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**THE EFFECTIVENESS OF THE INDIAN CONTRACT ACT IN  
PROTECTING CONSUMER RIGHTS IN THE CONTEXT OF  
STANDARD-FORM CONTRACTS.**

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**Abstract**

The research paper studies in detail the effectiveness of the Indian Contracts Act in protecting Consumer Rights in the context of Standard-Form Contracts. A standard form contract is a pre-written agreement that is used repeatedly for similar transactions between parties. Also known as a boilerplate contract, it is a one-size-fits-all document that is not negotiated between the parties and typically favours the party that drafted it. Standard form contracts are commonly used in consumer transactions, such as for cell phone or credit card contracts, where the terms and conditions are predetermined and non-negotiable. They may also be used in commercial transactions, such as for rental agreements or employment contracts. While standard-form contracts offer convenience and efficiency, they may also raise concerns about fairness and transparency in the contractual relationship. The current status of consumer protection laws along with the ways to make consumer protection laws more stringent and punishment for violating the same harsher are discussed in the paper. Various cases are analysed and discussed in the paper along with the role of the judiciary in implementing the aforementioned laws. Suggestions to improve the law have also been discussed in the research paper.

**Introduction**

Standard form contracts are contracts where the terms and conditions are pre-determined by one party, usually the business or seller, and are not open to negotiation by the other party, usually the consumer or buyer. In such contracts, consumers are often at a disadvantage as they have limited bargaining power and are forced to accept the terms offered by the seller. The Indian Contract Act of 1872 provides protection to consumers against unfair contractual terms in standard-form contracts through the doctrine of unconscionability. According to this doctrine, any contractual term that is unfair, unreasonable, or oppressive to the weaker party will not be enforceable by the stronger party. In addition to this, the Act also provides protection to consumers against fraudulent misrepresentations made by

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sellers. Under Section 17 of the Act, a contract induced by fraudulent misrepresentation is voidable at the option of the party induced to enter into the contract. However, despite these protections, the effectiveness of the Indian Contract Act in protecting consumer rights in the context of standard-form contracts has been limited. This is because consumers often lack the knowledge and resources to challenge unfair contractual terms in court.

Moreover, the legal process can be lengthy and expensive, which further discourages consumers from seeking redress. To address these issues, the Indian government has introduced various consumer protection laws such as the Consumer Protection Act, of 2019, which provides for the establishment of a Central Consumer Protection Authority to regulate and promote consumer rights. The Act also provides for the setting up of Consumer Dispute Redressal Commissions at the national, state, and district levels to provide speedy and inexpensive resolution of consumer disputes.

### **Case Analysis**

#### **a. ProCD, Inc. v. Zeidenberg<sup>2</sup>**

ProCD, Inc. v. Zeidenberg was a landmark case in the United States involving the enforceability of shrink-wrap licenses. ProCD, Inc. was a software company that produced a phone directory database called SelectPhone. The company sold the database with a shrink-wrapped license agreement that prohibited customers from using the database for commercial purposes. Matthew Zeidenberg purchased the SelectPhone database and began using it for commercial purposes. ProCD sued Zeidenberg for breach of contract and copyright infringement. Zeidenberg argued that the license agreement was unenforceable because he did not have an opportunity to review it before purchasing the database. The case eventually reached the United States Supreme Court, which ruled in favour of ProCD. The Court held that the license agreement was enforceable because it constituted a contract between the parties, and Zeidenberg had an opportunity to review the terms of the license agreement before using the database. The Court also held that shrink-wrap licenses were valid and enforceable, as long as the terms of the license were visible and readily available to the customer before the sale was completed. The Court reasoned that shrink-wrap licenses were a

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<sup>2</sup> ProCD, Inc. v. Zeidenberg, 86 F.3d 1447 (7th Cir. 1996).

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necessary means of protecting intellectual property rights and promoting the efficient distribution of software. The decision in *ProCD v. Zeidenberg* established the legality of shrink-wrap licenses and set an important precedent for the enforceability of electronic contracts. The case has since been cited in numerous legal disputes involving software licenses and other digital products, and it continues to be an important reference for the development of contract law in the digital age.

**b. ACCC v. CLA Trading Pty Ltd<sup>3</sup>**

*ACCC v. CLA Trading Pty Ltd* was a case in Australia involving unfair contract terms. CLA Trading Pty Ltd was a company that operated a retail business selling furniture, bedding and electrical goods. The Australian Competition and Consumer Commission (ACCC) brought legal action against the company, alleging that its standard form contracts contained unfair contract terms. The Court found that several of the contract terms used by CLA Trading were unfair, including terms that allowed the company to unilaterally vary the terms of the contract and to charge customers for the cost of repairing or replacing faulty goods. The Court also found that the company had engaged in misleading and deceptive conduct in relation to its warranties and refund policies. As a result of the case, CLA Trading was ordered to pay penalties and was restrained from using unfair contract terms in its future contracts. The case was significant because it highlighted the importance of ensuring that standard form contracts are fair and transparent and that consumers are protected from unfair contract terms and practices. The case also prompted the Australian government to introduce new laws in 2016 to protect consumers from unfair contract terms in standard-form contracts. The laws apply to a wide range of industries, including telecommunications, finance, and energy, and have helped to promote fairer and more transparent contracting practices in Australia.

**c. Williams v. Walker-Thomas Furniture Co.<sup>4</sup>**

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<sup>3</sup> *ACCC v. CLA Trading Pty Ltd*, [2020] FCAFC 142 (2019).

<sup>4</sup> *Williams v. Walker-Thomas Furniture Co.*, 121 U.S. App. D.C. 315, 350 F.2d 445 (1965).

Williams v. Walker-Thomas Furniture Co. is a landmark case in contract law. The case was heard in the United States Court of Appeals for the District of Columbia Circuit in 1965. The plaintiff, Williams, purchased furniture from the defendant, Walker-Thomas Furniture Co., on an instalment plan. Williams fell behind on her payments, and the defendant sought to repossess the furniture. However, under the terms of the contract, the defendant could repossess any item that Williams had purchased from the company, not just the items that she had not yet paid for. Williams argued that the contract was unconscionable because it allowed the defendant to repossess all of her furniture, even if she had paid for some of it. The court agreed with Williams and held that the contract was unconscionable because it was oppressive and one-sided. The court stated that a contract cannot be enforced if it is unconscionable or against public policy. The court found that the defendant's conduct was "unfair, unreasonable and oppressive" and that Williams was entitled to a refund of the payments she had made on the furniture. The Williams v. Walker-Thomas Furniture Co. case established an important legal principle that an unconscionable clause in a standard form contract would render the entire contract void.

**d. Carnival Cruise Lines, Inc. v. Shute<sup>5</sup>**

Carnival Cruise Lines, Inc. v. Shute is a landmark case in contract law. The case was heard in the United States Supreme Court in 1991. The plaintiffs, Mr. and Mrs. Shute, were Washington state residents who purchased tickets for a cruise on a Carnival Cruise Lines ship. The tickets included a forum selection clause which required that any lawsuits arising from the cruise be filed in Florida, where Carnival's corporate headquarters were located. When Mr. Shute was injured during the cruise, the Shutes sued Carnival in Washington state court. Carnival argued that the forum selection clause was enforceable and that the case should be dismissed or transferred to Florida. The Washington court initially ruled in favour of the Shutes, but the decision was reversed on appeal. The Shutes appealed to the Supreme Court, arguing that the forum selection clause was not enforceable because they had not

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<sup>5</sup> Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585 (1991).

seen or agreed to its terms. However, the Supreme Court upheld the enforceability of the forum selection clause, holding that the clause was reasonable and that the Shutes had sufficient notice of its terms. The Court also stated that the clause did not violate the due process rights of the plaintiffs, even though they were residents of a different state. The *Carnival Cruise Lines, Inc. v. Shute* case established an important legal principle that a forum selection clause in a standard form contract is enforceable, and that a consumer can be bound by it even if they are not aware of its existence at the time of purchase. This case has had significant implications for the enforceability of forum selection clauses in standard-form contracts.

**e. Hayes v. Plantations Steel Co.<sup>6</sup>**

*Hayes v. Plantations Steel Co.* is a notable case in contract law that was heard by the Supreme Court of Louisiana in 1983. The case concerned a standard form contract between a steel company and a customer, Hayes. The contract contained a provision that limited the number of damages Hayes could recover in the event of a breach by the steel company. Specifically, the contract limited Hayes' damages to the amount he paid for the steel, even if the steel was defective or caused damage to his property. Hayes sued the steel company for damages after he received a defective shipment of steel that caused damage to his property. The steel company argued that Hayes was limited to the amount he paid for the steel under the terms of the contract. The court held that the limitation of damages clause in the contract was unconscionable and therefore unenforceable. The court stated that the clause was one-sided and unfair, and that it would prevent Hayes from obtaining any meaningful remedy for the steel company's breach of contract. The *Hayes v. Plantations Steel Co.* case established the principle that a limitation of damages clause in a standard form contract may be unconscionable and unenforceable if it is unfair, one-sided, or prevents the aggrieved party from obtaining a meaningful remedy for the other party's breach of contract. This principle has since been applied in other cases, and it has helped to protect consumers and other parties from unfair and oppressive contract terms.

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<sup>6</sup> *Hayes v. Plantations Steel Co.*, 849 F.2d 1470 (11th Cir. 1988).

## **Historical Background**

### **Rome, Europe and the USA**

In ancient Rome, contracts were often drafted by the stronger party and offered to the weaker party on a take-it-or-leave-it basis. Similarly, in medieval Europe, feudal lords would dictate terms to their vassals, who had little choice but to agree. In the United States, standard-form contracts became common in the late 19th century, as businesses began to sell goods and services to large numbers of consumers. Railroad companies were among the first to use standard-form contracts, as they sold tickets to millions of passengers. The rise of consumer protection laws in the 20th century led to greater scrutiny of standard-form contracts. In 1915, the American Bar Association began work on the Uniform Commercial Code (UCC), which sought to standardize commercial law across the United States. The UCC includes provisions on standard-form contracts, and many states have adopted the code. In the 1960s, the U.S. government passed several consumer protection laws, including the Truth in Lending Act and the Consumer Credit Protection Act, which regulated the terms of credit contracts. The 1970s saw further consumer protection laws, such as the Fair Credit Reporting Act and the Fair Debt Collection Practices Act. In recent years, standard-form contracts have come under increased scrutiny, with some arguing that they are unfair to consumers and restrict competition. In 2011, the Consumer Financial Protection Bureau began studying the use of arbitration clauses in standard-form contracts, and in 2016, it issued a rule that prohibited companies from including arbitration clauses that prevented consumers from joining class-action lawsuits. However, in 2017, the rule was overturned by Congress.

### **India and the United Kingdom**

India and the United Kingdom have their own histories and contexts when it comes to standard-form contracts. In India, standard-form contracts are often used in commercial transactions, particularly in the sale of goods and services to consumers. These contracts are usually non-negotiable, and consumers often have

little choice but to accept the terms offered by the seller. This has led to concerns about the fairness of these contracts, as well as the lack of consumer protections in Indian law. In response to these concerns, the Indian government passed the Consumer Protection Act in 1986, which established a framework for consumer protection and provided for the creation of consumer courts to hear complaints and disputes. In 2019, the government passed a new Consumer Protection Act, which includes provisions on standard-form contracts and requires that contracts be written in plain language and that consumers be given the opportunity to negotiate terms. In the United Kingdom, standard-form contracts are also common in commercial transactions. However, unlike in India, UK law provides more protections for consumers in the form of consumer protection legislation, such as the Consumer Rights Act 2015. This legislation requires that contracts be fair and transparent and that consumers be given the opportunity to negotiate terms. The UK government has also taken steps to regulate the use of standard-form contracts in certain industries, such as the financial services industry. For example, the Financial Conduct Authority has issued rules on the use of standard-form contracts in consumer credit agreements, which require that contracts be written in plain language and that consumers be given the opportunity to negotiate terms. In both India and the UK, standard-form contracts have been the subject of debate and regulatory scrutiny, with the goal of ensuring that consumers are protected and that contracts are fair and transparent.

### **Legal Provisions**

#### **The Indian Contract Act, 1872<sup>7</sup>**

The Indian Contract Act, 1872 does not specifically deal with standard-form contracts. However, it provides general principles of contract formation, such as offer and acceptance, consideration, and the requirement of free and informed consent. These principles are relevant in assessing the validity of standard-form contracts.

#### **The Consumer Protection Act, 2019<sup>8</sup>**

The Consumer Protection Act, 2019 provides specific provisions for the protection

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<sup>7</sup> Indian Contract Act, 1872, Act No. 9 of 1872, (India).

<sup>8</sup> The Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India).

of consumers from unfair contract terms and practices. Under this law, a contract term is considered unfair if it puts the consumer at a disadvantage, is one-sided, or restricts their rights or remedies. The law also empowers the government to regulate and prohibit unfair trade practices.

#### **The Competition Act, 2002<sup>9</sup>**

The Competition Act, 2002 prohibits anti-competitive agreements, which can include standard-form contracts that restrict competition, abuse market power, or lead to adverse effects on consumers.

#### **The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011<sup>10</sup>**

These rules require companies to obtain the consent of consumers before collecting and using their personal data. Standard-form contracts that do not provide adequate notice or consent mechanisms for data collection and use can be considered unfair under these rules.

#### **The Real Estate (Regulation and Development) Act, 2016<sup>11</sup>**

This law requires real estate developers to provide a standard-form agreement that is fair and transparent to homebuyers. The law prohibits developers from including one-sided or unfair terms in these agreements.

### **Analysis**

#### **Indian Contracts Act on Consumer Rights in context to Standard-form contracts**

The Indian Contract Act, of 1872, while not specifically addressing standard-form contracts, provides some general principles for contract formation that can be used to assess the validity of such contracts. However, these general principles may not always be sufficient to protect consumer rights in the context of standard-form contracts. To better

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<sup>9</sup> The Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India).

<sup>10</sup> The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, India Code, r. 4, G.S.R. 313(E) (Apr. 11, 2011).

<sup>11</sup> The Real Estate (Regulation and Development) Act, 2016, Pub. L. No. 31, 2016.

protect consumer rights, India has implemented several laws and regulations that specifically target unfair practices in standard-form contracts. These laws include the Consumer Protection Act, of 2019, the Competition Act, of 2002, and various sector-specific laws, such as the Real Estate (Regulation and Development) Act, of 2016. Under these laws, consumers can seek redressal through various mechanisms, such as consumer courts or the National Consumer Disputes Redressal Commission, if they feel they have been subject to unfair terms or practices in standard-form contracts. However, there have been some criticisms of the effectiveness of these laws in protecting consumer rights. Some argue that the legal processes for seeking redressal are slow and cumbersome and that consumers may not always have the resources or knowledge to pursue legal action.

### **Infringement of Consumer Rights by Standard-form Contracts**

Standard-form contracts are often used by businesses and service providers to streamline their operations and reduce transaction costs. These contracts are typically pre-written and presented on a take-it-or-leave-it basis, with little room for negotiation or modification by the consumer. While these contracts can be efficient for businesses, they can also lead to consumer rights infringements.

Here are some ways in which standard-form contracts can infringe upon consumer rights:

- a. **Unfair terms:** Standard-form contracts may contain clauses that are one-sided and unfair to consumers. For example, a contract for a cell phone service may contain a clause that allows the provider to terminate the service without notice while requiring the consumer to give 30 days' notice to terminate. Such clauses can unfairly restrict the rights of the consumer and give the provider an unfair advantage.
- b. **Lack of transparency:** Standard-form contracts may be complex and difficult for consumers to understand. Consumers may not be aware of the full implications of the contract terms, and may not be fully informed about their rights and obligations. This lack of transparency can lead to consumer rights infringements.
- c. **Lack of meaningful choice:** Standard-form contracts are often presented on a take-it-or-leave-it basis, with little opportunity for negotiation or modification by the consumer. This can lead to a lack of meaningful choice for the consumer, as they may feel pressured to accept the contract terms in order to receive the desired goods or services.
- d. **Unreasonable liability:** Standard-form contracts may contain clauses that limit or

exclude the liability of the business or service provider in case of a dispute or error. For example, a contract for a home renovation project may contain a clause that limits the contractor's liability to the cost of the project, even if the work is faulty or incomplete. Such clauses can unfairly shift the risk to the consumer and infringe upon their rights.

Standard-form contracts can infringe upon consumer rights in a variety of ways, including unfair terms, lack of transparency, lack of meaningful choice, and unreasonable liability. To protect consumer rights, it is important for businesses and service providers to use fair and transparent contract terms, and for regulators to enforce laws and regulations that prohibit unfair practices in standard-form contracts. Consumers should also be aware of their rights and take steps to review and understand contract terms before accepting them.

#### **The level of consumer protection and its relation to the standard-form contract**

The more stringent the consumer protection laws of a nation are, the lower would be the infringement of consumer rights by the way of standard-form contracts, &, the less stringent the consumer protection laws of a nation are, the higher would be the infringement of consumer rights by the way of standard-form contracts.

India is globally considered to be a moderate country in terms of consumer protection laws. The more India makes consumer protection laws stricter the less would be the number of instances wherein consumer rights are violated by the way of standard-form contracts. There are several countries around the world that are known for having strong consumer protection laws. Here are some examples:

- a. United States: The United States has several federal laws that protect consumer rights, including the Consumer Product Safety Act, the Fair Credit Reporting Act, and the Truth in Lending Act. Additionally, each state has its own consumer protection laws.
- b. Canada: The Canadian government has several laws and regulations that protect consumer rights, including the Consumer Protection Act and the Competition Act. The Canadian Radio-television and Telecommunications Commission (CRTC) also has regulations that protect consumers in the telecommunications sector.
- c. European Union: The European Union (EU) has a comprehensive set of consumer protection laws that apply to all member countries. These laws cover areas such as product safety, unfair commercial practices, and consumer contracts.

- d. Australia: The Australian government has several laws that protect consumer rights, including the Australian Consumer Law (ACL) and the Australian Securities and Investments Commission (ASIC) Act. The ACL covers areas such as consumer guarantees, unfair contract terms, and product safety.
- e. Japan: Japan has a range of consumer protection laws and regulations, including the Consumer Contract Act, the Act on Specified Commercial Transactions, and the Act on Sales, etc. of Financial Products.

## **Role of Judiciary**

### **General Concept**

In most countries, the role of the judiciary is to interpret and apply existing laws, not to make new laws. The power to make new laws is usually vested in the legislative branch of government. In some cases, the judiciary may also have a role in striking down laws that are deemed unconstitutional or incompatible with existing legal frameworks. This can sometimes create a situation where lawmakers are compelled to create new laws that conform to the court's rulings.

### **Common Law Nations**

In common law nations such as the United States and the United Kingdom, the role of the judiciary in making new laws is limited, but it can be significant. Common law is a legal system based on judicial decisions and precedents, rather than on codified laws. In this system, courts have the power to interpret the law and to create legal precedents that can be used to guide future decisions. When a case is brought before a court, the judge must interpret the law and apply it to the specific facts of the case. The judge's decision becomes part of the legal precedent that future judges may rely on when deciding similar cases. In this way, the judiciary can indirectly influence the development of the law by shaping legal precedents. In addition, in some cases, the judiciary may be called upon to fill gaps in the law when the legislative branch has not addressed a particular issue. For example, in the United States, the Supreme Court has created new rules and standards in areas such as free speech, privacy, and criminal procedure when the legislative branch has not acted.

### **Indian Context**

In India, the judiciary has played a significant role in shaping and enforcing the legal system in many areas. Some of the Indian laws where the judiciary has had a significant impact include

- a. Constitutional law: The judiciary has played a crucial role in interpreting the Indian Constitution and protecting fundamental rights enshrined in it. For instance, in the *Kesavananda Bharati case*<sup>12</sup>, the Supreme Court established the principle of "basic structure" of the Constitution, which limits the power of the legislature to amend the Constitution.
- b. Criminal law: The judiciary has also been involved in shaping criminal law in India. For example, in the landmark case of *State of Maharashtra v. Narayan Shridhar Mirajkar*<sup>13</sup>, the Supreme Court established guidelines for the exercise of contempt of court power by the judiciary.
- c. Environmental law: The judiciary has played a significant role in the development and enforcement of environmental laws in India. For example, in the case of *M.C. Mehta v. Union of India*<sup>14</sup>, the Supreme Court issued several orders to address environmental pollution in Delhi, including the banning of polluting industries and the conversion of public transport vehicles to run on cleaner fuels.
- d. Family law: The judiciary has also been involved in shaping family law in India. For example, in the *Shah Bano case*, the Supreme Court ruled that divorced Muslim women were entitled to maintenance under Indian law, even though Muslim personal law did not provide for it.

As we can see in the aforementioned cases, the judiciary in India does have considerable power in making new laws. In order to protect consumer rights the judiciary can play a vital role by doing the following

1. Recommending a draft of stricter consumer protection laws.
2. By pressurising the legislative to enact laws of the aforementioned nature.
3. By ensuring the constitutional validity of such laws.

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<sup>12</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

<sup>13</sup> *State of Maharashtra v. Narayan Shridhar Mirajkar*, 1966 AIR 1 (India).

<sup>14</sup> *M.C. Mehta v. Union of India*, 1987 SCC (1) 395.

## **Conclusion & Suggestions**

### **Conclusion**

The researcher would like to conclude the paper by stating the following:

1. Need for more stringent consumer protection laws:

India requires a set of more stringent consumer protection laws. That all infringements upon consumer rights will be curbed, this will include infringements not only by the way standard-form contracts, but also, by other ways of undermining these rights.

2. Role of Judiciary:

The judiciary in this context has to step up and act as a proactive player in order to ensure the well-being of Indian consumers. They also need to act as a pressure valve towards the legislative wing, whenever the legislature acts in a way detrimental to the consumers of India, the judiciary, by pressurizing should stop these acts from being enacted. Whenever the legislature passes a law in the interest of the consumers, the judiciary, should promote the act and ensure its enactment. The judiciary also needs to, by the way of precedents or suggestions to the legislature, define standard-form contracts more specifically.

3. Effectiveness of the Indian Contract Act in Protecting the Consumers' Rights in the context of Standard-form contracts:

The Indian Contracts Act, of 1872 is not very effective in protecting and ensuring consumer rights in the context of standard-form contracts. It requires the support of other consumer-centric laws like the Consumer Protection Act.

### **Suggestions**

The suggestions the researcher feels are as follows:

1. Standard Contracts:

Standard-form contracts should be more defined and specified in a definition which limits the powers of such contracts. Certain clauses like exclusion or limitation of liability clauses, mandatory arbitration clauses, non-disclosure clauses, etc., should be prohibited from use completely or should be heavily regulated.

2. Consumer Protection Laws:

Consumer protection laws as specified in the paper need to be more stringent in nature. The judiciary, being an expert in the law, needs to step up in order to frame laws which can protect consumer rights. Punishments for violating consumer protection laws should be severe to discourage the breaking of these laws.

3. Committee for consumer complaint:

A committee for consumer dispute resolution should be set up similar to the system set up under the Consumer Protection Act, but this committee should be integrated with another committee which has expertise in contractual laws. This way, every consumer complaint arising from contracts can be resolved. This will also divert pressure from civil courts and consumer forums set up under the Consumer Protection Act.