FRAUD (AS PER SECTION 17 OF THE INDIAN CONTRACT ACT, 1872)

In term of section17 of the Act, Fraud means and includes any of the following acts committed by a party to a contract or with his connivance or by his agent with intent to deceive another party there to or his agent or to induce him to enter into the contract.
(i) The suggestion, as to a fact, of that which is not true by one who does not believe it be true;
(ii) The active concealment of a fact by one having knowledge or belief of the fact;
(iii) A promise made without any intention of performing it;
(iv) Any other act fitted to deceive; and
(v) Any such act or omission as to law specially declared to be fraudulent.
It is important to note that 'fraud' that results in a contract alone is covered by section17 of the Act. If there is a 'fraud' but it does not result in a contract would not fall with in the purview of the Act.

Following can be taken as illustration of fraud:

- A director of a company issues prospectus containing misstatement knowing fully well about such misstatement. It was held any person who had purchased shares on the faith of such misstatement can repudiate the contract on the ground of fraud.
- B discovered an ore mine in the Estate of 'A' He conceals the mine and the information about the mine. A though ignorance agrees to sell the estate to 'B' of price grossly undervalued. The contract would be voidable of the option of 'A' on the ground of fraud.
- Buying goods with the intention of not paying the price is an act of fraud.
- It will be interesting to know that not only contract Act but also other Acts have specifically declared certain acts and omission as fraud. A seller of a property should disclose any material defect in the property. Concealing the information would be an act of fraud. Any other act committed to deceive is fraud. Mere silence would amount to fraud under certain circumstances.

Although a mere silence as to facts likely to effect the willingness of a person to enter into a contract is no fraud but where there is a duty to speak or where his silence is speech, then such silence amounts to fraud. This would be clearly seen from the explanation to section 17 of the Indian Contract Act. This situation often arises in Insurance contracts.

In the case of fire insurance contract between person standing in fiduciary relationship, nondisclosure of certain information would amount to fraud as there is a duty to make special disclosure. These are also known as *uberrimae fidei* contract.

In the case of marine insurance policy contract, where overvalues goods that are carried but fails to disclose such over valuation to the underwriter there is fraud. Similarly the insurance is not bound by the policy issued by him where he is misinformed about insurance policy previously taken by the insured.