CONTRACT LAW- I

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ABSTRACT

The establishment of a contemporary firm typically involves the use of a standard form contract. There are now two distinct applications for it. First, when the parties' respective bargaining powers are comparable, which ensures fairness; and second, when organisations with substantially higher bargaining power take use of this process to include favorable conditions. The purpose of this paper is to elaborate on the development of standard form contracts in India and UK and find that in order to prevent their misuse, courts have applied special rules of interpretation that assign a higher value to the purpose of the contract, and they have even nullified contracts when their material part was affected by unconscionability. This finding is made while the paper is discussing the evolution of standard form contracts. The conflict of forms is yet another challenge that these types of contracts have to overcome. Nevertheless, the courts have not been able to agree on a single rule to use in order to solve this problem. This paper begins with a literature review on the topic and analysis of the current legal position on the topic at hand. It then goes on to answer the research objectives and argues that the courts should always apply the knock-out rule because it strikes a balance between the law on consensus ad idem and the principle of acceptance of the contract by performance.

Keywords: Contract terms, Standard form contract, Bargaining power, Battle of forms, Counter-offer, Unconscionable terms

INTRODUCTION

A standard form contract is a contract between two parties that does not allow for negotiation and is either accepted or rejected. It's also known as an adhesion contract or a boilerplate contract. It is frequently a deal reached between unequal negotiation partners. Standard form of contracts is 'take it or leave it' contracts i.e., a contract signed between two parties that has no room for negotiation. Even though these kinds of contracts are not illegal in and of themselves, there is a very real chance that they are not fair. Also, if the contract language isn't clear, it will be interpreted against the party who wrote it. This is called "contra proferentem." There is much debate on a theoretical level whether, and to what extent, courts should enforce standard form contracts. On the one hand, there is no doubt that they play an important role in making the economy work better. Standard form contracting lowers transaction costs by removing the need for buyers and sellers of goods and services to negotiate the many details of a sale contract every time the product is sold. The party with the most negotiation power controls the agreement's terms. Typically, these terms are non-negotiable by the consumer or end-user. This is because these contracts are typically drafted by corporate attorneys without the involvement of the customer or the firm. This circumstance has the potential to give the vendor an unfair edge because it emphasizes the favorable terms of the contract while concealing the pitfalls. On March 17, 2015, the Unfair Contract Terms Act (UCTL) was enacted. It allows the consumer to file a complaint with the District Court about contract conditions that seem unfair.

The following are alternate names for these agreements:

- Boilerplate contracts
- Agreements of adhesion
- Take it or leave it agreements

LITERATURE REVIEW

- **ARTICLES**

1.) Srinidhi Muralidharan, Standard Form of Contracts: A Necessary Evil or Exaggerated Medium, 2019[1]

Courts assume that the parties have given their free and informed consent resulting in enforcement of such contracts. Therefore, it is to be understood that standard form contracts are seen uniquely due to the very imbroglio that exists. Contract Law, legislative wise, has evolved to an extent that it covers the application of regular form contracts.

2.) Andrew Tettenborn, The Unfair Contract Terms Act: Wider Still and Wider, 1992[2]

"The customer shall not be entitled to withhold payment of any amount due to the company under the contract by reason of any payment credit set off counterclaim allegation of incorrect or defective goods or for any other reason whatsoever which the customer may allege excuses him from performing his obligations hereunder".

3.) Andrew Burgess, Consumer Adhesion Contracts and Unfair Terms: A Critique of Current Theory and a Suggestion, 1986[3]

Consumer adhesion standard form contracts and the proliferation of unfair supplier-biased terms2 which characterize these contracts area common-place in modern day consumer markets.3 Recently, many countries have been enacting legislation aimed at providing a general scheme to deal with the potentially unfair terms in these contracts.

[1] Srinidhi Muralidharan, Standard Form of Contracts: A Necessary Evil or Exaggerated Medium, 2019, https://thelawbrigade.com/wp-content/uploads/2019/05/Srinidhi-Muralidharan.pdf, [9 JUNE 2022]
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[3] Andrew Burgess, Consumer Adhesion Contracts and Unfair Terms: A Critique of Current Theory and a Suggestion, 1986, https://doi.org/10.1177/147377958601500402, [9 JUNE 2022]

4.) Vicki Waye and Jeremy Coggins, Squeezing out the Market for Lemons: The Case for Extending Unfair Contract Terms Regulation in the Commercial Context[4]

Freedom of contract has stood as a stronghold against extending the mandate for regulating the use of unfair terms beyond consumers, small enterprises or for a narrow category of exclusion clauses. We explore if there is a rationale for extending the right to review unjust conditions in a broad company to-business setting.

5.) Ashwary Sharma, Considering Consideration in the Indian Law, 2020[5]

Contract law experts, judges, and practitioners have all given a great deal of attention to the requirement of contemplation as a subject of severe analysis. Some people have proposed the idea that consideration is not essential to the practice of contract law and should therefore be eliminated. This dispute has made its way into the jurisprudence of Indian contract law, and the mainstream idea of consideration in Indian contract law (namely, that its position in Indian law is the same as common law) has been brought into doubt as a result. It has been argued that the definition of consideration in the Indian Contract Act, 1872 is a step away from the traditional common law.

[4] Vicki Waye and Jeremy Coggins, Squeezing out the Market for Lemons: The Case for Extending Unfair Contract Terms Regulation in the Commercial Context, https://www.lexisnexis.com.au/__data/assets/pdf_file/0005/342590/Journal-of-Contract-Law-Volume-36-Part-3.pdf

[5] Ashwary Sharma, Considering Consideration in the Indian Law, 2020, https://dx.doi.org/10.2139/ssrn.3674969, [9 JUNE 2022]

- **BOOKS**

1.) Cheshire's Law of Contract, Use of standard form contracts, 12th Edition [6]

The process of mass production and distribution, which has mostly replaced, if not completely replaced, individual work, has led to the mass contract, which is a set of uniform documents that everyone who works with large-scale organisations must agree to. Such documents are not new in and of themselves. In the middle of the 19th century, a classical lawyer had a hard time adapting his simple ideas about contracts to the needs of powerful groups like the railway companies. But in the 21st century, many businesses, both public and private, have found it helpful to base their transactions on a set of standard forms that customers can't do much else than fill out.

2.) J. Beatson, A. Burrows, J, Cartwright, Anson's Law of Contract, 2016, 30th Edition[7]

Many written contracts include phrases that either exclude or limit the liability of the parties. This is especially true in the situation of documents that are in "standard form" and were drafted by either one of the parties or a trade association to which one of the parties belongs. The legislative control can be understood in the most helpful way by separating the control of exemption clauses in non-consumer contracts under the Unfair Contract Terms Act 1977 from the control of exemption clauses and unfair terms in consumer contracts under the Consumer Rights Act 2015. This provides a clearer picture of the legislative control.

[6] Cheshire's Law of Contract, Use of standard form contracts, 12th Edition

[7] J. Beatson, A. Burrows, J, Cartwright, Anson's Law of Contract, 2016, 30th Edition

STATEMENT OF PROBLEM

The dual form of the notion of freedom of contract poses a dilemma in determining SFC instances with equal regard for individual freedom and choice. Determining what this freedom entails is the most crucial and challenging undertaking. There are two interpretations of this phrase. To begin with, it implies that individuals are free to engage into contracts with anyone they choose and on whatever conditions they desire. Second, the parties should be permitted to do so without the government interfering. When it comes to SFCs, it is the merger of these two concepts that causes an issue. If the state intervenes, stringent adherents to the principle consider it a breach of freedom; if the state does not intervene, the party with lesser bargaining power in SFCs is denied freedom under the same doctrine (because such contracts are take it or leave it kind and so the terms decided already by the powerful are imposed on the weak).

RATIONALE OF STUDY

In this article, I will discuss about the standard forms of contract and how they work with different people. An additional objective of this research study is to investigate the gaps in the Indian legal system that are associated with ambiguous contracts and to make some suggestions for how these issues might be resolved. The purpose of this study was to examine the form of contracts. In conclusion, the research paper would discuss the ways in which the ambiguity inherent in contractual terms has a deleterious effect on society as a whole. I have briefly made a study of the ideals followed by the U.K and India in deciding the cases. This is done in order to show the wide gamut of problems involved in this intricate issue and how various countries deal with it.

RESEARCH OBJECTIVES

The purpose of this research is:

- To study the standard forms of contract
- To study about the Unfair terms in the contract
- To study about the unequal bargaining power
- To study about the consent of the parties

RESEARCH QUESTIONS

- Why people accept standard form of contract?
- What are the limitations of liability by one party?
- What is the nature of standard form of contract?
- How is the form of contracts different?

RESEARCH METHODOLOGY

The methodology that would be applied for carrying out this research is Doctrinal, Analytical and Critical research. In this research the primary sources of data are the Indian Contract Act 1872, Judicial Precedents, Reports of various Committees, Rules. The secondary sources of data comprise of various published books, journals, scholarly articles, news releases, online journals, research reports, and others were used.

MAIN CONTENT

STANDARD FORM OF CONTRACT

It works on the idea of "take it or leave it," so there is no room for negotiation. This saves both parties time and speeds up the process of signing a contract. It's the least expensive choice. There's no need to write a separate contract for each person and address it to them. People get used to the format over time because the terms of every contract are the same. This makes things more consistent and builds trust among customers. It also makes it harder for things to go wrong.

The UK, which is more concerned with helping people, thinks that true freedom comes from having equal bargaining power, and if people don't have equal bargaining power, the government thinks it's their right to step in and make laws to protect them. In different SFC cases, the courts have tried to come up with a body of law that protects the party with less power in negotiations. But the courts didn't judge the terms based on how fair they were and say, "We think that clause is unreasonable, so it can't be enforced" (because that would have been a direct attack on the doctrine of freedom). Instead, they took the common law understanding of how to read contracts and turned it into formal rules. Construction of Contracts was the name for this. On the other hand, the law isn't very clear about what you should and shouldn't do in SFCs to protect the weak party while also protecting the other party's freedom to contract (with respect to the terms and clauses). For example, the House of Lords has criticised the way that words in a business contract are interpreted by stretching their meaning to make them less important. This shows how contract freedom and limits on how it can be used are at odds with each other.

The Indian Position

The ICA of 1872, which is a British Indian law, is heavily based on common law ideas. And, once again, the state encourages fair and just individual exchanges. The courts and the government respect the freedom to make contracts, but they also think it's okay to step in when one party doesn't have true freedom to make contracts. In a ruling, the Supreme Court said, "If a clause in a contract is judged to be illogical or unfair, one must look at the relative bargaining power of the parties." This demonstrates that Indian courts are committed to ensuring the parties' equality and freedom. Courts have used phrases like "so wrong that it shocks the conscience of the Court" to explain why they should do anything.

Limitations of liability by one party:

- **There should be a Contractual Document:**

A contractual document must be signed between the parties in order to be submitted to the court in a standard form. The fundamental issue is determining whether the paper is a contract or a receipt. The difference between these two is that if the document expresses clearly and contains a condition, it is a contractual document; if it does not, it is a receipt. The contract must be signed by the person who accepts the document's terms and conditions.

- **There should be No Misrepresentation:**

To be legally enforceable, the contract must be free of misrepresentation, fraud, mischief, and other aspects that render the deal unenforceable.

- **There should be Reasonable Notice of the Contractual Terms:**

A good notice must be issued by the person delivering the document in order to provide appropriate information regarding the contract's terms and conditions. The terms and conditions must be provided at or before the time of signing the contract.

- **Terms of the Contract should be Reasonable:**

The contract's terms and conditions should be acceptable and not in violation of existing laws. They must be constructed in conformity with the legislation.

The courts, infact traditionally were reluctant to regard this inequality as a factor to be considered when deciding whether or not to enforce a contract. In Eric Grapp Ltd. v. Patroleum Board, Tucker, L.J. has said[8]:

Though a contract must be freely entered that does not mean that one party to a contract can escape its provisions merely because he was compelled to accept the terms of the other contracting party because there was no one else with whom he could contract for the supply of the particular commodity required.

[8] https://shodhganga.inflibnet.ac.in/bitstream/10603/132520/13/13_chapter%205.pdf

LEGISLATIVE FRAMEWORK

Section 13 of the Indian Contract Act, 1872 [9]

Two or more persons are said to consent when they agree upon the same thing in the same sense.

Section 14 of the Indian Contract Act, 1872[10]

Consent is said to be free when it is not caused by

(1) coercion, as defined in section 15, or

(2) undue influence, as defined in section 16, or

(3) fraud, as defined in section 17, or

(4) misrepresentation, as defined in section 18, or

(5) mistake, subject to the provisions of sections 20, 21 and 22.

Section 10 of the Indian Contract Act, 1872[11]

All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

JUDICIAL PRECEDENTS

- **Parker vs South Eastern Rail Co 1877**

In this case the court ruled that the company could not be prosecuted because the company made a hasty decision and the plaintiff admitted that he was aware there was something written on the back of the ticket but did not see what it was because he thought the ticket was a mere receipt.

- **Lloyds Bank Ltd. v. Bundy 1974**

The fact that Mr. Bundy was in a weaker position to negotiate terms with the bank than the bank was with him led Lord Denning MR to rule that the contract should be null and void. He came to the conclusion that improper influence was a subset of a more general category that included situations in which the power dynamic between the parties was such that it called for the intervention of the court.

- **M Siddalingappa v. T Nataraj AIR 1970**

"All articles for cleaning and dyeing are accepted on conditions that the company shall incur no liability in respect of any damage which may occur and for delay or in the event of loss for which the company may accept the liability which shall in no case exceed eight times the cleaning

[9] Indian Contract Act, 1872, § 13
[10] Indian Contract Act,1872, § 14
[11] Indian Contract Act, 1872, § 10

charges." was in question Court held that petitioner is, undoubtedly, a bailee in respect of the sarees given to him and there is a minimum duty of care imposed upon all bailees under Section 151 of the Contract Act which they cannot contract themselves out of it is not subject to any contract to the contrary between the parties. Under that section, in all cases of bailment, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would in similar circumstances take of his own goods of the same bulk, quality and value as the goods bailed. Once that minimum duty is imposed upon the bailee by the law, a breach of that duty undoubtedly clothes the party affected with the right to recover damages commensurate with the consequences".

- **Olley vs. Marlborough 1949**

In this case, the court ruled that there must be proper notice to be given before or during the signing of the contract. Thus, the notice in the room was not part of the contract and the hotel was charged with compensation to the plaintiff.

- **Henderson v Stevenson 1875**

In the case of Henderson v. Stevenson, it was decided that an exclusion of liability is not part of the contract if the party is not properly told about it with a mark that is easy to see on the contract document.

- **Mitchell George v Finney Lock seeds (1983)**

It was decided that the exclusion did include the seeds that the claimant bought and used, and that to say otherwise would be to twist the words of the contract. But it was also pointed out that this term was unfair and could be thrown out under the Unfair Contract Terms Act of 1977.

- **Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly**

The Supreme Court held that an unfair or an unreasonable contract entered into between parties of unequal bargaining power was void as unconscionable, under Section 23 of the Act. Therefore, the courts of India, since then, have shown remarkable determination to violate the contracts of printed forms where there is evidence of unequal negotiation power.It has been held that the courts would relieve the weaker party to a contract from unconscionable, oppressive, unfair, unjust and unconstitutional obligations in a standard form contract.

CRITICAL ANALYSIS

A standard form of contract has different parts that come into play when deciding a specific case. These things are:

1. Unfair terms in the contract. These can be there because one party, usually a big business with its own interests in mind, is in charge of writing it.

2.Differing bargaining power: This can be caused by:

a) a difference in the size of the businesses

b) The offeror is not competitive or has a monopoly.

3.Consent of the parties: Even when the other factors are present, most SFCs still have this. In the case of SFCs, fraud or misrepresentation aren't likely to make the consent invalid.

Since the most important things about SFCs have already been talked about, it's important to remember that they can't be dealt with separately from the idea of freedom of contract. So, when a Standard form of agreement is made between two parties with different bargaining power and their free consent, the court always looks at it with skepticism. This is also why the courts don't like to use "public policy" as a reason to get involved in private contracts. Because in those situations, a person's choice would be limited by how the court interpreted the vague concept of "Public Policy," which could mean different things to different people. (Because anything can be seen as going against public policy, depending on when and how a contract is made.) This would again put a big limit on the freedom of the people who signed the contract.[12]

SUGGESTIONS

In light of my research done for the project the stronger party in a contract should not impose the terms and conditions on the weaker party. This gives the giant company a unique chance to take advantage of the person's weakness by making him agree to terms that often look like a kind of private law and may even go as far as exempting him from the law the company from all of its obligations under the contract.

CONCLUSION

It's very common these days for one party to write up standard terms for a contract and have the other party agree to them. Usually, the terms of a contract are written down and given to the other party. The opposing side can hardly bargain. The only thing he can do is say yes. He can't change

[12] http://racolblegal.com/the-notion-of-freedom-of-contract-in-case-of-standard-form-of-contracts/#_ftnref4

it. words, or even talk about them. He can choose to take them or not. This method has clear benefits. It saves time and makes dealings more predictable. It lets both sides know what kind of risk they are likely to have to take. On the other hand, the practise could also be used in ways that aren't what they were meant for. In a contract between businesses that sell goods and services on the one hand, and private consumers on the other. The suppliers could add information to the printed form a clause that would limit or even get rid of his liability. Otherwise, be subject, either because a term is implied in the law or because it is quite clear regardless of the contract. Most of the time, the consumer would be in a weak position to fights against putting these exemption clauses in place. He didn't usually read. If he fills out the printed form, it would defeat the main purpose of saving time. He sometimes couldn't get the goods or services he wanted except on the terms listed in the offer, so in the end, it might have been his only option to take them on those terms or not take them at all.

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