ABSTRACT

Contracts of sale, lease, loan, labour, assignment and other types of contracts are the tools whereby different transactions are effected whether between individuals inter se or among groups, individual or legal persons. The contents of contracts do not rank equally in regard to their legal value. Exemption clauses are of the most important categories because they delimit or determine the boundaries and four corners of the contract and an international phenomena and problem. It has been understood that a certain control of exemption clauses, is indispensable. Whereas exemption clause enable a party to a contract to limit or exclude a liability which will otherwise be his, limitation terms restrict the liability of a party either by placing a ceiling for compensation, or by specifying a time limit for doing an action. They are regularly used in standard form contracts particularly in the type known as contracts of adhesion. Now, the device of the standard form is a prevalent phenomenon of the modern society. It is used in transactions usually related to the needs of the daily life such as electricity, water, communication...so on. The providers of these services have usually a superior power position or monopoly on them. Such this position is appropriate to make inequality of bargaining powers and to put consumers in a weaker position. The law is to step in to restore the contractual balance and to protect consumers as weaker party. This is achieved by controlling the use of exemption clauses such as limitation or exclusion terms and etc., in contracts via judicial or statutory arrangements. The legal intervention, whether judicial or statutory, is backed by economic and social dimensions. As far as the economic and social factors are variable, the need for studying exemption clauses is continually renewed not only in comparative systems, but also within the same legal system. The vital importance of exemption clause at the legal as well as the economic and social levels always triggers studies.

The present study with six chapters not only a developmental perspective, whereby discussing the development and legality of exemption clauses in standard form of contract in India and UK, also follows a comparative approach. Hence, various aspects of the Indian Contract Act 1872 are compared with the Unfair Contract Terms Act 1977 of United Kingdom.
So far the Indian scene is concerned, should be aware that modernization and industrialization of the country has given birth to the standard form contracts in various spheres of business and commerce. In our daily life they have been essential. But it is highly surprising and unfortunate that courts are not serious new challenge. Their decisions show complete indifference of the efforts made and techniques developed by the UK courts which are, in essence, of the nature of private legislation. There have been few cases and that too have been decided with reference to Section 23 of the Indian Contract Act, 1872.

A thorough examination of the Indian Contract Act 1872 and cases law show that the road for protection of the weaker party in India is not smooth. It is still in novice stage with many ambiguities that blocked in working of successful of this road in India which are multiple starting from emergent needs to amendment or modify of certain provisions of the Indian Contract Act 1872 or legislature should draft and enactment a private legislation same as Unfair Contract terms Act, 1977 (UK) in related to standard form of contract specially exemption clause, to changing the attitude of all potential parties who are involved.