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VALIDITY OF EXCEPTION CLAUSES IN STANDARD FORM CONTRACTS: A CRITICAL ANALYSIS

Dr. Veena Kumari

Assistant Professor, University Institute of Legal Studies, Ava-Lodge Campus, Himachal Pradesh University, Shimla, Himachal Pradesh, India

Abstract: Standard form contracts are used very commonly by big commercial organizations, Governments and its instrumentalities, public corporations, banks and insurance companies. Standard form contracts have pre-printed and pre-drafted terms and conditions and have become common in almost every branch of industry and commerce, consumer contracts, employment, hire-purchase, insurance, travel and courier services etc. However the contracts entered by these big organizations with the individuals or consumers are not at equal footing, one party i.e. the consumer is bound to sign on the dotted line with no opportunity for that party to negotiate over the terms and conditions of the contract at all. The principles which came out from this concept have been applied in a society in which freedom of contract has become in many respects more fictitious, imaginary. The individual has a legal right to choose to enter into a contract or not to make a contract. More and more such transactions have consisted in the presentation by one side to the other of standard terms and conditions. This problem of standard forms is multiplied by use of exemption and exclusion clauses in a language which is Greek to a common man. These exemption clauses are used as a side gate by the stronger parties to escape from their liabilities. Under Indian Contract Act, 1872 there is no specific provision, which deals with standard form contract. Law Commission under its 199th report has emphasized the need of insertion of specific provision relating to standard form contracts. But this step from legislatures is still awaited.

Index Terms: Standard form Contracts, Exemption Clauses, Interpretation, Conditions

Introduction:

In the present era, where the trade and commerce has reached at zenith level we cannot imagine the commercial world without the existence of the standard form Contract. In the era of e-commerce, the mass production and distribution has introduced the mass contracts i.e. the uniform documents, which are required to be accepted by all persons who deal with large scale organizations. It is not possible for any organization to sign the contract individually with each and every one by negotiating the terms and conditions of the agreement. Hence there is necessity of Standard form contracts. These contacts came into existence in 19th century. At that time they were used in the form of bill of lading, tickets etc. Standard form Contract is a legally binding agreement between two parties to do ascertain thing, in which one party has bargaining power and uses that power to write the contract primarily to his advantage.[1] Standard Form Contracts are usually pre- printed and pre- drawn conditions .Terms in the contract are pre- established on which the weaker party is to adhere; the other party does not have any option to change or discuss about the terms of the contract. These standard form contracts differ from the traditional contracts because their terms are non- negotiable and are offered to the consumer on "take it or leave it" basis.[2] Such non- negotiated forms are also called "contract of adhesion" because the consumer is powerless to do anything other than to adhere to those terms.

In the present scenario, standard form contracts are classified into two kinds, the first are customary standard Form contract, are those which are set out the terms on which commercial transactions of common occurrence are to be carried out like bill of lading, policies of Insurance etc. The standard clauses of these contracts have been settled over the years by negotiations by the representatives of the commercial interests involved .These contacts been widely adopted because experiences have shown that facilitate the conduct of trade. It would give rise to a strange presumption that their terms are fair and reasonable. However, this cannot be said about the modern standard form contract.

1 Friedrich Kessler, Contract of Adhesion - some Thoughts about Freedom of Contract,43,COLUM.Rev., 1943,p 630

2 Supra Note 1 , p, 632

These modern contracts are result of concentration of particular kind of business relatively few hands. The terms of such type of contract have not been subject of negotiation between the parties to it.[3]

In the times of specialization there has been a standardization of contracts. By "standardization of contract" it is meant that their characteristic feature are tailor-made, to suit the requirements of all contracting parties. It can said to have the new characteristics feature of one size fit all model .This Standardization is achieved by what have come to be ubiquitously known was standard form contract[4].These standard form contracts have become very popular due to certain advantages, firstly, there is certainty of terms and conditions, secondly; because there terms are pre- drafted so it leaves no chance of negotiation between the parties; thirdly, as the terms and conditions are already mentioned in the contract, the parties are aware of the obligations of the contract. However there are various grounds on the basis of which, they are considered as unfair. The main terms of the contract are put in the large print, but the qualifications are buried in a small print. The language of the contracts are such complicated that a layman finds it very difficult to understand, and gives consent to it, even without understanding. Individuals in most of the cases are not able to read and understand the standard terms because of shortage of time and the compulsion to sign the contract at the earliest and if they read they are not in a position to understand the impact of the standard terms beforehand. Secondly, if they understood the terms properly and its future impact they are not in a position to get the terms changed to their favor and convenience. Lack of effective choice, owing to market monopoly, plus the consequent pressure to sign along the dotted lines, etc. are few of the factors that underline the conclusion of a standard form contract. This is in quite disagreement with the established fundamental principles of contract law.

Standard Form Contract: Meaning

Standard form contract is a legally binding agreement between two parties to do a certain thing, in which one party has all the bargaining power and uses to write the agreement to his or her own advantage. Standard form contract are the agreements that employs standardized, non- negotiated provisions, usually in the printed form. Standard form contracts pervades trade practices and have unfiltered all possible sectors starting from the industry and commerce to consumer, travel agreement, currier services and online shopping and social media etc.[5]These are the contracts that employ standardized, non- negotiated provisions usually in printed form. Boiler plate embedded contracts, take -it -or leave- it contracts, contract of adhesion are all different names that are given to the standard form contract format. The contract in such a case is not made by the process of negotiation, as regards its terms and conditions, between the two parties .One of the parties generally prepares the draft of the contract, which the other party is enabled or sometimes even deemed to agree by the parties. Standard forms Contract are usually pre-printed and pre-drown .Conditions and terms in such contracts are pre- established on which the weaker party is to adhere; the individual has no option to change or discuss about the terms of the contract.

Advantages and Disadvantages of Standard Form Contracts

Rise of relevance of standard form contracts affirm the "theory of evolution" of Darvin and survival of the fittest. Standard form contract has indeed served the real need of the business world and to a greater extent of the individual consumer too. The unique feature of the standard form contract is that on one hand they are highly standard i.e., uniform in wording/ clauses, on the other hand they are quite customizable.[6] Standard form contracts increases the profitability by increasing efficiency on one hand and also decreases the cost in engaging afresh with the individual[7]. The use of Standard Form Contract has in fact made the modern business model sustainable. However there are also many disadvantages of the standard form contracts. The greatest disadvantage of the Standard Form Contract is that, the courts have turned blind eye to the inequality between the parties but even more disturbing fact is that the continuing increase in pervasiveness of standard form contract is increasing the difference in bargaining power between the two[8] . The case of one sided agreements is aggravated when they refer to those terms that gives unilateral power to the drafting party to modify the terms of the contract at any time, as long as the period of the contractual relationship continues.

Role of Exemption Clauses

The exemption Clauses are the one that intend to exempt – wholly of partly, the liability, of one of the parties, in the event of certain contingencies happening. An exemption clause or an exclusion clause is a term of a contract which either excludes or limits any liability of party to the contract for a breach that would have arisen in the absence of such a term. A party to the contract signing a written contract is bound by its terms whether he has read or understood them or not. [9] Therefore limitation clauses also come within the ambit of exemption clauses. These exemption clauses may be aimed to establish rights and obligations between the contracting parties so that their obligations can be decided. However it is a fact that such allocation of obligation is either negotiated or imposed without due notice or with the absence of effective choice. As a result the courts have tended to view such limiting or liability excluding clauses as a separate category and have developed the specific rules for their treatment. Exemption clauses have been on one hand been defended as expression of freedom of

3 Schroeder Music Publishing Co. Ltd. V. Macaulay [1956] 2 ALL ER 866.,

4 It is also referred to as Adhesion contract.

5 Law Commission of India, 199th Report

6 Mostly the clauses that usually interest the consumer like prize and quality are made negotiable, through a significant lot is left beyond the reach of the consumer.

7 Wayne Borne, Toward a Fairer Model of Consumer Assent to Standard Form Contract: In Defence Of Restatement Section 211(3) , 82 WASH LAW REV.227(2007)

8 (1883) 10 QBD 178.

9http://indiankanoon.org/document/1741949/?forminput=standard%20form%20contract%20%doctypes%3A%20judgements

contract doctrine and attached on the other as a means of oppression of inferior party and befooling the unsuspecting consumers. There are many types of exemption, exclusion or limitation clauses, a few may be cited here:

(a) Limiting the compensation for a breach of contract: Clauses which tend to limit or exclude the liability which would otherwise attach to the breach of contract. These are clauses which intent to limit or reduce the defendant's substantive obligations and duties. E.g. If a party making a standard form limits the compensation for the breach of contract. Whereas the actual loss caused to the other party is much greater than that, then the court may decide to set aside such clause and grant relief to the other party. If the result of the breach is the total destruction of subject matter of the contract then the contract is automatically at the end along with all its exception clauses.[10] Under these limitation clauses, the party which has inserted the terms and conditions limits the amount of compensation in the situation of default by that party. Such clauses limit the rightful claim of the weaker party.

(b) Limiting the time during which a remedy is available: Sometime a party to the contract imposes such terms by which he is not bound by any liability under the contract after the expiry of certain specified period.

(c) Excluding or limiting the express or implied terms: clauses which intends to exclude or limit the duty of the party in default fully to indemnify the other party. e.g.: by limiting the maximum amount that can be claimed under the damages or the time limit within which such claim can be made. Clauses by which a seller of the goods or any other person has been exempted for breach by expressed or implied terms has always been looked by the court with disfavor.

The courts have always looked upon the clauses by which a seller of goods or any other person for breach of express or implied terms with disfavor and very often they are construed against the person who put it forward where a substance quite different from that contracted for has been delivered, the exemption clause has no application because the difference cannot be said to constitute "defect. The most objectionable clauses are found in the complex standard conditions which are now common. In the ordinary way the customer has no time/opportunity to read them, even if he did have opportunity and understands and did object to any of them, he would generally be told that he could take it or leave it. Freedom of contract must surely imply some choice or room for bargaining, which is mostly not available to the weaker party[11].The use of limiting terms and exclusion clauses in the standard form contract without any knowledge of the party in weaker position is nothing but exploitation of the weaker party. Big commercial organizations usually draft the standard terms in ways, which are highly favorable to themselves. It is generally by means of clauses which excludes or limits their liability for failure to perform the terms of the agreement.

As a general rule, a party signing a written contract is bound by its terms in the absence of any fraud, mistake or misrepresentation. Where a document containing contract is presented by one party to another and such contract contains certain exception clauses or limitation clause, then the recipient who accepts the document will be bound by those terms. The benefit of such excluding out exemption clauses from the general realm of the contractual terms and employing greater judicial scrutiny to them serves the purpose of the maintaining the dignity of freedom of contract intact. The law about the exempting clauses has been much developed in the recent years .It is now settled that the printed exemption clauses which are often passed unread, no matter how widely they are expressed, are only availed by the party forming them. So he is not allowed using them as a cover for misconduct or indifference to enable him to turn a blind eye to his obligations.[12]

Statuary Provisions in India

A contract can be declared to be void or voidable by the court of law only if falls under one or the other of the provisions of Indian Contract Act, 1872, or The Sale of Goods Act, 1930 whereby the courts can give relief to the consumer or the party in a weaker bargaining position by declaring that such terms in the contract are void because they are unreasonable or unconscionable or unfair. The law commission of India in its 103rd report on 'Unfair terms in Contract' has pointed out that the existing provision of the Indian Contract Act do not seem to be capable of meeting the mischief caused by the unfair terms incorporated in the contracts. The only relevant provision in the Indian Contract Act which can apply is section 23, when it states that "The consideration and object of an agreement is lawful, unless…. The court regards it….as opposed to the public policy."[13] This section does not speak of unconscionability as one of the grounds. However the last clause in section 23 declares that no one can lawfully do that what id opposed to the public policy. It comprehends the protection and promotion of public welfare. It is the principle of law under which freedom of contract or private dealing is restricted by the law for the good of the community. So the responsibility lies on the courts to decide on the basis of facts and circumstances that, whether the terms and exemption clauses in the contract are of such nature that they can be considered as opposed to the public policy on the basis of unfairness.

Apart from the provisions of Indian Contract Act, 1872, The Sale of Goods Act, 1930 creates a large number of rights, duties and liabilities. These include warranties and guarantees implied by the provisions of Sale of Goods Act. Section 62 of the Act permits exclusion of these rights, duties or liabilities by express clause or on account of the course of dealings between the parties or by usage, if the usage is such as to bind both parties to the contract. Section 62 enables the parties to a sale to exclude liability for implied terms. The section recognizes different modes by which liability for implied terms may be negative; firstly by express contract, Clauses by which a seller excludes his liability for breach of implied terms are strictly construed against him unless the liability is excluded by very appropriate terms.

10 Harbutt,s Plarticine Ltd V/s Wayne tank and pump Company ltd (1970) 1 All E R 225

11 Suise Atlantique societe d' armament maritime S A V/s Ratterdomshe kalen Centrale ,s (1966)2 All E R 61

12 Karsale,s (Harrow) Ltd V/s Wallis (1956) 2 All E R 866

13 Central Inland water transport corporation V. Brojo Nath AIR 1966 Mad. 13

There should be clear proof of the existence of a course of dealing. A course of dealing may arise with equal force from a written or parole bargain or from the repeated occurrence of similar methods as between the parties.

In early years when welfare legislation like Consumer Protection Act did not exist, the maxim caveat emptor (let the buyer beware) governed the market. Now with the opening of global markets and progressive removal of restrictions on international trade there is increasing competition among manufacturers which has benefited consumers in the form of improvement in quality of goods and services. In spite of various provisions providing protection to consumers through different enactments like Civil Procedure Code 1908, Indian Contract Act 1872, Sale of Good Act, 1930, very little could be achieved in the area of consumer protection. The consumer Protection Act, 1986 was thus framed to protect consumers from unfair trade practices of business community. The preamble of the Act shows that it is an Act to provide for better protection of the interest of consumers and for that purpose, to make provision for establishment of consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith. When consumer Protection Act 1986 was enacted it did not originally contain the definition of "unfair trade practice." The concept of unfair trade practice was, however, interpreted according to definition of unfair trade practice, given in the MRTP Act 1969.

Under the Consumer Protection Act 1986 the method of inquiry into the allegation of unfair trade practice is on three levels by the three authorities having its own original pecuniary jurisdiction. The complaint is filed before the District Forum where the value of goods or services and for compensation claimed does not exceed rupees five lakhs. The District Forum after the proceeding are conducted under Section 13 is satisfied that the goods complained against suffer from any of the defects specified in the complaint about the services are proved, it shall issue an order to the opposite party directing him to either remove the defect pointed out to or replace the goods with new ones, to remove the defects or deficiencies in services in question, to return to the complainant the price, to pay such amount as compensation for any loss suffered, to discontinue the unfair trade practice or the restrictive trade practice, or not to repeat them[14]. Section 14 of the Consumer Protection Act deals with the relief which the District Forum is authorized to give to the aggrieved consumer. The District Forum has to record its satisfaction as regard the defects in goods, deficiency in service. It is only after recording such satisfaction that the District Forum can give direction in respect of the reliefs which it grants to consumers. The District Forum shall issue orders to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them.

Incorporation and Interpretation of the Exemption Clause

The idea of mass production for mass consumption and distribution is not possible unless we have standard form contracts having uniform set of pre-drafted terms and conditions printed on it. Standard form contracts can be used time to time and again and again and continuously for any number of persons who may come and wish to enter into the contract with a large and giant organization. Time is money, so one object of these standard form contracts is to save time; time is saved so money is saved. These contracts are cost friendly when money is saved then the big and giant organization may give some additional benefit to its customers entering into the contract. The cost incurred in these types of contracts is less than the contracts negotiated individually .Parties to the contract is bound by the terms of a contract. When the terms of the agreement limits the obligation of one of the party, Such terms will be considered as valid and enforceable if the agreement is signed by the parties, reasonable notice is given to the other party about such terms[15] and lastly the document which contain such terms/ exemptions clause must be capable of considered as a contract[16].

The courts evolved some models of protection for the individual.

A. Reasonable notice:

In order for the terms of an unsigned document to be binding, it is necessary for the party against whom the terms of the unsigned document are sought to be enforced to have knowledge of these terms or to have been given reasonable notice of the existence of such terms. What constitutes reasonable notice will depend upon the circumstances of each case. In the case of *Parker V. South Eastern Railway Co*[17], the plaintiff deposited his bag in the cloakroom at the defendants' station.

B. Time of Notice:

In order to be contractual, a document must be introduced at or before the making of the contract and must be of such a nature that a reasonable person would expect it to contain terms governing the contract. In *Olley V. Marlborough Court Ltd*[18]. In this case Mrs. Olley with her husband hired a room in the defendant's hotel and paid for a room in the defendant's hotel .Due to the negligence of the hotel staff, their property was stolen from the room. In an action against the defendants to recover compensation for loss they sought exemption from liability on the basis of the notice displayed in the room. The court of Appeal held that the notice formed no part of the contract since Olley could not have seen it until after the contract was made and the defendant was accordingly held liable for the loss occurred to the plaintiff .

14 Section 14 of consumer Protection Act,1986
15 Parker V/s South Eastern Railway Company Co. 1877 2 C P D 416
16 Chapelton V/S Berry urban UDC 1940 1 KB 582
17 (1877) 2 C.P.D. 416
18 (1949) 1 K B 532

C. **There should be no misrepresentation:**

As a general rule, a person who signs a document containing contractual terms is precluded from denying that he is bound by the terms of that document and that he had notice of the terms contained therein. However, there are circumstances in which, owing to a mistake as to the nature of the document or to a misrepresentation by the other party, the signatory can avoid liability.

D**. There should be contractual document**:

The parties are bound by the term if the term is contained in a contractual document. In order to be contractual, a document must be introduced at or before the making of the contract and must be of such a nature that a reasonable person would expect it to contain terms governing the contract. In *Chapelton V. Barry Urban District Council*[19] it was held that if the document is a mere receipt and does not create a contract, the terms contained in such a document are binding.

E. **The terms of the contract should be reasonable**:

For a valid contract it is necessary that the terms of the contract should be brought adequately to the notice of the party by a sufficient notice before the contract is entered into. Similarly it is also necessary that the terms of the contract should be reasonable. If the terms of the contract are unreasonable and opposed to public policy they will not be enforced 137 merely because they are printed on the reverse of bill or receipt or have been expressly or impliedly agreed upon between the parties. In the case of *Central Inland Water Transport Corporation Ltd. V. Brojo Nath* [20], one of the clause in the service Rules of the Corporation provided that the service of an employee can be terminated without assigning any reason. On interpretation of the relevant Service Rule the Supreme Court held that the Rule empowering the Government Corporation to terminate services of its permanent employees by giving notice or pay in lieu of notice period is opposed to public policy and violative of Article 14 and directive principles contained in Articles 39(a) and 41 of Constitution of India .The principle laid down in the case of Central Inland was followed again by the Supreme Court in *B.C.C.P. Mazdoor Sangh V. N.T.P.C*[21]. In this case the Hon'ble Supreme Court held that, "in the vast majority of cases, however, such contracts are entered into by the weaker party under pressure of circumstances, generally economic which results in inequality of bargaining power. Such contracts will not fall within the four comers of the definition of "undue influence" given in section 16(1) of the Indian Contract Act, 1872.

F. Theory of Fundamental Breach:

It is another device which is adopted to protect the weaker party from the clauses in the contract when they have unequal bargaining position. No party to a contract can exempt themselves from the responsibility for a fundamental breach of contract. It is presumed that the parties to a contract cannot have intended an exemption clause, albeit clearly exempting liability, to be so wide as to exempt or limit the obligation to perform the contract at all, or to exempt liability where a person is not performing the contract but is departing from it, or to exempt liability for breach of the fundamental obligation or obligations under the contract. In *Alexander V.s Railway executive*[22] it was observed by the court that when the luggage is deposited with railway parcel office, its basic objective the safe custody of the goods. Hence any exemption clause, exempting the party in case of wrong delivery of the goods will not be valid. This fundamental term is something more basic term of the contract and because of its breach the whole purpose of contract is defeated.

G. Liability in tort :

In those cases where more than one kind of liability arises, exclusion of contractual liability may not negative other kind of liability. A contracting party can be made liable irrespective of negligence; a clause exempting him generally from liability "for all damages" does not exempt him from liability for negligence.

Construction of Exclusion Clauses:

What the parties to the contract meant to say or write is a question of construction of the words used having regard to the tenor of the agreement and to the surrounding circumstances. However a number of rules of construction have been developed to assist the courts to ascertain the meaning of the words and phrases in various circumstances.

(i) General Principle: The General principle is that the words or phrases receive the construction which will best give effect to the intentions of the parties to the contract so far as they can be ascertained from whole of the terms of the agreement in the light of surrounding circumstances. However, where the terms of a contract are contained in a document, extrinsic evidence whether oral or otherwise are admissible to alter or to explain express terms which are clear and unambiguous. The interpretation of the contract is no formal or mechanical task. On the contrary, it is one of the most intractable tasks which a court have to face, and it is not made easier by the utter inadequacy of the tools which the courts have forged to assist them. Perhaps nowhere does the law of the twentieth century seem more inadequate to its purposes than in the rules for the interpretation of written documents.[23]

(ii)Exemption Clauses and Strict Construction: A clause in the contract which purports to exempt or limit the liability of one of the parties under a contract is to be strictly construed against the party relying upon it. An exemption clause will always be construed narrowly, against the party who put it forward .For the interpretation of exemption clauses, "contra proferentem" rule is applied generally. The

19 (1940) 1 K B 532
20 AIR1966 Mad. 13
21 AIR 2008 S. C. 336
22 (1951)2 K B 882
23 P.S. Atiyah "An introduction to the law of contract" Ch. X 3rd Ed. 1981 at p. 166

principle whereby the words or terms of a written contract are construed more strictly, forcibly and narrowly against the party putting forward the document of contract.

Report of Law Commission of India:

The Law Commission of India in its 103 Report on "Unfair Terms in Contract (1984), observed that "the entire basis of a contract, that it was freely and voluntarily entered into by parties with equal bargaining power, completely falls to the ground when it is practically impossible for one of the parties not to accept the offered terms. In order to render freedom of contract a reality and particularly of one whose bargaining power is less than that of the other party to the contract, various measures like labor legislation, money lending laws and rent Acts have been enacted but there is no general provision in the Indian Contract Act, 1872 itself under which the Courts can give relief to the weaker party". The existing sections in the Contract Act do not seem to be capable of meeting the mischief. The Law Commission in its 103rd Report has recommended the amendment in the Indian Contract Act, 1872 and insertion of chapter IV A with a single section 67A in it which would combine the advantages of the English Unfair Terms Act and Section 2.302 of the Uniform Commercial Code of the United States. The Law Commission of India again in its 199th Report on Unfair (Procedural and Substantive) Terms in Contract (2006) discussed in detail the existing provisions as regards voidable and void contracts under the Indian Contract Act, 1872 as well as non-enforcement of contracts where there is unfairness or hardship, as contained in the Specific Relief Act, 1963. The Law Commission in its 199 Report has suggested that the provisions of these two statutes need not be disturbed. The Law Commission in its 199th Report agreed with its earlier observation in its 103rd Report of 1984 where it was opined that the provisions of the Indian Contract Act, 1872 and other laws are not sufficient to meet the problems of today. The Commission was of the view that there is now need to introduce more provisions than were contemplated in its 103rd Report. The Law Commission prepared a draft of the Proposed Bill on "Unfair (Procedural and Substantive) 422 Terms in Contract Bill, 2006" and recommended for its enactment. The Law Commission segregated the provisions in the bill which deal with "Procedural" and "Substantive" unfairness and it said that this type of division of unfairness is very necessary. But the enactment of these provisions is still awaited.

Conclusion

We live in the era when standardized conditions cover large fields of human activity. They have become a means whereby powerful interests seek to dictate to the public the conditions on which they will do business. The party in a weaker bargaining position is offered by the stronger party of contract on the terms: "take it or leave it". Nevertheless, although such contracts are more by-laws than a contract, there is no doubt that this set of rules contains the contract between the members. The terms and conditions of the standard form contracts are so inserted in the contract that the individual consumer is literally at the mercy of the supplier of the goods and the warrantees or guarantees proves later on simply as a hollow drum or an illusion or hope that cannot be realized. Exemption clauses can cause injustice by depriving a contracting party of the benefit he reasonably expected to receive from the contract. The powers of judges have widened over the years but still it is limited. It is submitted humbly that on the some decisions of the different High Courts and the Apex Court that apart from some sections of the Indian Contract Act, 1872 as Sections 16, 23, 27 and 28 the Courts have invoked Article 14, 16, 19 and 21 of the Constitution of India to strike down certain unreasonable terms of the contract entered by the Government, its instrumentalities, Public Sector Undertakings and Statutory Bodies which are "State" within the meaning of Article 12 of the Constitution of India.

The recommendations of the Law Commission of India contained in its 199th Report on Unfair (Procedural and Substantive) Terms in contract should be implemented by the Central Government at the earliest. Considering the gravity of the problem posed by these unfair and unreasonable terms, it is also essential that some special measures should be devised to eliminate the abuse of freedom of contract in relation to these 'standard form contracts." There should be setting up of a "office of fair trading" on the British pattern in each revenue district headed by a retired judicial officer of a cadre not below of a district judge. In addition to this, this "office of fair trading" should have the authority to scrutinize all the advertisements and terms and conditions printed in it and on the receipts and the guarantee cards etc. After the scrutiny this office should issue a certificate of "fairness", only then they should be allowed to be issued to the consumers.