CHAPTER – I

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1. Meaning and Definition

A standard form contract sometimes referred to as an adhesion contract or boilerplate contract is a contract between two parties that does not allow for negotiations, i.e. take it or leave it. It is often a contract that is entered into between unequal bargaining partners, such as when an individual is given a contract by the sales – person of a multinational corporation. The consumer is in no position to negotiate the standard terms of such contracts and the company’s representative often does not have the authority to do so.

An example of a standard form contract is a standardized contract form that offers goods or services to consumers on essentially a “take it or leave it” basis without giving consumers realistic opportunities to negotiate terms that would benefit their interests. When this occurs, the consumer cannot obtain the desired product or service unless he or she acquiesces to the pre-drafted terms of the contract.

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 it to write the contract primarily to his or her advantage. There is nothing unenforceable or even wrong about standard form contracts. In fact, most business would never conclude their volume of transactions if it were necessary to negotiate all the terms of every consumer contract. Insurance, carriers, banks courier and residential leases are other kinds of standard form contract. This does not mean,
however, that all standard form contracts are valid. Many standard form contracts are unconscionable; they are so unfair to the weaker party (mostly individual) that a court will refuse to enforce them. For example there would be severe penalty provisions for failure to pay loan installments promptly that are physically hidden by small print located in the middle of an obscure paragraph of a lengthy agreement. In such a case a court can find that there is no meeting of minds of the parties to the contract and that the weaker party has not accepted the terms of the contract. One cannot give consent to a term which he or she did not read or understand.

Mostly the terms and conditions in a standard form contract are in small print and written in such language and style often seems irrelevant and unnecessary to a person. The prospect of an individual finding any useful or important information from reading such terms is very low, and even if such information is discovered the individual is in no position to bargain as the contract is presented on a “take it or leave it” basis. Very often large amount of time is needed to read the terms, the expected payoff from reading the contract is low and few people would be expected to read it. Access to the full terms may be difficult or impossible before acceptance. Often the document being signed is not the full contract; the purchaser is told that the rest of the terms are in another location. This reduces the likelihood of the terms being read and in some situations, such as contract through internet the terms of the contract can only be read after they have been notionally accepted by purchasing the goods.

The most important terms to purchasers of a good are generally the price and the quality; which are generally understood before the contract is signed. Terms relating to events which have very small probabilities of
occurring or which refer to particular statutes or legal rules do not seem important to the purchaser. This further lowers the chance of such terms being read and also means they are likely to be ignored even if they are read.

Standard form contracts are usually pre-printed and pre-drawn, conditions and terms in the contract 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. The standard terms and conditions unilaterally prepared by stronger party are offered to the other on a “take it or leave it” basis. The individual participation in the contract is only adherence to the document drafted unilaterally, he has to sign only on dotted line, and the contract is made. Often consumer do not have the opportunity to negotiate or read the terms. Extreme example in this context is insurance policies. Purchaser of insurance policies often do not receive their policies before entering into the contract.

“The standardized contracts are really pretended contracts that have only the name of contract. They are called contracts of adhesion from the French term contracts & adhesion because, in these, a single will is exclusively predominant, acting as unilateral will, which dictates its terms not to an individual but to an indeterminate collectivity. The standard terms and conditions prepared by one party are offered to the other on a “take-it-or-leave-it” basis. The main terms are put in a large print, but the qualifications are buried in small print. The individual participation consists of a mere adherence, often unknowing to the document drafted unilaterally and insisted upon by the powerful enterprise: the conditions imposed by the document upon the customer, are not open to discussion, nor are they subject to negotiation between the parties, but the contract has to be accepted or rejected as a whole. The contracts are produced by the printing press. The pen
of the individual signing on the dotted line does not really represent his substantial agreement with the terms in it, but creates a fiction that he has agreed to such terms. The characteristics, usually and traditionally associated with a contract, such as freedom to contract and consensus, are absent from these so called contracts."

Standard form contracts are known by different names in different places. In France it is called *contracts d'adhesion*. In U.S. they are called ‘Adhesion contract’ or contracts of adhesion. In U.K. it is called standard form contract. In India too, it is called standard form contract or contracts in standard form.

In Black’s Law Dictionary, the standard form contract is defined as under,

“A standard-form contract prepared by one party, to be signed by the party in a weaker position, usually a consumer, who has little choice about the terms. Also termed contract of adhesion, adhesory contract; adhesionary contract; take it or leave it contract; leonire contract.”

What the French call “contracts d-adhesion”, the American call “adhesion contracts” or “contracts of adhesion”. An “adhesion contract” is defined in Black’s Law Dictionary. Fifth Edition, at page 38 as follows:

“‘Adhesion contract’. Standardized contract form offered to consumers of goods and services on essentially ‘take it or leave it’ basis without affording consumer realistic opportunity to bargain and under such conditions that consumer cannot obtain desired product or services except by acquiescing in form contract. Distinctive feature of adhesion contract is that weaker party has no realistic choice as to its terms. Not every such contract is unconscionable.”
The position under the American Law is stated in “Restatement of the Law – Second” as adopted and promulgated by the American Law Institute, Volume II which deals with the law of contracts, in section 208 at page 107, as follows:

“S.208 Unconscionable Contract or Term

If a contract or term thereof is unconscionable at the time the contract is made a Court may refuse to enforce the contract, or may enforce the remainder of the contract without the unconscionable term, or may so limit the application of any unconscionable term as to avoid any unconscionable result.”

In the Comments given under that section it is stated at page 107:

“Like the obligation of good faith and fair dealing (S.205), the policy against unconscionable contracts or terms applies to a wide variety of types of conduct. The determination that a contract or term is or is not unconscionable is made in the light of its setting, purpose and effect. Relevant factors include weaknesses in the contracting process like those involved in more specific rules as to contractual capacity, fraud and other invalidating causes; the policy also overlaps with rules which render particular bargains or terms unenforceable on grounds of public policy. Policing against unconscionable contracts or terms has sometimes been accomplished by adverse construction of language, by manipulation of the rules of offer and acceptance or by determinations that the clause is contrary to public policy or to the dominant purpose of the contract. Uniform Commercial Code S 2-302 Comment 1....A bargain is not unconscionable merely because the parties to it are unequal in bargaining position, nor even because the inequality results in an allocation of risks to the weaker party. But gross inequality of bargaining power, together
with terms unreasonably favourable to the stronger party, may confirm indications that the transaction involved elements of deception or compulsion, or may show that the weaker party had no meaningful choice, no real alternative, or did not in fact assent or appear to assent to the unfair terms.”

There is a statute in the United States called the Universal Commercial Code which is applicable to contracts relating to sales of goods. Though this statute is inapplicable to contracts not involving sales of goods, it has proved very influential in, what are called in the United States, “non-sales” cases. It has many times been used either by analogy or because it was felt to embody a general accepted social attitude of fairness going beyond its statutory application to sales of goods. In the Reporter’s Note to the said section 208, it is stated at page 112:

“It is to be emphasized that a contract of adhesion is not unconscionable per se, and that all unconscionable contracts are not contracts of adhesion. Nonetheless, the more standardized the agreement and the less a party may bargain meaningfully, the more susceptible the contract or a term will be to a claim of unconscionability.”

The position has been thus summed up by John R. Peden in “The Law of Unjust Contracts” published by Butterworths in 1982, at pages 28-29.

“… Unconscionability represents the end of a cycle commencing with the Aristotelian concept of justice and the Roman law laesio enormis, which in turn formed the basis for the medieval church’s concept of a just price and condemnation of usury. These philosophies permeated the exercise, during the seventeenth and eighteenth centuries, of the Chancery Court’s discretionary powers under which it upset all
kinds of unfair transactions. Subsequently the movement towards economic individualism in the nineteenth century hardened the exercise of these powers by emphasizing the freedom of the parties to make their own contract. While the principle of *pacta sunt servanda* held dominance, the consensual theory still recognized exceptions where one party was overborne by a fiduciary, or entered a contract under duress or as the result of fraud. However, these exceptions were limited and had to be strictly proved.

It is suggested that the judicial and legislative trend during the last 30 years in both civil and common law jurisdictions has almost brought the wheel full circle. Both courts and Parliaments have provided greater protection for weaker parties from harsh contracts. In several jurisdictions this included a general power to grant relief from unconscionable contracts, thereby providing a launching point from which the courts have the opportunity to develop a modern doctrine of unconscionability. American decisions on article 2.302 of the UCC have already gone some distance into this new arena . . .”

The expression “*laesio enormis*” used in the above passage refers to “*laesio ultra dimidium vel enormis*” which in Roman law meant the injury sustained by one of the parties to an onerous contract when he had been overreached by the other to the extent of more than one-half of the value of the subject-matter, as for example, when a vendor had not received half the value of property sold, or the purchaser had paid more than double value. The maxim “*pacta sunt servanda*” referred to in the above passage means “contracts are to be kept.”

Standard form contract is called as *contracts d’adhesion* by French lawye.s. ‘iē term contract d’ adhesion is employed to denote the type of
contract of which the conditions are fixed by are of the parties in advance and are open to acceptance by anyone. The contract which frequently contains many conditions is presented for acceptance en bloc and is not open discussion.\(^3\)

Thus standard form contract which is so highly restrictive of one party’s rights, but not of other, that it is doubtful that it is a truly voluntary and uncoerced agreement. The concept typically arises in this context of standard-form contracts that are prepared by one party, not subject to negotiation, and offered on “take it or leave it” basis.

Lord Diplock in *Schroeder Music Publishing Co. Ltd. V. Macaulay*\(^4\) defined standard form contract and observed as under,

> "Standard forms of contracts are of two kinds. The first, of very ancient origin, are those which set out the terms on which mercantile transactions of common occurrence are to be carried out. Examples are bills of lading, charter parties, policies of insurance, contracts of sale in the commodity markets. The standard clauses in these contracts have been settled over the years by negotiation by representatives of the commercial interests involved and have been widely adopted because experience has shown that they facilitate the conduct of trade. Contracts of these kinds affect not only the actual parties to them but also others who may have a commercial interest in the transactions to which they relate, as buyers or sellers, charterers, or ship owners, insurers or bankers. If fairness or reasonableness were relevant to their enforceability the fact that they are widely used by parties whose bargaining power is fairly matched would raise a strong presumption that their terms are fair and reasonable.

The same presumption, however, does not apply to the other kind of standard form of contract. This is of comparatively modern origin. It is the result of the concentration of particular kinds of
business in relatively few hands. The ticket cases in the 19th century provide what are probably the first examples. The terms of this kind of standard form of contract have not been the subject of negotiation between the parties to it, or approved by any organization representing the interests of the weaker party. They have been dictated by the party whose bargaining power, either exercised alone or in conjunction with others providing similar goods or services, enables him to say, 'If you want these goods or services at all, these are the only terms on which they are obtainable. Take, it or leave it.'

Thus it seems that the standard form contracts are two way swords. They enable business to save costs but they may enable one party to dictate terms to the other. The result is this that the weaker party to the contract has no option, he has either to accept the contract on the terms already fixed or reject the contract in toto. There may be certain clauses included in the contract which may define what the other party has to do in an unacceptably narrow way. Insurance policies, for example often has exception clauses which allows the Insurance company to increase price or can terminate the contract at its convenience without compensation.

2. Nature and Object:

Standard form contracts have prefixed terms and condition. The terms are drafted and incorporated in the contract by the stronger party and the weaker party has only one function i.e. is to sign on the dotted line and the contract is made. Whether the weaker party, who does not have any bargaining power, knows that there is any term in the contract, whether there is limiting or exclusion clauses or not, that is immaterial. The consent is inferred from the fact that the party has put his signature on the contract.
In this context the question now arises, whether a standard form contract can be considered a contract in a classical sense? In order to ascertain this answer a standard form contract has to be analysed within the framework of the definition of a classical contract. Where there is total freedom of contract i.e. freedom of a party to choose to enter into a contract on whatever terms it may consider advantageous to its interest or choose not to enter into a contract. The other element is *consensus ad idem* i.e. meeting of minds that is one of the essential requisites of the formation of a valid contract.

As submitted earlier, the standard form contracts have pre-fixed terms and condition drafted by the stronger party often individual do not have the opportunity to negotiate or even read the terms. Extreme examples in this context are insurance policies where purchaser of insurance policies often does not receive their policies before entering into the contract. Therefore these ingredients are lacking in the standard form contract. So standard form contract cannot be said a contract in a classical sense.

Another example again is given regarding the insurance sector. The law requires every vehicle owner to get his vehicle insured for third party risk i.e. risk of injury to any person by accident. Here the law compels vehicle owner to get the insurance cover for the benefit of the third person. Here freedom of a person not to enter into a contract has been taken away by the legislation.

But freedom of contract also referred to the idea that as a general rule there should be no liability without consent embodied in a valid contract. This second and negative aspect of freedom of contract was
influential in narrowing the scope of those parts of the law of obligation which deal with liability imposed by law: tort and restitution.\footnote{6}

Today the position is seen in a different light. Freedom of contract is generally regarded as a reasonable social ideal only to the extent that equality of bargaining power between contracting parties can be assumed, and no injury is done to the economic interests of the community at large. In the more complicated social any industrial conditions of modern society it has ceased to have much idealistic attraction except, perhaps, to the proponents of a completely free market economy, who have advanced it in recent years in a modern and sophisticated way, some using the tools of micro-economic analysis. But whatever its status may be as an ideal, the concept of freedom of contract has suffered severe inroads as the result of developments in modern social life and policy.\footnote{7}

The extensive uses of standard form contracts reflect today's underlying economic realities and are evidence of their economic necessity. Mass production for mass consumption gave birth to this new type of contract, contracts in standard form in which conditions is prefixed terms settled by the party who is strong in bargaining power.

On the one hand standard form contracts fulfill and important efficiency role in the society. Standard form contracts facilitate the functioning of modern society which is dependent on the mass production of goods. Generally, mass production can be characterized by high specialization, division of labour, the production of large amounts of standardized products which requires quality control. The result of this is the product becomes expensive. Then to reduce the cost of transactions the standard form contracts are the only alternative which are used to keep a check on the price of the product by incorporating the standard
terms and conditions in the contract. Standard form contracts ensure low transaction cost. In standard form contracts there is no need to settle terms and condition afresh for each contract, time is saved, money is saved and this will result in reduction of prices of the goods and services and this is for the benefit of the consumers.

Contractual terms are often set out in standard form which are used for all contracts of the same kind, and are only varied so far as the circumstances of each contract require. Such terms may be settled by a trade association for use by its members for contracting with each other or with members of the outside public. Standard contract forms are even provided by legislation or under statutory authority.

One object of these standard forms is to save time. The work of insurer, carriers and bankers, for example, would become impossibly complicated if all the terms of every contract they made had to be newly settled for each transaction. Standard form contracts are also device for allocating contractual risk. They can be used to determine in advance who is to bear the expense of insuring against those risks, and they also facilitate the quotation of differential rates, e.g. where a carriers form provides for goods to be carried either at his or at the customer’s risk, and the charge is adjusted accordingly. Between the businessmen bargaining at arm’s length such uses of standard forms can be perfectly legitimate, and this may be true even where the party to whom the standard terms are presented is a private consumer who has or is likely to have insured against the loss which has occurred. But a less defensible object of the use of standard terms has been the exploitation or abuse of the superior bargaining power of commercial suppliers when contracting with such consumers. The supplier could draft the standard terms in ways highly favourable to himself both by means of clauses which excluded or limited
his liability for failure to perform or for defective performance and by provisions which conferred rights on him under the contract.\textsuperscript{9}

The standard forms contracts reduce the transaction cost, but the consumer in a non-standard form contract would have to pay more as the transaction cost increases in non-standard form contract. Such increased cost would lead to an increase in the price of the product. Thus depriving many consumers the opportunity to enter into the transaction. Therefore, standard form contracts ensure an efficient delivery of mass produced products and benefit the consumer.\textsuperscript{10}

Additionally, they assure uniformity and quality of the transactions. Pre-drawn terms are often better adapted to the special needs of the particular bargain as sales persons and consumes are neither able and in some cases not permitted to set out their own terms and conditions.\textsuperscript{11}

Kessler in his analysis of contract of adhesion pointed out:

"The standard clauses in insurance policies are the most striking illustrations of successful attempts on the part of business enterprises to select and control risks assumed under a contract. The insurance business probably deserves credit also for having first realized the full importance of the so-called 'juridical risk', the danger that a court or jury may be swayed by 'irrational factors', to decide against a powerful defendant. Standardized contracts have thus become an important means of excluding or controlling the 'irrational factors' in litigation.

"In so far as the reduction of costs of production and distribution thus achieved is reflected in reduced prices, society as a whole ultimately benefits from the use of standard contracts. And there can be no doubt that this has been the case to a considerable extent. The use of standard contracts has however,
another aspect which has become increasingly important. Standard contracts are typically used by enterprises with strong bargaining power. The weaker party, in need of the goods or services, is frequently not in a position to stop around for better terms, either because the author of the standard contract has a monopoly (natural or artificial) or because all competitors use the same clauses. His contractual intention is but subjection more or less voluntary to terms dictated by the stronger party, terms whose consequences are often understood only in vague way if at all. Thus standardized contracts are frequently contracts of adhesion they are a *prendre on a laisser*. Not frequently the weaker party to a prospective contract even agrees in advance not to retract his offer while the offeree reserves for himself the power to accept or refuse, or he submits to terms or change of terms which will be communicated to him later.  

In a standard form contract the consumer is unaware and ignorant of both the contents and the existence of excluding or limiting terms in the contract, hence the so-called consent taken of the consumer is not and cannot be said his true consent or true manifestation of consumer’s will.

The idea of an agreement freely negotiated between the parties has given way to the necessity for a uniform set of printed conditions which can be used time and again and for a large number of persons, and at a less cost than an individually negotiated contract. Thus reduction of cost of production and distribution thus achieved is reflected in reduced prices, society as a whole ultimately benefits from the use of standard contracts.

The basic principle of the law of contract is “Freedom of contract”. This doctrine of “Freedom of Contract” has two key aspect: that every person of majority of age and otherwise competent to contract is free to enter into a contract with any person he chooses and to contract on any
terms he wants. In vice versa it could also be said that a person has also the freedom to refuse to enter into a contract if either the terms of the contract or the party is not suitable to him. It is also an underlying theme of Indian as well as of common law that contracts freely entered into will be enforced by the courts. The philosophy of freedom of contract implies that the parties to the contract are able to negotiate on an equal footing, have equal bargaining power, are equally able to look after their own interests and have a full understanding of the consequences of their actions and the terms of the contract.

But in recent times, it is the development of standard form contract which has become focus of allegations of unfairness. The use of standard form contracts is a consequence of the industrial revolution with its exponential growth in the mass production of goods for mass consumption and the provision of services. Business and commercial transactions with large number of consumer and customers is not possible without pre-drafted and pre-printed standard form contracts. Business with large number of customer clearly found it more convenient to have a pre-printed, contract in standard form to be used in all the dealings rather than negotiating each contract on an individual basis. To negotiate contracts on individual basis is time consuming, hence costly affair, so not in practice in many or rather in most fields of business.

Standard form contracts can have advantages to both supplier and purchaser provided that a fair balance is achieved between both parties to the contract. They reduce transaction cost which is passed on to the consumer. They allow for lengthy and detailed contracts to be finalized with the minimum of time and by lay persons who only need to negotiate the specifics such as price, description of goods and services and delivery times. Over a period of time, people become familiar with the contracts
because they are standard and may encourage a general understanding of trading practice. They are also a so-called symbol of fairness and equality, as they have fixed terms and conditions for everyone whosoever he may be.

However there are problems with standard form contracts. They do pose problems. These types of contract are often drafted by trade associations and highly qualified legal professionals on behalf of manufacturer and suppliers. The purchaser of goods or services very often has either no time or opportunity to read and understand the terms and conditions in the contract before signing it, let alone obtain the same standard of legal advice and assistance as of the supplier of goods and services. If there is time to read the terms and conditions in the contract, it is doubtful whether the purchaser is in position to understand the meaning and the impact of each term in the light of whole contract. Even if the purchaser did read and understand the terms and conditions of the contract, then the supplier of the goods or services may not be prepared to change the clauses at his request.

Thus standard form contracts are contracts in standard form on “take it or leave it” basis. This ‘take it or leave it’ attitude places purchasers of goods or services in a difficult or unfavourable circumstances in which either he has to agree to the terms of the contract or forgo the product or service. Since, however it is not feasible to go without many such goods or services, the individual is effectively compelled to adhere to those terms. Although at law it not the circumstance of coercion, undue influence or fraud but the onerous or one sided terms in the contract and conduct on the part of supplier prior to or at the time that the contract is made, the purchaser may have no option but to agree it he or she wants the product or service.
The customer is the king of the market but upto the time he did not enter into a standard form contract. His position is same as of a lion in the jungle, but afterwards when he entered into a standard form contract, he finds himself in a peculiar situation, entangled in the tentacles of terms and conditions which are there in tandem in the contract, and in the cobweb of intrigues made by the supplier of the goods. Then he becomes a lion in the cage of ringmaster he has no option but to dance to the tunes of the supplier.

Many such standard form contracts contain clauses which are unfair or unnecessarily one sided to the detriment of the purchaser. Purchaser may go anywhere but the terms and conditions of the contract are either same or similar. Whether he goes to a market where, there is a monopoly then there is no other alternative he has to adhere to the terms if he/or she wants the service or goods. For example a contract of electric supply connection or a contract of water supply from the local municipal corporation. Similar, if not the same position of the consumer is where, there is monopolistic competition such as the contract of general or life insurance with insurance company or a contract with mobile service provider company for a mobile service. Though the situation in area is different, where, there is perfect competition but the terms and condition of the contract for goods or services is fixed and the contract is on the pre-drafted and preprinted terms.

Finally, the development of technology gave birth to another type of contract in standard form. They are totally non-negotiated and having standard clauses, that are contract made through internet. The advent of computers and internet allows for contracts to printed as and when needed. One can by clicking the electronic mouse of the computer may enter into the contract having fixed terms and conditions. In this type of
contract there is no need even to put the signature on the dotted line, one click on the mouse is sufficient and the contract is made. The peculiarity of this type of contract is, the individual first have to say “yes” to enter into a contract for the purchase of any product through internet and after that he can have access to the terms of contract. Before entering into the contract he can only know about the product and the price only but not the terms of the contract. In these type of contracts the consent of the individual is taken before when he or she does not know, what the terms of the contract are, and after that terms of the contract are presented to him or her. Thus this type of contract, where the consent of the individual is taken before the terms of the contract is shown to him, cannot be said a contract in a classical and conventional sense. There is no negotiation in this type of contract. Need here play an important role, if you need a product you will have to accept the terms of the contract and if you do not accept the terms then forgo the product.

In an industrial society, whether advanced or developing, the individual craftsman, catering to the tastes of individual customers, slowly fades out, giving place to mass production of standardized products. Such standardization leads to standardized dealings with customers that is, to standardized contracts with customers. They are found in all areas where operations are on a large scale. In the case of such large scale organizations, which enter into innumerable contracts with individuals, it is very difficult for them to draw up a separate contract with each individual. For example, the Life Insurance Corporation of India has to issue thousands of covers every day. Similarly, the Railway administration has to enter into several contracts of carriage. Therefore, they have standardized printed forms of contracts, with blank spaces to be filled in by each individual; and when the form is
filled in and signed, a completed contract comes into existence between the organization and the individual. These standardized contracts are really pretended contracts that have only the name of contract. They are called contracts of adhesion from the French term (contracts d’adhesion) because, in these, a single will is exclusively predominant, acting as a unilateral will, which dictates its terms not to an individual but to an indeterminate collectively. The standard terms and conditions prepared by one party are offered to the other on a “take-or-leave it” basis. The main terms are put in large print but the qualifications are buried in small print. The individual’s participation consists at a mere adherence, often unknowing to the document drafted unilaterally and insisted upon by the powerful enterprise: the conditions imposed by the document upon the customer, are not open to discussion nor are they subject to negotiation between the parties, but the contract has to be accepted or rejected as a whole. The contracts are produced by the printing press. The pen of the individual signing on the dotted line does not really represent his substantial agreement with the terms in it, but creates a fiction that he has agreed to such terms. The characteristics, usually and traditionally associated with a contract, such as freedom to contract and consensus, are absent from these so-called contracts.¹⁶

Apart from the fact that the abstract theory of a contract as an agreement arrived at through discussion and negotiation is completely given the go-by, these contracts turn out to be a case of the big business enterprises legislating in a substantially authoritarian manner. Such large-scale business concerns get expert advice and introduce terms, in the printed forms, which are most favourable to themselves. They contain many wide exclusion and exemption clauses favourable to the large enterprise. The clauses are introduced, not always with the idea of
imposing harsh terms as a result of superior bargaining power, but because (a) as the executive of one commercial enterprise remarked, 'we trust our lawyers to get us out of jam, but we don't trust them not to get us into one; (b) when liquidated damages clauses are used, the enterprise feels it is a genuine attempt to pre-estimate damages; (c) there is a desire to avoid proceedings in a court; and (d) because every one else does it. These favourable terms are often in a small print which the individual never reads. That is because, it is a laborious and profitless task to discover what these terms are. The individual cannot bargain for a change in any of the terms, since he has to accept the giant organization's offer, whether he likes the terms or not. They are there for him to take or leave. Because of the monopolistic or near monopolistic position of big business, and even if there is no monopoly, all similar commercial enterprise introduce similar exclusion clauses in there standard form contracts, and because the individual customer has no choice or freedom in the matter but has to accept whatever terms are offered since he cannot negotiate them. And this gives an opportunity to the organization to exploit the helplessness of the individual and impose on him clauses which may, and often do, go to the extent of exempting the organization from all liability under the contract.\textsuperscript{17}

A meagre attempt may be made here to illustrate this problem with the help of a few decided cases of different High Courts of India relating to carriers.

The Assam High Court in \textit{Rukmanand Ajitsaria v/s Airways (India) Ltd.}\textsuperscript{18} held that the liability of internal carrier by airways who is not governed by the Indian carriage by Air Act 1934 or by the Carriers Act, 1855 is governed by the English Common Law since adopted in India and not by the contract Act. Under the English common law, the carrier's
liability is not that of bailee only, but that of an insurer of goods, so that the carrier is bound to account for loss or damage caused to the goods delivered to it for carriage, provided the loss or damage was not due to an act of God or the King's enemies or to some inherent vice in the thing itself.

The decisions, barring a few notable exceptions, appear to be unanimous that the liability of the carrier in such cases is governed by the English common law since adopted in India and not by the contract Act. Where those circumstances do not exist, the carrier cannot take the plea that it should be exempted from liability, because it had taken every reasonable care to avoid the loss or damage. At the same time the common law allows, the carrier almost an equal freedom to limit its liability by any contract with the consignor. In such a case, its liability would depend upon the terms of the contract or the conditions under which the carrier accepted delivery of the goods for carriage. The terms could be very far reaching. Indeed it could claim exemption even if the loss was occasioned on account of the negligence or misconduct of its servants or even if the loss or damage was caused by any other circumstances whatsoever, in consideration of a higher or lower amount of freight charged.

However, amazing a contract of this kind may appear to be, yet that seems to be the state of the law as recognized by the common law of England and adopted by the courts in India. The carriers Act, 1865 (Act III of 1865) also recognized the same principle and under Ss. 6 and 7 it specifically provided to what extent it was possible for the common carrier to limit its liability by a special contract. The Indian Railway Act 1890 (Act IX of 1890) was cognisant of the application of the law of carriers in India and therefore, under section 72 of the Act it specifically
provided that the liability of the Railways would be that of a bailee governed by Secs. 151 and 152 of the Act, except where the consignment was governed by the terms of a risk note. The Division Bench of Sarjoo Prasad C.J. and H. Deka J. of Assam High Court held that the clause in a contract of carriage by air gave the carrier-company complete immunity from liability and it could not be impugned on the ground that it is hit by section 23 of the Indian Contract Act, because the contract Act has no application to the case nor it can be said to be opposed to public policy. Exemption clauses of this nature have been upheld by the courts and there being no other statutory bar as provided under the Indian Carriers Act or under the Indian Carriage by Air Act which have no application to this case, under the common law a contract of this nature was permissible.

In the case of Indian Airlines Corporation v/s Madhury Chowdhuri the Calcutta High Court held that the obligation imposed by law on common carriers in India is not founded upon contract, but on the exercise of public employment for reward. The liability of common carriers in India is not affected by the contract Act 1872.

The facts of the case are as:

The suit arose out of a tragic air crash at Nagpur when a Dakota airplane VT-CHF crashed soon after it started flying from Nagpur to Madras. The plaint stated that the plaintiffs were the heir and legal representatives of the deceased Sunil Baran Chowdhury and that the action was brought for their benefit. Sunil Baran was a passenger by air from Calcutta to Madras via Nagpur in the Aircraft of the defendant Indian Airlines Corporation and had duly purchased the ticket. It was pleaded in the plaint that as a result of the accident Sunil Baran was killed. In the particulars of the accident given in the plaint it was said that
the accident took place on the 12th December 1953 at 3:25 a.m. about two miles from the end of the runway of Sonegaon Airport Nagpur when the said plane attempted to land owing to engine trouble immediately after it had taken off from the said aerodrome. On that ground it was pleaded that the defendant Indian Airlines Corporation was liable for damages for breach of contract in not safely carrying the passenger and for breach of duties under the carriage by Air Act and/or the notification there under. There was an alternative plea in the plaint which alleged that the deceased died of the said accident which was caused by the negligence and/or misconduct of the defendant corporation or its agent. In the written statement the defendant Indian Airlines Corporation relied on the terms and conditions of the passenger’s Air Ticket dated the 11th December 1953 issued by the defendant to the said Sunil Baran Chowdhury. In particular the defendant corporation relied on the exemption clause as an express term and condition of the said ticket which read inter alia as follows:

"The carrier shall be under no liability whatsoever to the passenger, his/her Levis, legal representatives or dependents or their respective assigns for death, injury or delay to the passenger or loss, damage, detention or delay to his baggage or personal property arising out of the carriage or any other services or operations of the carrier whether or not caused or occasioned by the act, neglect or negligence or default of the carrier or of pilot flying operational or other staff or employees or agents of the carrier or otherwise howsoever and the carrier shall be held indemnified against all claims, suits actions, proceedings, damages, costs, charges and expenses in respect thereof arising out of or in connection with such carriage or other services or operations of the carrier."
These conditions exempting the carrier from liability were duly brought to the notice of the passenger and he had every opportunity to know them.

The Calcutta High Court\textsuperscript{21} held that the obligation imposed by law on common carriers in India is not founded upon contract, but on the exercise of public employment for reward. The liability of common carriers in India is not affected by the Contract Act 1872. Therefore, no question of testing the validity of this exemption clause with reference to section 23 of the Contract Act could at all arise. The Contract Act does not profess to be a complete code dealing with law relating to contracts. An exemption clause of this kind was not hit by any section of the Contract Act, be it S. 23 or any other section, because the Contract Act itself had no application. No Act applies to internal carriage by air. The Warsaw convention did not apply, nor was there any statute which prevented or limited the scope or content of such an exemption clause. Both in respect of Contract Act and tort the present exemption clause set out above was good and valid and it legally excluded all liability for negligence. It could not be held to be bad under section 23 of the Contract Act.

The Rajasthan High Court\textsuperscript{22} has held:

"Wherever, on the face of the goods ticket words to the effect "For conditions see back" are printed the person concerned is as a matter of law held to be bound by the conditions subject to which the ticket is issued whether he takes care to read the conditions if they are printed on the back or to ascertain them if it is stated on the back of the ticket where they are to be found. Where on the other hand the words printed on the face of the ticket do not indicate that the ticket is issued subject to certain conditions but there are merely words to the
effect “See Back” then it is a question of fact whether or not the carrier did that which was reasonably sufficient to give notice of the condition to the person concerned. If however, conditions are printed on the back of the ticket, but there are no words at all on the face of it to draw the attention of the person concerned to them, then it have been held that he is not bound by the conditions."

In the present case on the face of the ticket there was a declaration to the effect that the consignor was fully aware of and accepted the conditions of carriage given on the back side of the consignment receipt. Any prudent consignor would read the ticket to see that his goods and the transport charges payable were correctly entered in it and in doing so he would read the above declaration or if he did not know English he would have the ticket read by someone else knowing English who could come to know that it was subject to conditions printed on the back. The man must be taken to know that which he has the means of knowing, whether he has availed himself of those means or not. If he does not he must bear the consequences of his carelessness.23

The Madras High Court24 has held:

(i) A common carrier is a person who professes himself ready to carry goods for everybody. He is considered to be in the position of an insurer with regard to the goods entrusted to him and so his liability is higher.

(ii) But when it is expressly stipulated between the parties that a carrier is not a common carrier that conclusively shows that the carrier is not liable as a common carrier. And even assuming that the carrier would be deemed to be a common carrier or held liable as such, it was open to such a carrier to contract himself out of the liability as common carrier or fix the limit of liability.
As early as in 1909 Shankaran Nair J. in the case of *Shaikh Mohd. Ravuther V. B.I.S.N. Co.* in his dissenting judgement expressed the opinion that section 23 of Indian Contract Act 1872 hits such exemption clauses but his view has been rejected by the High Courts in later decisions i.e. *Rukmanand V. Airway (India) Ltd.* and *Indian Airlines Corporation V. Madhuri Chowdhury.*

The very important and crucial question is, that we suppose, that the person who entering into this type of standard form contract knows the terms and conditions even before entering into the contract but if he wanted to change them or alter any term or any condition, can he do so, or could he negotiate on terms and conditions? If he cannot then how the court can come to his rescue and give relief to the individual.

This is not so that the courts did not come to the relief of the weaker party but there are a few cases and the legal basis of such decisions is elusive, vague and obscure. There is no general provision in the Contract Act itself under which 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. Section 23 of the Contract Act which provides that

“...The consideration or object of an agreement is lawful, unless –

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or

involves or implies, injury to the person or property of another; or

the court regards it as immoral, or opposed to public policy.”

The Madras High Court held that a clause in the contract for the supply of jaggery by the Appellant to the Railway Administration of the
respondent, which empowered the administration to cancel the contract at any stage was void and unenforceable.

In the present case the Railway Administration accepted the tender submitted by the plaintiff for the supply of certain quantity of jaggery. The plaintiff paid the requisite amount as security deposit for fulfillment of the contract. Thereafter the Railway Administration placed an order with the plaintiff for the supply of jaggery in certain installments.

After the first installment was supplied, the Administration informed the plaintiff that the balance of quantity of jaggery outstanding was treated as cancelled and the contract closed, without explaining the reason for cancellation. The Administration took the stand on the following clause in the tender

“This Administration reserves the right to cancel the contract at any stage during the tenure of the contract without calling upon the outstandings on the unexpired portion of the contract.”

The court held:

1. That there was in law a concluded contract between the parties;
2. That the clause was not a limiting provision only providing for contingencies subject to which the contract was enforceable. The effect of the clause was that there was an enforceable contract subject to the condition that it was open to one of the parties to say that it was not enforceable.
3. That the clause did not indicate that the Railway should give any reasons, still loss, valid and sufficient reasons, for the cancellation of the contract. The clause purported to confer an
absolute and arbitrary power on one of the parties to cancel the contract, and was therefore void and unenforceable.

This judgement of the High Court was confirmed by the Supreme Court but on a different ground. The Supreme Court did not pronounce on the validity of the clause in the contract. The Supreme Court held:

(i) that the acceptance of the tender did not amount to the placing of the order for any definite quantity of jaggery on a definite date and, therefore, did not amount to a contract in the strict sense of the term in view of the provisions of paragraphs 8 and 9 of the tender requiring a deposit of security and the placing of the formal order;

(ii) that the condition mentioned in the note to para 2 of the tender or in the letter, dated February 16, 1948, referred to a right in the appellant to cancel the agreement for such supply of jaggery about which no formal order had been placed by the Deputy General Manager with the respondent and did not apply to such supplies of jaggery about which a formal order had been placed specifying definite amount of jaggery to be supplied and the definite date or definite short period for its actual delivery. Once the order was placed for such supply on such dates that order amounted to a binding contract making it incumbent on the respondent to supply jaggery in accordance with the terms of the order and also making it incumbent on the Deputy General Manager to accept the jaggery delivered in pursuance of that order.

The Supreme Court in the judgement's para 17 referred an illustration from "Law of Contract" by Cheshire and Fifoot 5th Ed. At p. 36:

"There are at least two possible cases. First, the corporation may have stated that it will definitely require a specified
quantity of goods, no more and no less, as, for instance where it advertises for 1000 tons of coal to be supplied during the period January 1st to December 31st. Here acceptance of the tender is an acceptance in the legal sense and it creates an obligation. The trader is bound to deliver, the corporation is bound to accept, 1000 tons and the fact that delivery is to be by installments as and when demanded does not disturb the existence of the obligation.”

The other case illustrated by Cheshire and Fifoot is:

“Secondly, the corporation advertises that it may require articles of a specified description up to a maximum amount, as, for instance where it invites tenders for the supply during the coming year of coal not exceeding, 1000 tons altogether, deliveries to be made if and when demanded, the effect of the so-called “acceptance” of the tender is very different. The trader has made what is called a standing offer. Until revocation he stands ready and willing to deliver coal up to 1000 tons at the agreed price when the corporation from time to time, demands a precise quantity. The ‘acceptance’ of the tender, however, does not convert the offer into a binding contract, for a contract of sale implies that the buyer has agreed to accept the goods. In the present case the corporation has not agreed to take 1000 tons, or indeed any quantity of coal. It is merely stated that it may require supplies up to a maximum limit.”

“In this latter case the standing offer may be revoked at any time provided that it has not been accepted in the legal sense; and acceptance in the legal sense is complete as soon as a requisition for a definite quantity of goods is made. Each requisition by the offeree is an individual act of acceptance which creates a separate contract.”
The Supreme Court observed: "we construe the contract between the parties in the instant case to be of the second type. To reserve a right to cancel an outstanding contract is then consistent with the nature of the agreement between the parties as a result of the offer of the respondent accepted by the appellant and a similar note in the formal order, dated the 16 February 1948 had no reference to the actual orders but could refer only to such contemplated supplies of goods for which no orders had been placed.

In view of the construction we have placed on the contract between the parties it is not necessary to decide the other contention urged for the appellant that the stipulation in the note amounted to a term in the contract itself for the discharge of the contract and, therefore, was valid, a contention to which the reply of the respondent is that any such term in a contract which destroys the contract itself according to the earlier terms is void as in that case there would be nothing in the alleged contract which would have been binding on the appellant. We are of the opinion that the order of the High Court is correct."30

In another case before the Madras High Court31, the laundry receipt of the appellant contained the condition, on the reverse of the bill which was handed over by the firm of launderers to his customer when receiving the article, that the customer would be entitled to claim only 50 per cent of the market price or value of the article in case of loss. A garment of a customer given for cleaning was lost due to the negligence. The firm insisted that in accordance with terms, they were bound to pay only 50 per cent of the market value of the lost garment. The question arose whether the condition printed on the bill was valid in law and if it could be enforced as between the parties."
Held that the term being prima facie opposed to public policy and to the fundamental principles of the law of contract would not be enforced only because it was printed on the reverse of the bill and there was a tacit acceptance of the term when the bill was received by the customer, it would put a premium upon the abstraction of the clothes by an employee of the firm, intent on private gain though the firm itself might be blameless with regard to the actual loss.

The High Court observed:

"It appears to me to very clear that a term which is prima facie opposed both to public policy and to the fundamental principles of the law of contract cannot be enforced by a court, merely, because it is printed on the reverse of a bill and there is a tacit acceptance of the term when the bill was received by the customer certainly, the conditions printed on the reverse of a bill may well govern or modify any simple contract, such as the contract in the present case, which was to entrust an article for dry cleaning, and to pay due charges for that service, subject to the obligation on the part of the businessman to perform the process properly, and to return of the articles safe and intact. But, if a condition is opposed, which is in flagrant infringement of the law relating to negligence, and a bill containing this printed condition is served on the customer, the court will not enforce such a term, which is not in the interest of the public and which is not in accordance with public policy."

In case of a contract of supply of kerosene by defendant to the plaintiff, the contract reserves a right to the defendant to cancel the plaintiff's dealership at any time without assigning any reason. On cancellation by the defendant, the plaintiff filed a suit and the suit was decreed on the ground that the term was an unfair term of the contract.
In this case the second appeal arise out of a suit instituted by the plaintiff, the proprietor of International Oil Co. against the Indian Oil Corporation, for an injunction restraining the defendant from withholding the supply of kerosene to the plaintiff. The supply of kerosene was on the basis of a contract entered into between the parties on 06.02.1964. The defence to the suit was that since the plaintiff had not complied with the terms of the agreement embodied in the agreement, he is not entitled for any continuous supply of kerosene and in any event, the suit itself is not maintainable. The plaintiff after some correspondence with the defendant had to file a suit for an injunction restraining the defendant, Indian Oil Corporation, from continuing the breach of contract, namely, withholding supply of kerosene and for damages for non-supply of kerosene. After the suit was filed, the Indian Oil Corporation terminated the contract itself. The questions that were considered by the courts below were whether the suit for injunction is maintainable, whether the defendant committed a breach of the contract and whether the plaintiff is entitled to damages.

The courts below gave a concurrent finding that the plaintiff is not entitled to any injunction against the Indian Oil Corporation as those was a valid termination of the agency, that the corporation did not commit any breach of contract when it did not supply any kerosene to the plaintiff and that the plaintiff is not entitled to claim any damages. The suit was dismissed. Against the dismissal of the suit the second appeal was preferred before the High Court of Madras.

The only question that arose before the High Court for consideration was whether the Indian Oil Corporation can terminate the agency with the plaintiff without any notice.
The High Court referred to the observation of McNair J. in Martin Baker Aircraft Co. Ltd. V. Canadian Flight Equipment Ltd. and Martin Baker Aircraft Co. V. Murison 1955 2 Q.B. 556.

"If it were a pure agency agreement and nothing more, there is much to be said for the view that it would be terminable summarily at any moment. But if an agreement of this nature has to be looked at as a whole, and the whole of its contents considered, and if one finds (as one finds here) that the person who is described as sole selling agent has to expend a great deal of time and money and is subject to restriction as to the sale of other persons' products which may be competitive, it seems to me that it is a form of agreement which falls much more closely within the analogy of the strict master and servant cases where admittedly the agreement is terminable not summarily except in the event of misconduct but by reasonable notice."

The Hon'ble Court further observed that "Following the above observation we are of the view that this is a case where the appellant can validity contends before this court that the agency cannot be terminated without any notice. In M. Thathiah V.M. and S.M. Railway, 1956-2 Mad LJ 584 = (AIR 1937 Mad 82) a bench of this court has observed that an absolute power of cancellation of contract cannot be validly reserved in favour of one of the parties. In the instant case, the Indian Oil Corporation has reserved an absolute power of cancellation of the contract and has actually cancelled the agency without assigning any valid reasons. We are of the view that such a clause in the contract is absolutely illegal, irregular and void. It is true that the plaintiff-appellant had knowledge of the existence in the agreement of the sort of 'Sword of Damocles' termination clause. Even then, it is unfair on the part of
corporation to terminate the agency without due regard to the equities of an agent and without just provocation to cancel. Therefore, we are not able to agree with the findings of the court below that the suit is not maintainable and that the corporation is not bound to supply kerosene to the appellant. On the other hand it is a clear case of a breach of a contract and also termination of the agency without assigning any cause to such termination. On the review of the events that took place rapidly between the parties there appears to be something wrong which we are not able to understand. All that we can say is that the agency cannot be terminated without proper notice, and it is quite contrary to the principles established by law."\textsuperscript{34}

If any of terms of the contract are unconscionable, it would be against public policy and the party affected can approach the court for relief. But the court did not lay down any test as to when a term would be unconscionable and opposed to public policy. The decisions where relief was given to the aggrieved person are based on the observations in various judgements of the English Courts, but do not seem to be based on any legal principle of Indian Law. The decisions are based on unconscionable nature of term or the term being opposed to public policy or the term not being in public interest.

The Supreme Court in State of Rajasthan V. Basant Nahata\textsuperscript{35} took the discussion regarding ‘public policy’. The court observed that the public policy is not capable of being given a precise definition. Even though the doctrine has been crystallized under different heads. In this case the court observed.\textsuperscript{36}

\textquotation
"The word, ‘Public Policy’ or ‘opposed to public policy’, \textit{inter alia}, find reference in Section 23 of the Indian Contract Act, Section 7(1)(b)(ii) of Foreign Awards (Recognition and
Enforcement) Act, 1961, Section 3 (1) of U.P. (Temporary Control of Rent and Evictions) Act 1947 and Section 34(2)(b) (ii) of Arbitration and Conciliation Act, 1996. By reason of the said provisions the judiciary has been conferred with power to determine as to the factors of public policy which may form the basis for interference with a contract or award. It may not be necessary for us to deal with extensively the case laws dealing with the relevant provisions of the said statutes but it would not, in our opinion, be correct to contend that public policy is capable of being given a precise definition. What is ‘opposed to public policy’ would be a matter depending upon the nature of the transaction. The pleadings of the parties and the materials brought on record would be relevant so as to enable the court to judge the concept as to what is for public good or in the public interest or what would be injurious or harmful to the public good or the public interest at the relevant point of time as contra-distinguished from the policy of a particular government. A law dealing with the rights of a citizen is required to be clear and unambiguous. Doctrine of public policy is contained in a branch of common law, it is governed by precedents. The principles have been crystallized under different heads and though it may be possible for the courts to expound and apply them to different situations but it is trite that the said doctrine should not be taken recourse to in ‘clear and incontestable cases of harm to the public though the heads are not closed and though theoretically it may be permissible to evolve a new head under exceptional circumstances of a changing world.”

A contract being “opposed to public policy” is a defence under Section 23 of Indian Contract Act and the courts while deciding the validity of a contract has to consider:
(a) Pleadings in terms of order VI, Rule 1 of the Code of Civil Procedure.

(b) Statute governing the case.

(c) Provisions of Part III and IV of the Constitution of India.

(d) Expert evidence, if any.

(e) The materials brought on record of the case.

(f) Other relevant factors, if any.

A party in a suit against whom illegality is pleaded also gets an opportunity to defend himself. Hence this essential function to decide on what is pubic policy cannot be delegated to executive through a subordinate legislation.  

Thus the court laid down the general principles regarding public policy:

(i) since public policy is not capable of precise definition, it is not for the executive to file the grey areas as the said power rests with the judiciary;

(ii) even the power of the judiciary is very limited;

(iii) public policy, which itself is so uncertain, cannot provide sufficient framework or work as guidelines for the executive to function under it.

Thus it is submitted that standard form contract, is common in today's complex structure of giant corporations with vast infrastructural organization. The use of standard terms and conditions is not confined only to contracts in commercial transactions but contracts with multinational corporations, public authorities, insurance and banking
business, railways and airlines. Nowadays they are found in almost everywhere in consumer contracts, employment, hire-purchase any form of travel, courier services or while downloading software contracts from the internet.

The standard form contracts are very useful as it saves time. One object of these standard forms is to save time, otherwise the work of insurers, carriers and bankers would become impossibly complicated if all the terms of every contract they made had to be newly settled for each transaction. Standard form contract is very useful but its misuse also cannot be denied, i.e. exploitation or abuse of superior bargaining power of commercial suppliers when contracting with consumers. The bargaining power of the individual is not always on equal terms and one party invariably has to sign on the dotted line, with no opportunity for that party to negotiate over the terms at all.

Secondly the individual may be unfamiliar or ignorant with the terms or language used in the contract by the other party to the contract. The exclusionary and limiting terms are incorporated in the contract. Thus the characteristics traditionally associated with a contract, such as freedom of contract and consensus ad idem are absent in these standard form contract.

A standard-form contract prepared by one party, to be signed by the other party in a weaker position or in a position of no bargain usually a consumer who has little choice about the terms. In some cases these standard form contracts are extremely one sided grossly favouring one party against the other and are commonly referred to as contracts of adhesion.
Standard forms contracts are usually pre-printed and fore-drafted contracts that are only contracts in name. The standard terms and conditions unilaterally prepared by one party are offered to the other on take-it or leave it basis. In some cases the unilateral terms and conditions are forced by stronger party on the weaker party to the contract. The individual participation consists of a mere adherence to the contract drafted unilaterally by the powerful business enterprises. The traditional concept of free consent is lacking here or is nowhere is the standard form contracts. The conditions imposed by one party on the other are never put into discussion. One has to fill his name in the fore-printed and pre-drafted contract and sign on the dotted line.

In cases of mediclaim policy very often there are restricting clause which says that pre-existing illness that the policyholder suffers from will not be covered. There are also contracts where one party is authorized unilaterally to alter the terms of the contract at his own free will and that too without the notice to the other party.

Employment contracts also contain certain clauses enabling the employer to terminate the service contract without assigning any reason whatsoever and some contracts of service the employer is authorized by virtue of the contract that in case of any dispute between the parties the employer can nominate his own employee, consultant or lawyer to act as arbitrator. These type of contracts cannot be said the contracts having equal bargaining power. Here one party to the contract is in dominating position and the other party is in weaker position having no bargaining power. Such terms incorporated in the standard form contract could never be part of contract, if parties were to negotiate the terms on equal level.
The standard form contract can be beneficial to both the parties to the contract if the terms constitute a fair balance between them. For this it is necessary for that the stronger party to the contract should not incorporate the harsh and one sided limiting terms in the contract. There should be a mechanism to check this menace, so that the stronger party should not be in a position to draft the standard terms in ways highly favourable to himself, both by means of clauses which excludes or limits his liability for failure to perform or for defective performance, and by provisions which confer rights on him under the contract. In cases concerning exemption clauses the courts are not in a position to redress the balance in favour of the parties prejudicially affected by standard form contracts. This is so because there is no specific law or any provision in the contract Act under which the courts in India could give the relief to the weaker party to the contract who is prejudiciously affected by the contract.

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18. AIR 1960 Assam 71.

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22. Singhal Transport v/s Jesaram, AIR 1968, Rajasthan-89

23. Ibid at page 93 para 12.


25. 1909 ILR 32 Mad. 95


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29. Union of India V/s Maddala Thathaiah AIR 1966 Supreme Court 1724.
30. Ibid at page 1728-1729 paras 17-18-19-20-21
32. Ibid at page 14 para 5.
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35. AIR 2005 SC 3401; SCJ 2005(6) 552.
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