UNSOUNDNESS OF MIND AND THE INDIAN LAW OF CONTRACT:

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ABSTRACT:

Article 12 of the Indian contract Act , 1872, holds Soundness of mind as an essential feature of a contract. Therefore, a person who is of unsound mind is not fit enough to enter into a contract since he/she cannot form rational judgement of the consequences as a result of entering into a contract. This essay sheds light on the different aspects of unsoundness of mind under the law of contract, presents case laws regarding the same and also presents a comparison between unsoundness of mind under the Indian law and English laws.

INTRODUCTION:

Soundness of mind is an essential prerequisite for one to be competent enough to be able to enter into a contract. The act of entering into a contract is a serious affair and persons entering into such contracts should be rational and prudent enough to understand the consequences of his/her actions. Section 12 of the Indian Contract Act lays down that a person should be of sound mind at the time of entering into a contract and is able to form rational judgement and understanding regarding the outcomes as a result of him entering into the contract.[1] According to the clause 3(5) of the Mental healthcare Act 2017, determination of mental illness alone does not imply that that person is of unsound mind.[2] Mental illness, unsound mind and bad behaviour are different in nature. A person might behave in a normal fashion and yet be incapable of understanding the terms of an agreement or transaction and the consequences of entering into the agreement. Hence, Unsoundness of mind of a person has to be declared by a competent court.

Mental incapacity deprives a person not only of the understanding of the agreement he is entering into but also the fact that he is incapable of understanding it. This distinguishes it from not being able to understand the clauses of an agreement because

[1] The Indian contract act, 1872,§12, No.9, Acts of Parliament, 1872 (India).
[2] Mental Healthcare Act, 2017,§ 3, No. 10, Acts of Parliament, 2017 (India).

of illiteracy or not being able to understand the language.[3] There is a presumption of sanity while entering into a contract.[4] Section 12 of the Indian Contract Act, 1972, renders a contract entered into by or with a person of unsound mind void. A sound mind is a precondition essential for a contract to be enforceable. In this section a person who is occasionally of sound mind and usually of unsound mind can enter into a contract when he is of sound mind. On the other hand, who is occasionally of unsound mind and usually of sound mind is not competent to contract when he is of unsound mind. Mental incapacity can result from mental disorders, lunacy or insanity. However, mere weakness of mind is not sufficient reason to believe that he is of unsound mind.[5] The mental condition of him must be such that he is rendered as incapable to understand the nature and terms of the agreement he is entering into and the outcome as a result of him entering into the contract.

In the case of Sona Bala Bora and others v Jyotirinda Bhattacharjee[6], the husband of the appellant, Bhogirath made a deed of gift to his wife where he gifted her one of the houses among the three houses that he owned and a piece of land. He also agreed to build a cement brick wall surrounding the house gifted to the appellant and a sanitary restroom. However, later in breach of this deed, he sold all the three houses and the land to the respondent. Bhogirath, had also filed a criminal case against his family without any reason. The appellants were not aware of the transaction. The respondent filed a case against the appellant stating that the husband of the appellant, Bhogirath Bora was the absolute owner of the land and therefore the respondent, who purchased the house from Bhogirath, has the right to evict the appellant and use the house for his own purposes. According to the respondent, Mrs. Bora, the appellant had nor right over the houses and the land.

The appellants also filed a suit against the respondent stating that Bhogirath did not have the absolute right to transfer the property and that they also had a preferential right and right of pre-emption to purchase the other two houses on the land. They also contended that the contract of sale of the houses and the land to the respondent was

[3] Pollock and mulla, The Indian Contract Act, 1872, (LexisNexis 2020)
[4] Pollock and mulla, The Indian Contract Act, 1872, (LexisNexis 2020)
[5] Mohammad Yakub and Ors. v. Abdul Quddus and Ors., AIR 1923 Pat 187.
[6] Sona Bala Bora and Ors. v. Jyotirindra Bhattacharjee, (2005) 4 SCC 501.

void. The issues that arose were whether the respondent was entitled to get the purchased property, whether Bhogirath was of unsound mind at the time of entering into a contract, Whether Mr. bora was the sole owner to the houses and the land, Whether the appellant has possession over the property.

The court in its judgement contended that Bhogirath was bound by the gift deed and that the appellant had possession over the property. Bhogirath after his retirement became increasingly short tempered and insane. It was declared by the court that Bhogirath was of unsound mind which is proved by the fact that he filed a false criminal case against his family and also sold their residential house. Therefore, the contract between Bhogirath and the respondent was void as it was entered into in a state of unsound mind.

In this case, it was declared by the court that the contract entered into was void since according to section 12 of the Indian contract act,1872, a contract entered into by an individual of Unsound mind is null and void.

TEST OF UNSOUNDNESS OF MIND:

The test of unsoundness of mind checks whether that person is incapable of understanding the nature and terms of the agreement that he is entering into and that he can form rational judgement of his actions. The burden of proof when a person contends that another party is of unsound mind lies on the party who is claiming that the other party is of unsound mind. This is because it is presumed that a person is of sound mind when he enters into a contract.

Case Example: Kimtu v. Lachhi devi[7]:
In this case the father of the plaintiff, Mr. Gehru was deaf and dumb from his childhood and was of slow intelligence. Due to this, his property was managed by his mother and later his wife Smt. Sobhi. After receiving the power of attorney of the property she started squandering away parts of the property by gifting them and selling them at low prices. Mr. gehru's daughter i.e. the plaintiff, filed a case in 1984 against Mrs. Lachhi

[7] Kimtu v. Lachhi Devi, 1999 AIHC 2533 (HP).

Devi to whom Mrs. Sobhi had sold 4.16 bighas of the suit land for a meagre consideration of Rs. 3360. She claimed that she was entitled for possession of suit land and that since her father was of slow intelligence, the power of attorney transferred to Mrs. Sobhi by him was void. As a result of which, the sale deed of the property sold to Mrs. Lachhi Devi by Mrs. Sobhi was also void. Two of the lower courts where Mrs. Kimtu i.e. the plaintiff and mr. Gehru's daughter had appealed contended that there was no solid evidence that Mr. Gehru was of unsound mind. However, the High court of Himachal Pradesh held that Mr. Gehru was incompetent to enter into a contract as he is of unsound mind since he does not have the ability to manage his own property and was not able to form rational judgement from his actions due to his slow intelligence at the time of passing the power of attorney to his wife. Therefore, the agreement between Mrs. Sobhi and Mr. Gehru and subsequently the sale of deed between Mrs. Sobhi and Mrs. Lachhi were both void.

Mere weakness of mind is not sufficient to prove that that person is of unsound mind. A crucial point that must be found out in the test of unsoundness of mind is whether that person knows the nature of agreement he is entering into and can form rational judgement from his actions. Temporary loss of memory also cannot be the basis for declaring that a person is of unsound mind.[8]

However, if it is established that a person entering into the contract is usually of unsound mind, then the burden of proof lies on that person where he needs to prove that he entered into the contract when he was of sound mind. In the judgement of Govindswami Naicker and Ors. Vs. K.N Srinivasa Rao and Ors.[9], the learned judge held that in case of an old man suffering from a disease such as senile dementia entering into a contract, the burden will be upon persons who want to uphold the contract to prove that the plaintiff had the contractual capacity at the time of the transaction.

With increase in the age of a person, he loses his cognitive abilities. However, that does not make him incompetent to contract. In the judgement of Ram Sundar Saha and Ors.

[8] Aishwarya Padmanabhan; "Unsoundness of Mind in Contract",Manupatra, (September 8, 2021, 11:32 am) http://www.manupatra.com/roundup/325/Articles/Unsoundness%20of%20Mind%20in%20Contract.pdf.

[9] Govindswami Naicker and Ors. V. K.N Srinivasa Rao and Ors, AIR 1940 Mad 73.

vs. Kali Sen Narain Chowdhury Ors[10], the court held that if it can be proved before court that due to extreme old age, a person's mind has become completely vacuous and he has lost the ability to form rational judgement and is unable to understand the nature of bargain or transaction he is entering into, then only it can be held that that person is incompetent to enter into a contract.

BURDEN OF PROOF:

When a contract is appealed to be declared void by the court due to the unsoundness of mind of the person making the transaction, the burden of proof lies with the person who is alleging such unsoundness of mind.[11] There is a presumption of sanity. It must be proved that the person was of unsound mind during the time of formation of contract in order to render the contract void. On the other hand, if the person is generally of unsound mind, the burden of proof that he was of sound mind lies with the person affirming it.[12] However, in case of drunkenness, the person alleging has the onus to prove that he was so drunk at the time of entering into the contract that he was not in his right mind. In English law, the other party was aware of the drunk state of the person alleging it. In the decision of Gore v. Gibson[13], it was stated that a contract entered into by a drunk person is void provided he was unaware of what he was doing and the other party was aware that the former was so drunk that he was unable to comprehend the consequences of his actions. Hence, here the burden of proof lies on the person who was drunk and he needs to prove before the court that not only he was so drunk that he was incapable of understanding the terms of the contract but also the other party was aware of such incapacity.

PERSONS OF UNSOUND MIND

LUNATICS:

According to the Lunacy Act, 1912, a person of unsound mind is known as a lunatic.[14] However, a person may not at all times be a lunatic. He may be of sound mind in general and have lunatic intervals for a certain duration or vice versa. Lunacy may be temporary as well. A lunatic person can only enter into a contract if at the time of agreement, he is of sound mind and is able to make rational judgements. Otherwise, any contract

[10] Ram Sundar Saha and Ors. vs. Kali Sen Narain Chowdhury Ors, AIR 1927 Cal 889.
[11] Bahadur singh v. Bir Bahadur singh, AIR 1956 Cal 213.
[12] Madangopal Marwadi v. Sadasheo Sonak, AIR 1941 Nag 251.
[13] Gore v. Gibson, (1845) 13 M & W 623, 626
[14] Indian Lunacy Act, 1912, § 3, No. 4, Acts of Parliament, 1912 (India).

entered into by a lunatic person during their lunatic intervals is void with an exception of necessities. Section 68 of the Indian Contract Act, 1872, states that a person who supplies the necessaries to a person of unsound mind must be reimbursed from the property of the person of Unsound mind.[15]

In English Law, a contract entered into by a lunatic is completely void with also an exception in the case of necessities. However, it recognizes the fact that a lunatic cannot enter into a contract by themselves and therefore accordingly a quasi contract or obligation is created for the person. In case, of goods other than necessities, the lunatic person is held to be completely incapable of being bound by a contractual obligation.

IDIOTS:

An Idiot is a person who does not have the capability to manage his/her affairs or judgements from birth. An idiot is different from a lunatic. A lunatic has lucid intervals, on the other hand, an Idiot has no acumen to judge his actions. Lunatic is a broadened term which include all kinds of insane persons except idiots.

In the Judgement of Hari Singh Gond vs The State of M.P, the Supreme court defined an idiot as a person who is unable to even count to 20, or remember the names of his parents, or is incapable of telling the days in a week. Idiots do no have Lucid Intervals.[16]

In the case of Inder Singh v. Parmeshwardhari singh,[17] a property which was worth 25000 Rupees was sold by one of the Defendants (Defendant No.1) for only 7000 rupees. The Defendant No.2 who is the mother of Defendant No.1 had claimed that her son was an Idiot since birth and does not have the ability to understand the terms of the transaction. In this case, the court held the sale to be void. It further states that it is important to note whether the person entering into a contract has understanding of the terms of the contract and is able to form rational judgement with regards to his interest. It does not need a man to be a lunatic in order to not be permitted to enter into a contract. Even if a person behaves in a normal way, he might not be able understand or be devoid of any judgement of the consequences of his actions.[18]

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[15] The Indian contract act, 1872,§ 68, No.9, Acts of Parliament, 1872 (India).

[16] Hari Singh Gond v. State Of MP, Criminal Appeal No. 321 OF 2007

[17] Inder Singh v. Parmeshwardhari Singh, AIR 1957 Pat 491

[18] Rishabh, *Rights of Persons of Unsound Mind*, INDIAN LAW PORTAL, (September 8, 2021, 12:00 PM), https://indianlawportal.co.in/rights-of-persons-of-unsound-mind/

DRUNKENNESS:

According to the Judgement of Yogendra Singh vs Prem Lata & Anr,[19] mere consumption of alcohol does not mean that the person has lost his sense of Judgement or understanding of the consequences of his actions. A contract can be declared void if it is proved in court that the person entering into the contract was so drunk that he became incapable to understand the result of his actions and form rational decisions due to such drunkenness. The appellant /plaintiff in order for the court to declare the contract entered into with the defendant void, a "finding" will have to be submitted that the Plaintiff was so inebriated at the time putting into effect the agreement, that his mental capacity was affected to the point that he was mentally incapable of understanding the terms of the agreement. The intoxication led him to become of unsound mind during the time of executing the agreement.

In English law, an intoxicated person does not have the capacity to enter into a contract.[20] However, an intoxicated person is bound by a contract for necessities and is liable to pay for such necessary goods purchased by him. Any other contract entered into by an intoxicated person is voidable with the option to either terminate or ratify the contract.[21]

MENTAL DECAY:

With age, there is loss of mental energy and vigour. Due to extreme old age, there can be complete senile decay which may lead to the inability to understand the consequences of one's actions. There is complete vacuousness of the mind. In order to render a contract void, it must be proved before court that there is infirmity of mind which has lead to the person becoming incapable of understanding his actions.[22]

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[19] Yogendra Singh v. Prem Lata and Anr., RFA No. 36 of 2005

[20] Pitt v. smith, 170 E.R. 1296

[21] *What is capacity in Contract law*, Harper james solicitors (last visited September 8, 2021, 1:00 pm) https://hjsolicitors.co.uk/article/contract-formation-capacity/

[22] The Law of Contracts, M. Krishnan Nair, (Orient Longman 1996).

ENGLISH LAW VS INDIAN LAW:

Indian Law is different from the English law in this regard. In English Law, the person of unsound mind can enter into a contract unless he/she can prove in court that when he/she was incapable of understanding the terms of the contract and other party was aware of this incapability. In the judgement of Imperial Loan Co Ltd v. Stone, Lord Esher stated that a contract entered into by a person of unsound mind can be set aside only when it is proved that at the time of signing the contract, the person of unsound mind was unable to understand the general nature of the contract and the other party had knowledge of this.[23] However, under the Indian law, the contract entered into by a person of unsound mind is void and unenforceable. However, in case of supply of necessaries, a person is bound by the contract. However, if a person is of sound mind when entering into a contract, he will be bound by the contract.

The same goes for a drunk person entering into a contract. In case of English law, the contract is not voidable unless it is known that the person was incapable of understanding the terms of the contract which was known by the other party. Whereas, in case of Indian law a person is incompetent too contract if his drunkenness causes him lose the ability to make rational judgments from his actions. However, a drunken person is liable for the necessaries supplied to him while he is incapable to contract. The English law and the Indian law are different in some aspects. However, both prevents from a party to take advantage of the unsoundness of mind of a person and use it for his own benefit.

[23] Imperial loan co Ltd. v. Stone, [1892] 1 Q. B. 599)