

TAKE IT OR LEAVE IT: INDIAN JURISPRUDENCE ON THWARTING UPRISING ABUSE OF STANDARD FORM CONTRACTS

Manik Tindwani* Rupali Chauhan*

ABSTRACT

Contracts are not limited to agreements where the terms and conditions are mutually decided by the parties. A standard form contract is a perfect epitome. The Standard Form Contracts are standardized contracts that have a lot of terms and conditions that limit and frequently exclude liability. This presents an opportunity for the large corporation to take advantage of the individual's vulnerability by imposing terms on him that frequently resemble a form of privacy legislation and may even go so far as to release the business from all liability under the contract. Now, several intriguing legal questions emerge under these conditions including, inter alia, whether such an exclusion clause is legally valid, whether there are any restrictions on its use, and is there any legal recourse available against such abuse. The courts are now in charge of fighting such abuses. The courts have had a very difficult time helping the less powerful party. It is therefore the Courts evolved several principles including the doctrine of strict construction and the doctrine of contemporaneous notice to ensure the protection of the rights of the accepting party in case of a breach. Studying and analyzing these doctrines in the context of standard form contracts form the core of this research endeavor.

Keywords: Standard Form Contracts, Strict Construction, Contemporaneous Notice, Liability Exclusion Clause.

RESEARCH OBJECTIVES

The research paper aims at studying the doctrine of contemporaneous notice and the doctrine of strict construction in the context of Standard Form Contracts and their use to prevent the legal rights of the accepting party on breach of contract. The research paper also discusses the quintessential of a valid standard form contract and other legal recourse available to the parties accepting the terms of a standard form contract.

*BA LLB, SECOND YEAR, UNIVERSITY OF RAJASTHAN, JAIPUR.

*BA LLB, SECOND YEAR, UNIVERSITY OF RAJASTHAN, JAIPUR.



RESEARCH QUESTIONS

The research paper aims at divulging the opinions of the researcher on various research questions including, inter alia,

1. What is a Standard Form Contract?
2. What legal issues are people facing due to the increased use of Standard Form Contracts?
3. What is the legal course available to parties accepting the terms and conditions under the Standard Form Contract to enforce their legal rights in case of breach of contract?
4. What is the doctrine of contemporaneous notice and the doctrine of strict construction?
5. How are these doctrines useful in preventing the legal rights of the accepting party?
6. Whether there is any difference of views between English and Indian Jurisprudence on the subject matter?
7. What are the steps which are required to be taken by the Government of the State to remedy injustice in case of breach of a standard form contract including an immunity clause?

RESEARCH HYPOTHESIS

The researcher has formulated the following hypothesis which is tested in the research paper further:

1. The Standard Form Contracts are being misused by industrialists to immune themselves from liability arising from breach of contract.
2. Increased use of Standard Form Contracts with an immunity clause is causing legal complications in the enforcement of rights of the accepting party in case of a breach.
3. There is a slight difference of views between English and Indian Jurisprudence on the subject matter.

RESEARCH METHODOLOGY

The researcher has adopted Doctrinal Research Methodology. The Researcher has made excessive use of primary and secondary data available on the Internet in form of articles, thesis, research projects, blogs, and other sundry miscellaneous sources including books,

commentaries, and legal research databases which are duly accredited with appropriate citations hereunder according to the OSCOLA Rules of citation.

STANDARD FORM CONTRACTS

“Standard form contracts” are non-negotiable, “take it or leave it” contracts, i.e., a contract signed by two parties in which there is no space for discussion. The consumer is unable to renegotiate the contract’s normal terms, and the company’s representative cannot often do so. Such contracts are also known as “Contracts of Adhesion”, which means that the individual has no choice but to accept; he does not negotiate, but merely adheres. They are also known as “Compulsory Contracts”, which are a form of imposition; and “Private Legislation”, which is a form of a code of bye-laws based on which the individual can enjoy the offered services.¹

It is very difficult for huge corporations to negotiate individual contracts with each employee. According to Kessler, they maintain written forms of contract, i.e. Standard Form Contracts, that include a huge number of terms and conditions in “fine print” that limit and often exclude the other party’s obligation under the contract.² Briefly, the Standard Form Contracts may be explained as a consequence of:

- a) the usefulness of having a printed form;
- b) the fact that one party is in a position where the terms dictated by it can be imposed on the other, regardless of the other party’s will; and since the terms of such agreements are known to the former even before the parties enter into such agreements, the former prints it out and keeps it ready, waiting for the parties to enter into such agreements; and;
- c) the consumer’s desire to cooperate with the provider and his assessments of the likelihood that the contract will be upheld against the latter.³

Such terms and conditions set out in the contract are acceptable for the following reasons in particular:

¹Anson, Law of Contract (23rd end, AG Guest 1971); Nair Shyama, “Standard Form Contract” (Legal Services India) <<http://www.legalservicesindia.com/article/1161/Standard-Form-Contract.html#:~:text=The%20Notice%20Should%20Be%20Contemporaneous,his%20assent%20for%20the%20same>> accessed June 25, 2022.

² *Id.*

³ *Id.*

- a) Standard Form Contracts are not often read: Such agreements are usually printed in small size and written in complex legalese, which is often incomprehensible to the general populace. Additionally, such agreements are usually “take it or leave it” agreements. The anticipated return from reading the contracts is modest, and relatively few individuals do so because of the lengthy time commitment required.
- b) Before an acceptance, access to the complete conditions may be difficult or impossible: The buyer is often informed that the contract they are about to sign does not include all of the provisions; instead, it just contains a portion of them. This lessens the possibility that the conditions will be read; in other cases, such as with software licensing agreements, the terms can only be read after being ostensibly agreed upon via the purchase and opening of the item.
- c) Boilerplate terminology is not important: The price and quality of a product are the most crucial conditions for buyers, and these terms are often understood before the Standard Form Contract is signed. As a result, other terms that can be exploitative are not read at all.
- d) Various kinds of societal pressure to sign documents may exist: Standard Form Contracts are only signed when the major points of the transaction have been settled or fully explained. There may be a variety of social pressures to seal the deal at such times. For instance, there may be further pressure to sign fast if the buyer is at the head of a line, or the salesman may insinuate that the extra conditions are “simply something the attorneys want us to do”. As a result, the buyer signs the Standard Form Contract in a rush to complete the deal.
- e) Standard Form Contracts may take advantage of unequal power relationships: If the commodity being sold through a Standard Form Contract appeals to the buyer or is an essential one for the buyer, such as a rental property or a necessary medical item, then the “take it or leave it” condition again has an effect and the buyer frequently has no choice but to buy that commodity.⁴

⁴ Anson, Law of Contract (23rd ed, AG Guest 1971); Nair Shyama, “Standard Form Contract” (Legal Services India) <<http://www.legalservicesindia.com/article/1161/Standard-Form-Contract.html#:~:text=The%20Notice%20Should%20Be%20Contemporaneous,his%20assent%20for%20the%20same>> accessed June 25, 2022.

CHARACTERISTICS OF STANDARD FORM CONTRACTS

A standard form of contract forbids discussion and is either accepted or rejected. It is often an agreement reached between parties with different negotiating power. A legally binding agreement between two parties to do a task is a kind of contract in which one side has all the bargaining leverage and uses it to shape the agreement solely in their interests. It may also be referred to as an adhesion contract or a boilerplate contract.⁵ A standardized contract form that gives customers products or services on a fundamentally “take it or leave it” basis without allowing consumers actual chances to negotiate conditions that would suit their interests is an example of an adhesion contract. When this happens, the customer is prevented from getting the desired item or service unless they agree to the standard contract. Considering a different scenario, where a salesman from a global firm hands a person a contract. The client is not permitted to discuss the common clauses of such contracts, and the company’s representative cannot often do so. Adhesion agreements themselves are not illegal, but there is a very good likelihood that they might be unconscionable.

LEGAL PROBLEMS ASSOCIATED WITH STANDARD FORM CONTRACTS

The law of contracts is now dealing with an issue that is taking on new dimensions. The issue has developed as a result of the widespread and large-scale contemporary practice of signing contracts in standardized forms. People who are forced to conform by such exemption provisions or standard form contracts barely have a choice or other option. This presents a singular chance for the large corporation to take advantage of the person’s vulnerability by imposing clauses that may even exclude the business from any contractual accountability. It is right and vital that their interests be upheld. To safeguard these individuals’ interests, the courts have developed a set of norms.⁶ Offer and acceptance are necessary for a contract to be enforceable. To be considered an acceptance, it must be made knowingly and consciously of the terms and circumstances of the proposition. This is known as a legitimate acceptance. Of course, this does not suggest that a man who signs a contract while wearing a blindfold would be exempt from his responsibilities under that contract only because he subsequently decides to take it off. However, Section 2(b) of the Indian Contract Act, 1972 does provide that the

⁵ *Id.*

⁶ Vishnu S., “Standard Form of Contract” (Legal Services India)
<<http://www.legalservicesindia.com/article/286/Standard-form-of-Contract.html#:~:text=A%20standard%20form%20contract%20is,into%20between%20unequal%20bargaining%20partners>> accessed June 25, 2022.

acceptor must have a reasonable chance to examine the proposal and make a decision on its acceptance. However, the person under the Contract of Adhesion has no option “but to accept”, and instead just adheres which makes them susceptible to legal abuse.⁷

PROTECTION FROM LEGAL PROBLEMS

Abuse at a large scale cannot go unnoticed. So, the Courts had taken note of the growing legal concern regarding the use of standard form contracts. To remedy injustice the Courts formulated several principles and doctrines over decades to prevent people from such abuses including, inter alia, the doctrine of reasonable notice, the principle of contractual documentation, the principle of no fraud and misrepresentation, the doctrine of fundamental breach, the doctrine of tortious liability, the principle of exclusion of the third party, the doctrine of strict construction and doctrine of contemporaneous notice. The principles and doctrines are elucidated as follows:

1. Doctrine of Reasonable Notice

The doctrine of Reasonable notice states that the person providing the document has a responsibility to adequately notify the offeree of the written terms and conditions. The acceptor will not be bound by the terms if it is not done. In *Henderson v. Stevenson*⁸, the plaintiff paid for a steamship ticket that said, “Dublin to Whitehaven” on the front and several limitations on the back, one of which prohibited the firm from being held responsible for the passenger’s or his luggage’s loss, damage, or delay. The plaintiff was not shown the ticket’s back, and the stipulations on the back were not disclosed on the front of the ticket. Plaintiff’s luggage was lost in the shipwreck as a result of the carelessness of the company’s workers. The House of Lords established that, notwithstanding the exemption terms, the plaintiff is nonetheless entitled to compensation from the firm for the damage he sustained.⁹

The plaintiff in *Parker v. South Eastern Rail Co.*¹⁰ left his suitcase in the cloakroom at a train station and was given a ticket. The words “See back” were placed on the front of the ticket, while the words “the firm will not be liable for any package exceeding the value of 10” were printed on the back. The identical message was also posted on a sign in the changing room.

⁷ *Id.*

⁸ *Henderson v. Stevenson*, (1875) LR 2 Sc and D. 470.

⁹ *Id.*

¹⁰ *Parker v. South Eastern Rail Co.*, [1877] 2 CPD 416.

The complainant stated that his luggage had been stolen and was now worth more than ten dollars. The exemption provision was used by the business. The plaintiff claimed that although being aware of the writing on the ticket, he failed to notice it because he mistakenly believed it to be just a receipt for the money he had paid.¹¹

According to the ruling in *M/s Prakash Road Lines (P) Ltd v. HMT Bearing Ltd*¹², the pledged products must be delivered by the carrier to the specified location, or he will be charged for them. Unless it can be shown that the plaintiff was made aware of these circumstances, the transporter's responsibility is not satisfied by simply marking on the truck receipt that the products are being transported at the owner's risk. Without the plaintiff's knowledge and cooperation, the term of the contract cannot be construed to be the simple writing on the truck receipt.¹³

2. Principle of Contractual Documentation

The problem was that for the courts to implement this theory, they had to make a distinct distinction between contracts and receipts. In *Parker v. South Eastern Railway Co.*¹⁴, Mellish LJ provides a clear solution to this issue, concluding that a document is considered contractual if it "embodies the contract", or if the recipients of the document should be aware that conditions are intended to be included. However, if the document does not explicitly state or indicate the terms of the contract, it will be seen as a voucher, receipt, etc. The same was reaffirmed in *Chapelton v. Barry Urban District Council*¹⁵.

In *Thornton v. Shoe Lane Parking Ltd.*¹⁶, Lord Denning MR observed that to give the receiver enough notice, the exemption provision "would need to be emblazoned in red ink with a red hand pointing to it, or something similarly shocking". The agreement would not be included in the contract if this were not done. The following paragraph from the judgment makes a clear distinction between a contract and a receipt:¹⁷

"The document must be of a class which either the party receiving it knows or which a reasonable man would expect, to contain contractual

¹¹ *Id.*

¹² *M/s Prakash Road Lines (P) Ltd v. HMT Bearing Ltd.*, [1987] ILR Kar 3511.

¹³ *Id.*

¹⁴ *Parker v. South Eastern Railway Co.*, [1877] 2 CPD 416.

¹⁵ *Chapelton v. Barry Urban District Council*, [1940] 1 KB 532.

¹⁶ *Thornton v. Shoe Lane Parking Ltd.*, [1970] EWCA Civ 2.

¹⁷ *Id.*

conditions. Thus, a cheque-book, a ticket for a deck chair, a ticket handed to a person at a public bathhouse, and a parking ticket issued by an automatic machine have been held to be cases where it would be quite reasonable that the party receiving it should assume that the writing contained no conditions and should be put in his pocket unread.”¹⁸

According to the ruling in *L’Estrange v. Graucob Ltd*¹⁹, a party who signs a written contract and accepts it is then obligated by all of its provisions regardless of whether they have been read. However, in certain situations, the party that is being impacted may be protected by the basic breach concept, by a determination that the conditions are unreasonable, or by a decision that there was misrepresentation about them.²⁰

3. Principle of no Fraud and Misrepresentation

*Curtis v. Chemical Cleaning & Dyeing Co.*²¹ is the landmark case known for laying the foundation of the principle of no fraud and misrepresentation area. A white satin bridal dress was given by the plaintiff to the defendant for washing. Without reading the receipt, she was requested to sign it, making her accountable for any damage to the sequins and beads. Now, the receipt included a provision that released the business from liability for any dress damage. The dress had a stain on it when it was returned. Defendants used the exemption clause in response to the plaintiff’s demand for damages. The acceptor had signed the paper, but the defendants were nonetheless held accountable because a party to a contract cannot depend on an exclusion provision to shield themselves from responsibility for deception or fraud.²² Similarly, *Chau v. Van Pelt*²³ was upheld. American Restatements of Contracts have a regulation that is a contemporary development in this respect. It said that a phrase is not a part of the agreement if the other party has cause to think that the party expressing written consent would not do so if he knew the term was in the writing.²⁴

4. Doctrine of fundamental breach

¹⁸ *Id.*

¹⁹ *L’Estrange v. Graucob Ltd.*, [1934] 2 KB 394.

²⁰ *Id.*

²¹ *Curtis v. Chemical Cleaning & Dyeing Co.*, (1951) 1 KB 805.

²² *Id.*

²³ *Chau v. Van Pelt*, 172 AD2d 659.

²⁴ *Id.*

This is an extra approach to avoid the weaker section from being taken advantage of. It is a method for reducing the unintended consequences of wide and all-encompassing exemption rules. The party enforcing a document's terms and conditions may not be able to rely on them even though they have been sufficiently disclosed if the other party has violated the agreement in a manner that may be deemed "fundamental". In *J. Spurling Ltd. v. Bradshaw*²⁵, Lord Denning LJ established this. In *B.V. Nagaraju v. Oriental Insurance Co. Ltd.*²⁶, the Supreme Court of India highlighted the same principle and quoted that;

"Every contract contains a 'core' or fundamental obligation that must be performed. If one party fails to perform this fundamental obligation, he will be guilty of a breach of contract whether or not any exempting clause has been inserted which purports to protect him."²⁷

In *Davies v. Collins*²⁸, it was decided that the existence of a specific limiting provision in the contract was enough to exclude the exercise of any right to subcontract the execution of the contract's essential terms. Limitation provisions of this kind are not applicable when the items are lost during an operation that was never intended by the contract or when they are lost beyond the boundaries of the contract when something was being done that was completely unrelated to its terms.

But in a few instances, the court did not hold the bailees accountable for any material divergence from the contract's primary intent. For instance, in the case of *Gib and v. Great Eastern Railway*²⁹, a bicycle that had been left at a station owned by the defendant railroad firm was not carried to the cloakroom but rather left there, where it was later stolen. It was decided that the corporation is shielded by the ticket provision that released it from responsibility. The cycle's mandatory storage in the cloakroom was not included in the contract, thus the Court of Appeal was unable to identify a fundamental violation.

In *Suisse Atlantique Society D' Armement S.A v. N.V. Rotterdamsche Kolen Centrale*³⁰, the word "fundamental breach" is used in the instances to refer to two quite distinct things, according to Lord Wilberforce, namely: a performance wholly inconsistent with what the

²⁵ *J. Spurling Ltd. v. Bradshaw*, EWCA Civ 3 (Bailii).

²⁶ *B.V. Nagaraju v. Oriental Insurance Co. Ltd.*, 1996 SCC (5) 71.

²⁷ *Id.*

²⁸ *Davies v. Collins*, 2011 NSCA 79.

²⁹ *Gib and v. Great Eastern Railway*, [1921] 37 T. L. R. 422.

³⁰ *Suisse Atlantique society D' Armement S.A v. N.V. Rotterdamsche Kolen Centrale*, [1967] 1 AC 361.

contract envisions; and secondly, a violation of the contract that is more severe than the kind that just entitles the offending party to damages and gives him the right to reject performance or continued performance.

However, it is no longer essential to use a basic breach. It is no longer necessary to employ the theory of Fundamental Breach to achieve the same result because Section 11 of the Unfair Contracts Terms Act, 1977 states that any restricting or excluding clause in respect of any loss caused by a breach of contract shall be void unless it satisfies the requirement of reasonableness. If a provision is “a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been known to or in the contemplation of the parties when the contract was made”, then it will be considered reasonable.

5. Doctrine of Tortious Liability

Even though the exclusion clause covers all possible contractual responsibilities, it could not cover tort liability. For an instance assume that the defendant's bike was rented by the plaintiff. The defendants agreed to continue the defendant's cycle. The plaintiff was riding the bicycle when the saddle slanted forward, throwing him and injuring him. The defendants promised to keep the bicycle in working condition, but they also agreed that they would not be held responsible for any personal injury. The court ruled that even if the provision released the defendants from their contractual duty even though they were irresponsible, it did not release them from their culpability for negligence.

However, the parties are free to choose to forgo culpability even for particular words or required inference. In *Ruther v. Palmer*³¹, the same rule was established. Nevertheless, the result of such cases has been altered by the (English) Unfair Contract Terms Act, 1977, which expressly specifies any phrase in a contract that removes or lowers liability for death or physical injury resulting from carelessness shall be unenforceable. The Act defines “negligence” as a breach of any common law or contractual obligation.

6. Principle of Exclusion of Third Party

According to the idea of privity of contract, a contract only exists between the parties to it; a third person cannot benefit from or be held accountable for it. The Standard Form Contracts

³¹ *Ruther v. Palmer*, (1922) All ER 367.

should also be subject to this. “The responsibility to the third party does not emerge out of contract, but independently of it” was established in *Haseldine v. C.A. Daw & Son Ltd.*³²

A third party cannot take advantage of the conditions of a contract, just as they are unaffected by them. The notion of vicarious immunity or implicit contract, as established by the House of Lords in *Elder, Dempster & Co v. Paterson Zochonis & Co*³³, seems to be the only method to provide the benefit of exception provisions to workers, subcontractors, etc.

7. Notice must be contemporaneous with the Contract

Before or at the time of the contract, the terms shall be provided adequate notice. A later communication would be considered a modification of the first contract and would not be enforceable against the other party unless he had consented to it.

Now, the question of whether the notification written on the ticket was supplied contemporaneously with or after the contract arises when it is fulfilled by the automated machine issuing a ticket. In *Thornton v. Shoe Lane Parking Ltd.*³⁴, Lord Denning took into account this issue. In the case of tickets sold by clerks, the notion is that the business makes the offer of the ticket, and the client accepts it without reservation by paying for the ticket. He has the option to decline the ticket. The consumer cannot reject a ticket that is issued automatically, however. When he inserts his money into the machine, he commits. The deal is then finalized. The note posted on the machine’s back details the conditions of the offer. If the conditions are properly disclosed to the buyer in advance, he is bound by them; otherwise, he is not. If the conditions listed on the ticket conflict with the notice, he is not obligated by them since the contract has already been established and the ticket was sent too late. The ticket is thus nothing more than a receipt for the payment. Therefore, the exclusion provision must make it clear to the other party at the time of contracting that the terms and conditions have been included in the agreement.

In the case of *Olley v. Marlborough Court Ltd.*³⁵, the plaintiff and her husband reserved a room in the hotel of the defendant in advance for one week’s worth of boarding and lodging. They discovered a sign that said, “Proprietors will not hold themselves liable for goods lost or stolen

³² *Haseldine v. C.A. Daw & Son Ltd.*, [1941] 2 KB 343.

³³ *Elder Dempster & Co v Paterson Zochonis & Co.*, (1924) AC 522.

³⁴ *Thornton v. Shoe Lane Parking Ltd.*, [1970] EWCA Civ 2.

³⁵ *Olley v. Marlborough Court Ltd.*, 1 KB 532.

unless surrendered to the administration for safe custody” when they went to occupy the room. Plaintiff’s belongings were taken from the room as a result of the hotel staff’s carelessness. They claimed an exclusion from culpability in a lawsuit against the defendant to collect damages for the loss based on the notice that was posted in the room. It was decided that the notice in the room did not constitute a part of the contract and that the defendants were consequently responsible for making restitution.

8. Doctrine of Strict Construction

When a sentence is so broadly stated as to be exceedingly illogical, the exclusion clauses are interpreted rigidly. If there is any uncertainty in the manner in which an exemption provision is expressed, the clause is determined in favor of the weaker party, which results in a contra proferentem ruling against the party that added it. To better explain it, it may be said that the limited construction is chosen when the terms used in an exclusion clause can be read in one of two ways: either broadly or narrowly. This is because the rule of law is that the limited construction must be read broadly. In Latin maxims, it is termed as “Contra Proferentem” which means that “if there is any doubt as to the meaning and scope of the excluding or limiting term, the ambiguity will be resolved against the party who has inserted it...”.³⁶

In the case *Delhi Cloth and General Mills v. Rajasthan State Electricity Board*³⁷ a provision in a contract for the delivery of power provided that “the rate of supply as determined in Clause 17 shall be reviewed every fifth year provided that the component of the cost of generation out of the total cost varies by 25% or more”. This was a price escalation clause, according to the consumer, and would only authorize increases from the base price in response to an increase in the cost of production. This was rejected by the Supreme Court. Justice A.K. Sen clarified the difference between an “escalation” provision and a “price” review clause and said;

“An escalation clause, according to the accepted legal connotation means a clause which takes care of the rise and fall of the prices in the market, whereas the right to review confers the power to revise the rate of supply. The word ‘review’ necessarily implies the power of the board to have a

³⁶ Nair Shyama, “Standard Form Contract” (Legal Services India) <<http://www.legalservicesindia.com/article/1161/Standard-Form-Contract.html#:~:text=The%20Notice%20Should%20Be%20Contemporaneous,his%20assent%20for%20the%20same>> accessed June 25, 2022.

³⁷ *Delhi Cloth and General Mills v. Rajasthan State Electricity Board*

second look and to so adjust from time to time its charges to carry on its operation under the Act without sustaining a loss.”³⁸

The following sentence from Corpus Juris Secundum was also quoted by the court;⁵

“A contract giving one of the parties the right to vary the price is not unenforceable for lack of mutuality where the right is not an unlimited one, as where its exercise is subject to express or implied limitation, such as that the variation must be in proportion to some objectivity determined base or must be reasonable, and this rule has been applied to contracts containing so-called ‘escalator’ clauses”³⁹

ENGLISH LAW AND INDIAN LAW

The (English) Unfair Contract Terms Act, 1977, which went into effect on February 1, 1978, aims to improve the state of business contracts by fully voiding certain exemption clause types and putting all of them through a reasonableness test. The Act is a trailblazer in that it is the first to give the word “negligence” a legislative meaning that applies to both tort and contract violations. According to the definition, negligence is defined as the following:

- a) a breach of any duty to exercise reasonable care or care under the express or implied terms of a contract;
- b) a breach of any common law duty to exercise reasonable care or skill (but not a stricter duty); or
- c) a breach of the duty of care mandated by the Occupiers’ Liability Act, 1957.

The second significant impact is that, as a result of this act, any contract provision that excludes or limits responsibility for death or personal harm brought on by negligence must be null and invalid. The third significant result is that any limiting or excluding provision in respect of any damage brought on by a breach of contract will be unlawful unless it fulfills the standard of reasonableness set out in Section 11 of the Unfair Contracts Terms Act, 1977. If a provision “is a fair and reasonable one to be included having regard to the facts which were, or ought

³⁸ *Id.*

³⁹ *Id.*

reasonably to have been, known to or in the contemplation of the parties at the time the contract was signed”, then it will be considered reasonable.

The fourth clause deals with protecting consumers and those whose rights have been violated by standard form contracts. According to the Act, a person who transacts with a consumer on their terms is not eligible to rely on any provisions that limit or exclude his obligation if he breaches them himself, nor is he eligible to request a particular performance. Only if the terms are acceptable will he be able to benefit from them. The Supply of Goods (Implied Terms) Act of 1973 is included in this Act’s last and most significant consequence. This Act prohibits the exclusion of responsibility for implicit conditions and warranties from consumer sales, which now apply to any transactions in which ownership of or title to products is transferred from one person to another, such as leases or rentals of appliances. The reasonableness of exception provisions in non-consumer contracts will be evaluated.

The rights of the contractual parties to exclude or restrict their liabilities via exemption provisions in their agreements are severely constrained in England under the Unfair Contract Terms Act, 1977. A clause in a contract or notice cannot exclude or limit liability for death or bodily harm. Additionally, about items provided for personal use or consumption, the maker or distributor cannot disclaim obligation for carelessness or faulty goods. Contrary to England, India does not have specific legislation that addresses the subject of contractual duty exclusion. Under section 16 of the Indian Contract Act for undue influence or under section 23 of that Act for being against public policy, unconscionable agreements may be ruled unlawful.

The Supreme Court invalidated a provision in a service agreement that allowed a permanent employee’s employment to be terminated by providing him either three months’ notice or three months’ pay in *Central Inland Water Transport Corp. Ltd v. Brojo Nath*⁴⁰. According to section 23 of the Indian Contract Act, it was determined that this provision was irrational, against public policy, and invalid. The Law Commission of India suggested the addition of a new chapter IV-A consisting of section 67-A of the Indian Contract Act, 1872 in its 103rd report (May 1984) on unfair terms in contracts. If the court determines that the contract or any portion of it is unconscionable based on the provisions of the agreement or evidence presented by the parties, it should do so by this advice. According to this clause, a contract is deemed

⁴⁰ *Central Inland Water Transport Corp. Ltd v. Brojo Nath*, 1986 AIR 1571.

unconscionable if it absolves any party from responsibility for negligent or willful violation of the agreement.

CONCLUSION

The Standard Form Contracts are standardized contracts with a multitude of clauses that restrict and often absolve parties of liability. This presents a singular chance for the large corporation to take advantage of the individual's vulnerability by imposing conditions on him that often resemble a kind of private law and may even go so far as to release the business from any obligation under the contract. The courts are now in charge of fighting abuse. The courts have had an extremely tough time helping the less powerful party. The courts have developed and put into practice specific rules to safeguard the interests of the consumer, customer, or passenger, as the case may be, who is subjected to standard form contracts or exemption clauses, such as the need for reasonable notice, contemporaneous notice, contra proferentem contract interpretation, tort liability, exemption clauses, and third parties.

SUGGESTIONS

If the general public carefully reads the contract before signing it, standard form contracts may be used as effective business tools. Therefore, the extensive contract terms and conditions, which may contain the exemption clause and which the general public is not used to reading, are the core of the issue. The solutions listed below may assist in resolving these problems: firstly, before engaging in a contract, parties to a Standard Form Contract must read and understand a brief explanation of the contract at the beginning of the agreement. If there is an exception provision, it should be included in this summary so that readers are aware of it; secondly, the Indian Contract Act, 1872 should be revised, and a provision for required adherence of the same should be added to the provision since it is improbable that the above proposal would be followed in every single Standard Form Contract formed.