

**Article**

Standard Form Contracts in International Trade: A Legal Analysis of Consent, Fairness, and Enforcement

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Abstract: The present paper is a critical literature review of the complex legal environment related to Standard Form Contracts in international trade, in relation to the Indian legal system. It explores the difficulties presented by the power imbalance inherent in contracts in such a manner, examining the ways in which the concept of consent, fairness and enforcement are interpreted and exercised in Indian contract law particularly in contrast to international standards. Also an analysis of how appropriately remedies address non-performance and the judicial interpretation of exemption regarding clauses is made as the Indian Contract Act is 19th century in its genesis and does not provide a fair-minded approach to unfair terms in the modern adhesive e-contract. Moreover, the paper examines how Indian judiciary interprets exemption clauses and force majeure clauses in standard form contracts especially against global best practice and the UN Convention on Contracts of the International Sale of Goods. The other issue this study addresses is the jurisprudential conflicts that come with adhesion contracts in e-business that assess their effects on the core idea of the consent theory whereby the parties must enjoy equal bargaining powers. It explores the Indian remedy to these imbalances with reference made to the principles of contract law which underlie such freedom of contract and the autonomy of parties, which may be undermined by the fact that such a contract is non-negotiable. Nonetheless, the Indian legal system has struggled to integrate larger conceptions of unconscionability to confront the unfairness that is likely to occur as a result of such contractual structures, especially in the booming digital environment.

Keywords: Standard Form Contracts, International Trade, Indian Contract Law, Consent, Fairness, Enforcement, Exemption Clauses, E-contracts, Unconscionability.

INTRODUCTION

The development of the standard form contracts in international trading requires an in-depth analysis of the legal field, especially in the Indian scenario, to find answers to such key questions as consent, fairness, and enforcement. The idea of this paper is to discuss the obstacles of the natural power asymmetry of such

contracts, which is only magnified in India where the contract law that exists mostly in the country, the Indian Contract Act of 1872, is mostly a creation of the classical common law of the 19th century and says practically nothing about unjust terms. In spite of this, Indian courts have come up with rules of interpretation to curb the abuse of standard forms contracts which in most cases gives a priority to the

purpose of the contract and even strikes down contracts which are unconscionable.¹ This judicial activism, has, however, not been entirely consistent in its approach to solving complexities such as the battle of forms and there is a possibility of a more coherent approach to the law. The lack of express statutory procedures relating to standard form contracts in India is such that the role of the judiciary can be a primary means by which abusive clauses in contracts, particularly on the dual nature of these contracts, power parity can predetermine fairness whereas disparate bargaining power can predetermine unfavorable terms. This informational vacuum is also compounded in the electronic world, as the complications of e-contracting compound the possibilities of maleficent clauses in standard form contracts.² Although Indian jurisprudence on unconscionability is still developing, other researchers believe that more comprehensive approach to the application of this doctrine would offer a more powerful means to combat unfairness in the digital standard form of contract. In this paper, the paper will then explore the particular management issues and modifications that need to be made in the Indian legal environment in order to fully control the standard form contracts in international trade in both traditional and digital environments. It will also examine whether current Indian contract law is sufficient to offer relaxation of non-performance as a very important feature that usually exists in international contract law such as CISG Article 79, which has not yet been widely incorporated into the Indian legal fabric. That kind of study will surely extend to the determination by the judiciary regarding the interpretation of force majeure clauses and the doctrine of frustration, where the standard of relief is frequently high in the extraordinary cases before the Indian courts. The common law principles of the current legal framework, which provide much freedom to the parties to the contract, have the tendency of proliferation of wide sweep protection clauses which requires a more proactive approach in detection and mitigation of creeping unreasonableness in contracting practices in India.³ This study will also examine how far the Indian courts have without particular legislation such as the Unfair Contract Terms Act in England been able to employ

interpretative measures to soften the impact of exemptions clauses; occasionally they have even misunderstood international legal trends in the undertaking.

Conceptual Framework of Standard Form Contracts

Standard form contracts refer to standardized contracts that are sold on the basis of take it or leave it, and they have standard terms and conditions that are not negotiable with regard to their terms.⁴ Such inability to negotiate with the adhering party often gives rise to the issues of true consent and the possibility of unfavorable terms as well when such contracts are applied in the international trade whereby different legal systems and business proceedings overlap. These are sometimes referred to as adhesion contracts, and inherently, the contracts tend to be highly susceptible of being full of unconscionable terms, more so where digital transactions are involved or where the contract is between the consumer and the organization.⁵ Such issues with such contracts are intensely felt in India when the contract law has historically developed and the exemption clauses have become widespread to limit or avoid liability. The Indian judiciary has continually been focused on the application of the literal terms of the contracts, a traditionally classical contract law model, which usually leaves options of relief, even in cases of unexpected global disruptions such as the COVID-19 pandemic. Therefore, autonomy of parties tends to be accepted by Indian law, but the uncertainty of creeping unreasonableness in standard form contracts, often as a result of broad exclusion provisions, is a large issue. It is even more significant in terms of e-contracts, where the fiction of the duty to read is legal and the true consent is extremely doubtful and requires a more thorough trial in the courts. This requires a critical analysis as to how the Indian courts can properly strike the balance between the ideals of contractual freedom and the necessity of ensuring substantive fairness of such digital adhesion contracts, possibly by broader use of the doctrine of unconscionability.⁶ Moreover, the availability and readability of digital standard form contract of the same are also decisive factors given that these two variables would directly influence the capacity of a

¹ M. P. Ram Mohan et al., "Indian Law on Standard Form Contracts" *SSRN Electronic Journal* (2020).

² Dharmita Prasad and Pallavi Mishra, "Unconscionability of E-contracts: A Comparative Study of India, the United Kingdom, and the United States," 43 *Liverpool Law Review* 339 (2022).

³ M. P. Ram Mohan and Anmol Jain, "Exclusion Clauses Under the Indian Contract Law: A Need to Account for Unreasonableness" *SSRN Electronic Journal* (2020).

⁴ M. P. Ram Mohan et al., "Indian Law on Standard Form Contracts" *SSRN Electronic Journal* (2020).

⁵ Dharmita Prasad and Pallavi Mishra, "Unconscionability of E-contracts: A Comparative Study of India, the United Kingdom, and the United States," 43 *Liverpool Law Review* 339 (2022).

⁶ Dewa Kadek Kevin Patria and Abdul Rokhim, "Klausula Eksonerasi dalam E-Commerce: Antara Kebebasan Berkontrak dan Penyalahgunaan Keadaan," 8 *JURNAL USM LAW REVIEW* 1743 (2025).

consumer to understand and agree to the terms, particularly in a time where being digitally excluded is a major obstacle on its own to most. This will require a re-examination of existing legislative strategies to make sure that digital standard form contracts are not abusive to the loopholes that have been caused by technological differences or informational asymmetries.⁷ Although developed with the intention of facilitating online transactions, the Uniform Electronic Transactions Act could actually serve as a contributing factor to these issues and have the negative effect of undermining consumer rights debate and propelling toward a more unconscionable approach to electronic standard form transactions.

Consent in Standard Form Contracts

The main assumption of the contract law, i.e., the free and informed consent has been greatly challenged by the concept of standard form contracts and mainly in India where the traditional meaning of consensus ad idem is, more often than not, challenged by the take-it-or-order-me contracts. This is especially within the digital context, where both the quick and quite inalienable nature of terms and conditions of acceptance obliterates the contours of true consent, with significant doubts cast on the existence and enforceability of e-contracts and consumer rights protection. This is also compounded by the fact that the architecture of most digital standard form contracts has been crafted in such a manner to be less readable and understandable, making any attempts to inform consumers useless.⁸ In fact, being extremely numerous and complicated and featuring other practices such as a so-called blanket assent to similar terms in the form of clickwrap licenses, they tend to subject users to the notion of agreeing to something without necessarily having the slightest clue about the meaning or voluntarily abandoning important rights. This causes a scenario in which contractual freedom is harshly limited and it usually diminishes the choice of the consumer having the option to just accept the total contract or to renounce the service altogether.⁹ The fact that consumers are not provided with a relevant opportunity to negotiate their terms or even to understand them altogether, implies that consent has to be reassessed in these digital situations, simply because it is possible that businesses will incorporate different terms that can take advantage of such an informational asymmetry. Additionally, the fact that sellers in internet deals set the terms of the contract on their own, rather often

undermines the position of the consumer as they are typically given an option of take it or leave it. This imbalance of power highlights why a strong system of law in India is required that has the authority to question and in instances where it is warranted, strike down provisions in the common form contract that is provable to be unfair or unconscionable, even though the contracting party may appear to have agreed. This jurisprudential conflict between consent theory and adhesion contracts, mostly prominent in the context of online business, underscores the degradation of the right to negotiate, which unfairly favors the superior group. Such loss of negotiating equality has been particularly key with the growing trend of Internet retailing, where standard-form contracts in electronic form are widely used, and often overwhelm the traditional concept of assent on which contract paradigms generally rely. The absence of a substantial choice by the consumers, who, in many cases, simply cannot possibly refuse critical services, also worsens the issue of consent, making a mutually accepted agreement in a partnership partnership one-sided.¹⁰ Such a dynamic requires a subtle conceptualization of consent to be obtained, which extends beyond observing procedures and taking into regard substantive fairness to seek to understand the terms in reality, as perceived by the contracting parties. The institutionalized practice of laying before the user long, often boilerplate terms of service, to which they seldom pay attention and which they regularly revise, further reconstructing the gap between formal agreement and informed consent and producing a legal fiction that compromises consumer agency. The scenario necessitates reevaluation of the interpretation and application of contractual consent in a digital setting by the Indian courts that may be informed by the principles of consumer protection to guard against the exploitative terms.

Fairness and Unconscionability

The presence of unconscionability doctrine in India, albeit tentatively applied, represents a possible way of dealing with the unfairness inherent to a standard form a contract, by ensuring the creation of a structure that can allow the courts to question and perhaps fight off the oppressive conditions. Indian Contract Act of 1872, as a creation of classical common law of the 19th century, has little against unfair terms, and consumers need judicial intervention to prevent the adhesiveness of modern e-contracts. This judicial activism is, though, typically

⁷ Ama C Siriwardhana, "Has the Blind Consumer Assent in Standardized Contracts Been Sufficiently Redressed – A Comparative Analysis of the Contexts of the United States and Sri Lanka" *SSRN Electronic Journal* (2018).

⁸ Kristin B. Cornelius, "Standard form contracts and a smart contract future," *7 Internet Policy Review* (2018).

⁹ Francesca Lagioia et al., "AI in Search of Unfairness in Consumer Contracts: The Terms of Service Landscape," *45 Journal of Consumer Policy* 481 (2022).

¹⁰ Rishab Bailey et al., "Disclosures in Privacy Policies: Does 'Notice and Consent' Work?" *SSRN Electronic Journal* (2018).

within the boundaries of formal rules of interpretation, in practice, by assigning greater weight to the purpose of the contract, and in some cases, declared contracts to be void when material terms were skewed by unconscionability.¹¹ This tactic has, however, had issues in its efforts to apply classical conception of consent to adhesion contracts, especially those where it attempts to divert to arbitration any dispute, and to limit the freedom of choice of venue, class action litigation, or remedies. These provisions have been found to raise issues regarding the maintenance of the access to the right to justice and the effectiveness of traditional consumer-protective principles. The Indian judiciary has also often considered the question of unconscionability by taking into account, among other factors, unequal bargaining power and substantive unfairness on particular cases. Judicial review plays an important role to check that contractual language is not unfairly disadvantageous to a given side, especially where a large difference in economic strength or access to information exists.¹² This usually entails the evaluation of whether the conditions are so contrary that they are outrageous to the conscience of the court and thus allowed to intervene even when consent seems afforded. Various factors may be looked upon by the courts to establish that the procedure is unconscionable, highlights of which may include, but not be limited to, the high-pressure selling dynamics, the lack of education of a party or the obscurity of the language in the contract, which is especially significant in the Indian context due to the diverse socio-economic environment. This considerations goes to the extent of examining whether the contracting parties were making a meaningful choice in agreeing to the terms, which against is a factor missing in standard form contracts. Besides, substantive unconscionability at focusing on the severity of the terms themselves is taking on a foothold, and courts are considering whether the terms of a contract are too lopsided or oppressive either way procedure is not fair. Such dual treatment of unconscionability (comprising a procedural and substantive form) enables an Indian court to more fully evaluate the validity of standard form contracts to go beyond superficial findings of assent in the contract to examine equity and fairness in the contractual relationship. It is most essential in a scenario where there is a mismatch of information between consumers, particularly new customers to the involvement in complex financial markets, which is subject to mis-selling as a result of India

undertaking greater financial inclusion programs. Although the legal system in India does not specifically define what unconscionability relates to, the judicial precedents have helped create an assortment of limits in order to resolve this issue by highlighting the significance of fair dealing and protecting the vulnerable.¹³ This delicate practice makes sure that contracts do not simply get enforced on technical consent but they are also determined to be fair substantially particularly when there is a major power imbalance among the parties. Additionally, the Indian courts have established that unconscionable practices in contracts have the terms that are either unjust or one-sided to the extent they cannot be accepted by a reasonable person without sufficient reasons, usually pointing to some flaw in the processes of bargaining.

Enforcement Mechanisms and Challenges

Enforcements Standard form contract are severely challenged in India especially in regard to consumer finance disputes where the legal frameworks in place are often unable to deliver timely and sufficient redress. It is also notably so on the backdrop of financial inclusion taking place in India, where numerous people are presented with complicated products and contracts without proper and sufficient knowledge and existing judicial precedent tends to find the consumer liable to a signed contract, even when they do not truly understand or even consider understanding it. This places excessive load on the consumer and creates a stronger need to create a closer regulation of the market and improved clarity of legal interpretations in order to protect individuals susceptible to exploitative contractual legal practices. When plain language has been enforced into legislation as a condition of a digital selection in other countries, and copies of standardized terms have been made available to the customer, India remains confined managing the consequences of digital exclusion and access in its domestic legislation. These problems are compounded by the nature of information asymmetry that exists between consumers and the financial service providers, and it will be especially difficult to effectively address such grievances in the traditional court systems, especially in India, due to the rapidly growing financial environment in the country.¹⁴ This is also compounded by the fact that in most of such contracts there are usually forum selection clauses and mandatory arbitration clauses, which may effectively discourage individual consumers to claim on the

¹¹ M. P. Ram Mohan et al., "Indian Law on Standard Form Contracts" *SSRN Electronic Journal* (2020).

¹² Margaret Jane Radin, "The Deformation of Contract in the Information Society," *37 Oxford Journal of Legal Studies* 505 (2017).

¹³ Karan Gulati and Renuka Sané, "Grievance Redress by Courts in Consumer Finance Disputes" *SSRN Electronic Journal* (2021).

¹⁴ Karan Gulati and Renuka Sané, "Grievance Redress by Courts in Consumer Finance Disputes" *SSRN Electronic Journal* (2021).

grounds that the costs and associated procedural complexities are too high. These provisions may constitute a major obstacle to justice, especially to those consumers who might not have the means to traverse it to a distant legal forum or to arbitral proceedings. Also, there is a general critique of the available law in India, that the Indian courts have little experience in cases of consumer finance litigation, and that consumer courts are frequently filled with legal experts who, although qualified, have not had the specialist financial experience necessary to effectively adjudicate complex contractual issues. This weakness may result in inconsistency in rulings and a prolonged process, which may erode consumer faith in the redressal system. In addition, the number of complaints registered monthly with the National Consumer Helpline highlights the sheer size of the grievances, which means that existing systems have a hard time processing and resolving conflicts successfully with a population that is becoming more and more interested in financial services. It frequently contributes to the consumer being overwhelmed and underserved, which also requires reassessment of the existing dispute resolution framework to address the peculiarities of financial agreements and consumer vulnerabilities in a more appropriate way.¹⁵

CONCLUSION

Thus, a full restructuring of the law and regulations to the standard form contracts in India is essential to guarantee fair results to consumers, especially in the context of global digital financial services. This reform must be aimed at defending consumer protection statutes, more effectively redressing grievances mechanisms, and rendering their contracts more transparent and equitable. This involves creating more precise recommendations on digital lending platforms, solving the problem of borrower harassment and reducing the risks of high-interest loans and high-pressure debt collection policies. Moreover, the legal framework must incorporate the policies of mandatory readability tests, and accessibility of SFCs, especially the ones provided in a digital format, to curb digital exclusion and make sure that customers do not only understand the terms they are accepting to effectively. In addition, given the depth of finance-related contracts, specialized tribunals may resolve disputes faster, offer consistent informed decisions, which will encourage more consumers to trust and have confidence in the legal system. The incorporation of Online Dispute Resolution tools, and the consistency in the framework and capacity-building measures, may assist in considerable relief

to the burden of conventional courts and offer more convenient access to redress, especially due to the transformational potential of those tools. This would not only make the resolution process more efficient but, also, would lead to a stronger and more responsive legal landscape, with the ability to respond to the specificities of the modern financial transactions in India. In addition, legislation focusing on proactive documentation and standardization of digital contracts, beyond notification to thorough explanation, is essential to give consumers sufficient information and knowledge on what they are obliged to in the contract. This involves taking into consideration the consequences of the European Union measures on unfair contract terms, the consideration of transparent and intelligible language to make the user aware that they are being dealt with, and the insights may also be of great use to the Indian policy makers. It should go a notch higher to include the requirement of plain language and digestible forms of all digital contracts, such that the consumer, especially with low levels of digital literacy, is able to fully understand the terms and conditions of the agreement even before they commit themselves into it. These would require the presence of strong regulatory controls and establishment of enforcement measures to monitor compliance and mitigate cases of ambiguous or deceptive contracting behaviors.

¹⁵ Prasanna Dasari, "Digital Lending in India: Harassment, Settlements, and the Rise of Financial Exploitation" (2025).