtly threatening deactivation or reduced visibility may "incentivize" ride-share drivers to put in more hours or accept lower income. In a similar vein, small companies who depend on online markets could be pressured into accepting unfair prices or promotions. These new activities

<sup>3</sup> The House of Lords affirmed in *The Universe Sentinel* [1983] 1 AC 366 that economic pressure might qualify as duress if it included the use of false threats that left the victim with no other option.

<sup>4</sup> *The Sibotre and The Siboen* One Lloyd's Rep 293 [1976]: Lord Denning's suggestion that economic threats could qualify as duress if they were unlawful was a turning moment in this case.



raise significant ethical and legal concerns regarding coercion in digitally mediated transactions by obfuscating the distinction between consent and control.

## 6. LAW RELATING TO ECONOMIC DURESS IN INDIA

Economic duress in the Indian law commercial law context, finds its place in Chapter II of the Indian Contract Act, 1872.<sup>5</sup> The section defines “*free consent with reference to the existence, or rather non-existence, of five explicit causes which affect free consent. Implicit in the exhaustive nature of this definition is that no other cause can debase the parties’ consent to contract. Even if by fact the consent is not free, it is presumed to be de jure ‘free consent’, for want of the five vitiating elements. Interestingly, although the Indian Contract Act, 1872 does not expressly recognize economic duress as a vitiating factor, this concept has been woven into the fabric of Chapter II of the Act through a liberal interpretation of the provisions contained therein*”.<sup>6</sup>

A glance of judicial remark that delves into a discussion on ‘economic duress’ highlights that “*there is no rule of universal application indicated by the courts in this regard*”. However, the Indian principals of legal framework on Commercial Law largely reflects in common law, the law on economic coercion is also largely based on English precedents that discuss the same.<sup>7</sup> Therefore, courts for the practical approach to understand various manner/meaning of duress, have not strayed too far away from the interpretation adopted by the English courts. The law, as enunciated through judicial decisions, categorizes economic duress within the sweep of coercion, as duress, regardless of the form it takes, is nothing but a coercion of the will to vitiate consent.<sup>8</sup> “*The general rule adopted in this interpretation is that commercial pressure or business compulsion would amount to economic pressure if two key ingredients are fulfilled i.e. (1) pressure amounting to compulsion of the will of the victim; and (2) the illegitimacy of the pressure exerted. The litany of cases that interpret economic duress akin to coercion postulate that economic duress encompasses the basic elements of coercion i.e. the combination of illegitimate pressure and absence of practical choice*”. However, coercion is nothing but willingness of the party regarding that agreement, even if for commercial or economic advantage. Therefore, a plea of economic duress is nothing but an expansion of the exceptional vitiating factor of coercion under Section 15 of the Indian Contract Act.

A relevant point for enquiry that has emerged in the discussions relating to economic duress is whether the concept can be invoked as a means of unconscionable bargain under Section 16(3) of the Indian Contract Act. In the case of *Puri Construction P. Ltd. and Ors. v. Larsen and Toubro Ltd. and Ors.* the Court answered this in the affirmative. “*It noted that even though economic duress is a recognized head answering the description of “coercion”, economic coercion arising from a situation where the relation subsisting between the parties is such that one of them is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other, will fall within the meaning of Section 16 of the Indian Contract Act. However, an invocation of Section 16 to support a claim of economic duress is based on certain pre-conditions. A claim of economic duress under Section 16(3) of the Act will sustain provided one party is proved to dominate the will of the other. As unconscionable bargain is evident where one party is in a comparatively advantageous position than his counterpart, the existence of a real and apparent authority of one party over the other is imperative. Therefore, although economic duress may be regarded as a means of unconscionable bargaining, it can only be restricted to cases where the parties are unequally situated*”.

Remarkably, the Indian Courts have taken the liberty to define the doctrine of economic duress by including it within the meaning of the ‘public policy’ under section 23 of Indian Contract Act. In the case of *Jaipal v. State of Haryana*<sup>9</sup> the learned Single Judge quite distinguishingly pointed that “*transactions, which are unfair and unconscionable and caused by economic duress, cannot bind the petitioners, even if they were not under undue influence or coercion. The Courts have to strike down such terms on the ground of public policy.*” Of much importance in the observation of the Court is that “*the fact that economic duress is not contemplated as a factor vitiating consent but that which affects public policy under Section 23 of the Act. This implied that even though the contract stands undefeated for want of animus contrahendi, its validity may be affected on the touch stone of public policy*”. This goes to show that economic duress is a broad concept that need not be restricted to an inquiry into consent of parties.

Apart from all these, whether the in terms of the effect of economic duress on an agreement render that voidable and not void becomes the next challenge. So answering to this problem court has to underlying the terms of the contract to derive the amount of decisiveness results in the impairment of free-consent. Duress, be it economic or not, gives room for

<sup>5</sup> Indian Contract Act, 1872, § 14.

<sup>6</sup> *Dai-ichi Karkaria Private Ltd., Bombay vs. Oil and Natural Gas Commission Bombay and Ors.*, AIR 1992 Bom 309.

<sup>7</sup> *Balaji Pressure Vessels Ltd. vs. Bharat Petroleum Corporation Ltd.* MANU/MH/2127/2014.

<sup>8</sup> 2013 VIII AD (Delhi ) 415

<sup>9</sup> 1988 (2) UJ 367



compromise. A victim of economic duress may often submit to the illegitimate pressure simply because his commercial interests would be best served by consenting to the contract. The party whose consent was vitiated by duress may allow for honest claims in the contract by agreeing to vary the terms. In such situations, it would be more practical for the party under threat to renegotiate the terms of the contract after the illegitimate pressure is put to rest rather than reduce the contract to a nullity. In the case of *Dai-ichi Karkaria Private Ltd., Bombay vs. Oil and Natural Gas Commission Bombay and Ors.*,<sup>10</sup> the Court observed that “sometimes it may happen that the entire transaction in a contract is not vitiated by duress or fraud but only a particular stipulation is vitiated. In such situations, it is open to the victim of duress to impugn the part of the transaction or even a particular stipulation which was incorporated in the contract by use of duress. Similarly, whenever duress results in a varied contract, the victim of duress may refuse to abide only by the new term introducing the variation. In certain situations, the victim of duress may seek an injunction restraining enforcement of the impugned term imposed on him by the other side by use of economic duress without setting aside the entire transaction.”<sup>11</sup> Therefore, to rectify this impairment, the contract may be declared void only at the instance of the party whose consent was impaired”.

## 7. CONCLUSION

In the context of contract law, economic coercion has become a complex and dynamic notion, particularly when one party uses a position of financial or commercial supremacy to coerce another into signing a contract. Although courts have long recognized classic theories like physical pressure and undue influence, economic coercion pushes the limits of these accepted ideas. Determining whether economic pressure deprives the impacted party of genuine choice and when it becomes unlawful are crucial issues.

When economic threats or excessive commercial pressure jeopardize the fairness of contractual negotiations, courts are becoming more and more prepared to step in. Famous cases like *DSND Subsea Ltd v. Petroleum Geo-Services and The Universe Sentinel* have demonstrated how the court evaluates the validity of pressure, the lack of workable alternatives, and the existence of bad faith or illegal activity. Courts must use caution, though, to prevent getting in the way of lawful commercial agreements or regular hard negotiating.

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<sup>10</sup> *Dai-ichi Karkaria Private Ltd., Bombay vs. Oil and Natural Gas Commission Bombay and Ors.*, AIR 1992 Bom 309.

<sup>11</sup> *Central Inland Water Transport Corporation Ltd. v. Brojo Nathm*, (1986) ILLJ 171 SC, ¶ 82.



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