STANDARD FORM CONTRACT: ITS LEGISLATIVE AND JUDICIAL TREND

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A. Legislative Control

(a) General

In order to protect consumers against such one sided contracts and agreements (standard from contracts) we need to have a specific law or a regulation that prohibits unfair terms in contract. Legislation is the promulgation of legal rules by an authority which has a power and authority to legislate. The law which comes into being through legislation is called enacted or statute law. It is for the courts to apply them in specific cases.

In the United Kingdom for example, protection to the consumer is given through the Unfair Contract Terms Act of 1977, which together with the Sale of Goods Act of 1979, makes some forms of exclusion clauses null and void in all circumstances. In addition, the unfair terms in consumer contracts Regulations that came into force in October, 1999 in response to an European Commission Directive, apply to standard contract terms used with consumers. Under these regulations, a consumer is not bound by a standard term in a contract with a seller or a supplier if that term is unfair. They also give the Office of Fair Trading and other qualifying bodies such as the utility regulators and the consumers association, the powers to stop the use of unfair standard terms by business.

In India, there is no specific legislation and mechanism to protect consumer's interests. However, the monopolies and Restrictive Trade Practices Act, 1969 deals with the problems of Restrictive Trade Practices which generally, are in standard form. Provisions to regulate these contracts are mainly scattered in different statutes. It is very necessary to discuss the legislative control over standard form contracts. Here, we are discussing some enactments which relate to the control of standard form contracts as legislative measures.

(b) The Indian Contract Act, 1872:

This act was passed in 1872 when the standard form contracts were not so popular among business communities. These contracts became popular in the end of nineteenth century. Some provisions of the Indian Contract Act, 1872, however, provides some control over those contracts.

(i) Undue Influence and Public Policy:

According to the Indian Contract Act, in undue influence, one party must be in a dominating position and also uses it for obtaining unfair advantage over the other[1]. A person is deemed to be in a position to dominate the will of another when he holds a real or apparent authority over the other or where he stands in a fiduciary relation to another or where he enters into a transaction with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress. In *PK Achutan v. State Bank of Travancore*[2], it was held that a question about the unconscionableness in an agreement would properly arise only when the relationship between the contracting parties was such that one party was in a dominating position the will of the other and that he has used such position to get an unfair advantage over the other. Only in those cases in which the both conditions are clearly established by the party who wants to avoid the transaction and the court finds the bargain in the case is so unconscionable that the terms of the contract in question will be held to be uninforceable on the ground of unconscionableness.[3]

Where on party is in a dominating position to dominate the will of another and the transaction appears on the face of it or on the basis of evidence produced to be unconscionable, a presumption of undue influence would arise there. The party who is in a dominating position has to prove that he did not exercise undue influence in that case.

The above discussion about the doctrine of undue influence in the law of contract brings in a bold relief that it presupposes some form of association between the parties prior to the entering into the contract and giving one party the opportunity to take unfair advantage over the other. In respect of those sales which are in standard form; the absence of prior relationship between the parties is much fatal for the operation of the doctrine of undue influence.

[1] See section 16, The Indian Contract Act, 1872.
[2] A.I.R. 1975 Ker. 47.
[3] See also Ladli Prasad Jaiswal v. The Kamal.

It is now well settled that no such contract would be enforced which is against the policy of th law or is against to such interest of the consumer, which the state has to protect.[4]

We can conclude that the courts should face the problem faced by the standard form contracts squarely and try to solve it rationally by using the concept of public policy in section 23 of the Indian Contract Act, 1872 in a more dynamic and functional manner. The concept of public policy is certainly capable of being used more effectively that at present it is.

(ii) Contract of Service:

In a contract of service, the parties have full liberty to include whatever terms they choose, they may clearly make provisions about every term of the contract e.g., for wages when and where payable, what duties are to be performed by the parties, and when and where those duties are to be performed, which type of notice is to be required to terminate the contract, what are the rights of the parties on the illness, what are the rights of the representatives in the case of death of either of them, etc. These may be covered by a number of documents such as letter of appointment, orders by the employer from time to time and statutory rules and administrative directions, viz., conditions of service.

The provisions of the Indian Contract Act, 1872 have been used to regulate the terms contained in a service contract. There are certain other provisions scattered in different statutes for regulating the relations of master and servant and prohibiting them from arranging their own terms relating to hours of work, wages and the like, for protecting the employee from unfair advantage due to their weaker bargaining position. The legislative regulation of such contracts can be divided under the following heads:-

(i) Service contracts under the Indian Contract Act, 1872:

The Indian Contract Act provides that:

> Every agreement by which anyone is restrained from exercising lawful profession, trade or business of any kind, is to that extent void.[5]

The scheme of the contract act was to enunciate the rule in section 27 and it also lay down in the enactment itself the exceptions to the rule. The first exception, regarding the sale of the goodwill of the business is annexed to section 27 itself. Three more exceptions to the rule were also a part of the chapter on partnership in unamended contract which later became the Indian Partnership Act, 1932. These exceptions are contained in section 11(2), 36(2) and 54 of the said act. It is to be noted that the contract between the master and servant was not the subject matter of any of the exceptions. If the rule is subject to the stated exceptions only, the ordinary interpretation of these statutory provisions would be that no other exceptions are to engrafted upon these statutory rules stated in section 27.

The Indian Courts have constructed section 27 in the following way:

(a) When a contract of service is valid and under the contract an employee is required that during the period of service he must not engage in any other work and must not disclose to any person, the trade secrets of the employer, then under such an agreement, even in the absence of a negative covenent prohibiting the employee from doing so, the employee would be prohibited by the law from doing so. For, these acts are inconsistent with the performance fo the contract which would amount to breach of contract. This conclusion can be based on the contract itself even without invoking section 27 of the act.

(b) But any restraint imposed by the employer on the employee would prima facie be illegal and void as being directly hit by section 27, if it is to operate after the expiry of the period of service contract.

In *Niranjan Shankar v. The Century Spinning & Manufacturing Co. Ltd.*[6] appellant was employed as shift supervisor in the type cord division of Century Rayons. He executed a contract in the standard form, clause 17 of which reads as follows:

> In the event of the employee leaving or resigning the service of the company in breach of the terms of the agreement before the expirty of…..five years, he shall not directly or indirectly engage in or carry on….the business at present being carried on by the company and he shall not serve in any capacity, whatsoever or be associated with a person, firm or company carrying on such business for the remainder of the said period…..

There was a further provision as to repayment of liquidated damages, and also the refund of the expenses incurred on the employee's training. Under an agreement with a West German firm, the company was committed to secrecy as to technical know-how. The employee received the training including technical knowledge. After serving the company for less than a year, the employee took a job in rival concern. The employer sought the enforcement of the contractual terms.

[4] Section 23 and 27, The Indian Contract Act, 1872.
[5] Id Section 27.
[6] A.I.R. 1967 SC 1098.

(ii) Service Contracts under other Enactments:

For the protection of the interest of the employees provisions have been made in several statutes, and it is clearly provided in those statutes that the provisions of these acts shall have precedence over any terms contained in the terms of employment, i.e., the terms of service which are against the provisions of the act shall be void. For example th Beedi and Cigar Workers Act, 1966[7] provides that the provisions of this act shall be given effect to notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement or contract of service whether made before or after the commencement of the act.

To regulate contract of apprenticeship, The Apprentice Act was passed in the year 1961. Under this act every contract of apprenticeship may contain such terms and conditions as may be agreed to by the parties to the contract but such terms and conditions should not be inconsistent with any provision of this act or any rule made thereunder.[8] If any such terms and conditions are there, those shall not be given effect to. A provision is made in the act for registration of contract of apprenticeship with the Apprenticeship Advisory[9]. The Apprenticeship Advisor shall refuse to register a contract of apprenticeship if he is not satisfied under this act for being engaged as an apprentice to undergo apprenticeship training in the designated trade specified in the contract[10].

(c) Contracts in Restraint of Legal Proceedings (Section 28):

Standard form contracts often contain conditions which inter alia relate to the time within which notice must be gtiven or claim must be made, or for compulsory reference to arbitrators and finally of their decision or stipulations regarding jurisdiction of the courts of particular state or city only. The validity of these conditions may be examined with reference to section 28 of the Indian Contract Act under the following heads:

(i) Agreements Restrictingi Legal Proceedings:

Provisions of this section relating to the agreements in restraint of legal proceedings have been explained by Garth C.J. of Calcutta High Court in the case of *Coringo Oil Co. Ltd. v. Koegler*[11] thus:

> This section applies to agreements which wholly or partially prohibit the parties from having recourse to a court of law. If, for instance, a contract were to contain a stipulation that no action should be brought upon it, that stipulation would be void, because it would restrict both parties from enforcing their rights under the contract in the ordinary legal tribunals.[12]

(ii) Agreements Limiting Time:

An agreement which provides that a suit should be brought for the breach of any term of the agreement within a time shorter than the period of limitation prescribed by law is void upto that extent. For example, in an insurance policy the validity of the following clause was to be tested:

> No suit to recover under this policy shall be brought after one year from the death of the assured.

It was held that the clause is void under the provisions of this section.[13]

Courts have distinguished agreements of this kind from those which do not limit the time within which a party may enforce his rights, but which provide for a release of forfeiture of rights if no suit is brought within the period stipulated in the agreement. The latter class of agreement are outside the scope of the present section, and they are binding between the parties.

(iii) Jurisdiction of Courts Restricted to Particular State or City Only:

Standard form contracts often contain clauses 'subject to jurisdiction of particular place'. The question arise whether such clauses are violative of the provisions of section 28 of the Contract Act. These clauses have been subject matter of judicial interpretation in a number of cases, for example in *Hukam Singh v. M/s Gammon (India) Ltd.*[14] appellant agreed to do certain construction work for the respondent on the terms and conditions of a written tender. Clauses 12 and 13 of the tender were:

> 12. In the event of any dispute arising out of this sub contract, the praties hereto agree that the matter shall be referred to arbitration, by two arbitrators under the Arbitration Act, 1940, and such amendments thereto as may be enacted thereafter.
>
> 13. Notwithstanding the place where the work under this contract is to be executed, it is mutually understood and agreed by and between the parties hereto that this contract shall

[7] Section 16 of the act.
[8] Section 4(2), The Indian Apprenticeship Act, 1961.
[9] Id section 4(1) (b).
[10] Id section 4(3).
[11] (1876) 1 Cal. 446.
[12] Id at 468-69.
[13] Hirabhai v. Manufacturer's Life Insurance, (1912) 14 BLR 741.
[14] A.I.R. 1971 SC 740.

be deemed to have been entered into by the parties concerned in the city of Bombay, where they shall have jurisdiction to adjudicate thereon.

From the above observation of Supreme Court it is clear that where more than one court have jurisdiction to try suit, the parties can by agreement restrict that only one court will try the suit. But the courts have not restricted the jurisdiction to one court only where such a term does not form part of the contract. For example in *Grandhi Pitchaish Venkatoraju & Co. v. Pulukuri Jagannadham and Co. Calcutta*[15], a bill was prepared by Calcutta's firm adressed to petitioner of Rajahmundry. It contained description of the pulses supplied, the weight and the rate and the total payable. It further contained the top words "subject to Calcutta jurisdiction" and same was underlined in print.

(iv) Arbitration Agreements:

Exception 1 to section 28 provides that this section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of subject shall be referred to arbitration and that only the amount awarded in the such arbitration shall be recoverable in respect of the dispute so referred. In other words, an agreement to refer disputes to arbitration is perfectly valid. Thus in, *Coringo Oil Co. v. Keogler*[16], the validity of a clause in agreement that all disputes would be referred to arbitration of two competent London brokers and their decision would be final came for consideration before the Calcutta High Court.

If the reference to arbitration is made a condition precedent before an action can be started in a court of law; the condition will be valid. For example in *N.G. Insurance Co. v. United Equipment Stores*[17] insured car was damaged in an accident. The owner got it repaired in garage and duly signed the claim form. He drove away the car from garage without the inspection having been done by the company's surveyor. The company objected to this. The owner paid the bill and filed a suit for the recovery of Rs. 1000/- from the company. In the agreement between the parties there was a clause : … "the making of a Award shall be condition precedent to any right of action against the company". The question was whether this clause in the agreement deprived the party of his right to have recourse under section 28 of the Indian Contract Act. It was held that since clause merely staggered the right of a party to move the court and did not close the doors of the court to him the clause was valid. It did not contravene section 28 of the Indian Contract Act.

(d) Section 74 of the Indian Contract Act, 1872:

The study is divided into following heads:

(i) Supply of Goods:

Government departments and corporations made bulk purchases from different agencies. They have printed terms and conditions in their order forms. The terms and conditions which are in standard form have often come for interpretation and enforcement before various courts. For example in *Union of India v. Basudeo Agarwal*[18], where plaintiff respondent entered into five contracts by execution of purchase orders, with defendant Railway for supply of different kinds of commodities. These purchase orders were printed forms of defendant Railway in which such agreements were entered into. Terms and conditiosn were printed on the reverse of each purchase order. The crucial term on the reverse of the purchase order was condition number 8, which was as under:

> Time for completion, of delivery should be deemed to be essence of the contract. If the quantities contracted through this purcahse order are not supplied within the stipulated date or dates the supplier is liable to a penalty to percent per day on the value of quantities, he has failed to deliver by the stipulated date or dates, but the Railway administration reserves the right to refuse to accept the undelivered position of the contracted quantity after 7.9.49 (date) whether the Railway administration will be at liberty to purcahse elsewhere on the account and the risk of the suppliers, the said undelivered quantity and to recover from the supplier any extra cost that may be incurred from the money due to supplied by the Railway administration and/or forfeit the security deposit in whole or in part at the discretion of the Railway administration.

The commodities contracted for under these agreement were not delivered within the time stipulated; and there was delay in each case, and the commodities were supplied and accepted in each case beyond even the extended date mentioned in clause 8 of each of these fine agreements. The defendant Railway made deductions from the plaintiff's bill on acount of delayed delivery beyond the extended time as provided in clause 8 of the agreement.

[15] A.I.R. 1975 AP 32.
[16] ILR (1876) 1 Cal. 466.
[17] A.I.R. 1970 Cal 221.
[18] A.I.R. 1960 Pat 87.

To take an example, suppose, the delivery is made long after even that of extended time mentioned in clause 8 and the defendant although not bound under clause 8, to take the delivery then, accepts because it finds that at that date the amount of penalty comes to more than the price of the commodity delivered and therefore, the defendant would get the commodity gratis, without paying a farthing for it, but it would also get in cash from the plaintiffs as damage for delivery delayed, then in such a case the plaintiffs will lose not only the commodity supplied and the price thereof, but will also have to pay over and above the commodity, some money in cash to the defendant. This aspect clearly established the extravagent and unconscionable nature of the terms in question. The amount of such penalty, in the given case, would be far greater than in comparison with even the greatest loss that could conceivably be proved to have flowed from the breach. The fact that the amount deducted by the defendant in each case is not much, is to my mind, not the test to determine whether the stipulation for payment of the penalty was in the nature of the penalty. In the instant case it cannot be said that the fact of the claim for penalty being of an exorbitant or of an unconscionable amount as compared with any possible damage could not have been within the contemplation of the parties, and therefore, this is also a reason for holding it to be a penalty, and not to be liquidated damages.

The court concluded by saying:

> This stipulation could not possibly have formed a genuine pre-estimate of the defendant's probable or possible interest in the due performance of the principal obligation by the plaintiffs, as contended by the appellant. This penalty clause, therefore, is more 'brutum fulmen', an agreement that neither party had any intention of enforcing at all to any extent. As the appellant wanted to seek to show that it is liquidated damages, the onus was on the appellant to prove that such was the intention. The appellant, in my opinion, has not succeeded in discharging its onus.[19]

(ii) Work Contracts:

The provisions of section 74 of the Indian Contract Act have also been applied in situations where a contract is entered into to execute some work. For example in *State of Rajasthan v. Chander Mohan Chopra*[20], the plaintiff-contractor had not finished the work by the date fixed in the agreement, i.e. 9.1.1956. The defendant state allowed him to continue and complete it and final bill was prepared, without imposing any penalty in terms of contract. The contractor claimed refund of security deposit. The public works department claimed to deduct Rs. 15000/- as penalty. On a suit brought by the plaintiff for the recovery of the deposit it was held that in view of the statement of the Chief Engineer himself, it is difficult for us to hold that the Department sustained any loss on account of the breacah of the contract in not having completed the work within the stipulated time. Section 74 of the contract act is fully applicable and the defendant state was not entitled to recover any amount by way of compensation from the plaintiff.[21]

(iii) Hire Purchase:

Hire purchase contracts are also generally in standard form and courts have relieved the hire purchase against the penal provisions contained in such contracts. Most illustrious judgement of Mr. Justice B. Mukherji in *Tirath Raj Pandey v. Amar Credit Corporation*[22] needs discussion in detail. In this case on August 19, 1963 plaintiff agreed to buy and the firm agreed to sell, a motor car for rupees 17,651, Rs. 14,000 being the net price plus Rs. 3651 representing the interest, all costs and expenses for payment of instalments of Rs. 646 a month after an initial payment of Rs. 2,148 on August 19, 1963 and took delivery of the motor car upon execution of an agreement in English in a printed form. By September 22, 1965 Rs. 14,437 were paid, leaving a balance of 3,214. Defendant took possession of the car because the plaintiff made default in making payment of remaining instalments.

Holding that the firm is not entitled to retain the car, in addition to Rs. 14,437 which it has received already, the court observed:

> The reason is this: reckoning penalty as the genus, section 74 provides – one species thereof is the sum named in the contract as the amount to be paid which the contract is broken; and another species is any other stipulation the contract contains by way of penalty. The first species does not bulk large here and at this stage. The second species does. For illustration, say, Tirathraj has paid Rs. 17,005 that is, all the monthly instalments put together but the last and has therefore, not paid the last monthly instalment of Rs. 646 plus the option fee of Rs. 1 and he will be punished – in plain English, penalty means punishment – by paying the forfeit of Rs. 17,005 and also by losing the car, which he was

[19] Id at 94.
[20] A.I.R. 1971 Raj 229.
[21] Id at 231.
[22] (1967-68) 72 CWN 243.

> ought to purchase on deferred payments. This is penalty: the second species provided for in section 74.[23]

The court concludes saying:

> I, therefore, see here penalty, not in a sum of money, but in the stipulation itself, enabling the firm to get both the car and the sum of Rs. 14,000 odd received so far from Tirathraj. And I shall not enforce it.[24]

(iv) Cash Credit:

Loans are advanced by the governmental or non-governmental agencies on standard terms and conditions. If there is any stipulation which is penal in nature, it is subjected to the provisions of section 74 of the act. Whether a stipulation for enhanced interest at 11% from the date of default is a penalty brought up for consideration before the Punjab & Haryana High Court in *M/s Jyoti Cold Stores v. Punjab Financial Corporation*.[25] In this case the appellant had taken loan from the respondent by the mortgage of properties and under the terms of the mortgage, the principal was payable in each annual instalemnts. As the appellant failed to make the payment of the instalments as and when those became due, the respondent issued notice that the loan had been recalled. As no payment was made in response to the notice, another notice was issued and thereafter the petition was filed for the recovery of the amount with interest and future interest at the rate of 11%, the appellant had challenged the claim of the corporation for the enhanced interest on the ground it was penal.

The court rejected the contention that the stipulation was penal. The explanation to section 74 provide that "a stipulation for increased interest from the day of default may be a stipulation by way of penalty". Man Mohan Singh Gujral J. pointed out:

There is nothing in the explanation to preclude the court from coming to the conclusion that a stipulation for increased interest from the date of default ought not to be regarded as stipulation by way of penalty. Read in the light of the illustration, the Explanation shows that it is for the court to decide, on the facts of a particular case, whether the stipulation is by way of penalty or not. If the court finds a stipulation on to be a penalty, it may award compensation not exceeding the penalty stipulated for. If there is something unconscionable or unreasonable about the agreement or if the enhanced interest be not moderate, the court may find the stipulation to be penalty.[26]

(e) Contracts of Bailment:

In the present society persons usually require goods for some specific purpose for a short time or require services of others in relation to their own goods, for example, parking places, warehouses, cloak rooms, laundries and garages etc. The agreements on the basis of which goods and services are contained are known as contracts of bailment. Such contracts to limit their liability or exclude altogether or they may place conditions restricting / limiting their liability by resorting to printed forms. The question that needs to be examined is to what extent the provisions of Indian Contract Act can be effective to protect the weaker party from such exclusion or limitation of liability clauses.

The liability of the bailee in respect of the bailed goods is prescribed in sections 151 and 152 of the Indian Contract Act. According to section 151:

> 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 pundence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

Section 152 provides:

> The bailee, in the absence of any special contract, is not responsible for the loss, distruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

The learned judge of the trial court observed that the condition relating to the restriction of the claim to 50% of the market price is not enforceable on public grounds. If this condition is enforced, then, any laundry owner will try to misappropriate new clothes.

(f) Contract of Agency (Section 192):

Often services are rendered by the agents on pre-drawn terms and conditions which exempt the agent from liability in situations in which he would ordinarily have been liable. Section 192 of the Indian Contract Act, 1872, which inter alia lays down the liability of the agent, provides that the agent is responsible to the principal for the acts of the sub-agent and the sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilfull wrong. The question then arises whther the agent can exclude his liability as laid down in the above mentioned section. This question came up for consideration before the Punjab High Court in *S.*

[23] Id at 270.
[24] Id at 273.
[25] A.I.R. 1973 P&H 38.
[26] Id at 38.

Summan Singh v. National City Bank of New York, Bombay[27]. The question to be decided was whether because of the exemption clause National City Bank was protected and was not liable for the negligence of its agent, the Punjab National bank.

(g) The Sale of Goods Act, 1930:

Most of the contracts for the sale of goods are in standard form. The law governing transactions of sale is contained in the Indian Sale of Goods Act, 1930, which in turn is based on English Sale of Goods Act, 1893. The English statute was passed at a time when the previous rigorous attitude of the common law to the maxim caveat emptor was being questioned in the light of new industrial and merchandising techniques. The earlier tensions between the caveat emptor and the needs of consumer protection were therefore reflected in the provisions of English Act and Indian Sale of Goods Act, 1930.

Importing the notions of public policy in certain bailment contracts the courts in India have declared clause void in such contracts which exclude or restrict liability. This bold step, however, has not been taken by the courts with reference to exclusion of liability by the seller of goods, presumably with a view to avoid adverse economic repercussions. Such exclusion or limitation of liability is frequently resorted to by the sellers/ manufacturers in the garb of issuing guarantees. There is nothing in the way if the courts are so inclined to strike down such terms in guarantees, but for reasons undisclosed they have not done so.

(h) The Hire Purchase Act, 1972:

Hire purchase agreements are standard form agreements wherein hirer is only required to put his signature on the dotted lines. These agreements are heavily loaded in favour of financers. These financiers and commercial instutitions exploit the weaker section of the society because of their superior bargaining and monetary power.

This act aims at striking a balance between the rights and liabilities of the hirer and owner. Chapter II of the acat deals with 'forms and contents of hire purchase agreements'. According to section 3 of the act a hire purchase agreement must be in writing and signed by all the parties thereto and if these requirements are not complied with, such agreement is specifically declared to be void. Similarly for the protection of the hirer it is essential that in the hire purchase agreement, the hire purchase price of the goods, the cash price of the goods, the date on which the agreement is to commence, number these requirements. But the hirer may institute a suit for getting the hire purchase agreement rescinded.[28]

B. Recent Judicial Trend

In *Lewis v. Great Western Railway*[29]:

In this case the court of Exchequer rejected a plea of th plaintiff that a printed form in a contract was not binding on him since he could not be expected to have read so lengthy a document which was presented to him in printed form.

Olley v. Marlborough Court[30]:

In this case the court of appeals in England refused to enforce a clause in a printed form displayed in a hotel room, exempting the hotel from any liability for loss.

The strict enforcement theory is not a satisfactory means of resolving the issue as it requires for its applicability, a valid contract. In *Lily White v. R. Manuswami*[31]: The Madras High Court has held that printed forms are not directly enforceable in view of the absence of consensus as to the terms thereof.

The Supreme Court in *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly*[32] 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. Thus Indian courts have, since then shown a marked willingness to interfere with printd form contracts where there is evidence of unequal bargaining power.

In *Delhi Transport Corporation v. DTC Mazdoor Congress*[33] it has been held that the courts would relieve the weaker party to a contract from unconscionable, oppressive, unfair, unjust and unconstitutional obligations in standard form contract.

In the case *Mukul Dutta Gupta v. Indian Airlines Corpn.*[34]

[27] A.I.R. 1951 Pun. 172.
[28] Section 4, The Hire Purchase Act, 1972.
[29] 157 ER, p. 1427 (Ex. 1860).
[30] (1949) 1 All ER 127.
[31] A.I.R. 1966 Mad 13.
[32] (1986) 3 SCC 156.
[33] 1991 Supp (1) SCC 600.
[34] A.I.R. 1962 Cal. 311.

The Calcutta High Court held to be binding, the conditions of carriage applicable to an air ticket, which were printed in small font, on the inside of the air ticket. The High Court was of the view that sufficient steps were taken by the airline company to bring these conditions of carriage to the notice of the customers.

Similarly, in the *Indian Airlines Corporation v. Jothaji Maniram*[35], Madras High Court held to be binding, certain conditions limiting the liability of a carrier, which were printed on the consignment note. The high court was of the view that there were the conditions that the customer could reasonably expect to be bound by in the course of such transactions.

In *LIC of India v. CERC*[36]

The Supreme Court has also held that standard form contracts drawn up even by the government must be fair, and that these contracts are open to judicial review on grounds of unreasonableness or unfairness.

In Chairman and MD, *NTPC Ltd. v. Reshmi Constructions Builders and Contrators*[37], the Supreme Court has upheld a plea that a printed form contract was void on grounds of coercion, where the parties had unequal bargaining power.

In *R.S. Deboo v. Dr. M.V. Hindlekar*[38]

Bomaby High Court followed the view of Madras High Court that a printed form in a dry-cleaning contract, exempting the dry cleaner from any liability in the event of loss or damage to the clothes concerned has been held to be contrary to public policy and therefore void.

In *Tata Chemicals v. Skypak Couriers*[39] the National Consumer Disputes Redressal Commission after referring to copious case law, refused to enforce an onerous clause in a printed form contract and accordingly relieved a consumer from the terms found thereon.

As a general rule, the common law treats standard form contracts like any other contract. The signature or some other objective manifestation of intent to be legally bound will bind the signor to the contract whether or not they read or understood the terms. The reality of standard form contracting, however, means that many common law jurisdictions have developed special rules with respect to them. In general, in the event of an ambiguity, the courts will interpret standard form contracts *contra proferentem* (against the party that drafted the contract), as that party (and only that party) had the ability to draft the contract to remove ambiguity.

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