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LAW OF STANDARD FORM CONTRACTS[1]

ABSTRACT

The Law of Standard Form Contracts is based on popular perceptions. This research article analyses anticipated customer behaviour in common contractual scenarios and investigates these intuitions. To begin, the research study examines the need for Standard Form Contracts as well as its rationale. Following a thorough explanation of the word and its practical use, the attention moves to the legal question of what are the issues with the widespread usage of Standard Form Contracts and how they might be exploitative. Furthermore, the article analyses the general inclination of consumers to accept Standard Form Contracts, the reasons for this acceptance, and how the party issuing the Standard Form Contract might profit from the consumer's ignorance. The second section delves into the efforts taken by the courts to protect the ordinary man from being exploited by Standard Form Contracts. Finally, the article includes the author's proposals for addressing the major difficulties, as well as the recommendations of the 103rd Law Commission of India Report for improving pertinent legislation.

INTRODUCTION

A typical form of contract is when one of the parties sets the contract's terms and conditions, and the other side has little to no power to negotiate more desirable terms, leaving them in a "take it or leave it" scenario. Although these contracts are not unconstitutional in and of themselves, they do have the potential to be unconscionable. Furthermore, in the case of ambiguity, the ambiguity would be settled against the person that drafted the contract language. On a theoretical basis, there is considerable discussion about when and to what degree courts can enact common style contracts.

On the one side, they unquestionably play a critical role in fostering economic efficiency. By removing the need for buyers and sellers of products and services to discuss the many aspects of a selling contract each time the commodity is delivered, traditional type contracting cuts

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purchase costs considerably.

On the other hand, signatories to these contracts can be inefficient and even unfair terms. If such provisions cause the purchaser to escape any responsibility, arbitrarily change conditions, or end the deal, they may be considered unfair. These concepts include, but are not limited to, forum preference provisions and binding settlement clauses, which can prohibit or prevent a party from going to court, and liquidated damages clauses, which restrict the amount that can be recovered or compel a party to pay a certain amount. They can be inefficient if they burden a negative result, such as faulty manufacture, on the consumer, who may not be in the strongest position to protect himself.[2]

In practice, the average buyer or employee who signs a contract does not read the contract's terms and conditions. And if they read it, they would not recognize the rest of the contract's terms and conditions, making it impossible to defend the weaker party. Standard contract forms are used on a national and international basis, and the same issue persists all over the world; it must be resolved for the legal system to progress. In layman's words, a typical form of contract is a "take it or leave it" type of contract; in this type of contract, the opposing side is""reluctant to negotiate about the contract's terms and conditions; instead, the parties must either enter into the contract or forget about it. As a result, this kind of contract affects the inherent right to bargain. These types of contracts are also referred to as adhesion or boilerplate contracts. The basic form of contract is written in fine print and contains all of the contract's terms and conditions. In the Indian sense, claims are heard under the provisions of the Indian Contract Act; there is no act expressly designed to deal with standard style contracts. In this form of contract, the weaker party will easily be abused, and there is no specific law in place to prohibit a dominant party from acting in this manner.[3]

In the advancement of the judicial system, courts have developed several methods and tools to protect the fundamental rights of the weaker party by applying natural justice concepts and precedent from various cases. Since these types of contracts are made in very large numbers regularly as a result of restructuring, careful review and a lengthy process will not be effective. The only thing that can be done is to raise consciousness about the rule such that the parties entered into the contract can read the clauses and attempt to understand them, as well as pose questions about such clauses if they do not understand them.

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[2]Jeetu Kanwar, 'Standard Form Of Contracts - Law Times Journal' (*Law Times Journal*, 2019) <http://lawtimesjournal.in/standard-form-of-contracts/> accessed 30 March 2021.

[3] Amartya Bag, 'Standard Form Of Contracts And The Law In India - Ipleaders' (*iPleaders*, 2014) <https://blog.ipleaders.in/standard-form-of-contracts-and-the-law-in-india/> accessed 30 March 2021.

LEGAL LIABILITY IN STANDARD FORMS OF CONTRACT

If there are elements of responsibility embodiment of setting up a traditional type of contract, the principles of fairness would be realized. In drawing up a basic kind of contract, the state makes specific guidelines for satisfying liabilities. Contract material agreements are not entirely the parties' responsibility, but they should be closely watched, particularly in comparison to the traditional model of contract.[4] Since it necessitates regulations related to the liabilities of the parties to the normal type of contract, unrestricted contract freedom would result in a disparity of power. The importance of legal liability when drafting a traditional form of contract cannot be overstated. In the event of a conflict resulting from a normal form of contract, it should be decided who is responsible and to what degree that liability should be delegated. The assumption of responsibility is a philosophy that states that one can often assume responsibility (presumption of liability). This theory states that unless a criminal can prove his innocence, he is still presumed guilty. The complainant carries the burden of evidence. The term "considered" in the concept of "presumption of guilt" is significant that the claimant will be able to absolve himself of blame if he can show that he has "taken" all reasonable precautions to prevent the occurrence of damages. It's called changing the presumption of evidence because, as it's used in the case of customers, the person who needs to justify the fault is the party who is being sued. A defendant must provide proof of his innocence. The concept of ultimate liability (strict liability) is often confused with the principle of absolute liability. Experts, on the other hand, differentiate the two words mentioned above. Some claim that strict liability is a duty concept that determines that negligence is not a deciding factor. [5] However, some exceptions allow for removal from obligations, such as in the case of a force majeure situation. The principle of total liability, on the other hand, is the principle of liability without blame and exceptions. Liability lawsuits based on breach of contract (default) are followed by a contract under which one party fails to comply, miss, or complete the performance. The duty to pay restitution under this form of liability occurs due to the parties' implementation of a clause of a contract. The trend of responsibility demands is that one side demands results while the

[4]W. David Slawson, 'Standard Form Contracts And Democratic Control Of Lawmaking Power' (1971) 84 Harvard Law Review.

[5] legal India, 'Standard Form Of Contract' (*Legalservicesindia.com*, 2021) <http://www.legalservicesindia.com/article/286/Standard-form-of-Contract.html#:~:text=A%20standard%20form%20contract%20is%20a%20contract%2C%20which%20does%20not,take%20it%20or%20leave%20it.&text=unequal%20bargaining%20partners.-,It's%20a%20type%20of%20contract%2C%20a%20legally%20binding%20agreement%20between,to%20his%20or%20her%20advantage.> accessed 31 March , 2021

other party questions the basic type of contract's applicability.

States have a right to draught common contract forms; state action is expected in the form of regulations to support the weakest sides, those with less bargaining power, restricted access to information, limited resources, and a lack of money. Since a contract is one of the human means of achieving success, government interference is needed in establishing laws on standard forms of contract. Increased wealth is one of the components of the right to life, which is the most fundamental human rights. In the world of economics, a contract is a human right. Human rights, such as the freedom to express themselves, have been harmed due to the disparity between vulnerable parties and those with larger "bargaining power." The winner of a contract in the traditional form cannot adequately express their will in the contents of the contract unless they require the goods or services given.''

This necessitates state interference to re-balance the parties' positions. The state shall protect the fulfillment of life needs as a form of human rights as one of the duties to ensure, which requires two obligations: the duty to protect and the obligation to meet. Therefore, the responsibility for writing standard form contracts rests not only with those that are contractually bound but also with the state, which is responsible for protecting the vulnerable parties by enacting relevant standard form contract laws.''

The liabilities contained in drafting a traditional type of contract can be divided into two categories: those assumed by the parties and those assumed by the state. In general, the plaintiffs' (contracting parties') responsibilities are limited to the award of damages. In general, the appeal for compensation for damages sustained by either side, split into claims for damages based on contract violation and claims for damages based on tort. The state's role in developing standard forms of contract is in rulemaking, supervision, and the resolution of a standard type of contract disputes. The state should establish rules on the standard form of contract that is intended for the contract of final consumer and other commercial contracts (among consumers); the state should supervise the standard form of clause circulating in the community.[6]

[6]Vandana Pali, 'Law Related To Standard Form Of Contracts - Corporate/Commercial Law - India' (*Mondaq.com*, 2013) <https://www.mondaq.com/india/corporatecommercial-law/272948/law-related-to-standard-form-of-contracts> accessed 31 March 2021.

ISSUES RELATED TO STANDARD FORM OF CONTRACTS

a.) Unfair terms of contracts

Courts have looked at the terms of the contract to the parties' bargaining power and intervened in situations where the parties' bargaining power was unequal. In *Life Insurance Corporation of India v. Consumer Education and Research Centre and others*[7] , The Hon'ble Supreme Court has held that "If a provision or a clause in a contract is considered to be unequal, unjust, or insane, one must look to the relative bargaining power of the contracting parties." There will be no need for a lesser party to negotiate or assume fair bargaining power in dotted line contracts.

An unjust and unreasonable contract or an unfair and unreasonable clause in a deal entered into between parties with unequal bargaining rights will not be followed and will be struck down by the courts. However, if the purchasing power of the contracting parties is equal or substantially equal, or where both parties are merchants and the contract is a contractual agreement, this concept would not apply."

b.) Unconscionable nature of Contract

The fundamental measure of a contract's "unconscionability" is when the provisions included are too one-sided as to oppress or arbitrarily surprise the party in the conditions that prevailed at the time of the contract's creation and in light of the general contractual history and commercial requirements of the specific trade or event. Equity courts did not share the common law courts' inability to police bargains over substantive unfairness. A contract that was "inequitable" or "unconscionable," one that was so unjust as to "shake the conscience of the court," will not be imposed in equity, considering the reality that simple "inadequacy of care" was not a basis for withholding equitable relief."

In *Ferro Alloys Corpn. Ltd. v. A.P. State Electricity Board and another*[8], The Supreme Court of India declined to participate in an adhesion deal because it was not immoral enough to "shock the court's conscience.

c.) Inequality of bargaining powers

Courts also ruled against traditional arrangements that take advantage of an employee's role about the boss. They also consistently held that in the case of an employment contract between

[7]1995 SCC (5) 482
[8]1993 SCC Supl.(4) 136 JT 1993 (3) 82

an employer and an employee, the employer has a universal propensity to incorporate in a printed and normal type certain provisions that are beneficial to him, leaving the employee with no real substantive option but to give consent to all those terms.

In *Superintendence Company of India (P) Ltd v. Sh. Krishan Murgai*,[9]Hon'ble Supreme Court, held that

"It is well settled that employees covenants should be carefully scrutinized because there is inequality of bargaining power between the parties; indeed, no bargaining power may occur because the employee is presented with a standard form of contract to accepts or reject. At the time of the agreement, the employee may have given little thought to the restriction because of his eagerness for a job; such contracts "tempt improvident persons, for the sake of present gain, to deprive themselves of the power to make future acquisitions, and expose them to imposition and oppression.

WAYS TO LIMIT EXPLOITATION FROM STANDARD FORM OF CONTRACTS

It is simple to take advantage of a party that enters into a standard form of contract; however, some laws have been developed to protect the rights of the weaker party. In the SFC, a specific protocol has been specified to protect the weaker party."

a.) Reasonable notice

The person delivering the agreement must provide fair notice to provide sufficient details about the contract's terms and conditions. This principle was propounded in the case of *Henderson V. Stevenson*[10] from the House of Lords. The details of the case are that a person purchased a ship ticket on the front of which only the boarding and arrival places were written, but on the backside of the ticket, there were some terms and conditions which the party could not see nor was there anything written on the face of the ticket to turn over and look at the back of the ticket. The court stated that a person could not consent to a definition if he has not seen it or is not informed of it.

Before or at the time of contract signing, a notice of the terms and conditions should be issued.

b.) Contractual Document

To be enforceable in court, a common version of the document must be accompanied by a contractual document signed by all parties. The fundamental issue is determining whether the

[9]1981 SCC (2) 246

[10] [1873] SLR 11 98

paper is a contract or a receipt. The difference between these two is that a contractual agreement explains the express and implicit conditions in the document, while a receipt does not. The contract must be signed by the individual who accepts the document's terms and conditions.[11]

c.) Unreasonable or Unfair terms

One of the protective safeguards for the weaker party can be pointing out unreasonable contract terms. Unreasonable contract provisions are those that violate the contract's defined intent or are against public policy. In *Lilly White V. Mannu-Swami*[12], this principle has been clearly explained in the case. In this case, the laundry receipt specified that in the event of loss or degradation of the fabric, only 15% of the selling price of the cloth would be recovered. The court found that these provisions were unfair and against the public interest.

In an Indian financial case of *Seven Day Adventists Vs. M.A Uneerikutty and Anr.*[13] It states that if any of the contract's provisions are unconstitutional, the contract is invalid, and the court's ruling states that certain types of situations are against public policy and that any clauses that violate public policy render the contract void.

Certain points must be followed in the case of a contract with the government to avoid abuse of the other party in the contract. Since the government's decision was made in bad conscience. A decision is made based on unfair or trivial factors. The decision was made without observing the system's prescribed protocol. If these conditions are not fulfilled, the court will find the contract to be irrelevant, and certain provisions will cover the parties against coercion of the contracting party.

THEORY OF FUNDAMENTAL BREACH

It's one of the tools used in this theory to protect the weaker party from exploitation. In principle, there is a cornerstone or principle to the contract that all sides are bound to obey, and if they are not met, there will be a violation of a contract. In the event of a contract violation by the other side, the weaker party would not be obligated to obey the contract. The basic violationof a contract will be tested under section 11 of the 1977 unequal contract act, which states that if the contract does not uphold the reasonableness of the contract, it would be

[11] Legal India, 'Standard Form Contracts' (*Legalserviceindia.com*, 2021) <http://www.legalserviceindia.com/articles/stcontracts.htm> accessed 1 April 2021.
[12] AIR 1966 Mad 13, (1965) 1 MLJ 7
[13] (2006) 6 SCC 351

invalid.[14]

AMBIT AND AUTHORITY OF CONTRACT ACT

There is no such thing as a legally binding form or condition in an Indian contract. Parties may consent to contract in a certain manner that is not prohibited by statute. The problem in India is that there is no such particular law in the Contract Act; instead, various rules have been specified in different kinds of Acts that regulate contract operation, such as specific provisions in the Railway Act and government regulation of public transportation. The government issues different types of rules for contracts in the coffee and tea industries entered into by employees.[15]

Conclusion

Standard Form Contracts are structured contracts with a wide range of fine print terms and conditions that limit or preclude liability under the contract. This provides a rare chance for the large corporation to take advantage of the individual's vulnerability by placing provisions on him that resemble private law and excluding the corporation from all responsibility under the contract. The fight against abuse has been handed over to the judiciary. It has become exceedingly difficult for the judiciary to come to the assistance of the lesser side. [16]

The courts have established and applied such laws to protect the interests of the client, buyer, or passenger, as the case may be, who are entitled to common form contracts or exemption provisions, such as a fair note, notice, notice contemporaneous with the contract, doctrine of substantive violation, contra proferentem contract reading, and so on.

Take it or leave it; it is the essence of the contract that leads to the filing of such legal proceedings in which there is an immediate need to seek justice to the lesser party that entered into the contract without understanding the relevant provisions.

[14]Ian R. Macneil, 'Efficient Breach Of Contract: Circles In The Sky' (1982) 68 Virginia Law Review.
[15] The Indian Contract Act, 1872
[16]W. David Slawson, 'Standard Form Contracts And Democratic Control Of Lawmaking Power' (1971) 84 Harvard Law Review.